



## General Terms and Conditions for the provision and licensing of software

### § 1 Definitions

- 1.1. "GEZE" shall imply GEZE GmbH, GEZE Service GmbH or another company of the GEZE Group of Companies; the GEZE company that concludes the contract with the customer shall be specifically mentioned in the offer in each case.
- 1.2. "Software" is to be understood comprehensively and, in addition to embedded software, also includes other standard software which GEZE provides to the customer as independent software, in particular mobile apps.
- 1.3. "Embedded software" includes firmware, i.e. programs which are permanently installed in GEZE systems and control, regulate and monitor these (e.g. an intelligent door control unit), as well as software which is permanently stored on a certain hardware and is delivered together with it, such as the GEZE cockpit.
- 1.4. "GEZE systems" are GEZE systems for door, window and safety technology.
- 1.5. "Approved systems" are door, window and safety systems which, in addition to GEZE systems, may also contain systems and/or components from third-party manufacturers and which are either expressly approved for use with GEZE software or intended for use in accordance with their intended purpose (the intended purpose may result from the individual contract, the product description and/or the documentation as part of a project planning).
- 1.6. "GEZE Products" is the generic term used for GEZE systems, software and other delivery items of GEZE (e.g. cockpit hardware).
- 1.7. "Third-party products" include third-party software (e.g. operating systems, databases) and other products from third-party manufacturers (e.g. PCs, laptops) which GEZE supplies to the customer as independent merchandise or integrated in GEZE's own products.
- 1.8. "Open source software" are programs which are offered to the general public under Open Source license conditions and which, in particular, permit the comprehensive, "free" use of the program. The freedom from license fees and the openly accessible source code are essential prerequisites for this free usability.
- 1.9. Depending on the GEZE product covered by the contract, the service contract is a maintenance, support or other service contract that needs to be concluded or that has been concluded by the customer.

### § 2 Scope of these General Terms and Conditions (GTCs)

- 2.1. These General Terms and Conditions (hereinafter referred to as the "Software GTCs") apply exclusively to business transactions, namely to the delivery and licensing of standard software and – if agreed – to the provision of services relating to the installation, configuration and commissioning of the software.
- 2.2. The provision of services that go beyond the delivery and licensing as well as the installation, configuration and commissioning of the software (refer to § 7 below), such as the adaptation of the software to the special needs of the customer, the creation of specific interfaces to already existing programs of the customer, the integration of the software into the building management system and into the interdisciplinary building automation, requires the conclusion of a separate agreement. The software is permanently supported and/or

serviced on the basis of a separate service contract, if the customer has commissioned us to do so.

- 2.3. The software is provided to the customer either as independent application software, for integration into own or third-party programs (e.g. a building management system) or as embedded software, e.g. integrated into GEZE systems in the field of door, window and safety technology. If GEZE provides the customer with the software pre-installed on a piece of hardware, the following provisions of these Software GTCs (e.g. regarding liability for defects) shall also apply correspondingly to the (purchase) provision of the hardware, insofar as these Software GTCs or the respective individual contract do not provide for any deviating regulations.
- 2.4. For the download of mobile apps from a third party provider for use on mobile devices, for example via the Apple AppStore (for iOS devices) or the Google Play Store (for Android devices), the corresponding conditions of the respective App Store operating company apply in addition to these Software GTCs, in particular the prevailing Apple or Google App Store conditions. If an independent contractual relationship is established between the customer and the App Store operating company, this shall not be affected by these Software GTCs; the Software GTCs shall only apply as a supplement and insofar as they do not contradict the App Store conditions.
- 2.5. The current version of the Software GTCs shall also apply to all future contracts for the delivery and licensing of software and the provision of accompanying services between GEZE and the customer, even if these are not explicitly referred to again.
- 2.6. The type and scope of the licences acquired by the customer and the agreed services as well as the amount of the remuneration shall be determined by the individual contract, in particular by the offer and the order confirmation by GEZE. In the event of contradictions, the customer-specific conditions in the individual contract shall take precedence over these Software GTCs. The customer's general terms and conditions shall not apply even if GEZE provides software to the customer without contradicting these conditions.
- 2.7. For third-party software and other third-party products which GEZE supplies to the customer as independent merchandises and which GEZE separately identifies and mentions their prices in its offers, the contractual and licensing conditions of the respective manufacturer or supplier of the third-party product shall be applicable in the absence of other agreements. These may contain regulations deviating from these Software GTCs regarding the granting of rights of use as well as warranty and liability. GEZE will draw the customer's attention to the manufacturer's or supplier's contract and licence conditions when concluding the contract. If there are loopholes in the contractual and licensing conditions applicable to third-party products, the provisions of these Software GTCs shall apply accordingly.
- 2.8. For open source software supplied by GEZE to the customer, the contract and licence conditions applicable to the open source software shall apply with priority. In addition, the licence conditions in these Software GTCs shall apply accordingly. The individual open source software components including the applicable open source license conditions (in full text) are listed in detail within the software (e.g. in a Readme file). Upon request, GEZE will also provide the

customer with the applicable open source license conditions outside the software. Within its area of responsibility, the customer shall ensure compliance with the open source license conditions applicable to the open source software.

