

# General Terms and Conditions BRUNNER Engineering GmbH & Co. KG Okt. 2016

## § 1 General, area of validity

1. The general terms and conditions (hereinafter called GTC) of BRUNNER Engineering GmbH Co. KG (hereinafter called BRUNNER) for orders of customers shall apply exclusively; BRUNNER shall not recognise conditions of its customers which contradict or deviate from the GTC unless BRUNNER has expressly agreed to them in writing. The GTC shall apply also if BRUNNER carries out the orders of customers without any reservation in spite of knowledge of conflicting or deviating conditions of its customers.
2. The GTC shall apply only to contractors in the sense of § 14 of the Civil Code, corporate bodies under public law or public separate estates.
3. The GTC shall also apply to all future business transactions with on the customers of BRUNNER.
4. The order confirmation of BRUNNER including these GTC reflect the complete content of the agreement between BRUNNER and the customers for the performance of the order of the customer.

## § 2 Offer, offer documents

1. Offers of BRUNNER are non-binding, insofar as they are not expressly marked as binding.
2. If the order of the customer can be classified as an offer in accordance with § 145 of the Civil Code, then BRUNNER can accept the order within 2 weeks.
3. BRUNNER reserves the right, on the condition that this is reasonable for the customers, to make changes with regard to slight colour, design, weight, dimension or shape deviations of the goods to be delivered or manufactured by BRUNNER as well as customary deviations to the same after conclusion of the contract.
4. The specifications (dimensions and other technical information) information and figures in the offers, brochures, catalogues, data sheets, documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents of BRUNNER - also in electronic format - are customary estimated approximate values, unless they are expressly denoted as binding by BRUNNER.
5. BRUNNER reserves all property rights and copyrights as well as the registration of commercial industrial property rights to the offers, figures, drawings, calculations, information and other documents (also in electronic format) of BRUNNER. This applies particularly to documents (also in digital format) that are denoted as "confidential" or are obviously to be treated as confidential. Customers require the express written consent of BRUNNER before passing them on to third parties.
6. Contract conclusion takes place under the reserve of correct and timely self-delivery by the supplier of BRUNNER. This applies only in case of non-delivery which is not the responsibility of BRUNNER, in particular with the conclusion of a congruent hedging transaction with the suppliers of BRUNNER. The customer shall be notified immediately of the unavailability of the services, BRUNNER shall be entitled to withdrawal. Consideration shall be reimbursed immediately. BRUNNER shall present the covering contract to the customer immediately and assign the resulting rights in the required extent.
7. If the customer orders standard parts on the condition of the release of initial sample parts, then the release is deemed to have been granted if the customer does not refuse the release within 14 calendar days of having been informed by BRUNNER.

## § 3 Prices, terms of payment

1. Unless arising otherwise from the order confirmation, prices are for a delivery "ex works Durmersheim", exclusive of postage, packaging, insurance and transportation; the exempt services shall be invoiced separately.

2. The statutory legal VAT is not included in the prices of BRUNNER. Inasmuch as not already mentioned in the offer or the order confirmation, value-added tax in the amount determined by law applies to all prices. It will be accounted for in invoices as a separate item on the day of issue of the invoice.
3. All contractually agreed prices apply up to the agreed delivery date. BRUNNER reserves the right to raise prices adequately if, after conclusion of the contract of BRUNNER and after the agreed delivery date, an increase in costs arises beyond the control of BRUNNER, particularly due to collective bargaining agreement or price increases for materials.
4. The deduction of discounts shall require a special agreement.
5. Unless not otherwise provided for in the order confirmation, invoices shall be due (without deduction) within 8 days of the date of invoice. The legal rules concerning the consequences of default in payment shall apply.
6. Customers shall be entitled to rights of set-off only if their counterclaims were determined without further legal recourse, uncontested or accepted by BRUNNER. The customer is also authorized to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

## § 4 Provisions of the customer

1. If customers provide plans, drawings, sample parts, materials or intermediate goods for the performance of the contract or provide appropriate technical/organisational defaults to BRUNNER, then BRUNNER shall not assume any liability for the correctness of the dimensions, functionality and quality. The customer shall bear the sole responsibility for this. BRUNNER reserves the right to refuse the installation of provided materials and intermediate products insofar as they do not meet the quality requirements of BRUNNER.
2. In case BRUNNER develops or produces technical programs, tools, means of production, fixture facilities or other aids to perform the contract, they shall remain the property of BRUNNER and must not be turned over to the customer.
3. If provided materials / intermediate products of BRUNNER have been processed, then BRUNNER shall gain ownership therein. A surrender to the customer must be made only for the purposes of contractual performance.

