

General Terms and Conditions for the Maintenance of User Software

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§ 1 Scope of application, general regulations

- 1.1 These General Terms and Conditions for the Maintenance of User Software (hereinafter referred to as "**GTC Maintenance**") govern the legal framework for the provision of maintenance services for software products (hereinafter referred to as "**Maintenance Services**") by Gesellschaft für Organisationsberatung und Softwareentwicklung mbH (hereinafter referred to as "**GFOS**").
- 1.2 GFOS offers the maintenance services 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 shall not be accepted by GFOS. The term "**Customer**" is used below to refer to any company that concludes a contract with GFOS on the provision of maintenance services for user software under inclusion of these GTC Maintenance (hereinafter "**Maintenance Contract**").
- 1.3 These GTC Maintenance 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 any case, for example even if GFOS commences performance 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 Maintenance, in particular the service description, the offer or a service level agreement of GFOS, are integral parts of the Maintenance 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 Maintenance. 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 a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC Maintenance.
- 1.7 In the absence of any express provision in the Maintenance Contract, GFOS shall provide the Maintenance Services for the client as a support service on a service-contract basis within the meaning of sections 611 ff. BGB, without owing a concrete performance outcome.

§ 2 Conclusion of contract, subject matter of contract, cooperation

- 2.1 All offers of GFOS are subject to changes and are non-binding, unless they are marked as binding. If the Customer places an order on the basis of the non-binding offers, a Maintenance Contract - also in current business transactions - shall only be concluded through the written order confirmation by GFOS (sufficient also by e-mail), if the Customer requests such a confirmation. In all other cases, the conclusion of the Maintenance Contract shall be effected at the latest by the execution of the maintenance services. If an order confirmation is issued by GFOS, this alone shall be decisive for the content of the Maintenance Contract, in particular for the delivery time or other performance deadlines.

- 2.2 The object of the Maintenance Contract is the Maintenance Services specified in the offer or in a separate service description or a service level agreement, not a specific (economic) success. GFOS shall provide the maintenance services in accordance with the generally recognised rules of technology and in compliance with the agreed requirements. The maintenance services shall only be provided for the current version and the previous version of the respective software. With the release of the next software version, support for the previous version will be discontinued. Apart from the current and the previous version, the customer has no entitlement for GFOS to maintain an older version of the software. If the Customer wishes this, he must reach a separate agreement with GFOS on this.
- 2.3 Close cooperation between the Customer and GFOS is necessary for the provision of services. GFOS and the Customer shall therefore inform each other of all circumstances from their sphere which may have an effect on the provision of services by GFOS. The Customer shall name an authorised contact person and at least one key user to GFOS in writing. If the Customer decides to change this contact person and/or the key users, it shall inform GFOS in writing in good time about this and about the time. The contact person shall be deemed to be authorised to make or receive legally binding declarations for the Customer and to make binding decisions for the Customer.
- 2.4 Unless otherwise agreed in writing or in text form, GFOS may, at its own discretion, use competent subcontractors for the execution of the order.
- 2.5 GFOS shall examine any requests from the Customer for changes to the contractually agreed Maintenance Services and take them into account at its own discretion, insofar as this is possible within the framework of the capacities and within the framework of the effort and time planning. Insofar as such changes affect the terms of the contract, the parties shall agree on an adjustment of the Maintenance Contract, in particular with regard to remuneration and performance time/periods. If no agreement is reached on this, GFOS shall not be obliged to fulfil the Customer's request for changes to the agreed Maintenance Services.
- 2.6 Unless otherwise specified in the offer or in a separate service description or in a service level agreement, GFOS shall not be obliged to carry out ongoing adaptation of the software to changing legal framework conditions (i.e. mandatory laws, legal ordinances, regulatory requirements) or due to changing requirements in the sphere of the Customer.
- 2.7 The patches/updates/upgrades/releases to be provided by GFOS as part of the maintenance services, if any, shall be made available to the Customer in the form of the object code at the reasonable discretion of GFOS (i) as a download in electronic form via the Internet or (ii) on a data carrier customary in the market as soon as GFOS has released them. The Customer shall be responsible for the correct and proper installation of the patches/updates/upgrades/releases. For the installation, the installation instructions described in the product description and/or application documentation, in particular the hardware and software environment that must be available at the Customer's premises, must be observed.

