

# BRABUS Terms and Conditions of Delivery, Payment and Assembly

## 1. General, Scope of Application

1.1 The following terms and conditions of delivery, payment and assembly ("GTC") shall apply to all - also future - deliveries and services of BRABUS GmbH (hereinafter "BRABUS"). Conflicting general terms and conditions of the respective contractual partner are expressly rejected. Such terms and conditions of a contractual partner shall not be binding on BRABUS even if BRABUS has not expressly objected to them after receipt by BRABUS or if BRABUS performs services to the contractual partner without reservation in knowledge of conflicting or deviating terms and conditions of the contractual partner.

1.2 The following General Terms and Conditions shall apply to all BRABUS contractual partners, i.e. to natural or legal persons or legally responsible associations of persons under civil law as well as to legal persons under public law or special funds under public law, irrespective of whether they are merchants within the meaning of the German Commercial Code (HGB) or entrepreneurs or consumers within the meaning of German Civil Code (hereinafter referred to as "Contractual Partners"). Deviating special provisions, in particular for consumers, shall be specifically indicated in each case.

1.3 Deviations from the GTC are only effective if determined in writing in the respective contract and have been confirmed in writing by BRABUS.

## 2. Conclusion of Contract

Offers provided by BRABUS are always subject to change. Conclusions of contracts and other agreements, especially verbal collateral agreements and assurances of employees or representatives, become binding only after written confirmation by BRABUS.

## 3. Prices

3.1 Unless otherwise stated in the order confirmation, BRABUS prices for deliveries are "ex works" plus statutory VAT. Packaging, freight, postage, insurance and delivery charges will be charged separately.

3.2 The prices for repairs, assemblies and other services are basically based on the respective expenditure, whereas work performances are charged according to the respective applicable catalog of working values, as far as the respective applicable price catalog of BRABUS does not contain any information in this respect. For parts used, the respective applicable catalog prices shall be charged.

3.3 Price quotations in brochures and catalogs are only binding if the brochures and catalogs are still valid at the time of order placement and if the order confirmation does not state otherwise.

## 4. Terms of payment

4.1 Unless otherwise stated in the order confirmation, invoices issued by BRABUS are to be paid without deduction by the 5th day of the month following the month of invoicing. Invoices for repairs and assemblies on vehicles provided by BRABUS as well as invoices for vehicle deliveries have to be paid before or at pickup.

4.2 If terms of payment according to Sec. 4.1 are exceeded, the Contractual Partner is in default. In this case BRABUS is entitled to charge interest on late payment in the amount of five percentage points above the respective prime rate towards consumers and in the amount of nine percentage points p.a. above the respective prime rate towards other Contractual Partners according to § 247 of the German Civil Code (BGB). We reserve the right to assert further damage caused by default. § 353 HGB shall remain unaffected.

4.3 In case of partial deliveries or partial services, BRABUS is entitled to refuse the performance of the services still to be rendered under the contract in case of default of payment of the Contractual Partner until the outstanding claims have been fulfilled. Furthermore, BRABUS is entitled in such a case to demand concurrent payment for the remaining services to be rendered in deviation from the provisions under Sec. 4.1. Deviating mandatory statutory provisions in favor of consumers shall remain unaffected.

4.4 Non-compliance with the terms of payment, default or other circumstances that reduce the creditworthiness of the Contractual Partner entitle BRABUS to make all claims from the current business relationship with the Contractual Partner immediately due.

4.5 The Contractual Partner is only entitled to set-off with counterclaims and to exercise a right of retention if counterclaims are based on the same contractual relationship. Furthermore, the Contractual Partner is only entitled to set-off with counterclaims if counterclaims are legally established, undisputed or acknowledged by BRABUS.

## 5. Delivery Periods and Dates

5.1 Delivery periods and dates shall only be considered as approximate data, unless BRABUS has expressly designated dates as binding in writing. The delivery period for purchase transactions shall commence on the day of the order confirmation submitted by BRABUS, but not before clarification of all technical and commercial details as well as submission of possibly required approvals. Any changes in the design of the delivery item requested by the Contractual Partner within the delivery period interrupt and extend the delivery period accordingly. Performance periods in connection with the execution of assembly, repair and maintenance contracts do not start before confirmation of the order by BRABUS and provision or availability of the vehicle on which the work is to be performed. Apart from that, the regulations above under sentence 2 and sentence 3 apply accordingly.

