GENERAL TERMS AND CONDITIONS OF DELIVERY

of botek Präzisionsbohrtechnik GmbH



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1. Scope

1.1. These General Terms and Conditions of Delivery ("GTCD") apply to all business relationships between botek Präzisionsbohrtechnik GmbH, Längenfeldstraße 4, 72585 Riederich, Germany ("BOTEK" or "we") and its customers, provided that the latter are entrepreneurs (Section 14 of the German Civil Code (*BGB*)), legal entities under public law or special funds under public law ("Customer"). These GTCD do not apply to interactions with consumers.

1.2. These GTCD apply particularly to contracts for the sale and/or delivery of movable goods ("Goods"), regardless of whether BOTEK manufactures the Goods itself or purchases them from suppliers (Sections 433, 650 of the German Civil Code (*BGB*)), as well as to the provision of services to the Customer by BOTEK.

1.3. These GTCD apply exclusively. The inclusion of the Customer's general terms and conditions is hereby rejected. These shall not apply even if we carry out the delivery to the Customer with knowledge of, or without expressly objecting to, the Customer's general terms and conditions.

1.4. These GTCD shall also apply to similar future transactions between BOTEK and the Customer without the need for further reference to these GTCD.

2. Rights to Documents

2.1. Quotations, cost estimates and other documents remain our property and may only be made available to third parties with our prior consent in text or written form (*Text- oder Schriftform*).

2.2. All (copyright) rights to samples, fixtures, tools, drawings, cost estimates, designs and plans produced by us, in particular patent, copyright and inventor's rights, are vested exclusively in us. They may only be made available to third parties providing we have expressly granted our prior consent in writing or in text form.

2.3. The provision of the aforementioned items does not constitute a transfer or grant of rights (licence to use).

2.4. The Customer is obliged to return the aforementioned documents and items to us immediately upon our request and to destroy any copies that may have been made.

3. Conclusion of Contract

3.1. Our offers are subject to change and non-binding unless they are expressly marked as binding. Offers marked as binding are valid for fourteen (14) days from the date of dispatch.

3.2. The Customer's order for Goods or services shall be deemed a binding offer to enter into a contract. The contract shall come into effect upon our order confirmation in text or written form or upon our performance of the service.

3.3. Unless otherwise stated in the order, we are entitled to accept an order submitted by the Customer by means of an order confirmation in text or written form within fourteen (14) days of receipt of the order by us. If the order is not accepted by us (by means of an order confirmation in text or written form or our performance of the service) within fourteen (14) days of its receipt, the contract shall not be concluded.

3.4. If the order is placed by the Customer via remote data transmission (RDT, *Ferndatenübertragung, FDÜ*), the contract shall only come into effect upon our order confirmation in text or written form. Any changes made by us in the context of the order confirmation shall constitute a new offer and must be accepted by the Customer within five working days.

4. Subject Matter of the Contract

4.1. The service owed under the contract is determined by the agreement reached, in particular the order confirmation. Insofar as the service owed under the contract is intended to serve a purpose specified by the Customer, this is only binding on us if it was communicated to us in text or written form prior to the conclusion of the contract and we have expressly confirmed to the Customer in text or written form that the service is suitable for this purpose.

4.2. Any agreement regarding a guarantee (*Garantie*) or specific characteristics (*Beschaffenheit*) must be in writing to be valid. Illustrations, drawings, weight and dimension specifications, material grades, cutting data and other descriptions of the Goods contained in the documents accompanying BOTEK's quotations are only approximate, unless they are expressly designated as binding or unless suitability for the contractually intended purpose requires exact conformity. They do not constitute an agreement or guarantee of a corresponding quality or durability of the Goods, unless they have been expressly agreed as such. The same applies to the specification of an intended use in our catalogues and on our website. Nor do the Customer's expectations regarding the Goods or their use constitute an agreement or guarantee.

