

# GENERAL TERMS AND CONDITIONS OF DELIVERY

of botek Präzisionsbohrtechnik GmbH



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## **§ 1 Scope of Application**

- (1) These General Terms and Conditions of Delivery (hereinafter referred to as "GTCD") of botek Präzisionsbohrtechnik GmbH (hereinafter referred to as: "BOTEK" or "we") shall apply to all transactions concerning the delivery and the provision of services to the customer by BOTEK.
- (2) The scope of application of these GTCD is limited to contracts with entrepreneurs, legal entities under public law or a special fund under public law. These GTCD do not apply to transactions with consumers.
- (3) These GTCD apply exclusively. The inclusion of the customer's general terms and conditions is hereby objected to. These shall not apply even if we make the delivery to the customer with knowledge of or without express objection to the customer's GTCD.
- (4) These GTCD shall also apply to future transactions between BOTEK and the customer without the need for a renewed inclusion.

## **§ 2 Rights to Documents**

- (1) Offers, cost estimates and other documents remain our property and may only be made available to third parties with our prior written consent.
- (2) We are exclusively entitled to all (copyright) rights to samples, devices, tools, drawings, cost estimates, drafts and plans produced by us, in particular patent, copyright, inventor's and other intellectual property rights. They may only be made accessible to third parties if we have expressly given our written consent to this.
- (3) The transfer of the aforementioned documents and objects does not constitute a transfer or grant of rights (licence of use).
- (4) The customer is obliged to return the aforementioned documents and objects to us immediately upon our request and to destroy any copies made.

## **§ 3 Conclusion of the Contract**

- (1) Unless expressly stated otherwise, our offers are subject to change, non-binding and valid for 4 weeks from dispatch by us.
- (2) The contract shall be concluded by our written order confirmation or our performance of the service.
- (3) We are entitled to accept an order submitted by the customer by means of a written order confirmation within five working days of receipt of the order by us. If the order is not accepted by us within five working days of its receipt, the contract shall not be concluded.
- (4) If the order is placed by the customer by way of remote data transmission (DFÜ), the contract shall only be concluded upon our written order confirmation. Changes on our part within the scope of the order confirmation constitute a new offer and are accepted by the customer if the customer does not object to these changes in writing within three days.

#### **§ 4 Content of the Contract**

- (1) The performance owed under the contract shall be determined in accordance with the agreement reached, in particular the order confirmation. Insofar as the performance owed under the contract is intended to serve a purpose desired by the customer, this shall only be binding on us if we were notified of this purpose in writing prior to the conclusion of the contract and we have expressly confirmed to the customer in writing that the performance is suitable for this purpose.
- (2) The agreement of a guarantee or a special quality must be in writing in order to be effective. In particular, the technical specifications (e.g. weight, dimensions, material quality, cutting data) of our services and goods do not constitute per se either a quality agreement or a guarantee without a separate express and written agreement. The same applies to the indication of an intended use in our catalogues and on our homepage.
- (3) Subsequent changes or adjustments to the performance owed by BOTEK are permissible insofar as they are customary in the trade or technically necessary and do not unreasonably burden the customer. This shall apply in particular to the technical further development of our tools. Changes in the design caused by this further development shall not constitute a defect insofar as they do not impair the usability for the contractually intended purpose.
- (4) In the case of tools, which are specially made for the customer according to dimensional specifications, deviations in the order quantity of 10% do not constitute a defect. Only the actual delivery quantity shall form the basis of the invoice.

