

## BRABUS Online Shop Terms and Conditions

of BRABUS GmbH, Brabus-Allee, 46240 Bottrop, registered in the Commercial Register of the Local Court of Gelsenkirchen under HRB 5286, VAT identification number: DE124238007, represented by the Managing Director Constantin Buschmann (hereinafter referred to as "**BRABUS**")

### 1. Scope

- 1.1 For the purchase of goods between the online shop provider BRABUS and the customers (hereinafter referred to as "**Customer**") via the BRABUS online store (www.brabus.com), the following General Terms and Conditions ("**GTC**") apply exclusively in their version valid at the time of the order. Deviating general terms and conditions of the Customer are not accepted, unless BRABUS expressly agrees to their validity in writing.
- 1.2 The GTC apply regardless of whether the Customer is a consumer or an entrepreneur. The Customer is a consumer insofar as the purpose of the ordered goods and services cannot be attributed predominantly to the Customer's commercial or independent professional activity. On the other hand, an entrepreneur is any natural or legal person or partnership with legal capacity who, when concluding the contract, acts in the exercise of his commercial or self-employed professional activity.

### 2. Conclusion of contract

- 2.1 Contracts concerning the offered Goods described in the following on the website www.brabus.com are concluded between the Customer and BRABUS.
- 2.2 The Customer can select products from the BRABUS assortment, especially high-quality tuning and automotive component parts from BRABUS, simple component parts, clothing and accessories ("**Goods**") and collect them in a so-called shopping cart by clicking the button "*add to cart*".
- 2.3 During the order process, the Customer can choose whether he wants the assembly of the ordered Goods. He can order the assembly at BRABUS (plant Bottrop, in the following "**BRABUS Plant Bottrop**") or choose one of the partner workshops listed there ("**BRABUS Partner Workshop**") via the button "*Change*". In this case BRABUS only establishes the contact to the BRABUS Plant Bottrop or the BRABUS Partner Workshop. The contractual relationship between the BRABUS Plant Bottrop and the Customer is governed by the BRABUS Terms and Conditions of Delivery, Payment and Assembly of the BRABUS Plant Bottrop ([Annex](#)), which the Customer can save via download link or the respective contractual conditions of the BRABUS Partner

Workshop, which are provided to the Customer by the respective BRABUS Partner Workshop after contacting the BRABUS Plant Bottrop in the course of the contract initiation. The assembly contract is then concluded with the respective workshop, not with BRABUS. The Customer agrees on assembly dates with the respective workshop.

- 2.4 Only after confirmation of a concluded order according to the general terms and conditions of the respective workshop (BRABUS Plant Bottrop or BRABUS Partner Workshop) between the Customer and the BRABUS Plant Bottrop or the respective BRABUS Partner Workshop, BRABUS will ship the ordered Goods to the workshop for assembly.
- 2.5 In case that no assembly contract between the Customer and the BRABUS Partner Workshop is concluded, the Customer may withdraw from the purchase contract for the ordered Goods free of charge according to Sec. **Error! Reference source not found.**
- 2.6 By clicking on the checkbox "*I have read the GTC and agree with them*", these GTC for online purchases and, in the case of a desired assembly, the respective contractual terms and conditions for the ordered assembly services are accepted and thus become part of the Customer's order. Only after the Customer has accepted the GTC, the ordering process continues.
- 2.7 After checking the shopping cart, the Customer enters the shipping address as well as the Customer's billing information and the method of payment is determined (credit card, PayPal, instant payment or Giropay). By clicking on the button "*ORDER PAYABLE*", the Customer makes a binding request to purchase the Goods in the shopping cart. Before sending the order, the Customer can change and view the data at any time.
- 2.8 BRABUS will then send the Customer an order confirmation by e-mail, in which the Customer's order is listed again and which the Customer can open as a PDF file via the "*Print*" function. The contract is concluded by the receipt of the order confirmation by the Customer. In this e-mail or in a separate e-mail, but at the latest upon delivery of the Goods, the text of the contract consisting of the order, GTC and order confirmation (contract confirmation) will be sent by us to the Customer on a durable medium (e-mail or paper printout). The contract will be stored in compliance with data protection.
- 2.9 The details with regard to the ordered assembly such as date, costs, duration are agreed upon by the Customer with the BRABUS Plant Bottrop or the selected BRABUS Partner Workshop immediately after the order. The respective workshop contacts the Customer by telephone on the next working day at the latest.
- 2.10 The conclusion of the contract via the BRABUS online store shall be in English language.

