

General Terms and Conditions of Software as a Service (SaaS)

Status: January 2023

§ 1 Scope of Application, Special SaaS Terms of Contract

- 1.1 The General Terms and Conditions for Software as a Service (SaaS) (hereinafter "**GTC Cloud**") of Gesellschaft für Organisationsberatung und Softwareentwicklung mbH (hereinafter "**GFOS**") apply to the provision of GFOS software as Software as a Service (SaaS) in the GFOS knownCloud .
- 1.2 These GTC Cloud apply exclusively to entrepreneurs within the meaning of section 14 of the German Civil Code ("**BGB**"), i.e. to natural persons or legal entities who, when concluding a legal transaction, act in the exercise of their commercial or independent professional activity. The term "**Customer**" is hereinafter used to refer to any company that enters into a SaaS Contract with GFOS, including these GTC Cloud, for the provision of *gfos* software as software as a service (**SaaS**) in the GFOS knownCloud (hereinafter referred to as the "**SaaS Contract**").
- 1.3 These GTC Cloud and the documents referred to herein shall apply exclusively. Deviating, conflicting or supplementary GTC of the Customer shall only become part of the SaaS Contract if and insofar as the parties have expressly agreed to their validity in writing. This requirement of consent shall apply in any case, for example even if GFOS begins to provide the service to the Customer without reservation in the knowledge of the Customer's GTC or terms and conditions of purchase.
- 1.4 Individual agreements made between GFOS and the Customer in individual cases (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these GTC Cloud. The content of such agreements shall be governed by a written contract or written confirmation from GFOS.

- 1.5 The documents referred to in these GTC Cloud, in particular the product description, are integral parts of the SaaS Contract concluded between the parties. Unless expressly stated otherwise, references to documents relate to the respective applicable version of the documents.

§ 2 Definitions

- 2.1 "**GFOS knownCloud**": Hardware and software in the data centre of GFOS incl. operating systems, databases and infrastructure, which GFOS makes available to the Customer for the use of the SaaS service.
- 2.2 "**SaaS Service**": Any GFOS software ordered by the Customer, including application documentation in electronic form, which is provided as Software as a Service (SaaS), plus the IT services specified in the respective product description.
- 2.3 "**GFOS Group**" means GFOS and all companies affiliated with GFOS within the meaning of sections 15 ff. of the German Stock Corporation Act ("**AktG**").
- 2.4 "**Group Companies**" means, in relation to the Client's Company, another company which is affiliated with the Client's Company within the meaning of sections 15 ff. AktG.

§ 3 Conclusion of contract, performance deadlines and scope of performance

- 3.1 All offers of GFOS are subject to changes and are non-binding, unless they are marked as binding. They are merely invitations to the Customer to place orders. If the Customer places an order on the basis of the non-binding offers, a SaaS Contract - also in current business transactions - shall only be concluded by the written order confirmation of GFOS (sufficient also by e-mail). In all other cases the SaaS

Contract is concluded at the latest by the execution of the SaaS services. If an order confirmation is issued by GFOS, this alone shall be decisive for the content of the SaaS Contract, in particular for the scope of the SaaS services and the delivery time or other performance deadlines.

- 3.2 Dates and deadlines are non-binding unless they have been expressly agreed as binding in writing. GFOS shall only be in default with a performance obligation if the Customer has previously warned GFOS in writing and unsuccessfully set a reasonable deadline for performance.
- 3.3 GFOS shall provide the Customer with the technical possibility and authorisation to access the SaaS service via the Internet and to use the agreed functionalities within the framework of the SaaS Contract. The functional scope of the SaaS service, the service levels, the technical requirements for use and further details on the access rights acquired by the Customer are set out in the product description for the respective SaaS service. GFOS shall provide the SaaS Services to the Customer on the basis of the service quality and service level specified herein. However, the information in the product description is not to be understood as a guarantee of the quality of the respective SaaS services, insofar as these are not expressly designated as such in the product description.
- 3.4 The respective SaaS service is provided in a data centre for use and retrieval by the Customer. The relevant performance transfer point for the SaaS services is the router output of the data centre used by GFOS. GFOS shall not be responsible for failures or the non-availability of hardware and software components, the Internet or other networks after this performance transfer point. The connection of the Customer to the internet, the maintenance of the network connection as well as the procurement and provision of the hardware and software required on the part of the Customer is not the subject of the SaaS Contract and is the sole responsibility of the Customer.
- 3.5 GFOS is entitled to adapt the SaaS-Services to the current technical development or due to