#### **§ 5 Delivery Time; Delivery Deadline; Force Majeure, Call Orders**

- (1) Unless otherwise agreed in individual cases, delivery times are approximate.
- (2) The start of an agreed delivery period requires the prior clarification of all preliminary questions, in particular commercial and technical questions, as well as the release of the drawing documents or tool drawings by the customer. The delivery period shall not commence before the customer has fulfilled his obligations to cooperate in this respect.
- (3) An agreed delivery period shall not commence in the event of an agreement on an advance performance obligation on the part of the customer, such as the making of a down payment, before the customer has fulfilled the advance performance obligations incumbent on it.
- (4) BOTEK shall be entitled to the defence of non-performance of the contract.
- (5) An agreed delivery period is subject to complete and timely delivery by our suppliers.
- (6) The delivery period shall be extended appropriately in the event of force majeure, in particular, but not exclusively, in the event of floods, natural disasters, shortage of raw materials, terrorist attacks, and strike. BOTEK shall immediately inform the customer of the existence of force majeure as well as the expected end of this circumstance. If the state of force majeure lasts continuously for more than eight weeks or if the delivery date is delayed by more than eight weeks due to force majeure, both parties shall be entitled to withdraw from the contract. In the event of force majeure, the assertion of further claims is excluded.
- (7) Purchase obligations from call orders shall be fulfilled at the latest within 12 months after conclusion of the contract. If the customer does not comply with this obligation, BOTEK shall be entitled, at its own discretion, to deliver the goods not yet called off or to withdraw from the contract with regard to the part not yet called off and to demand compensation for damages, following a prior request and setting of a deadline.
- (8) We are prepared to make partial deliveries, provided this is not unreasonable for the customer.

## § 6 Transfer of Risk

The risk of accidental loss shall pass to the customer when the goods are made available for collection by the customer, his carrier or a third party designated by him ex works Riederich (EXW Riederich INCOTERMS 2020).

## § 7 Default of Acceptance; Damage caused by Delay

- (1) If the customer does not accept the goods on time or if he is in default of acceptance in any other way, he shall be obligated to pay BOTEK an amount in the amount of 0.5% of the order value or the value of the partial delivery for each commenced week of the default, but in total a maximum of 5% of the order value or the value of the partial delivery.
- (2) The customer shall have the right to prove a lower damage, BOTEK the right to prove a higher damage.

## § 8 Prices; Terms of Payment; Minimum Order Value

- (1) All prices are net prices and do not include the statutory value added tax applicable at the time of performance.
- (2) All other costs incurred, in particular for the handling of payment, transport, import and export duties, fees, etc., shall be borne by the customer.
- (3) Unless otherwise agreed in individual cases, all prices shall be EXW Riederich (EXW INCOTERMS 2020).
- (4) The deduction of a discount requires a separate agreement in each individual case.
- (5) Payments shall be due within thirty (30) days from the transfer of risk (§ 6). Only the crediting of an account at BOTEK shall meet the deadline.
- (6) The minimum order value is EUR 100.00 net value of goods. BOTEK shall be entitled to charge a processing fee of 20% of the net value of the goods for an order with a net value of goods of less than 100.00 EUR.

## § 9 Inspection of Goods; AMD Services; Notice of Defect

- (1) The customer is obliged to inspect the services rendered without delay, but at the latest within five (5) working days from the transfer of risk, to ensure that they are free of defects and to give notice of any defects discovered without delay, but at the latest within a further three (3) working days.
- (2) If a defect becomes apparent which was not recognisable during the inspection pursuant to Clause 1, this must be notified within three (3) working days of actual discovery.
- (3) Any defects discovered shall be notified to us in text form. The complaint must include a detailed description showing the suspected causes and the effects. Upon request, suitable documentation material, in particular photographs, as well as the defective goods shall be made available to us in Riederich at the customer's expense. In the event of a justified notice of defect, BOTEK shall reimburse the customer for the expenses for the most economical shipping route from the place of use provided for in the contract, alternatively from the delivery address.
- (4) If the customer does not comply with his obligation to inspect and give notice of defects, the performance shall be deemed to have been approved and he shall not be entitled to any warranty rights. This does not apply if we had fraudulently concealed the defect.
- (5) The customer shall be obliged to bear BOTEK's costs associated with the unjustified notification of defects.
- (6) The deadlines of clauses 1 and 2 shall only begin, insofar as documentation is owed by BOTEK, when the customer has received the documentation.

## **§ 10 Warranty; Limitation of Warranty Claims**

- (1) BOTEK shall provide supplementary performance by rectification (repair) or subsequent delivery (delivery of a defect-free item). The choice of the type of supplementary performance shall be incumbent on BOTEK.
- (2) BOTEK is entitled to carry out the supplementary performance within a reasonable period of time.
- (3) Warranty claims due to defects caused by improper handling by the customer, maintenance not in accordance with BOTEK's specifications, modification of the goods or disregard of the instructions for use are excluded.
- (4) Warranty claims based on defects – with the exception of claims for damages – shall become statute-barred within twelve months from the transfer of risk (§ 6). In the case of fraudulently concealed defects, § 438 para. 3 BGB shall apply.
- (5) Section 11 shall additionally apply to the assertion of claims for damages.
- (6) The statutory regulations on the recourse of the seller in the supply chain according to §§ 445a, 445b BGB remain unaffected.

