

Sales and delivery conditions of Braunform GmbH

- I. Application and validity**
- 1.1 The following conditions of Braunform GmbH (hereinafter named Braunform) are valid for all contracts that are concluded between Braunform and the contract party (hereinafter named customer). The conditions apply in particular to all future business even if specific reference is not made to them. The following conditions apply only to entrepreneurs. Entrepreneurs, according to these conditions, are natural and legal persons or legal partnerships with which business relations can be formed and which exercise a commercial, or independent professional activity.
- 1.2 The following conditions apply to all business divisions of Braunform, whereby additional special conditions apply to the business divisions mold shop/production of tools on the one hand and the delivery of plastic parts on the other hand as outlined in XII and XIII.
- 1.3 Opposing, differing or supplemental general terms and conditions of our customers are not binding even if Braunform does not expressly contradict these.
- 1.4 Any amendments to the content of this contract must be made in writing. Communication in text form shall suffice to meet the requirement of written form.
- 1.5 If we remain silent with regard to the customer's legal declarations, this must never be taken to mean that we consent to them.
- 1.6 The customer must not transfer his contractual rights or parts of these to third parties without our written consent.
- II. Completion of a contract and scope of delivery**
- 2.1 Our offers are without engagement. Only requests for submitting offers are concerned.
- 2.2 The contract comes into effect on receipt of the order confirmation from Braunform. The order confirmation is drawn up by Braunform as soon as the contract contents/scope of delivery between the contract parties is established in the details required. If written confirmation is not received, the order is considered to be accepted upon the transfer of goods to the customer or relevant freight forwarder.
- 2.3 We reserve the right to amendments to the design and/or form and/or version of the delivery item as well as to technical amendments, and these provide no grounds for complaints or withdrawal from the contract provided that the amendments are acceptable to the customer taking the interests of Braunform into account.
- 2.4 Moreover the documents relating to the offer, such as illustrations, drawings, details of weights and dimensions, rating details, samples and test parts are considered as non-binding items for viewing and dimensional details unless expressly designated as binding. Subsequent changes are to be mentioned in an offer addendum or order confirmation.
- 2.5 For the scope of delivery the order confirmation is definitive.
- 2.6 A special offer is to be made for necessary tool changes that are calculated by expenditure.
- III. Prices and payment conditions**
- 3.1 The prices that are given in the order confirmation are binding.
- 3.2 In the event of delivery delays for which the customer is responsible Braunform is entitled to enter into negotiations with the customer regarding an adoption of the price in order to adjust the price according to a possibly existing change in costs for which Braunform is not responsible.
- 3.3 Unless agreed otherwise prices are valid ex works in €. This increases by the statutory level of VAT.
- 3.4 Regardless of invoicing or receipt of the invoice, payments are due immediately upon delivery of the goods. The customer falls into arrears if he does not provide payment within 30 days after delivery or receiving the invoicing. Irrespective of this the customer falls into arrears with an overdue notice. The interest on arrears is at 8 percentage points above the basic interest rate. If we are able to prove more arrears damage then we are entitled to assert this right.
- 3.5 Offsetting with counterclaims is excluded unless the counter claim is undisputed or legally established. The customer can only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- IV. Delivery and transfer of risk, late delivery**
- 4.1 The agreed time of delivery begins on the date of order confirmation, but not before the provision of the documents, consent or approvals to be obtained by the customer if required. The agreed time of delivery begins on the date of order confirmation provided that all technical issues have been clarified.
- 4.2 The originally agreed delivery period is to be appropriately increased if, after acceptance of the order, the customer wishes to make changes to the delivery item that make it impossible to adhere to the earlier delivery time.
- 4.3 Acts of God, such as war, riots, natural catastrophe, traffic delays, a lack of raw material, strikes and blockades, failed energy supplies, destruction to our plant or other important operating parts and other comparable operational disruption for which we are not responsible but which make delivery impossible, entitle us to postpone the delivery by an appropriate period while the problematic situation exists. This also applies if our suppliers, which necessarily were charged for the contractual performance, face such circumstances. If the customer is immediately informed that the delivery cannot be made or cannot be made in full for the reasons given, withdrawal from the contract and demands for compensation by the customer are excluded. If these circumstances persist for more than four months, both parties have the right to withdraw from the contract.
