

# General Terms and Conditions 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 for the Sale of Hardware and System Software (hereinafter "**AGB-Hardware**") of the Gesellschaft für Organisationsberatung und Softwareentwicklung mbH (hereinafter "**GFOS**") govern the legal framework for the sale of hardware and associated system software (hereinafter referred to collectively as "**Hardware**")
- 1.2 These GTC hardware apply exclusively to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB), i.e. to natural or legal persons who, when concluding a legal transaction, act in the exercise of their commercial or self-employed professional activity, including legal entities under public law and special funds under public law; Orders from consumers will not be accepted by GFOS. As "**Customer**" is hereinafter referred to as any company that concludes a contract with GFOS for the provision of hardware with the inclusion of these GTC hardware (hereinafter "**Contract of sale**").
- 1.3 This T&C Hardware and the documents referenced herein are exclusive. Deviating, conflicting or supplementary terms and conditions of the customer shall only become part of the purchase contract if and to the extent that the parties have expressly agreed on their validity in writing. This consent requirement applies in any case, for example even if GFOS begins to provide services to the customer without reservation in knowledge of the customer's general terms and conditions or terms and conditions of purchase.
- 1.4 The documents referred to in these T&Cs Hardware, in particular the product description and/or the investment overview and/or the offer of GFOS, are integral parts of the purchase agreement concluded between the parties.

Unless expressly stated otherwise, references to documents refer to the version of the documents in force from time to time.

- 1.5 Individual agreements (including ancillary agreements, additions and amendments) made between GFOS and the Customer in individual cases shall in any case take precedence over these T&Cs Hardware. The content of such agreements shall be governed by a written contract or the written confirmation of GFOS.
- 1.6 References to the applicability of statutory provisions are only of clarifying significance. Even without such clarification, the statutory provisions shall therefore apply, insofar as they are not directly amended or expressly excluded in these T&Cs Hardware.
- 1.7 The provisions of this T&C Hardware apply accordingly to the provision of application documentation as well as the provision of patches, updates, upgrades and new releases and versions of the hardware to the customer in the context of rectification or hardware support.

## § 2 Conclusion of Contract, Terms of Service and Scope of Services

- 2.1 All offers from GFOS are subject to change and non-binding, unless they have been marked as binding. They are merely requests 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 – even in ongoing business transactions – is only concluded by the written order confirmation from GFOS (sufficient also by e-mail). In all other cases, the conclusion of the purchase contract takes place at the latest by the execution of the services or the transfer of the hardware. If an order confirmation is made by GFOS, this is the only decisive factor for the

content of the purchase contract, in particular for the scope of the hardware transfer as well as the delivery time or other performance periods.

- 2.3 Dates and deadlines are non-binding, unless they have been expressly agreed in writing as binding. GFOS shall only be in default with an obligation to perform if the customer has previously warned GFOS in writing and has unsuccessfully set a reasonable deadline for the provision of services. In the case of physical shipment, the time at which GFOS or the supplier of GFOS hands over the hardware to the carrier is decisive for compliance with delivery dates and the transfer of risk, otherwise the time when, for example, the system software is made available and this is communicated to the customer. In the absence of any other written agreement, the customer's interest in delivery shall only cease to exist in the event of a delay in delivery or performance if GFOS does not deliver essential parts or delays them. GFOS shall not be in default as long as the Customer is in default with the performance of obligations towards GFOS, including those arising from other contracts.
- 2.4 The customer acquires from GFOS the hardware specified in the offer under the terms of use agreed in these T&Cs Hardware.
- 2.5 A reference to standards, similar technical regulations as well as technical information, descriptions and illustrations of the hardware to be supplied in offers and brochures and in the advertising of GFOS only constitute an indication of the characteristics of the hardware and services of GFOS if GFOS has expressly declared the quality as a "characteristic of the delivery or service"; otherwise they are non-binding, general service descriptions.
- 2.6 The range of functions of the hardware as well as the technical requirements for use are specified in the product description for the respective hardware. For the range of functions of hardware and system software from third-party manufacturers (hereinafter "**Third-party products**"), the information in the GFOS offer and the product descriptions of the respective manufacturer ("**Product**

**Description**"). The GFOS offer is either accompanied by the third-party product description applicable to the respective third-party products or GFOS refers in the offer to the manufacturer's website, through which the customer can view and download the third-party product description. However, the information in the product description of GFOS and in the third-party product description is not to be understood as a guarantee of quality for the respective hardware and software, unless they are expressly designated as such in the GFOS offer.