### **§ 3 Dates and deadlines; scope of delivery and functions**

- 3.1. Agreed dates and deadlines are non-binding unless they are explicitly designated as binding in the individual contract. Compliance with agreed dates and deadlines requires the timely receipt of all required documents and information as well as the timely provision of the necessary materials and cooperation services by the customer.
- 3.2. Events beyond the control of a contractual partner that make the delivery or service considerably more difficult or temporarily impossible, such as force majeure, strikes, lock-outs, absence or delay of supplies from third parties despite the conclusion of congruent hedging transactions, entitle the affected contractual partner to postpone the fulfilment of its obligations for the duration of the hindrance plus a reasonable restart time. The contractual partners shall notify each other immediately of the occurrence and end of such circumstances.
- 3.3. The software shall be made available to the customer in the current version at the time of delivery and it is either integrated into a GEZE system, pre-installed on the hardware or provided in the electronic format. Unless otherwise agreed upon, the customer shall not be entitled to the provision of the source code of the software; the only exception to this shall be open source programs whose license conditions expressly intend the provision of the source code. If the software is provided to the customer exclusively in object code, the rights of use granted for the software shall also relate exclusively to the use of the software in object code. If this is necessary to operate the software, the customer shall receive a user manual in printed or electronic format (e.g. as integrated online help) in German and English together with the software.
- 3.4. The scope of functions and services of the software shall be conclusively derived from the individual contract, the product description as well as the user manual. The software can and may be used for control and use only together with GEZE systems and other approved systems. GEZE assumes no responsibility for the usability and operability of the software for controlling or for its use together with other systems that are not approved by GEZE.
- 3.5. GEZE reserves the right to make changes and improvements to the supplied GEZE products as part of technical development or due to changed legal requirements, provided that these do not impair the usability of the GEZE products for the contractually intended purpose. This also applies to changes and improvements which are made after the GEZE product has been handed over to the customer. GEZE further reserves the right to collect and use (non-personal) system data (refer to § 12.1) from the customer in order to improve the quality of service and/or to facilitate the rectification of defects in GEZE products; details can be found in § 12 below.

### **§ 4 Granting of usage rights**

- 4.1. All copyrights and other protective rights to the software (including all new versions) are exclusively owned by GEZE in relation to the customer. The customer receives only the simple usage rights for the software described in §§ 4 and 5.
- 4.2. Unless otherwise regulated in the individual contract, GEZE shall grant the customer the non-exclusive, unlimited usage rights and to utilise the software (including any customer-specific adaptations and/or extensions) for the customer's own purposes agreed upon or presupposed by both contractual partners, subject to a condition precedent and subject to full payment of the agreed remuneration. The special rules in § 14 below shall apply with priority to the

provision of software for temporary use (e.g. as part of a subscription model).

