

# General Terms and Conditions of Service [EN]

## Heidelberg Instruments Mikrotechnik GmbH - Germany



Effective as of September 1, 2020

### § 1 Scope of application

The following Terms and Conditions of Service of Heidelberg Instruments Mikrotechnik, Mittelgewannweg 27, 69123 Heidelberg, Germany ("HIMT") apply, as far as not expressly stipulated otherwise in writing, to all services undertaken between HIMT and the customer as individual orders for the provision of services, and in particular to all assembly, installation, repair, troubleshooting, maintenance or instruction services. They also apply to any future business relationships even if they are not expressly agreed again. Any deviating general terms and conditions of the customer are not accepted, even if HIMT does not expressly object to them. These Terms and Conditions of Service do not apply to any services provided in the context of the fulfilment of the customer's claims for defects due to deliveries provided by HIMT.

### § 2 Conclusion of 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) or, in particular where the customer places his order by telephone or orally e.g., in urgent cases, if HIMT has accepted the order by starting to provide the service.

(2) Side agreements and amendments require mutual written confirmation (by letter, fax, or e-mail) in order to be effective.

(3) The General Terms and Conditions of Sale and Delivery of HIMT apply in relation to all deliveries of products, spare parts, wear parts, consumables, tools and software in the context of the provision of services. Under these terms and conditions, claims for defects asserted by the customer are subject to a limitation period of one year from delivery as well as a retention of title on the part of HIMT for all delivery items until full payment of the agreed price.

### § 3 Assembly and installation as an individual order for the provision of services

The individual order for the provision of assembly and installation services comprises the assembly and installation of a machine or component that has been supplied fully assembled or that has been dismantled for transport purposes as well as its functional test in the agreed scope. The installation and start-up of software are also part of a machine installation.

### § 4 Repair and troubleshooting as an individual order for the provision of services

The services provided by HIMT in the context of an individual order for the provision of repair or troubleshooting services regularly depends on the technical requirements. Unless expressly agreed otherwise, an individual order for the provision of services placed by a customer includes:

- carrying out all the work necessary, based on professional expertise and accepted engineering standards, to restore the machine or component to its working order;
- the delivery of all service parts required for this purpose pursuant to § 2 (3). Insofar as the service parts are included in the replacement procedure pursuant to § 6, the replaced service parts become the property of HIMT. The customer is obliged to return these replaced parts to HIMT;
- the installation of the service parts; • functional testing of parts of plants in relation to which repair or troubleshooting services have been commissioned; this does not, however, include functional testing of the whole plant. Given that the time required for repair and troubleshooting of a machine or component depends, among other things, on its age and condition as well as the existing facilities available at the customer's business premises, it is not possible to make any binding statements regarding estimated duration and costs. Prior to the execution of more extensive work or the installation of service parts HIMT will obtain the customer's consent if and to the extent
- a cost limit expressly set by the customer would have to be exceeded;
- the estimated repair cost would be distinctively disproportionate compared to the utility value of the plant to be repaired.

### § 5 Other individual orders for the provision of services (machine maintenance, instruction etc.)

The individual order for the provision of services includes

- in the case of machine maintenance the provision of maintenance services in accordance with the agreed upon scope;
- in the case of instruction or training services, instructing a person designated by the customer as to the operation and functioning of the machines, components or software to the extent necessary to achieve the purpose;
- in the case of oral user advice (e.g., provided by a member of the service staff on site or by telephone), providing or conveying available user knowledge; in relation to software, however, this is restricted to the latest and the preceding version only. In the case of more extensive consultancy projects or other services (e.g., the relocation of machinery or similar) the scope of services and the fee are set out in the offer submitted by HIMT or in the respective service package.

### § 6 Supply of service parts, replacement procedure

(1) Participation in the replacement procedure („repair by exchange“, RBE) If a service part is included in the replacement procedure provided by HIMT, the customer must return the replaced service part to HIMT. If, upon its receipt, HIMT discovers that it is not possible to repair the part in the producer's factory using commercially reasonable efforts, HIMT invoices the customer for the difference in cost compared to that of the newly delivered part.

