



# General Terms and Conditions of Sale and Delivery

## I. Scope of Application

1. These General Terms and Conditions of Sale and Delivery ("GTSD") shall apply to all sales and deliveries of goods by HIMA Paul Hildebrandt GmbH ("HIMA"), unless otherwise stated in these GTSD or in the order confirmation of HIMA.
2. These GTSD shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business or purchase of the customer shall only become part of the contract if and to the extent that HIMA expressly agrees to their validity in writing.
3. These GTSD shall apply only to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB).

## II. Scope of the Obligation of Performance upon Supply of the Products

1. The volume, quality and specifications of the good to be supplied (hereafter also referred to as "Delivery Item") shall exclusively be laid down in the written description of HIMA and these GTSD. Any further details, including, but not limited to those given in prior discussion, advertising and/or industrial standards, referred to shall only become an integral part of the contract by explicit written inclusion.
2. The quality defined in the specifications shall comprehensively and finally define the characteristics of the Delivery Item. In particular, public statements of HIMA, of the manufacturer, of their assistants (Gehilfen) or third parties (e. g. public presentation of product characteristics) shall not supplement or change these specifications of the Delivery Item.
3. The contractual obligations shall neither include commissioning of production plants nor the accomplishment of the economic objectives the customer pursues by operating the production plants. The customer shall exclusively bear the responsibility for putting the plants into service, even if HIMA employees or persons commissioned by HIMA are present for support.
4. The parties agree that, according to the state of the art, safety-related controls, operated through data processing programs cannot run completely fail-safe. For this reason, it is necessary to design the control in such a manner that fail-safe operation can be accomplished at all times in order to ensure the necessary safety. Any resulting interruptions in the production shall not constitute any loss.

## III. Prices and Terms of Payment

1. Unless HIMA's order confirmation provides otherwise, the delivery shall be made "Free Carrier (FCA), Brühl (Baden) Germany" according to ICC Incoterm® 2020. Prices are, however, exclusive of packaging and statutory value added tax. Transport packaging and any other packaging pursuant to the German Packaging Ordinances (Verpackungsverordnung) shall not be taken back and title to them shall pass to the customer. The customer is obliged to provide for disposal of the packaging at its own costs.
2. If HIMA has also undertaken to carry out the erection or assembly and unless agreed otherwise, the customer shall bear, besides the agreed remuneration, any and all required incidental expenses such as travel costs, costs of transport of tools, personal luggage and daily allowances for the staff assigned by HIMA.
3. Payments shall have to be made net (without deduction) within thirty (30) days of the invoice date. In the event of default of payment by the customer, HIMA shall be entitled – subject to further claims for damages – to charge default interest at the statutory rate.
4. The place of performance for payment shall be Brühl (Baden), Germany. Payments are to be made free of transaction charges to the designated bank account of HIMA.

5. A set-off or the exercising of a right of retention by the customer shall only be permitted for undisputed, recognized or legally established claims.
6. If the customer is in default of payment or HIMA sees the risk of a substantial deterioration in the customer's financial situation, the outstanding claims including any potential deferred claims HIMA has against the customer shall fall due for immediate payment. Moreover, HIMA has the right to deliver any outstanding items under the contract only against advance payment or provision of a security. HIMA reserves further rights.

## IV. Reservation of Title

1. HIMA reserves title to the Delivery Items (hereinafter "Reserved Property") until receipt of all payments payable under the business relationship with the customer. In the event of breach of contract on the customer's part, including but not limited to default in payment, HIMA is entitled to take back the Reserved Property.
2. The customer is obliged to treat the Reserved Property carefully; the customer is particularly obliged to insure the Reserved Property at original value sufficiently against fire, water damage and theft at its own costs, and already now assigns its claims for compensation under such insurance contracts to HIMA. Insofar as maintenance and inspection works are required, the customer must carry them out at its own costs in good time.
3. As long as ownership has not passed yet, the customer must inform HIMA in writing immediately if Reserved Property is pledged or exposed to any other third party interventions.

