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1. Validity

1.1 The BURG T&CS shall apply only to supplies of tools, printing plates, films, parts, foil and services including production of the design and the provision screen printing and application services for finished decorated parts ("**Delivery**"), which Burg Design GmbH ("**BURG**") provides on the basis of a contract between an entrepreneur or a company ("**Customer**") and BURG. Customer and BURG hereinafter referred to collectively as "**Parties**" and individually as "**Party**".

1.2 The BURG T&CS shall apply exclusively between the Parties. Any deviant term or condition shall only apply if this is stated in the offer or in the order by BURG or in the acceptance of the order of the Customer or in the contract.

1.3 Amendments to the contract must be made in writing.

2. Offer

2.1 The description of the quality of the Delivery is exclusively and conclusively defined in the respective Technical Specification ("**TS**").

2.2 BURG reserves the property rights and intellectual property rights of the documents relating to its offer (e.g. illustrations, drawings, plans and construction or engineering documents, etc.).

2.3 A pre-contractual service during the offer stage that BURG provides at the request of the Customer (e.g. development of design, dummy, injection-molded part etc.) shall be invoiced for, even if the Parties have not subsequently concluded a contract.

2.4 BURG is bound by an offer for 45 calendar days from the date of the offer.

3. Terms of Delivery, Transfer of Risk

3.1 A Delivery shall be EXW (Ex Works) (Moosing 101, 4431 Haidershofen, Austria or location of supplier) Incoterms®2010 ("**Place of Delivery**").

3.2 The price of the Delivery is a net price in EUR (Euros), including necessary packaging ("**Wrapping**") plus additional packaging costs upon request of the Customer, plus the value added tax (VAT) valid at the date of delivery without further deductions.

3.3 BURG participates in an extensive system of disposal of packaging Altstoff Recycling Austria AG in compliance with the Austrian Packaging Regulation 2014¹. BURG is released from its obligation to take back Wrapping and additional packaging pursuant to license number 167 667 331. Additional charges or costs (e.g. deposit money) shall be borne by the Customer.

3.4 A partial Delivery is permissible insofar as reasonable for the Customer.

3.5 The risk shall be transferred to the Customer at the time BURG provides the Delivery at the Place of Delivery (3.1). This shall apply to free Delivery as well if a Delivery is dispatched or collected at the request of the Customer. In case of a dispatch of the Delivery the costs arising in this regard shall be borne by the Customer (e.g. transport, insurance, customs).

3.6 BURG reserves the right to make an additional or short Delivery up to $\pm 5\%$. In this case the Delivery has to be invoiced at the price agreed between the Parties.

4. Reservation of Self-Supply

In the event that the Delivery is not available because BURG has not received deliveries from its own suppliers or the delivery stock of BURG is depleted, BURG reserves the right to deliver a Delivery which is equivalent in quality and price to the Delivery agreed between the Parties in a contract. If this is not possible, BURG reserves the right to rescind the contract.

5. Terms of Payment, Right of Retention, Set-Off

5.1 Unless otherwise agreed by the Parties, invoices of BURG are due for immediate payment without deductions.

5.2 The Customer may only set off those claims or exert the right of retention for that claims which are undisputed or have been finally determined in a legally binding manner. This does not apply for costs of the Customer for removal of a Defect (8.2) resulting from the contract between the Parties.

5.3 In case the Customer is in default of payment or if the Customer has made an application due to insolvency or bankruptcy or if the Customer tries to achieve an out-of-court-settlement with its customer with regard to cessation of payment or in case, another legal proceeding has opened with regard to its financial situation, then BURG reserves the right to demand immediate payment of all invoices, including invoices that are not due. Furthermore, BURG reserves the right to make a further Delivery dependant on an advanced payment.

6. Delivery Period

6.1 The observance of the agreed delivery period requires the receipt on time of complete documents, necessary permits and approvals, in particular plans to be provided by the Customer, as well as the compliance with the terms of payment and other obligations by the Customer (e.g. advance payment, payment by installment). In case these conditions are not fulfilled on time, the delivery period shall be extended appropriately; this shall not apply if BURG is solely responsible for the delay. For the duration of the testing time of the Customer (e.g. proof, sample) the delivery period is interrupted.

