

# General Terms and Conditions for the Supply of Products and Services

## I. Scope

1. These General Terms and Conditions for the Supply of Products and Services ("GTC") shall apply to all sales of goods and services of HIMA Paul Hildebrandt GmbH („HIMA“), unless otherwise stated in these GTC or in the order confirmation of HIMA.
2. These GTC shall apply exclusively. Diverging, conflicting or supplemental general terms and conditions of trade or general terms and conditions of purchasing of the customer shall only become a part of the contract if and to the extent HIMA explicitly agrees to their applicability in writing.
3. These GTC shall only apply vis-à-vis entrepreneurs (Unternehmer) as referred to in Section 310 subsection 1 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 GTC. 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.
5. If the customer requests modifications regarding the agreed scope, time or volume, subsequently, then such modifications shall be coordinated with HIMA in advance. In the event of a reduction of the order volume, HIMA reserves the right to claim liquidated damages in the amount of 15 % of the agreed remuneration payable for the reduced percentage of the agreed products and/or services. The customer and HIMA respectively shall be free to prove a higher or lower amount of damages.

## 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® 2010. Prices are, however, exclusive of packaging and statutory value added tax. Transport packaging and any other packaging pursuant to the German Packaging Ordinance (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 be made net (without deduction) within thirty (30) days after the invoice date. If the customer is in default of payment, HIMA shall be entitled to charge default interest in the amount provided by law, aside from further claims for damages.
4. The place of performance of payment shall be Brühl (Baden), Germany. Payments shall be made free of transactions charges to HIMA's bank account.
5. The customer may only set off claims that are undisputed or have been determined by final court judgment. However, in the event of defects of the Delivery Item, the reciprocal rights of the customer remain unaffected.
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 HIMA falls in default, the customer may – provided that it credibly establishes it suffered a loss from such default – claim compensation of 0.5 % for each full week of default, but in total no more than 5 % of the price for the part of the Delivery Item which could not take into service as intended due to the default.
4. 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® 2010 „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 Items are defective, HIMA is entitled to cure (Nacherfüllung) in form of remedy or by supplying a new item free of defects at its own discretion. This shall not apply if the customer had to take back the software from his buyer as a result of an asserted defect or if the buyer has reduced the purchase price. 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. Unless otherwise stated in the contract or in applicable law, the warranty period for Delivery Items shall be twenty-four (24) months after delivery. 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 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 by the section "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. In the event of infringement of IPR, the claims of the customer regulated in subsection 2 a. shall be governed by the provisions of item VII of subsection 3 accordingly.

## IX. Liability

Unless agreed otherwise in an individual contract, HIMA shall be liable as follows:

1. Cases of liability are defined by the statutory provisions.
2. HIMA shall be liable without limitation in the event of wilful misconduct, gross negligence, fraudulent intent, provision of a guarantee, culpable injury to life, limb or health and liability pursuant to the German Product Liability Act (Produkthaftungsgesetz).
3. Unless a case of the subsection above is concerned, HIMA's liability in the event of negligent breach of fundamental rights and duties arising from the nature of the contract shall be limited to the amount of twice the order value per damaging occurrence and year. Insofar as the foreseeable risk of the contract does not substantially exceed the maximum liability amount, the parties may agree a higher liability amount – against an equivalent remuneration for HIMA's assumption of risk – provided that insurance coverage can be taken out for this.
4. For the rest, HIMA's liability shall be excluded unless laid down above otherwise.
5. The limitations and disclaimers of liability above shall also apply insofar as the customer requests reimbursement of vain expenditures in lieu of a claim for compensation for damages.
6. Insofar as liability of HIMA is excluded or limited, this shall also apply to personal liability of the employees, staff, representatives (Vertreter), corporate bodies (Organe) and assistants in performance (Erfüllungsgehilfen) of HIMA.

## X. Confidentiality

The customer shall keep any and all received drawings, calculations, figures and other documents as well as any and all verbal and written information strictly confidential and – unless advised for accomplishing the purpose of the contract – shall not record or exploit them in any way. They may be disclosed to third parties only with the explicit written consent of HIMA. The obligation to confidentiality shall remain in full force beyond the execution of the individual contract. It shall only cease if and to the extent the provided information and documents have become generally known. The regulations above shall apply to documents of the customer correspondingly.



