

I. Area of application

1. These General Terms and Conditions (hereinafter referred to as GTC) govern the entire legal relationship between Christ Electronic Systems GmbH (hereinafter referred to as CES) and its customers.
2. These GTC apply to our contracts regarding the sale of software and the transfer of open source software. They shall apply in their respective version, also for all future delivery, subsequent delivery and service contracts between the parties in an ongoing business relationship, without the need for renewed inclusion of or reference to the GTC after the initial agreement.
3. These GTC only apply if a contractual relationship between CES and the customer has been established through a purchase contract, e.g. the customer has purchased the software directly from CES or the seller has acted as a representative of CES. In the event of contradictions, individually agreed rules take precedence if they have been made in writing or confirmed by CES.
4. Our General Terms and Conditions apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the contractual partner shall only become part of the contract if and insofar as CES has expressly agreed to their validity. This requirement of consent applies in any case, for example even if CES carries out the delivery to the contractual partner without reservation in the knowledge of the contractual partner's General 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 is enclosed in a foreign language and which refer to a contract for which German is the language of negotiation, the translation shall only be deemed to be information. The German wording alone is decisive for the content of the contract.
7. References to the validity of legal regulations are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

II. Offers

1. Offers made by us are subject to change, the offer on our homepage is non-binding. Offers represent an invitation to the customer to submit a binding offer to conclude a contract. CES is not obliged to object to an order letter from a potential customer 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 contractual 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 matter of the contract at any time to the extent customary in the trade due to technical progress and design changes. In the event that the change to the subject matter of the contract goes beyond the customary scope and is also unreasonable for the customer, the customer shall have the right to withdraw from the contract, which he may exercise in writing two weeks after receipt of a corresponding notification from us.
3. The first processing of an offer is generally free of charge. Further offers and design work shall only be free of charge insofar as the supply contract becomes and remains valid.
4. We reserve our property rights and copyrights to the documents sent, in particular drafts, program flow charts, sketches and illustrations. They 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 can accept by sending an order confirmation. Assurances, collateral agreements, amendments and supplements to this agreement require the written confirmation of both parties to be effective. The managing director of CES and authorized signatories may also conclude effective contracts in verbal form.
6. Subsequent amendments to the contract and assurances of properties must be made in writing to be effective.

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

1. Place of performance for all contractual obligations is Memmingen.
2. If the customer 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 shall be, at our discretion, Memmingen, the registered office of the customer or, in the case of deliveries abroad, the capital of the customer's country of domicile.
3. If the customer is not a registered trader, the place of jurisdiction shall be Memmingen, the customer's registered office or, in the case of foreign purchases, the capital of the customer's country of domicile, at our discretion, in the event that the customer moves his domicile or habitual residence outside the area of application of this law or his domicile or habitual residence is not known at the time the action is brought.
4. Legal relationships between the customer and us are subject exclusively to the law of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

IV. Contract- and scope of delivery

1. In case of doubt, the order confirmation or, if available, the specifications, the requirements specification or the minutes of the joint workshop shall be decisive for the scope of deliveries and services. In the event of conflicting documents, the most recent date shall take precedence.
2. We reserve the right to adapt the specifications of the software product to technical developments, changes in the law or future market requirements. Unless otherwise described, source codes are not part of the delivery. The same applies to individual adaptations or extensions of the software. In the event of loss of the software, the password and/or any printed documentation supplied, we shall supply a replacement against payment of the cost price, if still available.
3. We shall only enter into a contractual obligation if the nature and scope of the service and consideration have been agreed in writing by both parties. Subsequent verbal amendments and additions shall only become effective if they have been confirmed in writing. The same applies to all declarations of intent, in particular complaints, reminders and notices of defects within the scope of the contractual relationship.
4. 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.
5. All support services (in particular preparation for use, installation and demonstration of operational readiness, conversion of old data, instruction, training and consulting) shall be remunerated on a time and material basis, unless otherwise agreed. The same applies to expenses, travel costs, packaging and transportation costs. Hourly rates, travel and ancillary costs are based on the relevant CES price list.
6. Unless otherwise agreed, the customer is entitled to use the software on one (1) workstation, touch panel PC or industrial PC. The customer is not entitled to the provision of the source code, unless CES offers this in accordance with XIII. below for open source software.

