

General terms and conditions for software

Date: August 2018

I. Applicability

1. These general terms and conditions govern the legal relations between Christ Electronic Systems GmbH (hereinafter referred to as CES) and its customers.
2. These general terms and conditions apply to our contracts for the sale of software. They apply in their respective version, including to all future supply, subsequent delivery and repair contracts between the parties in ongoing business relations, without the need for any further inclusion of or reference to the general terms and conditions after the initial agreement has been concluded.
3. These general terms and conditions apply only if a purchase contract has been concluded between CES and the customer, i.e. the customer has purchased the software directly from CES or the seller has acted as a representative of CES. In the event of any conflict, individually agreed provisions take precedence provided that they have been made in writing or are confirmed by CES.
4. Our general terms and conditions apply exclusively. Any deviating, opposing or supplementary general terms and conditions of the contractual partner will only become part of the contract if and to the extent that CES has expressly agreed to their validity. This approval requirement applies in all cases, even if, for example, CES carries out the delivery to the contractual partner without reservation and with knowledge of the contractual partner's terms and conditions.
5. Each provision of these terms and conditions is valid on its own.
6. In the case of documents for which the translation in a foreign language is appended and that refer to a contract for which German is the language of negotiation, the translation is deemed to be provided for information purposes only. The German text alone is decisive with regard to the content of the contract.
7. References to the validity of legal regulations are provided for the purpose of clarification only. The relevant legal regulations therefore apply even without such clarification, unless they are directly amended or expressly excluded in these general terms and conditions.

II. Offers

1. Offers that we make are subject to change. The offer on our website is non-binding. Offers constitute an invitation to the purchaser to make a binding offer for the conclusion of a contract. CES is not obliged to decline a written order from a potential purchaser referring to such an offer if the contract is not to be concluded. Unless otherwise stated in the order, CES is entitled to accept this offer within three weeks of its receipt by CES.

2. Descriptions of our software are only approximate. We reserve the right to make changes to the subject of the contract at any time to the extent customary due to technical progress or design changes. In the event that a change to the subject of the contract exceeds the customary scope and is furthermore unreasonable for the purchaser, the purchaser has the right to withdraw from the contract, which the purchaser may exercise in writing within two weeks of receiving such notification from us.

3. The initial work on an offer is usually free of charge. Further offers and design work are only free of charge insofar as the supply contract becomes valid and remains valid.

4. We retain our proprietary rights and copyrights to the submitted documents, in particular drafts, program sequences, sketches and pictures. These documents may not be copied or made accessible to third parties without our consent.

5. The contractual partner's order constitutes a binding offer, which CES may accept by sending order confirmation. Assurances, side agreements, amendments and additions to this agreement require the written confirmation of both parties in order to be effective. Furthermore, the manager of CES and authorised signatories may conclude effective contracts in verbal form.

6. Any subsequent changes to the contract and assurances regarding characteristics made by persons not authorised by the contract must be made in writing in order to be effective.

III. Place of performance, place of jurisdiction and agreed law

1. The place of performance for all contractual obligations is Memmingen.

2. If the purchaser is a registered trader or has no general place of jurisdiction in Germany, the place of jurisdiction for all legal disputes arising from the contractual relationship will be, at our option, Memmingen, the registered office of the purchaser or—in the case of deliveries abroad—the capital of the purchaser's country of domicile.

3. If the purchaser is not a registered trader, the place of jurisdiction will be agreed upon, at our option, as Memmingen, the registered office of the purchaser or—in the case of purchases abroad—the capital of the purchaser's country of domicile in the event that the purchaser moves their domicile or habitual residence out of the scope of this law or that the purchaser's domicile or habitual residence is not known at the time of the action being filed.

