

# BCOMP | GENERAL TERMS & CONDITIONS

These general terms and conditions (**GTC**) form together with the terms of any signed quotation, order form or similar document (**Order Form**) referencing these GTC and any annex, appendix or schedule thereto (**Schedule**) a legal agreement (**Agreement**) between Bcomp AG (Bcomp SA) (Bcomp Ltd) (CHE-161.964.560), Passage du Cardinal 1, 1700 Fribourg, Switzerland (**Bcomp**) and any customer mentioned in an Order Form (**Customer**, with Bcomp, the **Parties**) in relation to the provision by Bcomp of products or other equipment (the **Products**) and any related services.

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## 1. Scope and Acceptance

- 1.1. Scope. These GTC govern Customer's rights and obligations with respect to the provision by Bcomp, and the use by Customer of Products and any related services, as specified in the Order Form executed by Customer (the **Services**).
- 1.2. Acceptance. By executing the Order Form, Customer expressly agrees to be bound by the terms of these GTC. Any general terms and conditions or other commercial terms of Customer are expressly waived and shall not apply.
- 1.3. For clarity, if Customer is a legal entity, any order of Products or Services by any of Customer's employees, agents or representatives, on behalf of Customer, is deemed as acceptance of these GTC by Customer. If you are entering into this Agreement or using the Services on behalf of a legal entity, you represent and warrant that you are duly authorized to do so.

## 2. Services

- 2.1. In General. Subject to Customer's compliance with these GTC, in particular the payment of all applicable Fees in accordance with Section 5, Bcomp shall supply the Products and/or provide the Services as specified in the applicable Order Form.
- 2.2. Products and Services. Bcomp shall be bound by an obligation of means under the Order Form for the supply of Services. Bcomp will supply the Services in accordance with standard professional practice, with the care and diligence required from a supplier of similar services.
- 2.3. Deliverables. Bcomp only has an obligation of result if such obligation is expressly provided for in the Order Form in relation to Deliverables if their Specifications (as defined in Section 3.1) are described therein. In this case, Section 3 GTC shall apply.
- 2.4. Delivery. All Products and Deliverables shall be delivered FCA (free carrier alongside), Bcomp delivery site as specified in the applicable Order Form according to Incoterms 2022.
- 2.5. Planning. Bcomp will endeavour to supply the Services within the deadlines set out in the applicable Order Form. If the agreed deadlines are not expressly stipulated as binding in the applicable Order Form, they shall not be binding to Bcomp and are approximate, and Bcomp shall be entitled to make partial deliveries.

## 3. Deliverables

- 3.1. In General. If the applicable Order Form expressly identifies specific Product(s) to be delivered by Bcomp (**Deliverables**) as well as their detailed technical specifications (**Specifications**), such Deliverables shall constitute on the part of Bcomp an obligation to deliver a specific result. The provisions of this Section 3 shall only apply to such Deliverables to the exclusion of any other Products.

- 3.2. Verification. Immediately upon delivery of any Deliverable, Customer shall inspect and verify if such Deliverable contains any (a) material non-conformity with its Specifications or (b) defects which objectively compromise the performance of the Deliverable in such a way that its intended purpose can no longer be achieved (the **Defects**).
- 3.3. Notification. Customer shall notify Bcomp in writing of any Defect affecting a Deliverable within 10 days from the date of its delivery, and provide a reasonably detailed description. Any Defects which are not discoverable on visual inspection shall be reported to Bcomp in writing within 10 days from their discovery, during the warranty period set out under Section 3.4. In the absence of a timely notice pursuant to this Section 3.3, the Deliverables shall be deemed irrevocably accepted and any later claims waived by Customer.
- 3.4. Warranty on Deliverables. Bcomp warrants to Customer that the Deliverables will be free from Defects as may be required for normal use for a warranty period of 1 year from their delivery. Bcomp's sole liability under this warranty shall be, at Bcomp's option, to either (i) replace or repair the defective Deliverables, or (ii) refund or credit the corresponding Fees to Customer. This Section 3.4 sets forth Customer's exclusive remedies in case of defects. **Bcomp's obligations under this Section 3.4 is subject to timely notice in accordance with Section 3.3 and to Customer's payment of all applicable Fees.**
- 3.5. Warranty Limitation. Bcomp's obligations under this Section 3 are limited to Defects which are exclusively caused by Bcomp. Third Party Content, defects due to Customer or third parties, are expressly excluded and shall only be addressed by Bcomp if agreed in writing by the Parties. Any statement concerning Products or Deliverables and inconsistent with the limited warranty set forth herein shall be of no force or effect.
- 3.6. No Extension. A replacement or repair of Deliverables in accordance with Section 3.4 shall not give rise to a new warranty period, or an extension or suspension of the initial warranty period set forth above. The warranty is likewise not extended for periods in which the Deliverables are not used. Bcomp shall acquire ownership of all replaced Deliverables.

