

# General Terms and Conditions of Contract for for the Sale of Hardware and System Software

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## § 1 Scope of application, general regulations

- 1.1 These General Terms and Conditions of Contract of Gesellschaft für Organisationsberatung und Softwareentwicklung mbH (hereinafter referred to as "**GFOS**") for the sale of Hardware and system software (hereinafter referred to as "**GTC Hardware**") regulate the legal framework for the sale of Hardware and associated system software (hereinafter collectively referred to as "**Hardware**").
- 1.2 GFOS offers the Hardware exclusively to Customers who are entrepreneurs (section 14 of the German Civil Code, "**BGB**"), a legal entity under public law or a special fund under public law; orders from consumers are not accepted by GFOS. The term "**Customer**" is hereinafter used to refer to any company that concludes a contract with GFOS for the provision of Hardware under inclusion of these GTC Hardware (hereinafter "**Purchase Contract**").
- 1.3 These GTC Hardware and the documents referred to herein shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business and Purchase of the Customer shall only become part of the contract if and to the extent that GFOS has expressly agreed to their validity in writing. This requirement of consent shall apply in all cases, for example even if GFOS commences the provision of services to the Customer without reservation in the knowledge of the Customer's General Terms and Conditions of Business and Purchase.
- 1.4 The documents referred to in these GTC Hardware, in particular the product description and the offer of GFOS, are integral parts of the Purchase Contract concluded between the parties. Unless expressly stated otherwise, references to documents shall refer to the version of the documents in force at the time.

- 1.5 Individual agreements made in individual cases between GFOS and the Customer (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these GTC Hardware. The content of such agreements shall be governed by a written contract or written confirmation from GFOS.
- 1.6 References to the applicability of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these GTC Hardware.
- 1.7 The provisions of these GTC Hardware shall apply mutatis mutandis to the provision of the application documentation as well as the provision of patches, updates, upgrades as well as new releases and versions of the Hardware to the Customer within the scope of rectification or Hardware support.

## § 2 Conclusion of contract

- 2.1 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.
- 2.2 If the Customer places an order on the basis of the non-binding offers, a Purchase Contract – also in current business transactions – shall only be concluded by the written order confirmation of GFOS (also sufficient by e-mail), if the Customer requests such a confirmation. In all other cases, the conclusion of the Purchase Contract shall be effected by the performance of the services or the provision of the Hardware. Insofar as an order confirmation is issued by GFOS, this alone shall be decisive for the content of the Purchase Contract, in particular for the scope of the provision of Hardware as

- well as the delivery time or other performance deadlines.
- 2.3 The Customer acquires from GFOS the Hardware specified in more detail in the offer under the terms of use agreed in these GTC Hardware.
- 2.4 A reference to standards, similar technical regulations as well as technical specifications, descriptions and illustrations of the delivery item/service in offers and brochures and the advertising of GFOS shall only constitute a specification of the properties of the deliveries and services of GFOS if GFOS has expressly declared the quality as a "property of the delivery or service"; otherwise, these are non-binding, general descriptions of the performance.
- 2.5 A guarantee shall only be deemed to have been assumed by GFOS if GFOS has designated a property and/or a performance outcome as "legally guaranteed" in writing.
- 2.6 The Customer is responsible for checking whether the Hardware is suitable for the intended use. GFOS shall only provide binding advice on this if GFOS has agreed this with the Customer in writing on the basis of a separate consultancy order.
- 2.7 GFOS reserves the property rights and copyright to illustrations, drawings, weight and dimension specifications, performance and other property descriptions, cost estimates and other documents relating to the Hardware to be supplied. The Customer undertakes not to make the documents listed in the above sentence available to third parties unless GFOS gives its express written consent.
- § 3 Provision of the system software, scope of delivery and deadlines, force majeure**
- 3.1 Unless otherwise agreed, the system software shall be provided to the Customer in the version current at the time of conclusion of the Purchase Contract together with the associated Hardware and application documentation.
- 3.2 Insofar as the system software is not already installed on the Hardware to be supplied, GFOS shall effect the transfer of the system software by either (i.) providing the Customer with the number of programme copies of the system software specified in the offer on a machine-readable data carrier or (ii.) making the Hardware available for download via the Internet, at its own discretion.
- 3.3 The source code of system software is not the subject matter of the contract and shall not be provided to the Customer.
- 3.4 The functional scope of the Hardware and the technical requirements for use are specified in the product description for the respective Hardware. For the functional scope of Hardware and system software from third-party manufacturers (hereinafter "**third-party products**"), the information in the GFOS offer and, subordinately, the product descriptions of the respective manufacturer shall apply. The product description applicable to the respective Third-Party Products is either attached to the GFOS offer or GFOS refers in the offer to the manufacturer's website, where the Customer can view and download the product description. However, the information in the product description is not to be understood as a quality guarantee for the respective Hardware and software, insofar as this is not expressly designated as such in the GFOS offer.
- 3.5 For the installation of the Hardware, the installation instructions described in the product description and/or the application documentation, in particular the software and Hardware environment that must be available at the Customer's premises, must be observed.
- 3.6 Unless expressly agreed in the product description or in the respective Purchase Contract, GFOS shall not owe any further services, in particular installation, support, set-up, consulting, adaptation and/or training services. Further information on the Hardware, i.e. in brochures, on Internet pages or in the context of oral presentations, shall not be deemed to be information on quality unless