### **3. Delivery time, availability of Goods**

- 3.1 The delivery times are indicated under the respective Goods in the BRABUS online store. Delivery times stated by BRABUS are calculated from the time of their order confirmation, provided prior payment of the purchase price, if it is a simple purchase in the online store with shipping to the Customer. In case the Customer additionally orders an assembly, this will take place in consultation with the BRABUS Plant Bottrop or the respective BRABUS Partner Workshop.
- 3.2 If BRABUS is not able to meet binding delivery dates for reasons BRABUS is not responsible for (non-availability or non-provability of the service due to substantial complication or impossibility), BRABUS will inform the Customer about this 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; already rendered considerations of the Customer will be refunded immediately. A case of non-availability of the service in this sense is in particular the non-timely self-delivery by suppliers, if a congruent hedging transaction was 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, however, a reminder by the Customer is required. Deviating mandatory legal regulations in favor of consumers remain unaffected.
- 3.3 If the Goods are not or not completely delivered or the service is not or not completely rendered even after a reminder, the Customer is entitled to withdraw from those deliveries and services which have not been delivered until the expiry of the grace period; in this respect, the dispatch by BRABUS is equivalent to the delivery in case of delivery transactions. If the Customer incurs 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 Goods or services of the delayed or omitted delivery or service, unless BRABUS can be charged with intent or gross negligence. If the respective Customer 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.
- 3.4 In case of force majeure affecting BRABUS itself, its sub-suppliers or the Customer, the contracting party affected thereby is released from the obligation to deliver, perform or accept for the duration and to the extent of the effect. In this context, force majeure is in particular any official closure of operations or disruption in the transport route for which BRABUS is not responsible, operational disruption such as fire damage, floods, strikes, lawful lockouts, epidemics and pandemics, war.

- 3.5 BRABUS is released from compliance with any delivery deadline if the Customer is in default of payment from previous orders or with regard to a partial delivery of an order or does not fulfill other contractual obligations.
- 3.6 In the case of dispatch of Goods, the day of dispatch shall be deemed to be the day of delivery; in all other cases, the day on which the Customer receives notification of readiness for dispatch, delivery or handover shall be decisive.
- 3.7 The following delivery restrictions apply: BRABUS only delivers to Customers who have their habitual residence (billing address) in one of the following countries and can provide a delivery address in the same country: Austria, Belgium, Croatia, Cyprus, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, and Spain.

#### **4. Contractual right of withdrawal**

- 4.1 In case an assembly of the ordered Goods has not been ordered via the BRABUS Plant Bottrop but via a BRABUS Partner Workshop, but no assembly contract has been concluded with the selected assembly partner, BRABUS grants the Customer a contractual right of withdrawal also from the purchase contract for the ordered Goods.
- 4.2 The declaration of withdrawal must be made immediately in writing or text form (e.g. letter or e-mail).

#### **5. Retention of title**

Until full payment, the delivered Goods remain the property of BRABUS.

#### **6. Prices and shipping**

- 6.1 All prices stated on the BRABUS website are inclusive of the applicable statutory value added tax.
- 6.2 The shipping costs are indicated in the price details in the online store. The price including VAT is also displayed in the order screen before the Customer submits the order. The shipping costs are available above the price of the Goods via a link that redirects to the page listing the shipping costs. The shipping costs are to be paid by the Customer. From an order value of € 1,000.00 BRABUS delivers to the Customer free of shipping costs.
- 6.3 Goods that are assembled at the BRABUS Plant in Bottrop or at a BRABUS Partner Workshop are not delivered to the Customer but to the commissioned workshop. The Customer agrees on an assembly date with BRABUS or the BRABUS Partner Workshop

at which the Customer delivers the vehicle on which the ordered Goods are to be assembled. The collection of the vehicle will be done according to the agreement with the respective workshop.

- 6.4 The shipment of the Goods is done by mail. The shipping risk is borne by BRABUS if the Customer is a consumer.
- 6.5 In the event of a withdrawal, the Customer shall bear the direct costs of the return shipment.

## **7. Payment modalities**

- 7.1 The Customer can make the payment by credit card, PayPal, instant payment or Giropay.
- 7.2 The Customer can change the payment method in his user account at any time.
- 7.3 The payment of the purchase price is due immediately upon conclusion of the contract. If the due date of payment is determined according to the calendar, the Customer is already in default by missing the deadline. In this case he has to pay BRABUS default interest for the year in the amount of 5 percentage points above the base interest rate.
- 7.4 The obligation of the Customer to pay default interest does not exclude the assertion of further damages caused by default by BRABUS.