6.2 If the non-adherence to the agreed delivery period is due to incidents such as natural disasters, mobilization, war, acts of terrorism, virus and other attacks by third parties on the IT system of BURG despite compliance with the necessary protective measures, riots, strikes or lockouts, hindrances caused by an Austrian, US-American or other applicable national, EU or international foreign trade legislation, operational disruptions or interruptions to operations, traffic difficulties or comparable incidents for which BURG is not responsible ("**Force Majeure**"), the delivery period shall be appropriately extended. Should the incidents of Force Majeure last longer than 60 calendar days, BURG or the Customer shall have the right to completely or partially rescind the contract without one Party having, as a result, the right to any claim for damages against the other Party. This shall also apply if the abovementioned incidents of Force Majeure occur at a point in time at which BURG is in delay of the Delivery.

6.3 In the event BURG is responsible for the delay of the Delivery, the Customer may, where it can credibly establish that it has incurred damage as a result of the delay, demand compensation for each complete calendar week of the delay in the amount of 0.5 %, however for a maximum total of 5 % of the net price of the part of the Delivery which cannot be utilized by the Customer as a result of the delay either in time or in accordance with the contract. The obligation of BURG to pay the lump-sum compensation in damages assumes that it is proven by the Customer that damage has occurred at all, but not its extent. BURG shall be allowed to provide evidence that a lower amount of or even no damage at all has been incurred by the Customer.

6.4 Claims by the Customer for damages due to a delay of the Delivery or for damages in lieu of performance which exceeds the limits specified in 6.3 shall be also excluded after expiry of a delivery period for the Delivery set by the Customer. Further claims and remedies of the Customer due to a delay, in particular due to indirect or consequential damages, loss of profit or interruption to production, shall be excluded. This exclusion shall not apply in cases of willful misconduct or gross negligence or in case of the injury of life, body or health, where the liability is mandatory.

6.5 The Customer may only rescind the contract in case BURG is responsible for the delay of the Delivery and the Customer has set a reasonable delivery period to BURG for carrying out the Delivery after the maximum level of compensation for delay as given by 6.3 has been reached and the reasonable delivery period has expired without any success. This shall not imply a change in the burden of proof to the detriment of the Customer.

6.6 The Customer shall declare on request of BURG within a reasonable period of time whether it will rescind the contract as a result of the delay of the Delivery or if the Customer will insist on the Delivery.

7. Retention of Title

7.1 BURG shall retain the right of ownership of the Delivery up to the complete fulfillment of the claims arising from of the existing business relationship with the Customer ("**Reserved Goods**"). The Customer may not damage, amend, remove or conceal any numbers, identifying marks, type labels, company and/or brand names and other markings which are applied by BURG. Should the value of the secured rights assigned to BURG exceed the amount of the secured claims by more than 10 %, BURG shall release a corresponding part of the secured rights to the Reserved Goods at the request of the Customer; BURG shall have the right to choose between various secured rights for release.

7.2 The retention of title shall remain in force if individual claims by BURG against the Customer have been included in a current invoice and the balance has been drawn and acknowledged, as far as the balance has been cleared.

7.3 For the duration of the retention of title, the Customer is prohibited from giving the Reserved Goods in pledge or as security. In case of a seizure of the Reserved Goods or other acts or interventions by a third party regarding to the Reserved Goods, the Customer shall immediately inform BURG thereof in writing. In the event of a substantiated legitimate interest, the Customer immediately shall give BURG the information necessary to assert the rights of BURG towards such third party and hand over the necessary documents.

7.4 The resale of the Reserved Goods by the Customer to its customers during the ordinary course of business shall only be permissible under the condition that the Customer receives payment from its customer or retains title so that the property in the Reserved Goods is transferred to its customer only after fulfillment of the obligation of the customer to pay.

7.5 In case the Customer resells Reserved Goods, it already now assigns to BURG as security, without any subsequent declarations to this effect being necessary, all claims that the Customer will have against its customers due to the resale, including any collateral rights and relating balance claims. If the Reserved Goods are sold together with other items and no individual price has been agreed with respect to the Reserved Goods, the Customer shall assign that portion of the total price which equals the price of the Reserved Goods invoiced by BURG. BURG herewith accepts such assignment. The duty of BURG to release secured rights (7.1) shall remain unaffected.