- 4.4 The delivery is subject to Braunform itself being supplied on time and with the correct goods. If Braunform has concluded a hedging transaction with a sub-supplier in order to fulfil the contract and this sub-supplier does not fulfil his duty to supply, Braunform is entitled to withdraw from the contract.
- 4.5 If we fall behind with our deliveries, then the customer can only enforce claims for compensation for damages instead of performance and rescission claims if he has given us a reasonable subsequent delivery period under a penalty of non-performance and this period has expired without a delivery being made.
- 4.6 In case of late delivery, we are liable, in accordance with legal stipulations, if this late delivery is caused by our intentional or grossly negligent breach of duty. In all other cases of delayed deliveries caused by our negligent breach of duty, our liability for compensation for damages in addition to performance is restricted to no more than 10 % of the value of the delivery.
- 4.7 If the customer due to a late delivery caused by our negligent breach of duty claims for compensation for damages instead of performance, this claim is restricted to foreseeable damage as is typical for the contract.
- 4.8 If the delivery cannot be made, the customer's claims for compensation for damages are restricted in addition to or instead of the service to 10% of the value of that part of the delivery which cannot be used since the service cannot be provided. Further customer claims due to the impossibility of delivery are excluded. This restriction does not apply in the event of enforced liability in cases of acting with deliberate intent, gross negligence or as a result of death, bodily injury or damage to health.
- 4.9 Unless agreed otherwise delivery shall be made EXW Bahlingen (Incoterms 2020). In the event that Braunform assumes the delivery processing duties of the buyer in part by way of derogation, this shall not affect the delivery agreement for the delivery in question or for subsequent deliveries. This shall merely constitute assistance without legal obligation for which Braunform shall only be liable where intent and gross negligence are demonstrated; the provisions under clauses 7.1-7.2. apply. Unless agreed otherwise deliveries to countries outside the European Union shall be subject to the delivery terms of FCA Bahlingen (Incoterms 2020). If, in individual cases, Braunform should select the carrier, the costs of delivery and the buyer's risk of loss shall remain unaffected. With the provision of the delivery item from us, the risk of the accidental destruction and accidental deterioration of the delivery item is transferred to the customer, the customer is immediately informed of this in writing. In case the parties agree on FCA the risk is transferred to the customer on delivery of the delivery item to the forwarder, the carrier or the person specially designated to carry out the dispatch. This rule also applies to partial deliveries. The risk is also transferred to the customer if he is late accepting the delivery item.
- V. Dispatch**
- 5.1 As soon as the goods are ready for dispatch, the customer's duty to accept the goods begins. The customer will be immediately informed in writing once the goods are ready for dispatch. In the event of the good being dispatched, this is done using a suitable means of dispatch which we are free to choose and at the cost of the customer. In the event of the good being dispatched, the risk of the accidental destruction and accidental deterioration of the goods is transferred to the customer when the goods are handed over to the haulage contractor, freight forwarder or other person intended to carry out the dispatch, even if under exceptional circumstances we have paid the dispatch costs.
- 5.2 Insurance policies against damage during transport are only taken out if specifically agreed to and at the cost of the customer.
- 5.3 Packaging is invoiced at cost and is not returnable.
- VI. Complaints and liability for defects**
- 6.1 For faulty goods we first of all offer, according to our choice and within the scope of the guarantee, to rectify the fault or arrange for delivery of a replacement. We shall bear the costs incurred by this, in particular the operating, travel, material and transport costs relevant to the place of fulfillment of the replacement. Installation and expansion costs will only be assumed if the prerequisites of a fault-based liability for damages are met.
- 6.2 If we are not prepared or in a position to rectify the faults or make a replacement delivery, the delivery is specifically delayed for an appropriate period for reasons for which we are responsible, or if we in some other way fail to rectify the faults or make a replacement delivery, the customer is entitled, in accordance with his own choice, to terminate the contract or demand a corresponding reduction in the purchase price. However, in case of only a marginal breach of contract, particularly only slight faults, the customer is not entitled to cancel the agreement.
- 6.3 Failure of a remedy of defects as well as of a replacement delivery is considered to exist once an attempt for subsequent performance has failed for at least the second time.
