

General Terms and Conditions of the BOC Group



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1. Scope of Application

1.1.1. The following General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all present and future agreements concluded after the 1st of September 2021 between BOC Products & Services AG or its subsidiaries on the one hand (hereinafter jointly referred to as "BOC") and the client of BOC on the other hand.

1.1.2. The GTC shall apply to all legal relationships between the Parties even if they are not expressly referred to.

1.1.3. These GTC are supplemented, where applicable, by the relevant Terms of Use (Terms of Use Subscription Services, Terms of Use Software Purchase or Terms of Use Professional Services), which form an integral part of these GTC. The respective individual contract concluded with the client regulates which special Terms of Use apply. The respective special Terms of Use shall apply to the following circumstances:

- The Terms of Use Subscription Services on all recurring services (e.g., SaaS, hosting, software maintenance, etc.).

- The Terms of Use Software Purchase for the purchase of standard software.
- The Terms of Use Professional Service for the professional services offered by BOC (software adaptations, training, consulting and technical services).

1.1.4. In the event of conflicting provisions, the following order of precedence shall apply: 1. Provisions from the individual contract (offer), before 2. the relevant Terms of Use, before 3. these GTC.

1.1.5. BOC exclusively concludes business to business contracts.

1.1.6. The GTC as well as the Terms of Use are available at <https://www.boc-group.com/gtc>.

2. Offer and Conclusion of a Contract

2.1.1. Unless otherwise agreed, offers are non-binding until acceptance by the client and are valid for 60 days from the date of issue. A contract is deemed to have been concluded upon written acceptance of an offer (via letter, fax or email) or by submission of an online purchasing form by the client. Verbal agreements or promises require written confirmation by BOC in order to be effective. Offers, cost estimates and the like are subject to the agreed confidentiality provisions.

2.1.2. BOC is entitled to use affiliated companies for the fulfilment of the order. Affiliated companies are all companies in which BOC Products & Service AG has direct or indirect holdings amounting to more than 50%.

3. Duties of Collaboration

3.1.1. Both contracting parties guarantee the careful execution of the rights and duties to which they are bound in accordance with the Agreement and shall only use staff with sufficient expertise and appropriate reference to the subject matter for the fulfilment of the contract.

3.1.2. The client shall provide BOC with all information necessary for the fulfilment of the contract and the accounting in a timely manner. In particular, the client shall inform BOC immediately of circumstances that have a significant impact on the services to be provided by BOC.

3.1.3. The client shall, where necessary, support BOC in the performance of the service to be provided. In particular, the client shall carry out agreed preparatory work in a timely manner and in the agreed quality and shall, if necessary, make qualified personnel available. The access to premises or infrastructure, work equipment, information and documents that are required for the fulfilment of the contract shall be made available by the client in a timely manner and free of charge.

3.1.4. Insofar as the client requires a PO number (purchase order number) for accounting, he shall announce this in good time, namely at least 14 days before the end of an accounting period. If the purchase order number is not announced or is announced late, with regards to the accounting, the client waives the right to objections in connection with the purchase order number.

3.1.5. The client shall inform BOC of changes to his company name or address within a reasonable period. If no such notification of changes occurs, written documents shall be deemed received by the client if they were sent to the last known address.

4. Data Protection and Confidentiality

4.1. General Provisions

4.1.1. Confidential Information is information that a judicious third party would regard as sensitive and worthy of protection or information that is marked confidential. This includes information disclosed in the course of oral presentations or discussions. Confidential Information may only be used for the purpose of executing the contract. Information that is not deemed confidential includes information that is already legally known to both contractual parties, or that the parties become aware of independently from the Agreement without violation of this confidentiality contract.

4.1.2. Personal Data shall have the meaning as defined in Article 4 GDPR.

4.1.3. Third parties as set out in this section do not include employees, subcontractors, tax consultants, auditors, lawyers or comparable external advisers of one of the parties or its affiliates, insofar as these are strictly bound to secrecy for professional reasons or due to a comprehensive confidentiality agreement with one of the parties.

