

General Terms and Conditions for the Provision of User Software

Status: January 2023

§ 1 Scope of application, general regulations

- 1.1 These General Terms and Conditions for the Provision of User Software (hereinafter referred to as "**GTC Software**") govern the legal framework for the provision of user software (hereinafter referred to as "**Software**") by Gesellschaft für Organisationsberatung und Softwareentwicklung mbH (hereinafter referred to as "**GFOS**") for an unlimited period of time.
- 1.2 GFOS offers the software 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; GFOS does not accept orders from consumers. The term "**customer**" is hereinafter used to refer to any company that concludes a contract with GFOS for the provision of Software under inclusion of these GTC Software (hereinafter "**Provision Contract**").
- 1.3 These GTC-Software 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 consented to their validity in writing. This requirement of consent shall apply in all cases, for example even if GFOS begins to provide 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 Software, in particular the product description and the offer of GFOS, are integral parts of the transfer agreement concluded between the parties. Unless expressly stated otherwise, references to documents refer to the respective applicable version of the documents.

- 1.5 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 Software. A written contract or the written confirmation of GFOS shall be authoritative for the content of such agreements.
- 1.6 References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC Software.
- 1.7 The provisions of these GTC Software shall apply correspondingly 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 software to the Customer within the scope of rectification or software 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 transfer contract shall only be concluded - also in ongoing business transactions - through the written order confirmation by GFOS (sufficient also by e-mail), if the Customer requests such a confirmation. In all other cases, the transfer contract shall be concluded by the performance of the services or the transfer of the software. If an order confirmation is issued by GFOS, this alone shall be decisive for the content of the transfer contract, in particular for the scope of the software transfer as well as the delivery time or other performance deadlines.

- 2.3 The Customer acquires from GFOS the software described in more detail in the offer under the terms of use agreed in these GTC Software.

§ 3 Provision of the software, delivery periods, performance obligations, force majeure

- 3.1 In the absence of any other agreement, the software shall be provided to the Customer in the version current at the time of conclusion of the transfer agreement together with the associated application documentation (in electronic form in the help function of the software).
- 3.2 GFOS shall effect the transfer of the software by either (i.) providing the Customer with the number of program copies of the software specified in the offer on a machine-readable data carrier or (ii.) making the software available for download via the Internet, at its own discretion.
- 3.3 The source code of the software shall not be the subject matter of the contract and shall not be provided to the Customer.
- 3.4 The functional scope of the software and the technical requirements for use are set out in the product description for the respective software. The information in the product or module description (hereinafter "**product description**") is not to be understood as a quality guarantee for the respective software, unless it is expressly designated as such in the product description.
- 3.5 For the installation of the software, the installation instructions described in the product description and/or the application documentation (including the compatibility list), in particular the hardware and software 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 transfer contract, GFOS shall not owe any further services, in particular no installation, support, set-up, consulting, adaptation and/or training services. Further information about the software, e.g. in brochures, on Internet pages or in

the context of oral presentations, shall not be deemed to be information about the quality of the software unless this information is also expressly stated in the product description.

- 3.7 Dates and delivery periods shall not be 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 following shall apply the time at which GFOS hands over the software to the carrier shall be decisive, otherwise the time at which the software is made available for retrieval and this is communicated to the Customer.
- 3.8 If the delivery or provision of the software is delayed or temporarily impossible due to circumstances which could not have been foreseen by GFOS even by exercising the utmost care which could reasonably be expected, e.g. 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 hacker 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 performance deadlines 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 transfer contract.

§ 4 Rights of Use

- 4.1 All rights to the software are the exclusive property of GFOS or the respective licensors of GFOS. The software is protected by copyright law and international agreements on the protection of intellectual property.
- 4.2 GFOS grants the Customer the non-exclusive, non-transferable and non-sublicensable

right, unlimited in time, to use the 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 software 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 right of use includes the right to install the software on hardware and to reproduce it, insofar as the respective reproduction is necessary for use in accordance with the contract. Necessary reproductions include the Installation of the software in the mass memory of the hardware used as well as loading the software into the random access memory.

