

# General Terms and Conditions of BOLL Engineering AG

*Version 2.17 from April 12, 2022*

## **1 Scope of application and validity**

- 1.1 These General Terms and Conditions, hereinafter referred to as "GTC", govern the rights and obligations in the relationship between BOLL Engineering AG, hereinafter referred to as "BOLL Engineering", and its customers. They apply to all contracts according to clause 2.2 below between BOLL Engineering and customers, in particular to the delivery of products according to clause 1.6 below and the provision of services, unless otherwise agreed in writing.
- 1.2 The GTC in the respective current version are included in the electronic or written order confirmation according to clause 2.2 below or the shipping documents of BOLL Engineering or it is expressly referred to therein.
- 1.3 The customer's terms and conditions shall only apply if and insofar as they have been expressly accepted by BOLL Engineering in writing and are not in conflict with the GTC of BOLL Engineering.
- 1.4 All subsidiary agreements, amendments, supplements to these GTC must be in writing to be valid. For the conclusion of contracts for the delivery of products and the provision of services, the formal requirements pursuant to section 2.2 below shall apply.
- 1.5 Should individual provisions of these GTC or of the contract concluded between BOLL Engineering and the customer be or become invalid or ineffective, the validity and effectiveness of the remaining provisions shall remain unaffected. In such a case, the invalid provision shall be reinterpreted or supplemented in such a way that the intended regulatory purpose is achieved as far as possible.
- 1.6 "Products" are machines, devices, components and accessories offered and sold by BOLL Engineering, in particular EDP hardware, furthermore parts thereof, additional equipment as well as software.

## **2 Order, delivery, handover of the products**

- 2.1 Orders can be placed by telephone, electronically (e.g. by e-mail) or in writing (e.g. by letter, fax).
- 2.2 A contract shall be concluded by our electronic or written order confirmation or, e.g. in the case of immediate delivery pursuant to Section 2.3 below, at the latest always by dispatch of the goods and invoicing. In this case, the GTC shall be deemed accepted with the unconditional acceptance of the ordered products.
- 2.3 For the scope and execution of the delivery, the respective order confirmation shall be authoritative. In the event of immediate delivery/collection, no order confirmation shall be issued. The availability or deliverability of the products from the manufacturer remains reserved.
- 2.4 In the absence of any express written assurance to the contrary, the delivery dates stated by BOLL Engineering are to be regarded as indicative only. The specification of a delivery date is made to the best of our knowledge, but without guarantee. This applies in particular in the event of delays in delivery, e.g. as a result of replenishment problems at the manufacturer. Should a delivery be delayed beyond a delivery date guaranteed in writing by BOLL Engineering, the customer may, after expiry of an additional period of at least three weeks to be set by him in writing, put BOLL Engineering in default and, after unused expiry of an appropriate further period of grace, subsequently withdraw from the order concerned. In this case, BOLL Engineering is only liable to the customer for the direct and immediate damage if and insofar as the delay or the impossibility of delivery is demonstrably due to a negligent breach of contract by BOLL Engineering. BOLL Engineering is liable, in any case, at most for the order value of the goods or services.
- 2.5 In case of disruption of delivery due to circumstances beyond BOLL Engineering's control, such as strike, lockout, material failure, suspension of transport or operation by the manufacturer or transport problems, BOLL Engineering is entitled to cancel the order.
- 2.6 Order changes or cancellations requested by the customer require a written agreement with BOLL Engineering. Costs already incurred may be charged to the customer by BOLL Engineering.
- 2.7 BOLL Engineering is entitled to make partial deliveries, if agreed.

## **3 Acceptance and inspection**

- 3.1 The customer is obliged to inspect the products and services supplied by BOLL Engineering for damage, completeness and correctness immediately after delivery or collection and to report any defects and complaints immediately after discovery, at the latest within 14 days after delivery or collection at the latest, to BOLL Engineering in writing.

- 3.2 In case of failure to notify BOLL Engineering in due time, any warranty and any other claim of the customer shall expire, unless the damage or defect was not recognizable during the required incoming inspection.

#### **4. Transfer of benefit and risk**

- 4.1 The risk shall pass to the customer upon handover of the delivered products.
- 4.2 If the Products are not collected by the Customer on time, the Products shall be stored at the Customer's expense and risk for 5 days and then forwarded to the Customer.

#### **5. Return of Products**

- 5.1 The return of products by the customer requires the prior consent of BOLL Engineering, for which a request form is provided, which must be filled out completely and correctly. The return of the products is at the expense and risk of the customer. The goods must be in their original packaging, complete and undamaged. Procurement products are generally excluded from return. Any exceptions require the prior agreement of the respective supplier to take back the product on his part. Processing or return fees may be charged for the return of products.
- 5.2 BOLL Engineering reserves the right to return products with missing, defective or described original packaging or products that are no longer in perfect condition to the customer at the customer's expense and risk. In case of return without error description, BOLL Engineering can carry out an error search at the expense of the customer (minimum expenditure one hour).