## V. Supply

1. There are no fixed delivery periods. Delivery dates shall only be binding if they have been confirmed by HIMA in writing. Partial deliveries shall be admissible insofar as they can be reasonably expected by the customer. The beginning of the confirmed delivery periods requires clarification of all technical questions and receipt of all documents, required permits and approvals, including but not limited to, plans, to be supplied by the customer in good time, as well as the customer's compliance with the agreed payment terms and any other obligations. If these requirements are not met in good time, the delivery periods shall be extended by a reasonable period of time; this shall not apply in the event that HIMA is responsible for the delay.
2. If non-compliance with contractual obligation can be attributed to force majeure of any kind, unpredictable operational, traffic or shipment disruptions, fire damage, flood, unpredictable lack of personnel, unpredictable lack of energy or raw materials or adjuvants, lawful strikes, lawful lockouts, official decrees, or any other hindrances the party obliged to perform is not responsible for, then the relevant party shall be released from its obligation of supply or acceptance for the duration and the extent of the disruption. This shall also apply if the circumstances occur at a subsupplier's business. Neither shall the party obliged to perform be responsible for the conditions above if they occur during any existing default. If, as a consequence of the disruption, the delivery is exceeded by more than eight (8) weeks, then either party is entitled to withdraw from the contract and there shall be no claims for damages in this regard. The payment obligations of the relevant parties shall be excluded from the provisions above.
3. If dispatch or delivery is delayed upon the customer's request by more than one month after notice of readiness for dispatch is given, then HIMA may charge warehouse costs to the customer in the amount of 0.5 % of the price of the Delivery Items, but no more than 5 %. The customer is entitled to prove that HIMA has suffered no or lower warehouse costs. HIMA is entitled to prove that it has suffered higher loss. The provisions regarding passing of risk shall remain unaffected by the aforesaid.



## VI. Passing of Risk

Unless explicitly agreed otherwise, the risk of accidental destruction and accidental deterioration shall pass to the customer according to ICC Incoterm® 2020 „FCA Brühl (Baden), Germany“.

## VII. Liability for Defects

1. It is a precondition of the customer's claims for defect that the customer has properly performed its duties owed by law to examine the goods delivered and give notification of defects.
2. Claims for defects shall be excluded in the event of only marginal deviations from the agreed quality, only marginal impairment of usability, natural wear and tear or damage arising after the passing of risk from incorrect or negligent handling, excessive strain, inappropriate utilities, defective workmanship, unsuitable building land or because of special external circumstances not anticipated under the contract. Claims based on defects attributable to improper modifications or repair work carried out by the customer or third parties and the consequences thereof shall be likewise excluded.
3. If the Delivery Item is defective, HIMA is entitled to cure in form of remedy or by supplying a new item free of defects at its own discretion. In the event of remedy or replacement delivery, HIMA is obliged to bear any and all expenses required for cure, including, but not limited to, transport, infrastructure, labour and material costs; however, this shall not apply to additional costs arising from the Delivery Item having been taken to a place other than the place of performance, unless such transportation complies with the Delivery Item's intended use. This shall apply accordingly to the customer's claim for reimbursement of expenses pursuant to Section 445a BGB, provided that the last agreement in the supply chain is no consumer good purchase. The customer's right of recourse as may arise in this context vis-à-vis HIMA shall only exist to the extent as the customer has not made any agreements with its customer beyond the claims for damages provided by law.
4. If cure has failed repeatedly, has been refused or cannot be reasonably expected or not performed within a reasonable time limit set for cure or such setting of a time limit is dispensable, then the customer is entitled to withdraw from the contract or to reduce the remuneration. If the customer requests compensation for damages in lieu of performance or intends to repair the defect itself, then cure shall only be deemed failed after the second unsuccessful attempt. For the rest, the cases of dispensability of setting a time limit provided by law shall remain unaffected.
5. The statutory provisions concerning suspension, suspension of expiry and the recommencement of the statute of limitations shall also remain unaffected hereby.