## **§ 11 Liability**

- (1) BOTEK shall be liable in accordance with the statutory provisions in the event of culpable breach of duty for all damages arising from injury to life, body or health.
- (2) BOTEK shall be liable in accordance with the statutory provisions in the event of culpable violation of essential contractual obligations. Liability shall, however, be limited to the damage foreseeable at the time of conclusion of the contract and typical for the contract, but no more than EUR 7.5 million per case of damage, if BOTEK does not violate essential contractual obligations intentionally or through gross negligence. Essential contractual obligations are those, which are imperative for the achievement of the purpose associated with the contract and on the observance of which the customer may rely.
- (3) BOTEK shall be liable for the grossly negligent and intentional violation of non-essential contractual obligations.
- (4) BOTEK shall be liable in accordance with the provisions of the Product Liability Act.
- (5) The aforementioned limitations and exclusions of liability shall apply equally in favour of the organs, legal representatives, employees and other vicarious agents of BOTEK.
- (6) In all other respects, liability is excluded.

## **§ 12 Set-Off; Right of Retention**

- (1) Offsetting by the customer is only permissible with undisputed or legally established claims.
- (2) Clause 1 shall apply accordingly to the exercise of a right of retention.
- (3) Clauses 1 and 2 shall not apply insofar as the customer would thereby be denied the assertion of a claim which is in a close synallagmatic connection with the claim asserted by BOTEK.

### § 13 Retention of Title

- (1) Goods delivered by us shall remain our property (reserved goods) until full payment of all claims arising from the business relationship. The customer shall be entitled to dispose of the reserved goods in the ordinary course of business. In the case of a current account, the reserved property shall serve as security for the balance claim arising in favour of BOTEK.
- (2) The customer is obliged to sufficiently insure the reserved goods against fire, water and theft at his own expense.
- (3) The processing or transformation of the reserved goods by the customer shall always be carried out for BOTEK. If goods subject to retention of title are processed with other items not belonging to BOTEK to form a new item, BOTEK shall acquire co-ownership of the new item. The co-ownership share shall be calculated according to the value of the reserved goods in relation to the value of the other processed or transformed objects at the time of the processing or transformation.
- (4) If the customer combines or mixes the goods subject to retention of title to form a uniform item and if one of the other items is to be regarded as the main item, BOTEK shall be entitled to proportional ownership of the resulting item. The co-ownership share shall be calculated according to the value of the reserved goods in relation to the value of the other combined or mixed objects at the time of the combination or mixing. The customer already now assigns this co-ownership to BOTEK, whereby BOTEK already now accepts the assignment.
- (5) The customer shall assign the claims against third parties arising from the resale of the goods subject to retention of title, including all ancillary rights, to BOTEK already at the present time as security. BOTEK accepts this assignment. The customer undertakes to retain ownership of the goods vis-à-vis his customers until the purchase price has been paid in full. BOTEK is authorised to collect the resulting purchase price claims for the account of BOTEK until revocation or until cessation of payment to BOTEK. The customer is not authorised to assign this claim. BOTEK shall only revoke the collection authorisation if the customer is in default of payment or if an application is made for the opening of insolvency proceedings against the customer's assets. In the event of revocation of the direct debit authorisation, the customer shall provide BOTEK with the information necessary for collection of the claim by submitting the corresponding supply contracts with its customers, the invoices and an overview of the payments of the customers to the customer.
- (6) The customer shall inform BOTEK immediately in text form about access by third parties to goods in which BOTEK has ownership, in particular also compulsory enforcement measures in the goods subject to retention of title and the claims of BOTEK, and shall transmit the information and documents required for a defence.
- (7) Insofar as the realisable value of the security rights to which BOTEK is entitled exceeds all claims against the customer not yet paid to BOTEK by more than ten per cent, BOTEK shall be obliged to release the security rights at the customer's request. The selection of the security interests to be released shall be at BOTEK's discretion.