4. Legal relations between the purchaser and us are subject exclusively to the law of the Federal Republic of Germany.

IV. Scope of contract and scope of delivery

1. In case of doubt, the order confirmation or, if available, the requirement specification, the functional specification or the protocol of the joint workshop is decisive in determining the scope of deliveries and services.
2. We reserve the right to adapt the specifications of the software product in line with technical developments, changes in laws or future market requirements. Source codes are not included in the delivery unless otherwise specified. The same applies to custom adaptations to or extensions of the software. In case of loss of the software, password and/or any printed documentation supplied, we will provide a replacement against payment of the cost, if still available.
3. In principle, we only enter into a contractual obligation if the type and scope of service and consideration have been defined in writing by both sides. Subsequent verbal amendments and additions will only become effective upon subsequent confirmation in writing. The same applies to any declarations of intent, in particular complaints, reminders and notices of defects within the framework of the contractual relations.
4. The scope of the right of use is based on individual contractual provisions.
5. Documents, cost estimates, test programs etc. are the intellectual property of CES. They may not be reproduced or made accessible to third parties and must be returned to CES if the order is not placed with CES.
6. All support services (in particular preparation for use, installation and demonstration of operational readiness, conversion of old data, instruction, training and advice) are remunerated on a time and material basis, unless otherwise agreed. The same applies to expenses, travel costs, packaging costs and transport costs. The hourly rates, travel costs and additional costs are based on the respective CES price list.
7. Unless otherwise agreed, the customer is authorised to use the software on one (1) workstation, touch panel PC or IPC. The customer is not entitled to the provision of the source program.
8. CES is only required to supply one copy of documentation and it must be in a machine-readable format.
9. The purchaser shall designate a competent contact person who shall make the decisions necessary for the fulfilment of the contract or shall arrange for them to be made without delay.

V. Software acceptance

1. The acceptance of software adaptations and software developments will always be carried out immediately or, by agreement, no later than 30 days following delivery using agreed test methods. In case of doubt, an acceptance report will be drawn up, which will be signed by the purchaser.

2. If there are no serious defects and the purchaser does not declare acceptance within 30 days of delivery, both the delivery and the installation will be deemed to have been accepted.

3. Any existing defects that are identified in the acceptance report will be rectified free of charge by CES within the scope of the contract fulfilment obligation in accordance with the scope of the order. All other claims, in particular claims for damages due to a delay in commissioning or downtimes, are excluded.

VI. Software rights of use

4. The software developed by CES, including subsequent updates, is recognised by the purchaser as being protectable by copyright. The purchaser will receive the right to use the software for an unlimited period time, but in the case of demo, trial or test installations, this right is limited to three months.

5. The duplication of the software and the documentation provided is permitted for data backup purposes only. CES does not assume any liability or warranty for duplicated software.

6. In principle, the resale of the software is permissible. This is conditional on the customer not retaining any software and/or materials, and any copies that have been made being destroyed or transferred to the buyer.

VII. Software maintenance and care

1. CES shall ensure the maintenance, further development and optimal use of the software it has developed within the framework of a separate contract. If the purchaser orders software maintenance not at the time of purchasing the licences but at a later date, CES is entitled to request the charges incurred in the meantime in retrospect so that the purchaser receives the latest version of the software.

VIII. Services

1. All services are calculated according to actual expenditure per hour of work begun according to the CES price list valid at the time of execution. In addition, the purchaser shall bear the costs for travel to and from the site. Travel expenses are calculated via a flat kilometre rate or on the basis of individual evidence. When calculating the flat kilometre rate, the costs of the travel time are also included. When calculating the travel expenses on the basis of individual evidence, the travel time is calculated additionally according to the valid price list. Daily expenses are calculated according to the CES price list. Overnight stays are charged on the basis of individual evidence.

IX. Customer cooperation

1. The customer shall take appropriate precautions (e.g. data backup, fault diagnosis, regular checks, error logs) in case the software does not work properly in whole or in part.
2. The programs provided as well as the documentation may not be made available to third parties, either in whole or in part, for possible misuse. The customer may not alter our designations, copyright notices or ownership information on the programs in any way. The customer shall place the same obligation on its employees.