changes in the law, changes in jurisdiction, changes in the SaaS-Services of subcontractors or changes in the economic circumstances and in this context to change the technical properties and functionalities of the SaaS-Services. Insofar as such an adjustment not only improves the SaaS-Services from the Customer's point of view, but also reduces the scope of services specified in the product description or changes it in an unreasonable manner for the Customer, GFOS shall announce the adjustment to the Customer in writing at least six (6) weeks before its implementation and provide the Customer with a correspondingly adjusted product description. If the Customer does not object to the amendment in writing to GFOS within six (6) weeks of receipt of the notification, the amendment shall be deemed to have been approved and the amended version of the product description shall apply to existing contracts between GFOS and the Customer from this point in time. GFOS shall expressly draw the Customer's attention to this consequence when notifying the Customer of the amendment. In the event that the Customer does not accept the amendment, both GFOS and the Customer shall be entitled to terminate the SaaS Contract with effect from the time the amendment comes into force.

- 3.6 Unless expressly agreed in the product description or in the respective SaaS Contract, GFOS shall not owe any further SaaS services, in particular no installation, set-up, consulting, customisation and/or training services. Further information on the SaaS services, e.g. in brochures, on websites or in the context of oral presentations, are not part of the agreed SaaS services, unless this information is also expressly mentioned in the product description.

§ 4 Rights of access and use, blocking of access, rights of third parties

- 4.1 For the duration of the SaaS Contract, GFOS grants the Customer and its group companies using the SaaS services the right of access and the contractual use of the respective SaaS services for solely internal business purposes of the Customer or its group companies. The aforementioned rights of access and simple rights of use are, unless otherwise

agreed in writing, non-exclusive and non-transferable. The regulations apply accordingly to updates and upgrades of the SaaS services provided by GFOS.

- 4.2 The Customer shall protect the user and access authorisations assigned to him or his users as well as identification and authentication backups from access by unauthorised third parties and shall not pass them on to unauthorised third parties. As soon as the Customer has indications that the user and access authorisations have been obtained illegally by a third party or could be misused, the Customer is obliged to inform GFOS of this immediately. Insofar as the Customer is entitled to grant access to the respective SaaS service to its group companies, the Customer shall be liable for any fault of these group companies as for its own fault. The Customer shall pass on all provisions of the SaaS Contract to such group companies entitled to use the service and oblige them to comply with the contractual provisions before the Customer grants access.
- 4.3 The Customer shall not use the SaaS services in any way or allow them to be used improperly, in particular shall not transmit any data with illegal content. The Customer shall also refrain from any attempt to retrieve information or data himself or through unauthorised third parties without authorisation or to interfere or allow interference with software operated by GFOS or GFOS subcontractors or to penetrate data networks of GFOS or GFOS subcontractors without authorisation.
- 4.4 The Customer is obligated to undertake backups of its data in machine-readable form at intervals appropriate to the application, at least once a day, and guarantees that the data can be restored with reasonable effort; this shall not apply insofar as the data back-up is a contractual service provided by GFOS. The Customer shall protect the systems with which it accesses the respective SaaS services by means of appropriate technical and organisational measures and regularly check these measures in order to ensure that the systems used by GFOS for the provision of services remain undamaged, in particular

against access by unauthorised third parties, viruses, Trojans or similar malware.

- 4.5 GFOS is entitled to block the Customer's access to the respective SaaS service temporarily or permanently if there are concrete indications that the Customer violates or has violated these GTC Cloud, the SaaS Contract and/or applicable law, or if GFOS has another justified interest in the blocking (e.g. maintenance measure to restore IT security, defence against cyber attack, violation of licence conditions). When deciding on a blocking, GFOS shall give due consideration to the legitimate interests of the Customer and shall threaten or announce a blocking in advance with a reasonable lead time in writing or . In individual cases, GFOS may also block access without prior warning/announcement in order to protect the legitimate interests pursued by GFOS with the blocking, unless prior warning/announcement is required by law or for other legal reasons. The blocking of access does not at the same time constitute termination of the SaaS Contract. The blocking of access without termination can only be maintained by GFOS for a reasonable period of time, in the case of breaches of contract by the Customer a maximum of three (3) months. The claim of GFOS to payment of the remuneration for the SaaS services shall remain unaffected during the blocking. In the event of breaches of contract, the Customer shall have a claim to the re-granting of access after proving that he has ceased the use in breach of contract and has prevented future use in breach of contract.