this information is also expressly stated in the product description.

- 3.7 GFOS shall only be obliged to perform from its own stock of goods. GFOS shall only assume a procurement risk by virtue of a separate written agreement using the phrase "we assume the procurement risk...". In particular, the assumption of a procurement risk shall not be justified solely by the fact that GFOS is obliged to deliver an item which is only specific in terms of its type.
- 3.8 Dates and delivery periods 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. For the observance of delivery dates and the transfer of risk, in the case of physical shipment the point in time at which GFOS or the supplier of GFOS hands over the Hardware to the carrier shall be decisive, otherwise the point in time at which, for example, the system software is made available for retrieval and this is communicated to the Customer. In the absence of any other written agreement, the Customer's interest in the delivery shall only cease to exist in the event of a delay in delivery or performance if GFOS fails to deliver essential parts or delivers them with a delay. GFOS shall not be in default as long as the Customer is in default with the fulfilment of obligations towards GFOS, including those from other contracts.
- 3.9 If the delivery or provision of the Hardware is delayed or temporarily impossible due to circumstances that could not have been foreseen by GFOS even by exercising the utmost care that could reasonably be expected, i.e. unforeseen political events or unrest, including war, terrorist attacks, fire damage, strikes and lawful lockouts, as well as plant 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 (hereinafter "**force majeure**"), then delivery periods shall be extended by a period corresponding to the

duration of the existence of the force majeure. GFOS shall immediately inform the Customer in writing of the impossibility to provide the service. If the force majeure exists for a period of more than ninety (90) days, both parties shall have an immediate right to withdraw from the Purchase Contract.

#### **§ 4 Shipment, Transfer of Risk Delivery of Hardware, Rights of Use to System Software**

- 4.1 Unless otherwise agreed in writing, Hardware shall be shipped by GFOS uninsured at the risk and expense of the Customer and from the GFOS location specified in the order confirmation (INCOTERM EXW 2020).
- 4.2 If the dispatch of the Hardware is delayed at the request of the Customer or for reasons for which the Customer is responsible, the notification of readiness for dispatch shall be equivalent to dispatch and the risk of accidental loss shall pass to the Customer (transfer of risk). In this case, GFOS shall also be entitled, starting with the expiry of the period set with the written notification of readiness for dispatch, to store the goods and to invoice the costs incurred as a result at 0.5% of the net price of the stored deliveries or services for each month or part thereof, up to a maximum of 5% of the net price. The assertion of further rights remains unaffected. The Customer shall have the right to prove that no costs or significantly lower costs were incurred. In addition, GFOS shall be entitled to dispose otherwise of the contractual Hardware after the expiry of the deadline and to supply the Customer again within a reasonable period of time.
- 4.3 The risk of accidental loss or accidental deterioration shall pass to the Customer when the Hardware to be delivered is handed over to the Customer, the forwarding agent, the carrier or the undertakings otherwise designated to carry out the shipment, but at the latest when it leaves the premises of GFOS.
- 4.4 If the shipment is delayed because GFOS exercises its right of retention as a result of the Customer's default in payment in whole or in part or for any other reason for which the Customer is responsible, the risk shall pass to

