

# Terms of Use On-Premise of the BOC Group

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## 1. Scope of Application

1.1.1 The following Terms of Use On-Premise form the underlying regulatory framework for all present and future agreements concluded after 01.07.2019 between BOC Products & Services AG, including its subsidiaries (hereinafter jointly referred to as “BOC”) on the one hand, and the client of BOC on the other hand, and that pertain to on-premise installations of BOC standard software in the Enterprise Edition (hereinafter referred to as “Product”) and product maintenance. These conditions shall form part of the contract even if, in individual cases, reference is not explicitly made to these Terms of Use On-Premise upon the conclusion of a contract.

1.1.2 These Terms of Use On-Premise shall be supplemented by the General Terms and Conditions of BOC (hereinafter “GTC”). In the event of conflicting regulations, the following order of priority shall apply: 1. regulations from the individual contract (offer), before 2. these Terms of Use On-Premise, before 3. the GTC of BOC.

1.1.3 The GTC as well as the Terms of Use can be viewed at <https://www.boc-group.com/gtc/>.

## **2. Product Use**

### **2.1 Right of Use (Licence)**

2.1.1 Against full payment of the agreed remuneration, BOC grants the client the worldwide, unlimited in time, non-exclusive, right to use the Product and the acquired additional components in the manner intended.

### **2.2 Right of Use (Licence) for Test and Development Systems**

2.2.1 In addition to every Right of Use according to section 2.1.1 or by separate agreement, for the agreed duration BOC grants the client the worldwide, non-exclusive, non-sublicensable, non-transferable right to use the agreed Product and, where applicable, additional components to the agreed extent in the manner intended for test and development purposes only. The client is not entitled to use this licence for other purposes, such as in particular in productive systems.

### **2.3 Scope of the Right of Use**

2.3.1 If a Right of Use (Licence) follows a "Concurrent Use" principle (CC), the number of users specified in the offer is to be understood as the highest number of users that may use the Product simultaneously.

2.3.2 Rights of Use according to the "Named Use" principle (NU) are assigned to specific users and allow only these users personal access to the Product.

2.3.3 Beyond this, clients may also purchase a Right of Use for additional components.

2.3.4 If additional components are made available for an ongoing fee contrary to section 2.1, the right of use is limited in time. Section 3.5 and 3.6 (Remuneration of the Maintenance Service and Termination of the Product Maintenance) shall apply *mutatis mutandis*.

2.3.5 The use of the application programming interfaces (REST API) is limited to 500 accesses per hour.

2.3.6 The client is entitled to create the duplications of the software that are absolutely necessary for the operation of the Product as well as for backup and archiving purposes. All copies must be protected from access by third parties. The client is expressly prohibited from making other duplications.

2.3.7 During product development, BOC relies partially on software components of third-party providers (usually open-source software). These components, which are integrated into the Product, are included in the right of use granted by BOC, and no property rights of third parties are violated in the process.

2.3.8 In addition, BOC's scope of supply may also contain third-party products (e.g. standard software by Apache). These third-party products are not a component of the BOC software and are thus neither maintained by BOC, nor does BOC assume a guarantee or liability for third-party products.

2.3.9 BOC is entitled to withdraw the Right of Use (Licence) from the client if the client breaches significant parts of the agreement and the client does not cease such behaviour despite a warning and setting of an appropriate deadline for the removal or cessation thereof. In the case of the withdrawal of the Right of Use, the client is not entitled to a refund of the agreed remuneration.

2.3.10 Given that the system is not installed or operated from a BOC managed hosting location, the overall system is not located within the exclusive sphere of influence of BOC. Thus, BOC cannot assume any guarantee for the availability of the system.

### **2.4 Conditions of Delivery and Installation**

2.4.1 The delivery occurs via the download of the Product in a machine-readable format by the client. The date of delivery is the day on which the client receives the download link.

2.4.2 BOC provides the client with installation instructions as well as extended software documentation. Unless otherwise agreed, the installation of the Product is carried out independently by the client.

2.4.3 The client shall take the measures necessary in order to protect the Product, documentation, passwords and log-ins from unwanted access or misuse by unauthorised persons.

2.4.4 The client is responsible for setting up the necessary technical conditions in his infrastructure such that the Products can be used in the manner intended (see section 2.7 System Requirements).

## **2.5 Remuneration of the Right of Use**

2.5.1 The agreed remuneration shall be invoiced to the client at the time of delivery (section 2.4.1).

2.5.2 Installation or installation support, briefing or training on this Product, as well as other Product-related services, are not included in this remuneration and require a separate agreement.

2.5.3 Apart from this, the conditions of payment are based on the provisions of the GTC.

## **2.6 Operation of the Product (Hosting) by a Third Party Commissioned by the Client**

2.6.1 The client is entitled to have the Product, with a valid Right of Use, operated by a third party commissioned by the client and to be announced to BOC (hosting). Operation of the Product by another BPM, EAM or GRC software manufacturer (competitors of BOC) is explicitly excluded.

