

1. General, Scope of application

1.1 These General Terms and Conditions of Sale ("GTC Sale") apply to all sales of boats ("Boats") to our customers ("Buyer"). For the purpose of these GTC Sale, a Buyer may be (i) a "Consumer", i.e. any individual entering into the contract for a purpose not related to his or her business, trade or self-employed professional activity (Sec. 13 of the German Civil Code), or (ii) a "Business Customer", i.e. an individual, company or partnership vested with legal capacity who enters into the relevant contract in the conduct of its business or its self-employed professional activity (Sec. 14 (1) of the German Civil Code).

1.2 The GTC Sale apply in particular to contracts for the sale and/or delivery of Boats regardless of whether we manufacture the Boats ourselves or purchase them from sub-suppliers. The GTC Sale as amended from time to time are deemed to constitute the framework agreement also for future contracts concluded with the same Buyer for the sale and/or delivery of movables with no obligation on our part to refer to these GTC Sale in each individual case; we will inform the Buyer of any changes or amendments to our GTC Sale without undue delay (unverzüglich).

1.3 Our GTC Sale apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer will only become part of the contract if and to the extent that we have explicitly consented to their application. This requirement of consent applies in any case, for instance also in the case that we execute delivery to the customer without reservations even though we are aware of the Buyer's GTC.

1.4 Any individual agreements made with the Buyer from time to time (including side agreements, changes and amendments) will in any case prevail over these GTC Sale. The content of any such agreement will be fixed in a written contract resp. in our written confirmation.

1.5 Legally relevant declarations and notifications which have to be given to us by the Buyer after contract conclusion (e.g. the fixing of a time limit, notice of defect, declaration of withdrawal, declaration for the reduction of the purchase price) must be in writing (Schriftform) to be valid.

2. Contract conclusion

2.1 Our offers are non-binding. This also applies in the case that we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product specifications or documents – including in electronic form – for which we reserve the corresponding property rights and copyrights.

2.2 Any order of Boats by the Buyer is deemed to constitute a binding offer for contract conclusion. Unless stated otherwise in the order, we are entitled to accept this offer within two (2) weeks from receipt (Zugang).

2.3 Unless otherwise agreed, acceptance of the offer is declared by our written order confirmation.

3. Delivery time and delay in delivery (Lieferverzug)

3.1 The delivery time shall be specified in the written order confirmation.

3.2 If we are unable to comply with binding delivery times for reasons which are not attributable to us (non-availability of the Boats or services to be provided), we will inform the Buyer without undue delay (unverzüglich) and at the same time indicate the estimated new delivery time. If the Boats or services are not available within such new delivery time either, we will be entitled to withdraw from the contract in whole or in part; any consideration already paid by the Buyer will be refunded without undue delay (unverzüglich). Non-availability of the Boats or services in terms hereof includes but is not limited to the case of late delivery to us by our sub-suppliers if we have concluded a congruent covering transaction, if no fault is attributable to us or our sub-suppliers or we are under no obligation to procure the Boats or services in the specific case in question.

3.3 The occurrence of a delay in delivery (Lieferverzug) is defined by the applicable statutory provisions; our liability in case of a delay in delivery (Lieferverzug) shall be subject to Sec. 8 below. However, in any case, a reminder (Mahnung) by the Buyer is required.

4. Delivery, passing of risk, acceptance

4.1 Delivery shall be EXW production plant as designated in the order confirmation (INCOTERMS 2010) which is also the place of performance (Erfüllungsort). The Boats will be delivered to another destination upon request and at the expense of the Buyer (sale by delivery to a place other than the place of performance – Versandungskauf in terms of German law). Unless otherwise agreed, we are entitled to choose the mode of dispatch (including but not limited to the carrier, dispatch route, packaging) in our sole discretion.