X. Prices and payment

1. Unless otherwise agreed, the supplier shall be bound by binding prices offered and agreed, up to a maximum of 30 days. If acceptance is issued or deliveries are made after this period, the supplier is entitled to make price adjustments. This also applies to partial deliveries.
2. Freight and packaging are charged at a flat rate. 3. The invoice amount must be paid net within 30 days.
4. The purchaser is only entitled to set off undisputed or legally established counterclaims. A right of retention is permissible to this extent.
5. In the event of a delay in payment, the supplier shall be entitled to claim interest on arrears amounting to 3% above the respective discount rate of the Deutsche Bundesbank. The right to assert further claims for damages is reserved.
6. Payments always repay the oldest claim due.
7. Payment methods other than cash or a bank transfer to the accounts indicated in the invoice are accepted only pending settlement of the relevant amount.
8. All payments are to be made without any charge to us. Any bank, discount and collection fees are to be borne by the purchaser. Bill of exchange payments are subject to prior agreement.
9. Every partial delivery is a separate transaction.
10. If the purchaser is in default with a payment for more than ten days or if there are reasonable doubts regarding the purchaser's solvency after conclusion of the contract, we may demand either the cash payment of all outstanding claims or the provision of security. Until this request is fulfilled, we are not obliged to continue delivery under current contracts.

XI. Retention of title and assignment

1. CES retains ownership of all software supplied by it until the purchaser has paid in full all of CES's claims arising from the business relations. The retained ownership of the delivery item thus also secures claims against the purchaser arising from contracts that do not relate to the delivery item.
2. If the extended retention of title has not become a part of the contract due to contradictory general terms and conditions of the purchaser, the delivery will alternatively be made under simple retention of title.
3. CES shall retain all copyrights and rights of use to the programs supplied to the customer, including the documentation accompanying them, even if the customer modifies them or links them to its own programs and/or those of a third party. In the case of such modifications or linking, and in the case of copies being created, the customer shall add a corresponding copyright notice. Modifications and extensions to the program code that are carried out at the customer's request and expense will become the property of CES and may be made available to other customers with the customer's consent.
4. The rights of use for program improvements are assigned to CES. CES hereby accepts the assignment. If programs modified by the customer or by third parties or other programs not obtained from us are used and thereby impair the functioning of the system, we shall not be liable for any damage incurred.
5. Any processing of the delivered products is carried out for the supplier. In the case of installation into third-party goods by the purchaser, the supplier shall become co-owner of the newly created products in proportion to the value of its products in relation to the third-party goods used. The resulting products will be deemed to be the supplier's goods subject to retention of title. Provided that the customer fulfils its payment obligations towards the supplier, the customer is—only under retention of title—entitled to resell the delivered or manufactured products. A pledge or transfer of security is not permitted. In the event of access by third parties to the goods subject to retention of title, the customer shall draw attention to the fact that the goods are the supplier's property and shall notify the supplier immediately.
6. The purchaser's claims arising from resale will be assigned to the supplier upon conclusion of the contract. The purchaser is entitled to resell only on the condition that the corresponding purchase price claims from the resale are transferred to the supplier. A pledge or transfer of security is not permitted. The purchaser is obliged to provide notification of any access by third parties to the goods delivered under retention of title in writing without delay and to provide information at any time. The purchaser shall store the goods owned by the supplier separately from other goods and shall mark them as the supplier's property. Furthermore, the purchaser shall insure the goods against fire, water and risk of theft, proof of which must be provided at the supplier's request. The claims from the corresponding insurance contract are hereby assigned to the supplier.
7. The risk of loss, wear or damage while the retention of title is in effect shall be borne by the purchaser.

8. Until all claims against the purchaser that are due to the supplier for any legal reason now or in the future are fulfilled (including all balance claims from any open account), the supplier shall release the aforementioned securities at the purchaser's request insofar as their value consistently exceeds the claims by more than 20%.

XII. Other general terms and conditions

1. Insofar as the software contains copyrighted material of other manufacturers and these manufacturers require the agreement of their own regulations, in particular general terms and conditions, these regulations will be included with the software and will also be agreed between CES and the customer as a contract in favour of the manufacturer named in that regulation. In this case, the other manufacturer's regulations will take precedence with respect to that manufacturer's software. However, with regard to CES's legal position, those regulations only apply in addition to these CES general terms and conditions.

2. If provisions of those other regulations are invalid, the provisions of these general terms and conditions that most closely reflect the relevant or invalid provisions will apply, irrespective of the priorities set out in Section XII.1.