4.2. Confidentiality

4.2.1. The contractual parties agree that all Confidential Information exchanged between the parties must be handled with strict confidentiality. Furthermore, they agree to ensure that unauthorised third parties are not able to gain knowledge of this information. The obligation to keep the information obtained secret shall particularly include the obligation not to use Confidential Information for a party's own purposes of competition. The confidentiality obligation does not apply if there is an obligation to disclose the Confidential Information by decision of a court, order of a public authority or by law.

4.2.2. Both parties are entitled to refer to the existing business relationship with the name and company logo, stating the field of application of the product or service.

4.2.3. Personal Data that was entrusted to the parties or that was otherwise made available to the parties in the course of the contractual cooperation must be kept secret. Processing may only take place to the extent permitted by law.

4.2.4. Upon expiry or dissolution of this Agreement, the confidentiality obligation for Confidential Information that was exchanged during the validity period of the Agreement shall remain in force for an unlimited period of time.

4.3. Collection and Processing of Personal Data

4.3.1. All Personal Data used by BOC are collected, processed and used only within the legal limits. If BOC uses third-party software or services that are not subject to European law, BOC takes care that either an adequacy decision (such as the decision by the European Commission C(2000) 2304 for Switzerland) or sufficient guarantees to ensure an adequate level of data protection are in place. These guarantees ensure that the data protection regulations and the rights of the data subjects are observed in a manner appropriate for the processing within the European Union.

4.3.2. BOC only processes Personal Data that are actively communicated to us by the customer or that arise from client servicing. BOC uses this data for:

- Contract management,
- Payment settlement,
- handling customer inquiries and
- transfer of product, service and event information.

4.3.3. For fulfilment of the order and for payment processing, BOC may use service providers to whom it is necessary that Personal Data be made available. These service providers are contractually obliged (a) to use this data exclusively for order fulfilment, (b) in particular not to use the data for their own purposes, (c) to delete the data after order fulfilment and (d) not to disclose the data to third parties.

4.3.4. Details on the collection and handling of Personal Data in connection with the BOC websites are available at <https://www.boc-group.com/privacy-policy>.

4.3.5. Should BOC process Personal Data on behalf of the client, BOC will conclude a Data Processing Agreement with the client pursuant to Article 28 DSGVO. A Data Processing Agreement (DPA) pre-signed by BOC will be provided to the client.

4.4. Data Security

4.4.1. BOC shall take appropriate technical and organisational measures (TOM) to protect the BOC systems and BOC websites against loss, destruction, modification, distribution and unauthorised access.

4.4.2. With regard to Art. 32 GDPR, BOC shall take appropriate measures to ensure an adequate level of protection for the risk involved. When selecting the measures, the following factors were taken into account:

- the state of the art,
- the nature, scope, context and purposes of processing,
- the costs of implementation,
- the risk of varying likelihood and severity for the rights and freedoms of data subjects.

4.4.3. Information on the specific technical and organisational measures (TOM) taken by BOC may be requested from the BOC account manager.

4.4.4. Data as defined in this section also includes data that is created, processed or stored as a result of the conventional use of BOC products, as well as installation and configuration settings, user information and any further documentation.

4.4.5. The client is responsible for the appropriate protection of application-related data and the performance of adequate data backups, unless this is the subject of an operating service.

5. Property Rights

5.1.1. The services of BOC do not violate any property rights of third parties.

5.1.2. The client shall notify BOC immediately of any claim raised by a third party. If the client acknowledges alleged copyright violations or possible extrajudicial agreements with third parties under the exclusion of BOC, BOC's liability in connection with this alleged violation of property rights is excluded.

5.1.3. Furthermore, BOC cannot be held liable against claims where the client is solely responsible for the alleged violation of property rights..

