

A. General

- The conditions stated hereinafter shall apply to all – even future – deliveries of goods and provisional services of BRABUS GmbH (hereinafter referred to as “BRABUS”). Conflicting General Terms and Conditions of the respective contractual partner are exclusively rejected. Such General Terms and Conditions of a contractual partner shall not bind us even if we did not object to them explicitly or if we provide goods or services without reservation although we know about contrary or deviating conditions.
- Deviations from our Delivery and Payment Conditions are therefore only binding, if they have been fixed in the respective contract in writing and have been confirmed in writing by us.
- The conditions stated hereinafter shall apply in general to all our contractual partners, i.e. all individuals or legal entities of associations of persons having legal capacity according to private law as well as legal entities of public law or public law special funds, regardless whether they are merchants as defined by HGB of entrepreneurs or consumers as defined by BGB. Deviating special provisions, in particular for consumers, shall be set out specifically.

B. Conclusion of contract

Our offers remain subject to being sold. Conclusions of contract and other agreements, in particular oral collateral agreements and guarantees of employees or representatives, may be binding only with our written confirmation.

C. Prices

- Our prices for deliveries are ex works, except as otherwise specified in our confirmation of order. Packing, freight, postage, insurance and delivery fees shall be charged separately.
- Prices for repairing, installation and other services are in principle chargeable with respect to the respective expense. However, manhours are chargeable with respect to the respective catalogue for working value in the event our respective price catalogue does not contain appropriate quotations. Respective decisive catalogue prices may be charged for employed parts.
- Price quotations in brochures and catalogues are only binding, provided such brochures and catalogues are still valid in the event of placing a purchase order and our confirmation of order does not state any deviations.
- Our respective stipulated gross prices shall be applicable for consumers. Statutory sales tax for price quotations are not included in business tradings with entrepreneurs or merchants. The statutory amount of such sales tax may be set out separately in the respective invoice.

D. Conditions for payment

- Except as otherwise specified in our confirmation of order, our invoices shall be paid until the 5th of the following month, in which the invoice has been issued, without any deduction. Invoices for repairing and installations for earmarked vehicles as well as invoices for deliveries of vehicles shall be paid before or with collection of such vehicles. Payments by cheque shall be done by LZB-cheque.
- In the event, the payment term pursuant to figure 1 sentence 1 is exceeded, the contractual partner will be in default. In such a case, we are entitled to charge interest amounting to 5 % over the discount rate of the European Central Bank towards consumers and interest amounting to 8 % over the discount rate towards other customers. The assertion of further damages caused by default remains reserved. Sec. 353 HGB remains unaffected.
- In case of part deliveries or part performances, BRABUS is entitled to refuse the performance of services still to be rendered under the contract in the event of a delayed payment of the contractual partner until the outstanding balances are settled. Further, BRABUS is entitled to demand cash on deliveries divergent to the provisions set forth in figure 1 regarding remaining services still to be provided.
- The non-observance of conditions for payment, occurrence of default or other circumstances minimizing the credit-worthiness of the contractual partner are entitled BRABUS to accelerate maturity of claims arising from current business relations.
- The customer shall be entitled to offset if its counterclaims are based on the same contractual relationship. Moreover, the customer shall only be entitled to offset to the extent its counterclaims are acknowledged, undisputed or assessed in a legally binding judgment. The customer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

