

General Terms & Conditions – HYDAC CMX Local Server Software

I. Application

Contracts on the grant of rights to use the HYDAC CMX Local Server software (referred to below as “Software”) are subject to our General Terms & Conditions – HYDAC CMX Local Server Software below. They are applicable exclusively vis-à-vis companies and public authorities. In entering into the contract, the customer agrees to be bound by our General Terms & Conditions – HYDAC CMX Local Server Software. We expressly oppose any terms that contradict our General Terms & Conditions – HYDAC CMX Local Server Software; they shall not apply unless we have agreed to them in writing. Where the requirement of the written form is set out in these terms and conditions, it shall also be deemed to be satisfied where transmission takes place by means of telecommunications (e-mail, telefax).

II. Subject matter of the contract

1. The contract covers the provision for use, in exchange for the payment of a fee, of the Software including the documentation for a limited period of time.
2. The Software offers the customer the possibility to collect and store data, in particular the data of data points (in this case: sensors and the like) and of Edge devices, and to process it. To this extent, the customer shall be permitted to link an agreed number of data points and Edge devices with the Software. The number of data points and Edge devices supported by the Software depends on the package purchased under the contract.
3. The Software is featured as server software (on-premises software). The Software, which is installed on a server, can be accessed via the Internet or a network, provided that the requirements as stipulated in the specification are satisfied for this at the customer's end. In so doing, the Software remains on the server and runs on it. No installation on other devices is permitted. These terms and conditions, our confirmation of order and the specification belonging to the Software shall be definitive with regard to the performance to be provided in a specific case.

III. Grant of rights

1. Under the agreed terms, the customer receives the non-exclusive right, limited to the contract term, to copy the Software for use by the customer. Permissible acts of duplication include installation on the storage media of a specific computer (server) and transfer of the Software, either in its entirety or in parts, from this storage media to RAM, and then into the CPU of the graphics card of the server and, as applicable, other machines that access the Software via the Internet or a network.
2. Any reinstallation of the Software – regardless of the reasons for this, including on the server on which the Software was initially installed – shall be subject to our prior consent in any event.
3. The customer shall not be permitted to remove existing protection mechanisms from the Software preventing its unauthorized use or to circumvent these mechanisms, unless this is permissible under the law.
4. The customer shall not be entitled to make the Software available to a third party, whether in exchange for valuable consideration or in exchange for no consideration, for use by that third party. Consequently, the customer is prohibited from engaging in the following, including, but not limited to, renting, giving, loaning, leasing or selling the Software, unless permitted under an agreement stipulating otherwise.
5. The customer has the right to make one backup copy where this is required for securing future use. The backup copy shall be labelled as such.
6. The customer may not decompile the Software without our consent unless consent is not required under the law. Disassembling or reconstructing, i.e. reverse-engineering the Software is not permissible.

IV. Provisioning and installation

1. The customer will be provided a copy of the Software in installable form on data storage media. The customer will additionally receive documentation belonging to the Software (installation guide, description of the software product, software and/or user manual in text form).
2. In principle, the customer is responsible for installing the Software. Installation services are not covered by the scope of services to be provided by us. However, these additional services may be agreed in exchange for separate remuneration.

V. Term and termination of the contract / return of data media, documentation and backup copies

1. Provision of the Software is done for a term of twelve (12) months (contract term). The contract term shall commence on the agreed date and automatically renew for another twelve (12) months where neither of the parties serves notice of termination in a timely manner.
2. The notice period amounts to three (3) months for the end of the current contract term.
3. The foregoing shall be without prejudice to the right of either party to terminate the contract without notice for good cause.
4. Upon the expiration of the contract the customer shall return to us the data media and any backup copies that have been made or destroy same, uninstall the Software and delete any detectable remains of the Software from the server of the customer's IT system. The customer shall send us written confirmation of its satisfaction of these obligations, if we so request.

VI. License fee, payment of the license fee

1. A monthly license fee is payable throughout the contract term.
2. The amount of the license fee depends on the package that has been purchased in an individual case, the package setting out the number of data points and Edge devices supported. All prices are quoted exclusive of VAT at the current rate. Separate fees shall be payable for any separately purchased support package that has been agreed.
3. The license fee is payable for twelve (12) months in advance. Payment is due two (2) weeks before the inception of the contract term or the current renewal term.
4. The customer shall not be entitled to offset claims against outstanding amounts owed us, unless the customer's claims for set-off are undisputed or final and non-appealable, or they originate from the same contract as our claim. The customer may assert a right to withhold payment only for claims arising from the same contractual relationship.
5. At the beginning of each contract renewal period we shall be entitled to adjust the license fee at our reasonably exercised discretion, with effect for the future, where this is warranted on account of price trends as shown by the consumer price index of the German Federal Statistical Office, in order to preserve the value of the agreed license fee. We will advise the customer three (3) months in advance in writing of any adjustment in pricing. In this case, the customer shall be entitled to exercise a special termination option, termination to go into effect as of the end of the contract term. This special termination option may be exercised up to two (2) weeks at the latest prior to the expiration of the contract term.