## **8. Warranty for material defects, guarantee**

- 8.1 If the Customer is a merchant (*Kaufmann*) or a legal entity under public law, the Customer shall inspect the delivered Goods immediately upon receipt and notify us in writing of any defects without delay, at the latest within 8 working days after receipt at the place of destination. Hidden defects are to be notified immediately upon discovery. Failure to comply with the deadline for notification of defects shall result in the exclusion of the Customer with claims of any kind with regard to the defects not notified or notified late.
- 8.2 BRABUS is liable for material defects of delivered Goods according to the applicable statutory provisions, in particular Sections 434 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*). Towards entrepreneurs the warranty period for Goods delivered by BRABUS is twelve (12) months.
- 8.3 An additional warranty exists for the Goods delivered by BRABUS only if this was expressly given in the order confirmation for the respective Good.

- 8.4 In case of demonstrable material or workmanship defects, BRABUS may, at its own discretion, remedy the defect free of charge or, against return of the defective Goods, either replace them free of charge or credit the invoice value or grant the Customer a reduction while reasonably safeguarding his interests. Mandatory legal provisions in favor of consumers deviating from this Section remain unaffected.
- 8.5 The warranty claims regulated in this Section exclusively refer to defects of the deliveries and services of BRABUS already existing at the time of the transfer of risk to the respective Customer or based on material and/or execution defects already existing at the time of the transfer of risk.
- 8.6 If BRABUS does not or not in accordance with the contract comply with an obligation of supplementary performance (replacement delivery or rectification) chosen by it or if the supplementary performance fails, the Customer shall be entitled to the right of reduction or the right to withdraw from the contract at his option within the scope of the statutory provisions. Mandatory statutory provisions in favor of consumers that deviate from this shall remain unaffected.

**For BRABUS tuning and automotive accessories applies additionally:**

- 8.7 In case of defective deliveries or services, BRABUS shall be given the opportunity to inspect the notified defect either on site or at BRABUS' premises at its discretion. The inspection by BRABUS has to be carried out immediately, provided that the Customer shows an interest in immediate settlement. Without approval of BRABUS nothing may be changed at defective Goods and/or services, otherwise the Customer loses his warranty claims. Deviating from the above regulations, defect remedy measures may also be carried out by another specialist workshop at the expense of BRABUS under the following conditions:
- (i) If a vehicle has become inoperable as a result of a defect in Goods delivered by BRABUS and is 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.
  - (ii) If there is an urgent emergency and BRABUS is not able to remedy the situation immediately; the obligation of the Customer to inform BRABUS immediately about the defect by stating the address of the commissioned company remains unaffected.
  - (iii) 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 Customer for the costs demonstrably incurred. The Customer is obliged to work towards keeping the costs for the removal of defects as low as possible.

8.8 BRABUS tuning and automotive accessories are TÜV-approved according to EU standards. BRABUS assumes no liability for the fulfillment of deviating national homologation regulations outside Germany.

8.9 The liability for material defects on assembled Goods is governed by the respective contractual terms of the commissioned workshop (BRABUS-WERK Bottrop or the respective BRABUS Partner Workshop).

## 9. Liability

9.1 BRABUS is liable for damages - regardless 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 essential contractual obligation (an obligation, the fulfillment of which enables the proper execution 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 stated in Sec. 9.1 shall not apply if and to the extent 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 as far as BRABUS and the Customer have made an agreement on the quality of **the item**. The same applies to any claims of the Customer under the Product Liability Act.

## 10. Cancellation policy

10.1 Consumers have in principle a statutory right of withdrawal when concluding a distance selling transaction, about which BRABUS informs in the following according to the legal model. The exceptions to the right of withdrawal are described in Sec. **Error! Reference source not found.** In Sec. **Error! Reference source not found.** you will find a sample withdrawal form.

### Right of withdrawal

The Customer – if consumer – has the right to withdraw from this contract within fourteen (14) days without giving any reason.

The withdrawal period is fourteen (14) days from the day on which the Customer or a third party designated by the Customer, who is not the carrier, has or has taken possession of the Goods.

In order to exercise his right of withdrawal, the Customer must inform BRABUS by means of a clear declaration (e.g. a letter sent by mail, fax or e-mail) about his decision to withdraw from this contract. The Customer may use the attached model withdrawal form for this purpose, which is, however, not mandatory.

