

General Terms and Conditions of BOGA GmbH - Edition 04/2023

1. Applicability; Definition

1.1 All deliveries, services, orders and offers of BOGA to entrepreneurs shall be exclusively based on these General Terms and Conditions. They shall form an integral part of all contracts concluded by BOGA with its contracting partners (hereinafter referred to as "Contract Partners") for deliveries or services. They shall also apply to all future deliveries, services, orders or offers to or from the contract partner, even if they are not separately agreed once again.

1.2 The terms and conditions of business of the contractual partner or third parties shall not apply, even if we do not separately object to their validity in individual cases, unless they are terms and conditions of business of manufacturers. Even if we refer to a written document that contains or refers to the terms and conditions of the contractual partner or a third party, this shall not constitute an agreement to the validity of those terms and conditions.

1.3 "Products" within the meaning of this contract shall be all items to be transferred to the contractual partner in accordance with the contract, including software, also insofar as they are made available in an incorporeal form, e.g. by electronic means of transmission.

2. Offer, Offer Documents and Conclusion of Contract

2.1 A contract between the contractual partner and us shall only be concluded after our written order confirmation for the order placed with us by the contractual partner. Our written order confirmation shall be decisive for the scope of the delivery or service. The same shall apply to the placing of an order by BOGA with the contract partner.

2.2 Our offers shall be subject to change and non-binding for repeat orders.

2.3 The contractual partner shall be obliged to carefully check our offer/order for correctness and expediency.

2.4 We reserve the property rights and copyrights to all documents, illustrations, drawings and calculations provided to the contractual partner; they may not be used for purposes other than those stipulated in the contract and not be made accessible to third parties.

3. Object of the Contract - Contractual Products or Services

3.1 Our products are intended for exclusive use by entrepreneurs. If the contractual partner intends to deliver the products purchased from us to a consumer or to an entrepreneur who in turn supplies consumers with such products, he/she shall be obliged to inform us of this.

3.2 Products and goods ordered by BOGA GmbH from the contracting partner must have the corresponding properties specified in the order and the applicable technical documents. Deviations must be communicated before the order is placed.

3.3 Information on properties contained in our public statements, such as catalogues, brochures, advertisements, illustrations, advertising and price lists, shall only form part of the quality insofar as they have expressly become part of the contract.

3.4 We reserve the right to make customary technical changes, in particular improvements, up to the time of delivery, provided that only insignificant changes in the quality occur as a result and the contractual partner is not unreasonably impaired.

3.5 Information on quality shall not contain a guarantee (assurance) within the meaning of Section 276 (1) of the German Civil Code (BGB) and a warranty within the meaning of Section 443 of the German Civil Code (BGB) if we have not expressly assumed such a guarantee in writing.

3.6 Setup, installation or establishment of technical readiness for operation shall not be the subject of our delivery. These services can be provided by us on request, but shall remain subject to a separate agreement. At the request of the contractual partner, a separate agreement can be made regarding further services (advice, instruction, training).

4. Supplementary Software Provisions

4.1 Our products may also contain open source software (hereinafter "OSS") in whole or in part (hereinafter "OSS products"). In particular, OSS products shall be all mechanical, electrical and electronic components, assemblies and equipment of a computer or a system on which OSS or parts thereof are stored in digital form subject to one or more identical or different OSS licences, insofar as the product in its entirety does not only have the function of a removable data carrier.

4.2 OSS are computer programs or parts thereof that are licensed under a licence that at least (i) does not provide for royalties; (ii) permits distribution of the software in source or binary code; if the software is distributed in binary code only, the licence provides that the source code must be made available to the recipient; (iii) permits modifications to the software code, including all modifications and alterations; and (iv) permits or requires the licensee to also place the distributed software and/or its modifications and/or software developments derived therefrom under the original licence (hereinafter "OSS Licence").

4.3 We expressly draw the customer's attention to the fact that when OSS products are supplied, OSS shall be included free of charge and as a gift in the supply of the OSS product. Conclusion of the associated OSS licence agreement(s) shall be the business basis for the acquisition of an OSS product from us. The OSS licence shall govern the rights of use to the OSS, which shall also be granted to the customer free of charge and as a gift by the licensor(s). The following provisions shall apply with priority to the OSS, the OSS licence and the conclusion of the OSS licence agreement(s).

