

General Terms and Conditions for use with companies

§ 1 Validity

1. These General Terms and Conditions (hereinafter called "GTC") shall represent the sole basis for all contracts between castus GmbH & Co KG (hereinafter also called "seller" or "castus") and its contractual partners (hereinafter also called "customer") regarding the goods or services offered by castus, irrespective of whether castus manufactures the goods itself or purchases them from suppliers (§ 433 and § 651 of the German Civil Code (BGB)). The General Terms and Conditions shall also apply to all future goods, services or offers to the customer even if they are not again agreed separately. The GTC shall only apply to entrepreneurs within the meaning of § 310 (1) of the German Civil Code.
2. Any different conditions of the customer or third parties shall not be accepted, unless the seller agreed their validity separately in an individual case. Even if the seller makes reference to a letter which contains or refers to the General Terms and Conditions of the customer or a third party, or performs delivery unconditionally in the knowledge of the customer's conditions, this shall not constitute any acceptance of the validity of those General Terms and Conditions.
3. All agreements between the seller and the customer shall be finally regulated in the written contract documents and these General Terms and Conditions; no incidental oral agreements have been concluded.

§ 2 Offer and conclusion of the contract

1. Unless otherwise expressly stated, offers from the seller shall be subject to change and shall be non-binding. The seller may accept orders or contracts within fourteen days after receipt.
2. Additions and amendments to the contract, including these GTC, shall be effected in writing. This provision shall also apply to the amendment of the written form requirement itself. Confirmation by telecommunication, especially fax or e-mail, shall be sufficient to comply with the written form if a copy of the signed statement is sent.
3. Information provided by the seller regarding the subject of the contract (e.g. weights, dimensions, performance characteristics, resilience, tolerances and technical data) and representations thereof (e.g. drawings, diagrams) shall be deemed approximate, unless usability for the contractually agreed purpose requires exact conformity. They shall not be regarded as guaranteed qualities, but rather as descriptions or identifications of the goods or services. Deviations which are typical in the trade and deviations which arise due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts shall be permitted if they do not impair usability for the intended contractual purpose.
4. The seller shall retain ownership rights and copyright to know-how, drawings, diagrams, calculations, brochures, catalogues, models, tools and other documents and aids, as well as to documents which are marked as "confidential". In particular, strict confidentiality shall be maintained regarding the stipulated know-how. The customer or third parties may only transmit, provide, disclose, use or reproduce the documents or information mentioned in Sentence 1 with the express prior permission of the seller.

§ 3 Prices and payment

1. The prices shall apply to the scope of supply and services shown in the order confirmations. Additional services or special services shall be billed separately. The prices shall be shown in Euro ex works plus packing and any shipping costs, VAT according to the valid rate at the time of invoicing, customs duties in the case of export deliveries, fees and other public charges, unless otherwise shown in the order confirmation.
2. Unless otherwise shown in the order confirmation, the purchase price shall become due for payment without deductions within 30 days after the invoice date. The seller shall grant 2% discount for payment of domestic transactions within 14 days. The deciding factor for the payment date shall be the date of receipt by the seller. Payment by cheque shall not be permitted, unless it was agreed separately in an individual case. With effect from the due date for payment, interest amounting to 5% p.a. shall be charged: enforcement of claims for higher interest and other losses in the event of default shall not be affected.
3. Offsetting of counterclaims by the customer or retention of payments due to these claims shall only be permitted if the counterclaims are undisputed or legally binding; if a right of retention is exercised, the counterclaim shall also be based on the same contractual relationship.

§ 4 Delivery and delivery period

1. Deadlines and dates set by the seller for the supply of goods and services shall not be binding, unless a binding deadline or a fixed date was expressly promised. In the event of an agreed sales shipment, the deadline shall be deemed to have been met on the date of handover of goods to the forwarding company. the haulier or other third parties commissioned to carry out the transport operation.
2. The seller shall not be liable for impossibility of delivery or for delays in delivery if they were caused by force majeure or other unforeseeable events, for which the seller is not responsible, at the time of conclusion of the contract (e.g. any kind of malfunction, problems in obtaining materials or energy, transport delays, strikes, legal lockouts, shortage of manpower, energy or raw materials, problems in procuring necessary official permits, official measures or non-delivery, incorrect delivery or late delivery by suppliers). If these events make it very difficult or impossible for the seller to supply the goods or services and the delay is not just temporary, the seller shall be entitled to withdraw from the contract.
In the case of temporary problems, the delivery or performance periods shall be extended or the delivery or performance dates shall be deferred by the duration of the delay plus a reasonable lead time. If the customer cannot be reasonably expected to accept the goods or services due to the delay, he may withdraw from the contract by immediately informing the seller in writing.
3. The seller shall be entitled to make partial deliveries if
 - a) the partial delivery can be used by the customer in accordance with the contractually agreed purpose,
 - b) delivery of the other ordered goods is guaranteed and
 - c) the customer does not incur any substantial additional expenses or additional costs as a result (unless the seller states that he is prepared to pay these costs).