§ 3 Scope of Maintenance Services, general regulations

- 3.1 Insofar as no deviating provisions are contained in the offer, in a separate service description or in a service level agreement, the provisions set out below under § 4 (error correction), § 5 (provision of new software versions) and § 6 (GFOS Customer Center) shall apply.
- 3.2 Dates and deadlines 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.
- 3.3 The Customer shall ensure that all support requests are made exclusively via the GFOS Customer Center or via a GFOS ticket system by the key users designated by the Customer in accordance with § 2.3. GFOS shall not owe

any end user support beyond this (e.g. questions on the operation of the software).

§ 4 Error correction

- 4.1 GFOS shall rectify reported errors in the software within a reasonable period of time. A defect in the software exists if the software does not provide the functionalities specified in the product description of the software when used in accordance with the contract. An error shall not be deemed to exist (in particular) if
- the presence of a defect has only an insignificant effect on the use of the software;
 - an error was caused by improper handling of the software (e.g. non-observance of the user documentation);
 - the cause of an error does not lie in the software, but is caused by other causes that are not within the sphere of GFOS (e.g. system crash of third-party software, network or server failure).
- 4.2 The type and manner of error elimination shall be at the reasonable discretion of GFOS. If GFOS offers the Customer new software versions, in particular patches, bug fixes, updates, upgrades, new releases, etc., in order to avoid or eliminate errors, the Customer shall accept these and install them on its hardware in accordance with the installation instructions of GFOS. The elimination of an error can also take the form of instructions to the Customer. The Customer shall follow such instructions.
- 4.3 GFOS shall carry out the troubleshooting remotely (remote desktop control) at the request of the Customer. On-site troubleshooting is not owed within the scope of the flat-rate remuneration according to § 9.1; however, the Customer may request on-site troubleshooting against separate remuneration.
- 4.4 If a software error reported by the Customer does not exist, GFOS shall be entitled to charge separately for the expenditure caused thereby if the Customer has failed to recognise the non-existence of an error due to at least gross negligence.
- 4.5 The prerequisite for the performance obligation of GFOS pursuant to this § 4 within the

framework of the flat-rate remuneration pursuant to § 9.1 is that the Customer operates the software to be maintained in the software and hardware environment specified in the product description and/or application documentation of the software.

§ 5 Provision of new software

- 5.1 GFOS shall make available to the Customer all patches/updates/upgrades/releases/versions of the Software (collectively "**Software Statuses**") released by GFOS. The classification of the respective software status under the terms "update", "upgrade", "release" and "version" shall be at the reasonable discretion of GFOS.
- 5.2 New software versions shall be delivered in the form of the object code at the reasonable discretion of GFOS (i) as a download in electronic form via the Internet or (ii) on a data carrier customary in the market. In the first case, GFOS shall provide the Customer with the information required for the download. A transfer of the source code is not owed.
- 5.3 The Customer is responsible for the correct and proper installation of new software versions. For the installation of the software versions, the installation instructions described in the product description and/or application documentation of the software, in particular the hardware and software environment that must be available at the Customer's premises, must be observed.
- 5.4 Insofar as the relevant application documentation of the software may have to be updated due to the provision of new software versions, this may be done either in paper or electronic form at the discretion of GFOS.

§ 6 GFOS Customer Center

- 6.1 GFOS allows the use of the GFOS Customer Centre (by telephone, e-mail or via the ticket system) for brief advice and reports in the event of errors, application problems, faults or other difficulties in connection with the processes of the software in accordance with the following provisions (hereinafter referred to collectively as "**support requests**").