## § 5 Period of delivery and delay of delivery

1. The start of the period of delivery specified by BRUNNER requires the clarification of all technical issues.
2. Adherence to the delivery and performance obligation of BRUNNER furthermore requires the timely and duly fulfilment of the customers duties. This includes especially the fulfilment of the cooperation duties such as the provision of plans, provisions of sample parts as well as the required releases and payments through the customers within the agreed dates. The plea of non-performance of the contract remains reserved.
3. Delivery periods and dates are, unless expressly specified otherwise with a written assurance, only non-binding planning targets. The deadlines start upon the receipt of the order confirmation from BRUNNER; however, not before all details of execution are clarified.
4. If the delivery date is delayed due to cases of force majeure (see § 9 Subparagraph 6), the delivery deadline is automatically extended by the period of the corresponding delay.
5. The delivery deadline is adhered to if the delivery item has left the BRUNNER plant by the time of expiry of the delivery deadline. Insofar as an acceptance is to be performed, the acceptance date is decisive - with the exception of justified rejection of goods - in the alternative, the notification of the readiness for acceptance or putting into use of the delivery item by the customer.

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6. If the customer is in default of acceptance or culpably violates other cooperation duties, then BRUNNER shall be entitled to demand compensation for the damages incurred to BRUNNER in this respect, including any additional expenditures. Further claims or rights remain reserved.
7. Inasmuch as the prerequisites of Subparagraph 6 are present, the risk of accidental wrecking or accidental deterioration of the item delivered or manufactured by BRUNNER passes to the customer at the time at which the customer is in delay with acceptance or in debtor's delay.
8. If a delivery deadline expressly agreed in writing agreed is not met resulting from a fault of BRUNNER, the customer shall be entitled to withdrawal from the contract; however, only after a reasonable grace period set by BRUNNER expires without satisfactory result together with the declaration to refuse acceptance of the delivery/service after the deadline expires. In the event of the impossibility or with a prior arrangement of short selling in the sense of § 286, Subparagraph 2, no.4 of the Civil Code or § 376 of the Code of Commercial Law, the duty to the extension of time shall be omitted.
9. Should damages arise to the customer because of a delay or non-delivery attributable to the fault of BRUNNER, then the liability of BRUNNER shall be limited to foreseeable typically occurring damages.  
The amount of any claims for damages is limited to 0.5 % per week, in all however 5 % of the value of the part of the delivery, which could not be used in time or not according to agreement due to the delay. This liability limit includes damages such as loss of profit, image loss or damages of a similar nature which might be a burden on the customer.

### § 6 Passing of risk, acceptance

1. The risk passes to the customer when the item to be delivered by BRUNNER has left the BRUNNER plant, and namely even if partial deliveries are made or if BRUNNER has assumed other services, e.g. the shipping costs or delivery and assembly. Insofar as an acceptance has to take place, this shall be decisive for the passing of the risk. It must be completed immediately on the day of acceptance, in the alternative after notification from BRUNNER of the readiness for acceptance. The customer must not refuse acceptance if an immaterial defect is present.
2. In the event of delay or failure of the dispatch or acceptance on grounds, for which the BRUNNER is not responsible, the risk shall pass to the customer from the day of notification of the dispatch or readiness for acceptance.
3. Partial deliveries and partial performances are permissible inasmuch as they are acceptable for the customer.

### § 7 Functional scope and function tests

1. The products to be delivered by BRUNNER are tested prior to delivery. In doing so, only those products with which marketable packaging materials with the size and quality defined in the specification can be processed are owed.
2. If acceptance of the delivery item is agreed at our plant and the customer does not appear at the agreed date of pickup, acceptance will be cancelled. If BRUNNER postpones acceptance by request of the customer, the customer shall bear the corresponding additional costs.
3. The customer shall check items for integrity and completeness at its plant immediately after delivery. Damage events are to be communicated to BRUNNER immediately. Without the timely and correct fulfilment of these formalities, the orderer cannot assert any claims towards BRUNNER. The orderer should document the reported defects with photographs.
4. BRUNNER will provide technically qualified personnel on request, within the scope of its possibilities and against separate calculation.

