

## GENERAL TERMS AND CONDITIONS for the sale and delivery of software support services

Date: September 15<sup>th</sup> 2022

### 1 Contract scope and validity

- 1.1 The following terms apply to all services and deliveries that BOOM SOFTWARE AG, FN 132252 p, Hasendorfer Str. 96, A-8430 Leibnitz (“Contractor”) performs as part of this contract for installed computer systems.
- 1.2 Orders and agreements are legally binding only if the Contractor signs them in writing according to the company rules, and they obligate the parties only to the extent indicated in the order confirmation.
- 1.3 The Customer’s general terms of business and terms of purchase are hereby rejected. The Contractor is not bound by them even if it does not reject them again when entering into a contract. The Customer’s terms of business and terms of purchase are hereby excluded, both for this legal transaction and the entire business relationship.
- 1.4 These GTC also apply as a framework contract for all additional orders and follow-up deliveries even if their application is not expressly agreed again.
- 1.5 All offers are nonbinding and are deemed invitations for the Customer to place an order.

### 2 Performance and inspection

- 2.1 Unless otherwise agreed, the Contractor shall perform the services under this agreement (“Performance Object”) at the computer system’s location or in the Contractor’s premises, at the Contractor’s discretion, during the Contractor’s normal business hours set forth in this agreement. Services performed outside the agreed normal business hours by way of exception and at the Customer’s request will be billed separately for a reasonable price unless the price for those additional services was agreed in writing in advance.
- 2.2 The Contractor may hire other people and companies to help them perform the services they owe. And the Contractor may assign to third parties any or all of its rights and obligations arising from this agreement. The Customer hereby consents to that transfer of rights beforehand. The Contractor shall notify the Customer of the transfer of rights without undue delay.
- 2.3 The Contractor shall perform the software support services forming the subject matter of this agreement according to the following scope:
  - **Information service:**  
The Contractor shall inform the Customer about new program statuses, available updates, program developments, etc.
  - **Hotline service:**  
The Contractor shall be available to the Customer during the Contractor’s “hotline hours” set forth in this agreement to give advice on problems that might arise in connection with the use of the software programs forming the subject matter of this agreement, and shall give the Customer the name of a point of contact.

If the same type of problem arises repeatedly, the Contractor may charge additional, reasonable consultation fees if the Contractor doesn't wish to take advantage of training programs for a fee.

- **Archiving and providing the software programs forming the subject matter of this agreement:**

The Contractor shall archive the software programs forming the subject matter of this agreement that it develops, in a form that is readable with a computer, as well as the documentation, to the extent necessary to meet the obligations under this agreement, and shall provide them to the Customer if necessary in accordance with the provisions of the contract on which the acquisition is based.

- **Update service:**

The Contractor shall provide the Customer with the program updates provided by the manufacturer, on a date that the Contractor shall determine. The program updates can contain corrections of errors and remedies for any program problems that appeared neither during the test run nor during practical application during the warranty period; or improvements to the scope of performance; or both.

- **Installing program updates:**

The Contractor shall support the Customer in importing or setting up the new program updates on the computer system forming the subject matter of this agreement, for a maximum of one development system and one productive system, whereby the Customer must import the update within six months. If the Customer fails to perform the update within six months, the Contractor may terminate the existing maintenance contract.

- **Handling problems:**

The Contractor shall handle problems arising within the scope of performance set forth in this agreement only if remote access using up-to-date technology is provided to the Contractor free of charge.

- **Software requirements:**

These are defined in this agreement.

- **Troubleshooting:**

An error that must be rectified has occurred if the software program forming the subject matter of this agreement exhibits behavior that deviates from the respective statement of work ("SOW")/documentation in the most recent valid version and the Customer can reproduce that behavior.

Notices of defect must be sent to the Contractor in writing. To allow any errors that occur to be examined more precisely, the Contractor shall provide the computer system it uses (and if systems are connected with other computers in an online network, the connection in question), software programs, logs, diagnosis documents, and data—to an adequate extent, for testing purposes, and at no charge—during the Customer's contractually agreed normal business hours, and shall support the Contractor. The Contractor shall cure within a reasonable period any errors it discovers for which it is to blame.

The Contractor is not required to do so, however, if that cure is hindered by one or more defects for which the Customer is responsible but does not rectify.

The error is cured through a software update or adequate workaround solutions.