XIII. Open source software/intellectual property rights

1. When using open source software, CES respects the conditions of use of the rights holders and their waiver in the form of a standardised licence, such as the GNU General Public License (also known as the GPL). However, CES does not guarantee completeness and draws attention to the inspection obligation of the user of the final product.

2. CES shall waive rights to open source software modified by CES and grant an unlimited General Public License (GNU).

XIV. Customer's provided software

1. CES shall store or save software in the customer's possession if requested. This software will be installed on the customer's hardware products as specified by the customer.

2. The customer confirms that it is entitled to possess the software provided and that the software may be used for the purpose of transferring (= copying) to its hardware. This applies in particular to any conditions of licence or use of third parties. CES assumes no obligation to carry out checks.

3. CES does not guarantee data recoverability in the event of data loss.

4. If third parties assert a claim against CES that the use of material provided by the customer in the course of implementing this contractual relationship violates copyrights, trademark rights or other

intellectual property rights of third parties, CES shall inform the customer thereof in writing. The customer shall indemnify CES against any liability to any third party in this respect, assist CES in legal defence and assume all damages, including the costs of reasonable legal defence.

XV. Liability for material defects or defects of title

In the case of proper fulfilment of the inspection and notification obligations under Section 377 of the German Commercial Code (Handelsgesetzbuch — HGB) (the notification of defects must be made in writing), we shall be liable for defects in the delivery as follows:

1. In the event of material defects or defects of title, we shall be entitled to remedy the defect or to deliver a defect-free item (supplementary performance); we shall have the right of choice for supplementary performance. Our liability is conditional on it not being an insignificant defect. If one of the two types or both types of supplementary performance are disproportionate, we are entitled to refuse it. Supplementary performance may continue to be refused as long as the customer has not fulfilled their payment obligations towards us to an extent corresponding to the defect-free part of the service.
2. We shall bear the expenses necessary for the purpose of supplementary performance, in particular transport, travel, labour and material costs; the bearing of such costs is excluded insofar as additional costs arise as a result of the shipment of the goods to a location other than the place of performance.
3. Should the above-mentioned supplementary performance fail or be unreasonable for the customer or should we refuse both types of supplementary performance as defined in Section 439 III of the German Civil Code (Bürgerliches Gesetzbuch — BGB), the customer has the right to choose either to reduce the purchase price accordingly (reduction) or to withdraw from the contract in accordance with the statutory regulations (withdrawal). Further claims on the customer's part, regardless of the legal basis, are excluded or limited in accordance with XVI.
4. For software defects that are proven not to be due to defects in the hardware, system software or other system parts not supplied by CES, CES shall only assume liability for such defects that impair the contractual use to a significant extent.
5. No liability is accepted for damage insofar as it is due to the following reasons: unsuitable or improper usage, incorrect installation by the customer or third parties, natural wear and tear, incorrect or negligent handling or operation, improper changes, improvements, maintenance or repair work undertaken by the customer or third parties without our prior approval.
6. We guarantee the smooth functioning of the software only on the operating systems approved by us.
7. CES shall only be liable for third-party software supplied by CES to the extent of the relevant supplier's warranty.

8. Due to the known defectiveness of the Windows and Linux operating systems as well as the variety of hardware used, irregularities that occur when using the software might not necessarily be due to the software. Thus, the legal evidence applies, meaning the customer must definitively prove that any irregularities occurring are due to errors in the software and that these errors were already present at the time of handover.

9. CES does not guarantee the accuracy of the results of the work intended to be carried out by the contractual partner using the CES software.

10. Notices of defects must be made immediately and in case of doubt in writing.

11. The defects will be corrected at CES's discretion by installing an improved version of the software or by providing instruction to remedy or circumvent the effects of the defect. The customer shall provide all documentation required for error diagnostics, as well as the computer system and the computer time required to remedy the errors, free of charge.

12. If claims are asserted for which limited liability exists in accordance with XV. or XVI., a limitation period of one year following delivery of the purchased item will apply to these claims.

13. None of the above provisions are intended to change the distribution of the legal or judicial burden of proof.

14. CES shall, at its sole discretion, decide whether to defend the customer against any claims asserted on account of the infringement of intellectual property rights or copyright arising from the use of licensed software in accordance with this agreement. The customer shall inform CES immediately of the assertion of such claims. If CES does not defend the customer, the customer is free to defend itself. CES shall support the customer and the customer is likewise required to support CES.