#### 4. Customer's Obligations

- 4.1. Payment of Fees. Customer shall pay the prices and fees as indicated in the Order Form or by any other appropriate means (the **Fees**), in accordance with the payment terms set forth in Section 5.
- 4.2. Proper Use. Customer shall at all times comply with all laws and regulations applicable to the use of the Services, as well as the conditions and limitation of any license or other right granted, as set out in the Agreement or as otherwise specified in writing by Bcomp.
- 4.3. Default. In case of default by Customer to comply with its obligations set forth in these GTC or in the Order Form, Bcomp shall be excused from the performance of its obligations under the Agreement and assume no liability in relation therewith (without prejudice to Bcomp's other rights under this Agreement).

#### 5. Financial Terms

- 5.1. Fees. Unless otherwise agreed in writing, Bcomp's invoices are due and payable within 30 days of their issue date.
- 5.2. Expected Volumes. Customer acknowledges that the fees agreed in the Order Form are based on an expected annual volume of deliveries. If the delivery volume is not met by Customer within 12 months of the Effective Date, or the then-applicable 12-month period, as further specified in the Order Form, Bcomp shall be entitled to invoice Customer the difference between the list price and the volume-based price.
- 5.3. Expenses. Customer shall reimburse Bcomp for any reasonable costs and expenses incurred in relation to the provision of the Services, provided that such costs and expenses are detailed on the corresponding invoice and accompanied by supporting documentation.
- 5.4. Payments. Payments shall be made pursuant to the terms of this Agreement to Bcomp by wire transfer to Bcomp's bank account.

- 5.5. Currency and Taxes. All payments shall be made in the currency quoted and on the bank account mentioned by Bcomp on its invoice. Fees and rates indicated by Bcomp shall be exclusive of all taxes (in particular, VAT) if and as applicable. Any applicable taxes or bank charges shall be borne by Customer.
- 5.6. Disbursement. Payment shall be considered received by Bcomp on the day the amount of the invoice is credited to Bcomp's bank account. Payments received regularly shall be offset with the oldest debt and Customer is not entitled to withhold and/or offset any amounts owed.
- 5.7. Late Payment. Any amount required to be paid by Customer which is not paid when due shall bear interest at a rate of 5% per year.
- 5.8. Price Adjustment. Customer acknowledges that from time to time, as Bcomp updates the Services and expands its technology offering, price may follow. Additionally, Bcomp shall be entitled to increase the Fees if the pricing of supply or other market conditions affecting Bcomp's pricing are affected by volatility.

## 6. Customer Materials

- 6.1. Customer Materials. To the extent specified in the Order Form or as reasonably required by Bcomp in writing to provide the Services, Customer may be required to provide Bcomp with certain documents, information or data (**Customer Materials**).
- 6.2. Ownership. As between the Parties, Customer Materials are and shall remain the sole and exclusive property of Customer and nothing herein shall be construed or interpreted as a transfer of ownership in any Customer Materials to Bcomp.
- 6.3. Use by Bcomp. Customer grants to Bcomp a non-exclusive worldwide, royalty-free, irrevocable, license to use its Customer Materials for the sole and exclusive purpose of providing the Services. For the avoidance of doubt, Bcomp will not sell or otherwise commercialize the Customer Materials.
- 6.4. Warranty. Customer warrants that (i) it has valid grounds and, if required, it has obtained all authorizations and consents for the processing of any Customer Materials within the frame of these GTC, and (ii) Customer Materials do not infringe on any law or regulation, these GTC, or any third party rights.
- 6.5. Deletion, Return. Upon termination of the Agreement, Bcomp shall, within reasonable time following a written request by Customer, provide Customer with a final extract of the Customer Materials and permanently delete any copies of such Customer Materials still under its control. In any case, Bcomp shall be allowed to permanently delete Customer Materials 60 days after termination or non-renewal of the Agreement.