§ 5 Permitted scope of use, right of third parties

- 5.1 The SaaS services may only be used by the Customer and only for the purposes agreed in the SaaS Contract. The Customer may access the respective SaaS services during the term of the SaaS Contract and use the agreed functionalities in accordance with the contract. The Customer does not receive any further rights, in particular to the *gfos* software, the associated IT services or any infrastructure services provided in the GFOS known-Cloud. Any further use of the SaaS services requires the prior written consent of GFOS.

GFOS reserves all rights to work results, trademarks, know-how and other industrial property rights that exist for the respective SaaS services or that arise in connection with the use of the SaaS services.

- 5.2 In particular, the Customer may not use the SaaS-Services beyond the agreed scope of use or have them used by third parties or make them accessible to third parties. In particular, the Customer is not permitted to reproduce the SaaS services or parts thereof or to sell, temporarily transfer, rent or lend the SaaS services. GFOS is entitled to take appropriate technical measures to protect against use not in accordance with the contract.
- 5.3 Insofar as the SaaS Service contains components of third-party software for which separate licence conditions apply, this is regulated in the product description. The SaaS Service may contain components of open source software, for which separate licence conditions of the respective rights holders apply. The respective licence conditions of the rights holders take precedence over the rights of use of these GTC Cloud; this also applies to warranty and liability exclusions of the open source software licence conditions. Open Source Software and the licence conditions separately applicable to it shall, where necessary, be displayed in the respective product descriptions and/or listed in the readme.txt, notices.txt or licenses.txt attached to the GFOS Software and/or otherwise made available to the Customer. The source code of the open source software is, if applicable, available under the link indicated there or on request. Insofar as the licence conditions of an open source software require a right to process for the Customer's own purposes and, associated with this, to reverse engineer for the purposes of troubleshooting a software accessing this open source software, GFOS hereby grants this to the Customer; contradictory provisions in the respective SaaS Contract shall not apply in this respect.
- 5.4 If a third party raises justified claims against the Customer due to the infringement of copyrights, patents or other industrial property rights by GFOS or by the SaaS services provided by GFOS and used by the Customer

in accordance with the contract, and the use of the SaaS services by the Customer is prohibited in whole or in part by a final court decision, GFOS shall be liable to the Customer as follows if and to the extent that GFOS is to be blamed in this respect:

- 5.5 GFOS shall at its own discretion and at its own expense (i) provide the Customer with the possibility to use the SaaS-Services, or (ii) modify the SaaS-Services in such a way that the third party's property right is not infringed but the SaaS-Services essentially correspond to the agreed quality, or (iii) refund the remuneration paid for the SaaS-Services for the period for which they can no longer be used in accordance with the contract. Furthermore, GFOS shall indemnify the Customer against legally established claims of third parties for the infringement of property rights due to a contractual use of the SaaS-Services as well as against the costs of legal defence caused thereby within the limits of the limitation of liability agreed in these GTCCloud.
- 5.6 The Customer shall provide GFOS with reasonable support in all damage mitigation measures. The above obligations of GFOS pursuant to § 5.5 shall only exist insofar as the Customer immediately notifies GFOS in writing of the assertion or threat of such claims, all out-of-court and in-court defence measures and settlement negotiations are reserved for GFOS or are only conducted in written agreement with GFOS, the Customer immediately makes available any information requested by GFOS for the assessment of the situation or defence of the claims and provides reasonable support. Claims of the Customer are also excluded if the infringement of property rights is caused by specifications of the Customer, by an application of the SaaS-Services not foreseeable by GFOS or by the SaaS-Services being modified by the Customer or by third parties commissioned by the Customer or being used together with products not supplied by GFOS, unless such infringement of property rights would also have been caused without such application, modification or use.