## § 14 Special Conditions for Processing Contracts and the Supply of used Goods

- (1) If BOTEK is commissioned with the reworking, reworking or repair of goods, in particular of tools, BOTEK shall only be liable for the proper reworking, reworking or repair of tools manufactured by BOTEK itself.
- (2) BOTEK shall not assume any liability for the processing of tools from other manufacturers, in particular if the goods sent in become unusable during processing or can no longer be used by the customer for the intended purpose, unless BOTEK is guilty of gross negligence or intent.
- (3) Paragraph 2 shall also apply if the customer only provides BOTEK with tools ground by himself for coating.
- (4) The delivery of used goods takes place under the exclusion of any warranty for material defects.

## § 15 Confidentiality

- (1) The customer is obliged to keep all illustrations, drawings, calculations and other commercial and technical documents, information and items received strictly confidential. They may only be disclosed to third parties with our written consent. Employees, subcontractors and vicarious agents shall be bound accordingly.
- (2) The above confidentiality obligations shall also apply after completion of an order; they shall expire – subject to other rights to which we are entitled – at the earliest when and insofar as the production knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known, but no later than 5 years after completion of the order.
- (3) The customer shall maintain confidentiality vis-à-vis third parties about the content of orders placed with us, in particular about prices and quantities. All documents made available by us (e.g. drawings, samples, etc.), as well as the goods manufactured thereafter, may not be passed on to third parties or used for advertising for our own or third parties' purposes without our consent. Unless otherwise agreed, they must be returned with the last delivery at the latest.
- (4) Samples, drawings, standard sheets, print templates, gauges may neither be passed on to third parties nor used for them or for advertising purposes or for the customer's own purposes without our written consent. They must be secured against unauthorised inspection or use. Unless otherwise agreed, they must be returned to us at the latest upon termination of the business relationship. Infringements oblige us to pay full compensation and entitle us to withdraw from the contract in whole or in part without further ado and without compensation.
- (5) Reference may only be made to the business relationship with us in the customer's advertising if we have agreed to this in writing.
- (6) Insofar as a confidentiality agreement already exists between the parties, this shall take precedence.

## § 16 Creditworthiness Query

- (1) If we make advance payments, e.g. in the case of payments on account, the customer authorises us to pass on his personal data required for a creditworthiness enquiry, including address data, to a company for creditworthiness information, e.g. Bürgel, Creditreform, for the purpose of this creditworthiness enquiry on the basis of mathematical-statistical procedures (scoring). The creditworthiness information may include probability values (score values) which are calculated on the basis of scientifically recognised mathematical-statistical procedures and in the calculation of which, among other things, address data are included. We use the information received about the statistical probability of a payment default ("probability value") for a weighed decision about the payment option to be granted to the customer and reserve the right to refuse the customer the payment method "on account" as a result of the credit assessment.
- (2) The customer may object to the transfer of personal data to the respective company at any time. A notification in text form (e.g. e-mail, fax, letter) is sufficient for this purpose. However, we would like to point out that in this case only the payment method "prepayment" is available to the customer.

## § 17 Arbitration Agreement; Applicable Law

- (1) All disputes arising out of or in connection with the contractual relationship with the customer or concerning its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) to the exclusion of the ordinary courts of law.
- (2) The arbitral tribunal shall consist of a sole arbitrator.
- (3) The place of arbitration shall be Stuttgart.
- (4) The language of the proceedings shall be English.
- (5) The substantive law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods ("CISG").

## § 18 Writing

All amendments and supplements to these GTCD as well as the waiver of their validity must be made in writing. This also applies with regard to a possible waiver of the written form requirement.

## § 19 Severability Clause

- (1) Should one or more provisions of these GTCD or parts of a provision be invalid, this invalidity shall not affect the validity of the remaining provisions or the contract as a whole.
- (2) However, in knowledge of the case law of the Federal Court of Justice, according to which a severability clause only leads to a reversal of the burden of proof, it is the express intention of the parties to maintain the validity of the remaining provisions of these GTCD in all circumstances.
- (3) The parties undertake to agree by mutual consent on a valid provision in place of the invalid provision which comes closest to the invalid provision in economic terms.
- (4) Clauses 1 to 3 shall apply accordingly in the event of a loophole.