- the Customer at the latest from the date of notification of readiness for shipment.
- 4.5 Insofar as there is a statutory obligation to take back transport packaging and the Customer requests GFOS to take back transport packaging, the Customer undertakes to have the return processed free domicile or to commission the return.
- 4.6 GFOS or the respective software manufacturers are exclusively entitled to all rights to the system software. The Customer shall be granted by GFOS the non-exclusive, non-transferable and non-sublicensable right, unlimited in time, to use the system software provided in the object code for the purposes specified in the offer, but only for the country of destination agreed between the parties in which the Hardware is to be used. In the absence of an express agreement, the right of use is granted exclusively for the country in which the Customer has its place of business. The Customer may only use the system software to the extent specified in the offer (i.e. with regard to the maximum number of users). The temporary or permanent provision of the system software in data centre operations for third parties (i.e. as "Hardware as a Service") as well as the leasing are not permitted. Copyright notices, serial numbers, version numbers, trademarks or other identification features of the system software may not be changed or removed under any circumstances. The same applies to the suppression of the screen display of corresponding features.
- 4.7 If the system software to be supplied by GFOS in accordance with the Customer contract is the standard software of a third party (hereinafter referred to as "**third-party software**"), the use of this Third-Party Software shall be governed primarily by the corresponding licence conditions of the respective software manufacturer. The Customer undertakes to comply with the respective licence conditions in full and at all times. The licence conditions applicable to the respective Third-Party Software are either attached to the GFOS offer or GFOS refers in the offer to the website of the software manufacturer via which the Customer can view and download the licence conditions. For the use of third-party software, it may also be necessary for the Customer to declare his consent to the validity of the licence conditions of the respective software manufacturer during the installation process. Insofar as the Customer has commissioned GFOS with the installation of the third-party software in accordance with a separate order, GFOS shall be authorised by the Customer to issue such a declaration of consent on behalf of the Customer and thereby bindingly oblige the Customer to comply with the licence conditions vis-à-vis the software manufacturer.
- 4.8 The system software 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 shall take precedence over the rights of use of this GTC Hardware; this shall also apply to warranty and liability exclusions of the open source software licence conditions. Open source software and the licence conditions separately applicable to it shall be displayed, where necessary, in the system software and/or listed in the readme.txt, notices.txt or licenses.txt attached to the version status. If applicable, the source code of the open source software is 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 Purchase Contract shall not apply in this respect.

## § 5 Retention of title

- 5.1 GFOS shall retain title to the delivered Hardware (hereinafter collectively referred to as "**reserved goods**") until all claims of GFOS arising from the business relationship with the Customer, including claims arising in the future from contracts concluded at a later date, have been settled. This shall also apply to a balance in favour of GFOS if individual or all

claims of GFOS are included in a current account and the balance has been struck.

- 5.2 It is the Customer's responsibility to insure the reserved goods sufficiently, in particular against fire and theft. Claims against the insurance company arising from a case of damage affecting the goods subject to retention of title are hereby assigned to GFOS in the amount of the value of the goods subject to retention of title.
- 5.3 The Customer is entitled to resell the delivered Hardware in the ordinary course of business. He is not permitted to make other dispositions, in particular pledges or the granting of ownership by way of security. If the goods subject to retention of title are not paid for immediately by the third-party purchaser in the event of resale, the Customer shall be obliged to resell only subject to retention of title. The right to resell the goods subject to retention of title shall lapse without further ado if the Customer suspends payment or defaults on payment to GFOS.
- 5.4 The Customer hereby assigns to GFOS all claims, including securities and ancillary rights, accruing to him from or in connection with the resale - including within the framework of current account relationships - of goods subject to retention of title against the end buyer or against third parties. He may not enter into any agreement with his purchasers which excludes or impairs the rights of GFOS in any way or nullifies the advance assignment of the claim. In the event of the sale of reserved goods with other items, the claim against the third-party purchaser shall be deemed to have been assigned in the amount of the delivery price agreed between GFOS and the Customer, unless the amounts attributable to the individual Hardware can be determined from the invoice.
- 5.5 The Customer shall remain entitled to collect the claim assigned to GFOS until revocation by GFOS, which shall be admissible at any time. At the request of GFOS, the Customer shall be obliged to provide GFOS with all information and documents required for the collection of assigned claims and, if GFOS does not do so itself, to inform its Customers immediately of the assignment to GFOS.
- 5.6 If the Customer has already assigned claims from the resale of the Hardware delivered or to be delivered by GFOS to third parties, in particular on the basis of genuine or non-genuine factoring, or has made other agreements on the basis of which the current or future security rights of GFOS may be impaired in accordance with this § 5, the Customer shall notify GFOS of this without delay. In the event of non-genuine factoring, GFOS shall be entitled to withdraw from the contract and demand the return of Hardware already delivered. The same shall apply in the case of genuine factoring if the Customer cannot freely dispose of the purchase price of the claim under the contract with the factor.
- 5.7 In the event of conduct contrary to the contract for which the Customer is responsible, in particular in the event of default in payment, GFOS shall be entitled - without GFOS having to withdraw from the contract beforehand - to take back all goods subject to retention of title. In this case the Customer shall be obliged to surrender the goods without further ado. In order to ascertain the inventory of the Hardware supplied by GFOS, GFOS may enter the Customer's business premises at any time during normal business hours. The Customer shall inform GFOS immediately in writing of any access by third parties to goods subject to retention of title.
- 5.8 If the value of the securities existing for GFOS in accordance with the above provisions exceeds the secured claims by more than 10% in total, GFOS shall be obliged to release securities of its choice to this extent at the Customer's request.
- 5.9 Processing and treatment of the goods subject to retention of title shall be carried out for GFOS as manufacturer within the meaning of section 950 BGB without, however, obligating GFOS. If the reserved goods are processed or inseparably combined with other items not belonging to GFOS, GFOS shall acquire co-ownership of the new item in the ratio of the invoice value of the GFOS Hardware to the invoice values of the other processed