7. Documentation must only be supplied by CES in machine-readable and simple form.
8. The customer shall name a competent contact person who shall make or immediately bring about the decisions necessary for the fulfillment of the contract.

V. Software acceptance

1. Acceptance of software adaptations and software developments shall generally take place immediately or, by agreement, no later than 30 days after delivery using agreed test methods. In case of doubt, a record of the acceptance shall be drawn up and signed by the customer.
2. If there are no serious defects and the customer does not declare his willingness to accept within 30 days of delivery, both the delivery and the installation shall be deemed to have been accepted.
3. Any existing defects recorded in the acceptance report will be rectified by CES free of charge in accordance with the scope of the order as part of the obligation to fulfill the contract. All further claims, in particular claims for damages due to delays in commissioning or downtimes, are excluded.

VI. Software rights of use

1. The scope of the right of use shall be governed by individual contractual provisions. If no individual contractual provision has been made, the following provisions shall apply to the scope of the right of use.
2. The customer shall receive the right to use the software for an unlimited period of time, but limited to three months in the case of demo, trial or test installations.
3. The duplication and processing of the software developed by CES is only permitted for the actions permitted by law, in particular for the intended use and for a backup copy
4. The resale of the software is generally permitted. This is subject to the customer not retaining any software and/or materials and destroying any copies made or transferring them to the buyer.
5. With regard to the open source software used by CES, the provision in section XIII takes precedence.

VII. Software- maintenance and support

1. CES ensures the maintenance, further development and optimal use of the software it has developed within the framework of an independent contract. If the customer does not order software maintenance when purchasing the licenses, but at a later date, CES is entitled to demand the fees incurred in the meantime retrospectively so that the customer reaches the current status of software development.

VIII. Services

1. All services shall be invoiced on the basis of actual expenditure per commenced working hour in accordance with the CES price list valid at the time of performance. In addition, the customer shall bear the costs of travel to and from the site. Travel costs are calculated on the basis of a flat rate per kilometer or on an itemized basis. When calculating the flat rate per km, the costs for travel time are included. If the travel costs are calculated on an itemized basis, the travel time will be charged additionally in accordance with the valid price list. Daily expenses are charged according to the CES price list. Overnight stays will be invoiced on an itemized basis.

IX. Cooperation of the customer

1. The customer shall take appropriate precautions (e.g. data backup, fault diagnosis, regular checks, error log) in the event that the software does not work properly in whole or in part.
2. The programs provided and the documentation material may not be made accessible to third parties, either in whole or in part, with any indication of possible misuse. The customer may not change our markings, copyright notices and proprietary information on the programs in any form. He must obligate his employees accordingly.

X. Prices and payment

1. Unless otherwise agreed, the supplier shall be bound to bindingly offered and agreed prices for a maximum of 30 days. Acceptances and deliveries after this period entitle the supplier to price adjustments. This also applies to partial deliveries.
2. Freight and packaging shall be charged at a flat rate.
3. The invoice amount is to be paid net within 30 days.
4. The customer shall only be entitled to offset undisputed or legally established counterclaims. A right of retention is permissible in this respect.
5. In the event of default of payment, the supplier shall be entitled to claim default interest in the amount of 3% above the respective base interest rate of the Deutsche Bundesbank. The right to claim further damages remains reserved.
6. Payments shall always settle the oldest claim due.
7. We only accept means of payment other than cash or bank transfer to accounts specified in the invoice on account of payment.
8. All payments are to be made free of charge for us. Bank, discount and collection charges shall be borne by the customer. Payments by bill of exchange require prior agreement.
9. Each partial delivery is a separate transaction.
10. If the customer is more than ten days in arrears with a payment or if there are reasonable doubts about the customer's ability to pay after conclusion of the contract, we may, at our discretion, demand either cash payment of all outstanding claims or the provision of security. We shall not be obliged to make any further deliveries under current contracts until this demand has been met.