4.3. Subsequent changes or adjustments to the service owed by BOTEK are permissible provided they are customary in the trade or technically necessary and do not place an unreasonable burden on the Customer. This applies particularly to the technical further development of our tools. Changes in design resulting from such further development do not constitute a defect, provided they do not impair the suitability for the contractually intended purpose.

4.4. In the case of tools which are manufactured specifically and individually for the Customer according to specific dimensional specifications, deviations in the order quantity of up to ±10% shall be deemed to be in accordance with the contract and shall not constitute a defect. Only the actual delivery quantity shall form the basis for invoicing.

5. Delivery Time; Delivery Period; Force Majeure; Call-Off Orders

5.1. Unless otherwise agreed in individual cases, delivery deadlines are approximate.

5.2. The commencement of an agreed delivery period is subject to the prior clarification of all preliminary matters, particularly commercial and technical issues, as well as the Customer's approval of the design documents or tool drawings. The delivery period shall not commence until the Customer has fulfilled their obligations to cooperate in this regard.

5.3. Where the Customer has agreed to a prior performance obligation, such as the payment of a deposit, an agreed delivery period shall not commence until the Customer has fulfilled the prior performance obligations incumbent upon them.

5.4. BOTEK is entitled to raise the defence of non-performance of the contract (*Einrede des nichterfüllten Vertrages*).

5.5. Agreed delivery dates and deadlines are subject to our suppliers providing us with complete, correct, and timely deliveries. This applies only if we have entered into a corresponding covering transaction (*kongruentes Deckungsgeschäft*) and are not responsible for the failure or delay in our own supply. If these conditions are met and we are unable to meet an agreed delivery date due to a failure in our own supply, the agreed delivery date shall automatically be postponed by four weeks from the originally agreed delivery date. We will notify the Customer of the postponement without delay. If we are also unable to meet the postponed delivery date for the same reasons, both we and the Customer are entitled to withdraw from the contract, and any consideration already provided will be refunded.

5.6. The delivery period shall be extended appropriately in the event of force majeure, particularly, but not exclusively, in the event of floods, natural disasters, shortages of raw materials, terrorist attacks or strikes. BOTEK shall inform the Customer without delay of the occurrence of force majeure and the expected end of such circumstances. If the force majeure situation continues uninterrupted 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.

5.7. Unless otherwise agreed, acceptance obligations arising from call-off orders must be fulfilled within 12 months of the conclusion of the contract at the latest. If the Customer fails to comply with this obligation, BOTEK shall be entitled, following prior notice setting a deadline, either to demand advance payment of the purchase price and to deliver the goods not yet called off, or to withdraw from the contract in respect to the part not yet called off. Further rights of BOTEK, such as the right to compensation, remain unaffected.

5.8. We are prepared to make partial deliveries, provided this is reasonable for the Customer, particularly if the partial delivery is of interest to the Customer in accordance with the purpose of the contract and does not result in any significant additional expense for the Customer.

6. Delivery; Transfer of Risk

6.1. Deliveries are made ex works Riederich, Germany (INCOTERMS 2020), unless otherwise agreed in individual cases. The risk of accidental loss passes to the Customer upon the Goods being made available for collection by the Customer, their carrier or a third party designated by them ex works Riederich, and upon the Customer being informed that the Goods are ready for collection.

6.2. Where expressly agreed with the Customer, we shall dispatch the Goods at the Customer's expense to the destination specified by the Customer ("Sales Shipment", *Versendungskauf*). Unless otherwise agreed, in the case of a Sales Shipment we shall be entitled, at our reasonable discretion, to determine the method of dispatch (particularly the carrier, route of dispatch and packaging) ourselves. In the case of a Sales Shipment, the risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer upon receipt by the Customer of our notification that the Goods are ready for dispatch or – if this is not provided for in the contract – at the latest upon handover of the Goods to the forwarding agent, carrier or any other person or organization designated to carry out the dispatch. This shall also apply in the event of partial deliveries or where we have undertaken other services (e.g. the aforementioned dispatch, transport or assembly). If acceptance (*Abnahme*) has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law governing contracts for work and services (*Bestimmungen des Werkvertragsrechts*) shall apply mutatis mutandis to acceptance. The handover or acceptance shall be deemed to have taken place if the Customer is in default of acceptance.