- We shall hereby deliver to the customer the licence offer(s) from the OSS licensor(s).
- The relevant licensor(s) for the respective OSS product as well as the licence conditions of the respective OSS can be found in the Conditions for OSS Software, available at <http://www.airwin.net/oss>. They are part of these Terms and Conditions and apply to the extent for the respective OSS product.
- Insofar as we are not the developers of the OSS ourselves, he/she shall only be the messenger of the licensor(s). The customer shall acknowledge that the OSS licensor(s) and thus his/her contractual partner(s) with regard to the OSS licence are not necessarily us. In such cases, acceptance of the licence offer by the customer shall establish new legal relationships with third parties in which we do not participate and for whose existence, continuance and scope we shall not be liable. If we are the OSS licensor at the same time, the customer shall receive the OSS licence from us as a gift and free of charge. If the licensor cannot be identified from the respective OSS licence agreement, it must be assumed that the OSS licence offer is made by an anonymous third party.
- Upon acceptance of the OSS licence offer(s), the customer shall be granted the right to use a reproduction of the OSS in accordance with the respective OSS licencing conditions (Special OSS Conditions). Without acceptance, its use shall not be permitted.

- The customer shall receive the OSS in the form of a pre-installed product already carried out for the customer on the OSS product. Additional source codes and build scripts shall be offered as downloads and shall be linked to each item or indicated by another source.

4.4 We expressly point out that only the OSS installed by us on the product is the result of a coordination of hardware and software in accordance with the product description. Unauthorised changes made by the customer to one of these components may impair the compatibility and functionality of the OSS product, but shall not constitute a defect in the OSS product.

5. Prices and Payment/Partial Delivery

5.1 All prices shall be in EURO ex works plus shipping, insurance and packaging costs and VAT valid at the time of the delivery including the original packaging.

5.2 We reserve the right, in the event of a delivery period of more than 4 months, to increase the prices in accordance with the cost increases that have occurred due to increases in personnel costs, working materials or material prices. If the increase amounts to more than 4.5% of the agreed price, the contractual partner, if he/she is not a merchant, shall have a right of withdrawal which must be exercised in writing within one week of receipt of the increase notification.

5.3 Our invoices shall be due for payment immediately within the respective payment period.

5.4 The statutory default rules shall apply. Interest on arrears for the year shall be 9 percentage points above the base interest rate for claims for payment in the case of legal transactions in which a consumer is not involved; otherwise 5 percentage points above the base interest rate. They shall be fixed higher if we prove a charge with a higher interest rate.

5.5 Retention of payments due to counterclaims of the contractual partner which are not recognised by us or which have not been legally established, shall not be permitted, nor shall offsetting against such be permitted.

6. Risk of Claims

6.1. If it becomes apparent after conclusion of the contract that our claim to counter-performance is jeopardised by the contractual partner's lack of ability to perform, the contractual partner shall provide security for its counter-performance in the absence of an obligation to perform in advance otherwise. If our contractual obligation consists of a work performance, services or delivery of a (common) product to be procured for the contractual partner which cannot be sold otherwise at any time, we may demand that the contractual partner provides advance performance in the amount of our procurement costs or, at our discretion, in the amount of 50% of his/her counter-performance and shall provide security for the remaining amount.

6.2. In all other respects, Section 321 of the German Civil Code (BGB) shall apply with the proviso that we may also refuse to perform if other claims arising from the same legal relationship within the meaning of Section 273 of the German Civil Code (BGB) are at risk.

6.3. If payment by instalments has been agreed, the entire remaining claim shall become due if the contractual partner is in default with at least two consecutive instalments in whole or in part. Deferment agreements shall become ineffective if the contractual partner is in default with a performance or if the prerequisites of Section 321 BGB (German Civil Code) occur with regard to a claim.

7. Delivery and Delivery Periods

7.1 Our obligation to deliver shall be subject to timely and correct delivery to ourselves. Deadlines and dates for deliveries and services promised by us shall always only be approximate, unless a fixed deadline or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

7.2 Delivery of products and goods to BOGA GmbH shall take place according to the date fixed on the contracting partner's order confirmation. Non-deliveries or partial deliveries must be notified in good time before the confirmed delivery date. The early notification must be made in such a way that it takes into account the usual market delivery time of the products.

7.3 Impediments to performance for which we are not responsible shall lead to a corresponding extension of the performance period. This shall apply in particular to lack or absence of self-delivery (see clause 1), force majeure, war, natural disasters, traffic or operational disruptions, impeded import, energy and raw material shortages, official measures and industrial disputes as well as breach of duties to cooperate or obligations of the contractual partner. We shall be entitled to withdraw from the contract if the impediment to performance continues for an unknown period of time and the purpose of the contract is at risk. If the impediment lasts longer than 2 months, the customer shall be entitled to withdraw from the contract with regard to the part not yet fulfilled, if he/she is not entitled to withdraw from the contract as a whole.

