

General Terms and Conditions of Service



Valid from June 1, 2022

I. Scope of Application

1. These General Terms and Conditions of Service ("GTCs") shall apply to all services (consulting, engineering, installation, maintenance, repairs, etc.) of HIMA Paul Hildebrandt GmbH ("HIMA") unless provisions stating otherwise or additional provisions are contained in these GTCs or in the order confirmation of HIMA.
2. These GTCs 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 GTCs shall apply only to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB). The GTCs shall not apply to services that are rendered in the context of the fulfillment of claims for defects of the customer arising from HIMA services.

II. Conclusion of the Agreement

1. HIMA's offers shall be subject to change unless they are expressly referred to as binding in the offer text. The service agreement shall only be deemed to be concluded upon its signing by both parties, or when HIMA confirms the order to the customer in writing (by post, fax or e-mail).
2. Ancillary agreements and changes shall require mutual written confirmation (by post, fax or e-mail).

III. Scope of Services

1. The scope and content of the services shall be determined in the respective service agreement, the associated service description, the respective HIMA price list and these GTCs, which are part of the service agreement. The scope and content of services that are not agreed in a service agreement ("individual orders") shall be determined by the binding offer or the written order confirmation of HIMA, the respective HIMA price list and these GTCs.
2. The applications developed by HIMA basically provide the customer with the option of making changes to these applications, even during operation, using the supplied software. HIMA expressly points out that the plant safety must be otherwise ensured by the customer during such interventions. As a matter of principle, the service does not include any changes while the customer's systems are operating. Insofar as HIMA should nevertheless assist the customer in intervening in the applications during operation, an express agreement to this effect shall be required between the parties.
3. Insofar as the service is to be rendered on a service object that has not originated from HIMA, the customer must point out existing industrial property rights with regard to the object at the time of conclusion of the agreement; if HIMA is not at fault, the customer shall indemnify HIMA against any claims of third parties arising from industrial property rights.
4. HIMA shall be entitled to employ third parties to fulfill its contractual obligations.
5. Unless otherwise contractually agreed, spare parts or other goods and objects required as part of the respective service shall be charged separately according to the actual work required and in accordance with the current HIMA price list. The General Terms and Conditions of Sale and Delivery of HIMA shall apply to all deliveries of objects and software within the scope of the provision of services. In accordance with these Terms and Conditions, a limitation period of twelve (12) months from delivery shall apply to claims for defects of the customer as shall a retention of title apply to all delivery items of HIMA until full payment of the agreed fee.
6. Additional services required shall be invoiced according to the work involved and in accordance with the current HIMA price list(s).

IV. Fees

1. All services offered and rendered by HIMA shall be subject to fees. All fees exclude the legally applicable VAT, excise duty, withholding tax, import and export taxes, customs duties, levies or any other similar taxes in the respectively applicable amount.
2. The fees for services, travel and waiting times as well as travel expenses to be borne by the customer are specified in the current version of the cost rates.

The prices quoted by HIMA for the services are based on the cost factors at the time of the offer. In the event of a change in the relevant cost factors upon completion of the service (in particular, salaries and wages or material price changes), HIMA shall reserve the right to make an appropriate adjustment to the fees if at least three months passed between the conclusion of the agreement and the rendering of the service; in this case, the prices valid upon commencing the rendering of the service shall be deemed to have been agreed. HIMA shall provide evidence of the change in the relevant cost factors to the customer upon request.

3. Insofar as the fees to be calculated are based on the cost rates, the HIMA Service Time Sheet to be signed by the customer shall be decisive for this purpose. The work time and work performance shall be recorded in it. Any 15-minute period commenced shall be rounded up to a quarter of an hour. Fees for small orders can be compiled up to a minimum invoice value of €300.00 and shall then be invoiced by HIMA in total only if this amount is exceeded. The customer shall be able to request the applicable cost rates when placing the order.
4. If training courses are included in the price or are offered in addition by HIMA for a fee, the price or fee shall not include travel, accommodation or meal expenses of the customer or his specified participants. These costs shall have to be borne by the customer himself.
5. The prices for the sale of delivery items shall be shown separately, and their delivery shall be determined according to the General Terms and Conditions of Sale and Delivery of HIMA.

V. Payment

1. 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.
2. 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.
3. 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.