- 4.3. The customer may use the software for the agreed type and number of licenses (e.g. released systems, authorised users). The type and scope of the usage rights granted or the scope of the contents of the licences are specified in detail in GEZE's offer or order confirmation. If necessary for use in accordance with the contract, the customer shall be entitled to reproduce the software and make a necessary backup copy, which shall be marked as such by the customer. Copyright and other property right notices within the provided software may not be altered or removed by the customer.
- 4.4. If the customer acquires the software as an external sales partner of GEZE (e.g. as a specialist planner or system integrator) for the purpose of resale, the customer shall be entitled to resell the software in the ordinary course of business in its own name and on its own account to end customers and to grant them usage rights for the software. The sales partner shall be the sole contractual partner and contact person of the end customer. The sales partner is not authorised to represent GEZE in legal transactions. The sales partner is not permitted to grant its end customers other or more extensive rights to the software those granted to it as far as the software is concerned. In particular, the end customer's usage rights also refers to the use of the software exclusively in connection with GEZE systems or other released systems. Furthermore, the sales partner shall not make any contractual promises to the end customer that go beyond or deviate from the agreed quality of the software according to the individual contract and these Software GTCs.
- 4.5. The customer shall only be entitled to integrate the software into its own or third-party programmes (e.g. a building management system) with the prior written consent of GEZE. Such integration shall take place exclusively via the interfaces provided by GEZE for this purpose. The customer is solely responsible for the compatibility and interoperability of the software with other programs. If GEZE agrees to integrate the software into another program, the customer shall be entitled to distribute the software as part of this superordinate program to end customers and to grant them usage rights, whereby the usage rights granted to the end customer for the software may not exceed the rights granted to the customer; § 4.4 above shall apply accordingly.
- 4.6. Sub-licensing for a limited period of time, leasing or other forms of temporary transfer of the software to third parties, use in SaaS, outsourcing or computer centre operations or any other use of the software by or for third parties against payment or free of charge require the prior written consent of GEZE. Third parties also include companies affiliated with the customer under company law.
- 4.7. The customer is not entitled to translate, edit or rework the software beyond the scope permitted by law – in particular the scope regulated by § 69d UrhG (Copyright Act). The decompilation of the software to achieve interoperability of the software with other programs is permissible only within the mandatory limits of § 69e UrhG and if GEZE does not voluntarily provide the necessary information and documents within a reasonable period despite a written request by the customer.
- 4.8. In the case of the provision of software for demonstration, pilot or test purposes, the customer's rights of use shall be limited to such actions that serve to determine the condition of the software and its suitability for the customer's purposes. Any further acts of use, in particular the productive operation or the preparation of the productive operation, shall be prohibited without the express consent of GEZE, as shall the creation of copies (including backup copies), the processing and decompilation of the software. The customer is aware that the software provided for pilot or test purposes may be prototypes, beta versions or the like, the accuracy and stability of

which has not yet been fully tested for all purposes under productive operating conditions – there are therefore no claims against GEZE for liability for defects (unless GEZE has deliberately caused a defect or fraudulently concealed it). If a specific test period has been agreed, the customer must completely and irretrievably delete the software after its expiry and confirm this deletion in writing to GEZE upon request.

- 4.9. After installation of a new version of the software, which is made available to the customer e.g. within the scope of subsequent performance or other services, the usage rights for the previous program version shall become void.
- 4.10. The customer may transfer the software acquired by GEZE for permanent use to a third party under final abandonment only for its own use. In any case, the transfer of the software requires the prior written consent of GEZE. GEZE will give its consent if the customer submits a written declaration by the third party wherein the third party undertakes to GEZE to comply with the licence conditions applicable to the software, and if the customer assures GEZE in writing that it has transferred all original copies of the software to the third party to the extent of the resale and has deleted all copies made by it. The provision in § 5.2 shall apply with priority in case of forwarding of embedded software.
- 4.11. Any use of the software together with systems other than those released by GEZE and any other use of the software beyond the limits agreed in this § 4 requires the prior written consent of GEZE. If the use takes place without this consent, GEZE shall invoice the customer for the remuneration incurred for the further use in accordance with its respectively valid price model (also retroactively). In addition, the right to demand claims for damages shall remain reserved. The customer is obliged to notify GEZE in advance of any change affecting his right of use or the agreed remuneration (e.g. imminent sub-licensing).

#### **§ 5 Embedded software**

- 5.1. If the software is integrated into the customer's system and made available as a fixed component of hardware supplied by GEZE (e.g. cockpit hardware) or a GEZE system in the field of door, window or safety technology (e.g. control software), the customer may use the software only together with this GEZE product. The use of the software for or together with another product or system requires the prior written consent of GEZE.
- 5.2. The customer shall only pass on the embedded software and the usage rights for the software to third parties together with the GEZE product in which the software is integrated or for which it is intended. In all other cases, the software may only be passed on to third parties and the transfer or granting of usage rights to third parties with the prior written consent of GEZE. In the event of a permissible transfer of the software, the customer may not retain any copies of the software.
- 5.3. Otherwise, the provisions of § 4 shall also apply to embedded software.

#### **§ 6 Provision of updates**

- 6.1. GEZE reserves the right, e.g., to provide software updates and import them in the GEZE products as a part of service or maintenance works on GEZE products, e.g., if it appears necessary in light of the existing or suspected security loopholes or other risks or is recommended for the optimisation of the GEZE products concerned. The customer already agrees to the import of such updates. If the customer itself is not the owner of the GEZE product concerned, the customer shall obtain the consent of the respective owner. Essential functional limitations are not associated with such updates.