or combined items. If the GFOS Hardware is combined with other movable objects to form a uniform object which is to be regarded as the main object, the Customer hereby assigns co-ownership of this to GFOS in the same proportion. The Customer shall hold the ownership or co-ownership in safe custody for GFOS free of charge. The co-ownership rights arising hereunder shall be deemed to be reserved goods. At the request of GFOS, the Customer shall be obliged at any time to provide GFOS with the information required to pursue the ownership or co-ownership rights of GFOS.

#### **§ 6 Duties to cooperate, conditions of use, right of control**

- 6.1 The Customer has informed himself about the essential functional features of the Hardware and bears the sole risk with regard to the actions of use performed by him with the Hardware.
- 6.2 The establishment of a functioning Hardware and software environment for the use of the Hardware is the sole responsibility of the Customer. The software and Hardware environment required for the use of the Hardware as well as any other requirements for use (i.e. required third-party software) are specified in the GFOS offer and/or in the product description. Insofar as the use of third-party software is required for the use of the Hardware, this shall not be part of the Hardware but shall be acquired separately by the Customer.
- 6.3 The Customer shall thoroughly test the Hardware in its IT environment for freedom from defects and for usability before it is used. This shall also apply to any patches, updates, upgrades and new releases and versions of the system software provided after conclusion of the contract.
- 6.4 The Customer shall observe the instructions given by GFOS in the product description and/or the application documentation for the installation and operation of the Hardware.
- 6.5 The Customer shall grant GFOS access to the Hardware for troubleshooting purposes, at

GFOS's discretion directly and/or by means of remote data transmission.

- 6.6 The Customer shall take reasonable precautions in the event that the Hardware does not work properly in whole or in part (i.e. through daily data backups, fault diagnosis, regular checking of data processing results). Insofar as the Customer does not expressly point this out in advance, GFOS may assume that all data of the Customer with which GFOS may come into contact are backed up.
- 6.7 GFOS shall be entitled to check whether the system software is being used in accordance with the provisions of these GTC Hardware and the purchase agreement. For this purpose GFOS may demand information from the Customer, in particular about the number of users and the other extent of use of the system software.

#### **§ 7 Purchase price, terms of payment**

- 7.1 The purchase price for the Hardware is regulated in the respective offer from GFOS or in the price list for the respective Hardware.
- 7.2 The purchase price is due for payment within fourteen (14) calendar days of the invoice date.
- 7.3 All prices are quoted in EURO plus packaging, freight and value added tax to be borne by the Customer at the statutory rate.
- 7.4 The Purchaser shall only be entitled to use the system software in excess of the rights of use granted in the Purchase Contract with the prior written consent of GFOS. In the event of additional use without consent (in particular in the event of simultaneous use by a larger number of users than agreed), GFOS shall be entitled to invoice the amount incurred for the additional use in accordance with the GFOS price list valid at that time, unless the Customer proves that GFOS has suffered significantly lower damages. Further non-contractual claims for damages shall remain unaffected.



7.5 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”).