§ 6 Availability of the GFOS knownCloud

- 6.1 The availability of GFOS knownCloud per contract year (12 months) shall be at least ninety-nine point six percent (99.6%) (the "**Availability**" or "**A**" for short). The availability refers exclusively to the availability owed at the power transfer point of the server (output router of the data centre used by GFOS). Impairments in the area of data transmission from this performance transfer point to the Customer and/or in the area of the Customer's IT systems themselves shall not be taken into account.
- 6.2 "Availability" means the ratio of (i) the difference between System Uptime and Unavailability during a SaaS Contract Year to (ii) the System Uptime during such SaaS Contract Year, expressed as a percentage.
- 6.3 The "System Uptime" (abbreviated to "**SU**") is the total amount of time during a SaaS Contract year (in minutes) during which the Customer is contractually able to access the GFOS knownCloud in accordance with the access protocols. Initially, a system uptime of 24 hours per day, 365 days per year is owed. However, the following periods are not to be taken into account when determining the system uptime:
- a) Malfunctions in or due to the condition of the infrastructure or software not to be provided by GFOS, in particular malfunctions for which the Customer is responsible, such as failures caused by incoming/outgoing hack attacks (DDoS/viruses) due to faulty and/or insufficient maintenance of the Customer's own hardware and software;
 - b) disruptions or other events for which GFOS is not responsible, in particular external DNS and routing disruptions, attacks on the network or mail infrastructure (DDoS/viruses) and failures of parts of the Internet outside the control of GFOS;
 - c) Periods of Planned Unavailability in accordance with § 6.5 below;
 - d) in cases of force majeure, whereby "**force majeure**" shall mean any unforeseen, extraordinary event
- beyond the control of GFOS as a result of which GFOS is unavoidably prevented in whole or in part from fulfilling its contractual obligations and which could not have been averted or rendered harmless even by the exercise of reasonable care on the part of GFOS. Force Majeure in this sense includes, in particular, unforeseen political events or unrest, including war, terrorist attacks, fire damage, strikes and lawful lockouts, as well as closures for which GFOS is not responsible, unavoidable hacking and/or cyber attacks by third parties, such as DDoS attacks, natural disasters, such as floods, official orders, epidemics and pandemics, such as the Covid19 virus;
- e) in the event of impairments to data transmission outside the data network operated by GFOS or the GFOS subcontractors, e.g. due to line failure or disruptions at other providers or telecommunications providers;
 - f) faults which are based on the fact that the Customer's hardware or software has been improperly used or repaired, or systems and software have not been installed, operated and/or maintained in accordance with the manufacturer's guidelines or specifications.
- 6.4 "Unavailability" ("**UA**" for short) means the time during a SaaS Contract year (in minutes) during which the Customer, although system uptime should be given, is not able to access the GFOS knownCloud, according to the access protocols. The availability is calculated as follows:
- $$A \text{ (in \%)} = (SU - UA) : (SU) \times 100$$
- Calculation results are to be rounded up or down to one decimal place.
- 6.5 The following maintenance windows are agreed upon for periodic, planned or unplanned maintenance work on the server system or the infrastructure of GFOS knownCloud, which is necessary for the maintenance and security of the ongoing operation,

as well as for the performance of data backups and the installation of updates or upgrades:

- a) Scheduled maintenance windows: daily, 23:00 to 05:00 and all day on up to two Sundays per calendar quarter (after prior information).
- b) Unscheduled maintenance windows: Furthermore, further maintenance windows may be agreed between GFOS and the Customer as required. GFOS shall also remain entitled in individual cases to carry out maintenance work without agreement with the Customer if this is absolutely necessary for the maintenance and security of the ongoing operation and prior agreement with the Customer is not possible for reasons of time. GFOS shall inform the Customer about the maintenance work at the latest after completion of the maintenance work.

The periods of Planned and Unplanned Maintenance Windows are collectively referred to as "**Planned Unavailabilities**".

- 6.6 During periods of Planned Unavailability, the client has no legal claim to use the GFOS knownCloud, even if the GFOS knownCloud is available in whole or in part at such times. If a malfunction or failure occurs when using the GFOS knownClouds during periods of Planned Unavailability, the Customer shall in particular not be entitled to any warranty or compensation.

§ 7 SaaS Contract Execution, Subcontractors

- 7.1 GFOS undertakes to provide the SaaS Services specified in the SaaS Contract and the Product Description.
- 7.2 GFOS commits to:
- a) have the capacity, authority and all necessary licences, permits and approvals to perform its obligations under the SaaS Agreement; and

- b) provide the SaaS Services through appropriately qualified and trained staff; and
- c) provide the SaaS Services in compliance with applicable laws; and
- d) perform the SaaS Services in accordance with the standards agreed in this SaaS Agreement.

- 7.3 GFOS shall remain entitled to have parts of the SaaS Services provided by suitable, competent subcontractors. When providing the SaaS Services, GFOS also reserves the right to make use of personnel resources as well as technical, professional and/or administrative support services of other companies of the GFOS Group and accordingly to pass on order-related confidential information of the Customer. All companies of the GFOS Group are obliged to maintain confidentiality. Notwithstanding the above, the responsibility for the provision of the SaaS services shall remain fully with GFOS. Any claims for performance and liability can therefore be asserted exclusively against GFOS, but not against other companies of the GFOS Group.