2.6.2 If the third party should make use of product maintenance services (section 3. Product Maintenance), this requires a separate agreement.

2.6.3 The client must include the third party in all obligations imposed upon him by BOC and must indemnify and hold BOC completely harmless for all damages arising from a breach of duty by the third party at first request, waiving all objections and irrespective of which party is at fault.

## **2.7 System Requirements**

2.7.1 The latest information on the system requirements of the respective Product and version can be requested from your BOC client advisor.

## **3. Product Maintenance**

### **3.1 Rendering of the Maintenance Service**

3.1.1 In the scope of the product maintenance, BOC renders in particular the following maintenance services for the Product:

- recovery of operability and support in the elimination of malfunctions and incidents of the Product(see section 3.2 Hotline),
- Maintenance of the Product through preventive measures and
- Provision of subsequent releases and fix levels of the Product

3.1.2 The maintenance service is generally carried out from the location of a BOC subsidiary. At the express request of the client and for an additional expense, BOC also carries out maintenance services at the location of the client.

### **3.2 Hotline**

3.2.1 BOC strives to keep downtimes and malfunction times to a minimum and aims for quick, efficient and effective processing of requests as well as incident reports.

3.2.2 For technical questions about the Product, as well as for the reporting of incidents, qualified staff of the client may contact the BOC hotline.

3.2.3 BOC accepts incident reports exclusively via the hotline by email or during the service times by telephone.

3.2.4 The basic procedure for the handling of incidents is structured as follows:

- Notification of the incident by the client at the earliest possible time via the BOC hotline
- Appointment of a point of contact on the client's end to serve as a contact person for BOC
- Implementation of the troubleshooting
- Confirmation by the client of the successful troubleshooting

3.2.5 When making use of the hotline the client must, if necessary, use the tools provided by BOC for the containment and diagnosis of the incident or fault. These tools include, for example, programmes for measuring the quality of the network connection, connecting detailed logging levels and/or using alternative Product versions with special analysis functions. For its part, the client ensures that the necessary technical prerequisites are provided for this purpose.

3.2.6 A named point of contact on the client's end is also appointed in the interest of the client. The point of contact must have sufficient authorisation to initiate the necessary measures on the client's end and to actively support BOC in any potential elimination of faults. In particular, information and analysis data requested by BOC, which are necessary for the elimination of the fault, must be made available by the client.

3.2.7 Every incident report requires a clear, comprehensible description in order to ensure the reproducibility of the relevant circumstances.

3.2.8 An incident that requires troubleshooting is deemed to exist if the Product exhibits behaviour that deviates from the corresponding performance specification/documentation, in the respective version, and if this can be reproduced by BOC, or, the incident has been adequately documented by the client.

3.2.9 Incidents shall be classified in accordance with the following scheme:

- An incident that inhibits operation is deemed to exist if the use of the Product is not possible at all in productive operation due to a product failure (complete failure of the software or complete failure of core functions required in daily use). Incidents arising out of the fault of the user are not taken into consideration.
- An incident that obstruct operation is deemed to exist if the use of the Product in productive operation is possible but there are severe limitations to the usage due to a product defect.
- A minor incident is deemed to exist if the use of the Product in productive operation is possible with slight restrictions, or if there is an incident in the Product in a test environment.

3.2.10 The rectification of a fault may also take place via a product release, fix level, appropriate workaround solution or via indication of necessary client-side remedial measures. However, the client is in no case entitled to inspect the source code.

3.2.11 Reaction and response times to incident reports as well as service inquiries are listed in the "Support-SLA for on-premise deployments".

### **3.3 Releases and Fix Levels**

3.3.1 BOC informs the client of any technical improvements, troubleshooting measures, as well as upgrades of the Product if required via email.

3.3.2 BOC provides fix levels for the Product, for maintenance and, if necessary, restoration.. If the included adjustments affect a subsequent release, the maintenance shall be provided by the delivery of the subsequent release. This also includes the adjustment of the Product to subsequent versions of the operating system and the database application, insofar as these are regularly maintained by the respective manufacturer.

3.3.3 BOC distinguishes between the following release types:

Name	Release identifier	Maintenance period	Description
Long-Term Support Release (LTS)	LTS	The product maintenance is guaranteed for 6 months after the publication of the next LTS release.  This typically leads to a maintenance period of 2 years.	A long-term support (LTS) release is a major release of a product that is explicitly designated LTS.  Long term support releases are issued every 1.5 years.
Major Release (major)	The first place of the version number (e.g. <b>10.0.0</b> )	The product maintenance is guaranteed for 3 months after the publication of the next major release.  This typically leads to a maintenance period of 9 months.	Major releases are issued one to two times per year.  A major release may contain important new functions and changes to the database scheme.
Minor Release (Minor)	The second place of the version number (e.g. <b>10.1.0</b> )	The rules of the major release upon which the minor release is based apply.  The maintenance period ends accordingly, together with the last published major release.	Minor releases have no regular publication cycle. They are issued when a new functionality is introduced outside of a major release.
Fix Level (FL)	The third place of the version number (e.g. <b>10.1.1</b> )	The rules of the major release upon which the fix level is based apply.  The maintenance period ends accordingly, together with the last published major release.	A fix level contains several bug fixes or security updates.

