

General Terms and Conditions of Sale and Delivery of Goods [EN]

Heidelberg Instruments Mikrotechnik GmbH - Germany



Effective as of January 1, 2020

§ 1 Scope of application

The following Terms and Conditions of Sale and Delivery of Heidelberg Instruments Mikrotechnik, Mittelgewannweg 27, 69123 Heidelberg, Germany ("HIMT") apply, as far as not explicitly stipulated otherwise in writing, to all transactions and services undertaken between HIMT and the customer, and in particular in relation to offers, purchase and delivery contracts, orders, order confirmations and deliveries. They also apply to any future business relationships even if they have not been expressly agreed again. Any deviating general terms and conditions of the customer are not accepted, even if HIMT does not expressly object to them.

§ 2 Conclusion of the contract

- (1) Offers made by HIMT are non-binding provided they have not expressly been specified as binding in the wording of the offer. The contract only enters into force once it has been signed by both parties or once HIMT has confirmed the order to the customer in writing (by letter, fax or e-mail).
- (2) Side agreements and amendments require mutual written confirmation in order to be effective.

§ 3 Scope of delivery, shipment and transfer of risk

- (1) The scope of delivery is determined by the order confirmation supplied by HIMT.
- (2) HIMT expressly reserves the right to make technical changes compared to the features of the delivery item agreed at the time the contract is concluded. Any resulting price changes will be communicated to the customer for approval.
- (3) Unless otherwise agreed the delivery item is shipped immediately after its completion. The customer bears all transport costs.
- (4) Delivery is made "ex works" (EXW, Incoterms 2020), unless otherwise agreed. The risk passes to the customer no later than upon provision of the delivery item at the specified location. If delivery is delayed due to any conduct of the customer or due to circumstances for which HIMT is not responsible, the risk passes to the customer once HIMT has communicated that it is ready to ship the item or for it to be collected.

§ 4 Delivery deadline and force majeure

- (1) Delivery deadlines that are not expressly agreed in writing as binding shall be non-binding.
- (2) Delivery deadlines start to run no earlier than after receipt of the documents required to determine the delivery item, after receipt of the advance payment by the customer and after the customer has complied with its cooperation obligations.
- (3) A delivery deadline is deemed to have been met if the delivery item has been provided for delivery or if it has been made available for collection by the delivery deadline.
- (4) Delivery deadlines do not begin to run or are extended – if not newly agreed upon – if circumstances occur for which HIMT is not responsible and which affect the production or delivery of the delivery item by such period for which the circumstances in question subsist in particular (i) force majeure events, natural disasters and labour disputes which affect HIMT or sub-contractors (disruptions to operations outside of a party's control), (ii) in the case of a valid contract amendment if HIMT does not receive the technical or commercial documents in time or if such documents have subsequently been changed by the customer with HIMT's consent or (iii) if the customer is in default in complying with its obligations.
- (5) If, owing to the occurrence of such circumstances, it is impossible to amend the contract despite all reasonable efforts, HIMT is released from its performance obligations.
- (6) If the delivery deadline is extended due to the aforementioned circumstances or if HIMT is released from its performance obligations, the customer does not have any liability claims whatsoever against HIMT. HIMT is not liable for any disruptions to operations outside of its control even if they occur during a delay in delivery. HIMT is obliged to notify the customer in the event that such circumstances occur.
- (7) Before the expiry of the delivery deadline, HIMT is entitled to make part deliveries and issue part invoices.
- (8) If the delivery of the delivery item is delayed either at the request of the customer or due to circumstances which originate in the customer's sphere of risk and responsibility, the customer shall reimburse HIMT for the costs incurred for storage and for any default interest. In the case of storage on

the part of HIMT, the default interest is at least 0.5% of the outstanding amount invoiced for each month outstanding, starting one month after notification that HIMT is ready for shipment. HIMT is entitled, upon setting a reasonable grace period to no avail, to dispose of the delivery item in another way and to deliver replacement goods to the customer within a reasonably extended period.

§ 5 Delivery of software

- (1) Insofar as software is included in the delivery scope, the customer is granted a non-exclusive right to use the delivered software including its documentation. The software is provided solely for use on the delivery item intended for such use or the item designated by the customer and approved by HIMT. A use of the software on more than one system is not permitted.
- (2) All copyrights, intellectual property rights and other rights to the software and the documentation shall remain with HIMT or its software suppliers. The customer is under an obligation not to remove or change any manufacturer's information – in particular copyright notices. The customer may copy, revise or translate the software or convert it from the object code into the source code only in exceptional cases to the extent expressly permitted by law. Any other form of duplication, review, translation, dissemination or other use of the software or granting of sub-licenses by the customer is not permitted.
- (3) The complete transfer of the software or the rights of use of the software is permitted only in exceptional cases if the customer has a legitimate interest in the transfer to a third party while renouncing its own use, e.g. in the event that the delivery item is sold on. In this case, the customer is obliged to place the purchaser under the contractual obligation to comply with any rights to which HIMT is entitled.