§ 8 Use of the SaaS Services by the Customer, cooperation services

- 8.1 The Customer shall support the activities of GFOS necessary for the performance of the service. This includes in particular the timely and complete provision and procurement of all necessary information for proper service provision. The Customer shall ensure that all cooperation services required for the provision of the SaaS services are provided in good time, in full and free of charge for GFOS. The Customer shall ensure that the Customer's employees who support GFOS in the provision of services are available at the agreed times. The client shall be responsible for ensuring that its employees have the necessary knowledge, skills and experience to perform the tasks assigned to them. The Customer's duties to cooperate include, in particular, creating all the conditions in its sphere of operation that are necessary for GFOS to provide the SaaS Services properly.

- 8.2 The Customer shall use the SaaS Services exclusively for its internal business purposes or, as the case may be, those of its group companies.
- 8.3 The Customer is responsible for monitoring the use of the SaaS services and shall immediately notify GFOS in writing of any use that exceeds the contractual agreements, in particular if the agreed employee licences are exceeded. In this case, the Customer is obliged to sign an extension agreement showing the additional use and the additional remuneration. The corresponding remuneration shall accrue from the day on which the excess exists. GFOS is entitled to check the contractual compliance of the use of the SaaS services, in particular the compliance with the contractually agreed employee licences.
- 8.4 The Customer shall maintain its internal systems and technical environments/equipment itself. These shall comply with the minimum specifications published by GFOS and to be communicated by GFOS upon request in order to enable GFOS to provide the service.
- 8.5 The Customer shall monitor the provision of the SaaS Services by GFOS in accordance with its obligations under the SaaS Contract.
- 8.6 The Client shall keep its own records in accordance with applicable law and shall, in particular, keep all original records of the information supplied to GFOS.
- 8.7 The SaaS services of GFOS are based on the information supplied by the Customer. The Customer shall be responsible for the accuracy and timely delivery of this information and accordingly in particular for any adverse effects caused by delays for which it is responsible as well as its own instructions.
- 8.8 Unless otherwise agreed, the Customer shall be responsible for communication connections, including the Internet, if the SaaS Services require the use of communication connections to establish the connection with GFOS. The Customer itself shall bear the installation, usage, service and repair costs for the communication links. GFOS is not responsible for the availability or reliability of the communication links used by the Customer to access the SaaS Services.
- 8.9 In the context of the use of the SaaS-Services by employees of the Customer, the Customer shall ensure that the obligations arising for the users from the SaaS-Contract are complied with. GFOS may block access to the SaaS-Services by a user in accordance with § 4.5 if GFOS has reasonable grounds to suspect that this user has violated these GTC-Cloud or is otherwise using the SaaS-Service in a manner contrary to the contract.
- 8.10 GFOS shall not provide legal, accounting or tax advice to the Client and the Client shall rely solely on its own advisers in relation to such advice.
- 8.11 The Customer has now and in the future unlimited power of attorney of its group companies, which shall claim SaaS services of GFOS, if applicable, for the execution of the SaaS Contract and it obligates its group companies to duly fulfil the obligations contained in this SaaS Contract. Furthermore, the Customer has all necessary licences, permissions and approvals for the provision of its cooperation services.
- 8.12 As long as the Customer's cooperation services are not provided in accordance with the contract, GFOS shall be released from the relevant performance obligation in whole or in part to the extent that GFOS is dependent on the respective cooperation or provision. GFOS shall not be responsible for disruptions to performance caused by the Customer's failure to provide cooperation services in accordance with the contract. Additional expenses incurred by GFOS due to the non-contractual provision of the cooperation services can be invoiced separately by GFOS according to expenditure. Any further claims of GFOS shall remain unaffected.

§ 9 Remuneration for SaaS Services

- 9.1 Billing for the SaaS services begins at the latest with the technical provision and is calculated with the monthly remuneration agreed in the SaaS Contract. Unless otherwise