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

The customer shall assume the obligation to properly dispose of the delivered goods after the end of their use at customer's own expense in accordance with the legal requirements. The customer shall hold HIMA harmless from the manufacturer's obligation to take the goods back and any associated claims of third parties. If the customer passes delivered goods on to commercial third parties, the customer will obtain a contractual commitment from said parties to properly dispose of the delivered goods after the end of their use in accordance with the legal requirements and, if the goods are passed on again, to impose the same obligation on the recipient(s). If the customer fails to fulfil this obligation, customer is obliged to take back the delivered goods after the end of their use by customer's own customers at customer's own expense and to properly dispose of them in accordance with the legal requirements. The right of HIMA to transfer the obligation to the customer /to be held harmless by the customer shall not become statute barred until two years after final cessation of use of the equipment. The two-year period of suspension of expiry shall begin no earlier than upon receipt of a written notification by the customer to HIMA that the equipment is no longer used.

#### **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. Data Privacy**

HIMA is entitled to collect, to process and to use the contact details and contract data generated in relation with the contractual relation in terms of the German Federal Data Protection Act (BDSG) as amended from time to time and to forward these details and data to affiliated companies (verbundene Unternehmen) of HIMA as defined in Sections 15 et seqq. of the German Stock Corporation Act (AktG).

#### **XIV. Place of Jurisdiction, Applicable Law and Place of Performance**

1. The sole place of jurisdiction for any and all disputes between the Parties arising from or in connection with these GTC or their business relationship shall be HIMA's registered place of business. However, HIMA is also entitled to sue at the customer's place of business.
2. The legal relations of the contracting parties shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods (CISG) and the conflict of laws of international private law. Unless the order confirmation of HIMA provides otherwise, the place of performance for HIMA shall be Brühl (Baden), Germany.

#### **XV. Supplemental Conditions for the Permission of Use of Software**

The conditions contained in this section shall apply as a supplement to the Terms and Conditions above for the provision of standard software as a part of supplies. In the event of conflicting provisions between the provisions below and the contents of the provisions above of these GTC, the following provisions shall prevail.

1. Insofar as services and suppliers 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.
2. For software that involves only a derived utilisation 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 prevail over these GTC; HIMA will point out such license agreements to the customer and make them available the customer upon request.
3. 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.
4. Only deviations from the specifications proven by the customer and reproducible deviations from the specifications shall be deemed a material defect of the software. However, 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 be expected from the customer. The customer shall inform HIMA of any detected defects or faults of the software even if they do not impair the intended use of the software.
5. Copyright notices, serial number or any other identification features must not be removed in any case.

#### **XVI. Supplemental Conditions for Services**

The conditions for services below shall apply as a supplement to the provisions above of the GTC for all services (consulting, engineering, assembly, maintenance, repairs etc.) rendered by HIMA. They shall apply both to pure services as well as for services related with the supply of goods. In the event of conflicting provisions between these provisions and the contents of the provisions above of these GTC, the following provisions shall prevail.

1. Scope of Services
  - a. The scope and the content of the services shall be determined by the relevant service agreement, the associated performance specification, the relevant HIMA price list and these GTC, which are all an integral part of the service agreement. The scope and the content of services not agreed in a service agreement ("single orders") shall be governed by the binding offer or the written order confirmation of HIMA, the relevant HIMA price list and these GTC.
  - b. The applications developed by HIMA enable the customer to make changes to these applications even during ongoing operation by using the software supplied with the goods.