7. Default of Acceptance; Damages for Delay

7.1. If the Customer is in default of acceptance (*Annahmeverzug*), fails to cooperate or if our performance is delayed for other reasons for which the Customer is responsible, we shall be entitled to claim compensation for the resulting damage, including additional expenses (e.g. storage costs). For this, we shall charge a flat-rate compensation of 0.5% of the order value or the value of the partial delivery for each week or part thereof that the delay lasts, up to a maximum of 5% of the order value or the value of the partial delivery.

7.2. The right to prove higher damages and our statutory claims (particularly reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; however, the flat-rate compensation shall be set off against any further monetary claims. The Customer is entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned flat-rate compensation.

8. Prices; Terms of Payment; Price Adjustments; Minimum Order Value

8.1. All prices are net prices and are exclusive of the statutory value added tax applicable at the time of performance. Unless otherwise agreed in individual cases, all prices are EXW Riederich (EXW INCOTERMS 2020).

8.2. In the case of Sales Shipment (Section 6.2.), the Customer shall bear the transport costs ex works and the cost of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public charges shall be borne by the Customer.

8.3. The deduction of a cash discount requires a separate agreement in each individual case.

8.4. Payments are due within thirty (30) days of the transfer of risk (Section 6.). Only the crediting of an account with BOTEK shall be deemed to meet the deadline. However, we are entitled at any time, even within the context of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest upon confirmation of the order.

8.5. The minimum order value is EUR 100.00 net value of Goods. For orders with a Goods value of less than EUR 100.00 (net), BOTEK is entitled to round the amount up to EUR 100.00. BOTEK will notify the Customer of this on a case-by-case basis prior to the conclusion of the contract.

9. Notice of Defects

9.1. The Customer is obliged to inspect the Goods for defects immediately, but no later than within five (5) working days (*Arbeitstage*) of the transfer of risk, and to give notice of any defects discovered in this process immediately, but no later than within a further three (3) working days.

9.2. If a defect becomes apparent which was not detectable during the inspection referred to in Section 9.1., this must be reported within three (3) working days of its actual discovery.

9.3. Any defects discovered must be reported to us in text form. The notification must include a detailed description from which the presumed causes and the effects are apparent. Upon request, suitable documentation, in particular photographs, as well as the defective Goods, must be made available to us in Riederich at the Customer's expense. In the event of a justified complaint, BOTEK shall reimburse the Customer for the costs of the most economical method of dispatch from the place of use specified in the contract, or alternatively from the delivery address.

9.4. If the Customer fails to fulfil their obligation to inspect and give notice of defects, the Goods shall be deemed to have been accepted and the Customer shall not be entitled to any warranty rights. This shall not apply if we have fraudulently concealed the defect.

9.5. The Customer is obliged to bear the costs incurred by BOTEK in connection with an unjustified complaint.

9.6. The time limits set out in Sections 9.1. and 9.2. shall, insofar as documentation is owed by BOTEK, only commence once the Customer has received the documentation.

10. Warranty (*Gewährleistung*); Limitation Period for Warranty Claims

10.1. The Customer's rights in the event of material defects (*Sachmangel*) or defects of title (*Rechtsmangel*) shall be governed by the statutory provisions, unless otherwise provided for or supplemented in these GTCD.

10.2. BOTEK shall provide subsequent performance (*Nacherfüllung*) by rectification (repair) or replacement (delivery of a defect-free item). The choice of the type of subsequent performance shall be at BOTEK's reasonable discretion.

10.3. BOTEK is entitled to carry out the subsequent performance within a reasonable period.

10.4. We are entitled to make the required subsequent performance conditional upon the Customer paying the purchase price due. However, the Customer is entitled to withhold a portion of the purchase price commensurate with the defect.