7.4 Extension of the performance period shall also occur as long as the parties negotiate a change in the performance or we submit a supplementary offer after assumptions in our offer that have become part of the contract turn out to be incorrect.

7.5 Compliance with our delivery obligation shall require the timely and proper fulfilment of the contractual partner's obligations.

7.6 The contractual partner shall ensure that the products can be properly delivered during the agreed delivery period. If the contractual partner does not take delivery of the products in due time, we shall be entitled, subject to all further rights, to grant him/her a reasonable period of grace, to dispose of the item otherwise after its expiry and to supply the contractual partner with a reasonably extended period of grace. Within the scope of a claim for damages, we may ask for 10% of the agreed price without value added tax as compensation without proof, unless it can be proven that only a significantly lower damage has been incurred. We reserve the right to assert an actually higher damage.

7.7 If we are in default with a delivery or service or if a delivery or service becomes impossible for whatever reason, our liability for damages shall be limited in accordance with Section 11 of these General Terms and Conditions of Delivery.

7.8 Moreover, in the event of a delay for which we are responsible, the contracting party shall only be entitled to assert further rights if a grace period of at least three weeks set by it after the occurrence of the delay has expired fruitlessly. If the contractual partner withdraws from a placed order without justification, we may claim 10% of the sales price for the costs incurred in processing the order and for lost profit, without prejudice to the possibility of claiming higher actual damages. The contractual partner shall reserve the right to provide evidence of non-existent or lower damages.

8. Place of Performance, Dispatch, Packaging, Transfer of Risk

8.1 The place of performance for all obligations arising from the contractual relationship shall be Soest, unless otherwise stipulated.

8.2 The method of dispatch and the packaging shall be subject to our dutiful discretion. Shipping packaging shall be charged separately.

8.3 The risk shall pass to the contractual partner at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or if we have assumed other services (e.g. shipping or installation). If the dispatch or handover is delayed due to a circumstance the cause of which lies with the contractual partner, the risk shall pass to the contractual partner from the day on which the delivery item is ready for dispatch and we have notified the contractual partner of this.

9. Acceptances

9.1 If acceptance is required by contract or by law, the following provisions shall apply.

9.2 At our request, partial acceptances shall be carried out for definable parts of the performance which can be used independently or for parts of the performance on which further services are based, if the parts of the performance to be accepted can be tested separately. If all parts of the service have been accepted, the last partial acceptance shall also be the final acceptance.

9.3 Partial or final acceptance shall be deemed to have been declared at the latest if the contractual partner does not refuse acceptance in writing, stating reasons, within a further period set by us in writing after delivery of the service and a reasonable inspection period (deemed acceptance).

9.4 If the delivery of hardware or standard software is part of the service requiring acceptance, we shall be entitled to charge the contractual partner for this, irrespective of any acceptance of the rest of the service.

10. Liability for Defects

10.1 The contractual partner shall be obliged to inspect the delivered products immediately after delivery and to notify us of existing defects in writing without delay (at the latest, however, after the expiry of 5 working days after delivery). Defects which are notified late, i.e. contrary to the aforementioned obligation, shall not be taken into account by us and are excluded from the warranty. Complaints made to field staff or third parties shall not constitute complaints in due form and time.

10.2 The contractual partner shall be obliged to provide us with the rejected delivery or parts thereof for the purpose of examining the complaint. In the event of culpable refusal, the warranty shall lapse.

10.3 In the event that a rectification of defects or replacement, delivery shall be made on the basis of a justified complaint, the provisions on delivery time shall apply accordingly.

10.4 Existence of a defect established as such and notified by effective notice of defect shall give rise to the following rights of the contracting party:

10.4.1 In the event of a defect, the contractual partner shall first have the right to demand subsequent performance from us. The right to choose whether a new delivery of the item or a rectification of the defect takes place shall be at our discretion.

10.4.2 In addition, we have the right, if an attempt at subsequent fulfilment fails, to carry out a new subsequent fulfilment, again at our own discretion. Only if the repeated supplementary performance also fails shall the contractual partner be entitled to withdraw from the contract or to reduce the purchase price.

10.5 The warranty period shall be one year from delivery. In any case, the contractual partner must prove that the defect was already present at the time of delivery.

10.6 We shall not be liable for natural wear and tear.

10.7 In the event of justified withdrawal by the contracting party, we shall be entitled to demand reasonable compensation for the use made of the products by the contracting party until rescission. This compensation for use shall be determined on the basis of a four-year total period of use, with an appropriate deduction for the impairment due to the defect that led to the withdrawal.

11. Liability for Damages due to Fault

11.1 Our liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited in accordance with the provisions of Section 11, insofar as fault is relevant in each case.