4.2 The risk of loss and/or damage passes to the Buyer no later than upon hand-over of the Boats. However, in the case of sale by delivery to a place other than the place of performance (Versandungskauf in terms of German law), the risk of loss and/or damage of the Boats as well as the risk of delay passes to the Buyer already upon hand-over of the Boats to the carrier, forwarder or other person or institution assigned to execute the dispatch.

4.3 In the event that a Contractual Partner who is not a consumer does not fulfill its contractual obligations, in particular, but not limited to, the obligation of acceptance and/or the obligation to pay the (remaining) purchase price and BRABUS suffers a damage, BRABUS is entitled to charge a lump sum of 15 % of the agreed purchase price. The compensation is to be set higher if BRABUS proves a higher damage and lower if the Contractual Partner proves that a lower damage or no damage at all has occurred.

5. Prices and terms of payment

5.1 Unless otherwise agreed, the applicable prices are those valid upon contract conclusion, ex production plant as designated in the order confirmation, plus statutory value-added tax (if applicable).

5.2 In the case of a sale by delivery to a place other than the place of performance (Versendungskauf in terms of German law) (Sec. 4.1), the costs of transport ex production plant as designated in the order confirmation and the costs of transport insurance, if requested by the Buyer, are borne by the Buyer. Customs duties, if any, fees, taxes and other public charges are borne by the Buyer.

5.3 Unless agreed otherwise, the purchase price is due and payable as follows:

- 50% within seven (7) business days from the date of the written order confirmation;
- 30% within seven (7) business days from the notification to the Buyer that the start of production of the Boat has occurred;
- 20% within seven (7) business days from the notification to the Buyer that the Boat is ready for dispatch.

5.4 The Buyer is only entitled to set-off or retention if and to the extent that the Buyer's claim is undisputed or has been established by a final non-appealable court decision.

5.5 If it becomes foreseeable after contract conclusion that our purchase price claim is endangered due to the Buyer's inability to pay (e.g. because a petition in insolvency is filed), we will be entitled under the statutory provisions to refuse performance and – if required, after grant of a grace period – withdraw from the contract according to Sec. 321 of the German Civil Code. The statutory provisions governing the dispensability of a grace period remain unaffected.

6. Reservation of title

6.1 We reserve title to the sold Boats until all our current and future claims arising from the sales contract have been paid in full.

6.2 The Buyer shall not be entitled to resell any products delivered by us which are under retention of title, except with our prior written consent.

7. Warranty for defective Boats

7.1 In the event of a defect of the delivered Boat, the Buyer shall be entitled to request from us to repair the defect or to supply another product (as ordered) which is free from defects. Notwithstanding the foregoing, if the Buyer is a Business Buyer, we shall have the right to choose between any such remedies at our discretion, provided that such choice shall be made by us by written notice [in "text form", including by telefax or by e-mail] within a period of three business days following receipt of the Buyer's notice of the defect. In any cases, we may refuse to remedy a Boat in the manner requested by the Buyer if such remedy would result in unreasonable costs.

7.2 If the remedy (supplementary performance- Nacherfüllung) pursuant to Sec. 7.1 fails or cannot reasonably be expected from the Buyer or we refuse to remedy the defect, the Buyer shall be entitled to terminate the sales contract, reduce the purchase price or claim damages or frustrated expenses, in each case in accordance with applicable law; provided, however, that damage claims of the Buyer shall be subject to the provisions contained in Sec. 8 of these GTC Sale.

7.3 The warranty shall be excluded in the following cases:

- Any defect that occurs in or arises from or in connection with any equipment, parts or accessories which are not installed by us or the manufacturer of the Boats;
- Any windshield damages or leakages;
- Any defect resulting from Buyer's negligence, willful misconduct, improper use of the Boat, overloading, powering in excess of the recommended maximum horsepower, improper rigging, misuse or alterations or repairs or attempted repairs on the Boat not authorized by us or the manufacturer; this includes the use of improper trailer, boat lift and sling;
- Failure of the Buyer to use, maintain or store the Boat as specified in the Boat's manual, or any other failure to provide reasonable care and maintenance;
- Items of normal wear and tear, including but not limited to ropes, filters, bulbs and batteries;
- Any defect arising from repairs or services made by non-authorized service providers;
- Any defect that arises from or connection with the Boat being used in a competitive event.