- 2.7 The customer is responsible for checking whether the hardware is suitable for the intended use. GFOS will only provide binding advice on this subject if GFOS has agreed this in writing with the customer on the basis of a separate consulting assignment.
- 2.8 GFOS reserves the right of ownership and copyright to illustrations, drawings, weights and dimensions, 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 preceding sentence available to third parties unless GFOS gives its express written consent.
- 2.9 Unless expressly agreed in the product description or in the respective purchase contract, GFOS does not owe any further services, in particular no installation, support, setup, consulting, adaptation and/or training services. Further information on the hardware, e.g. in brochures, on websites or in the context of oral presentations, is not an indication of quality, unless this information is also expressly mentioned in the product description.

### § 3 Shipping, transfer of risk Delivery of hardware, transfer of system software, scope of delivery and deadlines

- 3.1 Unless otherwise agreed in writing, the shipment of hardware by GFOS is uninsured at the risk and expense of the customer and from the location of GFOS (INCOTERM EXW 2020) specified in the order confirmation.

- 3.2 If the shipment 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 shipment is equivalent to shipment and the risk of accidental loss passes to the customer (transfer of risk). In this case, GFOS is also entitled to carry out a storage facility starting with the expiry of the deadline set with the written notification of readiness for shipment and to invoice the resulting costs at 0.5% of the net price of the stored deliveries or services for each month or part thereof, but not more than 5% of the net price. The assertion of further rights remains unaffected. The customer reserves the right to prove that no or significantly lower costs have been incurred. In addition, GFOS is entitled to dispose of the hardware subject to the contract elsewhere after the expiry of the deadline and to resupply the customer with a reasonable period of time.
- 3.3 The risk of accidental loss or accidental deterioration shall pass to the customer upon handover of the hardware to be delivered to the customer, the freight forwarder, the carrier or the other companies intended to carry out the shipment, but no later than when GFOS leaves the site.
- 3.4 If the shipment is delayed due to GFOS exercising its right of retention as a result of total or partial default in payment by the Customer 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.
- 3.5 If there is a legal obligation to take back transport packaging and the customer demands that GFOS take back transport packaging, the customer undertakes to have the return processed free of charge or to order the return.
- 3.6 Unless otherwise agreed, the system software shall be made available to the customer in the version current at the time of conclusion of the purchase contract, together with the associated hardware and application documentation (in electronic form in the help function of the software).
- 3.7 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 GFOS at its own discretion either (i) providing the customer with the number of program 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.
- 3.8 The source code of system software is not the subject of the contract and is not made available to the customer.
- 3.9 For the installation of the hardware, the installation instructions described in the product description and/or the application documentation (including compatibility list), esp. the software and hardware environment that must be available at the customer's premises.
- 3.10 GFOS is only obliged to pay from its own stock of goods. GFOS only assumes a procurement risk by virtue of a written, separate agreement using the phrase "we assume the procurement risk...". In particular, the assumption of a procurement risk is not justified solely by the fact that GFOS is obliged to deliver an item that is only specific in terms of class.

#### **§ 4 Rights of use**

- 4.1 All rights to the system software belong exclusively to GFOS or the respective software manufacturers. The system software is protected by copyright law and international treaties for the protection of intellectual property.
- 4.2 Upon full payment of the agreed remuneration, GFOS grants the Customer the non-exclusive and non-sublicensable, perpetually unlimited right to use the system software provided in the object code only for the purposes specified in the purchase agreement and only for the internal business purposes of the Customer, 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 registered office. The

right of use includes the right to install and reproduce the system software on hardware, insofar as the respective reproduction is necessary for the use in accordance with the contract. The necessary duplications include the installation of the software in the mass storage of the hardware used and the loading of the software into the working memory.

- 4.3 The Client may use the System Software only to the extent specified in the Offer (e.g. with regard to the maximum number of Users). The temporary or permanent provision of the system software in data center operation for third parties (e.g. as "Hardware as a Service") as well as rental are not permitted.
- 4.4 Customer may make a copy of the System Software for backup purposes. This backup copy must be marked as such. The backup copies must be stored in a place that is secured against unauthorized access by third parties. The customer is obliged to prevent unauthorized access to the system software by third parties by taking appropriate precautions.
- 4.5 The customer does not receive any rights to edit the system software and may only carry out processing if this is expressly permitted by mandatory law or contractually agreed. GFOS points out that even minor changes can lead to significant, unforeseeable disruptions in the operation of the system software. The customer is only entitled to decompile the software within the limits of § 69e UrhG and only if GFOS has not provided the necessary data and/or information to establish interoperability with other hardware and software after a written request within a reasonable period of time.
- 4.6 Copyrights, serial numbers, version numbers, trademarks or other identifying 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 The Customer may only transfer the System Software to a third party in its entirety together with the Hardware and not only temporarily. In the event of a complete and not

just temporary disclosure, the Customer shall (i) completely and definitively cease its own use of the System Software (including all patches, updates, upgrades and new releases and versions received), (ii) either transfer or destroy all copies (including backup copies) to the third party, (iii) provide the third party with a copy of such T&C Hardware as well as any other usage and use conditions agreed between the parties. Terms of Assignment, and (iv) promptly notify GFOS in writing of the assignment, including the name and address of the third party.