11.2 We shall not be liable:

11.2.1 in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents;

11.2.2 in the event of gross negligence on the part of our non-managerial employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations.

11.3 Insofar as we are liable for damages on the merits, this liability shall be limited to damages which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen taking into account the circumstances of which we were aware or which we should have been aware when exercising due care. Indirect damage and consequential damage which are the result of defects in the delivery item shall also only be eligible for compensation insofar as such damage is typically to be expected when the delivery item is used as intended.

11.4 In the event of liability for simple negligence, our liability to pay compensation for damage to property or personal injury shall be limited to the invoice amount of the relevant delivery per case of damage, even if this involves a breach of material contractual obligations.

11.5 The above exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.

11.6 Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.

11.7 The restrictions of Section 11 shall not apply to liability due to intentional conduct, due to injury to life, body or health or according to the Product Liability Act.

12. Retention of Title

12.1 Delivered products shall remain our property until all our claims against the contractual partner arising from the business relationship have been fulfilled. In the event of behaviour contrary to the contract on the part of the contractual partner, in particular in the event of default in payment, we shall be entitled to take back the products after withdrawal and the contractual partner shall be obliged to surrender the products.

12.2 Processing or transformation of the products by the contractual partner shall always be carried out for us. If delivery items are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivery items to the other processed items at the time of processing.

12.3 The contractual partner shall be entitled to resell the delivery items in the ordinary course of business to resellers outside a current account relationship; however, he/she shall already now assign to us all claims in the amount of the purchase price agreed between us and the contractual partner (including value added tax) which accrue to the contractual partner from the resale, irrespective of whether the delivery items are resold without or after processing. The contractual partner shall be authorised to collect these claims after their assignment. Our authority to collect the claims ourselves shall remain unaffected; however, we undertake not to collect the claims as long as the contracting party duly meets his/her payment obligations and is not in default of payment. However, if this is the case, we may demand that the contractual partner discloses the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

12.4 The contractual partner may neither pledge the delivery items nor assign them as security prior to the transfer of ownership to him. In the event of seizure or confiscation or other dispositions by third parties, the contractual partner must notify us immediately and provide us with all information and documents required to protect our rights. Enforcement officers or a third party must be informed of our ownership. We undertake to release the securities to which we are entitled at the request of the contractual partner insofar as the value exceeds the claims to be secured by more than 20%, insofar as these have not yet been settled. Assertion of our rights from the retention of title shall not release the contractual partner from his/her contractual obligations. The value of the products at the time of repossession shall only be credited against the existing debt.

13. Export Clause

The contractual partner shall be solely responsible for compliance with export regulations. We shall not be obliged to ship products to places for which export restrictions apply.

The contractual partner is aware that there are restrictions with regard to re-exporting the delivery items and that official approvals may be required. Special provisions of the US Department of Commerce shall apply to re-exports of certain delivery items from the country of origin USA. These provisions shall also apply if certain components originating in the USA are integrated in the delivery item. If the contractual partner intends to re-export delivery items from the country to which we have delivered according to the contract, he/she shall be obliged, in addition to informing us accordingly, to obtain information from the competent authorities as to the actual and legal conditions under which this is possible and permissible. There shall be no claims against us.

In the event of a violation, the contractual partner shall indemnify us against claims of third parties. If we are heard by the authorities due to a violation of export law for which the contractual partner is responsible, the contractual partner shall be obliged to provide us with comprehensive information about the delivery/continued delivery of our products.

14. Suspension of the Statute of Limitations during Negotiations

Suspension of the statute of limitations of claims of the contractual partner during negotiations shall only occur if we have entered into negotiations in writing. Suspension shall end 3 months after our last written statement.

15. Place of Jurisdiction/Choice of Law

15.1 The place of jurisdiction for any disputes arising from the business relationship between us and the contractual partner shall be Soest. Soest shall be the exclusive place of jurisdiction for actions against us. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

15.2 The relations between us and the contracting party shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Products of 11 April 1980 (CISG) shall be excluded.

16. Severability Clause / Written Form

16.1 Insofar as the contract or these General Terms and Conditions contain loopholes, those legally effective provisions shall be deemed agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions if they had known about the loophole.

16.2 Supplements and amendments to the agreements made, including these General Terms and Conditions of Business, shall be in writing in order to be effective. With the exception of managing directors or authorised signatories, our employees shall not be entitled to make verbal agreements deviating from this. Transmission by telefax shall be sufficient to comply with the written form requirement; otherwise, transmission by telecommunication, in particular by e-mail, shall not be sufficient.

16.3 Please note: Our **data protection regulations** apply, they are available at <http://www.airwin.net/kontakt/datenschutz>.

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