### 3 Services not covered by the contract

- 3.1 Unless otherwise explicitly regulated in the contract, the Customer shall pay a separate fee for the costs for travel, travel time, and places of residence for anyone the Contractor commissions to perform the service.
- 3.2 If services are claimed without authorization, the Contractor may charge the Customer for the costs incurred at the rates that apply to the specific case.
- 3.3 Services resulting from changes to the operating system, hardware and/or changes to mutual program-dependent software components and interfaces not covered by the contract.
- 3.4 Individual program adaptations or reprogramming;
- 3.5 Program changes based on changes to statutory provisions.
- 3.6 The contractor is released from all obligations arising from this agreement if the Customer's staff or third parties make changes to the software programs forming the subject matter of this agreement without the Contractor's prior consent or the software programs are used in breach of contract or not in accordance with the contract purpose.
- 3.7 Curing errors caused by the Customer or third parties.
- 3.8 Loss or damage that the Customer or user causes directly or indirectly through their actions or neglected actions during operation.
- 3.9 Data conversions, recovery of data sets, and interface adaptations.
- 3.10 Installing the software programs forming the subject matter of this agreement.
- 3.11 Technical training.
- 3.12 Curing errors caused by improper operation by the Customer or its staff.
- 3.13 Adjusting printouts, forms, screen templates, etc.
- 3.14 Data imports or exports.
- 3.15 Data acquisition or setup or changing core or control data.
- 3.16 Interface adjustments for logs changed by third parties
- 3.17 Migration/porting to a system environment other than the one agreed in the contract (computer, operating system, database, interfaces).
- 3.18 Maintaining IT infrastructure (hardware, network, periphery, etc.).
- 3.19 Tuning measures.
- 3.20 Maintaining test systems at the Customer's place of business.

### 4 Prices, taxes, and fees

- 4.1 Prices are given in euros and do not include statutory sales tax or other fees. The Customer shall bear any fees incurred. The prices apply only to the given order. The prices are given "from the Contractor's registered office or branch office." The costs for program data carriers, documentation, and any contract fees will be billed separately.
- 4.2 If salary and material costs or other costs and charges increase after the contract is entered into, the Contractor may increase the contractually agreed lump sum amounts accordingly and charge the new amounts to the Customer beginning in the month after those increases occur.

The adjustment amount is based on the customary industry price increase according to the Austrian Wage Agreement for company employees who provide automatic data processing and information technology services; this agreement is available online on the homepage of the Austrian Economic Chamber, Technical Unit UBIT [business consulting, bookkeeping and information technology].

- 4.3 For library (standard) programs, the list prices apply that are valid on the day of delivery. For all other services, (organizational consulting, programming, training, conversion support, telephone consultation, etc.), the work expenditure will be charged at the rates valid on the day on which the service is rendered. Deviations from the time expenditure on which the contract price is based, but for which the Contractor is not responsible, will be billed according to actual time spent.
- 4.4 If one or more people commissioned by the Contractor must be present in person to execute the order, the Customer shall reimburse the actually incurred accommodation costs for everyone the Contractor commissions. And the Customer shall compensate the Contractor for the travel expenses incurred by its employees as follows: for railway travel, costs for first-class tickets; for air travel, airfare for economy-class tickets; and for travel by car, kilometer expenses amounting to the applicable official kilometer allowance for each kilometer driven.
- 4.5 The location of the computer system forming the subject matter of this agreement is set forth in this agreement. If the computer system is relocated, the Contractor may redefine the flat rate or prematurely terminate the contract.

## 5 Delivery date

- 5.1 The Contractor shall use reasonable efforts to respond to the Customer's inquiries within a reasonable period during the Contractor's contractually agreed normal business hours.
- 5.2 The Customer shall not withdraw or claim damages based on an exceedance of the envisaged deadlines.
- 5.3 The Contractor may make advance deliveries.
- 5.4 A service will be deemed accepted if any of the following occur: the Customer confirms acceptance; the installed delivery or service is put into operation at the Customer's place of business; the data carrier containing the software is handed over; or four weeks have elapsed since installation.

## 6 Electronic invoicing

- 6.1 All invoices will be sent electronically.

## 7 Payment

- 7.1 The Customer shall pay the Contractor's invoices 14 days or sooner after the invoice date, including sales tax and excluding deductions and charges.
- 7.2 The Customer shall pay in advance the agreed lump sum cost contributions for the contract year of part thereof.

- 7.3 Compliance with agreed payment deadlines is an essential condition for the Contractor rendering the service and performing the contract. If the Customer defaults on payment, the Contractor may discontinue the ongoing work and withdraw from the contract. The Customer shall bear all associated costs, damage, and loss of prospective profit.
- 7.4 If the payment is late, default interest amounting to 10% p.a. plus sales tax will be charged. If partial payments have been agreed and the Customer misses two consecutive installments, the Contractor may enforce default of due date and demand payment for all acceptances.
- 7.5 The Customer shall not withhold payments due to incomplete overall delivery, guarantee or warranty claims, or complaints.

## 8 Copyright and use

- 8.1 The Contractor is the exclusive holder of all rights to use and exploitation of the Performance Object. Those rights also include all performances, know-how, work results, and creations, including without limitation all works for the purposes of the Austrian Copyright Act (Urheberrechtsgesetz, UrhG), such as the Performance Object, texts, graphics, graphic and conceptual designs, databases, images, layouts, logos, ideas, concepts, and plans contained in the Performance Object.
- 8.2 Based on these conditions, the Contractor grants the Customer the revocable, non-exclusive, nontransferable right to use the Performance Object during the contract term.