VI. Customer's Obligations to Cooperate / Deadlines

1. The customer shall be obliged to comply with the statutory regulations on health and safety, the German Ordinance on Industrial Safety and Health (BetrSichV) and the accident prevention regulations of the employer's liability insurance associations at the operation site. In particular, the objects on which a service is to be rendered must not pose a health risk to the persons employed by HIMA (e.g.: ABC contamination). The customer must inform HIMA's service personnel of existing special safety regulations insofar as these are of importance for the service personnel.
2. The specific operating times must be agreed with HIMA, and the customer shall be responsible in particular for compliance with the German Working Time Act (ArbZG), especially with respect to rest periods.
3. In the event of malfunction reports, the customer shall undertake to provide an exact description of the error that has occurred.
4. For services rendered by HIMA, the customer shall, in good time and at his own expense, provide the following:
 - Support staff in the number deemed necessary by HIMA
 - Devices, cranes, lifting equipment and tools, equipment and operating materials required for installation and commissioning
 - Electricity, lighting, heating/air conditioning, water, compressed air
 - Rooms or cabinets suitable for the storage of tools and delivered parts, in particular, dry and lockable rooms or cabinets.
5. The customer shall be obliged to provide HIMA or a third party commissioned by HIMA with unhindered access to the property indicated in the service agreement as well as to all equipment to be maintained in order to fulfill their performance obligations. The customer shall ensure that, prior to the installation of equipment or components, all necessary parts are available on site and that all preparatory work is completed to the extent that HIMA's service staff can start the installation immediately upon arrival and execute it without interruption.

6. The customer shall inform HIMA immediately of any legal or factual changes occurring that affect the service agreement or its performance.
7. The customer shall have to promptly provide weekly written evidence to HIMA of the duration of the work time of the installation personnel as well as the completion of the installation, assembly or commissioning.
8. Deadlines that have not been expressly agreed in writing as binding shall be deemed to be non-binding.
9. Deadlines shall be deemed to be met if the service is rendered within the agreed period.
10. Agreed deadlines shall not begin to run or be extended – unless newly agreed – in the event of such circumstances for which HIMA is not responsible and which affect the rendering of the service by the duration of the respective circumstances, in particular, (i) events of force majeure, natural disasters and labor disputes affecting HIMA or sub-suppliers (operational disruptions through no fault of their own), (ii) in the event of a valid amendment to the agreement, if HIMA does not receive the technical and commercial documents in time, or if they have been subsequently amended by the customer with the consent of HIMA or (iii) in the event of default by the customer with respect to the fulfillment of his obligations.
11. If, despite all reasonable efforts, it is not possible to make the required adjustment to the agreement due to the occurrence of such circumstances, HIMA shall be released from its service obligation.
12. If the deadlines are extended due to the aforementioned circumstances or if HIMA is released from its obligations, the customer shall have no liability claims of any kind against HIMA. HIMA shall also not be liable for operational disruptions through no fault of its own during a delay. HIMA shall be obliged to inform the customer of any occurrence of the aforementioned circumstances.

VII. Acceptance

1. If an acceptance has been expressly agreed or the services have been expressly marked as a service contract, the customer must communicate the acceptance within two weeks of the notification of completion by HIMA. If this does not occur, the acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place when the delivery has been put into use – and upon completion of an agreed test phase if necessary. This shall also apply to completed partial services or partial deliveries.
2. Acceptance may only be refused due to significant defects until they have been remedied.

VIII. Claims due to Unsatisfactory Execution of the Service

1. HIMA shall render the service with the necessary expertise and care, while taking into account the regulations of point IX of these GTCs. In the event of proven poor performance of the service rendered, HIMA shall provide a one-time rectification of the service free of charge. Further or other claims of the customer due to defective performance of the service, e.g. for warranty, shall not exist.
2. If deliveries of delivery items are made within the context of the rendering of services by HIMA or, if a work service or work delivery service has been expressly agreed by way of exception, claims for defects by the customer can only be made in accordance with point VII. of the General Terms and Conditions of Sale and Delivery of HIMA. In accordance with these Terms and Conditions, a limitation period of twelve (12) months from delivery or acceptance shall apply to claims for defects of the customer.

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.

X. Cancellation / Notice of Termination

1. Any cancellation of a scheduled service must be made in writing. For cancellations received at least 2 calendar weeks before the start of the operation, no cancellation costs shall be charged. For cancellations received 7 or more calendar days before the agreed start of the operation, cancellation costs shall be charged at the daily rate for 25% of the pre-agreed operating time, provided that it is no less than 1 daily rate. For cancellations received less than 7 days before the start of the operation, daily rates shall be charged for 50% of the pre-agreed operating time, provided that it is no less than 2 daily rates.
2. In the event of termination, HIMA shall be entitled to fees for the services already rendered and to the fee claims arising until the termination takes effect, which shall become due immediately. Furthermore, the reimbursement of the expenses and costs incurred shall also be owed by the customer. If HIMA is not responsible for the termination, HIMA shall also be entitled to request payment of at least 15% of the agreed fees attributable to the part of the agreed service not yet provided in the case of services under an agreement for work and services.

XI. 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.

XII. 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.

XIII. Severability Clause

If a provision of these GTCs 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.

XIV. Place of Jurisdiction / Applicable Law / Place of Performance

1. The sole place of jurisdiction for all disputes between the parties arising from or in connection with these GTCs 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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