

# General Terms and Conditions of the BOC Group



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## **PART 1. APPLICATION OF THE GTC**

1. The following General Terms and Conditions (hereinafter referred to as "GTC") come into effect as of 15 October 2015. The provisions of these GTC constitute the basic set of rules for contracts concluded between BOC Products & Services AG and/or its subsidiaries (hereinafter jointly referred to as "BOC") and clients of BOC after the start date of these GTC.

2. Client relationships with BOC can refer to the following types of transactions:

- licensing of standard software, including BOC auxiliary programmes included in the delivery, and associated documentation (hereinafter referred to as "product") against payment of a fee (User Agreement),
- provision of product maintenance services for licenced standard software including hotline services (Product Maintenance Agreement),
- provision of operational services by BOC (Operation Service Agreement),
- provision of other services (Service Agreement) such as, in particular, the preparation of customer-specific solutions based on the standard software

3. The services to which the transactions listed in Clause 2 relate each constitute a factual, economic and legal unit.

4. Unless agreed otherwise, the provisions of PART 2 apply with respect to the respective service components.

5. PART 3 applies for all of the transactions indicated in Clause 2.

## **PART 2. SERVICE PROVISIONS**

### **6. Utilisation of products**

#### **6.1. Permanent licensing of products against one-time payment**

6.1.1. Upon conclusion of a User Agreement against payment of a one-time licence fee, BOC grants the client the non-exclusive right to use the product according to its intended purpose without local restriction and for an indefinite period of time, against payment of a one-time licence fee.

6.1.2. The client is entitled to create copies for backup and archiving purposes. Every legal copy of the product must bear the same copyright and other property right notices as the original product.

6.1.3. The client is entitled, to install a copy of the standard software in a test system. Repeat installation and utilisation for commercial purposes is not permitted.

6.1.4. The client may not sell, relinquish or make accessible the standard software, solutions, additional components or the like to competitors of BOC.

#### **6.2. Licensing of products for an indefinite period of time against on-going payment**

6.2.1. Upon conclusion of a User Agreement against payment of an on-going licence fee, BOC grants the client the non-exclusive, non-transferrable right to use the product according to its intended purpose without local restriction and for an indefinite period of time, against payment of an on-going licence fee.

6.2.2. Incidentally, Clause 6.1 applies by analogy, with the exception of Clause 6.1.1.

#### **6.3. Scope of the right of use**

6.3.1. BOC retains the intellectual property rights in all documents and information provided within the scope of the business relationship. Any rights not expressly granted are reserved for BOC. The same applies for future upgrades or similar developments of the products, if any.

6.3.2. Unless expressly agreed otherwise in writing in individual cases, BOC also retains the right to process and translate the product. The client is in particular not allowed to identify or alter the source code.

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

6.3.4. If BOC has reason to suspect that the right of use granted has been violated, BOC is entitled to call on the client to shut down the usage of the product until final clarification of the facts.

6.3.5. BOC is entitled to withdraw the right of use from the client without notice if the client violates an essential provision of a contract or of the GTC and does not cease to do so despite a written demand and setting of an appropriate deadline in which to eliminate or cease this behaviour. If the right of use is withdrawn, the client is not entitled to any claim for reimbursement of the agreed fee. In this case, all the agreed obligations of the client regarding confidentiality and data protection remain in force for an indefinite period of time.

#### **6.4. Delivery and delivery period**

6.4.1. Unless agreed otherwise, products are delivered by shipping the data medium free domicile to the client's door.

6.4.2. Unless agreed otherwise in writing, within the scope of granting a right of use in accordance with Clause 6.1 or 6.2, BOC delivers

- one copy of the licenced standard software in machine-readable form,
- a licence number sheet or a licence file, and
- the associated documentation.

6.4.3. If the client accidentally deletes the product, BOC reserves the right to deliver a replacement against reimbursement of the

reproduction and shipping costs incurred, provided that such deletion is proven without a doubt.

6.4.4. In general, the delivery period is four weeks, unless agreed otherwise.

6.4.5. Products of third party vendors are generally not included in the delivery.

6.4.6. If a delivery is delayed due to unforeseen events outside the control of BOC, the delivery period is extended appropriately according to the reason for the delay.

