

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 "GTC") form the underlying regulatory framework for all present and future agreements concluded after 01.07.2019 between BOC Products & Services AG, including its subsidiaries (hereinafter jointly referred to as "BOC") on the one hand and the clients of BOC on the other hand, even if, in individual cases, reference is not explicitly made to the GTC upon the concluding of a contract.

1.1.2. These GTC shall, if necessary, be supplemented by the relevant Terms of Use (Terms of Use Cloud, Terms of Use On-Premise or Terms of Use for Services). The respective individual contract (offer) concluded with the client regulates which provisions apply. In the event of conflicting regulations, the following order of priority shall apply: 1. Regulations from the individual contract (offer), before 2. the relevant Terms of Use, before 3. these GTC.

1.1.3. All products (standard software) and services offered by BOC may only be acquired by companies.

1.1.4. The GTC as well as the Terms of Use can be viewed 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 (letter, fax or email) acceptance of an offer or by sending of the online 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 rendered by BOC.

3.1.3. The client shall, where necessary, support BOC in the performance of the service to be rendered. 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 (e.g. to the product or the work product concerned), entry to premises or infrastructure, work equipment, information and documents that are essential 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 means all data containing specific details about personal or factual circumstances, such as name, email address, telephone number, occupation, bank details etc. However, Personal Data does not only include data that can be specifically associated with an individual in particular, but also data where additional information is required to identify the person. In case of doubt, it should always be assumed that personal information is involved.

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.

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 valid period of the agreement shall remain in force for an unlimited period of time.

4.2.5. The client agrees that its data may be processed by BOC for purposes of internal business transactions.

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 to the processing within the 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 performance and payment processing, BOC occasionally uses service providers to whom it is absolutely 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 become active as a data processor for the client, a Data Processing Agreement (DPA) is concluded with BOC. A pre-signed DPA may be requested from the BOC client advisor.

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, access, modification and distribution of data by unauthorised persons. Personal Data is always transmitted in encrypted form over the internet.

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 as well as
- 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 client advisor.

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 securing his application-specific data appropriately and for carrying out adequate data backups and updates, unless these measures are the subject of an Operation Service Agreement.

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, claims against BOC are excluded if 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 shall 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 client is exclusively entitled to the intellectual property rights to the models created in the product. In the event of an Operation Service Agreement, BOC shall provide the client with a corresponding export option.

6.1.2. The products, as well as all documents and information entrusted within the context of the business relationship, remain the intellectual property of BOC. This also applies to any future upgrades or similar developments of the products. All rights not explicitly mentioned in this agreement remain with BOC.

6.1.3. BOC reserves the exclusive rights to edit and translate work results, products, solutions, additional modules, documents and the like. The client is in particular 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, relinquish or make accessible any products, solutions, additional modules, documents or other confidential information according to section 4 to competitors of BOC, in particular other BPM, EAM 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 or restructuring 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 the remedy of defects by BOC, the client must observe his duty to cooperate.

7.1.8. If the client rejects a suitable solution for the correction of defects or for replacement of a defective part of the services provided within a reasonable period of time, BOC is exempt from any further warranty obligations and any further liability, in particular any claim of the client for price reduction or conversion. In this case, the client is liable for any damage incurred by BOC due to the rejected removal of defects.

7.1.9. 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 in an Operation Service Agreement, 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 him 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 are not used in the designated manner.

8.1.6. In addition, the contracting parties shall be liable only if a breach of an essential provision of the present contract exists. The amount of liability is limited for each event causing harm to the total value of the contract.

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. Value stability is explicitly agreed upon for ongoing payment. The Harmonised Index of Consumer Prices (HICP) published by the statistical office of the EU (Eurostat) of the nation, in which the BOC subsidiary concluding the contract has its headquarters, shall be used to calculate the value stability. The basis for the calculation is the index figure determined in the month of September of the current year. The adjustment shall occur once a year at the end of the year, with validity from January of the following year. Should this index cease to be published, the index that follows this index, or at least most closely corresponds to it, shall be taken as the basis. The remuneration is adjusted to the extent by which the specified index changes as compared to the starting basis. If BOC does not carry out a possible price adjustment for the calendar year, this is not deemed a waiver of its right of adjustment.

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

9.1.5. If the client does not comply with the agreed payment deadlines, it shall be considered to be in default without further warning. If the payment is not made even after a reminder has been issued by BOC, having granted a reasonable grace period, BOC is entitled to withdraw from the agreement.

9.1.6. Should the client be in default with a payment, the regulations 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 the client exceeds the payment deadline by more than 30 days, BOC is entitled to cease all services. In such case, BOC is further entitled to demand payment immediately for all services already performed regardless of any payment terms.

9.1.7. 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.

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

10. Delivery and Delivery Date

10.1.1. Unless otherwise agreed, the delivery shall take place via the provision of a download link or via transfer of the access data. The delivery date is the day on which the client receives the download link or the access data.

11. Miscellaneous

11.1. Retention

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

11.2. Forfeiture of Claims

11.2.1. 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.

11.3. Offsetting

11.3.1. 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.

11.4. Written Form Requirement

11.4.1. 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.

11.5. Assignment, Transfer, Pledging

11.5.1. 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.

11.6. Severability Clause

11.6.1. 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.

11.7. Amendment of the GTC

11.7.1. Following consent by the client, BOC is entitled to amend the provisions of this agreement. Consent is deemed granted if the client does not object to the planned amendments within 60 days from receipt of the written notification thereof. BOC shall inform the client at the latest 90 days before a planned amendment. If the client objects to the amendments, the amendments shall not enter into force for the client and the contractual relationship shall be continued under the hitherto existing conditions.

12. Applicable Law and Jurisdiction

12.1.1. 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.

12.1.2. 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.