5.1.4. Furthermore, claims against BOC are excluded if the alleged violation of property rights refers to programmes or data provided by the client, or if such alleged violation of property rights is based on the fact that the part of the services delivered by BOC and the data contained therein is not used in the unaltered original version delivered or not in accordance with the intended use.

5.1.5. If BOC is at fault for the violation of property rights, BOC shall optionally at its own expense either replace the affected part of the services with another or assume the licence fees for the use of the part of the service for the holder of the property rights.

6. Intellectual Property

6.1.1. The intellectual property rights to the content created by the client in the product or service are exclusively vested in the client. There is a corresponding export option.

6.1.2. The products, services and all documents and information provided by BOC within the scope of the business relationship are the intellectual property of BOC. All rights not expressly granted are reserved by BOC. This shall also apply to any future improvements or comparable further developments of the products or services.

6.1.3. The right to edit and translate products, services, solutions, documents, software adaptations and the like is reserved exclusively for BOC. In particular, it is not allowed to identify or alter the source code.

6.1.4. Any copyright notices and trademarks applied to the product by BOC may not be altered or deleted.

6.1.5. The client is not permitted to sell, transfer or make available products, services, solutions, documents or other Confidential Information pursuant to Section 4 to competitors of BOC, in particular other BPM, EA or GRC software manufacturers.

7. Warranty

7.1.1. BOC warrants that the services provided, if used appropriately and in accordance with the agreement, present the agreed properties and are free of any defects that would annul or significantly reduce the value of the services or their suitability for the intended usage according to the agreement.

7.1.2. The warranty period is 6 months starting with the handover/delivery to the client. In case of partial deliveries, the warranty period starts with the handover/delivery of the partial delivery. Any presumption of defectiveness is excluded.

7.1.3. In case of warranty, improvement always takes priority over price reduction or rescission of the agreement. In the event of justified complaints, defects shall be corrected within an appropriate period, whereby the client shall enable BOC to take all measures necessary for the investigation and correction of the defects.

7.1.4. BOC will remove any defects that demonstrably occur or exist and that are reported by the client in due time within the warranty period or – at BOC's discretion – replace the defective part of the services with a faultless one.

7.1.5. Insofar as the subject of the contract is the alteration or supplementation of already existing programmes, the warranty only refers to the alteration or supplementation. In this case, the warranty for the original programme is not reinstated.

7.1.6. If BOC is obliged to carry out rectifications due to product defects, it may also do so in the form of fix levels or subsequent releases. If a rectification is technically not feasible or is economically unreasonable for BOC, the defect shall be resolved with the development of an adequate workaround that is reasonable for the client.

7.1.7. In the event of rectification of defects by BOC, the Client shall observe the duty to cooperate.

7.1.8. Furthermore, warranty claims are excluded that arise as a result of the client failing to regularly obtain and apply hotfixes, update levels, subsequent releases or deliverables.

8. Liability

8.1.1. Neither party can be held liable for pure financial loss, loss of profit, expected savings that did not occur, and other losses due to claims of third parties.

8.1.2. Liability for data loss is excluded unless agreed in writing within the scope of the operating service, stating the parties obligations and the definition of an upper liability limit.

8.1.3. Neither party is liable for damages that are attributable to circumstances beyond their control. This applies in particular for damages caused by the acts of third parties (such as in particular hacking) or by force majeure. Liability against BOC is excluded if arising due to independent actions of the client, the network environment used by the client or circumstances located in the sphere of the client.

8.1.4. If the client does not fulfil his duties of collaboration as described here to the agreed extent, the liability of BOC for damages resulting from this failure to do so is excluded. The client is liable for any and all damage incurred by BOC due to culpable violation of the client's duties to collaborate.

8.1.5. BOC is exempt from all obligations described in the Agreement if programme changes are carried out in the software programmes that form the subject of this contract without the prior consent of BOC or if the products or services are not used in the designated manner.