## 6.5. Payment for the right of use

6.5.1. BOC grants the right of use of the products against payment of a one-time (Clause 6.1) or on-going (Clause 6.2) licence fee plus statutory value-added tax. This fee covers

- the right of use of the product and
- the packaging and transport costs of the product including all the components included in the scope of the delivery.

6.5.2. A one-time licence fee (Clause 6.1) is charged no earlier than upon delivery to the client.

6.5.3. An on-going licence fee (Clause 6.2) is charged no earlier than at delivery to the client. The first, incomplete quarter is charged on a pro-rata basis from delivery of the product together with the first full quarter.

6.5.4. Any installation or installation support is not in scope of delivery. Such and other services provided by BOC are agreed and invoiced separately.

6.5.5. The agreed on-going licence fee (Clause 6.2) is hedged on the basis of the harmonised consumer price index (HICP) for the respective member state published by Eurostat. If the customer is not in a Member State of the EU so the index number of the Member State of the offering BOC Company or its parent company applies. The calculation is based on the index published for the most recent month of October. The fee is adjusted once a year at the end of the year coming into effect by January of the following year. If the respective index is no longer published, the calculation is based on the index that follows or comes as close as possible to such index.

6.5.6. The payment terms are based on the provisions of Clause 11.

## 6.6. Termination of the User Agreement

6.6.1. A User Agreement according to Clause 6.2 can be terminated by either contractual party, without giving any reason, with three months' notice as of the end of the year.

6.6.2. BOC is entitled to extraordinary termination of a contract according to Clause 6.2 in particular if

- the client breaches a provision of the agreement and does not cease to do so and remedy the effects of such violation within a

period of seven days despite corresponding request,

- the client is in default with more than one payment,
- the continuation of the contract becomes unacceptable due to a loss of trust, which has to be substantiated by BOC in writing,
- the client becomes insolvent, if legal bankruptcy or similar proceedings (in particular composition or reorganisation proceedings) are opened against the client, or if such proceedings are dismissed for lack of assets,
- the customer violates anti-corruption provisions.

6.6.3. The client is entitled to extraordinary termination of a contract according to Clause 6.2 for an important reason within the scope of responsibility of BOC as well as violations of anti-corruption provisions, if BOC does not remove such reason for extraordinary termination within a reasonable time despite a corresponding written request of the client detailing and substantiating this reason for extraordinary termination.

6.6.4. Upon termination of the User Agreement, the client shall uninstall the standard software on all their equipment and return the original data medium provided to them as well as all copies of the installation files to BOC without undue delay. The client will not keep a copy for archiving purposes.

## 7. Product maintenance

### 7.1. Product maintenance agreement

7.1.1. Within the scope of the Product Maintenance Agreement, BOC shall in particular provide the following maintenance services with respect to the product:

- ensuring operability by means of preventive measures,
- recovery of operability and support in the elimination of malfunctions and errors,
- provision of subsequent releases of the standard software.

7.1.2. The product maintenance agreement includes all purchased licenses.

7.1.3. In order to ensure or recover the operability, BOC shall supply hotfixes and update levels for the standard software. If the adaptations included in such hotfixes and update levels affect a subsequent release, operability is ensured by delivering such subsequent release. This includes adaptation of the standard software to subsequent versions of the operating system and the database application provided that they are actually under regular maintenance by the respective manufacturer.

7.1.4. BOC shall notify the client of any technical upgrades, measures for the elimination

of malfunctions and errors and further developments of the product.

7.1.5. Subsequent releases of the standard software, hotfixes and update levels are provided to the client in accordance with the usual terms of delivery (see Clause 6.4).

7.1.6. The customer, or the third party acting under their instruction, is responsible for installation of the hotfixes, update levels or subsequent releases delivered.

7.1.7. For the purpose of ensuring and recovering the operability, BOC provides a hotline which receives and processes requests and reports of malfunctions or errors during on-call service hours. Any client requests have to be called in via this hotline. Other means of communication may only be used if the hotline cannot provide a solution. It is also permitted, once identified and authorized by both the client and BOC, for third parties to enter requests and fault and error messages on behalf of the client.