6.2 Unless otherwise agreed, the GFOS Customer Center is only available during service hours (Mon-Fri. 8.00-18.00, except on public holidays at the GFOS headquarters and on 24.12. and 31.12. (hereinafter referred to as "**service hours**"). Support requests that are processed outside the Service Hours shall be remunerated plus reasonable surcharges for overtime, night work, weekend work and work on public holidays per hour or part thereof per employee. Appropriateness shall be assumed in particular if the corresponding surcharges result from collective bargaining agreements or other applicable company regulations, which GFOS shall prove to the Customer in a suitable form upon request if recourse is made to collective bargaining agreement rates or rates otherwise regulated by the company.

6.3 The GFOS Customer Center may be called upon during GFOS's Service Hours by the key users designated in accordance with § 2.3 if the Customer's first-level support is unable to remedy the identified defects, application problems, malfunctions or other difficulties.

6.4 Insofar as no deviating regulations on response and/or recovery times are agreed in the offer, in a separate service description or in a service level agreement, the following regulations shall apply in addition:

Response time is the period of time within which the execution of the maintenance service is started (e.g. with the rectification of a fault). The period starts with the receipt of the corresponding support request by GFOS or the occurrence of an agreed event within the service time and runs exclusively during the agreed service time. If a support request is received or an agreed event occurs outside the agreed service time, the response time begins at the start of the next service time. GFOS will, upon receipt of a qualified support request via the GFOS Customer Center, start processing a support request within a response time of six (6) hours at the latest in the event of a malfunction that prevents operation. A malfunction preventing operation exists if the malfunction prevents the use of the

software and it is not possible to work in live operation.

Resolution time is the period of time within which GFOS endeavours to finally process a malfunction or other work order, if necessary also by means of reasonable workarounds, within the framework of the technical and operational possibilities of GFOS. Solution times shall run exclusively during the agreed service time. In the case of solution times, such times shall not be taken into account which, despite reasonable efforts by GFOS, lead to delays in the provision of the service, such as: outstanding acts of cooperation by the Customer, delivery times for necessary third-party software or hardware (insofar as no stockpiling has been expressly agreed) and, insofar as manufacturer bug fixes to hardware/software are necessary, the times until the corresponding provision by the manufacturer. In these aforementioned cases, GFOS shall also use its best efforts to identify interim measures that minimise any adverse effects on the Customer.

§ 7 Subcontractors

7.1 GFOS shall remain entitled to have parts of the maintenance services rendered in whole or in part by suitable subcontractors.

7.2 In providing the Maintenance Services, GFOS reserves the right to make use of personnel resources as well as technical, professional and/or administrative support services of companies affiliated with GFOS ("**GFOS companies**") and accordingly to pass on order-related confidential information of the client. All GFOS Companies are, of course, bound to secrecy. Notwithstanding the above, the responsibility for the provision of the Maintenance Services remains in full with GFOS. Any claims for performance and liability can therefore only be asserted against GFOS, but not against other GFOS companies.

§ 8 Duties to cooperate, user support by Customers

8.1 The Customer shall ensure that all cooperation services required for the provision of the Maintenance Services are provided in good time, in full and free of charge for GFOS.