§ 6 Cooperation obligations, installation, assembly and commissioning

- (1) If Delivery Items are delivered subject to prior testing and acceptance by the customer at HIMT, then the installation, assembly and commissioning at the customer shall be undertaken upon delivery by a technician of HIMT or by a person authorized by HIMT.
- (2) All the necessary preparations and measures, in particular access ways, surface space for machines and accessories as well as connections for the Delivery Items, shall be put in place by the customer in good time prior to the technician's arrival in order to ensure that he can make an immediate start on installation, assembly and commissioning. If requested by HIMT, the customer shall provide to the technician, at the customer's expense, qualified personnel as well as all materials, devices, cranes, hoists and tools etc. necessary for the installation, assembly, commissioning and adjustment of the Delivery Item.
- (3) The working time of the technician and all costs and expenses incurred in connection with the installation, assembly and commissioning during the time the technician is posted at the customer shall be borne by the customer. Any travel and waiting times shall count as working time.
- (4) Should there be any delays in HIMT providing the goods or services because the customer has failed to meet its cooperation obligations in a timely manner or fully, then all dates and deadlines that have been set for the provision of goods or services by HIMT shall be non-binding and shall require a review by HIMT and a new agreement between the contracting parties. The customer shall be obliged to reimburse any additional costs incurred by HIMT due to a failure to fulfil its cooperation obligations in accordance with the HIMT's prices applicable at the time in question. Both contracting parties shall be obliged to immediately notify one another about any delays in writing.

§ 7 Prices and terms of payment

- (1) The order confirmation issued by HIMT is decisive for the determination of prices for all deliveries and services.
- (2) All prices are quoted ex works or place of dispatch. They are quoted in Euro (EUR) or in any other currency specified in the order confirmation plus any transport, packaging, insurance, installation and instruction costs as well as value-added tax, excise duties, withholding taxes, duties or taxes on import and export, customs duties or similar taxes applicable in law at the statutory rate from time to time in force. If training is included in the price or is offered by HIMT in return for an additional fee, this does not include any travel, accommodation or subsistence costs of the customer and the participants nominated by the customer. These costs shall be borne by the

customer itself. The same applies to technicians' costs in accordance with § 6 (4) above.

(3) If a partial payment is agreed with the customer with a final payment after the technical acceptance, such acceptance is deemed to have been granted in case of any productive use of the delivery items. Regardless of an acceptance, all payments by the customer are due no later than 3 months after delivery of the delivery items.

(4) Any set-off or exercise of a right of retention by the customer is only permitted with regard to undisputed, acknowledged counterclaims or counterclaims that have been upheld and declared unappealable by a court of law.

§ 8 Retention of title

(1) Drawings, plans and system designs which HIMT produces in the context of contract initiation or implementation shall remain the property of HIMT. Any reproduction or transfer to third parties is prohibited; neither may these items be used by the customer or by a third party for the production of the Delivery Items in question or misused in any other way.

(2) HIMT retains title to the respective Delivery Item until its complete payment. Furthermore, the retention of title shall continue until all claims resulting from the business relationship with the customer have been settled.

(3) While the retention of title is in place, the following shall apply:

a) The customer shall have the right to use the Delivery Item, but he shall not be entitled to transfer it to third parties, to sell it or place encumbrances on it.

b) The customer shall ensure, at its expense, that the Delivery Item remains free from any encroachment by a third-party (e.g. seizure) and shall immediately notify HIMT of any impending encroachments in writing, including those that relate to the customer's business premises. The customer shall be entitled to transfer title of its prospective entitlement for security purposes only with the consent of HIMT.

c) Moving the Delivery Item to a different location shall require the written consent of HIMT and may only be effected by HIMT staff or their agents.

d) The customer shall ensure that the Delivery Item is kept in perfect condition. Furthermore, the customer shall insure the Delivery Item for the benefit of HIMT, at the customer's expense, against damage from mechanical breakdown, fire, theft and water, and provide proof of insurance and payment of insurance premiums to HIMT on request.

e) After prior notice and during usual business hours, the customer shall allow HIMT or its agents the right to inspect the Delivery Item and access to its premises for this purpose without claiming any payment in this regard.