E. Term and dates of delivery

- Terms and dates of delivery are only approximately information, provided that such terms and dates have been designated in writing and explicitly as binding. The term of delivery for purchase order commences the day of confirmation of order by us. However, the commencement shall not be effected before clarification of all technical and commercial details as well as presentation of permissions, if necessary. Any modifications regarding the delivery of the contractual object requested by the contractual partner within the term of delivery shall interrupt and extend the term of delivery accordingly. Term of delivery in connection with the execution of installation, repairing and commissioning contract shall not commence before confirmation of order and placing at the contractual partner's disposal respectively availability of the vehicle to be executed with such works. As for the rest, the provisions as stipulated in sentences 2 and 3 apply correspondingly.
- In case of force majeure, such as delayed deliveries by the subcontractor, strike, lock-out, shortage of material, official actions as well as other acts of God, the respective term of delivery respectively term of performance shall be extended with the period between the commencement and the cessation of such event.
- In case of non-availability respectively non-performance of services caused by essential aggravation or impossibility, BRABUS is entitled to rescind the contract without being committed to claims for damages, if BRABUS has notified the respective contractual partner immediately about the non-availability of the contractual services and has undertaken simultaneously to compensate counterservices already collected. The contractual partner is authorized to demand a declaration whether we intend to rescind the contract or to deliver within a reasonable time limit after being notified about such occurrence. If we fail to provide such declaration, the contractual partner may rescind the contract. The contractual partner is not entitled to reject part deliveries or part performances, unless a legitimate interest for such rejection is given. Statutory claims of the contractual partner to be enforced in lieu of claims for damages or to be asserted simultaneously with a claim of damages remain unaffected.
- If BRABUS is in default with contractual services, the contractual partner is obliged to grant in writing a reasonable period of grace for performance. In case the contractual object is not or not completely delivered within such period of grace respectively the services are not or not completely rendered, the contractual partner has the right to rescind the contract after expiration of such period with respect to deliveries and services, which have not been delivered until expiration of such period of grace. Insofar, in delivery tradings the dispatch of the goods is equivalent to the delivery. If the contractual partner suffers damages caused by a delayed delivery BRABUS is liable for, BRABUS shall compensate the resulting and provable injury. However, such compensation is limited to 5 % of the net price of the delayed or omitted delivery or performance, unless BRABUS is liable for damages caused by intentionally or gross negligence. If the respective contractual partner not being a consumer asserts claims for damages in lieu of performance, such claims are excluded, unless BRABUS is liable for damages caused by intentionally or gross negligence.
- BRABUS shall be released from any observance of terms of delivery, if the contractual partner is in delay of payment of former orders or of part deliveries of an order, or fails to fulfil other contractual obligations.
- In case of dispatch, the day of dispatching the goods shall be considered as the date of delivery. In other cases, the day, on which the contractual partner receives notice about the readiness for dispatch, delivery or handing over of goods, shall be decisive.

F. Dispatch/risk in the goods

- The goods may be dispatched to the contractual partner or any named third person at the expense of the contractual partner.
- In case of dispatching the goods, the risk in the goods passes to the contractual partner as soon as the goods have left the works of BRABUS. In the event the goods shall be dispatched from a subsupplier directly to the contractual partner at the instigation of BRABUS, the same applies correspondingly. These provisions are applicable for part deliveries or in case BRABUS undertakes services of a different kind as well. They do not apply for consumers.
- In the event of delay of the dispatch due to circumstances which the contractual partner is liable for, the risk in the goods passes to the contractual partner upon the day of notice about the readiness for dispatch.
- BRABUS is entitled to insure the goods against transportation risk at the expense of the contractual partner. BRABUS is only obliged to insure the goods on the basis of a written agreement of the parties.
- Goods not being dispatched or other services may be received respectively collected from the contractual partner at the works of BRABUS within seven days, at the latest, of being notified that the goods are ready for delivery respectively collection. In the event the contractual partner fails to collect the goods, BRABUS is entitled to make use of its statutory rights.
- If BRABUS claims damages, such compensation shall be amounting to 15 % of the purchase price of contracts regarding new and second hand cars and 20 % of the purchase price of contracts regarding spare parts or other services. The compensation shall be calculated higher or lower, if BRABUS is able to furnish proofs of a higher damage or the contractual partner is able to furnish proofs of a lower damage.

G. Warranties

- The contractual partner is obliged to inspect delivered goods immediately upon receipt and to give written notice of a defect immediately at the place of destination or, at the latest, within 8 business days upon receipt. Latent defects shall be noticed immediately upon ascertainment. In the event the contractual partner fails to observe the time limit for notification of a defect, every possible claim regarding defects not being noticed or being noticed out of time are excluded, if the contractual partner is a merchant or a legal entity of public law.
- In case of faulty deliveries or services, BRABUS shall have the opportunity to inspect at its option the noticed defects on the spot or at its places of business. The inspection shall take place immediately, if the contractual partner explains his interest in immediate settlement. Goods or services being found faulty shall not be modified without consent of BRABUS. Otherwise, the contractual partner may lose his claims based on warranty. Divergent from the foregoing provisions, remediation works of deficiencies can be executed by another professional workshop at the expense of BRABUS, if the following conditions are fulfilled:
 - If the vehicle is out of service due to a defect and has been removed more than 50 km from the plant of BRABUS and BRABUS has given consent prior to the placing of an order to the third work shop.
 - If an urgent case of necessity is given and BRABUS is not able to take remedial actions immediately. The obligation of the contractual partner to inform BRABUS about the defect stating the address of the commissioned plant remains unaffected.
 - In the event defects have been remedied by another professional workshop, the commissioning order shall set forth that the execution of the remediation works is considered as such of BRABUS. It is imperative to make an entry that the dismantled parts shall be holding at BRABUS' disposal during a reasonable time limit. BRABUS undertakes to reimburse the provable arising costs of the contractual partner. However, the contractual partner is obliged to keep the costs of remediation works as low as possible.
- In case of provable material or implementation defects, BRABUS is entitled to remedy the defects free of charge or to replace free of charge or to credit the invoice value against return of the defective goods or to grant the contractual partner reduction of the purchase price by observing reasonably the contractual partner's interest. Deviating imperative provisions of law for the benefit of the consumers remain unaffected.
- If BRABUS fails to fulfil one of its refined obligations to perform subsequently (replacement/delivery of a substitute or rectification of defects) or does not meet such obligation according to contract or if the subsequent performance goes wrong, the contractual partner is entitled to the right of reduction of the purchase price or the right of rescission of the contract within the scope of the provisions of law. Deviating imperative provisions of law for the benefit of consumers remain unaffected.