(2) Returning unused spare parts

If the customer wishes to return service parts that had been acquired but not used in return for a refund of the purchase price, HIMT is only prepared to accept this provided the following conditions are met: If the service parts are received by HIMT, unopened in their original packaging, within 5 days from delivery of the new service part in Germany and within 10 days from delivery of the new service part abroad, HIMT will issue a credit equivalent to the purchase price of the newly delivered service part and reserves the right to charge a lump sum compensation for the return and the taking of the goods back into storage at a rate of 15% of the purchase price and a maximum of EUR 500 per service part. If the service parts are returned to HIMT with an opened original packaging within 5 days from delivery of the new service part in Germany and within 10 days from delivery of the new service part abroad, HIMT will issue a credit note for the purchase price of the newly delivered service part and reserves the right to charge a lump sum compensation for the return, the quality review required to be carried out at HIMT and the taking back into storage at a rate of 25% of the purchase price. No credit note will be issued for consumables and software or if the aforementioned conditions are not complied with.

(3) Acceptance of service part orders

With the exception of national public holidays and of public holidays in the state of Baden-Württemberg HIMT is available for orders via telephone Monday to Friday from 8.00 a.m. until 6.00 p.m. Shipping costs in relation to the delivery of service parts are not included in the price. If the customer requires faster delivery (e.g., early delivery, courier, intercity express), this will be charged for separately.

### § 7 Fees

(1) As a rule, a fee is chargeable for all services offered and provided by HIMT in the context of individual orders for the provision of services unless HIMT expressly offers them free of charge as a gesture of goodwill. All fees are quoted in addition to statutory value-added tax, excise duties, withholding taxes, duties HIMT TCs Service final Sept 2020 Page 2 of 3 or taxes on import and export, customs duties, or similar taxes in force from time to time.

(2) The fee for individual orders for the provision of services as well as travel costs to be borne by customers are laid down in the schedule of standard cost rates as amended from time to time. Travel times counts as working time and is billed at 50% of the agreed upon hourly rate. The prices quoted by HIMT for the services are based on cost factors at the time the offer is made. If the relevant cost factors change after the individual order for the provision of services has been placed (in particular salaries and wages or changes in price of materials), HIMT reserves the right to make reasonable adjustments to the fees provided there is a period of at least 3 months between conclusion of the contract and performance of the service; in this case, the prices applicable at the time when the performance of the service

has started are deemed agreed. At the customer's request, HIMT will provide evidence regarding the relevant cost factors to the customer.

(3) Waiting times for which HIMT is not responsible are considered as work time and are charged up to a maximum of 8 hours per day. Entire working days lost during a service deployment for which HIMT is not responsible (e.g., due to local holidays), will be charged with 8 hours per day at 50 % of the agreed upon hourly rate plus the lump-sum for travelling costs as well as accommodation costs as agreed.

(4) If the fee is to be calculated based on the schedule of standard cost rates, the service report to be signed off by the customer in this regard is used as the relevant basis. Working time and performance are recorded therein. Any part of a 15-minute period worked is rounded up to a quarter of an hour. HIMT reserves the right to reasonably adapt the schedule of standard rates for working hours and travel expenses if the operating cost changes substantially. When placing an order, the customer may request a schedule of standard cost rates as amended from time to time.

(5) 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.

(6) The prices for the sale of delivery items will be shown separately and their delivery is determined in accordance with the General Terms and Conditions of Sale and Delivery of HIMT.

### **§ 8 Payment**

(1) Payments shall be made by the customer without any deductions and free of any transaction charges to the designated account of HIMT. Unless specified otherwise in the offer or order confirmation of HIMT or agreed in writing, all payments are due immediately upon receipt of the invoice.

(2) In case of default of payment of the customer, default interest is charged in the amount of 5 per cent per year by HIMT; this does not affect the right to provide proof that the loss or damage suffered was lower.

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

### **§ 9 Joint ownership for security reasons, lien**

(1) In order to secure claims that have arisen or arise for the benefit of HIMT due to services provided, the customer grants joint ownership in the machine or component that was the subject of the service to HIMT in an amount equivalent to the invoice value of the service provided. Until the claim has been fulfilled, the customer holds the machine or component on behalf of HIMT free of charge.