7.1.8. For the delivery of new hotfixes, update levels and releases, the provisions of Clause 6.4 and Clause 13.1.5 apply in the context of product maintenance.

7.1.9. If a Product Maintenance Agreement is concluded after a right of use was purchased or when a product is purchased again after an interruption, Clause 7.3.2 applies by analogy.

7.1.10. The maintenance services are generally provided from the location of the BOC subsidiary which is a party to this contract. If the client fulfils the technical requirements, the maintenance services can be carried out by remote maintenance, if agreed.

7.1.11. Against reimbursement of expenses, the maintenance services can be carried out at the location of the client. In this case, BOC will provide a corresponding performance record for the client.

## **7.2. Provision of maintenance services**

7.2.1. BOC will endeavour to minimise downtimes and failures and to process any request and report of malfunctions or errors quickly, efficiently and effectively. BOC can only guarantee the availability of the system if the entire system is under the exclusive control of BOC and such a guarantee has been agreed in the individual case.

7.2.2. Before calling the hotline, the operator of the software shall use the tools for identification and diagnosis of malfunctions and errors provided by BOC.

7.2.3. BOC accepts reports of malfunctions or errors exclusively by way of the hotline and, in the cases described in Clause 7.1.7, by way of telephone or e-mail.

7.2.4. Every report of a malfunction or error must include a concise and comprehensible description for reproducibility of the relevant situation. In the interest of the client, a client

representative should be nominated to actively support BOC in the elimination of malfunctions or errors.

7.2.5. BOC will initiate immediately an attempt for recovery.

7.2.6. In case of escalation to the next level of support, the response and processing time is extended accordingly.

7.2.7. BOC cannot be held liable for any damage directly or indirectly caused by a failure on the part of the client to procure hotfixes, updates or subsequent releases on a regular basis.

## **7.3. Payment for the maintenance services**

7.3.1. BOC will provide maintenance services against payment of the annual general maintenance fee plus statutory value-added tax, payable in advance. The first year is charged in advance on a pro-rata basis.

7.3.2. The amount of maintenance fee depends on the number of user licenses (see 7.1.2).

7.3.3. If user licences are subsequently increased, maintenance services shall be paid in accordance with the provisions of the applicable maintenance agreement. For the following calendar year, the fee is based on the accumulated licence fee at the time of the respective purchase. The first, incomplete year is charged in advance on a pro-rata basis from the date of effectiveness of the amendment to the maintenance agreement.

7.3.4. Travel expenses for any necessary and agreed travels will be charged at BOC's current flat rates or invoiced at cost.

7.3.5. The maintenance fee is hedged and Clause 6.5.5 is applicable by analogy.

7.3.6. With a change in the scope of the maintenance agreement a possible existing minimum term remains unaffected.

## **7.4. Limitation of maintenance services**

7.4.1. In Particular the following services are not provided within the scope of the Product Maintenance Agreement and must therefore be agreed in a separate agreement:

- adaptation of a subsequent release of the standard software to customer-specific extensions,
- adaptation of the standard software to changes in the legal or application-specific requirements or general conditions,
- handling of malfunctions caused by
  - specific environmental or system conditions at the place of installation, force majeure or unauthorised intervention of third parties,
  - utilisation of a product for a purpose other than its intended purpose, or
  - non-compliance with the hardware and software requirements provided by BOC,

- support with modifications of or corrections to the installation or the operating environment such as, in particular, migration in case of relocation,
- partial or full assumption of or support with maintenance work on the installation or operating environment,
- support with the elimination of errors occurring at an interface of external or basic systems with the product,
- extension of the agreed service hours for support (hotline), and
- data backups.

7.4.2. BOC endeavours to provide bypass solutions. The client is not entitled to see the source code under any circumstances.

7.4.3. Any services provided within the scope of a separate agreement will be charged in accordance with the applicable price list of BOC. This pricing will apply in particular to any maintenance services provided by BOC that are based on the report of a malfunction and not covered by BOC's performance obligation.