XI. Retention of title and assignment

1. The CES retains title to all software supplied by it until full payment of all its claims arising from the business relationship with the customer. Thus, the retention of title to the delivery item also secures claims against the customer from contracts that do not relate to the delivery item.
2. If the extended retention of title has not become part of the contract due to conflicting general terms and conditions of the customer, delivery shall alternatively be made under simple retention of title.
3. The CES remains the owner of the exclusive copyrights and rights of use to the programs provided to the customer, with the exception of open source software, but including the associated documentation material, even if the customer combines them with his own programs and/or those of a third party. In the event of such changes or combinations, as well as when making copies, the customer shall attach a corresponding copyright notice. Changes and extensions to the program code, which are carried out at the request and for the account of the customer, become the property of CES and can be made available to other customers with the consent of the customer.

4. The rights of use for the program improvements are assigned to CES. CES hereby accepts the assignment. If modified programs or other programs not purchased from us are used by the customer or third parties and the function of the system is impaired as a result, we shall not be liable for any resulting damage.
5. Any treatment or processing of the delivered products shall be carried out for the supplier. In the event of installation in third-party goods by the customer, the supplier shall become co-owner of the newly created products in the ratio of the value of its products to the third-party goods used. The products thus created shall be deemed to be reserved goods of the Supplier. Provided that the customer meets his payment obligations to the supplier, he is only entitled to resell the delivered or manufactured products subject to retention of title. Pledges or transfers by way of security are not permitted. In the event of seizure of the reserved goods by third parties, the customer shall draw attention to the supplier's ownership and inform the supplier immediately.
6. The customer's claims from the resale shall be assigned to the supplier upon conclusion of the contract. The purchaser is only entitled to resell the goods subject to the proviso that the corresponding purchase price claims from the resale are transferred to the supplier. Pledging or transfer by way of security is not permitted. The Purchaser is obliged to immediately notify third parties in writing of any access to the goods delivered under retention of title and to provide information at any time. The Purchaser is obliged to store the goods owned by the Supplier separately from other goods and to mark them as the property of the Supplier. Furthermore, the Purchaser shall be obliged to insure the goods against fire, water and the risk of theft, proof of which shall be provided at the Supplier's request. The claims arising from the corresponding insurance contract are hereby assigned to the Supplier.
7. The risk of loss, wear and tear or damage during the validity of the retention of title shall be borne by the customer.
8. Until the fulfillment of all claims (including all balance claims from any current account) to which the supplier is entitled against the customer now or in the future for any legal reason, the supplier shall release the aforementioned securities at the request of the customer, insofar as their value exceeds the claims by more than 20% on a sustained basis.

XII. Other General Terms and Conditions

1. Insofar as the software contains copyrighted material from other manufacturers and these manufacturers require the agreement of their own regulations, in particular general terms and conditions, these regulations are attached to the software and are also agreed between CES and the customer as a contract in favor of the manufacturer named in that regulation. With regard to the software of the other manufacturer, those provisions shall take precedence. With regard to the legal position of CES, however, those provisions apply only in addition to these GTC of CES.
2. Should provisions of those other provisions be invalid, the corresponding provisions of these General Terms and Conditions or those provisions which come closest to the invalid provisions shall apply, notwithstanding the priorities set out in Section XII.1.

XIII. Open Source Software

1. CES also uses pre-existing open source software when creating software. According to the open source definition of the Open Source Initiative (<https://opensource.org/osd>), open source software is software that is licensed by the respective rights holders to anyone for comprehensive, royalty-free use and whose source code is available. A list of the software components concerned and the applicable license conditions as well as further information (e.g. on obtaining source code) will be provided to the customer together with the product.
2. As long as the customer uses the open source components exclusively internally, the customer has no license obligations to the rights holders of these open source components. However, the customer

may additionally acquire a non-exclusive right to use the open source software used from the respective rights holders under the conditions provided for in the applicable open source licenses. Any use of open source software on the basis of these open source licenses and outside the use provided for in our products is at the customer's own risk and is not part of the contractual relationship with CES. The provisions between CES and the customer, including these General Terms and Conditions Software, do not apply in this respect. Restrictions on the use of the software only apply to CES's own developments, but not to open source software.