## 9 Withdrawal right

- 9.1 The contract relationship assumes the software programs forming the subject matter of this agreement have been properly acquired and installed. The contract relationship begins when the contract is signed and is entered into for an indefinite period.
- 9.2 Either party may terminate this agreement in writing, that termination taking effect at the end of any contract year, if giving at least three months' notice (but each party shall not terminate before expiry of the 36th contract month from contract commencement).
- 9.3 If the software program forming the subject matter of this agreement is taken out of operation by the Contractor outside the minimum contract term, or destroyed, the contract relationship can be terminated under consideration of a three-month notice period. If this occurs, and the Contractor takes the software out of operation, the Contractor shall transfer the aliquot portion of the annual lump sum for the services not used into a bank account that the Customer shall specify.

## 10 Warranty; Maintenance; Modifications

- 10.1 The Contractor is not liable for the loss of data and/or programs insofar as the damage is caused by the Customer neglecting to perform data backups and thereby ensure that lost data can be recovered with an acceptable expenditure.

- 10.2 The Contractor guarantees the functionality and operational readiness of the services it renders exclusively as regulated in the offer. All statutory warranties of the Contractor are excluded. Notices of defect are valid, however, only if they affect reproducible defects and are made using written documentation within four weeks after the agreed service is delivered. If there are any defects, the Contractor shall either repair them or make a new delivery, at its discretion, within a reasonable period. If these measures are not suited to cure the defect, or two attempts at repair fail or are not carried out within a reasonable period, the Customer may reduce the fee or—if the defect is more than negligible—withdraw from the contract.
- 10.3 The Customer shall support the Contractor in detecting and curing the defect and allow the Contractor to inspect the documents revealing the specific circumstances of the defect's appearance. . Any reverse onus—the obligation of the Contractor to prove its lack of culpability for the defect—is excluded.
- 10.4 The Contractor may refuse to render the supplementary performance if the Customer has not fully paid the remuneration it owes for the adjustment but has no legitimate interest in withholding that remuneration in arrears.
- 10.5 The Contractor will not be liable for cases in which the Customer made changes to the services rendered by the Contractor unless those changes had no influence on the emergence of the defect.
- 10.6 If an investigation proves that the claimed defect is not allocable to the Contractor's obligation to be liable for defects and the Customer could have recognized this, a reasonable fee will be agreed for the expenses incurred for verifying and troubleshooting.

## 11 Liability

- 11.1 The Contractor shall be liable for damage if such damage can be proven to be attributed to a deliberate act or gross negligence on the part of the Contractor, within the framework of the legal provisions. Liability for minor negligence shall be excluded.
- 11.2 Compensation for consequential damages and financial losses, savings not realized, losses of interest, and damages from third-party claims against the Customer shall be excluded in any case, to the extent permitted by law.

## 12 Ban on poaching

- 12.1 During the parties' collaboration and for one year thereafter, the Customer shall not poach any of the Contractor's employees, or hire them without the Contractor's consent. Each time the Customer culpably breaches that obligation it shall pay liquidated damages amounting to one year's salary of the employee.

## 13 Data protection; Nondisclosure

- 13.1 The Contractor shall obligate its employees to comply with the provisions in accordance with § 15 of the Austrian Federal Data Protection Act (Datenschutzgesetz, DSG).

13.2 Each party shall use the documents, knowledge, and experience transferred to that party by the other exclusively for the purposes of this contract and shall not make them available to third parties unless they must be provided to third parties due to their purpose or are already known to the third parties. "Third party" does not refer to the assistants brought in to perform the contract, including without limitation freelance workers, sub-contractors, etc.

## 14 Electronic post for advertising purposes

14.1 The Customer hereby gives its revocable consent for the Contractor to use the Customer's contact data and the professional contact data of its employees (postal address, email address, fax number, and telephone number) exclusively for the Contractor's own consultation and advertising purposes; and for the Contractor to send the Customer current product information, newsletters, or both, in this manner. The Customer may withdraw that consent in writing or by email at any time.

## 15 Other provisions

15.1 Finding one or more provisions of this agreement to be ineffective, now or in the future, will not affect the rest of this agreement's content. The parties shall cooperate as partners to find a regulation that comes closest to the ineffective provisions.

## 16 Final provisions

16.1 Unless otherwise agreed, the legal provisions between fully qualified traders apply according to Austrian law even if the order is performed abroad. Any disputes will be settled by the court having subject-matter jurisdiction for the Contractor's registered office. For sales to consumers for the purposes of the Austrian Consumer Protection Act (Konsumentenschutzgesetz, KSchG), the preceding provisions will apply unless that act provides for other compulsory provisions.

16.2 If a party breaches material contract components, the other party may rescind the contract prematurely without notice.