- 6.2. Unless explicitly stated otherwise in the contract (e.g., service contract) concluded with the customer, the customer has no claim to the provision and installation of regular updates. Furthermore, GEZE is not obliged to regularly check whether the manufacturers of third-party software, which GEZE has supplied as independent merchandise or integrated in GEZE's own products, have published or provided updates to their products. Statutorily mandatory claims of the customer remain unaffected by the above clause.

- 6.3. The terms and conditions of §§ 4 and 5 are applicable to the usage rights related to updates.

- 6.4. If GEZE provides the customer with updates of the software outside the framework of an existing service contract and without any other remuneration being due for this, these updates are not subject to any independent liability for defects. Legally mandatory claims (e.g., for intentional breaches of duty) and any claims for defects of the customer related to the originally acquired software status remain unaffected, i.e. due to provision of a free update, the customer does not lose any rights in this respect. If GEZE provides the customer with free updates to the software, this does not lead to a restart of limitation periods.

#### **§ 7 Provision of services; cooperation; acceptance**

- 7.1. If GEZE also provides services such as the installation, configuration and commissioning of the software provided ("software-related services"), the scope and quality of the services shall be governed exclusively by the individual contract and the documents confirmed as binding by GEZE. Further customer specifications must first be confirmed in writing by GEZE. Unless expressly agreed otherwise in the individual contract, software adaptations based on source code and customer-specific interface adaptations do not form part of the scope of services. The reference to technical standards serves only to explain or describe performance and in no way constitutes the acceptance of a warranty.

- 7.2. GEZE may use affiliated companies, external GEZE partners or other subcontractors as vicarious agents for the provision of services, whereby GEZE shall always remain directly obliged to the customer. The customer may object to the use of a subcontractor only owing to a justifiable reason.

- 7.3. If the provision of software-related services is agreed in the individual contract, GEZE shall take over the configuration as well as the subsequent installation and commissioning of the software at the customer in accordance with the documentation created (e.g. in a functional specification) in the absence of deviating agreements. The customer shall immediately check any documentation created and provided by GEZE to ensure that the settings described therein fully meet his needs and requirements. If the customer discovers defects, gaps or contradictions during the inspection, he shall inform GEZE immediately and GEZE shall supplement and/or correct the documentation accordingly; otherwise the customer shall release the documentation. The documentation shall be deemed to have been released if the customer does not submit written complaints to GEZE within 2 weeks of its transfer. After release of the documentation by the customer, it forms the binding and final basis for the provision of further services, replacing all other already existing documents describing the services. If the customer requests conceptual or content changes to the settings or services after approval of the documentation, this will be treated as a request for a contract change.

- 7.4. The customer shall provide the proper and complete cooperation services required for the fulfilment of the contract on time and free of charge. This includes, in particular, the services listed below; further cooperation services may arise in addition, e.g. from the individual contract.

- The customer shall ensure that its employees have the necessary qualifications and decision-making powers to provide the cooperation services.
- Insofar as this is necessary for the provision of services, the customer shall provide complete and consistent data, information and documents as well as the necessary IT and other infrastructure and shall participate in tests and acceptance tests.
- The customer shall create all conditions that are necessary for the proper provision of services in its sphere of operation. In particular, the customer shall grant GEZE access to its systems that need to be connected to the extent necessary.
- The customer shall ensure the provision and licensing of required third-party products (hardware, software, databases, etc.) required for the provision of the contractual services. The customer shall be responsible to ensure the proper operation and availability of the third-party products (including any necessary access and processing rights of GEZE), if necessary by means of licence and service contracts with the manufacturers or suppliers of the third-party products.
- The provision of materials and technical cooperation services must be provided by the customer such that the agreed services can be performed by GEZE without delay and interruption. The customer shall coordinate third party services related to GEZE's services in such a way that they do not cause delays, waiting times and/or additional expenses to GEZE.
- The customer shall observe the applicable technical system requirements for the software, including, for example, regular updating of operating systems and other system and security software, provided these have been supplied to the customer by GEZE.

The additional expenses and waiting times of GEZE resulting from the omitted, delayed or improper fulfilment of cooperation obligations shall be invoiced to the customer based on the actual efforts and expenses. This shall also apply in the event that necessary provisions by the customer do not meet GEZE's requirements or the customer does not comply with the technical system requirements and this results in additional expenditure. Further claims of GEZE due to improper cooperation shall remain unaffected.