- 4.8 Unless expressly agreed otherwise, the Customer may only use the Hardware in the Federal Republic of Germany and/or the agreed country of destination. In no event may the Software be used in or out of any country where the use of the Software is prohibited by applicable import, export control or sanctions laws. The hardware may also not be used by companies or persons with whom no business may be done due to the applicable import, export control or sanctions law, e.g. because they are listed on an applicable sanctions list.

## § 5 Third-Party Software, Open Source Software

- 5.1 If the system software to be supplied by GFOS in accordance with the customer contract is the standard software of a third party (hereinafter "**Third-party software**"), the use of this third-party software shall be subject to the corresponding license terms and conditions of the respective software manufacturer. The customer undertakes to comply fully and at all times with the respective license conditions. The GFOS Offering is either accompanied by the license terms applicable to the respective third-party software or GFOS refers to the software manufacturer's website in the Offer, where the Customer can view and download the license terms. For the use of third-party software, it may also be necessary for the customer to declare his consent to the validity of the license 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 is authorized by the Customer to issue such a declaration of consent on behalf of the Customer and thereby obliges the Customer to comply with the license conditions vis-à-vis the software manufacturer.

- 5.2 The system software may contain components of open source software, which are then subject to separate license terms of the respective rights holders. The respective license terms of the rights holders are made available to the customer upon request and take precedence over the rights of use of this GTC hardware; this also applies to warranty and liability exclusions of the Open Source Software license terms. Open Source Software and the license terms and conditions that apply separately to it will be displayed, if necessary, in the system software and/or the product description and/or listed in the readme.txt, notices.txt or licenses.txt attached to the version and/or otherwise made available to the customer. The source code of the Open Source Software may be available under the link provided there or on request. Insofar as the license terms of an open source software require a right to edit for the customer's own purposes and thus to reverse engineer for the purpose of troubleshooting software accessing this open source software, GFOS hereby grants this to the customer; contradictory provisions in the respective purchase contract do not apply in this respect.

## § 6 Retention of Title

- 6.1 GFOS retains ownership of the delivered hardware (hereinafter referred to as a total "**Goods**") until all claims of GFOS arising from the business relationship with the customer, including future claims arising from contracts concluded later, have been settled. This also applies to a balance in favour of GFOS if individual or all of GFOS' receivables are included in a current account (current account) and the balance has been drawn.
- 6.2 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 claim relating to 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.

- 6.3 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 pledging or granting of security property. If the goods subject to retention of title are not paid for immediately by the third-party purchaser upon resale, the customer is obliged to resell only under retention of title. The right to resell the goods subject to retention of title shall automatically lapse if the customer ceases to pay or defaults on payment to GFOS.
- 6.4 The Customer hereby assigns to GFOS all claims, including securities and ancillary rights, which arise from or in connection with the resale of goods subject to retention of title against the end customer or against third parties. The receivable assigned to GFOS by the customer in advance also refers to the recognized balance and, in the event of the customer's insolvency, to the then existing 'causal' balance. In any case, the assignment will only take place in the amount of the invoice value of the GFOS hardware. The Customer shall not enter into any agreement with its customers that 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 goods subject to retention of title with other items, the claim against the third-party customer in the amount of the delivery price agreed between GFOS and the customer shall be deemed to have been assigned, unless the amounts attributable to the individual hardware can be determined from the invoice.
- 6.5 The customer remains entitled to collect the claim assigned to GFOS until revocation by GFOS, which can be done under the same conditions as for the expiry of the authorization to resell. At the request of GFOS, it is obliged to provide GFOS with the information and documents required for the collection of assigned receivables in full and, if GFOS does not do so itself, to inform its customers immediately of the assignment to GFOS.