In order to comply with the withdrawal period, it is sufficient that the Customer sends the notification of the exercise of the right of withdrawal before the expiry of the withdrawal period.

#### **Consequences of the withdrawal**

If the Customer withdraws from this contract, BRABUS has to reimburse the Customer all payments BRABUS has received from the Customer, including the delivery costs (with the exception of the additional costs resulting from the fact that the Customer has chosen a type of delivery other than the favorable standard delivery offered by BRABUS), without undue delay and at the latest within fourteen (14) days from the day on which the notification of the withdrawal from this contract has been received by BRABUS. For this repayment BRABUS will use the same means of payment the Customer used for the original transaction, unless expressly agreed otherwise with the Customer; in no case the Customer will be charged any fees because of this repayment.

BRABUS may refuse the repayment until BRABUS has received the Goods back or until the Customer has provided proof that the Customer has returned the Goods, whichever is earlier.

The Customer shall return or hand over the Goods to BRABUS without undue delay and in any case not later than within fourteen (14) days from the day on which the Customer notifies BRABUS of the withdrawal from this contract. The deadline is met if the Customer sends the Goods before the expiry of the period of fourteen (14) days.

The Customer bears the direct costs of returning the Goods.

The Customer shall only be liable for any loss in value of the Goods if such loss in value is due to handling of the Goods that is not necessary for testing the quality, characteristics and functioning of the Goods.

10.2 The right of withdrawal does not apply to contracts for the delivery of audio or video recordings or computer software in a sealed package if the seal has been removed after delivery. The right of withdrawal also does not exist if the consumer has previously waived it in the context of orders for installation services.

10.3 BRABUS informs about the model withdrawal form according to the legal regulation as follows:

### **Sample cancellation form**

(If you want to cancel the contract, please fill out and return this form).

- To BRABUS GmbH, Brabus-Allee, 46240 Bottrop:
- I/we (\*) hereby withdraw from the contract concluded by me/us (\*) for the purchase of the following Goods (\*)/provision of the following service (\*)
- Ordered on (\*)/received on (\*)
- Name of the consumer(s)
- Address of the consumer(s)
- Signature of the consumer(s) (only in case of notification on paper)
- Date

(\*) Delete as applicable

## **11. Online dispute resolution**

11.1 The European Commission provides a platform for online dispute resolution (OS), which can be found at <https://ec.europa.eu/consumers/odr>.

11.2 BRABUS is willing to participate in an out-of-court conciliation procedure. Responsible is the universal arbitration board of the federal government at the Zentrum fuer Schlichtung e.V., Strassburger Strasse 8, 77694 Kehl am Rhein, [www.universalschlichtungsstelle.de](http://www.universalschlichtungsstelle.de).

## **12. Final provisions**

12.1 Contracts between BRABUS and the Customers are governed by the laws of the Federal Republic of Germany excluding the UN Sales Convention. The statutory provisions on the limitation of the choice of law and on the applicability of mandatory provisions, in particular of the state in which the Customer as consumer has his habitual residence, remain unaffected.

12.2 If the Customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from contractual relationships between the Customer and BRABUS is the registered office of BRABUS.

## **TERMS AND CONDITIONS OF DELIVERY, PAYMENT AND ASSEMBLY OF THE BRABUS PLANT BOTTRUP**

### **1. General, scope of application**

- 1.1 The following Terms and Conditions of Delivery, Payment and Assembly of the BRABUS Plant Bottrop ("**GTC**") apply to all - also future - deliveries and services of BRABUS GmbH (hereinafter referred to as "**BRABUS**"). Conflicting general terms and conditions of the respective contractual partner are expressly rejected. Such terms and conditions of a contractual partner are not binding for BRABUS even if BRABUS has not expressly objected to those 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 GTC apply in principle 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 or entrepreneurs or consumers within the meaning of the German Civil Code (hereinafter "**Contractual Partners**"). Deviating special provisions, in particular for consumers, shall be specially indicated in each case.
- 1.3 Deviations from the GTC are only effective if they have been set down in writing in the respective contract and confirmed in writing by BRABUS.

### **2. Conclusion of contract**

BRABUS offers are always subject to change. Conclusions of contracts and other agreements, in particular also verbal collateral agreements and assurances of employees or representatives, shall only become binding upon written confirmation by BRABUS.