- In the event that defects occur on vehicles which are made available to us for the purpose of executing structural alteration and/or actions for increasing efficiency and/or installation of special components like engines for increasing efficiency and/or special running gear and/or executing maintenance respectively repairing works, our warranty obligation is in principle limited to such installed parts respectively rendered services. Divergent to the provisions as set forth above in figure 3, BRABUS is obliged to remedy provable material or implementation defects. This obligation to remedy defects includes vehicle parts not being provided by BRABUS, if such parts have been directly injured or damaged due to the respective material or implementation defect.
- Other or further claims of the contractual partner, in particular claims for compensation of handling costs, costs relating to installation and dismantling as well as damages not relating to the delivery object (consequential damages), are excluded, provided that they are permitted by statute. Deviating imperative provisions of law for the benefit of consumers remain unaffected.
- In case line sample has been sent into to the contractual partner, BRABUS is only liable for the circumstance that the delivery will be executed in accordance with the inspected line sample in the light of any adjustments (stipulation of quality by line sample).
- Warranty claims as settled in this section are pertaining exclusively to defects of deliveries and services of BRABUS, including any defects on new vehicles with increasing efficiency, which have been existing on the date the risk in the goods passes to the respective contractual partner, or defects resulting from material and/or implementation defects, which have been existing on the date the risk in the goods passes to the contractual partner. The resulting warranty claims of the contractual partner are subject to a limitation period of 12 months counting from the date of passing the risk in the goods. In case of second hand purchase objects, any liability for defects as to quality are excluded, unless the existence of such defects has been concealed fraudulently. In case of contracts with consumers, the limitation period for delivery of new cars and for execution of services runs to 24 months and limitation period for delivery of used goods runs to 12 months counting from the date of passing the risk in the goods to the contractual partner.
- Any information relating to an increase in output and/or Performance Kits are to be understood as average figures. Due to testing, deviations of +/- 5 % may occur. Information relating to the overall output of factory motors which have been modified by an increase in output and/or by Performance Kits are based on the information provided by the manufacturer in the official vehicle registration which in return may deviate +/- 5 %. Brabus will not be responsible for an output of factory motors which is below the aforementioned figures.
- BRABUS-products are TÜV certified according to EU-regulations. BRABUS does not take responsibility for the performance of any other national homologation regulations outside Germany.

H. Claims under guarantee

- Claims of a contractual partner based on violation of a guarantee only come into question, if BRABUS has furnished expressly a guarantee of quality or tenability to the contractual partner and has designated the respective guarantee as such. The written confirmation can be replaced through handing over of written guarantee conditions formulated in advance.
- Aside from respective concrete promises of guarantee and/or guarantee conditions, the contractual partner is only authorized to claim damages relating to the violation of a guarantee, if the contractual partner has been insured through a guarantee against damages of the arising kind.

I. General limitations of liability

- The liability of BRABUS is exclusively determined by these conditions. All claims not being expressly acknowledged in these conditions, in particular even claims for damages based on impossibility, default, violation of contractual collateral duties (including advising and furnishing information), culpa in contrahendo, tort act – even if such claims are relating to claims of defects of the contractual partner – are excluded. This principle does not apply, if the claims are based on intentional or gross negligent act/misconduct of BRABUS, respectively a legal representative or vicarious agent or based on the circumstance that BRABUS, its legal representative or vicarious agent has violated negligently contractual cardinal obligations or has violated in other way substantial contractual obligations or on the circumstance that an intentional or negligent violation of life, person and/or health of a third person is given. Further, deviating imperative provisions of law for the benefit of consumers remain unaffected.
- All claims against BRABUS, no matter based on which legal ground, are subject to, at the latest, a limitation period of one year, unless an intentional or fraudulent act of BRABUS is given or a damage from injury to life, body or health due to negligent breach of duty by BRABUS or its legal representative or a vicarious agent used to perform an obligation of the user or other damage arising from a grossly negligent breach of duty by BRABUS or its legal representative or a vicarious agent used to perform an obligation of the user. In such cases, the provisions of law regarding limitation periods shall apply. Deviating imperative provisions of law for the benefit of consumers remain unaffected.
- Exclusions of liability according to these General Terms and Conditions shall not be applicable for claims relating to the Product Liability Act.