§ 9 Claims for defects – limitation period

(1) If the delivery item is defective, the following shall apply:

a) HIMT undertakes to provide subsequent performance and provides this at its own choice either by remedying the defect or by delivering an item that is free of defects. The replaced parts shall become property of HIMT.

b) If any further attempts at remedying any defects are no longer reasonable and if supplementary performance finally fails, then the customer is entitled to withdraw from the contract or reduce the purchase price. Withdrawal from the contract is excluded if the breach of duty on the part of HIMT is merely insignificant.

c) The customer shall grant the time and opportunity required for HIMT to undertake all actions to remedy any defects and supply any replacements that HIMT deems necessary. Otherwise, HIMT is released from liability for any resulting consequences. If, for operational reasons, the customer requests the deployment of a service technician at short notice or the implementation of works outside of normal working hours, the customer bears the resulting additional costs (e.g. overtime surcharges, longer journey times).

(2) The limitation period for claims for defects is one year from delivery. If the start of the limitation period is linked to a technical acceptance by the customer, such acceptance is deemed to have been granted in case of any productive use of the delivery items. The customer shall immediately notify HIMT of any defects.

(3) Claims for defects are excluded:

a) In relation to any second-hand machines or other second-hand items, unless a liability for defects has expressly been agreed.

b) The consumption and wear of materials and parts which, by their nature, are subject to inevitable and regular wear and tear is not covered by the liability for defects.

c) If the delivery item is used in the customer's business in functional conjunction with hard- or software components already on site or that have been acquired from a third party, provided that the fault is caused by these or their lack of compatibility with the item delivered by HIMT. If HIMT has promised compatibility with third-party products, this only applies to the

product version current at the time the promise was made and not to any older or future product versions (software upgrades, service releases or software updates) of this product.

d) If and to the extent that a fault is due to the fact that the customer has failed to ensure compliance with technical parameters which are set out in the documentation and any documentation supplementing this.

e) If and to the extent that a fault is due to the fact that the customer fails to undertake, or fails to commission a third party to undertake, the prescribed maintenance and service works in accordance with the requirements set out in the operating manuals or tampers or causes a third party to tamper with the delivery items.

The customer shall pay for the service calls required to rectify the faults set out under a) to e) according to the applicable Terms and Conditions of Service of HIMT at the rates applicable from time to time.

(4) The customer remains solely liable for damage suffered as a result of inevitable and regular wear and tear, faulty or negligent handling, excessive use, unsuitable operating materials, unsuitable installation site in particular installation surface, lack of stability or inadequate electricity supply, chemical, electrochemical or electric influences, weather and other natural factors.

(5) Extra costs for supplementary performance, which are due to a shipment of the delivery item to a place other than the place of delivery, are borne by the customer.

(6) HIMT assumes no liability for any suggestions or advice provided to the customer by employees of HIMT as a courtesy outside the contractual scope owed; this applies correspondingly for any assistance provided in this context.

§ 10 Liability for damages

(1) HIMT is liable for claims:

- due to a culpable injury to life, limb or health of individuals,
- under the German Product Liability Act (Produkthaftungsgesetz),
- as a result of non-compliance with a guarantee,
- due to the fraudulent concealment of a defect or
- as a result of an intentional or grossly negligent breach of duty without limitation in accordance with statutory provisions.

(2) Apart from that, HIMT's liability shall be limited or excluded as follows:

a) In the case of a breach of fundamental contractual obligations caused by simple negligence, liability is limited to the typical damage foreseeable at the time the contract is entered into. A fundamental contractual obligation is an obligation that the contract is meant to impose on HIMT in accordance with its content and purpose, or the performance of which is necessary to make the implementation of the contract possible and on the compliance of which the customer regularly relies and is entitled to rely.

b) In case of a breach of non-fundamental contractual obligations caused by simple negligence and in case of any other breaches of duty caused by simple negligence, a liability of HIMT is excluded.

(3) Contractual damages claims of the customer against HIMT become time-barred in 12 months from the time the circumstances giving rise to the claim have become known. This does not apply to the claims referred to in paragraph 1.

(4) The aforementioned provisions in paragraphs 1 – 3 do not entail any change of the burden of proof to the customer's detriment.

§ 11 Liability for indirect losses or damages

Except in cases where HIMT has engaged in wilful conduct or gross negligence, HIMT shall not be liable for indirect loss or damage caused by a defective delivery item such as production downtime, lost profits or increased materials consumption.