- agreed, the remuneration for a contractual year is due in advance.
- 9.2 All prices of GFOS are always in EURO plus VAT to be borne by the Customer in the respective legally prescribed amount. The sales tax shall be shown separately on the invoice. The prices as well as price surcharges shall be determined according to the GFOS price list generally valid at the time of conclusion of the contract, unless otherwise agreed in writing.
- 9.3 The invoices of GFOS are payable without any deduction (e.g. discount) within fourteen (14) calendar days of the invoice date, unless otherwise agreed in writing. The date of payment shall be the date on which the money is received by GFOS or credited to the account of GFOS.
- 9.4 One-off services or works, in particular in the context of the possibly necessary implementation of the SaaS services, which the Customer requests but which are not part of the SaaS services agreed in the SaaS Contract, shall be offered and invoiced separately by GFOS on the basis of a separate agreement in accordance with the price list valid at the time.
- 9.5 In the event of changes in market conditions, significant changes in procurement costs, changes in value added tax or price increases by subcontractors, GFOS shall be entitled to adjust the remuneration for the SaaS services. However, such a price adjustment is permissible at the earliest twelve (12) months after conclusion of the SaaS Contract and only once a year. GFOS shall announce the change to the Customer in writing at least six (6) weeks before it takes effect. In the event that the Customer does not accept the price increase, both GFOS and the Customer shall be entitled to terminate the SaaS Contract in its entirety with a notice period of one (1) month to the end of the calendar month, insofar as the price increase amounts to more than five percent (5%) of the previous price. In the event of termination, the prices which have not been increased until the termination takes effect shall apply.
- 9.6 The Customer may only offset claims that have been legally established or are undisputed. He shall only be entitled to assert rights of retention against GFOS if the counterclaim asserted is undisputed or legally established. The assignment of claims against GFOS is excluded. However, the aforementioned shall not apply within the scope of application of section 354a of the German Commercial Code ("HGB").

§ 10 Defects in performance

- 10.1 A defect of the SaaS-Services exists if they do not have the contractually agreed quality. The contractual quality of the SaaS-Services results from the specifications in the product description of the respective SaaS-Services. Insofar as the quality was not agreed, it is to be assessed according to the statutory regulation whether a defect exists or not.
- 10.2 The Customer shall report defects in the SaaS services to GFOS immediately and in writing (e-mail suffices), stating the information known to him and relevant for their detection. The report must describe in detail the symptoms that have occurred, the program functionality and the system and hardware environment and contain the information that is useful for remedying the defects, for example the number of users affected, a description of the system and hardware environment and any third-party software that may have been loaded simultaneously.
- 10.3 The Customer shall, within the bounds of what is reasonable, take measures to facilitate the identification of defects and their causes. GFOS shall determine the cause of a defect at its own expense. GFOS shall regularly report to the Customer on the respective status and success of these efforts. If the determination of the cause leads to the conclusion that a malfunction of the SaaS services is not due to a defect for which GFOS is responsible, GFOS shall only have to remedy the malfunction if the Customer agrees to bear the associated costs.

- 10.4 GFOS may remedy defects in the SaaS Services by removal, bypass or replacement at GFOS's discretion. If GFOS does not successfully complete the rectification of defects within a reasonable period of time, the Customer may set GFOS a grace period. After expiry of the grace period, the Customer may demand a reasonable reduction of the remuneration or terminate the SaaS Contract; the Customer's right to self-execution according to section 536a para. 2 BGB is excluded. The setting of a grace period for the rectification of defects shall be dispensable if this is impossible, if it is refused by GFOS or delayed in an unreasonable manner, if there are reasonable doubts regarding the prospects of success or if it is unreasonable for the Customer for other reasons.
- 10.5 An immediate reduction of the current remuneration for the SaaS services is only permissible insofar as the claim for reduction is undisputed or has been legally established; the Customer retains the right to reclaim any overpaid amounts in accordance with the principles of unjust enrichment (sections 812 ff. BGB).
- 10.6 The rights of the Customer due to defects of the SaaS services are excluded insofar as the Customer makes or has made changes to the SaaS services without the consent of GFOS, unless the Customer proves that the changes do not have any effects on the analysis and elimination of the defects which are unreasonable for GFOS.
- 10.7 If GFOS provides SaaS services in the determination or rectification of defects without being obliged to do so, GFOS may demand remuneration on a time and material basis if the Customer has at least grossly negligently failed to recognise the non-existence of a defect.
- § 11 Liability**
- 11.1 GFOS shall be liable without limitation for damage caused intentionally or by gross negligence, for damage resulting from injury to life, body and health, and for damage that gives rise to a duty to pay compensation pursuant to section 1 of the German Product Liability Act ("ProdHaftG").
- 11.2 In the event of simple negligence, GFOS shall only be liable insofar as it concerns a breach of material contractual obligations, the fulfilment of which makes the proper performance of the SaaS Contract possible in the first place and on the observance of which the Customer could rely. Otherwise, liability for damages caused by slight negligence is excluded. § 11.1 remains unaffected.
- 11.3 In the event of a simple negligent breach of material contractual obligations by GFOS, the obligation to pay compensation shall be limited to the foreseeable damage typical for the contract. The foreseeable damage typical of the contract is the damage which GFOS foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which GFOS should have foreseen by exercising due care. Indirect damages and consequential damages which are the result of a service not being provided in accordance with the contract are also only compensable insofar as such damages are typically to be expected when using the SaaS services as intended. § 11.1 remains unaffected.
- 11.4 The liability of GFOS in the cases of § 11.3 is limited to two hundred and fifty thousand euros (€ 250,000.00) per case of damage. If, in the opinion of the client, the foreseeable contractual risk exceeds this maximum liability amount by more than an insignificant amount, GFOS shall be prepared to agree an appropriate higher liability amount in return for appropriate remuneration for the assumption of risk, provided that insurance cover can be agreed for this.
- 11.5 In the event of data loss or data destruction, GFOS shall only be liable insofar as GFOS has caused the destruction intentionally, through gross negligence or due to a breach of a material contractual obligation. The liability of GFOS for the simple negligent breach of an essential contractual obligation shall be limited in the above case to the amount of the damage that would also have arisen in the

