GENERAL TERMS AND CONDITIONS
for the sale and delivery of consultation services, organizational management, programming services, and utilization rights for works related to software products

Date: September 15th 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   The object of an order (the "Performance Object") can be:
- Working out organizational concepts
- Global and detailed analyses
- Creating individual programs
- Delivering library (standard) programs
- Acquiring rights to use software products
- Acquiring rights to use works
- Training the operating personnel
- Cooperating during commissioning (conversion support)
- Consultation
- Program maintenance
- Cloud hosting and operation management
- Creating program data carriers
- Other agreed services

2.2 Individual organizational concepts and programs are developed according to the type and extent of the information, documents, and resources that the Customer shall provide in their entirety. This also includes suitable test data and testing options to the necessary extent, which the Customer shall provide promptly, during the contractually agreed normal working time, and at its expense. If the Customer is already working in real-time operations in the testing environment provided for the test, the Customer shall be responsible for the security and quality of the real data.

2.3 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.

2.4 Individual programs are created based on the written statement of work ('SOW') that the Customer shall provide or that the Contractor shall develop for a fee based on the documents and information that the Customer shall provide. The Customer shall inspect the SOW to ensure it is correct and complete, in which case the Customer shall give it a mark of approval. Change requests made later can lead to separate agreements on deadline and price.

2.5 If software is individually created or a program is adapted, the Customer must accept the program package in question no later than four weeks from delivery. The Customer shall confirm this in a log. (Check for correctness and completeness using the SOW accepted by the Contractor using the test data provided, which are listed under item 2.2). If after four weeks the Customer has not approved the program or given written notice of any material defects in the software, the delivered software will be deemed accepted as of the last day of those four weeks. If the Customer uses the software in real-time operations, it is deemed accepted in any case. The Customer shall adequately document any defects appearing that constitute deviations from the SOW agreed in writing and give written notice of those defects to the Contractor, who shall use reasonable efforts to cure them as quickly as possible. If existing material defects have been reported in writing, real-time operations cannot commence or be continued and a new acceptance will be required after the defects are cured. The Customer shall not reject the software due to insignificant defects.

2.6 By ordering library (standard) programs, the Customer confirms it is aware of the programs' scope of performance.

2.7 If it becomes apparent during the work that the order cannot be actually or lawfully executed according to the SOW, the Contractor shall notify the Customer thereof without undue delay. If the Customer does not change the SOW accordingly or create a condition that would make performance possible, the Contractor may reject that performance. If performance is impossible because the Customer is guilty of noncompliance or changes the SOW subsequently, the Contractor may withdraw from the contract. The Customer shall refund the costs and expenses incurred for the Contractor's work and any dismantling expenses.

2.8 Any shipment of one or more of program data carriers, documentation, or SOWs will be at the Customer's risk and expense. And training and explanations beyond that extent which are requested by the Customer will be billed separately. Insurance will be taken out only at the Customer's request.

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 Program changes based on changes to statutory provisions.

3.5 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.

3.6 Curing errors caused by the Customer or third parties.

3.7 Loss or damage that the Customer or user causes directly or indirectly through their actions or neglected actions during operation.

3.8 Data conversions, recovery of data sets, and interface adjustments (unless otherwise explicitly regulated in the contract).

3.9 Curing errors caused by improper operation by the Customer or its staff.

3.10 Data imports and exports (unless otherwise explicitly regulated in the contract).

3.11 Data acquisition or setup or changing core or control data (unless otherwise explicitly regulated in the contract).

3.12 Interface adjustments for logs changed by third parties

3.13 Migration/porting to a system environment other than the one agreed in the contract (computer, operating system, database, interfaces).

3.14 Maintenance of IT infrastructure (hardware, network, periphery, etc.), unless otherwise explicitly regulated in the contract.

3.15 Tuning measures.

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.

5   Delivery date; Acceptance; Partial delivery

5.1   The Contractor shall use reasonable efforts to comply with the agreed dates for performance (completion) as exactly as possible.

5.2   The intended dates of performance can be complied with only if the Customer gives the Contractor all the necessary work and documents on the dates the Contractor specifies — especially the SOW that the Customer shall accept in accordance with item 2.3 — and meets its duty to cooperate to the necessary extent.
Delivery delays and cost increases caused by incorrect, incomplete or retroactively altered specifications and information, or by any documents provided, are not the Contractor's fault and will not cause the Contractor to enter default. The Customer shall bear any additional costs this incurs.

5.3   The Contractor may make partial deliveries and issue partial invoices for orders entailing multiple units or programs.

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 payment terms established for the overall order apply mutatis mutandis to partial invoices.

7.3   For orders entailing multiple units (such as programs, trainings, or implementation in stages), the Contractor may issue an invoice after delivering each unit or rendering each service.

7.4 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.

7.5 If the Customer's payment is late, the Customer shall pay statutory default interest plus sales tax. 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.