VII. Support

The content and scope of support are determined by the package purchased in an individual case and the service level agreed in it. Where no package has been agreed, the BRONZE service level pursuant to the service level agreement (SLA, see Appendix) shall be deemed to be agreed.

VIII. Customer's duties to cooperate and required conduct on the customer's part

1. The customer is obligated to notify us of any functional failures, malfunction or functional impairments of the Software without undue delay and to describe these events as precisely as possible in text form. The terms agreed in the service level agreement (SLA, see Appendix) shall apply.
2. When describing, narrowing down, establishing and reporting incidents and fault events, the customer must follow the instructions given by us.
3. The customer is to make complete data backups on a regular basis and use a current, updated version of virus scanning software.
4. The system requirements set out in the Software specification must be satisfied in the customer's environment for using the Software. The customer shall bear responsibility for this.
5. The customer shall prevent any unauthorized access to the Software and take suitable precautions to this end. For this purpose, the customer shall instruct, where necessary, persons who are given a user account of their own about compliance with copyright law.

IX. Unauthorized use by third parties, contractual penalty

1. In the event that our services are utilized by unauthorized third parties using the customer's login credentials, the customer shall be liable for the resulting fees until the customer's order to change the login credentials has been received or the customer has reported the loss or theft of its login credentials. This shall apply where the customer is at fault for the unauthorized third party gaining access.
2. Where the customer culpably violates its obligation to prevent unauthorized third parties from using the Software, this shall incur a contractual penalty in the amount of the license fee payable for six months. In addition, in cases of repeated conduct of this type we shall be entitled to terminate the contract without notice for good cause.

X. Rights in the event of material defects

1. The legal provisions pertaining to warranty in rental and lease agreements shall apply to the Software. Strict liability for defects that were already present upon the conclusion of the contract shall be exempted.
2. Technical data, specifications and performance data in public statements, including, but not limited to, advertising media, shall not constitute warranted characteristics or features. The functionality of the Software is first based on the description contained in the Software specification and any additional agreements made pertaining to this. Otherwise the Software must be suitable for the designated use set out in the contract and otherwise exhibit the characteristics that are customary for Software of the same type. Claims based on material defects will not be entertained where there are insignificant deviations from the agreed or stipulated characteristics or in the case of only slight impairment of serviceability.
3. We make the Software available and will maintain it in a condition that is suitable for use as provided for by the contract. Our obligation to maintain the Software shall not extend to adapting the Software to changed operating conditions and technical or functional developments such as changes in the IT environment, including, but not limited to, changing the hardware or the operating system, adapting functionality to match that of competitor products, or making the Software compatible with new data formats.
4. No defects in the Software may be claimed especially where the customer makes modifications to the Software or parts thereof personally or has modifications made by third parties without our authorization. The same shall apply to errors attributable to faulty installation work on the part of the customer or software products used by the customer that modify the Software or otherwise impact it.
5. We disclaim all responsibility for the Software's suitability for use with specific data points unless this is expressly set out in the Software specification.

6. The customer may not carry out a reduction of the license fee by deducting amounts from agreed license fee payments. This shall be without prejudice to the customer's right to assert relevant unjust enrichment claims or claims for damages.
7. The right of the customer to give notice of termination due to a failure to be granted use as provided for by the contract shall be precluded unless restoring use as specified in the contract must be considered to have failed.

XI. Liability and indemnification

1. Unless provided for otherwise below, we disclaim all liability, regardless of the legal grounds on which any such liability may be founded.
2. This disclaimer of liability shall not apply to cases of willful intent or gross negligence. Moreover, it shall also not apply to defects fraudulently concealed or whose absence was guaranteed, or in the case of negligent causation of harm to life, limb and health, or the breach of a material contractual obligation.
3. In the event that we should negligently breach any material contractual obligation, our liability shall be limited to the reasonably foreseeable loss.
4. However, this shall be without prejudice to claims under the German Product Liability Act (ProdHaftG) in any event.
5. We will accept no lump-sum compensation where this is not provided for by law.
6. Where the damage incurred by the customer arises from the loss of data, we disclaim all liability where such loss could have been prevented by the customer making complete backups of all relevant data on a regular basis.

XII. Engaging the services of third parties

We shall be entitled to commission third parties to fulfill our obligations under the contract.

XIII. Miscellaneous provisions

1. All legal relations between the parties shall be governed and interpreted exclusively in accordance with the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of performance shall be the registered office of our company. This shall also be the exclusive place of jurisdiction for all disputes arising from or in connection with the contract where the customer is a merchant. However, we also reserve the right to bring action against the customer at the customer's domicile.
3. The customer agrees to be bound by the principles of our Business Code (available on our website at: www.hydac.com→Company→Business Code).
4. If any of the above provisions should prove void or unenforceable, it shall not affect the validity or enforceability of any other provision hereof.

