

General Terms & Conditions of Delivery for BOGA GmbH – Domestic Purchases – Edition 05/2016

1. Applicability; definition

1.1 All deliveries, services and offers of BOGA to business operators shall be subject exclusively to the present General Terms & Conditions, which shall form an integral part of all contracts which BOGA concludes with its contract partners (hereinafter referred to *inter alia* as "Purchasers") for deliveries and services. The said Terms shall also apply to all future deliveries, services or offers to or from the Purchaser, even if they (the Terms) have not been separately re-agreed.

1.2 The terms and conditions of the Purchaser or third parties shall not be applicable, even if we do not specifically reject their applicability in an individual case, unless they are the terms and conditions of manufacturers. Even if we refer to a letter which includes or alludes to the terms and conditions of the Purchaser or a third party, this shall not constitute consent to the applicability of such terms and conditions.

1.3 The term "goods", within the meaning of this agreement, shall comprise all the items to be shipped under contract to the Purchaser, including software, even if said items are not in physical form, e.g. supplied by electronic transmission.

2. Offer, offer documents and conclusion of contracts

2.1 A contract between us and the Purchaser shall only come into being as of our written confirmation of the order placed with us by the Purchaser. The scope of the delivery or service shall be as stipulated in our written order confirmation.

2.2 Our offers shall be without obligation and without binding effect for any repeat orders.

2.3 The Purchaser shall be obliged to check our offer carefully with regard to its correctness and fitness for purpose.

2.4 We reserve proprietary rights and copyrights to all the documents, illustrations, drawings and calculations supplied to the Purchaser. Said items may not be used for other than the contractually defined purposes or made accessible to third parties.

3. Subject matter of agreement: goods or services

3.1 Our goods are intended exclusively for use by business operators. If the Purchaser intends to deliver goods obtained from us to a consumer or a business operator who in turn supplies consumers with such goods, the Purchaser shall be obliged to inform us of same.

3.2 Statements made about product properties in our public utterances, such as catalogues, brochures, advertisements, illustrations, promotions and price lists, shall only pertain to quality or condition if they have expressly been made an integral part of the contract.

3.3 We reserve the right to make the technical modifications customary for the trade until the time of delivery, in particular improvements, if this only causes minor changes to quality or condition and there is no unreasonable detriment to the Purchaser.

3.4 Statements about quality or condition shall not involve a warranty (assurance) within the meaning of section 276 (1) BGB (German Civil Code) and a warranty within the meaning of section 443 BGB, unless we have expressly assumed such a warranty.

3.5 Setting up, installation or the establishment of technical operational readiness shall not form part of our delivery service. These services can be provided on request, but only on the basis of separate written agreement. A separate agreement can, on request by the Purchaser, be concluded for further services (advisory, instruction, training courses) .

4. Supplementary provisions for software

4.1 Our goods can also contain Open Source Software in complete or partial form (hereinafter: "OSS") ("OSS Products"). OSS Products are, in particular, all mechanical, electrical and electronic components, modules and equipment of a computer or a system on which OSS or parts thereof are stored in digital form, use of which is subject to one or more than one identical or different OSS licence, except where the product, considered in its entirety, has the function only of a removable storage device.

4.2 OSS are computer programs or parts thereof which are subject to a licence which at least (i) does not provide for licence fees; (ii) permits the transfer of the software in source or binary code; if the software is transferred only in binary code, the licence provides for the source code to be made accessible to the recipient; (iii) permits modifications to the software code, including all forms of processing and conversion; and (iv) permits or obliges the licensee to place the transferred software and/or its modifications and/or software developments resulting therefrom under the original licence as well (hereinafter: "OSS Licence").

4.3 We expressly advise the Purchaser that in the case of delivery of OSS Products the OSS is included in the delivery free of charge and as a gift. The conclusion of the pertinent OSS licensing agreement(s) is the commercial basis for the purchase of an OSS Product from us. The OSS Licence regulates the usage rights to the OSS, which are granted to the Purchaser, also free of charge and as a gift, by the licensor. The regulatory provisions below apply, with priority effect, to the OSS, the OSS licence and the conclusion of OSS licensing agreement(s):

- We herewith supply the Purchaser with the licence offer(s) of the licensor(s) of the OSS.
- The licensor(s) relevant to the particular OSS Product and the licensing conditions for the respective OSS can be found in the conditions for OSS Software, accessible at <http://www.boga.de/oss>. They form part of the present Terms & Conditions and apply in full to the respective OSS Product.
- In cases where we are not the developer of the OSS, the developer is only the stand-in for the licensor(s). The Purchaser takes note that we are not necessarily the OSS licensor(s) and thus its contract partner(s) concerning the OSS Licence. In these cases, as of the time the Purchaser accepts the licence offer, new legal relationships to other persons are established, of which we form no part and for the existence, continued existence and scope of which we accept no liability. Insofar as we are at the same time the OSS licensor, the Purchaser receives the licence from us free of charge and as a gift. If the licensor is not identifiable from the particular OSS licensing agreement, it must be assumed that the offer of an OSS licence is that of an anonymous third party.
- As of acceptance of the offer of an OSS Licence, the Purchaser receives the right to use a reproduction of the OSS in accordance with the relevant conditions of the OSS Licence (special OSS conditions) .
- The Purchaser receives the OSS in the form of a pre-installation on the OSS Product, already carried out for the Purchaser. Additional source texts and build scripts are offered per

download, with links to each article, or alternatively a further source is stated.