## 7. Intellectual Property

- 7.1. In General. As between Bcomp and Customer, Bcomp shall be and remain the sole owner of all rights, title and interest, registered or not, arising under any national or international legislation, in copyright, databases, trademark, domain names, designs and patents of invention, know-how, confidentiality and/or business secrets, and all other intellectual property or similar proprietary rights of whatever nature (**Intellectual Property Rights**) in and to the Services and their outcome, including any Products or Deliverables, except only for Customer Materials. Nothing in these GTC shall operate any assignment or transfer of any Intellectual Property Rights of Bcomp to Customer.
- 7.2. Notice of Infringement. Should Customer become aware of any infringement or imminent risk of any infringement of any Intellectual Property Rights pertaining to the Services, Customer shall immediately inform Bcomp and provide all useful information on such infringement or risk of infringement. Bcomp shall have the exclusive power to decide on any action to be taken with respect to such infringement or risk of infringement. Customer shall, at its own costs, provide Bcomp with all reasonable assistance required by Bcomp to protect its Intellectual Property Rights, in accordance with its instructions.
- 7.3. Relief. Customer expressly acknowledges that any infringement of Bcomp's Intellectual Property Rights will cause irreparable harm to Bcomp, for which monetary damages alone would be inadequate, and that Bcomp may thus seek injunctive relief or any other remedy available at law in any jurisdiction, in case of such infringement.

## 8. Third Party Content

The Services may contain materials or components incorporated into the Services or provided therewith, developed, distributed and/or licensed by third parties (**Third Party Content**). Such Third Party Content shall be provided, and Customer shall use such Third-Party Content under, and strictly in accordance with, the applicable terms and conditions of the respective third party. Bcomp shall use its best efforts to identify any Third Party Content in the documentation of the Services.

## 9. Data Protection

9.1. In General. If the provision of the Services implies the processing by Bcomp of any personal data forwarded by Customer (**Customer Personal Data**), in particular as part of Customer Materials, Bcomp and Customer shall fully comply with their respective obligations under applicable data protection laws and regulations.

9.2. Roles of the Parties. In such cases, Bcomp shall process Customer Personal Data as (i) data processor, exclusively for the purpose agreed in these GTC and only to the extent necessary to fulfil the obligations hereunder, in accordance with Customer's instructions, which shall act as data controller; and (ii) for Bcomp's legitimate business operations incident to provision of the Services.

9.3. Bcomp's Obligations. Bcomp undertakes to comply with Swiss data protection legislation. If the European General Data Protection Regulation (GDPR) is applicable, Bcomp shall in addition comply with the obligations set out in Art. 28(3) GDPR.

9.4. Customer's Obligations. Customer shall ensure, with respect to any Customer Personal Data processed by Bcomp within the frame of the Services, if any, that such Customer Personal Data has been collected and transferred to Bcomp in strict compliance with the applicable data protection or data privacy laws and regulations. In particular, Customer shall:

- a) have, and maintain at all times, valid grounds for the processing of such personal data, including obtaining valid consent from the data subjects for the processing of their personal data, if such consent is required under the applicable data protection legislation; and
- b) provide adequate information to data subjects about the collection and processing of their personal data;

9.5. Responsibility. Customer shall bear sole responsibility for the processing of Customer Personal Data, if any, within the frame of the Services. Customer acknowledges and accepts that Bcomp shall deem any processing of any Customer Personal Data within the frame of the Services, as permitted under the Agreement, as well as any instructions by Customer with respect to such processing activities as compliant with applicable data protection or data privacy laws and regulations.

9.6. Transfer. By accepting these GTC, Customer expressly acknowledges and agrees that Customer Personal Data may be transferred to and processed on servers located outside of its jurisdiction, including in jurisdictions which may not have data protection and privacy laws and regulations equivalent to those in Customer's jurisdiction.

9.7. Compliance Actions. Bcomp may forward to Customer any request, investigation or other action by any supervisory authority and/or any third parties (including data subjects), directed at Bcomp with respect to the processing of any Customer Personal Data, and Customer shall be responsible for addressing them in accordance with the law. If Bcomp is required to undertake any compliance action itself, e.g. responding to a request by any supervisory authority or third-party and/or cooperating in investigations, and/or to provide assistance to Customer, Customer shall fully indemnify Bcomp for its effort and costs, including reasonable attorney's fees, incurred in such context.

## 10. Confidentiality

10.1. Definition. **Confidential Information** means any information disclosed by either Party (as the context requires, the **Disclosing Party**) to the other (as the context requires, the **Receiving Party**), either directly or indirectly, in writing, orally, or by inspection of tangible objects that is designated as "confidential", "proprietary", or some similar designation or can reasonably be considered of confidential nature. Confidential Information shall not include any information which: (i) was made public without restriction prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known without restriction after disclosure by the Disclosing Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files, records, and/or other

competent evidence immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by the Receiving Party's records.

