

General terms and conditions for deliveries and services of Boyke Technology GmbH and Boyke Wear Technology GmbH



1. General conditions

1.1 Deviations from these terms and conditions are only effective if these have been confirmed in writing by us. Contrary conditions are also inapplicable if Boyke Technology GmbH and Boyke Wear Technology GmbH accepts the performance of the contract partner without objection. Contrary conditions do not apply unless stipulated in the overall order.

1.2 Our deliveries and services are provided exclusively on the basis of these terms and conditions. The terms and conditions are deemed to have been accepted no later than with receipt of the goods or service. The customer's terms and conditions of business or purchasing conditions are explicitly excluded here.

1.3 Technical and company information in our drawings, brochures, etc. is intended as general information only and is non-binding, unless referred to in the quotation or contract. Drawings, contracts, etc. are our property. We must consent to any distribution to third parties.

1.4 If, after the quotation has been provided, new versions of / amendments to legal regulations, test body specifications or official requirements should be released, which affect the concluded contract, then the contract must be amended with the mutual consent of both parties.

2. Quotations and contract conclusion

2.1 Offers in brochures, advertisements, etc. are non-binding and subject to change – also with respect to pricing. The contractor shall abide by specially generated quotations for 30 days with equipment and spare parts, 3 months with systems.

2.2 Ancillary agreements, changes, supplements and/or other deviations from these terms and conditions are only valid if the contractor has declared his consent. Such agreements must be concluded in writing.

2.3 Information in quotations and/or order confirmations of the contractor, which pertain to an obvious error – namely a typing or calculation error – result in no obligation on the part of the contractor. Rather, the obvious error must be clarified.

2.4 The quotation documents, drawings, descriptions, samples and cost estimates of the contractor must not be distributed, made public, duplicated or made accessible to third parties in any other way without his consent. Upon request, the documents shall be returned without the retention of any copies.

3. Prices

3.1 All prices are net, ex works and exclude packaging, freight, insurances, customs duties, postage and any further ancillary costs. The INCOTERMS shall apply in their valid version.

3.2 The contractually agreed prices are subject to the statutory VAT applicable. The German or foreign sales tax owed by us on these sales shall therefore be billed for separately, in addition to the net prices. Any deposits or other payments to be made by the customer prior to the delivery or service being provided, which are subject to VAT at the time of receipt by us, shall be also be billed for with a separate charge listed for the respective VAT. The VAT is due together with the amount payable according to the invoice.

3.3 In case of deliveries abroad, all ancillary costs such as customs duties, insurance, taxes, etc. that we are required to pay abroad shall be borne by the customer.

3.4 Points 3.1. to 3.3 are omitted or subject to individual amendment if the quotation or contract contains an agreed "fixed price" in writing, which includes all ancillary costs.

4. Payment conditions

4.1 All payments must be received by us in cash on the agreed date and without deductions. The payment conditions set out on the invoice also apply.

4.2 The customer only has a right of retention or offset if the claims are uncontested and have been ascertained as being legally effective.

4.3 In the event of payment arrears, we are entitled to charge interest according to standard banking practice, although no less than 4% above the basic rate of interest of the German Federal Bank.

4.4 In case of payment arrears or a deterioration in the customer's creditworthiness, we are entitled to demand securities irrespective of the valid contract conditions. Furthermore, we are entitled to fulfil further deliveries and services only in return for prepayment or the provision of new securities.

4.5 If difficulties should arise when making payment transfers for foreign transactions, these costs shall be borne by the customer.

5. Packaging

5.1 Insofar as the customer returns the packaging used for transporting the delivery object to the supplier, the customer shall bear the costs of return transport to the supplier's factory.

5.2 Unless otherwise agreed in writing, the customer shall bear the costs of the packaging.

6. Delivery dates, performance impediments

6.1 The quoted delivery dates are non-binding and only apply if all order conditions have been clarified in advance, in particular the points that the customer is required to fulfill prior to receipt of the delivery or service.

6.2 We shall not be responsible for delivery and performance delays arising due to force majeure or due to events that make our delivery significantly more difficult or impossible – such as the delivery problems of third parties, official orders, etc. - also in the event of agreed binding deadlines and dates. Such events entitle us to extend the delivery or performance date by an appropriate period. If it should prove impossible or infeasible for us to fulfil our obligations then we are permitted to withdraw from the contract. The customer has the same right, if the delivery should become infeasible for him despite a period of grace. This point also includes strikes and lock-outs.

6.3 The supplier shall only be deemed to be delayed if the customer has granted a written period of grace of 2 months. In this case, the customer is entitled to compensation for delay of 0.5% for each full week, although no more than 5% of the total value of the invoice. Any further claims, in particular claims for damage compensation of any kind, are excluded. Unless we or our vicarious agents have acted maliciously or with gross negligence.

6.4 A right to withdraw arising for the customer due to point 6.2 only applies to the unfulfilled part of the contract. If part deliveries already supplied to the customer should become unusable, the right to withdraw also becomes legally effective here.

7. Acceptance

7.1 If acceptance has been agreed then this must take place immediately after notification of readiness for acceptance.

7.2 If a delivery object is put into operation without our approval, this is deemed to have been accepted.

7.3 If particulars have been agreed with respect to the delivery object, or if these were required of us for reasons to be explained, then the customer is automatically obligated to perform acceptance by the supplier. This also applies to part deliveries and services.

7.4 If a delivery object is put into operation without prior acceptance and without our approval, this is deemed to have been accepted. Any defects that arise at this time shall be handled according to point 9.