#### **6. Prices**

- 6.1 The prices of the products and services of BOLL Engineering are net prices in Swiss Francs (CHF) or any other agreed currency, excluding value added tax, duty paid and ex distribution center of BOLL Engineering. Incidental costs such as costs for packaging and shipping/delivery (freight/transport) are not included in the prices and are to be borne by the customer, as is VAT. Unless otherwise agreed, accessories are not included in the price.
- 6.2 For orders below CHF 80 net value of goods, a small-quantity surcharge of CHF 30 will be added to the shipping costs.
- 6.3 The prices of the products as well as the additional costs are always calculated according to the price list valid at the time of the order confirmation. BOLL Engineering may make changes to the price list at any time, even without prior notice.

#### **7. Terms of payment**

- 7.1 Unless otherwise agreed in writing, all invoices of BOLL Engineering are due and payable net to the specified bank account on the tenth day after the invoice date. After expiry of this period, the customer is in default without reminder.
- 7.2 If the customer is in default of payment, BOLL Engineering is entitled without further warning to stop all further deliveries to the customer in whole or in part until its claims have been settled or secured. All consequences resulting from such a suspension of delivery shall be borne exclusively by the customer.
- 7.3 If the customer subsequently does not pay his debts or does not ensure their fulfilment even within a period of grace set by BOLL Engineering, BOLL Engineering is entitled to definitely refuse all further deliveries to the customer and to claim damages. In addition, BOLL Engineering is also entitled to proceed according to the general legal rules of the CO.
- 7.4 All claims of BOLL Engineering, including those for which payment by instalments has been agreed, shall become due immediately if (a) the customer repeatedly fails to comply with terms of payment or (b) upon request of BOLL Engineering does not immediately provide the necessary securities to dispel justified doubts of BOLL Engineering as to his liquidity/ ability to pay, e.g. in case of debt collection or other indications of payment difficulties of the customer. The customer has the obligation to notify BOLL Engineering if liquidity bottlenecks are foreseeable.
- 7.5 Checks are only accepted by BOLL Engineering on account of payment and after prior special and written agreement and under the condition that all costs and expenses are borne by the customer.

#### **8. Offsetting / Right of Retention**

- 8.1 The client is not entitled to set off any counterclaims against claims of BOLL Engineering.
- 8.2 Any right of retention of the customer to objects of BOLL Engineering is fully excluded.

- 8.3 The customer is obliged to pay the invoice irrespective of whether he can deliver, invoice or collect the products within the scope of resale to his end customer.

## **9. Retention of title**

- 9.1 The products delivered by BOLL Engineering remain - as long as they are within the sphere of influence of the customer - the property of BOLL Engineering until BOLL Engineering has received the purchase price in full and in accordance with the contract. Until this time, BOLL Engineering is entitled to enter the retention of title in the retention of title register at the respective domicile of the customer in accordance with Art. 715 ZGB. The customer undertakes to give his written consent to the registration of a retention of title in all points essential for the registration immediately upon request of BOLL Engineering (cf. Art. 4 Para. 4 of the Federal Court Decree).

- 9.2 As long as the purchase price has not been paid in full, the customer is obliged to maintain the products delivered by BOLL Engineering, to treat them with care and to insure them against all usual risks.

## **10. BOLL Engineering services / support**

- 10.1 Support services are not included in the product price and will be charged to the customer separately according to the rates in the respective price list or according to a special agreement.

## **11. Warranty**

- 11.1 The responsibility for the selection, configuration, deployment and use of products as well as the results achieved with them lies with the customer or the purchaser of the products, i.e. the end customer. The customer acknowledges that BOLL Engineering does not carry out any incoming inspections of the products supplied by manufacturers or suppliers.
- 11.2 The warranty of BOLL Engineering for the products delivered by it is determined in every respect by the warranty conditions of the respective manufacturer/supplier. The customer waives any further warranty claims against BOLL Engineering and the manufacturer/supplier. The only obligation of BOLL Engineering is to assign any own warranty claims against the manufacturer/supplier to the customer.
- 11.3 The customer acknowledges that due to the respective applicable warranty provisions, the warranty is generally limited to rectification or replacement of the defective/deficient products at the discretion of the respective manufacturer/supplier and, moreover, only applies if the products remain in Switzerland or the Principality of Liechtenstein.
- 11.4 Furthermore, the customer acknowledges that in any case a defect only exists if it is reported in detail to BOLL Engineering in writing immediately after discovery and includes a relevant and reproducible error. The warranty is excluded in particular for defects which are based on one of the following causes: a) inadequate maintenance; b) non-observance of the operating or installation instructions; c) improper use of the products; d) use of unauthorized parts and accessories; e) natural wear and tear; f) transport, improper handling or treatment; g) modifications or attempted repairs; h) external influences, in particular force majeure (e.g. failure of the power supply or the air conditioning system, damage caused by natural elements), as well as other reasons for which neither BOLL Engineering nor the manufacturer/supplier are responsible. Warranty services not covered by the manufacturer/supplier as well as additional costs caused by the customer will be charged to the customer. In case of missing or insufficient error description, the troubleshooting will be carried out by BOLL Engineering at the expense of the customer.
- 11.5 In any case, the customer shall comply with the procedures defined by BOLL Engineering or the respective manufacturer/supplier for the handling of any warranty services.