- 6.4 If the customer wishes to have compensation after an unsuccessful attempt to rectify the problem the delivery item remains with the customer as long as this is not unreasonable.
- 6.5 If the customer claims compensation for damages based on faulty goods the liability clauses laid down VII apply.
- 6.6 For receipt of defect liability claims the customer is bound to fulfil his inspection and censure obligations according to § 377 HGB (German Commercial Code). We are to be informed immediately in writing of obvious faults, at the latest within 14 calendar days after receipt of the delivery item, otherwise the enforcement of defect liability claims is excluded. Timely dispatch is sufficient for observation of this term. The customer is to meet the full burden of proof for all claim conditions in particular for the fault itself, for the time of establishing the fault and for the reporting the fault on time.
- 6.7 Defect liability claims are statute-limited one year from the transfer of risk of the delivery item or upon acceptance, as far as acceptance is required. This limitation period does not apply to claims for damages on behalf of the client arising from injury to life, body or health or as a result of intentional or grossly negligent breach of duty on behalf of Braunform or its subcontractors which shall become statute-barred in accordance with the legal provisions.
- 6.8 If the customer receives the wrong assembly manual, Braunform are only obliged to deliver a correct assembly manual and this only if the error in the assembly manual excludes the correct assembly.
- 6.9 We do not provide any legal guarantees to the customer. This does not affect the manufacturers' guarantee.
- 6.10 The defect liability claim is null and void, if the fault results from the area of responsibility of the customer, especially if the fault of the delivery item results from normal wear, improper handling by the customer, breach of operators manual, improper maintenance or storage and care or improper changes, in particular the use of unsuitable attachments.
- VII. Liability**
- 7.1 Should the customer raise claims for compensation for damages, regardless of the legal basis for these but in particular as a result of defects, the infringement of duties resulting from the obligation or during contractual negotiations and from unauthorised dealing, we grant liability in accordance with legal rulings for cases of acting with deliberate intent or gross negligence. The same applies if our representatives or assistants are charged with acting with deliberate intent or gross negligence. Liability is furthermore excluded if compulsory liability is not granted on the grounds of culpable infringement of key contractual obligations. Essential contractual commitments are those which the contract must guarantee in view of its content and purpose or the fulfilment of which is deemed to be necessary for proper completion of the contract and on the fulfilment of which the customer regularly relies and may rely. The claim for compensation for damages on the grounds of infringement of key contractual obligations is however restricted to foreseeable damage as is typical for the contract. The same limitation applies in the event of gross negligence.
- 7.2 The aforementioned liability limitations do not relate to compulsory liability as defined in product liability law. Liability restrictions do also not apply in case of culpable death, bodily injury or damage to health.
- 7.3 Concerning the responsibility for late delivery reference is made to the provisions under IV.
- 7.4 The customer's damage compensation claims on the grounds of a defect come under the statute of limitations of one year from transfer of risk of the delivery item or upon acceptance, as far as acceptance is required. This limitation period does not apply to claims for damages on behalf of the client arising from injury to life, body or health or as a result of intentional or grossly negligent breach of duty on behalf of Braunform or its subcontractors which shall become statute-barred in accordance with the legal provisions.
- VIII. Retention of title**
- 8.1 The delivery item remains our property until the fulfilment of all requirements of the business relation between Braunform and the customer. The customer may neither pawn nor mortgage the delivery item before ownership is transferred to him.
- 8.2 The customer must inform us immediately and in the fastest way possible if the goods to which we reserve the retention of title or other objects or outstanding payments to which we are entitled are pawned by third parties, if application to initiate bankruptcy proceedings on his assets is submitted or if any other form of impairment is feared. The notification must include all the documents required. The customer must reimburse us for all costs incurred to us through such incidents.
- 8.3 If the customer does not provide due performance and in particular if he falls into payment arrears we are entitled to demand the handover of the delivery item if we have given a deadline to the customer for payment to no avail. A handover request also signifies withdrawal from the contract. The customer is obliged to handover the item immediately.