7.4 With regard to Business Customers only, the following shall apply: The Buyer shall promptly upon delivery inspect the Boat with due care. The delivered Boat shall be deemed to be approved by the Buyer unless the defect is notified to us (i) in case of any obvious defects within a period of five (5) business days upon delivery or (ii) otherwise within five (5) business days from the day when the defect has been identified.

7.5 If the Buyer is a Business Customer, the warranty period shall be one (1) year upon delivery of the Boat. If the Buyer is a Consumer, the warranty period shall be two (2) years and for the delivery of used goods one (1) year upon delivery.

8. Limitation of Liability

8.1 We will be liable for compensation of damage – irrespective of the legal ground of the claim – in case of intentional or grossly negligent conduct. In the case of simple negligence we may only be held liable for:

- for damage resulting from an injury of the life or limb or health,
- for damage resulting from the breach of a fundamental contractual duty (Wesentliche Vertragspflicht) [which is a duty the fulfilment of which is an



indispensable condition for the proper execution of the contract and on the fulfilment of which the contractual partner generally relies and is reasonably allowed to rely); however, in this case, our liability is limited to the compensation of the typical foreseeable damage.

8.2 The limitations of liability set out in Sec. 8.1 do not apply if and to the extent that we have fraudulently concealed a defect, have given a guarantee for the quality of the Boats or for a possibly existing obligation 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 Buyer under the German Product Liability Act (Produkthaftungsgesetz).

9. Instructions on the right of withdrawal

If you are a consumer (i.e. a natural person who places the order for a purpose that can be attributed neither to their 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 or has taken possession of the goods.

To exercise your right of withdrawal you must inform us,

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by means of a clear declaration (e.g. a letter sent by mail or e-mail) about your decision to revoke this contract.

You can use the attached model 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.

Effects of withdrawal

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the delivery costs (with the exception of additional costs resulting from the fact that you have chosen a type of delivery other than the most favorable standard delivery offered by us), without delay and no later than within fourteen days from the day on which we received the notification of your withdrawal of this contract. For the repayment, we will use the same means of payment that you used for the original transaction, unless expressly agreed otherwise with you; in any event, you will not incur any fees as a result of the refund.

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 withdrawal from 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 will only have to pay for any loss in value of the goods if this loss in value is due to an extent of contact with the goods that is not necessary for the examination of the condition, quality and functioning of the goods.

10. Dispute resolution, arbitration procedure

10.1 The European Commission provides a platform for online dispute resolution (OS), which can be found under the following link [Online Dispute Resolution | European Commission \(europa.eu\)](#). Consumers have the possibility to use this platform for the settlement of their disputes.

10.2 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](#).

11. Choice of law and place of jurisdiction

11.1 Any contracts entered into between us and the Buyer shall be governed by the laws of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods (CISG), without prejudice to any mandatory conflict of law provisions.

11.2 The preconditions and effects of the reservation of title in terms of Sec. 6 are subject to the law of the place where the Boat is located if and to the extent that the choice of German law is impermissible or ineffective thereunder. If the applicable property laws do not acknowledge a reservation of title as provided for in Sec. 6 or request additional preconditions such as but not limited to registration requirements etc., the Buyer undertakes to support us at our request in order to fulfil this requirement or to establish a comparable security interest for us in relation to the Boat.

11.3 If the Buyer is a corporation, limited liability company or commercial partnership or otherwise operates a commercial business (Kaufmann within the meaning of Sec. 1 (1) of the German Commercial Code) or is a legal entity or special fund organized under public law, the courts in Düsseldorf, Germany shall have exclusive – also international – jurisdiction in respect of all disputes arising out of or in connection with the relevant contract. In all other cases, we or the Buyer may file suit before any court of competent jurisdiction under applicable law.