5. The personnel may be employed only for the agreed works and are to be called only after the customer has made all preparations. Required supporting staff, energy and equipment are to be provided to the personnel without charge.

### § 8 Liability for defects

1. Claims for defects of the customer presuppose that the customer has duly performed the owed duties to inspection and objection pursuant to §§ 377, 381 of the Code of Commercial Law.
2. Insofar as there is a defect of the item delivered or newly manufactured by BRUNNER, BRUNNER shall have, at its discretion, the right of subsequent specific performance in the form of a removal of defects or delivery or creation of a new flawless item. If removal of defects or replacement delivery or manufacture of a new item takes place, BRUNNER shall be obligated to assume all necessary expenses for the supplementary performance, in particular transportation costs, route-related transport costs, labour costs and the cost of materials, insofar as these are not increased because the item delivered or newly manufactured by BRUNNER was transported to a place other than the place of fulfilment, whereby BRUNNER shall assume the required expenditures only up to amount of the price charged to the customer for the item originally delivered or newly manufactured by BRUNNER.
3. The place of supplementary performance is the registered office of BRUNNER.
4. If supplementary performance in accordance with § 7, Subparagraph 2, fails twice, then the customer shall, at its own discretion, be entitled to withdrawal or reduction.
5. Justified notices of defects shall not affect the performance of the contract apart from that. The right to withhold payments is precluded insofar as the value of the claimed items (calculated on the corresponding basis of the purchase price) does not exceed previously made payments.
6. The limitation periods pursuant to § 438, Subparagraph 1, no. 3 of the Civil Code and 634a, Subparagraph 1, no. 1 of the Civil Code are reduced to 1 year. The statutory regulations on the start of the period of limitations, the suspension of expiry, the suspension and on the re-commencement of the period remain unaffected.

### § 9 Joint and several liability

1. BRUNNER is liable in accordance with the provisions of the law inasmuch as the customer claim damages based on intent or gross negligence. Insofar as BRUNNER cannot be accused of intentional or grossly negligent breach of contract, the liability for compensation shall be limited to foreseeable, typically occurring damage.
2. BRUNNER is furthermore liable in accordance with the provisions of the law inasmuch as BRUNNER culpably violates an essential contractual obligation; however, in this case and with ordinary negligence, liability for compensation is limited to foreseeable, typically occurring damage. An essential contractual obligation is present if the violation of duty concerns a duty whose fulfilment the customer has relied on and also could have relied on.
3. Insofar as the customers is apart from that entitled to a claim for replacement of the damage in place of performance because of negligent violation, liability of BRUNNER is limited to replacement for foreseeable, typically occurring damage.
4. In the event of ordinary negligence, the liability amount is limited to the invoice value of the corresponding delivery. The calculation basis for this is the net order price of BRUNNER for the manufactured product and service version. This liability limit includes damages such as loss of profit, image loss or damages of a similar nature which might be a burden on the customer.
5. The liability because of culpable injury to life, body or health remains unaffected; the same applies to the compelling liability in pursuant to the product liability law as well as the event of fraudulent concealment of a defect, acceptance of a guarantee or the

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assurance of a characteristic, given if a defect that is covered by such a guarantee or assurance triggers the liability of BRUNNER.

6. BRUNNER is not liable in cases of force majeure (e.g. natural disasters, war, civil unrest, terrorism, sabotage, strike as well as machine damage / disruptions in production, inasmuch as this event is not the responsibility of BRUNNER).
7. Liability because of delayed delivery is conclusively regulated in § 5.
8. Further liability for compensation as provided for in Subparagraphs 1 to 7 is – irrespective of the legal nature of the asserted claim – precluded. This applies especially to claims for damages owing to a violation of any precontractual obligations, or any other neglect of duty or tortious claims involving in accordance with § 823 of the Civil Code.
9. The limitation of liability applies also insofar as the customer instead of a claim for damages demands reimbursement of useless expenditure instead of performance.
10. Insofar as the liability for compensation from BRUNNER is precluded or limited, this shall also apply in view of the personal liability of the workers, employees, representatives and agents of BRUNNER.