- 10.2. Obligation of Confidentiality. The Receiving Party shall not, and shall cause its employees, agents, subcontractors or representatives not to (a) disclose, sell, license, transfer, or otherwise make available to any person or entity any Confidential Information of the Disclosing Party, except to its employees, agents, subcontractors or representatives having a legitimate need to know such Confidential Information for the performance of the Receiving Party's obligations under the Agreement (and only to such extent), and/or (b) use, reproduce, or copy any Confidential Information of the Disclosing Party, except as necessary to perform its obligations hereunder.
- 10.3. Ownership and Return. All Confidential Information shall remain the Disclosing Party's property and all documents, electronic media, and other tangible items or portions thereof, which contain Confidential Information of the Disclosing Party will be delivered to the Disclosing Party promptly upon the Disclosing Party's written request.
- 10.4. Compliance. Nothing contained in this Agreement shall prevent a Party from complying with applicable laws. The Receiving Party may disclose Confidential Information of the Disclosing Party in connection with subpoenas, court orders, other legal processes, or as otherwise required by law, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement (unless expressly prohibited in writing in such subpoena, court order, or other legal process) prior to such disclosure and takes reasonable steps to protect the Confidential Information from public disclosure, and provided further that any such disclosure is limited to the minimum extent necessary to comply with the legal requirement.
- 10.5. Relief. The Receiving Party acknowledges that a breach of its obligation of confidentiality may give rise to irreparable harm to the Disclosing Party, which might not be adequately compensated in the form of monetary damages. Accordingly, the Disclosing Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, in contract or at law.

## 11. Limited Warranty

Save as expressly provided under Section 3.4, all Services are provided AS IS and AS AVAILABLE. To the maximum extent permitted by applicable law, Bcomp disclaims all warranties with respect to the Services, whether express, implied or statutory, including any warranties of merchantability, fitness for a particular purpose, quiet enjoyment and non-infringement of third-party rights.

## 12. Limited Liability

- 12.1. In General. Bcomp's liability under the Agreement, whether in contract, tort or any other theory of liability, is excluded to the maximum extent permitted under applicable law. Bcomp disclaims any liability for simple negligence as well as for any damages or losses, whether foreseen or foreseeable, or whether Bcomp has been advised of the risk thereof, related to the loss of use, interruption of business, loss of actual or anticipated profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data, or any other indirect, special, incidental, exemplary, or consequential damages or losses of any kind, regardless of the form of action, whether in contract, tort, strict liability or otherwise.
- 12.2. Limited Amount. In no event, Bcomp's total liability during any period of 12 months shall exceed the amount of the Fees actually paid by Customer during the 12 months preceding the events giving rise to Customer's claims.
- 12.3. Auxiliaries. The exclusions and limitations under this Section 12 extend to Bcomp's directors, officers, employees, agents, representatives and auxiliaries.
- 12.4. Insurance. Bcomp shall maintain in full force and effect during the Term (as defined under Section 14.2) comprehensive insurance with a reputable insurance company to cover its potential liabilities under this Agreement, such as commercial general liability insurance and professional liability insurance. As evidence of insurance coverage, Bcomp delivers if requested certificates of insurance issued by said insurance company.

### 13. Indemnification

- 13.1. Indemnification. Customer shall defend, hold harmless from, and indemnify Bcomp, its directors, officers, employees and auxiliaries, from and against all liability, loss, cost, damage or expense, including reasonable attorney's fees, resulting from Customer's use of the Services other than as permitted under these GTC and strictly in accordance with any documentation provided for the Services.
- 13.2. Procedure. In case of any claims or proceedings made against Bcomp, its directors, officers, employees or auxiliaries in relation to Customer's use of the Services or Bcomp's use of Customer Materials, Bcomp shall (i) inform Customer without undue delay; and (ii) allow Customer to assist Bcomp in the defence and settlement of such claims or proceedings with a counsel of its choosing and at its own expense, if and as permitted under applicable procedural rules.

### 14. Term and Termination

- 14.1. Entry into Force. The Agreement shall enter into force upon acceptance by Customer of these GTC pursuant to Section 1.2 above.
- 14.2. Term. The Agreement shall remain in effect for the initial term indicated in Order Form, and in the absence of such indication, until it is terminated by either Party with a 3-month prior written notice to the other Party or in accordance with this Section 14 (the **Term**).
- 14.3. Termination for Cause. Each Party may terminate this Agreement in writing with immediate effect, in the event of material breach by the other Party of its obligations hereunder, which the latter has not remedied within 30 days of receipt of a written notice requiring it to do so. Bcomp may further terminate the Agreement, in case Customer becomes insolvent, or subject to levy of execution or seizure measures, or in case of any infringement of third party rights through Customer's use of the Services.
- 14.4. Early Termination. Either Party may terminate the Agreement with immediate effect, in case of any material breach by the other Party, provided that, if such breach may be cured, the terminating Party shall first have given the breaching party 30 days' prior written notice (including by email) to cure such breach.
- 14.5. Effects of Termination. Upon termination of the Agreement, and in addition to the consequences described elsewhere in the GTC:
- a) Confidential Information shall be returned to the Disclosing Party and/or permanently deleted from any support of the Receiving Party, at the Disclosing Party's option, and Receiving Party shall cease using the Confidential Information; and
  - b) all Fees already paid by Customer shall remain acquired to Bcomp and are not reimbursable to Customer. Customer shall immediately pay all outstanding amounts due to Bcomp.