- 4.3 The Customer may only use the software to the extent specified in the offer (e.g. with regard to the maximum number of users). The temporary or permanent provision of the software in the computer centre operation for third parties (e.g. as "Software as a Service") as well as the leasing are not permitted.
- 4.4 The Customer may only use the software to the extent specified in the offer (e.g. with regard to the maximum number of users). The temporary or permanent provision of the software in the computer centre operation for third parties (e.g. as "Software as a Service") as well as the leasing are not permitted.
- 4.5 The Customer shall not be granted any rights to edit the software and may only carry out edits if this is expressly permitted by mandatory laws or contractually agreed. GFOS points out that even minor changes can lead to considerable, unforeseeable disruptions in the running of the software. The Customer shall only be entitled to decompile the software within the limits of section 69e of the German Copyright Act ("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 with a reasonable period of time.
- 4.6 Copyright notices, serial numbers, version numbers, trademarks or other identification features of the software may not be changed or removed under any circumstances. The

same applies to the suppression of the screen display of corresponding features.

§ 5 Third-Party Software, Open Source Software

- 5.1 Insofar as the software contains components of third-party software or open source software for which separate licence conditions of the respective manufacturers apply, this is regulated in the product description of the respective software.
- 5.2 The software may contain components of open source software for which separate licence conditions of the respective manufacturer apply. The respective rights holders shall apply. The respective licence conditions of the rights holders shall take precedence over the rights of use of this GTC Software; 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 Contract 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 it for the Customer's own purposes and, associated with this, to reverse engineer it for the purpose of troubleshooting a software accessing this open source software, GFOS hereby grants this to the Customer; contradictory provisions in the respective transfer agreement shall not apply in this respect.

§ 6 Obligations to cooperate, Conditions of Use, Right of Control

- 6.1 The Customer has informed himself about the essential functional features of the software and bears the sole risk with regard to the actions of use undertaken by him with the software.
- 6.2 The setting up of a functional hardware and software environment for the use of the software is the sole responsibility of the Customer. The hardware and software environment required for the use of the software as

well as any other requirements for use (e.g. required third-party software) are set out in the product description and/or the application documentation (including the compatibility list). Insofar as the use of third-party software is required for the use of the software, this is not part of the software but must be acquired separately by the Customer.

- 6.3 The Customer shall thoroughly test the software for freedom from defects and for usability in the existing hardware and software configuration before using it. This shall also apply to any patches, updates, upgrades and new releases and versions of the 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 software.
- 6.5 The Customer shall grant GFOS access to the software for troubleshooting purposes, at the Customer's option directly and/or by means of remote data transmission.
- 6.6 The Customer shall take reasonable precautions in the event that the software does not work properly in whole or in part (e.g. through daily data backups, fault diagnosis, regular checking of data processing results). Insofar as the Customer does not expressly indicate this 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 software is being used in accordance with the provisions of these GTC Software and the transfer 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 software.

§ 7 Purchase Price, Terms of Payment

- 7.1 The purchase price for the software is regulated in the respective offer of GFOS or in the price list for the respective software.

- 7.2 The purchase price is due for payment within fourteen (14) calendar days of the invoice date.
- 7.3 All stated remunerations and prices are exclusive of the statutory value added tax applicable at the time.
- 7.4 The Buyer shall only be entitled to use the software in excess of the rights of use granted in the transfer agreement 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 charge the amount accruing for the additional use in accordance with the rate of VAT valid at that time price list of GFOS, insofar as the Customer does not prove a significantly lower damage to GFOS. 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 software and that the use of the software by the Customer to the extent stipulated in the contract does not conflict with the rights of third parties. However, the warranty that the software is free from third party rights shall only apply to the country of destination agreed between the parties in which the software 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 assume an obligation to inspect and give notice of defects in accordance with section 377 HGB in respect of all