- 8.4 When making deliveries abroad, if certain measures are required in the importing country in order to achieve the effectiveness of the retention of title specified above or any other rights due to us there, then the customer must inform us of this and undertake such measures at his own cost. If legislation in the importing country does not allow for a retention of title, but allows the seller to retain other rights to the security object, we can exercise all rights of this kind. If this does not provide us with security amounting to the

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8.5	<p>same level of our claims against the customer, then the customer undertakes to provide us with other securities for the goods supplied or other securities and to do so at his own cost. The customer may process the goods, to which we retain ownership, as part of his normal business and mix, blend or combine it with other objects unless he is in payment arrears or has stopped making payments. We agree at this point that if the customer processes, mixes, blends or combines the goods, we shall be entitled to partial ownership of the new goods or quantity of goods produced by the processing, mixing, blending or combining; the level of ownership shall match the ratio which the goods subject to retention of title represents in the value of the products involved in the processing, mixing, blending or combining. The customer shall store the new item and/or entire volume of mixed, blended or combined items resulting from processing for us.</p>	10.6	<p>If requested, the customer and its affiliated entities shall return all concrete items of Confidential Information and all copies made thereof. Data and files must be destroyed and deleted such that they cannot be restored. The obligation to surrender or destroy does not extend to data and/or information which is conveyed as part of a contractual relationship and which represent a part of the service in accordance with the contract to be claimed by the recipient of the performance.</p>
8.6	<p>The customer may sell the goods to which we reserve the retention of title or to which we are entitled to partial ownership as part of his usual business unless he is in payment arrears or has stopped making payments. He must not pawn the goods or assign them as security. Sales abroad are only permitted with our prior written consent. If the customer sells goods to which we reserve the retention of title, at this stage and until all our outstanding payments have been settled, he cedes to us the rights to his customers which he gains from this sale along with all secondary rights, securities and retentions to titles.</p>	10.7	<p>The customer's obligations and restrictions resulting from this agreement, specifically those in accordance with clauses 10.3. and 10.4, each end five years following the disclosure of the respective Confidential Information. The statutory protection provisions shall apply in addition to the contractual obligations and shall continue to apply even after the contractual obligations come to an end.</p>
8.7	<p>We may demand that the customer informs his customers of this cession and provides us with all details and documents which are required for collection. The customer may however collect the outstanding payments ceded to us provided that he is not in payment arrears to us or has not stopped making payments to us. If the customer's outstanding payments from re-selling the goods to which we reserve the retention of title are made to a current account, then at this stage the customer cedes to us his claim to payments from the relevant and/or known balance and does so to the extent to which the re-sale of the goods to which we reserve the retention of title is included in outstanding payments. If we are only entitled to partial ownership of the goods sold, then this cession only amounts to the level of the value of our co-ownership.</p>	XI. Provisions under foreign trade laws	
8.8	<p>If goods to which we reserve the retention of title or to which we are entitled to partial ownership are sold along with other goods for a total price, then the above cession only applies to the level of the goods to which we reserve the retention of title and/or to the value of our co-ownership.</p>	11.1	<p>Customer is responsible for observing the pertinent German, European and other provisions under foreign trade laws.</p>
IX. Technical documentation, samples, intellectual property rights, data protection		11.2	<p>Offers are submitted with the precondition that the business transaction is permitted and lawful under foreign trade laws and that no permit or licence under foreign trade laws is required for its completion. Should it become apparent that such a permit or licence is required, Braunform may revoke its offer or, if a contract has already been formed, may withdraw from the contract without Braunform incurring any costs or charges. The withdrawal from the contract must be declared within six weeks after gaining knowledge of the duty to obtain a permit or a licence.</p>
9.1	<p>If the customer delivers drawings, models or samples for carrying out the contract he is to be held accountable for possible infringement of the trademark rights of third parties.</p>	11.3	<p>If a permit or licence is, or after contract closure becomes, compulsory under German, European or international foreign trade laws for the fulfilment and performance of the work and services offered, Braunform shall, without prejudice to its right of withdrawal under Section (2), be entitled to withhold the work and services owed until the necessary permit or licence has been granted; delivery periods commence at the earliest after such necessary permit or licence has been granted. If a necessary permit or licence is not granted, or if instructions as to content or ancillary conditions are not fulfilled or not met in good time, Braunform shall be released from the duty to provide work and services. If Braunform conducts the permit and licence procedure, Customer is under the obligation to provide its reasonable assistance and, in particular, procure all necessary items of information and documents without delay. Any costs and charges incurred thereby shall be paid by Customer. Any information on foreign trade laws given by Braunform are without binding effect and will not release Customer from making its own enquiries and reviews.</p>