7.6 If the Customer has sold its receivables as part of genuine factoring, then the receivables of BURG become immediately due and the Customer assigns the substitute entitlements to payment against the factor to BURG and forwards its sales proceeds to BURG without delay. BURG herewith accepts such assignment.

7.7 In the event that the Customer is in breach of an obligation, in particular, in delay of payment, the following shall apply:

7.7.1 After the expiration of a reasonable time limit within the Customer has to rectify the breach of the obligation, BURG is entitled to rescind the contract and to take back the Reserved Goods; the Customer is obliged to return the Reserved Goods to BURG. The legal provisions that a time limit is not needed in case of a serious and/or final refusal of performance remain unaffected.

7.7.2 The enforcement of the retention of title and the taking back of the Reserved Goods associated therewith does not require a rescission of the contract by BURG; the aforementioned actions or seizure of the Reserved Goods shall not constitute a rescission of the contract by BURG, unless expressly stated by BURG.

7.8 The Customer shall be allowed to process, transform and restructure the Reserved Goods with other products ("**Processing**"). The Processing shall be done for BURG. The Customer shall hold the new product resulting from the Processing for BURG with the due care of a prudent businessman. The new product shall be considered as Reserved Goods.

7.9 The Parties are in agreement that in the event that the Reserved Goods are processed with other objects which do not belong to BURG, then BURG shall have co-ownership of the new object in the amount of the claim, resulting from the ratio of the value of the processed Reserved Goods that are subject to retention of title in relation to the value of the other processed goods at the time of processing. The new product shall be considered as Reserved Goods.



7.10. The assignment of claims provision (7.5) shall also apply to the new product. Such assignment is valid only up to the amount corresponding to the amount invoiced by BURG for the processed, transformed or restructured Reserved Goods.

7.11 Until a notice of revocation is received by the Customer, the Customer may collect the assigned outstanding balance claims for sales proceeds. In the event of a good cause, in particular delay of payment, cessation of payment, opening of an insolvency proceeding, protest of a bill or in the event of comparable sustainable reasons which suggest the insolvency of the Customer, BURG shall be entitled to revoke the right to collect receivables of the Customer. Furthermore, upon prior warning and observing a reasonable period of time, BURG deserves the right to disclose the security assignment, to utilize the assigned claims and to demand from the Customer the disclosure of the security assignment of the Customer to its customers. The duty of BURG to release secured rights (7.1) shall remain unaffected.

8. Legal Rights in Case of a Material Defect

The liability of BURG for material defects is conclusively defined in the following provisions:

8.1 In the case a Delivery does not comply with the quality listed in the respective TS at the time of transfer of risk (3.5) ("**Material Defect**"), BURG shall at its option either repair or replace the Delivery within the limitation period (8.3) ("**Subsequent Performance**").

8.2 The description of the quality of the Delivery is defined conclusively in the respective TS. BURG shall not be liable for a Material Defect regarding to a quality that is not listed in the TS. The information provided in the TS shall not constitute any guarantee or commitment with regard to fitness of the Delivery for a special application. It is the sole liability of the Customer to examine the suitability of the Delivery for the intended use. In case the Customer wants additional examinations to be conducted according to the Delivery, they shall have to be agreed in writing separately and will be carried out at the expense of the Customer.

8.3 A claim due to a Material Defect shall expire twelve months after transfer of risk (3.5). This shall not apply in case of injury of life, body or health, in case of a willful or grossly negligent breach of an obligation by BURG and in case of fraudulent concealment of a Material Defect as well as non-compliance with a guarantee of specified qualities. The legal provisions regarding to suspension of expiration, suspension or recommencement of the limitation periods shall remain unaffected.

8.4 No new limitation period shall commence as a result of the Subsequent Performance.

8.5 The Customer shall give a notice of a Material Defect in writing immediately. The notice of a Material Defect shall include details of the data of the Delivery concerned (e.g. offer number, identification number, batch number or bar code).

8.6 If BURG shall not be given an adequate time and opportunity by the Customer to perform Subsequent Performance, BURG shall be exempt from its liability for the Material Defect.

8.7 In the event that Subsequent Performance fails, the Customer can rescind the contract or reduce the respective price of the Delivery.