4.4 We expressly advise 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. Arbitrary modifications by the Purchaser to one of these components may compromise the compatibility and operational capability of the OSS product, but do not represent a defect in the OSS Product.

5. Prices and payment / Partial delivery

5.1 All prices shall be understood to be in euros ex works plus shipping, insurance and packing costs and the output VAT effective at the time of delivery, including original packaging.

5.2 We reserve the right, in the case of a delivery time of more than 4 months, to raise prices in line with any cost increases that have occurred due to rises in personnel costs and increases in equipment and material prices. If the increase is more than 4.5% of the agreed price, the Purchaser shall have a right of withdrawal, if he is not a commercial operator, which must be exercised within one week of receipt of the notification of increase.

5.3 Our invoices shall be due for immediate payment within the particular payment period.

5.4 The statutory rules for default shall apply. We charge interest on default at 9% p.a. above the effective base rate set by the European Central Bank. The rate will be set higher if we provide proof of a detriment requiring a higher interest rate.

5.5 It shall be permissible neither to withhold payments on grounds of counter-claims by the Purchaser which are not recognised by us or established at law, nor to offset such claims against ours.

6. Claims at risk

6.1. If it becomes apparent, after conclusion of a contract, that our claim to payment in return is at risk because of the Purchaser's inability to pay, the Purchaser will have to provide security for its payment, except when it is obliged in any case to pay in advance. If our contractual obligation is to provide work performance, a service or the delivery of a saleable (common) article which cannot otherwise be procured by the Purchaser at any preferred time, we shall be able to require the Purchaser to pay in advance an amount which covers our acquisition costs or, at our option, 50% of the amount the Purchaser is due to pay and provide security for the balance.

6.2. In other respects section 321 BGB shall apply, subject to the proviso that if other claims of ours are at risk in the same legal relationship, we may, as laid down in section 273 BGB, refuse to render our performance.

6.3. If payment by instalment has been agreed, all the remaining instalments shall become due for payment, if the Purchaser is wholly or partially in default with at least two consecutive instalments. Extension agreements shall become invalid if and when the Purchaser is in default with a payment or if the conditions laid down in section 321 BGB with reference to a claim for payment are present.

7. Delivery and time of delivery

7.1 Our delivery obligation is subject to our being supplied correctly and in due time ourselves. The delivery dates and periods indicated by us apply in every case only as approximations, unless a fixed date or a fixed period has been promised or agreed. If shipment has been agreed, the delivery periods and delivery dates shall apply to the time the goods are handed over to the forwarder, the carrier or other third party commissioned to carry out the transport.

7.2 Hindrances to performance for which we are not responsible shall lead to a corresponding extension of the delivery period. This shall apply in particular to failure by our suppliers to deliver correctly or at all (see subsection 7.1), force majeure, war, natural disasters, disruptions to traffic or business operations, restrictions on imports, energy and raw material shortages, measures by public authorities and industrial action; also to a breach of the Purchaser's cooperation obligations or responsibilities. We shall be entitled to withdraw from the contract if the hindrance to performance continues for an indeterminate period and the contractual purpose is placed at risk. If the hindrance last longer than 2 months, the Principal shall be entitled to withdraw from the contract in respect of the still unfulfilled part thereof, unless the Principal has a right of withdrawal under the terms of the contract as a whole.

7.3 There shall also be an extension of the period for performance for as long as the parties are negotiating on an alteration to required performance, or if we submit an supplementary offer after assumptions made in our offer, which have become an integral part of the agreement, have proved to be incorrect.

7.4 The fulfilment of our delivery obligation shall be conditional on the Purchaser's timely and correct fulfilment of its obligations.

7.5 The Purchaser shall ensure that the goods can be delivered correctly at the agreed delivery time.

If the Purchaser does not take delivery of the goods at the correct time, we shall be entitled, having reserved all further rights, to set the Purchaser a reasonable period of grace, to effect other disposal of the goods after expiry of the said period, and to deliver to the Purchaser after a reasonably extended additional period. In the context of a claim for damages we can demand 10% of the agreed price, excluding output VAT, as compensation, without needing to provide evidence, unless a substantially smaller damage or loss has verifiably been incurred.