(2) If repairs are carried out in a HIMT plant or a plant of another manufacturer, the customer grants a lien to HIMT with regard to the machine or component handed over in order to secure all claims that have arisen or will arise, provided such claims are not already secured in accordance with § 9 (1). In addition HIMT has the right to retain the machine or component until the claims have been paid in full.

(3) The joint ownership and lien for the benefit of HIMT expires once the invoice has been paid in full.

### **§ 10 Cooperation obligations of the customer, deadlines**

(1) The customer undertakes to ensure that all structural requirements are met at the site at which the machine or component are to be installed – in particular with regard to the stability and evenness of the supporting surface, the footprint and height, the quality of the ambient air (purity, temperature, flow), access to the premises and electrical supply. If a fault report with subsequent repair order is submitted, the customer shall provide an exact description of the error.

(2) In case of installation, maintenance and repair work that may implicate an interference with the power supply, air lines, pipes for technical gases, cooling and other media, air conditioning and/or water or wastewater pipes, the customer shall ensure compliance with the relevant health and safety regulations, e.g., by calling in a qualified and licensed technician at the customer's expense.

(3) Apart from that, in the case of services provided by HIMT the customer shall provide in a timely manner and at its own expense:

- the number of support staff deemed necessary by HIMT;
- devices, cranes, hoists, tools, equipment, and supplies required for installation and commissioning;
- electrical power, lighting, heating / air conditioning, water, compressed air, vacuum, technical gases, cooling and other media, exhaust air;
- suitable and in particular dry and lockable rooms or lockers to store tools and supplied parts • protective or clean room clothing as required on site;

- suitable barrier options if there are any hazards in the area, (e.g. by laser beams) which cannot be ruled out otherwise in the context of the necessary work;
- suitable processing options (especially for developing and assessing necessary test exposures).

(4) The customer shall ensure that, before the start of the installation of a machine or component all required parts are available on the spot and that all preparatory work has been carried out so as to allow HIMT's service engineers to start installation as soon as they arrive and without interruption.

(5) Before the start of and during the performance of any service by HIMT up to their completion, the machine must be free of the customer's production tasks. The customer shall inform HIMT without delay of any legal or factual changes affecting the individual order for the provision of services or its implementation.

(6) Deadlines that have not been expressly agreed upon in writing as binding shall be non-binding.

(7) A deadline is deemed to have been met if the service has been performed by the agreed upon deadline.

(8) Agreed upon 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 performance of the service 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.

(9) 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.

(10) If deadlines are extended due to the aforementioned circumstances or if HIMT is released from its performance obligations, the customer does not have any liability claims of any kind resulting therefrom 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.

### **§ 11 Claims for improper performance of the services**

(1) HIMT will execute the service with the necessary professional competence and care while taking into account the provisions of § 12 of these General Terms and Conditions of Service. In the event of a proven defect in the services performed due to a breach of duty of care, HIMT will repeat the faulty part of the service once more free of charge. There are no further or other claims of the customer such as e.g., warranty claims based on improper performance of the services.

(2) If, in the context of the provision of services by HIMT, deliveries are made or, by way of exception, the provision of a work (Werkleistung) or a work with materials supplied (Werklieferungsleistung) was expressly agreed upon, the customer may only raise claims for defects in accordance with § 9 of the General Terms and Conditions of Sale and Delivery of HIMT. In accordance with these terms and conditions, the customer's claims for defects are subject to a limitation period of one year from delivery or acceptance.

### **§ 12 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 on 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. (5) HIMT does not accept liability for any advice provided to the customer by HIMT's experts as a courtesy outside of the contractually agreed scope; this applies accordingly with regard to the provision of free assistance.

#### **§ 13 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.

#### **§ 14 Assignment**

The customer is not entitled to assign its rights under this contract without written consent of HIMT. HIMT reserves the right to have certain individual services carried out by the staff of the manufacturers used by suppliers or by other authorised partners.

#### **§ 15 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 selfemployed 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 Service 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).

#### **§ 16 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 terms.