5.2 If BRABUS is not able to meet binding delivery dates for reasons BRABUS is not responsible for (non-availability or non-performance of the service due to substantial complication or impossibility of performance), BRABUS will inform the Contractual Partner immediately and at the same time inform about the expected new delivery date. If the service is also not available within the new delivery period, BRABUS is entitled to withdraw from

the contract in whole or in part; compensations already made by the Contractual Partner will be refunded immediately. A case of non-availability of the service within this meaning is especially the non-timely self-delivery by suppliers, if a congruent covering transaction has been concluded, neither BRABUS nor its supplier is at fault or BRABUS is not obliged to procure in the individual case. The occurrence of the delay in delivery is determined according to the legal regulations. In any case, a reminder by the Contractual Partner is required. Deviating mandatory statutory provisions in favor of consumers shall remain unaffected.

5.3 If the delivery item is not or not completely delivered or the service is not or not completely rendered even after a reminder, the Contractual Partner is entitled to withdraw from the contract after expiration of the deadline with regard to those deliveries and services that have not been delivered until the expiration of the grace period; in this respect, the dispatch by BRABUS is equivalent to the delivery in case of delivery transactions. If the Contractual Partner suffers a damage due to a delay in delivery for which BRABUS is responsible, BRABUS shall compensate the damage demonstrably incurred, however, not exceeding 5 % of the net value of the delayed or unperformed delivery or service, unless BRABUS can be charged with intent or gross negligence. If the respective Contractual Partner is not a consumer and asserts a claim for damages instead of performance, such claims are excluded in case of not grossly negligent or intentional conduct on the part of BRABUS.

5.4 In case of force majeure affecting BRABUS itself, its sub-suppliers or the Contractual Partner, the contractual party affected by it shall be released from the obligation to deliver, perform or accept for the duration and to the extent of the impact. Force majeure is in particular any official closure or disruption of the transport route, disruption of operations such as fire damage, floods, strikes, lawful lockouts, epidemics and pandemics, which are not caused by BRABUS.

5.5 BRABUS shall be released from compliance with any delivery period if the Contractual Partner is in default of payment from previous orders or with regard to a partial delivery of an order or if he does not meet other contractual obligations.

5.6 In case of shipment of goods, the day of dispatch shall be the day of delivery; in all other cases, the day on which the Contractual Partner receives the notification of readiness for dispatch, delivery or handing over shall be decisive.

## 6. Shipment/Risk Assumption

6.1 The shipment shall be carried out at the expense of the Contractual Partner to the Contractual Partner or according to the Contractual Partner's instructions to third parties.

6.2 In case of shipment, the risk passes to the Contractual Partner as soon as the goods to be delivered have left the factory of BRABUS. The same applies if the goods to be delivered are shipped directly to the Contractual Partner by a sub-supplier at the instigation of BRABUS. These regulations are also valid for partial deliveries or if BRABUS has taken over other services, but do not apply towards consumers.

6.3 If the shipment is delayed due to circumstances for which the Contractual Partner is responsible, the risk shall pass to the Contractual Partner on the day of the notification of readiness for shipment.

6.4 BRABUS is entitled to insure the goods to be shipped against the transport risk at the expense of the Contractual Partner. BRABUS shall only be obliged to do so on the basis of a special written agreement.

6.5 Goods not subject to shipment or other services have to be accepted by the Contractual Partner at the premises of BRABUS at the latest within 7 days after receipt of the respective delivery or pickup notice. In case of non-acceptance, BRABUS can make use of the legal rights.

## 7. Warranty

7.1 The contracting party shall inspect delivered goods immediately upon receipt and notify any defects in writing without delay, at the latest within 8 working days after receipt at the place of destination. Hidden defects shall be notified immediately upon discovery. Failure to comply with the time limit for giving notice of defects shall result in the exclusion of the Contractual Partner with claims of any kind with regard to the defects not notified or notified late if the Contractual Partner is a merchant or a legal entity under public law.