## **7.5. Termination of the product maintenance agreement**

The terms and conditions regarding termination stipulated in Clause 6.6 apply by analogy for the termination of a Product Maintenance Agreement. Termination of the User Agreement constitutes an additional important reason entitling BOC to extraordinary termination in the sense of Clause 6.6.2.

## **8. External product operation**

### **8.1. Product operation by BOC (operation service agreement)**

8.1.1. With the conclusion of an Operation Service Agreement, BOC undertakes to operate the product or to have it operated by a designated third party.

8.1.2. For aspects of the product operation, BOC can use named third parties, for example for the purchase of infrastructure services in a data centre.

8.1.3. In order to conclude an Operation Service Contract, the client has to procure product maintenance from BOC.

8.1.4. The operation can be based on an agreement in accordance with Clause 6.1 or Clause 6.2.

8.1.5. Delivery is affected by transmission of the access data by BOC.

8.1.6. Clauses 6 and 7 apply by analogy, unless agreed otherwise in the following.

8.1.7. The client shall design the necessary technical prerequisites within his infrastructure in

such a way that he is able to access the operational environment via the internet (e.g. firewall etc.).

## **8.2. Payment for product operation**

8.2.1. In the case of an Operation Service Agreement in the context of a license according to Clause 6.1, the operation fee is charged without affecting the on-going fee for product maintenance. The operating fee is additionally provided and continuously charged.

8.2.2. In the case of an Operation Service Agreement including reference to a license pursuant to Clause 6.2, the fee comprises the on-going product usage fee, the maintenance fee and the operation fee.

8.2.3. The operation fee is hedged and Clause 6.5.5 applies by analogy.

## **8.3. Termination of product operation**

8.3.1. Clause 7.5 applies by analogy.

8.3.2. When the Operation Service Agreement is terminated, BOC deletes the data stored by the client within a period of four weeks.

## **8.4. Product operation by a third party assigned by the client**

8.4.1. In order for the product to be operated by a third party assigned by the client, a User Agreement in accordance with Clause 6.1 has to exist. BOC has to be notified of the name of the third party. Product operation by a competitor of BOC is expressly prohibited.

8.4.2. Product maintenance services can be procured from BOC on the basis of a separate contract and against payment of a separate fee; if necessary, the third party assigned with the operation of the product can use such services to the agreed extent as well.

8.4.3. In order to repair in case of malfunction in the context of the product maintenance service the client shall notify BOC about all performed changes in the operating environment by him or a third party.

8.4.4. The client shall include the third party in all the obligations imposed on him by BOC, and he shall, upon first request and without raising any objection, hold BOC strictly harmless and indemnify them in full for any damage caused by a breach of duty of the third party.

## **9. Services**

### **9.1. General provisions**

9.1.1. BOC offers in particular the following services on the basis of separate agreements:

- product configuration and adaptation (customising),
- development of comprehensive solutions,

- development and implementation of methods,
- product, method and user trainings,
- product installation and advanced installation support,
- support with the introduction and on-going operation,
- project-specific consulting services.

9.1.2. BOC provides the respective service in accordance with the state of the art at the time of the conclusion of the contract and through personnel that are qualified for the provision of the agreed services.

9.1.3. In addition to Clause 10.1.5, the client provides all the necessary resources to BOC that will be used to achieve the agreed objective.

## **9.2. Place of performance**

9.2.1. Services according to Clause 9.1.1 are provided by BOC, as appropriate, either at the location of the client, the location of a third party or a location of BOC.

9.2.2. Clause 7.3.4 applies by analogy.

## **9.3. Rights of use of products and service components**

9.3.1. BOC grants the customer in terms of service results from the product configuration and customisation (customising) a non-exclusive, perpetual, irrevocable, non-transferable right of use.

9.3.2. In regards to training materials, documents and other service results (comprehensive solutions, interfaces, intermediate results and tools and the like), the client is entitled to use those for its own purposes. Transmission of this content to third parties, against payment or gratuitous is prohibited.