7.6 If we are in default with a delivery or a service, or if the delivery or service becomes, for whatever reason, impossible to perform, our liability for damages shall be limited as provided for in section 11 of these General Terms & Conditions of Delivery.

7.7 The Purchaser shall otherwise only be entitled to assert further rights in the event of a delay for which we are responsible, if a period of grace which it has set after the occurrence of default has been exceeded by at least three weeks without avail. If the Purchaser, without entitlement thereto, withdraws from an order which has been placed, we shall be able, notwithstanding the possibility of asserting a claim for an actually greater damage or loss, to require payment of 10% of the selling price in compensation for the costs incurred through processing of the order and for loss of profit. The Purchaser shall be entitled to provide evidence that no, or less, damage or loss has occurred.

8. Place of performance, shipping, packing, transfer of risk

8.1 The place of performance for all obligations arising from the contractual relationship shall be Soest, except where decided otherwise.

8.2 The method of shipment and the packing shall be subject to our best judgment.

8.3 The risk of the goods shall pass to the Purchaser as of the handing over of the delivery item (the exact time being decided by the start of the loading process) to the forwarder, carrier or other third party designated for the performance of the shipping. This shall also apply in the case of partial deliveries or when we have assumed other services (e.g. shipping or installation). If the shipping or the handover is delayed due to circumstances for which the Purchaser is responsible, the risk shall be transferred to the Purchaser as from the date at which the delivery item is ready for dispatch and we have given the Purchaser notice thereof.

9. Acceptances

9.1 In cases where acceptance is necessary under the law or the contract, the following provisions shall apply.

9.2 At our request, part acceptances must be carried out for separable parts of the performance which can be used independently of each other, or for parts of the performance on which other services are based, if the performance parts to be accepted can be inspected separately. When all the performance parts have been accepted, the last acceptance shall at the same time be the final acceptance.

9.3 A part or final acceptance shall be deemed to have been declared if, after delivery of the performance and a reasonable period for inspection, the Purchaser does not refuse acceptance in writing, with statement of reasons, within a deadline set by us in written form (deemed or notional acceptance).

9.4. If the performance requiring acceptance also includes the delivery of hardware or standard software, we shall be entitled to charge same to the Purchaser independently of an acceptance of the rest of the performance.

10. Liability for defects

10.1 The Purchaser shall be obliged to inspect the delivered goods immediately after delivery and inform us in writing without delay of any existing defects (but not later than after expiry of 5 working days after delivery). Defects which are complained about late (i.e. contrary to the above obligation) will not be considered by us and will be excluded from warranty. Complaints which are made to field staff or third parties shall not constitute complaints made in correct form and due time.

10.2 The Purchaser shall be obliged to place the delivery complained about, or parts thereof, at our disposal for the purpose of investigating the complaint. If the Purchaser wilfully or negligently refuses to do so, the warranty shall lapse.

10.3 in the event that a justified complaint is followed by rectification or replacement, the provisions regulating delivery time shall apply with any necessary modifications.

10.4 The presence of a defect which has been found to be such and of which notice has effectively been given shall establish the following rights for the Purchaser:

10.4.1 In the event of a defect being present, the Purchaser shall initially have the right to require supplementary performance from us. We shall have the right to decide, at our own discretion, whether the goods will be redelivered or the defect remedied.

10.4.2 We shall also have the right to decide, at our own choice, to render repeat supplementary performance if an attempt to render same is unsuccessful. Only if and when the repeat supplementary performance fails shall the Purchaser have the right to withdraw from the contract or reduce the purchase price.

10.5 The warranty period shall be one year as from delivery. The Purchaser must in every case prove that the defect was already present at the time of delivery.

10.6 We shall have no liability in cases of normal use and wear and tear.

10.7 In the event of the justified withdrawal from the contract by the Purchaser we shall be permitted to require reasonable compensation for the uses made of the products by the Purchaser up to the time of rescission of the contract. This usage compensation shall be calculated on the basis of a four-year useful life, provision being made for a reasonable deduction allowing for the defect which has led to the withdrawal.

11 Liability for payment of damages in case of fault

11.1 Our liability for the payment of damages, for whatever legal reasons, in particular impossibility of performance, default on delivery, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and unlawful acts, in cases where culpability is at issue, shall be limited as set forth in this section 11.

11.2 We shall not be liable

11.2.1 in case of simple negligence by our corporate bodies, legal representatives, employees or other agents;

11.2.2 in case of gross negligence by any of our non-executive employees or other agents in matters which do not concern a breach of obligations that are material to the contract.

11.3 In cases where we are liable on the merits of the matter according to subsection 11.2, this liability shall be limited to the damage or loss which we foresaw at the time the contract was concluded as the possible consequence of a breach of contract, or of which we should have been aware and, if exercising the care customary for the trade, should have foreseen. Indirect damage or loss and consequential loss resulting from defects in the delivery items shall in addition only be liable for compensation if such damage or loss is typically to be expected on the basis of the delivery items being used in accordance with their intended purpose.