- 8.2 The Customer shall ensure that employees of the Customer who support GFOS in the provision of the Services are available at the agreed times. The Customer shall be responsible for ensuring that its employees, in particular the key users, have the necessary knowledge, skills and experience to perform the tasks assigned to them.
- 8.3 The Customer's obligations to cooperate shall include, in particular, creating all the conditions in its sphere of operation that are necessary for GFOS to provide the maintenance services properly. Unless otherwise agreed, the Customer shall in particular
- ensure that support requests and error messages are only made by key users;
 - ensure that errors are reported immediately after discovery via the GFOS Customer Center;
 - In the event of error reports, monitor the problems that have occurred, the software and the IT infrastructure and report an error to GFOS in writing/text form, stating information that is useful for rectifying the error, for example the number of users affected, a description of the system and hardware environment and, if applicable, simultaneously loaded third-party software, and documents;
 - GFOS (to the best of its ability) in the search for the cause of the error and (if necessary) encourage its employees to cooperate with GFOS employees;
 - grant the employees commissioned by GFOS to carry out the maintenance services remote access (during normal office hours of the Customer) to the computers on which the software to be maintained is stored and/or loaded;
 - install the software and/or new software versions (patches, bug fixes, etc.) in accordance with more detailed instructions from GFOS (without delay) and comply with the suggestions and instructions for action communicated by GFOS for troubleshooting;
 - keep all data used or obtained in connection with the maintained software available in machine-readable form as a backup copy which allows reconstruction of lost data with reasonable effort;
 - GFOS of all events and circumstances which may be of significance for the performance of the Maintenance Services; this shall also
- 8.4 apply to documents, information, events and circumstances which only become known during the activity of GFOS. Further obligations of the Customer to cooperate and to provide are, if applicable, regulated in the offer, a separate service description or in the service level agreement for the Maintenance Services.
- 8.4 The Customer shall set up a user support within his company for the software to be maintained, which collects the support requests of the users, carries out an initial problem analysis and deals with the requests independently as far as possible. The user support shall be staffed with employees who have in-depth knowledge of the software (administrator knowledge). The Customer shall only forward to GFOS, via the key users named in accordance with § 2.3, enquiries relating to the software which it cannot deal with itself through its user support. The user support shall be obliged to cooperate with GFOS and shall provide GFOS with comprehensive support, in particular by coordinating multiple similar support requests, clarifying user problems that are merely attributable to operating errors, documenting errors including the circumstances under which they occurred and - as far as possible - by storing and transmitting data or software copies that enable or facilitate an analysis of an error.
- 8.5 As long as the Customer's cooperation services are not provided in accordance with the contract, GFOS shall be released from its obligation to perform in whole or in part to the extent that GFOS is dependent on the respective cooperation or provision. GFOS shall not be responsible for disruptions to performance caused by the Customer's failure to provide cooperation services in accordance with the contract. Additional expenses incurred by GFOS due to the non-contractual provision of the cooperation services can be invoiced separately by GFOS according to expenditure. Any further claims of GFOS shall remain unaffected.

§ 9 Remuneration

- 9.1 The flat-rate remuneration for the Maintenance Services listed under §§ 4, 5 and 6

results from the respective GFOS offer or from the price list for the respective Maintenance Services.

- 9.2 For services that are not covered by the flat-rate remuneration pursuant to § 9.1, GFOS shall invoice according to time and effort on the basis of the hourly or daily rates for persons specified in the offer. Material costs, travel costs, expenses and other expenses (hereinafter "**expenses**") shall be reimbursed separately. GFOS may demand reasonable advances and payments on account on the remuneration for services and the reimbursement of Expenses and make the delivery of work results dependent on the full satisfaction of all claims existing against the Customer.
- 9.3 The flat-rate remuneration pursuant to § 9.1 shall be payable in advance for one contractual year in each case. It shall be due in each case upon receipt of the invoice and shall be payable within fourteen (14) calendar days of the invoice date.
- 9.4 The remuneration for services to be invoiced separately shall be invoiced monthly in arrears according to expenditure. With regard to the due date and the payment period, § 9.3 above shall apply accordingly.
- 9.5 All stated remunerations and prices are subject to the statutory value added tax applicable at the time.
- 9.6 In the event of changes in market conditions, significant changes in procurement costs, changes in value added tax or price increases by subcontractors, GFOS shall be entitled to adjust the flat-rate remuneration and the hourly or personal daily rates. However, such a price adjustment shall be permitted no earlier than twelve (12) months after conclusion of the contract and only once a year. GFOS shall announce the change to the client in writing no later than six (6) weeks before it takes effect. In the event that the Customer does not accept the price increase, both GFOS and the Customer shall be entitled to terminate the Maintenance Contract with one month's notice to the end of the calendar month, insofar as the price increase amounts

to more than five percent (5%) of the previous price. In the event of termination, the prices that have not been increased until the termination takes effect shall apply.

- 9.7 The Customer shall only be entitled to assert rights of retention against GFOS if the counterclaim asserted is undisputed or has been legally established. The assignment of claims against GFOS shall be excluded; this shall not apply within the scope of application of section 354a of the German Commercial Code ("**HGB**").