- 7.5. Insofar as acceptance must take place on the basis of statutory regulations or the contractual partners explicitly agree to conduct the acceptance tests, the contractual partners shall execute an acceptance procedure in accordance with the following conditions. If GEZE has provided the entire agreed services, it shall first make the results of the work available to the customer for acceptance and inform the customer of the readiness for acceptance. The customer shall conduct the acceptance test within 2 weeks and declare acceptance if no defect in the work results preventing acceptance has occurred during the acceptance test. Acceptance shall be prevented only due to material defects which nullify or severely restrict the usability of the work results for the agreed or presumed purpose.

Acceptance shall be deemed to have been granted by the customer at the latest when

- the work results have been completed and handed over to the customer,
- GEZE has notified the customer of its readiness for acceptance and requested acceptance within a period of 2 weeks, and
- the customer has not refused acceptance within this period stating at least one essential defect, or the customer has not started

productive use of the software and work results, i.e. has not only put the software into operation for pure test purposes.

## § 8 Remuneration and payment conditions

- 8.1. The amount and due date of the license fee are determined by the individual contract. The remuneration for services is paid either at a flat rate (fixed price) or based on actual expenses at the agreed daily or hourly rates. If services are remunerated on the basis of actual expenses, they shall be invoiced to the customer after the service has been rendered, subject to submission of the customary proof of activity by GEZE.
- 8.2. All prices are quoted in euros plus the applicable statutory VAT. The customer must make payments within 14 calendar days of the invoice date without deduction.

## § 9 Defect rights

- 9.1. In accordance with the following paragraphs, GEZE guarantees that the software supplied and used by the customer in accordance with the contract (including GEZE hardware, if applicable, on which the software is stored) and the work performed or the work results provided (hereinafter collectively referred to as the "contractual objects") comply with the product or service description and that their use by the customer in accordance with the contract does not conflict with any rights of third parties.
- 9.2. The customer shall notify GEZE in writing or in text form of any defects in the contractual objects immediately after delivery or, in the case of hidden defects, immediately after their discovery. The customer shall take all reasonable measures to identify, isolate and document the defects. This may include the preparation of a defect report, system logs and memory extracts, the provision of the affected input and output data, interim and test results and other information and documents suitable for illustrating the defect. § 377 of the HGB (German commercial code) shall remain unaffected to the extent it applies to this contract.
- 9.3. GEZE guarantees that the contractual objects have the characteristics and functionalities described in the product or service description (e.g. in the offer or in the documentation). The customer can assert claims only due to defects that are reproducible or can be described comprehensibly by the customer. Functional impairments resulting, for example, from improper operation of the software by the customer, from the customer's system environment, from a change of operating system (including updates) or from other circumstances in the customer's area of risk are not considered to be defects.
- 9.4. Liability for defects presupposes that the customer complies with the technical system requirements specified by GEZE. The customer shall especially ensure the security of its network against unauthorised access from outside by means of suitable security measures corresponding to the latest technological advancements. Details of the technical system requirements can be found in GEZE's offer or order confirmation, for instance. Liability for defects also presupposes that the customer does not modify the contractual objects or use them contrary to the contractual specifications (e.g. under different usage conditions), unless the customer proves that the defect has occurred irrespective of this.
- 9.5. If GEZE provides services according to the customer's specifications or adapts components of third parties or of the customer at the customer's request or integrates them into its own software or GEZE products or connects them with these products, GEZE shall not assume any responsibility for the technical and legal properties of these third-party components or the consequences of the implementation of the customer's specifications.