3.3.4 Information regarding the current maintenance period may be requested from the BOC client advisor.

3.3.5 Subsequent releases of the Product and fix levels shall be made available to the client in accordance with the conditions of delivery and installation (section 2.4 Conditions of Delivery and Installation).

3.3.6 In principle, the client is free to choose whether and when to install new releases of the Product. However, each Product version has a maximum maintenance period. Fix levels will only be provided within this maintenance period.

3.3.7 If the client is using Product versions with an expired maintenance period, the client will still have access to the BOC hotline. However, BOC will no longer provide any fix levels for these versions. In particular, this means that the standard software of this version shall no longer be adjusted to subsequent versions of the operating system or the database application. BOC's claim to payment remains unaffected by this restriction. Moreover, BOC is not liable for damages resulting directly or indirectly from the client's failure to introduce and install new releases or fix levels.

3.3.8 The Product that has been extended/amended by releases or fix levels is subject to the same Right of Use (Licence) as the Product version originally acquired.

### **3.4 Limitation of the Maintenance Service**

3.4.1 The following services are not offered in the scope of the product maintenance and therefore require a special agreement:

- Installation of the Product and installation of updates,
- Adjustment of a subsequent release of the Product to client-specific extensions (product adaptations),
- Adjustment of the Product to changes in legal or application-specific requirements or framework conditions,
- Treatment of malfunctions that are caused by
  - force majeure or unauthorised interference by third parties,
  - utilisation of the Product for a purpose other than its intended purpose, or,
  - non-compliance with the hardware and software requirements stipulated by BOC,
- Support in the implementation of amendments or corrections to the installation or operating environment, such as migration in the event of relocation,
- Partial or complete assumption of, or support in, maintenance activities in the installation or operating environment,
- Support in troubleshooting third-party system interfaces with the Product,
- On-site servicing for the client,
- Trainings and,
- Data backup and data restoration.

3.4.2 If, based on an incident report by the client, services are requested that are not included in the performance obligation of the product maintenance, BOC can still perform these services upon request. A special agreement is required in this case.

3.4.3 Services performed in the scope of special agreements shall be charged according to BOC's current price list. This also applies in particular to maintenance services rendered by BOC based on an incident report that are not included in the performance obligation to which BOC is bound.

### **3.5 Remuneration of the Maintenance Service**

3.5.1 BOC performs maintenance services for a flat-rate maintenance fee to be paid annually in advance. The first year shall be charged proportionately in advance from the time of delivery (section 2.4.1).

3.5.2 The maintenance fee shall be calculated based on the list price for the granted Right of Use.

3.5.3 The maintenance fee is value-secured (Harmonised Index of Consumer Prices (HICP)). The terms of payment and provisions regarding the value guarantee are based on the provisions of the GTC.

### **3.6 Termination of the Product Maintenance**

3.6.1 The Product maintenance may be terminated in whole or in part by either contractual party without providing reasons with three month notice at the end of the calendar year..

3.6.2 If the partial termination concerns a reduction in the number of users, the client must also renounce the right of use affected by the termination (to the extent of the termination). The product maintenance refers to all valid Rights of Use of a Product. It is not possible to acquire the product maintenance only for a portion of the licensed number of users of a Product.

3.6.3 A termination by the client must be directed in writing to the BOC subsidiary with which the client has a contractual relationship. The parties agree that meeting the deadline corresponds to the receipt of the notice of termination by the indicated BOC subsidiary.

3.6.4 Both contractual parties are entitled to the extraordinary dissolution of the product maintenance in the event that there is an important cause for which the respective other contractual party is responsible, insofar as the contractual party does not resolve this cause for dissolution within a reasonable period, despite a written request to do so, in which the cause for dissolution is specified and the plausibility thereof is validated.

3.6.5 An important cause is deemed to exist if a contractual party:

- breaches an essential contractual provision and fails to cease or discontinue this breach and remedy the consequences of the breach within a period of seven days despite a request to do so,
- is in default of a payment by more than three months,
- becomes insolvent or if an insolvency proceeding or equivalent (in particular, a settlement or restructuring proceeding) is commenced against it or if such proceedings are rejected due to a lack of assets,
- violates anti-corruption provisions, or,

if the continuation of the contractual relationship has become unacceptable due to a fundamental loss of trust, the existence of which must be validated vis-à-vis the contractual party.