15. If a temporary injunction is issued against the customer, CES shall, at its own option and expense, either acquire the right for the customer to continue using the software, or exchange the software or alter it so that it no longer constitutes an infringement. If, at the sole discretion of Christ Electronic, this is possible with a reasonable amount of effort, CES shall refund the purchase price/labour costs to the customer upon return of the software.

XVI. Withdrawal of the customer and other liability on our part

1. The customer's statutory right of withdrawal will not be excluded or limited, except in the cases referred to in XV. Likewise, legal or contractual rights and claims to which we are entitled will not be excluded or limited.

2. In the case of only minor defects, the customer is not entitled to withdraw from the contract.

3. We are liable without limitation only in the case of wilful intent and gross negligence (including by our legal representatives and vicarious agents), as well as for damage resulting from injury to life,

limb or health resulting from a negligent breach of duty by our legal representatives and vicarious agents. We are also liable without limitation for guarantees and assurances made in the event that a defect covered by such a guarantee or assurance gives rise to our liability. Furthermore, there is no restriction on liability arising from strict liability offences (in particular in accordance with product liability law). Any liability according to the principles of the recourse of the company pursuant to Sections 478 et seq. of the German Civil Code remain unaffected.

4. In the case of other culpable breaches of essential contractual obligations (material obligations), our remaining liability is limited to foreseeable damage typical for the type of contract.

5. Liability excludes, in particular, the replacement of lost profits, lost savings and indirect or consequential damage. In the event of loss or damage to data or data carrier material, the obligation to provide compensation does not include the recovery of lost data.

6. Insofar as we facilitate access to other websites by providing links, we are not responsible for the external content featured on such websites. We do not adopt the third-party content as our own.

7. Insofar as CES's liability for damages is excluded or limited, this also applies with regard to personal liability for damages on the part of our employees, representatives and vicarious agents.

8. In all other cases, liability—irrespective of the legal basis (in particular claims arising from the breach of secondary contractual obligations, as well as other tortious liability)—is excluded. 9. The same (exclusions, limitations and exceptions) applies to claims arising from fault at the time of conclusion of the contract.

10. In the case of the reimbursement of expenses (except those referred to in Sections 439 II, 635 II of the German Civil Code), XVI. applies accordingly.

11. Any exclusion or limitation of our liability also applies to our legal representatives and vicarious agents.

XVII. Delivery deadlines

1. We will make every effort to meet the delivery deadlines and other performance deadlines that we provide. However, in the absence of an express guarantee, the only significance of these is to give the purchaser an approximate indication of the service. In no event shall the purchaser be entitled to claim damages if the deadline is exceeded.

2. The deadline is considered to be met if the delivery item has left the factory or notification of readiness for delivery has been provided by the delivery deadline. In the case of software developments or comparable services, delivery will be deemed to have been made upon handover or dispatch of the data carrier.

3. Delivery periods begin upon dispatch of the order confirmation.

4. Force majeure will entitle us to a reasonable extension of the deadline or, at our option, to withdraw from the contract in whole or in part without the purchaser being entitled to assert claims for damages against us.
5. Force majeure includes in particular: obstruction due to official measures, operational disruptions, strikes, lockouts, other industrial action, delays in the delivery of accessories, raw materials, auxiliary and operating materials etc.
6. We are not obliged to comply with the deadline if the purchaser does not fulfil its contractual obligations on time.
7. In the event of a delay in delivery in accordance with the above-mentioned provisions, a new delivery date will only be binding upon written confirmation by an employee authorised to represent CES.
8. If the dispatch or the performance of any other service is delayed at the request or by the behaviour of the purchaser, we are entitled to assert a claim for any resulting damages that we incur (e.g. idle time, storage costs).

XVIII. Transfer of risk

1. Any risk is transferred to the purchaser upon commencement of dispatch. At the purchaser's request and expense, the supplier shall insure the delivery against breakage, transport and fire damage.
2. If dispatch or delivery is delayed due to the behaviour of the purchaser, the risk will pass to the purchaser on the date of readiness for delivery.