9.3.3. With regard to materials, documents and the like offered or used within the scope of the services, BOC grants the client the non-exclusive and non-transferrable right of use according to the intended use for an indefinite period of time.

9.3.4. Work results are submitted to the client in accordance with the purpose and scope of application of the respective agreement. The work result is deemed to have been accepted as free of faults and defects if the client does not complain about faults or defects within ten days after delivery.

## **9.4. Payment for services**

9.4.1. Services provided in accordance with Clause 9.1.1 are charged either at a fixed price or at cost. BOC usually submits monthly invoices.

9.4.2. With respect to the payment for services, a cost ceiling may be agreed. A separate written agreement has to be concluded before such ceiling may be exceeded.

9.4.3. If BOC incurs additional expenses due to a failure on the part of the client, the client is charged separately for such expenses.

9.4.4. Clause 7.3.4 applies by analogy.

## **9.5. Product configuration and adaptation (customising)**

9.5.1. The technical specifications of solutions to be developed and the offer based on these specifications are prepared in close cooperation of the client and BOC.

9.5.2. With respect to the solution, the provisions of Clause 6.1.2 to Clause 6.1.4 apply by analogy.

9.5.3. The maintenance of a solution developed in the course of product configuration and adaptation (customising) is based on a separate agreement.

## **9.6. Trainings and seminars**

9.6.1. BOC provides comprehensive trainings and seminars consisting of several consecutive training modules. In the following both are summarised as "training".

9.6.2. The training fee comprises appropriate preparation of the training and the right of use in the training materials according to Clause 9.3.2.

9.6.3. Withdrawal from the training is possible, free of charge, if BOC receives a written statement of withdrawal no later than two weeks prior to the agreed date of the training; it is not necessary to indicate the reason for such withdrawal. If BOC receives the statement of withdrawal later than that, a cancellation fee in the amount of 50% of the training fee plus reproduction and subsequent cancellation expenses (in particular cancellation fees for booked event locations, catering, technical equipment, transport costs, accommodation, etc.), if any, will be reimbursed to BOC, irrespective of the reason for such withdrawal. The client's right to designate an internal representative who will participate in a training course at no additional cost, is not bound by any time limit.

9.6.4. BOC reserves the right to change or cancel dates with two weeks' notice.

## **PART 3. GENERAL PROVISIONS**

### **10. Obligation to cooperate**

#### **10.1. General obligation to cooperate**

10.1.1. Each contractual party ensures that its contractual obligations are fulfilled with due care.

10.1.2. The client undertakes to provide all the information that is necessary or important for BOC for the execution of the agreement or in connection with it to BOC without undue delay.

10.1.3. The client shall in particular notify BOC without undue delay of any circumstances that

could have a considerable effect on the services to be provided by BOC.

10.1.4. The client undertakes to fully support the provision of the services to be provided by BOC. The client shall carry out any necessary preliminary work, or have it carried out, in due time and in agreed quality. The client shall grant BOC access (for example to a defective product or a work result and to premises and infrastructure) and provide work equipment, information and documents in due time, at his own risk and at no additional cost to BOC.

10.1.5. Both contractual parties shall only deploy personnel with sufficient technical knowledge and reference to the subject field in connection with the execution of the agreement.

10.1.6. BOC is entitled to call upon other BOC companies as vicarious agents at any time.

10.1.7. If the client does not fulfil his obligation to cooperate as described above, any liability of BOC for damage directly or indirectly caused by such failure on the part of the client is excluded. The client is liable for any and all damage incurred by BOC due to culpable violation of the client's obligation to cooperate.

## 11. Payment terms

11.1.1. All invoices are payable net within fourteen days.

11.1.2. Any duties and fees such as import duties, customs duties, COD charges, transaction costs and the like shall be borne by the client.

11.1.3. If the client is in default with a payment, BOC is entitled to charge default interest at an amount of 12% p.a. as well as any appropriate dunning and collection charges actually incurred (whereas BOC may call upon third parties for collection) and any appropriate attorney's fees incurred pursuant to the *Rechtsanwaltstarifgesetz* [Austrian Act on Attorney's Fees] as amended. BOC expressly reserves the right to claim additional damages. If the client is in default with the payment of a non-negligible amount and a reminder threatening partial or complete cessation of service provision by BOC and setting a period of grace of two weeks remains un-successful, BOC is entitled to cease provision of the service entirely without notice.