- deliveries and services provided by GFOS in performance of the transfer contract. The Customer shall notify GFOS without delay of any defects, stating the information known to him and useful for their detection. The Customer shall take reasonable measures to facilitate the identification of the defects and their causes. The notification shall contain the following information in particular:
- the problems encountered,
 - the programme functionality affected,
 - the number of users affected, a screenshot of the problem provided it can be seen via the user interface and a description of the error,
 - a description of the system and hardware environment as well as any third-party software used simultaneously.
- 8.3 In the event of material defects, GFOS shall initially provide a warranty by means of subsequent performance. For this purpose, GFOS shall, at its discretion, provide the Customer with a new, defect-free software version, in particular patches, bug fixes or new versions of the software, or shall remedy the defect in another way. The Customer shall take over the new software version provided and install it on its hardware in accordance with the installation instructions of GFOS, insofar as the contractual functional scope of the software is maintained. The elimination of a defect may also take the form of instructions to the Customer. The Customer shall follow such instructions.
- 8.4 In the event of defects of title, GFOS shall first provide a 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 software 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 be done in particular by providing a new software version, which the Customer must accept, provided that the contractual functional scope of the software is maintained.
- 8.5 If the supplementary performance fails, the Customer is entitled to set a reasonable grace period for the elimination of the defect. In doing so, he must expressly point out in writing that he reserves the right to withdraw from the transfer contract and/or demand compensation in the event of renewed failure. If the rectification of the defect also fails within the additional period, the Customer may withdraw from the contract or reduce the remuneration if the defect is not merely insignificant. GFOS shall provide compensation for damages or reimbursement of futile expenses due to a defect within the limits set out in § 9.
- 8.6 If GFOS provides services in the determination or elimination of defects without being obliged to do so, GFOS may demand remuneration according to the time and effort involved if the the Customer has at least grossly negligently failed to recognise the absence of a defect.
- 8.7 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 shall authorise GFOS to take legal action against third parties in and out of court on its own. If the Customer is sued, he shall coordinate 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.
- 8.8 Claims based on defective software shall become statute-barred within one (1) year after delivery or provision of the software 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, limb or health. For the rest, the following § 9 shall apply to the Customer's claims for damages.

§ 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, limb and health, as well as for damage that gives rise to a duty to compensate in accordance with section 1 of the German Product Liability Act ("ProdHaftG").
- 9.2 In the event of simple negligence, GFOS shall only be liable insofar as it involves a breach of material contractual obligations, the fulfilment of which is a prerequisite for the proper performance of the transfer 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 using the software 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 euros (€ 250,000.00) per case of damage. If, in the opinion of the Customer, 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 appropriate 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 which would also have arisen in the event of proper data backup by the Customer.

- 9.6 If several claimants derive claims against GFOS from the transfer agreement 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 be available to the Customer and the other claimants only jointly and severally at the disposal (several creditor, section 428 BGB). section 334 BGB shall apply 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 The limitation period for claims for damages and claims for reimbursement of futile expenses of the Customer expires 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.

§ 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 transfer 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 Customer's personal data

- only within the scope of the contractually owed provision of services 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 manner in brochures and publications (e.g. reference lists), including 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 keep confidential information made available to them by the other party on the basis of the transfer agreement as well as knowledge which they have gained on the occasion of the fulfilment of the information shall be treated confidentially and shall not be made accessible to third parties if it is obtained in the course of a transfer agreement concerning confidential matters of the respective other party. 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 transfer agreement. The confidentiality obligation shall not apply to information that is
- the other party has demonstrably received or is receiving lawfully from third parties,
 - can be proven to have already been generally known at the time of conclusion of the contract or to have subsequently become generally known without any breach of the obligations contained in this § 10,
 - have been demonstrably independently developed by the other party, or
 - must be disclosed due to mandatory legal or official regulations.
- 10.4 The Customer shall only make the software accessible to its employees to the extent that this is necessary to exercise the rights of use granted to it. He shall instruct all employees to whom he grants access to the software about the rights of GFOS to the software 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 Software and the transfer contract are subject to the law of the Federal Republic of Germany. The provisions of international private 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 transfer agreement 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 Clauses
- 12.1 Amendments and supplements to these GTC Software or the transfer contract as well as other declarations in connection with the transfer contract which trigger a legal 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.
- 12.2 Should a provision of these GTC Software or of the transfer contract be or become void in whole or in part or should a loophole in the transfer 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.