- HIMA explicitly points out that during such interventions, the customer must guarantee the safety of the plant in another manner. Carrying out changes during ongoing operation of the customer's plants shall, in principle, not constitute a subject matter of the services. Insofar as, despite this, HIMA shall support the customer while intervening in the applications during ongoing operation, this shall require an explicit separate written agreement between the parties.
- c. Insofar as the services shall be rendered for a service item that has not been supplied by HIMA, the customer must point out any existing IPR in the item when concluding the contract; insofar as that HIMA is not responsible, the customer shall hold HIMA harmless of any potential third party claims based on IPR.
  - d. HIMA is entitled to assign third parties in order to perform its contractual duties.
  - e. Unless agreed otherwise in the contract, spare parts or other goods and items required in the course of the relevant services to be rendered, shall be charged separately according to the actually required expenditure and pursuant to the HIMA price list as amended from time to time. The supply of these spare parts or any other goods and items shall be governed by the GTC of HIMA exclusively.
  - f. Additionally required services shall be invoiced pursuant to the expenditure and pursuant to the HIMA price list(s) as amended from time to time.
2. Cost rates and terms of payment
    - a. Unless agreed otherwise by the parties, services shall be charged pursuant to the HIMA price lists as amended from time to time. The cost rates shall be exclusive of any and all taxes, customs duties or charges payable under applicable law. Any taxes, customs duties or charges imposed on HIMA or the subcontractor of HIMA shall be paid or reimbursed by the customer.
    - b. Journey times and travel costs shall be charged pursuant to the HIMA price lists as amended from time to time.
  3. Customer's obligation to cooperate
    - a. The customer is obliged to comply with the statutory provisions on safety and health protection, the German statutory instrument on safety in businesses (Betriebs-sicherheitsverordnung) and the accident prevention regulations of the employers' liability insurance associations at the place of assignment. In particular, the items on which a service shall be performed shall not pose a health hazard for the persons assigned by HIMA (such as: NBC contamination). The customer shall inform HIMA's service staff about any existing special safety provisions insofar as they are of importance to the service staff.
    - b. The exact working time shall be coordinated with HIMA, in particular, the customer shall be responsible for compliance with the German Act on Working Hours (Arbeitszeitgesetz), including, but not limited to rest times.
    - c. The customer is obliged to permit HIMA or a third party commissioned by HIMA in order to perform its duties unhindered access to the real estate designated in the service agreement and all devices to be maintained. The customer shall make any resources that may be required available to HIMA free of charge.
    - d. The customer shall certify the duration of the working hours of the assembly staff and the termination of the erection, assembly or commissioning immediately on a weekly basis.
    - e. If performance of services is delayed due to circumstances HIMA is not responsible for, then the customer must bear the costs for waiting time and any additionally required journeys of HIMA and/or its assigned service staff correspondingly to a reasonable extent.
  4. Acceptance
    - a. For services of a nature of a contract where a specific success is owed (werkvertraglicher Charakter) or if acceptance is agreed by contract, the customer shall carry out the acceptance within two weeks after HIMA has announced completion of the works. If this does not happen, acceptance shall be deemed effected. Acceptance shall also be deemed effected if the supply – possibly after termination of an agreed test period - is put to use. This shall also apply to partial services or partial deliveries to be considered as a final service or delivery.
    - b. Acceptance may only be refused due to major defects until their remedy.
  5. Claims for defects
    - a. If the service to be rendered by HIMA has a nature where a specific success is owed (werkvertraglicher Charakter), HIMA shall provide warranty as follows: In the event of defective service performance, HIMA shall be entitled and obliged to cure (Nacherfüllung) first. If cure definitely fails, then the customer may withdraw from the contract or reduce the remuneration or claim damages pursuant to the subsection "Liability" above.
    - b. If the agreed service is governed by services law, the following shall apply: In the event of defective services performance, HIMA shall be entitled and obliged to cure (Nacherfüllung) first. In the event that cure fails, then the customer shall be entitled to claim damages pursuant to the subsection "Liability" above.
    - c. Damage as a result of natural wear and tear, defective maintenance - unless executed by HIMA or a third party commissioned by HIMA -, non-observance of provisions on utilities, excessive or unsuitable strain, improper construction and assembly works of third parties or of the customer and any other external impacts and causes beyond HIMA's control and responsibility shall be excluded from claims under warranty.
    - d. Warranty shall lapse if the customer or third parties execute modifications or repairs to the services without HIMA's prior approval.
  6. Notice of termination

In the event of a notice of termination, HIMA shall be entitled to remuneration of the performance already rendered as well as reimbursement of the expenses and costs already incurred. Unless HIMA is responsible for the notice of termination, HIMA shall also be entitled to claim liquidated damages in the amount of 15 % of the agreed remuneration attributable to the agreed service's part not yet rendered. The customer is entitled to prove that HIMA has suffered no or lower loss. HIMA is entitled to prove that it has suffered higher loss.

(Status as of 01.April.2018)