11.4 In the case of liability for simple negligence, our obligation to provide compensation for damage to property or injury to person shall be limited, per case of damage, to the invoice amount for the delivery concerned, even if the breach is of obligations material to the contract.

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

11.6 In cases where we provide technical information or advisory services and this information does not fall within the range of the contractually agreed service performance we are required to render, this shall be done free of charge and to the exclusion of any liability.

11.7 The limitations laid down in this section 11 shall not apply to liability on grounds of

premeditated acts or injury to life, person or health under the German product liability act.

12. Retention of title

12.1 Goods delivered shall remain our property until all our claims against the Purchaser arising from the business relationship have been met.

12.2 The processing or remodelling of the goods shall in every case be done on our behalf. If the delivery items are processed together with other items which do not belong to us, we shall acquire co-ownership of the new article in proportion to the value of the delivery items, at the time of processing, as compared with the other items that are processed.

12.3 The Purchaser shall be entitled to resell the delivery items to resellers in the course of ordinary business outside a current account relationship; the Purchaser now however herewith assigns to us all the claims in the amount of the purchase price agreed between us and the Purchaser (including output VAT) which accrue to the Purchaser from the resale, independently of whether the delivery items are sold before or after processing. The Purchaser shall be authorised to collect these claims after they have been assigned. This shall be without prejudice to our entitlement to collect the claims ourselves; we undertake however not to collect the claims for as long as the Purchaser meets its payment obligations correctly and is not in default thereon. If however this is the case, we may require the Purchaser to make the assigned claims and the relevant debtors known to us, to provide the information necessary for collection, to hand over the pertinent documents and to inform the debtors (third parties) of the assignment.

12.4 The Purchaser may neither pledge the delivery items before title has passed to it nor assign them as collateral. The Purchaser must inform us without delay in the case of garnishments or confiscation or other disposals by third parties and provide us with all the information and documents which are necessary for us to be able to protect our rights. Enforcement officers and/or a third party must be referred to our ownership or title. We herewith undertake to release the securities due to us, on request by the Purchaser, in the event of the value exceeding by more than 20% the value of the claims to be secured, insofar as the claims have not yet been settled. The assertion of our rights under the retention of title shall not release the Purchaser from its contractual obligations. The value of the goods at the time of their being taken back shall be offset only against the existing debt.

13. Export clause

The Purchaser shall have sole responsibility for compliance with export regulations. We shall not be obliged to ship goods to places where export restrictions apply.

The Purchaser is aware that there are restrictions related to a re-export of the delivery items and that official permits may be necessary. Special regulations of the US Department of Commerce apply to re-exports of specific delivery items from the USA as the country of origin. These regulations also apply if specific components which originate in the USA are integrated in the delivery item. If the Purchaser intends to re-export delivery items from the country to which they have been delivered by us under contract, it shall be obliged not only to inform us accordingly but also to obtain information from the responsible authorities on the actual and legal conditions subject to which this will be possible and permissible. There shall be no claims on us in this respect.

The Purchaser shall indemnify us against any claims resulting from breach of the above. If we are questioned by the authorities with reference to a violation of export law for which the Purchaser is responsible, the Purchaser shall be obliged to give us comprehensive information on the delivery and/or redelivery of our goods.

14. Suspension of time-barring in case of negotiations

A suspension of the time-barring of claims by the Purchaser in the case of negotiations shall only take place if we have agreed in writing to enter negotiations. The suspension shall end 3 months after our most recent written statement.

15. Court with jurisdiction / Governing law

15.1 The courts at Soest shall have jurisdiction for any and all disputes arising from the business relationship between us and the Purchaser. The courts at Soest shall have sole jurisdiction for lawsuits against us. This provision shall be without prejudice to mandatory statutory provisions on courts with exclusive jurisdiction.

15.2 The relations between us and the Purchaser shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.

16. Severability clause / Written form

16.1 If the contract or these General Terms & Conditions have regulatory omissions, the legally valid provisions which the contracting parties would have agreed in light of the commercial objectives of the contract and the purpose of these General Terms & Conditions if they had been aware of the regulatory omission shall be deemed to have been agreed until such time as the omissions have been repaired.

16.2 Additions and alterations to concluded agreements, including these General Terms & Conditions, shall only be effective if in written form. With the exception of managing directors or authorised agents, our employees shall not be entitled to conclude oral agreements of other effect. Transmission by telefax shall be deemed to observe written form, but other forms of telecommunication, and in particular email, shall not suffice.

16.3 Note: Our data protection rules, which can be accessed at <http://www.boga.de/kontakt/datenschutz>, shall apply.

Effective: May 2016