10.5. Warranty claims for defects attributable to improper handling by the Customer, maintenance not in accordance with BOTEK's specifications, alteration of the Goods or failure to observe the instructions for use are excluded.

10.6. Warranty claims arising from defects – excluding claims for damages – shall become time-barred within twelve months of the transfer of risk (Section 6).

10.7. In the case of defects fraudulently concealed, Section 438 (3) of the German Civil Code (*BGB*) applies.

10.8. Section 11. also applies to claims for damages.

10.9. The statutory provisions regarding the seller's right of recourse in the supply chain pursuant to Sections 445a and 445b of the German Civil Code (*BGB*) remain unaffected.

11. Liability

11.1. BOTEK shall be liable in accordance with the statutory provisions in the event of a culpable breach of duty for all damages resulting from injury to life, limb or health.

11.2. BOTEK shall be liable in accordance with the statutory provisions in the event of a culpable breach of essential contractual obligations (cardinal obligations, *Kardinalpflichten*). However, liability shall be limited to the damage foreseeable at the time of conclusion of the contract and typical for the contract, up to a maximum of EUR 7.5 million per claim, provided that BOTEK has not breached essential contractual obligations intentionally or through gross negligence. Essential contractual obligations (cardinal obligations) are those whose fulfilment is essential for the proper performance of the contract and on whose compliance the Customer regularly relies and is entitled to rely.

11.3. BOTEK shall be liable for the grossly negligent and intentional breach of non-essential contractual obligations.

11.4. BOTEK shall be liable in accordance with the provisions of the German Product Liability Act (*Produkthaftungs-gesetz*).

11.5. The above limitations and exclusions of liability apply equally in favor of BOTEK's executive bodies, legal representatives, employees and other vicarious agents.

11.6. Otherwise, liability is excluded.

12. Set-Off; Right of Retention

12.1. The Customer may only set off claims that are undisputed or have been established by a final and binding court decision.

12.2. Section 12.1. applies mutatis mutandis to the exercise of a right of retention.

12.3. Sections 12.1. and 12.2. shall not apply if this would prevent the Customer from asserting a claim that is closely linked (*sygnallagmatisch verknüpft*) to the claim asserted by BOTEK.

13. Retention of Title

13.1. Goods delivered by us remain our property ("Reserved Goods") until full payment of all present and future claims arising from the business relationship. The Customer is entitled to dispose of the Reserved Goods in the ordinary course of business. In the case of an open account, the reserved ownership serves as security for the balance claim arising in favour of BOTEK.

13.2. The Customer is obliged to insure the Reserved Goods adequately against fire, water and theft at their own expense.

13.3. Any processing or transformation of the Reserved Goods by the Customer shall always be carried out on behalf of BOTEK. If Reserved Goods are processed together with other items not belonging to BOTEK to form a new item, BOTEK shall acquire co-ownership (*Miteigentum*) of the new item. The share of co-ownership is calculated based on the value of the Reserved Goods in relation to the value of the other processed or transformed items at the time of processing or transformation.

13.4. If the Customer combines (*verbindet*) or mixes (*vermischt*) the Reserved Goods to form a single item and one of the other items is to be regarded as the principal item, BOTEK shall be entitled to co-ownership of the resulting item. The share of co-ownership shall be calculated on the basis of the value of the Reserved Good in relation to the value of the other combined or mixed items at the time of combination or mixing. The Customer hereby assigns this co-ownership to BOTEK, and BOTEK hereby accepts such assignment.

13.5. The Customer hereby assigns to BOTEK, as security, all claims against third parties arising from the resale of the Reserved Goods, together with all ancillary rights. BOTEK accepts this assignment. The Customer undertakes to reserve title to the Goods vis-à-vis its customers until full payment of the purchase price. BOTEK is authorised to collect the resulting purchase price claims on behalf of BOTEK until such time as this authorisation is revoked or payment to BOTEK ceases. 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 to open insolvency proceedings against the Customer's assets. In the event of revocation of the collection authorisation, the Customer must provide BOTEK with the information necessary for the collection of the claim, together with the relevant supply contracts with its customers, the invoices and an overview of the payments made by the customers to the Customer.