11.1.4. Unless agreed otherwise, the invoice amount shall be transferred to a bank account at the place of residence of the BOC subsidiary issuing the invoice, which account has to be indicated by BOC on the invoice. Any expenses shall be borne by the client. A payment is deemed to have been made when it is credited to the account of BOC. The risk of faulty or delayed transfer shall be borne by the client.

11.1.5. The client shall notify BOC in writing of any change of the Company name or address within a reasonable period. If BOC is not notified of

such changes, documents are deemed to have been received by the client when they are sent to the last known address.

## 12. Data protection and confidentiality

### 12.1. General provisions

12.1.1. The contractual parties agree that all the information exchanged is strictly confidential and must only be disclosed to those persons who need to have access to such confidential information within the scope of the execution of this agreement. These employees shall be notified of the confidential nature of such information. The other contractual party has to be notified in advance and in writing if any such information is disclosed to external consultants and other persons.

12.1.2. Confidential information is information that a judicious third party would regard as sensitive and worthy of protection or 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. This obligation does not apply for 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.

12.1.3. Specific contractual details such as, in particular, terms and conditions shall be kept secret. A reference to the business relationship without giving additional details as well as utilisation of provided brand name and company logo in presentations as well as on BOC websites do not require specific consent.

12.1.4. Confidentiality obligations and obligations regarding compliance with data protection provisions remain effective for a period of seven years after termination of the contractual relationship.

12.1.5. The client agrees that his data may be processed by BOC for purposes of internal business processing.

### 12.2. Collection and processing of customer data

12.2.1. 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 in principle that the provisions of the Safe Harbor Agreement are complied with.

12.2.2. BOC uses only personal data that are actively communicated to us by the customer, or arising from client servicing. BOC uses this data for:

- contract management,
- payment settlement,

- handling customer inquiries,
- transfer of product, service and event information.

12.2.3. For performance and payment processing BOC occasionally uses a service provider, and where personal data is made available, these service providers are contractually obliged to only use this data:

- exclusively for order fulfillment,
- in particular not to use for its own purposes,
- delete after order fulfillment and not disclose it to third parties.

### 12.3. Data security

12.3.1. BOC shall take appropriate organisational and technical measures to protect the BOC websites and other systems against loss, destruction, access, modification or distribution of data by unauthorised persons. Personal data is transmitted over a secure connection over the Internet.

12.3.2. The client is responsible for securing his application specific data appropriately and for carrying out adequate data backups and updates, unless data security is subject to an Operation Service Agreement in the sense of Clause 8.1.1. Any liability of BOC for data loss is excluded, unless such liability is expressly agreed in writing in an Operation Service Agreement stipulating the obligation to cooperate of both contractual parties and defining a ceiling on such liability.

12.3.3. Data in the sense of Clause 9.2.1 also includes data produced, processed or stored within the scope of the intended use of BOC products, installation and configuration setting, user data and further documentation, if any.

12.3.4. BOC provides installation instructions and advanced software documentation to the client. However, this does not imply that BOC assumes any liability for damage caused by data loss or security gaps.

## 13. Warranty

### 13.1. General warranty

13.1.1. 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.

13.1.2. 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 replace the defective part of the services by a faultless one at BOC's discretion.

13.1.3. The warranty period is twelve months starting with the acceptance of the delivery by the

client. In case of partial deliveries, the warranty periods starts upon acceptance of the partial delivery and ends upon expiry of the warranty period for the entire delivery, but no later than eighteen months after acceptance of the partial delivery by the client.

13.1.4. Furthermore, warranty claims resulting from the client's failure to procure and use hotfixes, update levels, subsequent releases or deliverable results on a regular basis (Clause 7.2.7) or from the fact that the network environment disclosed to BOC differs from the actual situation, are excluded.