9.2	<p>If a third party enforces the trademark rights belonging to him and prohibits us from using them then we are entitled to stop the work without verification of the material and legal situation. The customer will be informed of this immediately. The customer shall exempt us from any claims resulting from copyrights, trade names or patents unless we ourselves are responsible for infringing the copyrights.</p>	11.4	<p>If a permit or licence procedure lasts longer than six months, Braunform shall be entitled to withdraw from the contract.</p>
9.3	<p>Braunform is legally entitled to any possible results capable of being protected (inventions, brands, designs, copyright etc.) arising from the performance of the order and, provided there is no written agreement stating the contrary, only Braunform shall be entitled to apply for the relevant protective rights. The client undertakes to take any measures (e.g. making claims according to the German Employee Invention Act (ArbNErfG)) necessary for granting or transferring the relevant rights.</p>	11.5	<p>If the performance of the contract fails owing to the non-observance of provisions under foreign trade laws, in particular, owing to such permit or licence not being granted, Braunform shall hold a claim for being reimbursed for the work and services rendered until that date as specified under No. 11.15. The same applies if Braunform withdraws from the contract under Section (2) or (4). Any down-payment received will be repaid only in the amount exceeding this claim.</p>
9.4	<p>The customer is entitled to unrestricted use (not restricted by time or geography) of the results in the sense of Clause 9.3 following the purpose and content of the contract concluded with Braunform. This usage right is settled through the agreed payment.</p>	XII. Special conditions for the field of mold shop/production of tools	
9.5	<p>We reserve the right to ownership and copyrights to the cost proposals, drafts, design proposals, data carriers, software and similar documents which we have made available. This applies, in particular, to any data made available in the course of the performance and completion of the contract, especially 3D data, data involving production tolerances and single-part drawings. These documents and data may be made available to third parties only with our express prior written agreement. This in particular applies to documents and data that are considered to be "confidential".</p>	12.1	<p>The following conditions apply to contracts, that concern the production or amendment of tools, especially injection molds, as well as turning tables and hot runner systems. They apply supplementing to the general conditions.</p>
X. Confidentiality		12.2	<p>Unless agreed otherwise, the contract includes, over and above the production and delivery of the tool, the forwarding of a 2D assembly drawing, a parts list, operating instructions including documentation, and a hot runner and cooling drawing. No further supply or delivery of data, in particular 3D data, is owed. The same applies to single-part drawings and production tolerances. If, as the case may be, 3D data, production tolerances or single-part drawings are transmitted to the customer under special agreement, the customer undertakes to use said data / tolerances / drawings solely for using the contractual object and, in particular, not to use said data / tolerances / drawings for producing further tools and not to forward these to third parties.</p>
10.1	<p>"Confidential information" within the meaning of this provision includes all</p> <p>a) items of information that is marked as confidential or referred to be confidential within the scope of the disclosure, reported under confidential circumstances or would be considered to be confidential by the parties.</p> <p>b) technical and business items of information, in particular drawings, data, injection mould designs, photographs, plans, videos, equipment, arrangements, specimens of apparatus, components and systems and other specimens, samples, goods, materials, presentations of procedures, technical processes, manuscripts, process graphs and representations, data of customers and suppliers, costing information, and other information, notably the transmitted know-how, which the parties shall make accessible to one another directly or indirectly. Confidential Information also includes items of information which are later accomplished as work results in the course of the collaboration.</p>	12.3	<p>If the customer demands modifications to the contractual item this will require the explicit agreement of the contract partners. Subject to agreements to the contrary, such modifications by Braunform shall be invoiced according to the actual expenses incurred and according to Braunform's regular hourly or daily rates.</p>
10.2	<p>Items of information are not deemed to be Confidential Information if they have been obvious prior to their communication or have been accessible by the general public or if they have been available to customer without the recipient being bound by the obligation to observe confidentiality or if they have become publicly accessible without breach of this agreement or if they have been lawfully communicated to the customer or its affiliated or associated companies by a third party without obligation to observe confidentiality. Know-how arising from combinations of transferred confidential information shall only fall under these exemptions if the combination itself and its principles correspond to the circumstances of these exemptions; and not because individual pieces of transferred information count as exemptions. The customer who refers to one of the above exceptions must prove their cause.</p>	12.4	<p>For delivery of new injection molds the prices are due as follows: 30% after receipt of the order confirmation, 60% after receipt of the first sample (first falling plastic parts), 10% after startup or production approval of the tool, at the latest however 3 weeks after delivery. In the event that the option on a bank guarantee is agreed to safeguard down-payments, this can only be granted if the payment amounts to more than € 100,00,00.</p>