Appendix: Service Level Agreement (SLA)

Appendix to General Terms & Conditions – HYDAC CMX Local Server Software

The following provisions specify the support services to be provided by us according to the agreed service level.

I. Terms and definitions

- “Business hours” (cf. clause II.1. of this Appendix) shall mean the time during which we are obligated to make suitable staff available for the purpose of providing specified support services. Incident reports are processed by us exclusively during working hours. The following are not included in our business hours: public holidays at our registered office and the period from 24 December to 31 December.
- “Incident” shall mean any impairment of the Software, e.g. downtimes, errors or degraded quality.
- “Workaround” shall mean a temporary solution shown by us enabling the impact of incidents on the functionality of the Software to be circumvented.
- “Response time” shall mean the maximum period between the receipt of an incident report and the time at which a support team member commences with issue analysis or issue resolution in a qualified manner. The response time shall commence with the transmission of the incident report to us including the information as set out in clause II.3 in this Appendix. The response time is not equal to the time period within which the request of the customer has been conclusively processed and the issue that was reported has been resolved.
- “Service level” shall mean the agreed level of service, including, but not limited to, the scope of support, response time and processing time.
- The availability of phone support (cf. clause II.1. of this Appendix) refers to the hours during which the hotline is manned and requests can be accepted and logged. The availability of phone support is not the same as “business hours”.
- “Knowledgebase” shall mean the online help enabling explanations on functionality to be accessed and printed out while using the Software for which the support services are provided.
- All times are in reference to local time in Germany.

II. Incident reports / support requests

- The acceptance and logging of incident reports and support requests is done only during business hours by way of the following channels:

Service level	BRONZE	SILVER	GOLD	PLATINUM
Access to knowledge-base	x	x	x	x
E-mail	x	x	x	x
Phone support (available exclusively for priority 1 incidents, hereinafter clause II.4.)			x	x
Availability of phone support			Mon–Fri 9am–4pm	Mon–Fri 8am–6pm
Chat support			available as a bolt-on option	available as a bolt-on option
Business hours	Mon–Fri 9am–3pm	Mon–Fri 9am–3pm	Mon–Fri 8am–5pm	Mon–Fri 8am–5pm
Remote maintenance		x	x	x

Requests via e-mail are received around the clock (0:00–24:00) at the e-mail address indicated in the Software specification for support requests. However, processing of requests is carried out exclusively during business hours.

- Only designated key users, IT heads, administrators and the customer’s executive management are entitled to use support services on the part of the customer. When reporting an incident, the persons availa-

ble as designated contacts for the respective incident are to be indicated as well as how these persons may be reached by phone. The designated contacts are to be indicated so that we are able to be in constant and direct contact with one of them during the customer’s business hours at minimum for the duration of the incident.

- The customer must ensure that an incident report or support request contains the following information:
 - customer’s name and server (sub-domain, e.g. customer_A.hydac-cmx.com),
 - detailed description of the issue,
 - date and time at which the issue arose,
 - actions that have been taken so far to resolve the issue.
- Incident reports submitted by the customer are classified according to the following priority levels:

Priority 1	Critical issue	The Software is not available; key components of the Software or the application are not available or the user is severely hampered. No workaround is possible.
Priority 2	Non-critical issue	Individual functions work only to a limited degree or are not available in part. This also applies where a critical issue is present for which a workaround is possible and reasonable.

The criteria applied for classifying an incident as a priority level: the presence of the characteristic features set out in the above definition. If an incident develops further after submitting a report to us or if it should disappear, the customer is to advise us of this without undue delay.

- The response time in the individual service levels is agreed as follows, depending on the priority level of the incident:

Service level	BRONZE	SILVER	GOLD	PLATINUM
Priority 1	3 business days	2 business days	next business day	Same business day (where reported before 12:00 noon)
Priority 2	5 business days	3 business days	2 business days	Next business day

We will inform the customer in a separate communication of the time that processing the customer’s incident report or support request is expected to take. When doing this, we will take appropriate account of the priority level, the complexity of the issue and the service level.

III. Services not covered by support

- Support does not cover the following: impaired data transmission outside of the data network operated by us caused by line failures or disruptions of telecoms providers, for example.
- Support also does not cover faults and disruptions caused by the customer directly. A fault or disruption caused by the customer includes, but is not limited to, incorrect operation of the Software by the customer or where the customer, without our authorization, has made modifications to the Software, or has made changes to the underlying hardware or software infrastructure.
- Support also does not include training services.
- In the case of clauses III.2. and III.3. of this Appendix, support services can be made available by agreeing separate remuneration.