- 9.6. In case of a defect in the contractual objects provided at the time of transfer of risk, GEZE shall provide warranty through subsequent performance, which, at GEZE's discretion, shall be effected by subsequent delivery (e.g. within the framework of an update or patch) or by rectification of defects. The rectification of the defect may also include GEZE initially showing the customer reasonable options to avoid or circumvent the effects of the defect ("workaround").
- 9.7. If subsequent performance finally fails (at least 2 attempts at subsequent performance per defect) or is refused by GEZE, the customer may withdraw from the contract or reduce the remuneration. Due to the complexity of the software, more than 2 attempts at subsequent performance may also be reasonable for the customer. In the event of only an insignificant deviation of the contractual objects from the agreed quality, there shall be no right of withdrawal. GEZE shall pay damages and compensation for futile expenses due to a defect within the scope specified in § 11.
- 9.8. If GEZE provides services to search for or to rectify a defect without being obliged to do so, GEZE may demand a separate remuneration from the customer for such services according to the respectively valid GEZE prices. This applies in particular if a defect reported by the customer cannot be proven or does not originate from GEZE's area of responsibility. A claim for remuneration shall not exist if the customer cannot recognise that there was no defect in the contractual objects.
- 9.9. The limitation period for the customer's warranty claims arising from this § 9 is one (1) year from delivery or – if an acceptance procedure is carried out – from the acceptance of the contractual objects. This does not apply in the event of intent or gross negligence on the part of GEZE, fraudulent concealment of a defect, a defect in title and in the cases specified in § 11.5.
- 9.10. If GEZE supplies third-party products to the customer, be it as independent merchandise or integrated in GEZE's own products, GEZE is generally not in the position to eliminate a defect in such third-party products, e.g., because GEZE does not have the source code required for this at its disposal. In the event of a defect in the third-party product, GEZE will, at its own option, (i) provide the customer with updates to the third-party products published by their manufacturer, serving to remedy the defect, (ii) assert its warranty claims against the manufacturer or sub-supplier in the name of the customer, or (iii) assign such claims to the customer to enable it to assert its claims. GEZE may initially also refer the customer to the manufacturer support (if available). Warranty claims against GEZE for defects of third-party products in accordance with an assignment of the customer's rights in this regards shall exist only if the judicial enforcement of the claims against the manufacturer or sub-supplier remains unsuccessful or is futile, e.g. due to insolvency of the manufacturer or sub-supplier. The statute of limitations of the customer's warranty claims against GEZE shall be suspended for the duration of the manufacturer's or sub-supplier's claim. If GEZE satisfies the claims of the customer itself, any claims for defects against the manufacturer or sub-supplier assigned to the customer shall revert to GEZE (reassignment).

## **§ 10 Property right infringements**

- 10.1. GEZE warrants that the software provided to the customer is free from third-party property rights and indemnifies the customer against third-party claims based on property rights infringements in accordance with the following provisions.
- 10.2. If third parties assert claims against the customer arising from the infringement of their property rights as a result of the contractual use of the software by the customer, the customer shall inform GEZE of this immediately in writing and with comprehensive details. GEZE is entitled, but not obliged, to settle the dispute with the third party independently in and out of court. If GEZE makes use of this right,

the customer shall support GEZE to an appropriate extent free of charge. The customer shall not acknowledge the claims of the third party on its own initiative.

- 10.3. If the software has a defect in title at the time of transfer of risk, GEZE shall provide the customer with a legally flawless option to use the software. Alternatively, GEZE may also exchange the affected software for equivalent software if this is reasonable for the customer. If an infringement of third-party property rights and/or a legal dispute with the third party over corresponding claims can be eliminated or avoided by the customer using a more recent software version provided by GEZE, the customer is obliged to take over and use this version within the scope of its duty to minimise damage, unless the customer can prove that the use of the more recent version is unreasonable.
- 10.4. GEZE shall indemnify the customer within the limits of liability of § 11 from all damages caused by the infringement of property rights, insofar as these are based on a legal defect for which GEZE is responsible. Otherwise, the provisions for material defects mentioned in § 9 shall apply accordingly to the customer's claims based on defects of title.
- 10.5. In particular, GEZE shall not be liable if claims of a third party based on alleged or actual infringements of property rights are based on the fact that the software was modified by the customer or used together with systems not approved by GEZE or in violation of the other contractually agreed conditions of use or for purposes other than those contractually agreed.

## **§ 11 Liability**

- 11.1. If GEZE provides the customer with software or renders services without any remuneration, e.g. a free update of the software or during a free test phase, GEZE shall only be liable for intentional and grossly negligent breaches of duty.
- 11.2. Otherwise, GEZE shall only compensate for material damage and financial loss as well as for futile expenses, irrespective of the legal basis, to the following extent:
- in the case of intent and gross negligence in the full amount as well as in the case of the assumption of a guarantee in the amount of the protective purpose covered by the guarantee;
  - in all other cases, only in the event of a breach of an essential contractual obligation, without which the achievement of the purpose of the contract would be endangered and on the fulfilment of which the customer can therefore regularly rely (so-called cardinal obligation), namely on compensation for the typical and foreseeable damage.
- 11.3. Within the limits of § 11.2, GEZE shall only be liable for the replacement of data of the customer which GEZE stores or secures for the customer within the framework of its contractual obligations, if the customer has ensured that the data from stocks held is available in electronic form and can be reproduced at any time with justifiable effort. The customer is and shall remain responsible for the necessary and adequate backup of its data depending on the associated risk.
- 11.4. The above limitations of liability shall also apply in favour of the legal representatives, vicarious agents and employees of GEZE.
- 11.5. GEZE's liability for damages resulting from injury to life, body or health and under the Product Liability Act shall remain unaffected by the above provisions.