§ 12 Rescission of the contract

(1) If the contract is rescinded after delivery (e.g. due to withdrawal by one of the contracting parties) the customer is obliged to surrender the delivery item to HIMT in advance, without prejudice to the rest of rescission provisions pursuant to the following paragraphs. HIMT is entitled to remove the delivery items from the customer's premises. § 8 (3) e) applies mutatis mutandis.

(2) Furthermore, HIMT may claim reasonable compensation from the customer for any deterioration, destruction or other reason why the delivery item cannot be surrendered, provided this lies in the customer's sphere of risk and responsibility.

(3) Moreover, HIMT may claim a fee for the use and enjoyment of the delivery item if the value of the delivery item has decreased in the period from its installation until HIMT has taken back full and direct possession of the item. This decrease in value is calculated from the difference of the total price according to the contract and the fair value as determined from its sales proceeds or, if a sale is not possible, by an estimate of a sworn expert.

(4) If HIMT legitimately withdraws from the contract, e.g. because the customer finally refuses to perform its contractual obligations or fails to obtain a funding commitment, the customer is obliged to compensate HIMT for all additional expenses incurred due to the withdrawal. Normally in these cases, HIMT will charge minimum expenses equivalent to any advance payment received for the delivery item; the customer retains the right to prove that HIMT has incurred lower expenses.

§ 13 Assignment

The customer is not entitled to assign and / or transfer its rights and obligations under this contract without written consent of HIMT.

§ 14 Service

If HIMT or HIMT's service company has taken on the provision of installation, instruction or other services as well as the delivery of service parts, HIMT's General Terms and Conditions of Service apply in addition to these Terms and Conditions of Delivery.

§ 15 Confidentiality

(1) The contracting parties shall both keep confidential any facts, documents and knowledge which the other contracting party discloses to them during the performance of the contract, provided the relevant contracting party has classified the respective information as confidential or has an obvious interest in its confidentiality ("Confidential Information"). The conclusion of this contract, its subject and content shall also be kept confidential by the contracting parties, with the exception of HIMT's list of references. Any publications regarding the conclusion of the contract may be issued by the customer only with the prior written consent of HIMT. Furthermore, the contracting parties undertake to use Confidential Information only for the purposes of processing the contract and to only make Confidential Information available to those staff members and advisors who require it in order to implement the contract and who are subject to the confidentiality obligation in the same way. In particular, they will not base their own developments on Confidential Information received or use it for the further development of their own products, nor will they register any intellectual property rights in relation to the Confidential Information or use it to object to an intellectual property right registration of the disclosing party.

(2) The obligation to maintain confidentiality and the restrictions on usage do not apply insofar as the Confidential Information in question demonstrably

- constitutes state-of-the-art technology in the public domain or becomes part of state-of-the-art technology without any action on the part of the receiving party or
- was already known to the receiving party or is disclosed by a third party entitled to do so or
- is developed by the receiving party without an exploitation of the Confidential Information or
- must be revealed pursuant to mandatory statutory provisions or official orders.

(3) If the contractual relationship and the cooperation of the contracting parties have come to an end, then each contracting party shall be under an obligation, at the other contracting party's request, to return the Confidential Information received to the other contracting party or to destroy it at its request. In this case, any data stored electronically shall be deleted in full.

(4) These obligations and restrictions on usage commence upon the first receipt of Confidential Information and end five years after the respective contract for whose implementation the Confidential Information was disclosed has been performed in full.

§ 16 Export control provisions

The delivery items and software may be subject to export control provisions of the Federal Republic of Germany, the European Union, the United States of America or other countries. In the case of an export of the delivery item abroad, the customer is responsible for compliance with legal provisions.

§ 17 Place of jurisdiction and applicable law

(1) In the case of contracts with merchants, persons who at the time the contract is concluded are acting in a commercial or self-employed capacity (entrepreneurs) as well as with legal persons under public law, Heidelberg, Germany, shall be the exclusive place of jurisdiction.

(2) These General Terms and Conditions of Sale and Delivery and all contracts entered into while they are effective are subject to substantive German law to the exclusion of the UN Sales Convention (CISG – United Nations Convention on contracts for the International Sale of Goods, entered into in Vienna on 11 April 1980).

§ 18 Severability clause

If a provision in this contract is or becomes ineffective in whole or in part, this does not affect the validity of the remaining provisions. The contracting parties shall work together to agree a valid provision that reflects the invalid provision as closely as possible in commercial term.