7.6 The Customer shall not withhold payments due to incomplete overall delivery, guarantee or warranty claims, or complaints.

8 Copyright and use; Further use of measurement data

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, nonexclusive, nontransferable right to use the Performance Object during the contract term.

8.3 The Contractor may use all the technical data it processes for the Customer as part of the Performance Object (such as measurement data and wheelset data) exclusively to enhance and improve the Performance Object. The Contractor may use those data in anonymized form, at no charge, and without additional written consent from the Customer. The purpose expressly includes using the technical data to form machine learning systems (algorithms)—through supervised and unsupervised learning, for example. All rights arising through the use of the technical data remain with the Contractor, and item 8.1 applies mutatis mutandis.

9 Withdrawal right

9.1 If an agreed delivery date is exceeded due to the Contractor' sole culpability or unlawful actions, and material parts of the agreed service remain unperformed even after a reasonable grace period granted for their performance expires, and the Customer is not at fault, the Customer may withdraw from the relevant contract in writing.

9.2 If the Customer is to blame for delays in the rendering of services, the Contractor may withdraw from the contract. If the Contractor withdraws for that reason, the Customer shall reimburse the Contractor for any costs it has incurred up to that point.

9.3 If force majeure events, labor conflicts, strikes, natural disasters, trade embargos, transport blockages, armed conflicts, diseases (including without limitation epidemics and pandemics), or other circumstances occur that are beyond the Contractor's control, the Contractor will not be required to meet its delivery obligation or may redefine the agreed delivery period.

9.4 The Customer shall not cancel except with the Contractor's written consent. If the Contractor consents to a cancellation, it may charge a cancellation fee amounting to 30% of the order value for the entire project still not billed, in addition to the services rendered and costs incurred.

10 Warranty; Maintenance; Modifications

10.1 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 only if they affect reproducible defects and are made within four weeks after the agreed service is delivered (or for individual software, after the program is accepted in accordance with item 2.4). If a justified defect claim is made, the Contractor shall cure the defect(s) within a reasonable period and the Customer shall allow the Contractor to perform any actions required to properly examine and cure the defect(s). Presumption of defect in accordance with §924 of the Austrian General Civil Code (Allgemeines bürgerliches Gesetzbuch, ABGB) is excluded.

10.2 Until the agreed service is handed over, the Contractor shall perform at its expense any corrections and supplements that appear necessary due to organizational and program defects for which the Contractor is responsible.

10.3 The Contractor shall bill the Customer for any assistance, misdiagnosis, faults, and troubleshooting for which the Customer is responsible, as well as other corrections, changes, and supplements. This also applies to the remedying of defects if program changes, additions, or other interventions have been undertaken by the Customer themselves or by third parties.

10.4 The Contractor also accepts no liability for errors, malfunctions or damage attributable to improper operation; modified operating system components, interfaces and parameters; the use of unsuitable organizational means or data carriers, if any have been prescribed; anomalous operating conditions (especially deviations from the installation conditions or storage conditions); and transport damage.

10.5 The Contractor gives no guarantee for programs that are subsequently modified by the Customer's own programmers or by a third party.

10.6 If the assignment aims to modify or supplement existing programs, the warranty relates to the modification or supplement. This will not revive the warranty for the original program.

11 Liability

11.1 The Customer 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 Customer, 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 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 purpose of the Performance Object and in accordance with the provisions of these GTC 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 Contractor's assistants brought in to perform the contract, including without limitation freelance workers, subcontractors, and commissioned processors, particularly BOOM Software GmbH, a fully-owned subsidiary of the Contractor, with registered office at Alter Stadthafen 3a, 26122 Oldenburg, the Federal Republic of Germany, registry court: Oldenburg Commercial Court, Register Number: HRB 208366.

13.3 The Contractor believes it is important to constantly improve and enhance its software, so it processes technical data that enable reports on the Customer's use of the software within the scope of the software usage agreement. Those data are processed exclusively to perform internal processes such as troubleshooting, product improvement, enhancement, data analysis (including user behavior in anonymized form), tests, research work, and collecting statistics. This should also guarantee the security of the software.
The data contained should enable reports on the functionality and use of the software without a personal reference. It cannot be ruled out, however, that data might be processed that bring about a personal reference in individual cases. The Contractor may collect the following data: name of the Customer, name of the Customer's employee, contact data for the Customer's employee, usage history of the software, problem description, and measurement data. The Contractor shall irretrievably erase the personal reference of the processed data after troubleshooting has been completed, if not before. The legal basis is the consent of the Customer granted through their use of the software and the existence of an overriding legitimate interest of the Contractor. The Customer may withdraw its consent at any time without giving reasons. Revoking consent will not affect the lawfulness of the data processing already performed.

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 either party breaches material contract components, the other party may rescind the contract prematurely without notice.