10.3	<p>The customer shall treat all Confidential Information with the strictest of confidentiality and shall neither announce, disseminate nor publish it and will take all measures necessary to prevent this information from becoming accessible to third parties. During the term of the contractual relationship, the customer agrees to use the Confidential Information transmitted solely within the scope of the agreement. Unless the express written consent by Braunform has been obtained, the customer undertakes not to make use of the transmitted Confidential Information after the contractual relationship has ended. He shall restrict access to Confidential Information solely to those managing directors, employees, affiliated companies, subcontractors or consultants who need to be aware of it for the purpose of this agreement and who are obliged to maintain the corresponding level of confidentiality. The customer warrants that its affiliated or engaged companies are also bound by the duties arising from this agreement if they obtain knowledge of the Confidential Information in the course of their collaboration.</p>	12.5	<p>If delivery periods have not been agreed on, Braunform services to the right to delivery periods extending up to 6 months into the future.</p>
10.4	<p>The customer is not permitted to exploit Confidential Information or parts thereof in any form, directly or indirectly, for commercial purposes without prior written approval by Braunform. This especially applies to the know-how and expertise transmitted. The customer is also prohibited from filing industrial property rights based on such Confidential Information.</p>	12.6	<p>If formal acceptance is agreed with the customer, it is to be declared immediately, if the delivery and the service are in accordance with the agreement. If, for the purpose of acceptance, the customer wishes to conduct a joint test run, the customer must within 14 days after delivery or notice of completion by Braunform specify a date therefore which must take place no later than 4 weeks after delivery or notice of completion.</p>
10.5	<p>Braunform shall retain all rights to any transferred Confidential Information, provided that the parties did not conclude a written contract granting the customer right of use. Braunform reserves the right to apply for protective rights for Confidential Information. With regards to confidential information received as a result of the contractual relationship, the customer shall not claim rights of prior use, nor claim the lack of innovation or evident prior use contrary to Braunform's protective rights.</p>	12.7	<p>The delivery item is considered to be accepted unless the customer demands the acceptance within two weeks after delivery or the date of completion and gives written notice of the defects which would justify the refusal of the acceptance. The same applies if a requested date of acceptance does not take place within 4 weeks after delivery or notice of completion for reasons within the customer's responsibility. Defects justifying refusal are defects which substantially limit or impair the usability of the delivery item.</p>
		12.8	<p>If the customer has put the delivery item into operation, or if the approval for production has been given, the delivery item is deemed to be accepted after expiry of six working days after the date of startup or the declaration of approval.</p>
		12.9	<p>If the customer has failed to declare acceptance within the period allowed for acceptance, the customer must within 14 days give written notice of any defects justifying the refusal of acceptance. The delivery item is otherwise deemed to be accepted.</p>
		12.10	<p>Unless there is opposing written agreement, the acceptance costs, including possible travel and accommodation costs, are to be met by the customer.</p>
		12.11	<p>We are to thoroughly verify the construction and other technical documentation provided by the customer for the manufacture of the delivery item for completeness and plausibility of the outlined conceptual solution and configuration. However checking of detailed fault and risk factors is excluded. If for reasons of such unidentifiable faults there are restrictions to the delivery item, these are within the sphere of responsibility of the customer.</p>
		12.12	<p>If the customer takes the responsibility of developing the delivery item, he must provide us with clear instructions, definitions or specifications, established in product drawings.</p>
		12.13	<p>After completion of the development and construction documentation these will be made available to the customer for verification and approval. The required production stages are to be first instructed by presentation of the customer's written approval.</p>
		12.14	<p>The delivery time is extended accordingly if there are delays in the customer's approval.</p>
		12.15	<p>The contract partners are to communicate in writing concerning technical and construction changes to the delivery item before and during the planning and manufacture of the delivery item. This is therefore a part of the contract agreement. We point out that the electrodes used in the tool shop will be destroyed after use or after initial sampling, unless otherwise agreed in the mold contract. As the electrodes are subject to wear, no warranty is given that the electrodes are free from defects in the event that the electrodes are handed over to the customer as agreed.</p>

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- 12.16 If, by way of exception based on an express agreement and besides the statutory defect liability claims for tools and moulds or other delivery items, we warrant the proper function for a certain output quantity (number of shots) or for a certain period of time, or declare the acceptance of a guarantee notably a durability guarantee for this purpose, the following applies:
- The statutory liability for defects that applies to sections VI and VII above remain unaffected by such commitments/guarantees.