3. The customer is permitted to edit software components originating from CES for the customer's own use and to carry out reverse-engineering to rectify errors in such edits, provided that these software components are linked to program libraries under the GNU Lesser General Public License (LGPL). However, it is not permitted to pass on the information obtained during reverse engineering or the edited software.

XIV. Software provided by the customer

1. On request, CES stores or saves software owned by the customer. This software is installed on the customer's hardware products in accordance with the customer's specifications.
2. The customer warrants that he is entitled to dispose of the software provided and that it may be used for the purpose of transferring (= copying) it to his hardware. This applies in particular to any license or usage conditions of third parties. CES does not assume any duty of examination.
3. CES does not guarantee the recoverability of data in the event of data loss.
4. If third parties assert claims against CES that the use of material provided by the customer in the context of the execution of this contractual relationship infringes copyrights, trademark rights or other property rights of third parties, CES will inform the customer of this in writing. In this respect, the customer is obliged to indemnify CES from any liability towards third parties, to support CES in its legal defense and to assume all damages, including the costs of an appropriate legal defense.

XV. Liability for material defects and defects of title

In the event of proper fulfillment of the inspection and complaint obligations under § 377 HGB (the notice 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 (subsequent performance); we shall have the right to choose the subsequent performance. The prerequisite for our liability is that the defect is not insignificant. If one or both types of subsequent performance are disproportionate, we shall be entitled to refuse them. Subsequent performance may also be refused as long as the customer has not fulfilled his payment obligations to us to an extent that corresponds to the defect-free part of the service.
2. We shall bear the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor and material costs; costs shall not be borne to the extent that additional costs are incurred due to the transfer of the item to a place other than the place of performance.
3. Should the above-mentioned subsequent performance fail or be unreasonable for the customer or should we refuse both types of subsequent performance within the meaning of § 439 III BGB, the customer shall be entitled to choose either to reduce the purchase price accordingly (reduction) or to withdraw from the contract in accordance with the statutory provisions (withdrawal). Further claims of the customer, for whatever legal reason, are excluded or limited in accordance with XVI.
4. For software defects that are demonstrably not due to errors in the hardware, system software or other system parts not supplied by CES, CES only assumes warranty for such errors that do not only insignificantly impair the contractual use.

5. No warranty is assumed for damages if these are attributable to the following reasons: Unsuitable or improper use, incorrect installation by the customer or third parties, natural wear and tear, incorrect or negligent handling and operation, improper modifications, repairs or maintenance and repair work carried out by the customer or third parties without our prior approval.
6. The warranty for defects in our products that are based on the processing of open source software is excluded. The customer shall bear the burden of proof that a defect in our product would also have occurred without the processing of the open source software contained therein
7. We guarantee that the software will only run properly on the operating systems approved by us.
8. For third-party software supplied by CES, CES is only liable to the extent of the supplier's warranty.
9. Due to the known defectiveness of Windows and Linux operating systems and the diversity of the hardware used, any irregularities occurring when using the software do not necessarily have to be due to the software. Therefore, the legal standard of proof applies, so that the customer must prove that any irregularities that occur are due to errors in the software and that these were already present at the time of delivery.
10. The CES is not responsible for the correctness of the work results intended by the contractual partner with the CES software.
11. Defects must be reported immediately and in case of doubt in writing.
12. The defects will be rectified at CES's discretion by installing an improved software version or by providing information on how to eliminate or circumvent the effects of the error. The customer shall provide all documents required for error diagnosis, as well as the computer equipment and computer time required to rectify the error, free of charge.
13. In the case of claims for which limited liability exists under XV. or XVI. a period of one year after delivery of the purchased item shall apply with regard to the limitation period for these claims.
14. None of the above formulations is intended to change the statutory or judicial allocation of the burden of proof.
15. CES decides at its own discretion whether to defend the customer against claims of infringement of intellectual property rights or copyright arising from the use of licensed software in accordance with this contract. The customer is obliged to inform CES immediately of the assertion of such claims. If CES does not defend the customer, the customer is free to defend itself. CES will support the customer in this; the customer is also obliged to support CES.
16. If an injunction is issued against the customer, CES shall, at its own discretion and expense, either acquire the right for the customer to continue using the software or replace or modify the software in such a way that it no longer fulfills the infringement. Should this be possible at reasonable expense at the sole discretion of CES, CES will refund the purchase price/remuneration to the customer against return of the software.