§ 10 Secrecy, data protection

- 10.1 The Customer undertakes to keep confidential such facts, documents and knowledge which come to his knowledge in the course of the implementation of the business relationship with GFOS and which contain technical, financial, business or market-related information about the company GFOS, provided that GFOS designates the respective information as confidential or has an obvious interest in keeping it confidential (hereinafter collectively referred to as "**confidential information**"). The Customer shall use the Confidential Information exclusively for the purpose of implementing and executing the contractual relationship with GFOS in accordance with the contract and the individual contracts based thereon.
- 10.2 The disclosure of confidential information by the Customer to third parties shall require the express and prior written consent of GFOS.
- 10.3 The duty of confidentiality pursuant to § 10.1 above shall not apply insofar as the respective confidential information can be proven:
- a) is or becomes generally known without any action on the part of the Customer or
 - b) was already known to the Customer or is made known by a third party authorised to pass on the information or

- c) is developed by the Customer without the intervention of GFOS and without exploitation of other information or knowledge obtained through the contractual contact; or
- d) must be disclosed due to mandatory statutory provisions or court or official orders.
- 10.4 The Customer shall be responsible for compliance with all relevant statutory data protection provisions, in particular for the lawfulness of the data disclosure and data processing of personal data of its employees and other data subjects in connection with the provision of services by GFOS. GFOS shall process the personal data of the Customer only within the scope of the contractually owed service provision and in accordance with the provisions of data protection law.
- 10.5 The Parties shall process personal data in compliance with the applicable provisions on data protection, in particular Regulation (EU) 2016/679 (General Data Protection Regulation).
- 10.6 With regard to personal data of the Customer, GFOS shall comply with the relevant statutory data protection provisions. Personal data of the Customer shall be collected, stored, processed and used by GFOS if, to the extent and for as long as this is necessary for the establishment, performance or termination of the Maintenance Contract with the Customer. Any further collection, storage, processing and use of the Customer's personal data shall only take place if required or permitted by a legal provision or if the Customer has consented thereto. The Customer is aware that in order to carry out pre-contractual measures and fulfil the contract with the Customer, the collection, processing and use of the contact data of the Customer's contact persons (name, e-mail addresses, etc.) is required on the basis of point b) of Art. 6(1) GDPR. In particular, GFOS is entitled to transfer the data to third parties if and to the extent that this is necessary for the performance of pre-contractual measures and fulfilment of the contract (e.g. for delivery, invoicing or Customer support) pursuant to point b) of Art. 6(1) GDPR or fulfilment of a legal obligation within the meaning of point c) of Art. 6(1)GDPR. GFOS will also forward this data to third parties (e.g. debt collection companies), if necessary, for the purpose of enforcing claims in accordance with point b) and/or point f) of Art. 6(1) GDPR.
- 10.7 GFOS's privacy policy is available at <https://www.gfos.com/en/privacy>.
- 10.8 Insofar as GFOS processes personal data on behalf of the Customer within the framework of the performance of the Maintenance Contract, GFOS shall only process the personal data within the framework of the contractually owed performance of services or other written instructions of the Customer and in accordance with the provisions of data protection law. The parties shall specify the details of the commissioned processing in a separate "Data Processing Agreement". This agreement shall take precedence over the provisions of these GTC Maintenance in its scope of application.

§ 11 Rights of Use, Passing on of Work Results

- 11.1 All contractually agreed maintenance services and work results of GFOS are intended exclusively for the client and for use for the purposes specified in the Maintenance Contract.
- 11.2 GFOS shall remain the owner of all work results which are or can be protected by industrial property rights or positions similar to industrial property rights of whatever kind (e.g. patent rights, trademark rights, utility model and design rights, copyrights) and whether registered or not, and to which GFOS is entitled at the time of conclusion of the Maintenance Contract or which are created by GFOS (or by third parties on its behalf) after conclusion of the Maintenance Contract (hereinafter "**materials**"). The same shall apply to adaptations, modifications and further developments.
- 11.3 GFOS shall grant the Customer rights of use to the new software versions (e.g.. versions, patches, bug fixes) and documentation delivered in fulfilment of the maintenance

agreement in accordance with the transfer agreement underlying the transfer of the software. The rights of use granted to the Customer hereunder shall remain unaffected by a termination of the Maintenance Contract.