- 6.6 If the Customer has already assigned claims arising from the resale of the hardware supplied or to be delivered by GFOS to third parties, in particular on the basis of genuine or false factoring, or has entered into other agreements on the basis of which the current or future security interests of GFOS pursuant to this Section 6 may be impaired, the Customer shall notify GFOS of this immediately. In the event of a false factoring, GFOS is entitled to withdraw from the purchase contract and demand the return of hardware that has already been delivered. The same applies in the case of genuine factoring, if the customer cannot freely dispose of the purchase price of the receivable according to the contract with the factor.
- 6.7 In the event of conduct contrary to the contract on the part of the customer, in particular in the event of default of payment, GFOS shall be entitled to take back all goods subject to retention of title without GFOS having to withdraw from the purchase contract beforehand. In this case, the customer is obliged to surrender without further ado. In order to determine the stock of the hardware supplied by GFOS, GFOS may enter the customer's business premises at any time during normal business hours. The Customer shall immediately inform GFOS in writing of any access by third parties to goods subject to retention of title.
- 6.8 If the value of the collateral existing for GFOS in accordance with the above provisions exceeds the secured receivables by more than 10% in total, GFOS shall be obliged to release collateral at GFOS' discretion at the request of the customer.
- 6.9 Processing and processing of the reserved goods is carried out by GFOS as a manufacturer within the meaning of § 950 BGB, but without obliging GFOS. If the goods subject to retention of title are processed or inseparably connected with other items that do not belong to GFOS, GFOS acquires 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 connected items. If the GFOS hardware is combined with other movable objects of the customer to form a single item, which is to be regarded as

the main item, the customer already transfers co-ownership thereof to GFOS in the same proportion. The customer shall keep the property or co-ownership free of charge for GFOS. The co-ownership rights arising thereafter shall be deemed to be reserved goods. At the request of GFOS, the Customer is obliged at all times to provide GFOS with the information necessary to pursue the ownership or co-ownership rights of GFOS.

## **§ 7 Participation Services, Requirements for Use, Right of Control**

- 7.1 The customer has informed himself about the essential functional characteristics of the hardware and bears the sole risk with regard to the actions of use carried out by him with the hardware.
- 7.2 The establishment of a functional 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 usage requirements (e.g. 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 necessary for the use of the hardware, this is not part of the hardware, but must be purchased separately by the customer.
- 7.3 The customer thoroughly tests the hardware in its IT environment before it is used to ensure that it is free of defects and that it is usable. This also applies to any patches, updates, upgrades as well as new releases and versions of the system software that may be provided after the conclusion of the contract.
- 7.4 The customer observes the instructions given by GFOS in the product description for the installation and operation of the hardware.
- 7.5 The Customer grants GFOS access to the hardware for troubleshooting and rectification, at GFOS' option directly and/or by means of remote data transmission.
- 7.6 The Customer shall take reasonable precautions in the event that the hardware is not working properly in whole or in part (e.g. by



- daily data backup, fault diagnosis, regular review of the data processing results). Unless the customer expressly points this out in advance, GFOS may assume that all customer data with which GFOS may come into contact is secured.
- 7.7 GFOS is entitled to check whether the system software is used in accordance with the provisions of this T&C hardware and the purchase contract. For this purpose, GFOS may request information from the customer, in particular about the number of users and the other scope of use of the system software.
- 7.8 The customer supports the activities of GFOS necessary for the provision of services. This includes, in particular, the timely and complete provision and procurement of all necessary information for the proper provision of services. The Customer shall ensure that all cooperation services required for the delivery of the hardware are provided in a timely manner, in full and free of charge for GFOS.
- 7.9 The Client shall ensure that the Client's employees who assist GFOS in the provision of services, as well as the Client's service providers on whose cooperation GFOS is dependent, are available at the agreed times and perform all necessary acts of cooperation. The customer is responsible for ensuring that its employees have the necessary knowledge, skills and experience to perform the tasks assigned to them.
- 7.10 The Client is obliged to provide GFOS with appropriate support in the provision of services and, in particular, to create all prerequisites in the area of its operating sphere that are necessary for GFOS to properly provide the services.
- 7.11 The customer maintains its internal systems and technical environments/equipment itself.
- 7.12 The Client shall retain its own records in accordance with applicable law and, in particular, shall manage all original receipts of the information supplied to GFOS itself.
- 7.13 GFOS does not provide legal, accounting or tax advice to the Client and the Client relies solely on its own advisors in respect of such advice.
- 7.14 Insofar as this is necessary in the context of the provision of services, the Client shall grant the consultants employed by GFOS direct or indirect access to software and IT systems as well as a simple right of use, limited in time to the period of the warranty, for the use of the Client's systems and applications in accordance with the contract and intended purpose. It is the customer's responsibility to ensure the proper operation of the necessary software and IT systems. Insofar as the Client provides GFOS with content, materials, data and information for the provision of services, it shall ensure that these are free of third-party rights that could conflict with the provision of services by GFOS.
- 7.15 The Customer shall take reasonable precautions in the event that the Hardware is affected by malfunctions (e.g. through data backup, fault diagnosis, periodic checks). Unless an explicit written notice is provided by the customer in individual cases, the consultants appointed by GFOS can assume at any time that all data with which they may come into contact is secured.
- 7.16 The cooperation services to be provided by the customer represent a real contractual obligation towards GFOS and not just an obligation. 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. The corresponding performance deadlines are postponed by a reasonable period of time. GFOS is not responsible for service disruptions caused by the non-contractual provision of cooperation services by the customer. Additional expenses incurred by GFOS as a result of the non-contractual provision of the cooperation services may be invoiced by GFOS separately according to expenditure. Any further claims of GFOS remain unaffected.