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

1. The customer's statutory right of withdrawal shall neither be excluded nor limited, apart from the cases under XV. Likewise, statutory or contractual rights and claims to which we are entitled shall neither be excluded nor limited.
2. In the case of only minor defects, the customer shall have no right of withdrawal.
3. We shall only be liable without limitation for intent and gross negligence (including that of our legal representatives and vicarious agents) and for damages resulting from injury to life, limb or health caused by a negligent breach of duty by our legal representatives and vicarious agents. We shall

also be liable without limitation for the provision of guarantees and warranties if a defect covered by them triggers our liability. There is also no limitation in the case of liability arising from hazardous circumstances (in particular under the Product Liability Act). Any liability according to the principles of recourse of the company according to §§ 478 f. BGB remains unaffected.

4. In the event of other culpable breaches of essential contractual obligations (cardinal obligations), our remaining liability shall be limited to the foreseeable damage typical of the contract.
5. Excluded from liability are, in particular, compensation for loss of profit, loss of savings and indirect or consequential damages. In the event of loss of or damage to data or data carrier material, the obligation to provide compensation does not include the replacement of lost data.
6. Insofar as we provide access to other websites via links, we are not responsible for the third-party content contained therein. 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 the personal liability for damages of our employees, staff, representatives and vicarious agents.
8. Liability is otherwise excluded, irrespective of the legal basis (in particular claims arising from the breach of secondary contractual obligations and other tortious liability).
9. The same (exclusions, limitations and exceptions) shall apply to claims arising from culpa in contrahendo
10. In the event of reimbursement of expenses (with the exception of those pursuant to §§ 439 II, 635 II BGB), XVI. 1 - 9 and XVI. 11 shall apply accordingly.
11. Any exclusion or limitation of our liability shall also apply to our legal representatives and vicarious agents.

XVII. Delivery periods

1. We endeavor to adhere strictly to the delivery and other performance deadlines specified by us. Nevertheless, in the absence of an express guarantee, they are only intended to give the customer an approximate indication of performance. Exceeding the deadline shall in no case entitle the customer to claim damages.
2. The deadline shall be deemed to have been met if the delivery item has left the factory by the time it expires or readiness for dispatch has been notified. In the case of software developments or comparable services, delivery shall be deemed to have taken place when the data carrier is handed over or sent.
3. Delivery periods begin with the dispatch of the order confirmation.
4. Force majeure shall entitle us to extend the deadline appropriately or, at our discretion, to withdraw from the contract in whole or in part, without the customer being entitled to claim damages from us.
5. Force majeure shall include in particular Obstruction by official measures, operational disruptions, strikes, lockouts, other labor disputes, delays in the delivery of accessories, raw materials and supplies, etc.
6. We are not obliged to meet the deadline if the customer does not fulfill his contractual obligations on time.
7. In the event of delays in accordance with the above-mentioned regulations, a new delivery date is only binding after written confirmation by an authorized representative of CES.

8. If the shipment or the execution of any other service is delayed at the request or through the fault of the customer, we are authorized to assert our resulting damages (e.g. idle time, storage costs).

XVIII. Transfer of risk

1. All risk shall pass to the Purchaser upon commencement of shipment. At the request and expense of the Purchaser, the Supplier shall insure the delivery against breakage, transportation and fire damage.
2. If dispatch or delivery is delayed due to the behavior of the customer, the risk shall pass to the customer from the day of readiness for dispatch.