7.5 All preconditions for acceptance must be realised by the customer. Any costs that arise here, excluding the supplier's personnel costs, shall be borne by the customer.

8. Shipping and transfer of risk

8.1. Shipping shall take place using our chosen means of transport and transport route, at the risk of the customer. The same rights apply to selection of the freight forwarder or courier, also with part deliveries.

8.2. The trade terms shall be set out according to the INCOTERMS in the form valid on the date of contract conclusion.

8.3. The customer must immediately retrieve delivery objects for which notification of readiness for delivery and shipping has been issued. If this does not take place, the delivery objects shall be stored at the customer's cost and charged as delivered.

9. Retention of title

9.1. The goods remain our property until full payment has been made.

9.2. The supplier is entitled to insure the delivery goods against theft, breakage, fire, water and other damage at the cost of the customer, where the customer has not verified the existence of such insurance cover.

9.3. The customer is not entitled to pledge the delivery goods or assign these as security. In the event of the pledging or appropriation of the goods or any other form of access by third parties, he must inform the supplier of this immediately.

10. Warranty

10.1. We must be informed of all defects in writing immediately.

10.2. Defective delivery objects and services shall be renewed, repaired or taken back by us and replaced with faultless delivery objects at our discretion. The supplier shall bear the replacement, repair and transport costs to an extent that must be appropriately reflective of the repair works or replacement materials. Any further costs shall be borne by the customer.

10.3. If the supplier should be delayed with the works in point 10.2 then the customer is entitled to demand a payment discount or withdraw from the respective part of the contract. However, a precondition here is the written granting of a period of grace. If the remaining elements of the contract should be unusable for the customer due to this delay, he is entitled to withdraw from the entire contract. The rights set out here also apply in cases of a failure of the repaired, renewed or replacement delivery.

10.4. The warranty periods for mechanical and electronic parts are 12 months with single-shift operation. With multi-shift operation the warranty periods are reduced accordingly. Excluded are products from other manufacturers; in this case we simply pass on the manufacturer's warranty.

10.5. As with the original delivery object, we also provide a warranty on all repaired, renewed or replacement deliveries in the same way.

10.6. No liability shall be accepted for damages arising for the following reasons: Unsuitable or unprofessional use; unauthorized and deficient assembly or commissioning by the customer or a third party; retrospective modifications by the customer or a third party; natural wear and tear; negligent or incorrect use, maintenance or servicing; infringements of the operating instructions; unsuitable operating fluids or equipment; deficient construction works on the part of the customer; unsuitable subsoil; chemical, electrochemical or electrical influences that are not attributable to us, as well as the influences of exceptional temperature or weather conditions.

10.7. In the case of nitride worms and cylinders, a porous zone is unavoidable and is not a defect.

10.8. The specifications set out also apply to the delivery of objects other than the contractual delivery objects.

11. General disclaimer

Our liability is determined exclusively according to the agreements in the preceding clauses. All rights that are not expressly cited here, e.g. rights of withdrawal, cancellation, annulment or reduction, or for compensation in case of any form of damages, regardless of the legal grounds and in particular also due to impossibility, impermissible use, positive contract infringements, blame with contractual agreement, are excluded. This disclaimer does not apply in the event of malice or gross negligence on the part of legal representatives or management personnel in case of a culpable infringement of significant contractual obligations, insofar as the purpose of the contract is at risk; however, liability is limited to contract-typical, foreseeable damage, unless one of the aforementioned cases provides for claims according to the product liability act. No liability shall be accepted for worms regenerated for coating and stripping.

12. Place of fulfillment, partial ineffectiveness

12.1. The place of fulfillment for our deliveries is the delivery site. If services are also to be supplied by us (e.g. assembly) then the site at which these services are to be provided is the place of fulfillment. With respect to the payment obligation of the customer, the place of fulfillment is the bank account as detailed in our invoice.

12.2. If individual contract conditions should be ineffective, the remaining conditions continue to be binding. The ineffective contract condition shall be replaced by a condition that reflects the ineffective condition insofar as possible.

13. Copyrights and intellectual property rights

13.1. The customer shall inform us with immediate effect and in writing, if he is aware of any infringement of copyrights and intellectual property rights resulting from the product supplied by us. We are solely entitled and obligated to defend the customer against claims by the proprietor of such rights, and to satisfy these claims at our own cost, insofar as they are based on a direct infringement caused by the product supplied by us. We shall subsequently obtain the fundamental right for the customer to use the product. If this should not be possible for us under economically reasonable conditions, we shall either modify the product so that the property rights are no longer infringed, or take the product back and reimburse the purchase price less an amount for any granted possibilities of use.

13.2. Conversely, the customer shall release or defend us against all claims of the proprietor of such rights, which arise as a result of us following the customer's instructions, or because the customer has modified the product or integrated it into a system.

13.3. The deliveries made available by us with the associated documentation are intended for use by the customer himself. The customer is not permitted to make this documentation accessible to third parties without our written permission. Copies of drawings and documentation may only be made for the purpose of archiving or as a replacement or for trouble-shooting – without the acceptance of any costs or liability on our part. If original parts bear a mark indicating copyright protection, then this must also appear on copies made by the customer.

14. Place of jurisdiction

14.1. The place of jurisdiction for all disputes, also for bills of exchange and cheque proceedings, shall be the court in Cologne presiding over Boyke Technology GmbH and Boyke Wear Technology exclusively. However, we can bring proceedings against the customer at the court with jurisdiction over his general place of business.