## § 8 Purchase Price, Terms of Payment

- 8.1 The purchase price for the hardware is regulated in the respective GFOS offer or in the investment overview for the respective hardware.
- 8.2 All GFOS prices are generally in EURO plus packaging, freight and VAT to be borne by the customer in the amount prescribed by law. The VAT will be shown separately in the invoice. The prices and price surcharges will be determined according to the GFOS investment overview generally valid at the time of conclusion of the contract, unless otherwise agreed in writing.
- 8.3 The invoices from GFOS for the hardware and for the associated system software are payable without any deduction (e.g. discount) within fourteen (14) calendar days of the invoice date, unless otherwise agreed in writing. It is irrelevant whether the hardware and/or the associated system software is delivered to GFOS or to the customer. The date of payment is the date of receipt of money by GFOS or crediting to the account of GFOS.
- 8.4 The buyer is only entitled to use the system software that goes beyond 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 case of simultaneous use of a larger number of users than agreed), GFOS shall be entitled to invoice the amount incurred for the further use in accordance with the GFOS investment overview valid at that time, unless the customer can prove that GFOS has suffered significantly lower damages. Further non-contractual claims for damages remain unaffected. Sections 69d (2), (3), (5), (7) and 69e of the Copyright Act shall remain unaffected.
- 8.5 GFOS will offer and invoice separately for one-off services or work, in particular in the context of the necessary implementation of the hardware and/or system software that the customer wishes, but which are not part of the scope of services agreed in the purchase contract, on the basis of a separate agreement in accordance with the applicable investment overview.

- 8.6 The customer can only offset claims that have been legally established or undisputed. He is only entitled to assert rights of retention against GFOS if the counterclaim asserted is undisputed or legally established. A right of retention can only be exercised by the customer to the extent that his counterclaim is based on the same contractual relationship. The assignment of claims against GFOS is excluded. However, the above does not apply within the scope of application of Section 354a of the German Commercial Code.

### **§ 9 Material and Defects of Title, Statute of Limitations**

- 9.1 In accordance with the rules of the Sales Law, GFOS provides a guarantee for the agreed quality of the hardware and for the fact that the use of the hardware to the contractual extent by the customer does not conflict with any rights of third parties. However, the guarantee that the hardware is free of third-party rights only applies 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 applies to the country in which the customer has its registered office.
- 9.2 Recognizable material defects must be reported by the customer to GFOS in writing immediately, 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 must be reported by the customer to GFOS immediately after discovery. Material defects that are recognisable at the time of delivery must also be reported to the transport company immediately upon delivery and the defects must be taken up by the latter. A complaint that is not made in due form and/or within the deadline excludes any claim by the customer for breach of duty due to material defects. This does 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 liability under the Product Liability Act.
- 9.3 The customer must take the measures within the scope of what is reasonable to make it easier to determine the defects and the



causes. GFOS will determine the cause of a defect at its own expense. GFOS will report regularly to customers on the status and success of these efforts. If the determination of the cause leads to the conclusion that a malfunction of the hardware is not due to a defect for which GFOS is responsible, GFOS only has to remedy the malfunction if the customer agrees to bear the associated costs.

- 9.4 With the commencement of processing, processing, connection or mixing with other items, the delivered hardware shall be deemed to have been contractually approved by the customer in the event of recognizable material defects. The same applies in the case of onward shipment from the original destination. It is incumbent on the customer to clarify whether the delivered hardware is suitable for the processing, process and other purposes intended by the customer by means of appropriate checks in scope and methodology before the start of any of the aforementioned activities.
- 9.5 Other breaches of duty must be warned in writing by the customer immediately before further rights are asserted, setting a reasonable remedy period.
- 9.6 If a defect exists, GFOS first provides warranty in the event of material defects by means of subsequent performance. Supplementary performance shall be carried out at the discretion of GFOS by remedying the defect (rectification) or by delivering new goods (new delivery).
- 9.7 In the event of defects of title, GFOS shall first provide warranty by means of subsequent performance. To this end, GFOS shall, at its own discretion and at its own expense, (i) provide the customer with the opportunity to use the hardware, or (ii) replace or modify the hardware in such a way that the intellectual property right of the third party is not infringed, but the hardware continues to comply with the contractual agreements. The latter can be done in particular by providing a new version of hardware, which the customer must take over, provided that the functional scope of the hardware in accordance with the contract is retained.