7.2 In case of defective deliveries or services, BRABUS shall be given the opportunity to inspect the notified defect either on site or in the branch offices of BRABUS at its discretion. The inspection by BRABUS has to be carried out immediately, provided that the Contractual Partner shows an interest in immediate settlement. Without approval of BRABUS no changes may be made to defective goods and/or services, otherwise the Contractual Partner loses his warranty claims. Deviating from the above provisions, measures for the removal of defects may also be carried out by another specialized workshop at the expense of BRABUS under the following conditions:

7.2.1 If a vehicle has become inoperable due to a defect and is located more than 50 km away from the BRABUS premises and BRABUS has given its consent to this before placing the order with the third party workshop.

7.2.2 If there is an urgent emergency and BRABUS is not able to remedy the situation immediately; the obligation of the Contractual Partner to inform BRABUS immediately about the defect by stating the address of the commissioned workshop remains unaffected.

7.2.3 If defects are repaired in another specialist workshop, it must be stated in the order form that the defect has been repaired for BRABUS. It must be noted that the removed parts are to be kept available for a reasonable period of time. BRABUS is obliged to reimburse the costs demonstrably incurred by the Contractual Partner. The Contractual Partner is obliged to

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work towards keeping the costs for the removal of defects as low as possible.

7.3 In case of demonstrable material or execution defects, BRABUS may at its own choice either remedy the defect free of charge or replace the defective goods against return delivery free of charge or credit the invoice value or grant the Contractual Partner a reduction while reasonably safeguarding the Contractual Partner's interests. Deviating mandatory legal provisions in favor of consumers shall remain unaffected.

7.4 If BRABUS does not or not in accordance with the contract meet its obligation of subsequent performance (replacement delivery or repair) or if the subsequent performance fails, the Contractual Partner shall be entitled to a reduction of the purchase price or to withdraw from the contract at its option within the scope of the statutory provisions. Deviating mandatory statutory provisions in favor of consumers shall remain unaffected.

7.5 If defects occur on vehicles which have been made available to BRABUS by the Contractual Partner for the purpose of carrying out conversions and/or performance-enhancing measures and/or the installation of certain vehicle components such as performance-enhanced engines and/or special chassis and/or for carrying out maintenance and/or repair work, the warranty obligation is basically limited to the parts installed and/or services rendered by BRABUS in each case. Deviating from the rule above under Sec. 7.3 BRABUS is obliged to remedy the respective defect in case of demonstrable material or workmanship defects. The obligation to remedy the defect also extends to vehicle parts not originating from BRABUS, which have been directly impaired or damaged as a result of the respective material or execution defect.

7.6 Other or further claims of the Contractual Partner, in particular for compensation of processing costs as well as damages, which do not concern the delivery item itself (consequential harm caused by a defect), are excluded - as far as legally permissible. Deviating mandatory statutory provisions in favor of consumers shall remain unaffected.

7.7 If boundary parts are sent to the Contractual Partner for testing, BRABUS shall only be liable that the delivery is carried out according to the tested boundary part taking into account possible corrections (determination of quality by boundary part).

7.8 The warranty claims regulated in this Section exclusively refer to defects of the deliveries and services of BRABUS, including any defects of performance-enhanced new vehicles, which already exist at the time of the passing of risk to the respective Contractual Partner or which are based on material and/or execution defects which already existed at the time of the passing of risk. The resulting warranty claims of the Contractual Partner who is not a consumer shall become statute-barred 12 months after the transfer of risk or acceptance. The limitation period for warranty claims of the Contractual Partner who is a consumer shall be 24 months with regard to the delivery of new goods and the performance of work and services and 12 months with regard to the delivery of used goods from the passing of risk or acceptance.

7.9 Information on performance increases and/or performance kits shall be understood as average values. Deviations of +/- 5 % due to testing are possible. Information on the total performance of factory engines modified by performance enhancement and/or performance kits shall be based on the manufacturer's data in the vehicle registration document, which in turn may deviate by +/- 5 %. BRABUS does not assume any liability for any further reduction in performance of factory engines.