13.6. The Customer must inform BOTEK immediately in text form of any third-party access to Goods owned by BOTEK, in particular enforcement measures against the Reserved Goods and BOTEK's claims, and must provide the information and documents necessary for defence.

13.7. Insofar as the feasible value of the security interests to which BOTEK is entitled exceeds all claims against the Customer that have not yet been paid to BOTEK by more than ten per cent (10%), BOTEK shall be obliged, at the Customer's request, to release the security interests. BOTEK shall be entitled to select the security interests to be released.

14. Special Terms and Conditions for Processing Contracts (*Bearbeitungsverträge*) and the Supply of Used Goods

14.1. If BOTEK is commissioned to recondition, modify or repair Goods, in particular tools, BOTEK shall be liable in accordance with statutory provisions for tools manufactured by BOTEK itself. In the event of a breach of essential contractual obligations (cardinal obligations) due to simple negligence, BOTEK's liability shall be limited to the foreseeable damage typical for this type of contract. Liability for indirect damages and loss of profit is excluded in this case. Liability for intent and gross negligence remains unaffected.

14.2. In the case of reconditioning, modification or repair of Goods, in particular tools, which are not manufactured by BOTEK itself, BOTEK shall be liable for damage resulting from such processes, in particular if the Goods sent in become unusable during processing or can no longer be used by the Customer for their intended purpose, only if such damage is due to a breach of duty caused by intentional misconduct or gross negligence, or if material contractual obligations are breached. In cases of simple negligence in the breach of material contractual obligations, liability is limited to the foreseeable damage typical for the contract. Any further liability is excluded.

14.3. Section 14.2. also applies if the Customer provides BOTEK with tools that the Customer has ground themselves solely for the purpose of coating.

14.4. The supply of used Goods is subject to the exclusion of any warranty for material defects. Liability for personal injury and damage to health, as well as liability for damage caused intentionally or through gross negligence, remains unaffected.

15. Confidentiality

15.1. 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 consent in text or written form. Employees, subcontractors and vicarious agents must be bound by the same obligations.

15.2. The above confidentiality obligations shall continue to apply even after the completion of an order; they shall expire – subject to any other rights to which we are entitled – at the earliest when and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known, but at the latest 5 years after completion of the order.

15.3. The Customer must maintain confidentiality towards third parties regarding the content of orders placed with us, particularly regarding prices and quantities. All documents provided by us (e.g. drawings, samples, etc.) may not be passed on to third parties or used for advertising for the Customer's own or other purposes without our prior consent in writing or in text form. Unless otherwise agreed in writing or in text form, these documents must be returned to us in full at the latest upon the final delivery or destroyed in accordance with our instructions. Goods manufactured and delivered by us on the basis of these documents may not be passed on to third parties or used for advertising purposes, whether for the Customer's own or other purposes, without our prior consent in writing or text form.

15.4. Samples, drawings, standards sheets, print templates and gauges may not be disclosed to third parties or used for their benefit, for advertising purposes or for the Customer's own purposes without our consent in writing or text form. They must be secured against unauthorised access or use. Unless otherwise agreed, they must be returned to us at the latest upon termination of the business relationship. Any breach of these provisions shall give rise to a claim for full compensation and shall entitle us to withdraw from the contract in whole or in part without further notice and without compensation.

15.5. The business relationship with us may be referred to in the Customer's advertising only if we have given our consent in writing or in text form.

15.6. Where a confidentiality agreement already exists between the parties, this shall take precedence.

16. Compliance; Export Control

16.1. The legally binding conclusion of a contract between the Customer and us is subject to the condition precedent that, should it be necessary, the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA*), Frankfurter Straße 29-35, 65760 Eschborn, Germany, grants the necessary licence(s) for the sale, delivery, transfer and/or export of the Goods.