8.8 There shall be no claim for a Material Defect in case of an insignificant deviation from an agreed quality, of an insignificant impairment of the usability, of natural wear and tear or damage arising after transfer of risk (3.5) as a result of incorrect or negligent handling, excessive use, unsuitable operating materials or because of particular external influences which were not assumed under the contract.

8.9 A claim of the Customer regarding expenditure necessary for the purpose of Supplementary Performance, in particular costs for transport, travel expenses, labor and material is excluded to the extent that the expenditure has increased due to the fact that the Delivery being subsequently brought to a place other than the Place of Delivery.

8.10 A claim for damages by the Customer against BURG due to a Material Defect (8.1) is excluded. This shall not apply in case of fraudulent concealment of a Material Defect, in case of non-compliance with a guarantee of specified qualities and in case of the injury of life, body or health, in case of a willful or grossly negligent breach of an obligation by BURG. This shall not imply a change in the burden of proof to the detriment of the Customer. Further or other claims of the Customer due to a Material Defect than regulated in 8. are excluded. The right of the Customer to rescind the contract shall remain unaffected.

9. Infringement of Intellectual Property Right and other Defects of Title

9.1 Unless otherwise agreed, a Delivery made by BURG in the Republic of Austria shall be free from industrial property rights and copyrights of third parties ("**Property Right**"). If a third party deems to have valid claims against the Customer due to an infringement of a Property Right by a Delivery made by BURG and used in compliance with the contract, BURG shall be liable to the Customer within the stipulated limitation period in 8.3 as follows:

9.1.1 At option and expense of BURG, BURG shall either obtain a right of use for the Delivery or modify the Delivery that the Property Right is no longer infringed or BURG shall replace the Delivery. If this is impossible for BURG under reasonable conditions, the Customer shall have a right to rescind the contract or reduce the price. 8.6 and 8.10 shall apply accordingly.

9.1.2 The fulfillment of the aforesaid obligations shall be subject to the condition that the Customer immediately informs BURG in writing of the claims asserted by the third party, that the Customer does not acknowledge an infringement and that BURG reserves the right to take preventive action and to initiate settlement negotiations. If the Customer stops using the Delivery to reduce the damage or for other important reasons, the Customer shall make it clear to the third party that the suspended use does not mean an acknowledgment of an infringement of the Property Rights.

9.2 A claim of the Customer against BURG shall be excluded if the Customer is liable for the breach of the Property Right.

9.3 A claim of the Customer against BURG shall also be excluded if the infringement of the Property Right was caused by a special requirement stipulated by the Customer, by an application of the Delivery not foreseeable by BURG or in case the Delivery was changed by the Customer or used together with products not provided by BURG.

9.4 In case of defects of title of the Delivery the provisions in 8. shall apply accordingly.

9.5 A claim for damages by the Customer against BURG due to a defect of title is excluded. This shall not apply in case of fraudulent concealment of a Material Defect, in case of non-compliance with a guarantee of specified qualities and in case of the injury of life, body or health, in case of a willful or grossly negligent breach of an obligation by BURG. This shall not imply a change in the burden of proof to the detriment of the Customer. Further or other claims of the Customer against BURG due to a defect of title than regulated in 9. are excluded.

10. Material provided by Customer

10.1 The Customer shall be responsible for the use and transfer of tools, decors, company logo, trademarks, samples, layouts and other creative elements provided by the Customer to BURG ("**Material**") – irrespective of the data carrier medium – which infringe the rights of third parties. The Customer shall immediately release BURG from corresponding third party claims.

10.2 The Customer shall deliver on its own costs Material to the Place of Delivery (3.1). The Customer shall bear the costs for storage, maintenance, repair and waste disposal of the Material.

11. Impossibility of Performance, Adaption of Contract

11.1 Insofar as the Delivery is impossible, the Customer deserves the right to claim damages unless BURG is not responsible for the impossibility. The claim for damages of the Customer against BURG shall be limited to 10 % of the value of that part of the Delivery which cannot be used by the Customer for the intended purpose because of the impossibility. This limitation shall not apply in case of a willful or grossly negligent breach of an obligation by BURG in case of the injury of life, body or health. This shall not imply a change in the burden of proof to the detriment of the Customer. The right of the Customer to rescind the contract shall remain unaffected.