7.10 BRABUS products are TÜV-tested according to EU standards. BRABUS does not assume liability for the fulfillment of deviating national homologation regulations outside Germany.

## 8. Warranty Claims

8.1 Claims of a Contractual Partner due to violation of a warranty shall only be considered if BRABUS has expressly confirmed a quality or durability warranty to the Contractual Partner in writing or has handed over pre-formulated warranty conditions to the Contractual Partner and has designated the respective warranty as such.

8.2 The Contractual Partner can only assert claims for damages due to violation of a guarantee insofar as the Contractual Partner was to be protected by the guarantee against damages of the type that occurred.

## 9. General Limitations of Liability

9.1 BRABUS shall be liable for damages - irrespective of the legal ground - in case of intentional or grossly negligent conduct. In case of simple negligence, BRABUS is only liable:

- (i) for damages resulting from injury to life, body or health;
- (ii) for damages resulting from the violation of an fundamental contractual obligation (Wesentliche Vertragspflicht) [which is an obligation, the fulfillment of which enables the proper performance of the contract in the first place and on the compliance with which the Contractual Partner regularly relies and may rely]; in this case, however, the liability of BRABUS is limited to the compensation of the typical foreseeable damage.

9.2 The limitations of liability mentioned in Sec. 9.1 shall not apply if and as far as BRABUS has fraudulently concealed a defect, has given a guarantee for the quality or for a possibly existing obligation of BRABUS to provide updates for digital products, in case of contracts for the delivery of goods with digital elements. The same applies to any claims of the Contractual Partner according to the German Product Liability Act (Produkthaftungsgesetz).

9.3 Claims against BRABUS, which are not regulated under Sec. 7 "Warranty", shall become statute-barred within the regular limitation period.

## 10. Extended Lien

10.1 BRABUS shall be entitled to a contractual lien on the objects coming

into its possession due to claims resulting from the order.

10.2 The contractual lien can also be asserted due to claims from work carried out earlier, spare parts deliveries and other services, as far as they are related to the subject matter of the order. The contractual lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or a legally binding title exists and the subject matter of the order belongs to the Contractual Partner.

## 11. Retention of Title

11.1 BRABUS reserves the title to the goods delivered by BRABUS until all claims against the Contractual Partner resulting from the current business relationship or - if the Contractual Partner is a consumer - until all claims against this Contractual Partner resulting from the respective contractual relationship have been fulfilled. This shall also apply if a Contractual Partner who is not a consumer has completely rendered the counter-performance for deliveries designated by the Contractual Partner which have been made by BRABUS within the scope of the current business relationship or - in case of contracts with consumers - for partial performances rendered by BRABUS within the scope of a contractual relationship the respective corresponding payments have already been made. Any processing and treatment is done for BRABUS without obligating BRABUS and without losing the title. If the Contractual Partner combines goods subject to retention of title with other goods, BRABUS is entitled to co-ownership of the new item in proportion to the invoice value of all combined goods. The new item shall be considered as reserved goods within the meaning of these GTCs.

11.2 The Contractual Partner is entitled to sell the reserved goods in the ordinary course of business. He shall be prohibited from disposing of the goods in any other way.

11.3 The Contractual Partner assigns in advance to BRABUS all claims arising from the use of the reserved goods. If the goods subject to retention of title are sold together with other objects not belonging to BRABUS or if they are used as material for the execution of contracts for work and services, the assignment shall only cover the share of the proceeds corresponding to the co-ownership share of BRABUS in the goods subject to retention of title.

11.4 The contracting party shall be authorized to collect the assigned claims only in the ordinary course of business.

11.5 The Contractual Partner has to inform BRABUS immediately about access of third parties to the goods subject to retention of title or to the assigned claims. Costs of interventions shall be borne by the Contractual Partner.

11.6 The authorization of the Contractual Partner to dispose of the reserved goods and to collect the assigned claims expires in case of non-compliance with the terms of payment. In these cases, BRABUS is entitled to withdraw from the contract in accordance with the statutory provisions and to repossess the goods subject to retention of title. The resulting costs shall be borne by the Contractual Partner. Upon request of BRABUS, the Contractual Partner is also obliged to provide BRABUS with the information and documents necessary to assert the assigned claims.