13.1.5. The remedial work or, alternatively, the new delivery that has to be provided by BOC in case of justified warranty claims may, in case of defects in the products, also be effected by delivering hotfixes, update levels or subsequent releases. If remedy is impossible for technical reasons or unreasonable for BOC for economic reasons, the defect shall be removed by developing an adequate alternative solution that is acceptable for the client.

13.1.6. Any claimed defect has to be reproducible or identifiable in order to give rise to a warranty claim. If a product or deliverable result presents a defect, such defect must be reported by the client without undue delay. The report has to be in writing and comprise a detailed description of the defect.

13.1.7. Defects shall be reported in accordance with the following classification:

- A defect is classified as preventing operation if utilisation of the system is impossible or severely restricted.
- A defect is classified as impeding operation if utilisation of the system is considerably restricted.
- A defect is classified as slight if utilisation of the system is possible with slight restrictions.

13.1.8. Within the scope of the removal of defects by BOC, the client shall comply with his obligation to cooperate (Clause 10.1.5). The client shall provide relevant information and competent personnel and grant BOC access to all the equipment, systems and files required for the removal of defects.

13.1.9. If the client rejects a suitable solution for the removal 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.

### 13.2. Property rights

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



13.2.2. If a third party raises a claim against the client for violation of property rights due to the contractual services provided by BOC, BOC shall either replace the part of the service in question with a different one at its own expense or bear the licence fees for the utilisation of the part of the services in question payable to the owner of such property rights.

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

13.2.4. Furthermore, claims against BOC are excluded if the client is solely responsible for the alleged violation of property rights.

13.2.5. 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.

#### **14. Liability**

14.1.1. Both Parties shall adhere mutually unlimited intent or gross negligence or ordinary negligence in the case of injury to life, body or health.

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

14.1.3. Both Parties are not liable for damages that are attributable to circumstances beyond their control. This applies in particular for damages, acts by third parties (in particular hacking), force majeure, client actions that are caused by the network environment or caused by other and acts located in the sphere of customer circumstances.

14.1.4. Both parties cannot be held liable for pure financial loss, loss of or damage to recorded data, loss of profit, expected savings that did not occur and other losses due to claims of third parties.

#### **15. Default**

If the client does not comply with the deadline stipulated in the existing contract or in these GTC as giving rise to default, they shall be considered to be in default without further warning. If they do not comply within a reasonable grace period, they shall be considered in default after a reminder from BOC. If this period of grace expires without success, BOC is entitled to withdraw from the agreement.

#### **16. Retention**

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

#### **17. Assignment, transfer, pledging**

Assignment or pledging of rights and/or transfer of obligations arising from the contractual relationship with BOC is not admissible, unless BOC has given its prior written consent.

#### **18. Parts of the agreement and hierarchy**

In case of conflicting provisions, the individual contract (in accordance with Clause 20) shall prevail over the GTC. In general, specific provisions shall prevail over general provisions, and posterior provisions shall prevail over anterior provisions.

#### **19. Expiry of claims**

If claims of the client arising directly or indirectly in connection with the contractual relationship with BOC are not asserted vis-à-vis BOC within three months after they arise, such claims shall expire; if an amicable settlement cannot be achieved, such claims expire if they are not asserted in court within six months after they arise.

#### **20. Written Form**

Any contract between the contractual parties requires the written form and the signature of both contractual parties to be effective. The same formal requirement applies for any amendment of this requirement.

#### **21. Severability**

If an individual provision of these GTC is or becomes ineffective or invalid, the effectiveness and validity of the remaining provisions shall remain unaffected. The ineffective or invalid Clause shall be deemed to be replaced by an effective and valid provision that corresponds, in economic terms, to the regulatory purpose intended by the author of the document at the time of establishment of these GTC (October 2012).

#### **22. Applicable law and place of jurisdiction**

22.1. The entire contractual relationship between the client and BOC, including these GTC, 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.

22.2. For disputes arising from or in connection with the contractual relationship between the client and BOC the jurisdiction of the responsible commercial court at the respective location of the BOC subsidiary that concluded the contractual relationship with the client is valid.