4. The occurrence of a delay in delivery shall be determined in accordance with legal provisions. However, a warning by the customer shall always be required. If the seller fails to supply goods or services on time or if he is unable to furnish the goods or services for whatever reason, the seller's liability shall be limited to compensation in accordance with § 6 of these General Terms and Conditions.

§ 5 Place of performance, dispatch, packing, transfer of risk, acceptance, delay in acceptance

1. Deliveries shall be made ex works. Unless otherwise agreed, the place of performance for all obligations arising from the contract shall be the head office of the seller. The place of performance for any due installations shall be the place where installation is to take place.
2. On request and at the expense of the customer, the goods shall be sent to another destination (sales shipment). The mode of dispatch, selection of the transport company, packing, etc. shall be at the dutiful discretion of the seller.
3. Risk shall pass to the customer at the latest at the time of handover of the delivery item to the freight forwarder, the haulier or another third party commissioned to carry out shipment; the start of the loading process shall be the deciding factor in this respect. This provision shall apply even if partial deliveries are made or the seller has assumed even more services (e.g. dispatch or installation). If dispatch or handover is delayed due to a reason for which the customer is responsible, risk shall pass at the time when the goods are ready for dispatch and the seller has notified the customer to this effect.
4. If the customer is in default of acceptance or delivery is delayed due to reasons for which the customer is responsible, the seller shall be entitled to demand the reimbursement of incurred storage costs amounting to 0.25% of the invoice amount of the delivery items to be stored for each full week. The seller shall reserve the right to enforce and prove claims for higher or lower storage costs and assert any further statutory claims.
5. The seller shall only insure the consignment against theft, breakage, damage in transit and fire and water damage or other insurable risks at the express request of the customer and at the latter's expense.
6. If an acceptance inspection has to be performed, it shall be the decisive criterion for the passing of risk; the purchase item shall be deemed to have been accepted if
 - a) delivery and installation, provided the seller is also responsible for the latter work, have been completed.
 - b) the seller has informed the customer accordingly with reference to this assumed acceptance and requested the customer to accept delivery.
 - c) ten working days have elapsed since delivery or installation, or the customer has started to use the purchased item (e.g. has commissioned the supplied machine) and five working days have elapsed in this case since delivery or installation, and
 - d) the customer has not performed acceptance within this period due to a reason other than a defect which was notified by the seller and renders the use of the purchased item impossible or significantly impairs its use.

§ 6 Warranty, defect rights of the customer

1. The customer's rights in regard to defects shall be subject to the condition that he duly complied with his inspection and notification obligations according to § 377 of the German Commercial Code (HGB).
2. If the purchase item is defective, the customer shall be entitled - at the choice of the seller - to supplementary performance in the form of rework or delivery of a new perfect product. If the defect is rectified or a replacement delivery is made, the seller shall be obliged to pay all costs which are necessary for the purpose of supplementary performance, especially transport costs, delivery costs and labour and material costs, unless these costs are higher because the goods were taken to a place other than the place of performance. If supplementary performance fails, the customer shall be entitled to either choose withdrawal from the contract or a reduction in the purchase price.
3. The seller's liability for compensation, irrespective of the legal reason, especially due to impossibility of performance, default, defective or incorrect delivery, breach of contract, infringement of obligations during contract negotiations and unauthorized action, shall be limited according to the provisions of § 6 if this depends each time on culpability.
4. The seller shall not be liable in the case of slight negligence of his organs, legal representatives, employees or other agents, unless essential contractual obligations were infringed. Essential contractual obligations shall be the obligation to promptly supply and install the delivery item, its freedom from legal defects and those material defects which seriously impair its functionality or usability, as well as consulting, protection and care obligations which will enable the customer to use the delivery item according to the contract or whose purpose is to protect life and limb of the customer's personnel or protect the customer's property against serious damage.
5. If the seller is liable to pay compensation on the merits according to § 6 (4), this liability shall be limited to damage which the seller had foreseen at the time of conclusion of the contract as a potential consequence of a breach of contract or which he should have foreseen if he had exercised the usual care in the ordinary course of business. Indirect and consequential damage resulting from defects in the delivery item shall also only be compensated if this damage can be typically expected during the intended use of the delivery item.
6. The above liability exclusions and restrictions shall apply equally to the organs, legal representatives, employees and other agents of the seller.
7. If the seller provides technical information or acts as an advisor and this information or advice does not form part of his due, contractually agreed scope of services, this information or advice shall be provided free of charge and to the exclusion of any liability.
8. The restrictions in § 6 shall not apply to the seller's liability for intentional behaviour, guaranteed qualities, loss of life, physical injury or damage to health, or under the Product Liability Act. Liability for culpable loss of life, physical injury or damage to health shall also not be affected; this provision shall also apply to compelling liability under the Product Liability Act-
9. Unless otherwise agreed above, liability shall be excluded.
10. The limitation period for defect claims shall be 12 months calculated from the date of passing of risk. This period shall not apply to compensation claims by the customer due

to loss of life, physical injury and damage to health or due to intentional or grossly negligent infringements of obligations by the seller or his agents. These claims shall become statute-barred each time in accordance with legal regulations.