- event of proper data backup by the Customer.
- 11.6 If several claimants under the purchase contract bring claims against GFOS arising from a simple negligent breach of essential contractual obligations (§ 11.3) by GFOS, the maximum liability amount determined in § 11.4 shall apply to the relevant claims of all claimants in total. The maximum liability amount shall only be available to the Customer and the other claimants jointly and once (joint and several creditor, section 428 BGB). section 334 BGB applies accordingly.
- 11.7 A liability for damages due to a defect already existing at the time of conclusion of the contract pursuant to section 536a BGB is excluded.
- 11.8 The above provisions on the limitation of liability shall also apply to the personal liability of the employees, representatives and bodies of GFOS.
- 11.9 Claims for damages and claims for reimbursement of futile expenses of the Customer shall become statute-barred within one (1) year; with regard to the beginning of the limitation period, section 199 para. 1 BGB shall apply. This shall not apply to claims for damages and claims for reimbursement of futile expenses due to injury to life, body or health, in the case of claims under the Product Liability Act and in the case of breach of a quality guarantee. Furthermore, this shall not apply to claims based on an intentional or grossly negligent breach of duty by GFOS or a legal representative or vicarious agent of GFOS.
- 11.10 A reversal of the burden of proof is not associated with the above provisions.
- § 12 Confidentiality, data protection, references**
- 12.1 The Customer undertakes to keep confidential such facts, documents and knowledge which come to his knowledge in the course of the implementation of the business relationship with GFOS and which contain technical, financial, business or market-related information about the company GFOS, provided that GFOS designates the respective information as confidential or has an obvious interest in keeping it confidential (hereinafter collectively referred to as "confidential **information**"). The Customer shall use the Confidential Information exclusively for the purpose of implementing and executing the contractual relationship with GFOS in accordance with the contract and the individual contracts based thereon.
- 12.2 The disclosure of confidential information by the Customer to third parties requires the express and prior written consent of GFOS.
- 12.3 The duty of confidentiality pursuant to § 9.1 above shall not apply if the respective confidential information can be proven:
- a) is or becomes generally known without any action on the part of the Customer or
 - b) was already known to the Customer or is made known by a third party authorised to pass on the information or
 - c) is developed by the Customer without the intervention of GFOS and without exploitation of other information or knowledge obtained through the contractual contact; or
 - d) must be disclosed due to mandatory statutory provisions or court or official orders.
- 12.4 The Customer shall be responsible for compliance with all relevant statutory data protection provisions, in particular for the lawfulness of the data disclosure and data processing of personal data of its employees and other data subjects in connection with the provision of services by GFOS. GFOS shall process the personal data of the Customer only within the scope of the contractually owed provision of services and in accordance with the provisions of data protection law.
- 12.5 The Parties shall process personal data in compliance with the applicable provisions