J. Extended right of lien

- BRABUS is entitled to a contractual right of lien on the object being in its possession due to the order because of its contract claims.
- The contractual right of lien can be asserted based on claims for prior executed works, deliveries of spare parts and other services as well, provided that such claims are related to the contractual object. The right of lien applies to other claims relating to this business connection, only if such claims are uncontested or have become res judicata and the contractual object is owned by the contractual partner.

K. Retention of title

- BRABUS retains title to the delivered goods until fulfillment of all claims against the contractual partner of the current business connection in full. The same shall apply, if the price for special deliveries designated by the contractual partner is paid. A processing and manufacturing may be done by BRABUS. However, BRABUS is not committed to such works and its title may not become extinct hereby. In the event the contractual partner consolidate the reserved goods with other goods, BRABUS shall obtain joint ownership on the new object with regard to the invoice value of all consolidated goods. Insofar, the new object shall be considered as a reserved goods in the sense of these conditions.
- The contractual partner is entitled to sell the reserved goods in the proper course of business. Any other disposals are prohibited.
- All claims arising out of the use of the reserved goods shall be resigned to BRABUS in advance. If the reserved goods are sold with other objects not being owned by BRABUS or are used as material for the execution of contracts for work and services, the assignment of the reserved goods only covers such portion of revenue, which is equivalent to the portion of the joint ownership of BRABUS with regard to the reserved goods.
- The contractual partner is only entitled to collect the resigned claims in the proper course of business.
- Any intervention on the reserved goods or the resigned claims by any third person may be notified to BRABUS by the contractual partner. The costs for such intervention shall be borne by the contractual partner.
- The authorization of the contractual partner to dispose of the reserved goods and to collect the resigned claims lapses in the event of non-observance of conditions of payment as well as in case of protests relating to bill and cheque. In such a case, BRABUS is entitled to take possession of the reserved goods. The costs relating thereof shall be borne by the contractual partner. A rescission of the contract is only given in the event of taking back the goods, if such a case is expressly declared by BRABUS. Upon request of BRABUS, the contractual partner is, further, obliged to make available information and documents being needed by BRABUS to assert the resigned claims.
- In the event the value of securities of a debt being available to BRABUS exceed more than 10 % of its claims, BRABUS undertakes to release at its option the exceeded securities upon request of the contractual partner.

L. Termination of contract for good cause

BRABUS has the right to withdraw from or terminate the contract in case of good cause which makes the continuation of the contract unacceptable, taking into account the interest of the other party. An important reason shall be in particular, if a substantial change of the financial situation of the other party or the value of security occurs or may occur.

M. Scrap parts

Parts being removed from vehicles (original or scrap parts) shall be taken over by the contractual partner within a time limit of 4 weeks. After this period of time, BRABUS does not take responsibility for the storage. A replacement is excluded. This provision does not apply for parts, which have been set off or passed into the ownership of BRABUS in other way.

N. Place of performance, place of jurisdiction, governing law

- BRABUS GmbH is willing to take part in an alternative dispute resolution with the following consumer arbitration centre:
Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e.V.
Straßburger Str. 8, 77694 Kehl
Phone: +49 7851 79579 40
Fax: +49 7851 79579 41
www.verbraucher-schlichter.de
Email: Mail@verbraucher-schlichter.de
The aforementioned consumer arbitration centre is a „General Consumer Arbitration Centre“ according to § 4 section 2 of the German consumer alternative dispute resolution law (VSBG). This information is provided to fulfil the legal obligation resulting from § 36 VSBG.
- The place of performance for all deliveries and services of BRABUS shall be the head office of BRABUS.
- The place of jurisdiction shall be depending on the head office of BRABUS. However, BRABUS shall be entitled to sue a claim against the contractual partner at its head office or at another statutory permitted place of jurisdiction. The same applies to liabilities on a bill or on a cheque.
- The governing law for deliveries and services of BRABUS shall be the laws of the Federal Republic of Germany, which is applicable between German domestic parties. The application of the United Nations Convention on Contracts for the International Sales of Goods shall be excluded.
- The foregoing figures 1-3 shall only be applicable, if the respective contractual partner is a merchant, a legal entity of public law or public law special funds.

O. Personal data

BRABUS is entitled to record and to process personal data of the contractual partner through electronic data processing.

P. Ineffectiveness

The ineffectiveness of single conditions does not affect neither the validity of the contract nor the validity of the remaining conditions.