 - If the respective commitment refers to a mould, it implies, unless otherwise agreed, the promise that the mould under normal use is basically suitable to properly produce the stated number of parts and/or during the stated period of time. Unless agreed otherwise, the undertaking of minimum term of function ends upon reaching the number of shots, at the latest however upon expiry of the agreed period of time. The undertaking of the output quantity and/or of the minimum term of function is conditional both upon the proper and careful use and on the appropriate, proper and sufficiently frequent maintenance work. No guarantee is given for parts subject to wear and tear or with reference to consistent quality or dimensional stability of the produced parts. The undertaking of the output quantity and/or of the minimum term of function does not extend to a hot runner system included in the delivery. In this respect we mediate without our own obligation the guarantee services by the manufacturer of the hot runner system.
 - If the respective commitment refers to other delivery items especially spare parts, it implies, unless otherwise agreed, the promise that the respective delivery item is basically suitable to properly fulfil its intentional function until the expiry of the agreed period of time (minimum term of function). No guarantee is given for parts subject to wear and tear, unless explicitly otherwise agreed. Any claims based on this commitment are under the precondition that the delivery item or the spare part is professionally inserted or built-in a system which is free of any other faults and properly maintained. If the delivery item or the spare part is used or installed in a mould or other system which has an age of more than 2 years any claims based on this commitment can only be asserted under the condition that the client provides evidence that the malfunction is not caused by deficits of the system.
 - Insofar as the customer identifies a defect that may justify a claim under the above provision we must be notified immediately. Clause 6.6 applies accordingly. Potential claims must be asserted in writing within 3 months of discovery of the defect, failing this the claim will expire. In the case of eligible claims we are entitled at our option to repair the contractual item, to carry out an exchange or to offer the customer a partial refund. With repairs and exchanges we do not assume any additional costs such as transport or installation and expansion. In the event that we decide on a partial refund of the purchase price, this shall amount to that proportion of the purchase price that corresponds to the ratio of the difference between the number of shots actually attained and the agreed shot number to the agreed shot number or – in so far as this results in a lower value – the ratio of the difference between the actual term of function attained and the agreed minimum term of function to the agreed minimum term of function (Example: Agreed number of shots 1 million; number of shots achieved 800,000; partial refund: 20% of the purchase price) Potential claims based on undertakings or guarantees in the aforementioned sense expire one year after the defect has been detected.
- 12.17 In the event of premature notice of termination, cancellation or other termination by client, also under mutual understanding, we are entitled to charge client for the work and services rendered by us to date prorated at the ratio of the value of the work and services rendered to date and the total work and services. Unless we have ourselves given an important cause for rescinding the agreement, we are additionally authorised to demand the agreed remaining remuneration minus any saved remuneration within the meaning of § 649 Iic. 2 BGB (German Civil Code), with us also being entitled to claim a lump sum of 10% of the remuneration for the partial work and services as yet not rendered. Either party hereto reserves the right to furnish proof from time to time that the difference between the agreed remuneration and the expenses which we have saved as a result of the rescindment of the contract or which we may have acquired through other deployments of our labour force or which we have with malicious intent failed to acquire, will result in a higher or a lower amount of reimbursement.