## **§ 12 Rights for the system data**

- 12.1. This § 12 applies to all data that is created, collected or otherwise processed by GEZE at the customer's premises via GEZE products or

- via special so-called "IoT devices", irrespective of the type of data involved (raw data, structured data, analysis results), how and by whom the data were generated (e.g. using sensors, Big Data analyses), in which form and in which format the data is available (e.g. individually or as part of a database), where it is stored (e.g. locally on the cockpit hardware, within a GEZE door system, in the cloud) and whether ownership or other property rights are applicable for this data. Essentially, this contains data on technical system states, system settings, command information (opening, closing), operating/standstill times, measured values (e.g. temperature, speed), error messages and other maintenance-relevant information (hereinafter referred to as "the system data"). The contractual partners may specify the relevant system data in the individual contract.
- 12.2. GEZE shall have the exclusive ownership of the system data described under § 12.1 as far as the relationship between the contractual partners is concerned. Accordingly, GEZE is entitled to comprehensive use and utilisation of this system data in all formats. This includes, for example, reproduction, distribution, analysis, processing and further development, integration into or linking to other data. If the customer (also) entitled to the data usage rights, it shall grant GEZE all rights to the data transmitted by it or accessible by GEZE which is necessary for the fulfilment of the contract, in particular for the storage and processing of such data for the purposes of system control, configuration and parameter settings, cause analyses and elimination of faults and errors in GEZE products and for other service purposes. For this purpose, GEZE may store and process the data on its own systems or in cloud infrastructures and pass them on to third parties (e.g. external service partners) or make them accessible (e.g. via a corresponding service app). Furthermore, the customer shall provide GEZE with the free and non-exclusive right, unlimited in time, space and content, to permanently evaluate the collected and processed system data for analysis, optimisation and benchmarking purposes and to merge, duplicate, process and disseminate them in any form with other data (including other customers).
- 12.3. All system data shall be stored and secured by GEZE in such a way that third parties have as little access as possible to the data. In this respect, the contractual partners may agree specific security measures in the individual contract. If the system data is stored in the customer's control area (e.g. on the cockpit hardware), GEZE is entitled to access and release the system data at any time. This claim also applies to the system data beyond the term of the contract; the customer is not entitled to a right of retention of the system data from any legal perspective. The customer is not entitled to obstruct or restrict GEZE's access to the system data in any way.
- 12.4. GEZE shall ensure that the customer, its employees or other natural persons cannot be identified (even indirectly) by third parties in the event of any use and exploitation of the system data and that any trade and business secrets of the customer which may be contained in the system data are not disclosed to third parties (e.g. by anonymisation or aggregation of the system data).
- § 13 Confidentiality and data protection**
- 13.1. The contractual partners undertake to maintain secrecy with regard to all trade and business secrets of the other party which have been entrusted to them, made accessible or otherwise made known to them as well as other confidential information and to use such information only for the agreed purpose. The contractual partners shall only provide access to the confidential information to such employees and subcontractors, who are bound to secrecy, who must have knowledge for the purposes of fulfilling the contract (the so-called need-to-know principle). The obligation to maintain secrecy applies for a period of 3 years beyond the end of the contract.
- 13.2. GEZE's confidential information especially includes the software in all forms of code and expression including the user manual and other documentations as applicable. The customer is prohibited from obtaining confidential information from GEZE through reverse engineering. Reverse engineering is defined as all activities, including monitoring, testing, inspecting and dismantling the software with the goal of obtaining confidential information. The applicability of mandatory copyright law regulations shall remain unaffected.
- 13.3. The obligation to maintain secrecy does not apply to confidential information which was previously known to the recipient without any obligation to maintain secrecy or which is or becomes generally known without the recipient being responsible for this or which is lawfully communicated to the recipient by a third party without any obligation to maintain secrecy or which has demonstrably been developed independently by the recipient.
- 13.4. The contractual partners undertake to properly store all business objects and documents made available to them by the respective other contractual partner so that third parties cannot access it and to hand them over to the other contractual partner at any time upon request.
- 13.5. Additional obligations to maintain secrecy arising from the law (e.g., in relation to trade and business secrets from the Act on Protection of Trade Secrets [GeschGehG] or regarding personal data from General Data Protection Regulation [GDPR]) remain unaffected by the preceding regulations.
- 13.6. If personal data of the customer or third parties is processed by GEZE on behalf of the customer, GEZE shall impose an obligation on the employees entrusted with this task in writing to ensure the confidential treatment of such data prior to their deployment. GEZE is entitled to pass on personal data to affiliated companies and other subcontractors (e.g. external service partners) used in accordance with the contract, insofar as such forwarding is necessary for the provision of the service commissioned in each case. If the customer provides GEZE with access to personal data, it shall first ensure that the relevant legal requirements for transmission to and processing by GEZE (and, if applicable, its subcontractors) are met.
- 13.7. If and to the extent that personal data is processed (in particular customer data), the contractual partners shall regulate in the individual contract as to who is responsible within the meaning of data protection law and how legally compliant data processing is ensured. If required, the contractual partners shall conclude a contract for the processing of orders in accordance with Article 28 of the General Data Protection Regulation (GDPR). GEZE will process this data on behalf of the customer, exclusively in accordance with the customer's instructions and not for its own purposes (or only after anonymisation).
- 13.8. If the customer consents to being named as a reference customer, GEZE may include the name of the customer in a reference list for its own advertising purposes and use the customer's company names, brands and logos in printed publications and online, in particular on the GEZE website.
- § 14 Special rules for temporary software licensing**
- 14.1. If the contractual partners agree on a temporary transfer and use of the software by the customer (e.g. within the framework of a subscription model), this is a rental agreement (in the case of free use, a loan agreement), for which the following special rules shall be applicable with priority over the other provisions of these Software GTCs. If software is made available to the customer via the Internet for online use in the form of Software as a Service or a Cloud solution, further specific conditions (e.g. regarding owed availability) arising from the individual contract or from a service level agreement (SLA) shall apply in addition to these Software GTCs.