8.1.6. In addition, the contracting parties shall only be liable if there is a breach of an essential provision of the present contract. The amount of liability for each event causing damage is limited in total to the remuneration paid or payable in the calendar year concerned for the service in question.

8.1.7. Damage claims shall become time-barred according to the statutory provisions, but not later than one year from the beginning of the statutory limitation period.

8.1.8. The liability limitations as set out in this section do not apply in the event of wilful intent, gross negligence, injury to life, body or health or to the extent that the Product Liability Act applies.

9. Payment Terms

9.1.1. Unless otherwise agreed, one-time payments shall be settled following provision of service, and ongoing payments shall be settled annually in advance. All invoices are payable strictly net within 30 days from the invoice date. The payment conditions specified for the total order apply to part invoices and advance payments equally.

9.1.2. Unless agreed otherwise, the invoice amount shall be transferred to a bank account indicated by BOC on the invoice. Any expenses shall be borne by the client. A payment is only deemed to have been made once it is credited to the account of BOC. The risk of faulty or delayed transfer shall be borne by the client.

9.1.3. Unless explicitly indicated otherwise, all prices are in Euros and exclusive of value-added tax (VAT).

9.1.4. The client shall be in default without further warning in the event of non-compliance with the agreed payment dates. The provisions on payment reminders and default interest between entrepreneurs shall apply in accordance with the statutory law applicable at the domicile of the BOC subsidiary concluding the contract. If payment is not made even after BOC has sent a reminder and granted a reasonable grace period, BOC shall be entitled to suspend the agreement. In this case, BOC shall also be entitled to demand immediate payment for all services already provided, irrespective of any payment deadlines.

9.1.5. Taxes (in particular VAT) and other duties shall be calculated on the basis of the respective valid legislation. If the tax authorities subsequently stipulate further taxes or duties beyond this, these shall be borne by the client.

9.1.6. For deliveries and services within the European Union (EU), the client shall declare his respective VAT identification number before the agreement is carried out.

10. Miscellaneous

10.1. Withholding

10.1.1. In case of defect and/or damage, the client is not entitled to withhold any service to be provided by the client until such defect and/or damage is eliminated or until BOC provides other services.

10.2. Forfeiture of Claims

10.2.1. All claims of the client arising in connection with the contracting relationship shall expire if they are not asserted vis-à-vis BOC in writing within six months after they arise.

10.3. Offsetting

10.3.1. The offsetting of claims of BOC with counterclaims is only permitted for claims that are undisputed or legally established and claims arising from the same contractual relationship, unless BOC explicitly consents to the set-off in writing in the individual case.

10.4. Written Form

10.4.1. Any conclusion, amendment, supplement or dissolution of an agreement between the contracting parties requires the written form and the signature of both contracting parties to be effective. The same applies for any amendment or supplement as well as for the elimination of this written form requirement itself.

10.5. Assignment, Transfer, Pledging

10.5.1. The assignment or pledging of rights and/or the transfer of obligations arising from the contractual relationship with BOC requires the written consent of BOC.

10.6. Severability Clause

If any provision of these GTC is invalid or void, the validity of the remaining provisions shall not be affected thereby. Invalid provisions shall be replaced by the parties with a legally effective provision that most closely corresponds to the economic purpose of the contractual terms and/or other agreements that was intended by the invalid provision.

11. Applicable Law and Jurisdiction

11.1.1. The entire contractual relationship between the client and BOC is subject to the law of the country in which the BOC subsidiary that concluded the contractual relationship with the client is registered. Application of The UN Sales Convention and the provisions on conflicts of law pursuant to the International Private law of the respective country is excluded.

11.1.2. For disputes arising from or in connection with the contractual relationship between the client and BOC, the jurisdiction of the responsible commercial court in the respective country of domicile of the BOC subsidiary that concluded the contractual relationship with the client is valid.