### **3. Prices**

- 3.1 Unless otherwise stated in the BRABUS 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 generally based on the respective expenditure, whereby work services are invoiced according to the respective applicable work value catalog, insofar as BRABUS' respective applicable price catalog

does not contain any information in this respect. For parts used, the respective applicable catalog prices will 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 nothing to the contrary is stated in the BRABUS order confirmation.

#### **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 of the month following the month of invoice issue. Invoices for repairs and assemblies on vehicles provided by BRABUS as well as invoices for vehicle deliveries are to be paid before or upon collection.
- 4.2 In case of exceeding the term of payment according to Sec. 4.1, the Contractual Partner is in default. In this case BRABUS is entitled to charge default interest in the amount of five percentage points above the respective base interest rate vis-à-vis consumers and in the amount of nine percentage points p.a. above the respective base interest rate vis-à-vis other Contractual Partners according to Section 247 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*). We reserve the right to assert further damage caused by default. Section 353 of the German Commercial Code (*Handelsgesetzbuch – HGB*) remains unaffected.
- 4.3 In case of partial deliveries or partial services, BRABUS may 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. Mandatory statutory provisions in favor of consumers deviating from this 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 due immediately.
- 4.5 The offsetting with counterclaims as well as the exercise of a right of retention is only available to the Contractual Partner 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 times and dates**

- 5.1 Delivery periods and dates are only valid in the sense of approximate information, unless BRABUS has expressly designated them as binding in writing. The delivery period for purchase transactions starts with the day of order confirmation by BRABUS, but not before clarification of all technical and commercial details as well as submission of possibly required approvals. Any change requests by the Contractual Partner in the design of the goods to be delivered 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 order confirmation by BRABUS and provision or availability of the vehicle on which the work is to be performed. In all other respects, the provisions above under sentence 2 and sentence 3 shall 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-provability of the service due to substantial complication or impossibility), BRABUS will immediately inform the Contractual Partner about this 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; already rendered counter-performance of the Contractual Partner will be refunded immediately. A case of non-availability of the service in this sense is in particular the non-timely self-delivery by suppliers, if a congruent covering transaction was 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, however, a reminder by the Contractual Partner is required. Deviating mandatory legal regulations in favor of consumers remain unaffected.
- 5.3 If the goods to be delivered are 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 expiry of the deadline with regard to those deliveries and services which have not been delivered until expiry of the grace period; in this respect, dispatch by BRABUS is equivalent to delivery in case of delivery transactions. If the Contractual Partner incurs damages 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 Goods or services of the delayed or omitted 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 thereby is released from the obligation to deliver, perform or accept for the duration and to the extent of the effect. In this context, force majeure is in particular any official closure of operations or disruption in the transport route for which BRABUS is not responsible, operational disruption such as fire damage, floods, strikes, lawful lockouts, epidemics and pandemics, war.
- 5.5 BRABUS is released from compliance with any delivery deadline if the Contractual Partner is in default of payment from previous orders or with regard to a partial delivery of an order or does not fulfill other contractual obligations.
- 5.6 In the case of dispatch of goods, the date of dispatch shall be deemed to be the date of delivery; in all other cases, the date on which the Contractual Partner receives notification of readiness for dispatch, delivery or handover shall be decisive.

## **6. Dispatch/risk transfer**

- 6.1 Shipment shall be made to the Contractual Partner at the Contractual Partner's expense or to a third party according to the Contractual Partner's instructions.
- 6.2 In case of shipment, the risk shall pass to the Contractual Partner as soon as the goods to be delivered have left the plant 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 also apply in case of partial deliveries or if BRABUS has taken over other services. These regulations do not apply to 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 on which the Contractual Partner is notified that the goods are ready 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. An obligation in this respect exists for BRABUS only on the basis of a special written agreement.
- 6.5 Goods not subject to shipment or other services are 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 collection notice. In case of non-acceptance BRABUS can make use of the legal rights.

## **7. Warranty**

- 7.1 The Contractual Partner 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 after detection. Failure to comply with the deadline for notification 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 at the BRABUS branch 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 nothing may be changed at defective Goods and/or services, otherwise the Contractual Partner loses the warranty claims. Deviating from the above regulations, defect removal measures may also be carried out by another specialist 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 company remains unaffected.

7.2.3 If defects are repaired in another specialized workshop, it has to be stated in the order form that the repair was carried out 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 work towards keeping the costs for the removal of defects as low as possible.