### § 8 Defects of quality and title, limitation period

8.1 In accordance with the rules of the law on the sale of goods, GFOS warrants the agreed quality of the Hardware and that the use of the Hardware by the Customer to the extent stipulated in the contract does not conflict with the rights of third parties. However, the warranty that the Hardware is free from third-party rights shall only apply to the country of destination agreed between the parties in which the Hardware is to be used. In the absence of an express agreement, the warranty shall apply to the country in which the Customer has its place of business.

8.2 The Customer shall notify GFOS in writing of any recognisable material defects without delay, but no later than seven (7) days after collection in the case of delivery ex works, otherwise after delivery or other transfer. Hidden material defects shall be notified to GFOS by the Customer immediately after discovery, but at the latest within the warranty period pursuant to § 8.10. In addition, notice of material defects recognisable on delivery must be given to the transport company immediately on delivery and the recording of the defects must be arranged by the transport company. Failure to give notice of defects in due form and/or time shall exclude any claim of the Customer for breach of duty due to material defects. This shall not apply in the event of intentional or fraudulent action on the part of GFOS, the assumption of a guarantee of freedom from defects by GFOS or in the event of liability under the Product Liability Act.

8.3 If there is a defect, subsequent performance shall be effected at the discretion of GFOS by

remediating the defect (rectification) or delivery of new goods (new delivery).

8.4 Upon commencement of processing, treatment, combination or mixing with other items, the delivered Hardware shall be deemed to have been approved by the Customer in accordance with the contract in the event of recognisable material defects. The same shall apply in the event of onward shipment from the original place of destination. Before commencing any of the aforementioned activities, it shall be incumbent on the Customer to clarify by means of appropriate tests in terms of scope and methodology whether the Hardware supplied is suitable for the processing, procedural and other purposes intended by it.

8.5 Other breaches of duty must be warned in writing by the Customer without delay, setting a reasonable remedy period, before further rights are asserted.

8.6 In the event of defects of title, GFOS shall first provide warranty by means of subsequent performance. For this purpose, GFOS shall, at its discretion, procure for the Customer at its own expense the necessary right to use the infringed rights or replace the Hardware or modify it in such a way that it no longer infringes the rights but continues to comply with the contractual agreements. The latter can take place in particular by providing a new Hardware version, which the Customer must take over, insofar as the contractual functional scope of the Hardware is maintained.

8.7 If the supplementary performance fails, the Customer shall be entitled to set a reasonable grace period for the rectification of the defect. In doing so, the Customer shall expressly point out in writing that it reserves the right to withdraw from the Purchase Contract and/or demand compensation in the event of renewed failure. If the remedy of the defect also fails within the grace period, the Customer may withdraw from the contract or reduce the remuneration if the defect is not merely insignificant. GFOS shall pay damages or compensation for futile expenses due to a defect within the limits set out in § 9.

- 8.8 If GFOS provides 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 failed to recognise the non-existence of a defect due to at least gross negligence.
- 8.9 If third parties assert claims that prevent the Customer from exercising the rights of use granted to it under the contract, the Customer shall inform GFOS immediately in writing and comprehensively. He authorises GFOS to conduct legal actions against third parties in and out of court on its own. If the Customer is sued, he shall consult with GFOS and shall only take legal action, in particular acknowledgements and settlements, with the consent of GFOS. GFOS shall be obliged to defend the claims at its own expense and to indemnify the Customer against all costs and damages associated with the defence against the claim, insofar as these are not based on the Customer's conduct in breach of duty.
- 8.10 The limitation period for claims for defective Hardware expires within one year of delivery of the Hardware to the Customer. This reduction of the limitation period to one (1) year shall not apply to damages based on a grossly negligent or intentional breach of obligations by GFOS, the legal representatives of GFOS or its vicarious agents, or in the event of injury to life, body or health. For the rest, the following § 9 shall apply to the Customer's claims for damages.
- 8.11 Further claims of the Customer due to or in connection with defects or consequential damage caused by defects, irrespective of the reason, shall only exist in accordance with the provisions of § 9, unless they are claims for damages arising from a guarantee which is intended to protect the Customer against the risk of possible defects. In this case too, however, GFOS shall only be liable for the typical and foreseeable damage.
- 8.12 If the Customer or a third party carries out improper repairs, makes unauthorised changes to the Hardware, replaces parts or uses consumables that do not comply with the manufacturer's specifications for consumables that can be used or does not follow operating or maintenance instructions, GFOS shall not be liable for the resulting consequences. This does not apply, however, if the warranty case is demonstrably not due to one of the aforementioned reasons for exclusion.
- 8.13 The warranty of GFOS and the liability resulting therefrom shall also be excluded insofar as defects and related damage are not demonstrably due to defective material or defective workmanship or defective instructions for use. In particular, the warranty and the liability resulting therefrom shall be excluded for the consequences of incorrect use, excessive use or unsuitable storage conditions, for example the consequences of chemical, electromagnetic, mechanical or electrolytic influences which do not correspond to the intended average standard influences. This shall not apply in the event of fraudulent or intentional conduct on the part of GFOS or injury to life, body or health or liability under the Product Liability Act.