16.2. The Customer shall not sell, export or re-export, directly or indirectly, any Goods supplied by us that fall under Article 12g of Council Regulation (EU) No 833/2014 to the Russian Federation or for use in the Russian Federation.

16.3. The Customer shall use all reasonable endeavours to ensure that the purpose of Section 16.2. is not frustrated by customers in the downstream supply chain, including any resellers. In particular, the Customer shall establish and maintain an appropriate monitoring mechanism to detect conduct by customers in the downstream supply chain, including any resellers, that would frustrate the purpose of Section 16.2.

16.4. The Customer must inform us immediately of any issues arising from the application of Sections 16.2. and 16.3., including any relevant activities by third parties that could frustrate the purpose of Section 16.2. The Customer is obliged to provide us with information regarding compliance with the obligations under Sections 16.2. and 16.3. within two weeks of receiving a request to do so.

16.5. To ensure adequate compliance, the Customer must adhere to our Code of Conduct, which forms part of the Contract and is made available to the Customer via the link https://www.botek.de/en/company/code-of-conduct/.

16.6. We are entitled to terminate the contract extraordinarily or to withdraw from it if the Customer breaches the provisions set out in Sections 16.2. to 16.5. Furthermore, the Customer is obliged to compensate us for any resulting damage, unless the Customer is not at fault in breaching of Sections 16.2. to 16.5.

17. Credit Check

17.1. Where we provide services on credit (*Vorleistung*), e.g. for payments on account, the Customer authorises us to pass on their personal data required for a credit check, including address details, to a credit reference agency such as Bürgel or Creditreform for the purpose of this credit check, based on mathematical-statistical methods (scoring). The credit report may contain probability values (score values) calculated on the basis of scientifically recognised mathematical and statistical methods, the calculation of which incorporates, amongst other things, address details. We use the information received regarding the statistical probability of a payment default ("probability value") to make a balanced decision on the payment option to be granted to the Customer and reserve the right to refuse the Customer the "on account" payment method as a result of the credit check.

17.2. The Customer may object to the transfer of personal data to the relevant company at any time. A notification in text form (e.g. email, fax, letter) is sufficient for this purpose. However, we would like to point out that in this case, only the "prepayment" (*Vorkasse*) payment method will be available to the Customer.

18. Place of Jurisdiction; Applicable Law

18.1. The exclusive place of jurisdiction for all disputes arising in connection with the contractual relationship with the Customer, its formation or its termination, is the Regional Court (*Landgericht*) of Tübingen (Germany), provided that the Customer is a merchant (*Kaufmann*) within the meaning of the German Commercial Code (*HGB*), a legal entity under public law or a special fund under public law.

18.2. BOTEK is also entitled to bring legal proceedings against the Customer at the Customer's general place of jurisdiction.

18.3. The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

19. Text and Written Form

Any amendments or additions to these GTCD, as well as any waiver of their validity, must be made in written or text form. This also applies to any waiver of this requirement for written or text form.

20. Severability Clause

20.1. Should one or more provisions of these GTCD or parts of a provision be invalid, such invalidity shall not affect the validity of the remaining provisions or of the contract as a whole.

20.2. In light of the ruling of the Federal Court of Justice (*BGH*), according to which a severability clause merely leads to a reversal of the burden of proof, it is nevertheless the express intention of the parties to maintain the validity of the remaining provisions of these GTCD under all circumstances.

20.3. The parties undertake to agree by mutual consent on a valid provision to replace the invalid provision, which comes as close as possible to the invalid provision in economic terms.

20.4. Sections 20.1. to 20.3. shall apply mutatis mutandis in the event of a loophole.

20.5. Wherever in these GTCD English terms are included after which either in the same provision or elsewhere in these GTCD terms have been inserted in brackets and/or italics, the respective German terms alone and not the English terms shall be authoritative for the interpretation of the respective provisions.