## VIII. Industrial Property Rights and Copyrights, Legal Defects

1. HIMA reserves the unrestricted exploitations rights under property and copyright law to cost estimates, drawings, calculations and any other documents (hereinafter jointly referred to as "Documents").
2. Unless agreed otherwise, HIMA is obliged to supply the goods free of third parties' industrial property rights and copyrights (hereinafter jointly referred to as "IPR") only in the country of delivery or the agreed country of the end customer respectively. If a third party asserts justified claims against the customer based on the infringement of IPR with respect to the Supplies provided by HIMA and used pursuant to the contract, then HIMA shall be liable vis-à-vis the customer within the warranty period for defects (Section VII Sub-section 5) as follows:
  - a. HIMA shall, at its own option and at its own costs, either acquire a right to use the relevant delivery or modify it in such a way that the IPR will no longer be infringed, or replace it. If doing so is impossible for HIMA at reasonable conditions, then the customer shall be entitled to withdraw from the contract or reduce the remuneration as provided by law.
  - b. HIMA's obligation to pay damages shall be governed exclusively by Section IX. "Liability" below.
  - c. HIMA obligations above shall only apply to the extent that the customer immediately notifies HIMA in writing of the claims asserted by the third party, does not admit an infringement vis-à-vis third parties, and HIMA reserves the right to all defensive actions and settlement negotiations. If the customer ceases to use the supply in order to reduce damages or for other important reasons, it is obliged to point out to the third party that

this cessation of use does not involve any acknowledgement of infringement of IPR.

3. Claims of the customer shall be excluded to the extent the customer is responsible for the infringement of IPR, including but not limited to, if the infringement of the IPR is caused by specific requirements of the customer, by an application not foreseeable by HIMA or because the customer modifies the Delivery Item or uses it together with products not supplied or authorized by HIMA.
4. In the event of infringements of IPR, the provisions of Section VII Sub-section 3 shall otherwise apply mutatis mutandis to the claims of the customer regulated in Sub-section 2.a.

## IX. Liability

1. HIMA shall be liable for claims:
  - as a result of culpable injury to life, limb or health of persons,
  - arising from the German Product Liability Act,
  - as a result of non-compliance with a guarantee,
  - due to fraudulent concealment of a defect or
  - as a result of an intentional or grossly negligent breach of obligation,

without restriction in accordance with the statutory provisions.

2. In all other respects, HIMA's liability shall be limited or excluded as follows:
  - a. In the event of a breach of essential contractual obligations caused by simple negligence, liability shall be limited to the typical damage foreseeable at the time of conclusion of the agreement. An essential contractual obligation is an obligation that the agreement intends to impose on HIMA in accordance with its content and purpose or the fulfillment of which makes the proper performance of the agreement possible in the first place and on the observance of which the customer regularly relies and may rely.
  - b. In the event of a breach of non-essential contractual obligations caused by simple negligence and in the case of other breaches of duty caused by simple negligence, HIMA's liability shall be excluded.
3. Contractual claims for damages by the customer against HIMA shall become time-barred 12 months after becoming aware of the conditions giving rise to the claim. This shall not apply to the claims specified in paragraph 1.
4. A change in the burden of proof to the detriment of the customer is not associated with the above provisions of paragraphs 1 to 3.
5. Insofar as liability of HIMA is excluded or limited, this shall also apply to personal liability of the employees, representatives (Vertreter), corporate bodies (Organe) and assistants in performance (Erfüllungsgehilfen) of HIMA.

## X. Confidentiality

The customer shall be obliged to maintain strict confidentiality with respect to all received drawings, calculations, illustrations and other documents as well as all oral or written information and to refrain from recording them or using them in any way, insofar as this is not required to achieve the purpose of the agreement. Such information may only be disclosed to third parties with the express written consent of HIMA. The duty of confidentiality shall exist beyond the performance of the individual contract. It shall only expire when and to the extent that the entrusted information and documents have become generally known. The above provisions shall apply mutatis mutandis to the customer's documents.

## XI. Take-Back and Environmentally Compatible Disposal of Electrical and Electronic Equipment pursuant to the German Electrical and Electronic Equipment Act (ElektroG).

Insofar as Delivery Items are to be taken back by HIMA as old appliances within the meaning of the German Electrical and Electronic Equipment Act (ElektroG) and are to be reused, recycled or disposed of in an environmentally compatible manner, the customer shall bear the costs of disposal.

## XII. Export Provision and Export Control

1. In order to comply with national and international foreign trade provisions and laws, the parties will support each other and provide



all necessary documentation and information upon request, such as relating to the registration of items to be exported in export control lists or to the final destination and end use of the items. Neither party is obliged to perform its obligation under the contract in violation of any statutory or internal export control regulations.