## § 9 Liability

- 9.1 GFOS shall be liable without limitation for damage caused intentionally or by gross negligence, for damage resulting from injury to life, body and health, as well as for damage giving rise to a duty to pay compensation pursuant to section 1 ProdHaftG.
- 9.2 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 is essential for the proper performance of the Purchase Contract and on the observance of which the Customer was entitled to rely. Otherwise, liability for damage caused by slight negligence is excluded. § 9.1 remains unaffected.
- 9.3 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 consequence of a service not being provided in accordance with the contract shall furthermore only be compensable insofar as such damages are typically to be expected when the Hardware is used as intended. § 9.1 remains unaffected.

- 9.4 The liability of GFOS in the cases of § 9.3 shall be 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 not only insignificantly exceeds this maximum liability amount, GFOS shall be prepared to agree an appropriate higher liability amount in return for corresponding remuneration for the assumption of risk, provided that insurance cover can be agreed for this.
- 9.5 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.
- 9.6 If several claimants under the Purchase Contract bring claims against GFOS arising from a simple negligent breach of essential contractual obligations (§ 9.3) by GFOS, the maximum liability amount determined in § 9.4 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.
- 9.7 The above provisions on the limitation of liability shall also apply to the personal liability of the employees, representatives and bodies of GFOS.
- 9.8 Claims for damages and claims for reimbursement of futile expenses of the

Customer shall become statute-barred within one 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.

## § 10 Data protection, references, confidentiality

- 10.1 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 service provision and in accordance with the provisions of data protection law.
- 10.2 GFOS shall be entitled to refer to the contractual relationship with the Customer in a suitable form in brochures and publications (i.e. reference lists); this shall include the use of the Customer's company logo. If the Customer does not agree to this, it shall inform GFOS accordingly in writing or in text form.
- 10.3 The parties are obliged to treat as confidential and not to disclose to third parties any confidential information made available to them by the respective other party on the basis of the purchase agreement as well as knowledge which they acquire about confidential matters of the respective other party on the occasion of the performance of the purchase agreement. "Confidential" shall mean information that is either expressly marked as confidential or whose confidentiality results from the nature of the information or the circumstances of its

disclosure. In particular, all internal business information of the parties is confidential. The use of the confidential information covered by this paragraph is limited solely to use in the context of the performance of the Purchase Contract. The confidentiality obligation does not apply to information that is

- the other party has demonstrably received or is receiving lawfully from third parties,
- can be proved to have been already generally known at the time of the conclusion of the contract or to have subsequently become generally known without any breach of the obligations contained in this § 10,
  - have been demonstrably developed independently by the other party, or
- by mandatory legal or regulatory requirements.

10.4 The Customer shall only make the Hardware accessible to its employees insofar as this is necessary to exercise the rights of use granted to it. He shall instruct all employees to whom he grants access to the Hardware about the rights of GFOS to the Hardware and the obligation to maintain secrecy and shall oblige them in writing to maintain secrecy, insofar as the employees concerned are not obliged to maintain secrecy at least to the above extent for other legal reasons.

#### **§ 11 Applicable law, place of jurisdiction,**

- 11.1 These GTC Hardware and the Purchase Contract shall be 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.
- 11.2 The place of jurisdiction for all legal disputes between the parties arising from or in connection with the Purchase 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.

#### **§ 12 Final provisions**

- 12.1 Amendments and supplements to these GTC Hardware or the Purchase Contract as well as other declarations in connection with the Purchase Contract that trigger a legal consequence (i.e. 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.
- 12.2 Should any provision of these GTC Hardware or of the Purchase Contract be or become void in whole or in part or should a loophole in the Purchase Contract or its supplements become apparent, the validity of the remaining provisions shall not be affected thereby.
- 12.3 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.