- 9.8 If the subsequent performance fails, the customer is entitled to set a reasonable grace period to remedy the defect. In doing so, he must expressly point out in writing that he reserves the right to withdraw from the purchase contract and/or claim damages in the event of another failure. If the remedy of the defect fails even within the grace period, the customer can withdraw from the contract if there is not only an insignificant defect, or reduce the remuneration. There is no need to set a grace period for the remedy of defects if this is impossible, if it is refused or unreasonably delayed by GFOS, if there are reasonable doubts as to the prospects of success or if there is an unreasonableness for the customer for other reasons. GFOS shall pay damages or reimbursement of futile expenses due to a defect within the limits set out in § 10.
- 9.9 If GFOS provides services in the identification or elimination of defects without being obliged to do so, GFOS may demand remuneration according to expenditure if the customer has at least grossly negligently failed to recognize the absence of a defect.
- 9.10 If a third party asserts justified claims against the Customer due to the infringement of copyrights, patents or other industrial property rights by GFOS or by the hardware supplied by GFOS and used by the Customer in accordance with the contract, and the use of the hardware is prohibited by the Customer in whole or in part, GFOS shall be liable to the Customer within the period specified in § 11.9 as follows: if and to the extent that GFOS is at fault in this regard:
- a) GFOS shall indemnify the Customer against legally established claims by third parties due to the infringement of intellectual property rights due to the contractual use of the hardware as well as from the costs of legal defense caused thereby within the limits of the limitation of liability agreed in § 10.
  - b) The customer will provide reasonable support to GFOS in all mitigation measures. The above obligations of GFOS pursuant to § 9.10.a shall only apply to the extent that

the Customer notifies GFOS immediately in writing of the assertion or threat of such claims, all out-of-court and judicial defensive measures and settlement negotiations are reserved for GFOS or are only conducted in written agreement with GFOS, the Customer makes available without delay any information requested by GFOS for the assessment of the situation or defense of the claims, and adequate support. The Customer undertakes to give GFOS and, if applicable, affected upstream suppliers of GFOS (e.g. software manufacturer from whom GFOS has obtained third-party software) the opportunity to participate in any legal dispute. The Customer shall support GFOS and, if applicable, the upstream suppliers of GFOS in all respects in the conduct of such a legal dispute. The customer must refrain from actions that could impair the legal position of GFOS or the upstream suppliers of GFOS, in particular to make acknowledgments and settlements only with the consent of GFOS. If the customer discontinues the use of the hardware for damage mitigation or other important reasons, he is obliged to inform the third party that the cessation of use does not imply an acknowledgement of an infringement of intellectual property rights.

- 9.11 Claims due to defective hardware shall become statute-barred within one year of delivery of the hardware to the customer. This shortening of the limitation period to one (1) year does not apply to damages based on a grossly negligent or intentional breach of obligations of GFOS, the legal representatives of GFOS or their vicarious agents, in the event of injury to life, limb or health, in claims under the Product Liability Act and in the event of a breach of a quality guarantee. In all other respects, the following § 9 shall apply to claims for damages by the customer.

- 9.12 Further claims of the customer due to or in connection with defects or consequential damages, regardless of the reason, shall only exist in accordance with the provisions in § 10, insofar as they are not claims for damages from a warranty which is intended to protect the customer against the risk of any defects. In this case, too, GFOS is only liable for the typical and foreseeable damage.

- 9.13 If the customer or a third party makes improper improvements, if impermissible changes are made to the hardware, parts are replaced or consumables are used that do not comply with the manufacturer's specifications for consumables to be used, or if operating or maintenance instructions are not followed, GFOS shall not be liable for the resulting consequences. However, this does not apply if the warranty claim is demonstrably not attributable to one of the aforementioned reasons for exclusion.

- 9.14 The warranty of GFOS and the resulting liability is also excluded if defects and related damages are not demonstrably based on defective material or on defective workmanship or inadequate instructions for use. In particular, the warranty and the resulting liability are excluded for the consequences of incorrect use, excessive use or unsuitable storage conditions, for example the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond to the intended average standard influences. This does not apply in the event of fraudulent or intentional conduct on the part of GFOS or injury to life, limb or health or liability under the Product Liability Act.