- XIII. Special conditions for the delivery of plastic parts**
- 13.1 The following conditions apply to contracts that concern the delivery of plastic parts. They apply supplementing to the general conditions.
- 13.2 Order cancellations are only valid once we have agreed to them. In such cases, we are entitled to a lump sum of 20 % of the agreed total purchase price as compensation for our lost earnings without needing to provide any evidence of this. The customer is expressly permitted to furnish evidence that damages have not occurred or that these are considerably lower than the lump sum. In individual cases, we reserve the right to demand a higher level of compensation if we have proof that we have suffered more damages.
- 13.3 Price increases can occur subject to agreements to the contrary according to the following terms:
- The following applies to standard products priced according to our list prices or bulk prices: If more than two months pass between the issuing of orders and the agreed delivery date, when generally increasing our list prices we are entitled to increase the agreed delivery price in this period by the same extent to which we have increased the list price for the product ordered. The same right exists in the event of delivery delays for which the customer is responsible as far as the increasing of the list price takes place during the delay.
 - For all other pricing, particularly for individualised customer series production of plastic parts, the contract parties can request a price adjustment once per year, the earliest point being one year after the effectiveness of the contract, assuming that the price of raw materials has changed by at least 3% since the conclusion of the contract or since the last adjustment. The same shall apply if other production costs deviate from the annual average by more than 10%. Price adjustments are based on data from the "Verlagsgesellschaft Kunststoff Information, Deutschland". A price adjustment must be requested in writing or in text form and must contain a sufficiently detailed statement of reasons. It shall become effective within two months upon receipt of the demand for increase.
- 13.4 Once the contract has been concluded, if the customer's financial circumstances deteriorate greatly or if we are only informed of a major deterioration in the customer's financial circumstances once the contract is concluded, then we are entitled to select between demanding prepayments or the provision of security.
- 13.5 Unless otherwise agreed, moulds, tools and other pieces of production remain our property, even if they are fully or partially charged to the customer.
- 13.6 The delivery deadline is observed if the ordered goods are ready for dispatch within the agreed dates. We cannot assume liability for the goods arriving at the customer's premises on time.
- 13.7 If dispatch is delayed at the instigation of the customer by more than 2 weeks after the agreed delivery date or, if no delivery date has been agreed on, by more than 2 weeks after readiness to dispatch has been announced, we are entitled to charge a flat rate storage charge for every month started amounting to 0.5% of the price of the delivery but this will not exceed 5% of the price of the delivery. Both contractual partners reserve the right to furnish evidence of greater or lower storage costs.
- 13.8 If the customer does not accept the goods, once we have set a reasonable subsequent deadline, for which 14 days are normally sufficient, we are entitled to withdraw from the contract and/or to demand compensation for non-fulfilment. If the goods can be sold to a third party, we are entitled to claim liquidated damages of 20 % of the agreed total purchase price. Both parties reserve the right to prove a greater or lesser extent of damage.
- 13.9 We only ever rectify faults on our own premises. On request, the customer is therefore obliged to return defective goods to us at our cost. Delivery costs will not be assumed if the delivery to a location other than the place of fulfillment will increase these costs.
- 13.10 A defect is not considered to exist in the event of standard variances, in particular regarding dimensional and weight details, rating details, colour shades for paintwork and discoloration of plastic parts, in particular when compared with our colour cards or colour samples.
- XIV. Area of jurisdiction, place of performance, applicable legislation, language**
- 14.1 The place of performance and payments is Bahlingen.
- 14.2 If the customer is a businessman, legal person from a public corporation or separate estate under public law, the exclusive area of jurisdiction for any dispute concerning this contract is our place of business. The same applies if the customer has no general area of jurisdiction in Germany or if his place of residence or usual inhabitancy at the time of the complaint enquiry is not known. We are however also entitled to institute proceedings at the customer's headquarters.
- 14.3 Legal relations between the customer and ourselves are governed solely by German law. The international sales law (the United Nations Convention on Contracts for the International Sales of Goods) or other interstate laws are excluded if this is permitted by law.
- 14.4 The contractual language is German. The German version of these conditions takes precedence.
- Braunform GmbH, Bahlingen
(Status: January 2020)