- on data protection, in particular Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR").
- 12.6 Personal data of the Customer shall be collected, stored, processed and used by GFOS if, to the extent and for as long as this is necessary for the establishment, performance or termination of the SaaS Contract with the Customer. Any further collection, storage, processing and use of personal data of the Customer shall only take place if a legal provision requires or permits this or the Customer has consented. The Customer is aware that in order to carry out pre-contractual measures and fulfil the contract with the Customer, the collection, processing and use of the contact data of the Customer's contact persons (name, e-mail addresses, etc.) is required on the basis of point b) of Art. 6(1) GDPR. GFOS is in particular entitled to transfer the data to third parties if and insofar as this is necessary for the implementation of pre-contractual measures and fulfilment of the contract (e.g. for service provision, invoicing or Customer support) in accordance with point b) of Art. 6(1) GDPR or fulfilment of a legal obligation within the meaning of point c) of Art. 6(1) GDPR. GFOS will also forward this data to third parties (e.g. debt collection companies) for the purpose of enforcing claims in accordance with point b) and/or f) of Art. 6(1)GDPR.
- 12.7 The data protection information of GFOS is available at <https://www.gfos.com/en/privacy>.
- 12.8 Insofar as GFOS processes personal data on behalf of the Customer within the framework of the performance of the SaaS Contract, GFOS shall only process the personal data within the framework of the contractually owed performance of services or other written instructions of the Customer and in accordance with the provisions of data protection law. The parties shall specify the details of the commissioned processing in a separate "Agreement on the Processing of Personal Data on Behalf". This agreement shall take precedence over the provisions of these GTC Cloud in its scope of application.
- 12.9 GFOS shall be entitled to refer to the contractual relationship with the client in a suitable form in brochures and publications (e.g. reference lists), including the use of the client's company logo. If the Customer does not agree to this, it shall inform GFOS accordingly in writing or in text form.
- § 13 SaaS Contract Term, Termination, Termination of Contract**
- 13.1 Unless the Parties have agreed otherwise, the SaaS Contract shall have a minimum term of three (3) years ("**Minimum Term**"). Thereafter, the SaaS Contract shall be renewed for twelve (12) months at a time unless it is terminated in writing beforehand with a notice period of six (6) months to the end of the Minimum Term, thereafter to the end of the respective renewal.
- 13.2 Each party is entitled to terminate the SaaS Contract at any time for good cause. Good cause exists if facts are given on the basis of which the terminating party, taking into account all circumstances of the individual case and weighing the interests of the other party, can no longer reasonably be expected to continue the SaaS Contract ("**good cause**"). If the Good Cause consists of the breach of a contractual obligation, the termination is only permissible after the unsuccessful expiry of a deadline set for remedial action or after an unsuccessful warning, insofar as the setting of a deadline is not dispensable pursuant to section 323 para. 2 BGB.
- 13.3 GFOS shall in particular be entitled to terminate the contract for Good Cause if the Customer is in arrears with the payment of at least two (2) monthly invoices.
- 13.4 After termination of the SaaS Contract for whatever reason
- a) all rights of use and other rights granted to the Customer under this SaaS Agreement shall automatically terminate:

- b) all Confidential Information provided by either party to the other under this SaaS Agreement or in connection with the terminated SaaS Services shall be returned to the respective party upon request; this shall not apply to correspondence between the parties and other documents to be retained by the respective party in accordance with statutory provisions;
- c) all unpaid remuneration and expenses shall become immediately due for payment.
- 13.5 Upon receipt of a notice of termination from GFOS or after the client's own notice of termination, the client shall immediately ensure that its data managed in the GFOS known-Cloud or in the respective SaaS service is backed up and migrated to a system of the client at the latest upon termination of the SaaS Contract. Upon termination of the SaaS Contract, GFOS will delete the client's data in accordance with the legal obligations. Upon request and against separate remuneration in accordance with the respective applicable service rates, GFOS shall support the Customer within the scope of the migration.
- 13.6 Insofar as GFOS is commissioned by the Customer to support the migration, the Customer's data shall be provided by GFOS in consultation with the Customer in a standard format (standard market format) on a data carrier or digitally for downloading.
- consequence (e.g. setting of deadlines, withdrawal) must be made in writing to be effective. This also applies to amendments or supplements to this written form clause. The transmission of the relevant declarations by telecommunication, in particular by e-mail, is not sufficient for this purpose.
- 14.4 The place of jurisdiction for all legal disputes between the parties arising from or in connection with the SaaS Contract shall be Essen, Germany, to the extent permitted by law; GFOS shall, however, also be entitled to sue the Customer at its general place of jurisdiction. The above agreement on the place of jurisdiction shall not apply if a different, exclusive place of jurisdiction results from the law.
- 14.5 These GTC Cloud and the SaaS Contract are governed by the laws of the Federal Republic of Germany. The provisions of private international law and the UN Convention on Contracts for the International Sale of Goods shall not apply.
- 14.6 These GTC have been drafted in German and English. In the event of any inconsistency between the German and English version of the GTC, the German version shall be binding.

§ 14 Final provisions

- 14.1 The place of performance for all contractual obligations shall be the registered office of GFOS.
- 14.2 GFOS shall be entitled at any time to transfer the rights and obligations under the SaaS Contract to companies of the GFOS Group.
- 14.3 Amendments and supplements to these GTC Cloud and the SaaS Contract as well as other declarations in connection with the SaaS Contract which trigger a legal