- 14.2. Upon conclusion of a contract for the temporary use of software, the Customer shall be granted a non-exclusive, non-transferable and non-sublicensable right to use the software for its own purposes during the term of the contract; otherwise §§ 4 and 5 shall apply to the scope of the usage rights. The amount and due date of the ongoing usage fees are determined by the individual contract.
- 14.3. In case of considerable defects in the software provided for temporary use, the customer shall be entitled to terminate the contract for good cause instead of withdrawing from the contract after the failure of subsequent performance or repair, insofar as the customer cannot reasonably be expected to adhere to the contract due to such defect. Otherwise, §§ 9 and 10 shall apply accordingly to the liability for defects in quality and title of the software. GEZE shall only be liable for defects in the software already existing at the time of conclusion of the contract, deviating from the legal regulation of § 536a of the BGB (German Civil Code), if GEZE is responsible for such defects.
- 14.4. Unless otherwise agreed, the contractual partners may terminate contracts for the temporary use of software with a notice period of 3 months to the end of the calendar year, for the first time at the end of the contractually agreed binding minimum term. If no other term is expressly agreed, a binding minimum term of one (1) year shall apply. The right of both contractual partners to terminate the contractual relationship due an important reason shall remain unaffected. An important reason, which entitles GEZE to an extraordinary termination without notice, is in particular if insolvency proceedings are opened against the customer's assets or if the opening of insolvency proceedings is refused due to lack of assets or if the customer is in arrears for more than 2 months with a significant part of the agreed remuneration. Any termination must be in writing in order to be effective.
- 14.5. The customer's right to use the software shall automatically terminate upon termination of the contract. The customer is obliged to completely and permanently delete all copies of the software and to return all data carriers, documentation and other documents provided. At GEZE's request, the customer shall confirm the complete and final deletion of the software in writing.

## **§ 15 Final provisions**

- 15.1. A cession or transfer of contractual rights and obligations by the customer to third parties – including affiliated companies of the customer – requires the prior written consent of GEZE.
- 15.2. All amendments and supplements to the contract must be made in writing in order to be effective (transmission by fax satisfies this requirement, transmission by email is not sufficient). The written form requirement itself can be waived only in writing.
- 15.3. An export of the software by the customer may be subject to national and international regulations of Export Control Law. In the event of resale or other export, the customer shall be responsible for compliance with any export requirements (e.g. obtaining official permits) and shall bear the associated costs. The customer shall indemnify GEZE against all costs and damages in connection with culpable violations of export control regulations by the customer.
- 15.4. The law of the Federal Republic of Germany shall apply with the exclusion of the conflict of laws rules of international private law and the exclusion of the UN Convention on Contracts for the International Sale of Goods. Stuttgart shall be the place of jurisdiction for all disputes arising in connection with the contract. GEZE also has the right to initiate an action before any other national or international competent court.
- 15.5. If individual provisions of these Software GTCs or the individual contract are or become invalid, or if the contract contains a loophole, this shall not affect the validity of the remaining provisions. The

invalid or missing provision shall be replaced by a valid provision that comes closest possible to what the contractual partners economically intended at the time the contract was concluded.

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