§ 12 Defects of quality and title, limitation period, force majeure

12.1 GFOS warrants that the maintenance services are free from material defects and/or defects of title. However, the warranty that the new software versions and Materials are free of third-party rights shall only apply to use in the Federal Republic of Germany if the Customer of GFOS has its registered office or branch there or additionally for a third country if GFOS has expressly agreed in writing with the Customer on the use of the software versions and Materials in this third country.

12.2 The Customer shall notify GFOS without delay of any defects in the maintenance services, 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 symptoms that have occurred,
- the care service concerned,
- the number of users affected.

12.3 GFOS shall initially provide warranty in the event of material defects in the error correction and/or the new software status/Materials by means of subsequent performance. For this purpose, GFOS shall, at its discretion, provide the Customer with a new, defect-free software version or remedy the defect in another way. The Customer shall take over the new software version provided and install it on his 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.

12.4 In the event of defects of title in the new software/Materials, 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 of use to the infringed rights or replace the software/Materials or modify them in such a way that they no longer infringe the rights but continue 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.

12.5 If GFOS does not provide the services of the GFOS Customer Centre in accordance with the contract, GFOS shall be entitled to repeat the services concerned free of charge, insofar as this can be made up for and is reasonable for the Customer.

12.6 If the supplementary performance fails, the Customer is entitled to set a reasonable grace period for the elimination of the defect. If the rectification of the defect also fails within the grace period, the Customer may reduce the maintenance fee appropriately. GFOS shall pay damages or compensation for futile expenses due to a defect within the limits set out in § 13.

12.7 If GFOS provides services in the determination or elimination 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 in the maintenance services due to at least gross negligence.