## § 10 Liability

- 10.1 GFOS is liable without limitation for damages caused intentionally or through gross negligence, for damages resulting from injury to life, limb and health, as well as for damages that justify an obligation to pay compensation pursuant to § 1 ProdHaftG.
- 10.2 In the event of simple negligence, GFOS shall only be liable to the extent that it is a breach of essential contractual obligations, the fulfillment of which is essential for the proper

execution of the purchase contract in the first place and on the fulfilment of which the customer was entitled to rely. In all other respects, liability for damage caused by slight negligence is excluded. § 9.1 remains unaffected.

- 10.3 In the event of a simple negligent breach of material contractual obligations by GFOS, the obligation to pay compensation is limited to the foreseeable damage typical for the contract. The foreseeable damage typical for the contract is the damage that GFOS foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or that GFOS should have foreseen if it had exercised customary care. Indirect and consequential damages that are the result of non-contractual performance are also only compensable to the extent that such damages are typically to be expected when the hardware is used as intended. § 10.1 shall remain unaffected.
- 10.4 The liability of GFOS in the cases of § 10.3 is limited to two hundred and fifty thousand euros (€ 250,000.00) per claim. If, in the Client's opinion, the foreseeable contractual risk exceeds this maximum liability amount by more than negligible, GFOS is prepared to agree on an appropriately higher amount of liability in return for appropriate remuneration for the assumption of risk, provided that insurance cover can be agreed for this.
- 10.5 In the event of data loss or destruction, GFOS shall only be liable if GFOS has caused the destruction intentionally, through gross negligence or due to a breach of a material contractual obligation. In the above case, GFOS' liability for the simple negligent breach of a material contractual obligation is limited to the amount of the damage that would have occurred even if the customer had properly backed up the data.
- 10.6 Even if the customer is entitled by written supplementary agreement to grant access to the hardware or system software to other group companies, the customer remains the sole contractual partner of GFOS and claims

against GFOS can be asserted solely by the customer. The customer indemnifies GFOS from all claims if its other group companies assert claims directly against GFOS in connection with the hardware or system software.

- 10.7 The above provisions on the limitation of liability also apply to the personal liability of the employees, representatives and bodies of GFOS.
- 10.8 Claims for damages and claims for reimbursement of futile expenses by the customer shall become statute-barred within one year; with regard to the beginning of the limitation period, § 199.1 of the Civil Code applies. This does not apply to claims for damages and claims for reimbursement of futile expenses due to injury to life, limb or health, to claims under the Product Liability Act and to the violation of a quality guarantee. This also does 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.
- 10.9 A reversal of the burden of proof is not associated with the above provisions.

## § 11 Confidentiality, Data Protection, References

- 11.1 The Client undertakes to maintain the secrecy of such facts, documents and knowledge which come to its knowledge in the course of conducting its business relations with GFOS and which contain technical, financial, business or market-related information about the company GFOS, insofar as GFOS declares the respective information to be in need of secrecy or has a manifest interest in its secrecy (hereinafter collectively referred to as "**confidential information**"). The Customer will use the Confidential Information exclusively for the purpose of implementing and executing the contractual relationship with GFOS in accordance with the contract.
- 11.2 The disclosure of confidential information by the customer to third parties requires the express and prior written consent of GFOS.