7.3 In case of demonstrable material or workmanship defects, BRABUS may, at its own discretion, either remedy the defect free of charge or provide a replacement free of charge against return of the defective goods or credit the invoice value or grant the Contractual Partner a reduction while reasonably safeguarding his interests. Mandatory legal provisions in favor of consumers deviating from this remain unaffected.

7.4 If BRABUS does not or not in accordance with the contract comply with an obligation of supplementary performance (replacement delivery or rectification) chosen by BRABUS or if the supplementary performance fails, the Contractual Partner shall be entitled to the right of reduction or the right to withdraw from the contract at its option within the scope of the statutory provisions. Mandatory statutory provisions in favor of consumers deviating from this 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 generally limited to the parts installed and/or services rendered by BRABUS in each case. Deviating from the regulation 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 defects 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 not relating to the delivered goods (consequential harm caused by a defect), are - as far as legally permissible - excluded. Mandatory statutory provisions in favor of consumers deviating from this shall remain unaffected.
- 7.7 If boundary samples are sent to the Contractual Partner for testing, BRABUS is only liable for the fact that the delivery is carried out according to the tested boundary sample under consideration of possible corrections (determination of quality by boundary sample).
- 7.8 The warranty claims regulated in this Section exclusively refer to defects of 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 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 transfer of risk or acceptance.
- 7.9 Information on performance increases and/or performance kits are to be understood as average values. Test-related deviations of +/- 5 % are possible. Information about the overall performance of factory engines modified by performance upgrades and/or performance kits is based on the manufacturer's specifications 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-approved according to EU standards. BRABUS assumes no 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 thereby designated the respective warranty as such.
- 8.2 The Contractual Partner may only assert claims for damages due to breach of warranty to the extent that the Contractual Partner was to be protected by the warranty against damages of the type that occurred.

## **9. General limitations of liability**

- 9.1 BRABUS is liable for damages - regardless 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 essential contractual obligation (an obligation, the fulfillment of which enables the proper execution 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 set forth in Sec. 9.1 shall not apply if and to the extent 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 under the Product Liability Act.
- 9.3 Claims against BRABUS, which are not regulated under Sec. 7 "Warranty", are subject to the regular statute of limitations.

## **10. Extended lien**

- 10.1 BRABUS is entitled to a contractual lien on the objects coming into its possession due to claims resulting from the order.
- 10.2 The contractual lien may also be asserted on account of claims from work previously performed, spare parts deliveries and other services, insofar as they are related to the subject matter of the order. For other claims arising from the business relationship, the contractual lien shall only apply 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 retains title to the goods delivered by BRABUS until all claims existing against the Contractual Partner from the current business relationship or – if the Contractual Partner is a consumer – until all claims existing against this Contractual Partner from the respective contractual relationship have been fulfilled. This shall also apply if a Contractual Partner who is not a consumer has fully performed the counter-performance for deliveries designated by this 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 made by BRABUS within the scope of a contractual relationship the respective corresponding payments have already been made by the Contractual Partner. Any processing and treatment is done for BRABUS without obligating BRABUS and without losing the property of BRABUS. 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 object is insofar considered as reserved goods in the sense of these conditions.
- 11.2 The Contractual Partner is entitled to sell the reserved goods in the ordinary course of business. The Contractual Partner is prohibited from disposing of the goods in any other way.
- 11.3 All claims accruing to the Contractual Partner from the use of the reserved goods are assigned to BRABUS in advance. 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 only covers the share of proceeds corresponding to the co-ownership share of BRABUS in the Goods subject to retention of title.
- 11.4 The Contractual Partner is 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 cause**

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

## **13. Old 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 a storage beyond this period. A replacement is excluded. This regulation does not apply to parts that 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 cannot be attributed to his commercial or 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.

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](mailto:info@brabus.com)

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

You may use the [WITHDRAWAL FORM](#) for this purpose, but it is not mandatory.

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.

### **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), without delay 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 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 an extent with the Goods that is not necessary for the examination of the condition, quality and functioning of the goods.

- Withdrawal policy end -

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

15.1 The European Commission provides a platform for online dispute resolution (ODR), which you can find [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. The competent body 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 is determined by the registered office of BRABUS, which, however, is entitled to assert claims against the Contractual Partner also at his registered office or at other legally admissible places of jurisdiction.

16.3 Deliveries and services of BRABUS are exclusively governed by German law as applicable among German residents. The application of the laws on the international purchase of movable goods and on the conclusion of international purchase contracts for movable goods is excluded.

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

Status 01.03.2022