11. The limitation period in case of delivery regress according to § 478 and § 479 of the German Civil Code shall not be affected; it shall be 5 years calculated from the date of delivery of the defective item.

§ 7 Total liability

1. Any liability for compensation other than that described in § 6 shall - without recourse to the legal nature of the enforced claim - be excluded. This provision shall apply, in particular, to compensation claims due to culpability at the time of conclusion of the contract, other infringements of obligations or tortious claims for compensation due to material damage according to § 823 of the German Civil Code.
2. The limitation according to § 7 (1) shall also apply if the customer demands, instead of a claim for damages, reimbursement of useless expenses instead of performance.
3. If the compensation claim against the seller is excluded or restricted, this provision shall also apply in regard to the personal compensation liability of his employees, representatives and agents.

§ 8 Reservation of title

1. The following agreed reservation of title shall serve to secure all current and future claims by the seller against the customer from the existing delivery relationship between the contracting parties.
2. The goods supplied by the seller to the customer shall remain the property of the former until all secured claims have been paid in full. The supplied goods and any goods that replace them and are subject to reservation of title according to the following provisions shall hereinafter be referred to as "reserved goods".
3. The customer shall keep the reserved goods for the seller free of charge. The customer shall be obliged to take good care of the goods and insure them sufficiently at his own expense against damage caused by fire, water and theft. Any necessary maintenance and inspection work shall be carried out by the customer in good time and at his own expense.
4. The customer shall be entitled to process and sell the reserved goods up until the occurrence of the disposal event (paragraph 9) in his normal course of business. Pledges and transfers by way of security shall not be permitted.
5. If the reserved goods are processed by the customer, processing shall take place in the name and for the account of the seller as the manufacturer. The seller shall acquire direct ownership or - if processing takes place using materials from several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership (fractional ownership) to the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. If the seller does not acquire this ownership, the customer shall now transfer his future ownership or - in the above-mentioned ratio - joint ownership to the newly created item to the seller as security.
6. If the reserved goods are inseparably mixed with other items not belonging to the seller or are combined to form a single product, the seller shall acquire joint ownership to the new product in the ratio shown in § 8 (5) Sentence 1. If combination or mixing takes

place to the extent that the customer's product can be regarded as a main product, it shall be deemed to have been agreed that the customer transfers proportionate joint ownership to the seller. The customer shall keep the solely or jointly owned product created in this way for the seller.

7. In the event of resale of the reserved goods, the customer shall now transfer by way of security the resulting claim against the purchaser to the seller. If the seller jointly owns the reserved goods, this assignment shall take place proportionately according to the joint ownership share. This provision shall also apply to other claims which arise instead of the reserved goods or occur in connection with the reserved goods in another way, e.g. insurance claims or claims arising from unauthorized action in the event of loss or destruction. The customer shall be revocably entitled to collect the assigned claim; the seller's authority to collect the claim himself shall not be affected. However, the seller shall be obliged to refrain from doing so as long as the customer fulfils his payment obligations from the collected proceeds, is not in arrears with payment and, in particular, no application has been made to open composition or insolvency proceedings, or payment has not been stopped. If this is the case, the seller may request the customer to inform him about the assigned claims and their debtors, provide all the information required to collect the claims, hand over the relevant documents and inform the debtors (third parties) about assignment.
8. If third parties lay claim to the reserved goods, especially through seizure, the customer shall refer them immediately to the seller's ownership and inform the seller so that he can enforce his ownership rights, especially by means of legal action according to § 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse the seller for the legal or non-judicial costs incurred in this respect, the customer shall be liable to the seller here.
9. The seller shall release the reserved goods and the goods or claims instead of the reserved goods if their value exceeds the amount of the secured claims by more than 50%. The seller shall choose the goods to be released here.
10. If the seller withdraws from the contract (enforcement event) due to behaviour by the customer contrary to the terms of the contract - especially payment default - he shall be entitled to request handover of the reserved goods and revoke the direct debit authorization according to § 8 (6).

§ 9 Final provisions

1. If the customer is a merchant, a legal person under public law or a special public asset, or does not have a general place of jurisdiction in Germany, the place of jurisdiction for any disputes arising from the business relationship between the seller and the customer shall be Biberach an der Riss at the choice of the seller or the head office of the customer. However, Biberach an der Riss shall be the sole place of jurisdiction for legal action against the seller in these cases. Compelling legal provisions regarding sole places of jurisdiction shall not be affected by this regulation.
2. The relations between the seller and the customer shall be governed solely by German law to the exclusion of the UN Convention on the International Sale of Goods (CISG).
3. If the contract or these General Terms and Conditions contain loopholes, these loopholes shall be deemed to have been replaced by legally effective clauses which the contracting parties would have agreed according to the economic objectives of the contract and the purpose of these General Terms and Conditions if the contracting parties had recognised the loophole. The validity of the other clauses shall not hereby be affected.