All terms which are expressed or intended to survive, and any provisions of the Agreement necessary for its interpretation or enforcement will continue to apply regardless of the reason for termination or expiry of the Agreement.

### 15. Miscellaneous

- 15.1. Independent Contractors. The Parties acknowledge and agree that they shall be considered as independent contractors with no authority to contract for the other or in any way to bind or to commit the other or in a way to bind or to commit the other to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the other. Under no circumstances shall either Party, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of the other. Neither Party shall pay any contributions to social security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, or provide any other contributions or benefits which might be expected in an employer-employee relationship.
- 15.2. Subcontractors. Bcomp may use subcontractors for the provision of the Services. Bcomp's use of subcontractors shall not relieve Bcomp of any of its duties or obligations hereunder, which shall be imposed on its subcontractors.

- 15.3. Force Majeure. Neither Party shall be liable for any delay or failure to perform its obligations hereunder due to causes beyond its reasonable control, such as natural catastrophes, war, strikes, blackouts, Internet failure, virus outbreaks, or similar events. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed Party. However, the delayed Party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. The delayed Party must notify the other Party promptly upon the occurrence of any such event, or performance by the delayed Party will not be considered excused pursuant to this Section, and inform the other Party of its plans to resume performance.
- 15.4. Amendment. The Order Form and these GTC may be amended only by written instrument signed by both Parties. Bcomp reserves the right to amend these GTC by written notice to Customer at least 4 months prior to the end of the Initial Term or any Renewed Term, in which case Customer's sole remedy shall be to terminate the Agreement in accordance with Section 14.2. In the absence of termination, such amendments shall become effective as of the beginning of the Renewed Term.
- 15.5. Entire Agreement. The Agreement constitutes the entire agreement between the Parties and supersedes any and all previous representations, understandings, or agreements between them, as to the subject matter hereof.
- 15.6. Hierarchy. In the event of a conflict or contradiction between the provisions of the GTC and any Order Form or Schedule, the GTC shall take precedence, subject to express and specific deviations, deletions or additions contained in the section of the Order Form "*Deviations to the GTC*" to that effect.
- 15.7. Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the Parties hereby agree to replace such provision with a valid and fully enforceable provision reflecting the original intent of the Parties to the fullest extent possible. In any event, all other provisions of the Agreement shall remain valid and enforceable to the fullest extent possible.
- 15.8. Electronic Form. The words "execution", "signature" and similar words in the Agreement shall be deemed to include unqualified electronic signatures (e.g. DocuSign or any equivalent e-signature provider) which shall be of the same legal effect, validity or enforceability as a manually executed signature; while the term "in writing" shall include communications by email or other electronic forms.
- 15.9. No Waiver. The failure of either Party at any time to require performance by the other Party of its obligations hereunder shall in no way affect that Party's right to fully enforce the other Party's obligations thereafter.
- 15.10. Assignment. Neither Party shall assign and transfer any or all of its rights and obligations hereunder, in whole or in part, to any third party without the other Party's prior written consent; provided however, that Bcomp may assign and transfer all or part of its rights and obligations hereunder to any third party acquiring all or substantially all of its business related to the Services, without Customer's consent.
- 15.11. No Third Party Beneficiaries. Except pursuant to Section 13 GTC, this Agreement shall be binding and inure solely to the benefit of the Parties (and their respective lawful successors and assigns). Nothing in the Agreement is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of these GTC or the Order Form.
16. **Governing Law and Jurisdiction**
- 16.1. Governing Law. The Agreement and/or any use of the Services shall be governed by Swiss substantive law, to the exclusion of its conflict of laws provisions.
- 16.2. Jurisdiction. Any dispute or controversy arising out of or in relation to the Agreement and/or Customer's use of the Services shall be subject to the exclusive jurisdiction of the competent ordinary courts at the place of the registered seat of Bcomp. Nothing in these GTC shall prevent Bcomp from seeking injunctive relief or any other remedy available at law in any jurisdiction in case of any infringement of its Intellectual Property Rights.

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