### § 10 Retention of title protection

1. BRUNNER reserves ownership in item delivered or manufactured by BRUNNER up until receipt of all payments from the business relationship. Insofar as there is a current account relationship, retention of title concerns the acknowledged balance. If the customer acts in violation of the contract - in particular if it is in default, BRUNNER shall be entitled to take back the item delivered or manufactured by BRUNNER. The taking back of an item delivered or manufactured by BRUNNER constitutes a withdrawal from the contract. BRUNNER is entitled to recycle the item delivered or manufactured by BRUNNER after taking it back, the earnings from the recycling shall be offset with the accounts payable of the customer – less adequate recycling costs.
2. The customer is obligated to treat the item delivered or manufactured by BRUNNER with care; it is obligated in particular to take out insurance against fire and water damage and theft at its own expense, with the insured sum being adequate to cover the replacement value.
3. In the event of garnishment or other intervention by third parties, the customer must inform BRUNNER immediately in writing so that BRUNNER can institute legal proceedings in accordance with § 771 of the Code of Civil. Insofar as the third party is not in a position to reimburse BRUNNER judicial and extra-judicial costs of an action in accordance with § 771 of the Code of Civil Procedure, the customer shall be liable for the loss arising for BRUNNER.
4. The customer shall be entitled to sell the item delivered or manufactured by BRUNNER in the ordinary course of business; however, the customer assigns to BRUNNER any and all claims in the amount of the final invoice amount (including value added tax) of the claim of BRUNNER due to the customer from the sale to its purchaser or third parties, and namely irrespective of whether or not the item delivered or manufactured by BRUNNER was sold without or after processing. The customer shall continue to be entitled to enforce such claims after they have been assigned. BRUNNER's right to collect the receivables itself shall remain unaffected hereby. However, BRUNNER undertakes not to collect the account receivable so long as the customer complies with its payment obligations arising out of the proceeds collected, is not in default of payment and particularly has not filed a

petition for the opening of insolvency proceedings or payments have not been suspended. Should this be the case, however, BRUNNER may demand that the customer discloses to BRUNNER the assigned claims and their debtors, and that the customer provides all information required to collect said receivables, turns over any related documents and notifies the debtors (third parties) of the assignment.

5. The processing or alteration by the customer of the item delivered or manufactured by BRUNNER shall always be performed on BRUNNER's behalf. If the item delivered or manufactured by BRUNNER is processed with other items not belonging to BRUNNER, BRUNNER shall acquire co-ownership in the new item in proportion of the value of the item delivered or manufactured by BRUNNER (final invoice amount, including value added tax) to the other processed items at the time of processing. The provisions applicable to the item resulting from the processing shall also apply to the item delivered or manufactured by BRUNNER with reservation.
6. If the item delivered or manufactured by BRUNNER is inseparably mixed with other items not belonging to BRUNNER, BRUNNER shall acquire co-ownership in the new item in proportion of the value of the item delivered or manufactured by BRUNNER (final invoice amount, including value added tax) to the other mixed items at the time of mixing. If the mixing takes place in such a manner that the item of the customer is to be regarded as the main item, then it shall be deemed to be agreed that the supplier transfers co-ownership to BRUNNER on a pro rata basis. The customer shall preserve the sole ownership or co-ownership on the behalf of BRUNNER.
7. At the request of the customer, BRUNNER is obligated to release the securities to which BRUNNER is entitled insofar as the realisable value of the securities of BRUNNER exceeds the , claims to be secured by more than 10 %; the selection of the securities to release is incumbent upon BRUNNER.

### § 11 Inventions and know-how

confidential, high-quality and advanced knowledge (know-how) existing at BRUNNER or gained on the occasion of the fulfilment of the contractual obligations through BRUNNER as well as inventions made by BRUNNER and any already existing or still to be registered commercial industrial property rights in this connection are – subject to separate agreement or the utilisation or use owed to the customer according to the sense and purpose of the contractual relationship – are due to BRUNNER exclusively.

### § 12 Place of jurisdiction, place of fulfilment

1. Insofar as the Customer is a merchant as defined in the German Commercial Code, the registered office of BRUNNER shall be the place of jurisdiction; however, BRUNNER shall be entitled to file court action against the customer at the court responsible for its registered office. The above jurisdiction clause also applies to customers with a registered office abroad, irrespective of its capacity as a merchant as defined in the German Commercial Code.
2. The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
3. Unless arising otherwise from the order confirmation, the registered office of BRUNNER shall be the place of fulfilment.

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