- 11.3 The duty of confidentiality pursuant to § 11.1 above does not apply if the respective confidential information can be demonstrated:
- a) is or becomes generally known without the customer's involvement, or
  - b) was already known to the customer or is made known by a third party authorized to pass it on, or
  - c) is developed by the customer without the involvement of GFOS and without the use of other information or knowledge obtained through the contractual contact, or
  - d) must be disclosed due to mandatory legal regulations or court or official orders.
- 11.4 It shall instruct all employees to whom it grants access to the Hardware about GFOS' rights to the Hardware and the duty of secrecy and shall oblige them in writing to maintain secrecy, unless the employees concerned are obliged to maintain secrecy for other legal reasons to at least the above extent.
- 11.5 The customer is responsible for compliance with all relevant statutory data protection regulations, in particular for the lawfulness of the data transfer and data processing of personal data of its employees and other data subjects in connection with the provision of services by GFOS. GFOS will process the customer's personal data within the scope of the contractually owed service provision and in accordance with the provisions of data protection law or the provisions of the purchase contract.
- 11.6 The parties process personal data in compliance with the applicable data protection regulations, in particular Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR").
- 11.7 Personal data of the customer will be collected, stored, processed and used by GFOS if, to the extent and for as long as this is necessary for the establishment, execution or termination of the purchase contract with the customer. Further collection, storage, processing and use of the customer's personal data will only take place if this is required or permitted by law or if the customer has consented. The Client is aware that in order to carry out pre-contractual measures and fulfil the contract with the Client, it is necessary to collect, process and use the contact details of the Client's contact persons (name, e-mail addresses, etc.) on the basis of Art. 6 (1) (b) GDPR. In particular, GFOS is entitled to transmit the data to third parties if and to the extent that this is necessary for the implementation of pre-contractual measures and the fulfilment of the contract (e.g. for the provision of services, invoicing or customer service) in accordance with Art. 6 (1) (b) GDPR or fulfilment of a legal obligation within the meaning of Art. 6 (1) (c) GDPR. GFOS will also forward this data to third parties (e.g. debt collection agencies) for the purpose of enforcing claims in accordance with Art. 6 (1) (b) and/or (f) GDPR.
- 11.8 GFOS' data protection information is available at <https://www.gfos.com/de/datenschutz>.
- 11.9 Insofar as GFOS processes personal data on behalf of the customer in the context of the performance of the purchase contract, GFOS will only process the personal data within the scope of the contractually owed performance or other written instructions of the customer and in accordance with the data protection regulations. The details of the order processing will be determined by the parties in a separate "Agreement on the Processing of Personal Data on Order". In its area of application, this takes precedence over the provisions of this GTC hardware.
- 11.10 GFOS is entitled to refer to the contractual relationship with the customer in an appropriate form in brochures and publications (e.g. reference lists), this includes the use of the customer's company logo. If the customer does not agree to this, he will inform GFOS accordingly in writing or in text form.

## § 12 Reservation of self-supply, force majeure and other obstructions

- 12.1 If, for reasons for which GFOS is not responsible, GFOS does not receive the services required by the subcontractors from GFOS for the provision of the service owed by GFOS, or does not receive them correctly or in a timely manner, despite proper and sufficient coverage prior to the conclusion of the contract with the customer, or if force majeure events occur, GFOS shall inform the customers in writing or in text form in good time. In this case, GFOS is entitled to postpone the provision of services for the duration of the disability or to withdraw from the purchase contract in whole or in part because of the part that has not yet been fulfilled, insofar as GFOS has complied with the above duty to provide information. A case "**Force majeure**" is any unforeseen, extraordinary event beyond the control of GFOS by 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 reasonable care on the part of GFOS. Force majeure in this sense is defined in particular as force majeure. unforeseen political events or unrest, including war, terrorist attacks, fire damage, strikes and lawful lockouts, as well as business closures through no fault of their own, unavoidable hacker and/or cyber attacks by third parties, such as DDOS attacks or ransomware attacks, natural disasters, such as floods, government orders, epidemics and pandemics, such as the Covid19 virus.
- 12.2 The customer is only entitled to withdraw from the purchase contract after the fruitless expiry of a reasonable grace period because of the part that has not yet been fulfilled if it is objectively unreasonable for him to continue adhering to the purchase contract and the event according to § 12.1 has already lasted longer than 3 months. Further claims by the customer, in particular those for damages, are excluded in this case. The customer is obliged to remunerate services rendered up to that point in accordance with what has been agreed in this respect.

## § 13 Final Provisions

- 13.1 The place of performance for all contractual obligations is the registered office of GFOS.
- 13.2 GFOS is entitled to transfer the rights and obligations arising from the SaaS contract to companies of the GFOS Group at any time
- 13.3 All agreements, ancillary agreements, assurances, amendments and additions to the purchase contract (including these GTC hardware) as well as other declarations in connection with the purchase contract that trigger a legal consequence (e.g. setting of deadlines, withdrawal) must be in writing in order to be effective. This also applies to changes or additions to or the waiver of this written form clause. If written form is required, it is also ensured by transmissions by fax, digital / electronic signatures and signatures (e.g. DocuSign). However, the telecommunicative transmission of the relevant declarations by e-mail is not sufficient for this purpose. The priority of an individual agreement (§ 305b BGB) remains unaffected.
- 13.4 The place of jurisdiction for all legal disputes between the parties arising out of or in connection with the purchase contract is, to the extent permitted by law, Essen, Germany; However, GFOS is also entitled to sue the customer at its general place of jurisdiction. The above jurisdiction agreement does not apply to the extent that a different, exclusive place of jurisdiction results from the law.
- 13.5 The purchase agreement (including such T&C hardware) is subject to 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 (CISG) do not apply.
- 13.6 Should any provision of this T&C Hardware or the Purchase Contract be or become void in whole or in part, or should a gap in the Purchase Contract or its supplements become apparent, this shall not affect the validity of the remaining provisions.