11.2 In case events of Force Majeure (6.2) substantially alter the economic importance or alter the content of the Delivery or substantially affect the business of BURG, the contract shall be appropriately adapted in accordance with the requirements of good faith. If this is not economically justifiable, BURG deserves the right to rescind the contract. BURG shall inform the Customer immediately of the exercise of the rescission after becoming aware of the significance of the event of Force Majeure; even if at first an extension of the delivery period was agreed between the Parties.

12. Other Claims for Damages

12.1 If not expressly agreed otherwise claims for damages or claims for reimbursement of expenses by the Customer against BURG shall be excluded irrespective of their legal grounds, in particular for the breach of obligations resulting from the contractual relationship or from tort.

12.2 BURG provides devices or suggestions with respect to technical applications to the best of knowledge. This shall not imply a liability of BURG for damages to the benefit of the Customer. The Customer shall not be released from its obligation to examine the intended use of the Delivery at its sole responsibility. This also shall apply if BURG knows the purpose of use intended by the Customer.

12.3 12.1 and 12.2 shall not apply in case of mandatory liability of BURG, e.g. under the Austrian Product Liability Actⁱⁱ, in case of willful misconduct, gross negligence of the owners, its legal representatives or the executive employees, in case of fraudulent intent, of non-compliance with an assumed guarantee, in case of culpable injury of life, body or health or in case of a culpable breach of significant contractual obligations.

12.4 The claim for damages due to a culpable breach of significant contractual obligations (12.3) shall be limited to the foreseeable damages that are typical to the contract.

12.5 Insofar as the liability of BURG is excluded or restricted pursuant to 12., this shall also apply to the personal liability of employees, personnel, staff and other agents of BURG, not, however, to the personal liability of legal representatives or executive employees of BURG.

12.6 12. shall not imply a change in the burden of proof to the detriment of the Customer.

13. Confidentiality

13.1 Each Party shall solely use information, knowledge, templates, including illustrations, drawings, plans, design documentation ("**Information**") for purposes of the contract, shall treat Information as confidential and Information shall not be made available by a Party to third parties without the prior written consent of the other Party. This shall not apply to Information which at the time of receipt are generally known or were already known by the receiving Party without being obliged to maintain confidentiality, were transferred by a third party or were developed by the receiving Party. Information shall be returned immediately by the receiving Party to the other Party in case no contract is concluded between the Parties. A right of retention by the receiving Party is excluded.

13.2 An affiliate company of BURG is not a third party as well as a person or a company that is assigned by BURG due to a contract and as far as the person or the company is obliged to maintain confidentiality in an equivalent manner as BURG.

13.3 The Customer is not allowed to utilize Information outside the scope of the contract concluded between the Parties without the prior written consent of BURG.

13.4 The obligation to maintain confidentiality shall begin upon receipt of the Information and shall expire 5 years after the termination of the business relationship between the Parties .

14. Assignment of Claims or other Rights

The assignment of claims or other rights under the contract is permitted only with the prior written consent of the other Party. This does not apply to bilateral entrepreneurship business.

15. Applicable Law

All disputes shall be settled in accordance with the provisions of the contract and all other agreements regarding its performance, otherwise in accordance with the substantive law in force in Austria without reference to other laws. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall be excluded.

16. Place of Jurisdiction

The exclusive place of jurisdiction is Steyr, Austria.



17. Corporate Social Responsibility

As a member of the KURZ-Group BURG shall respect and observe the [KURZ Code of Business Conduct](#). The Customer confirms to observe the applicable law and legislation; it shall not tolerate any kind of corruption or bribe, respect basic rights and the ban on child labor and forced labor. Furthermore the Customer shall take responsibility for the health and safety of its employees, shall ensure a fair compensation and reasonable working hours, shall act in accordance with the applicable environmental laws and shall use its best efforts to promote the observance of these principles among its customers.

ⁱ Verordnung des Bundesministers für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft über die Vermeidung und Verwertung von Verpackungsabfällen und bestimmten Warenresten ("[Verpackungsverordnung 2014](#)")

ⁱⁱ Bundesgesetz vom 21. Jänner 1988 über die Haftung für ein fehlerhaftes Produkt ("[Produkthaftungsgesetz](#)")