11.7 If the value of the securities available to BRABUS exceeds its claims by more than 10 % in total, BRABUS is obliged to release the exceeding securities at its own choice upon request of the Contractual Partner.

## 12. Termination of the Contract for Good Cause

BRABUS is entitled to withdraw from or to terminate the contract for good cause, which makes the continuation of the contract unreasonable for BRABUS even considering the interests of the Contractual Partner. A good cause is in particular, if a substantial deterioration of the financial situation of the Contractual Partner or the value of a security occurs or threatens to occur.

## 13. Used Parts

Parts removed from vehicles (original or old parts) have to be taken over by the Contractual Partner within a period of 4 weeks. BRABUS does not assume any liability for storage beyond this period. A replacement is excluded. This provision does not apply to parts, which are charged or otherwise become property of BRABUS.

## 14. Right of withdrawal for contracts concluded outside business premises and for distance contracts

If you are a consumer (i.e. a natural person who places the order for a purpose that can be attributed neither to his commercial nor independent professional activity), you have a right of withdrawal in accordance with the statutory provisions.

The withdrawal period is fourteen days from the day on which you or a third party named by you, who is not the carrier, has taken possession of the goods.

In order to exercise your right of withdrawal, you must send us,

**BRABUS GmbH.**  
**Brabus-Allee 1, 46240 Bottrop, Germany**  
**Phone: 02041 / 708666**  
**e-mail: info@brabus.com**

by means of a clear statement (e.g. a letter sent by mail or e-mail) about your decision to withdraw from the contract.

You can use the attached sample withdrawal form, which is not prescribed. In order to comply with the withdrawal period, it is sufficient that you send the notification of the exercise of the right of withdrawal before the expiry of the withdrawal period.

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## **Consequences of the withdrawal**

If you withdraw from this contract, we must repay all payments that we have received from you, including the delivery costs (with the exception of the additional costs resulting from the fact that you have chosen a type of delivery other than the cheapest standard delivery offered by us), immediately and at the latest within fourteen days from the day on which we received the notification of your withdrawal from this contract. For this repayment, we will use the same means of payment that you used for the original transaction, unless expressly agreed otherwise with you; in no case will you be charged for this repayment.

We may refuse repayment until we have received the goods back or until you have provided proof that you have returned the goods, whichever is the earlier.

You must return or hand over the goods to us immediately and in any case within fourteen days from the day on which you notify us of the cancellation of this contract. The deadline is met if you send the goods before the expiry of the period of fourteen days.

You shall bear the direct costs of returning the goods.

You only have to pay for any loss of value of the goods if this loss of value is due to the fact that the goods were not used to the extent necessary for checking their condition, quality and functionality.

- end of withdrawal instructions -

## **15. Dispute resolution, arbitration procedure**

15.1 The European Commission provides a platform for online dispute resolution (OS), which can be found here. Consumers have the possibility to use this platform for the settlement of their disputes.

15.2 BRABUS is willing to participate in an out-of-court conciliation procedure. Responsible is the Universalschlichtungsstelle des Bundes am Zentrum für Schlichtung e.V., Straßburger Straße 8, 77694 Kehl am Rhein, [www.universalschlichtungsstelle.de](http://www.universalschlichtungsstelle.de).

## **16. Place of Performance, Place of Jurisdiction, Applicable Law**

16.1 Place of performance for all deliveries and services of BRABUS is the registered office of BRABUS.

16.2 The place of jurisdiction shall be the registered office of BRABUS, which, however, is entitled to take legal action against the Contractual Partner also at the Contractual Partner's registered office or at other legally admissible places of jurisdiction.

16.3 Deliveries and services of BRABUS shall exclusively be governed by German law as it is applicable among German residents under exclusion of the UN Convention on the International Sale of Goods (CISG).

16.4 The above Secs.16.1 to 16.3 shall only apply if the respective Contractual Partner is a merchant according to HGB, a legal entity under public law or a special fund under public law.