## **12. Liability**

- 12.1 BOLL Engineering is only liable for direct damage and only if the customer proves that this was caused by negligence or unlawful intent of BOLL Engineering, its auxiliary persons or the third parties commissioned by BOLL Engineering. The liability is limited to the price of the respective delivery/service. The provisions of Clause 11, 12.2 to Clause 12.4 below remain reserved.
- 12.2 For services sold by BOLL Engineering, which are provided by third party companies (e.g. the manufacturers of the devices distributed by BOLL), there is no obligation of BOLL Engineering to offer the same or comparable services at the same or similar prices after expiry of such service subscriptions/contracts.
- 12.3 If services of a third party company sold by BOLL Engineering can no longer be provided during the service contract period for reasons for which BOLL Engineering is neither responsible nor can influence (e.g. in case of insolvency of the third party company), the customer has no claim for damages and/or refund of service fees already paid. In such cases, BOLL Engineering will, at the request of the customer, do everything appropriate and reasonable to support the customer in the search for and evaluation of replacement services.

- 12.4 The customer has no claim for damages and/or the return of purchased devices if services of any kind, such as new firmware versions, support or data updates of database-supported functions for its devices are no longer provided or offered by the previous provider, e.g. the manufacturer of the devices, or only in a different form or at different prices.
- 12.5 Any further liability of BOLL Engineering, its auxiliary persons and third parties commissioned by BOLL Engineering for damages of any kind is excluded, as far as legally permissible. In particular, the customer shall in no case be entitled to claims for compensation for damage not caused to the product itself, such as loss of production, loss of use or data, loss of orders, loss of profit and other indirect or consequential damage.
- 12.6 BOLL Engineering undertakes to assign to the customer any liability claims recognized by the manufacturer/supplier.

### **13. Confidential information**

- 13.1 The customer undertakes to treat confidential information made available to him by BOLL Engineering or its suppliers also as confidential and to protect it from access by third parties. Such information may only be disclosed to third parties with the written consent of BOLL Engineering. Confidential Information" means (non-exhaustively): product-related technologies, ideas and algorithms, trade secrets, technical, business or financial information and plans, terms of concluded contracts and any other information designated as confidential. Information that is generally known or publicly available shall not be considered confidential.

### **14. Patents and other industrial property rights**

- 14.1 The customer acknowledges and protects intellectual property, registered trademarks, copyrights and patent rights of BOLL Engineering and its suppliers.
- 14.2 The customer uses the products only in the sense intended by the manufacturer. Product designations and/or copyright marks may not be removed from the products. Software may not be modified or translated.
- 14.3 If a third party claims or should claim against the customer or his end customer for infringement of a patent, copyright or other industrial property right by delivered products or products from their operation, the customer will inform BOLL Engineering in writing and without delay about such infringement notices or claims made. BOLL Engineering will immediately forward these notices to the supplier or manufacturer and request the latter to settle the situation.

### **15. Re-export**

- 15.1 The products distributed by BOLL Engineering are subject to US and Swiss export regulations. The customer undertakes to apply for a special export permit from the competent authority (currently the Section for Import and Export of the Federal Department of Economic Affairs) before any re-export of the products. In the event of sale or other transfer of the products, this obligation shall be transferred to the respective acquirer with the obligation to pass it on.

### **16. Software programs**

- 16.1 The conditions of use and warranty concerning the software products, programs, manuals and other documents supplied by BOLL Engineering are governed by the special provisions of the respective software manufacturer, which are contained in particular in the software license agreement between software manufacturer and user/end customer.
- 16.2 In the event of resale or other transfer of the software products, the customer undertakes to transfer to the respective purchaser the obligations arising from the terms and conditions of use and warranty of the software manufacturer with the obligation to transfer.

### **17. Manufacturer Reporting, Data Protection**

- 17.1 The customer acknowledges that BOLL Engineering processes customer-related data such as e.g. sales prices and quantities as well as names and addresses of the customers within the scope of the periodical so-called manufacturer reporting and transmits them to manufacturers/suppliers possibly also abroad.

### **18. Transfer**

- 18.1 Rights and/or obligations from individual contracts (deliveries, services) may only be transferred by the customer with the prior written consent of BOLL Engineering. Transfers within groups of companies, subsidiaries, etc. are excluded.

**19. Applicable law and place of jurisdiction**

19.1 The individual contracts as well as the GTC are exclusively subject to Swiss law with the express exclusion of state treaty norms.

19.2 The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationships is for BOLL Engineering as well as for the customer at the ordinary courts locally and factually competent at the place of business of BOLL Engineering. BOLL Engineering is authorized to sue the customer also at other ordinary places of jurisdiction.