12.8 If third parties assert claims that prevent the Customer from exercising the rights of use to the new software/Materials 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 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.
- 12.9 Claims for defective Maintenance Services shall become statute-barred within one (1) year from the statutory commencement of the limitation period. The above limitation period shall not apply in the event of deficiencies in performance due to intent or gross negligence on the part of GFOS or in the event of injury to life, limb or health. In these cases, the statutory limitation period shall apply.
- 12.10 If, after termination of the Maintenance Contract, the Customer demands the rectification of a defect in the software on the grounds of a material defect and/or defect of title, the Customer shall bear the burden of presentation and proof that this defect is due to a maintenance service provided by GFOS. The presentation and proof shall be deemed to have been provided if the Customer presents and proves that this defect did not occur under comparable circumstances prior to the provision of a specific maintenance service to be specified by the Customer, but only became apparent afterwards, without any causes other than the specified maintenance service being apparent. In particular, the Customer must demonstrate and prove that no changes have been made to the software and its working environment after termination of the Maintenance Contract on which the defect may be based.
- 12.11 The Customer may only derive rights from other breaches of duty by GFOS if he has notified GFOS of these in writing and has granted GFOS a period of grace for remedial action. This shall not apply if a remedy cannot be considered due to the nature of the breach of duty. The limits set out in § 13 shall apply to compensation for damages or reimbursement of futile expenses.
- 12.12 If events of force majeure occur, GFOS shall inform the Customer in good time in writing or in text form. In this case, GFOS shall be entitled to postpone the Maintenance Services for the duration of the hindrance or to terminate the Maintenance Contract in whole or in part on account of the part not yet fulfilled, insofar as GFOS has complied with the aforementioned duty to inform. Cases of force majeure are in particular strikes, lock-outs, war, official interventions, epidemics and pandemics as well as their unforeseeable effects, energy and raw material shortages, cyber attacks, transport bottlenecks through no fault of GFOS, operational hindrances through no fault of GFOS - i.e. due to fire, network failure, water and machine damage - and all other hindrances which, viewed objectively, have not been culpably caused by GFOS. If a performance date has been bindingly agreed and this is exceeded due to force majeure, the Customer shall only be entitled to terminate the Maintenance Contract on account of the unfulfilled part after the fruitless expiry of a reasonable grace period if it is objectively unreasonable for it to continue to adhere to the Maintenance Contract and the force majeure has already lasted for more than two (2) months. Further claims of the Customer, in particular claims for damages, are excluded in this case. The Customer is obliged to pay for Maintenance Services provided up to that point in accordance with what has been agreed in this respect.
- ### § 13 Liability
- 13.1 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 which gives rise to a duty to pay compensation pursuant to section 1 of the German Liability Act ("**ProdHaftG**").
- 13.2 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 Maintenance Contract and on the observance of which the Customer was entitled to rely. Otherwise, liability for damage caused by slight negligence is excluded. § 13.1 remains unaffected.
- 13.3 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 are also only eligible for compensation insofar as such damages are typically to be expected when the Maintenance Services are used as intended. § 13.1 remains unaffected.
- 13.4 The liability of GFOS in the cases of § 13.3 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 exceeds this maximum liability amount by more than an insignificant amount, GFOS shall be prepared to agree an appropriate higher liability amount in return for appropriate remuneration for the assumption of risk, provided that insurance cover can be agreed for this.
- 13.5 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.
- 13.6 If several claimants under the Maintenance Contract bring claims against GFOS arising from a simple negligent breach of essential contractual obligations (§ 13.3) by GFOS, the maximum liability amount determined in § 13.4 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.
- 13.7 The above provisions on the limitation of liability shall also apply to the personal liability of the employees, representatives and bodies of GFOS.
- 13.8 Claims for damages and claims for reimbursement of futile expenses of the Customer shall become statute-barred within one (1) year; with regard to the beginning of the limitation period, section 199 para. 1 BGB shall apply. This shall not apply to claims for damages and claims for reimbursement of futile expenses due to injury to life, body or health, in the case of claims under the Product Liability Act and in the case of breach of a quality guarantee. Furthermore, this shall not apply to claims based on an intentional or grossly negligent breach of duty by GFOS or a legal representative or vicarious agent of GFOS.
- § 14 Term and termination**
- 14.1 Unless otherwise agreed in the offer, the Maintenance Contract shall initially be valid for a minimum term of three (3) contractual years. Thereafter, it shall be extended by one (1) further contractual year in each case if it is not terminated in writing by one of the contracting parties three (3) months before the expiry of a contractual year.
- 14.2 Either party is entitled to terminate the Maintenance Contract at any time in accordance with section 314 BGB for good cause. Good cause exists if facts are given on the basis of which the terminating party, taking into account all circumstances of the individual case and weighing the interests of the other party, can no longer reasonably be expected to continue the contract ("**good cause**"). If the Good Cause consists of the breach of a contractual obligation, termination shall only be permissible after the unsuccessful expiry of a deadline set for remedial action or after an unsuccessful warning, unless the setting of a deadline is dispensable pursuant to section 323 para. 2 BGB. Good cause entitling GFOS to terminate the contract shall be deemed to exist in particular if the Customer is in arrears with the payment of at least two (2) monthly invoices.

§ 15 Applicable law, place of jurisdiction

- 15.1 These GTC Care and the Maintenance 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.
- 15.2 The place of jurisdiction for all legal disputes between the parties arising from or in connection with the Maintenance Contract shall be Essen, Germany, to the extent permitted by law; GFOS shall, however, also be entitled to sue the Customer at his 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.

§ 16 Final provisions

- 16.1 Amendments and supplements to these GTC Care or the Maintenance Contract as well as other declarations in connection with the Maintenance Contract that 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.
- 16.2 Should any provision of these GTC Care or of the Maintenance Contract be or become void in whole or in part, or should a loophole in the Maintenance Contract or its supplements become apparent, this shall not affect the validity of the remaining provisions.
- 16.3 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.