2. Delays caused by export checks or licensing procedures shall put any lead times or deadlines out of force. Any claims for damages based on such delays and due to the exceeding of delivery periods are excluded.
3. HIMA shall be entitled, to the exclusion of claims for damages of the customer, at any time to withdraw from the contract, if:
  - a. the customer, despite request, does not provide either any or sufficient information about the final destination and the end use of the Supplies;
  - b. HIMA obtains knowledge of a contractual unintended end use or knowledge of any previously unknown person involved in the business after tendering and cannot perform the contract due to German, US American or any other applicable national or EU provisions under foreign trade law or intragroup regulations;
  - c. the Supplies or services are intended for military end use in countries subject to embargos, civil nuclear use or for use in connection with weapons of mass destruction or for missiles capable of delivering such weapons; (substantive evidence shall be sufficient to prove this intent); or
  - d. a possibly illegal or unlicensed export or an infringement of embargo rules cannot be fully ruled out.
4. Upon submitting the order, the customer declares that it complies with the applicable national and international export control provisions if it exports or resells goods. Furthermore, the customer declares not to ship, whether directly or indirectly, the delivery to countries against which an embargo is imposed and import of the delivered goods is thus prohibited or restricted. The customer shall hold HIMA harmless of all damage resulting to HIMA from culpable infringement of the obligations above.

### XIII. Conditions for the Permission of Use of Software

1. The following provisions shall apply to the provision of software as part of deliveries if and to the extent that no specific terms and conditions have been agreed for the provision and use of the software. In the event of any conflict with the foregoing provisions of these GTSD, the provisions of this Section XIII shall prevail.
2. Insofar as supplies of HIMA include the provision of HIMA software (computer programs), the customer shall be granted the non-exclusive right for the intended use of the software without restriction as to time and space on the agreed devices and within the scope of the relevant purpose of the contract.
3. For software that involves only a derived utilization right for HIMA and which is not what is called open source software (third party software), the license agreements agreed between HIMA and HIMA's licensor (such as an end user license agreement) – insofar as they concern the customer – shall apply in addition and shall prevail over these GTSD. HIMA will point out such license agreements to the customer and make them available the customer upon request.
4. For open source software, the license agreement the open source software is subject to shall prevail. HIMA will provide or make available the source code to the customer only if the license agreement of the open source software requires this. HIMA will point out to the customer the existence and the license agreement of the open source software made available and make the license agreement available to the customer or, to the extent as the license agreement requires it, provide it to the customer.
5. Only deviations from the quality owed proven by the customer and reproducible deviations from the specifications shall be deemed a material defect of the software. There shall be no material defect if it does not occur in the most recent version of the software made available to the customer and its use can reasonably expected from the customer.
6. All copyrights and IPR as well as other rights to the software and the documentation shall remain with HIMA or its software suppliers. The customer is obliged not to remove or change manufacturer's details – in particular copyright notices. The customer may only exceptionally to the extent expressly permitted by law copy, revise, translate or convert the software from the object code to the source code. Any other form of reproduction, revision, translation, distribution or other use of the software or granting of sublicenses by the customer is not permitted.

7. The complete transfer of the software or the rights to use it shall only be permissible by way of exception if the customer proves a justified interest in transferring it to a third party while relinquishing its own use, e.g. in the event of resale of the Delivery Item. In this case, the customer is obliged to contractually obligate the purchaser to observe the rights to which HIMA is entitled.

### XIV. Assignment

The assignment of the customer's rights under the agreement shall not be permitted without the written consent of HIMA. HIMA shall be entitled to have individual services rendered by authorized partners.

### XV. Severability Clause

If a provision of these GTSD is or becomes invalid in whole or in part, this shall not affect the validity of the remaining provisions. The contracting parties shall have to jointly strive to agree on a valid provision that comes as close as possible to the economic purpose of the invalid provision.

### XVI. Place of Jurisdiction, Applicable Law and Place of Performance

1. The sole place of jurisdiction for all disputes between the parties arising from or in connection with these GTSD or their business relationship shall be HIMA's registered office location. However, HIMA shall also be entitled to file an action at the customer's registered office location.
2. The legal relationships between the contracting parties shall be governed by the law of the Federal Republic of Germany and exclude the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict-of-law rules of private international law (PIL).
3. Unless otherwise stated in HIMA's order confirmation, the place of performance for HIMA shall be Brühl (Baden), Germany.

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