

General Terms & Conditions – HYDAC CMX SaaS Software

I. Application

Contracts on the use of the HYDAC CMX SaaS Software (hereinafter called "Software") as an SaaS (software as a service) or cloud solution are subject to our General Terms & Conditions – HYDAC CMX SaaS Software set out 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 SaaS Software. We expressly oppose any terms that contradict our General Terms & Conditions – HYDAC CMX SaaS 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, use of the Software

1. We will make the Software available to the customer for use by it, in exchange for the payment of a fee, for the term of the contract concluded on the basis of these terms and conditions, in the agreed version as a web service at the router exit of the data center in which the server on which the Software is installed is located (referred to below as "Provisioning Point"). For this purpose, we will set up the Software, or we will have a service provider commissioned by us set up the Software, on a server that is accessible to the customer via the Internet. The Software, the computing power required for its use and the requisite storage and data processing space will be provided by us. 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) for a limited period of time.
2. Where the Software runs exclusively on our servers or on a server of a service provider contracted by us, the customer shall not require any copyrighted proprietary rights of use in the Software. Consequently, we grant no such rights. However, we grant to the customer for the term of the contract the non-exclusive, non-transferrable right, restricted in time to the term of this contract, to load the Software's graphic user interface (GUI) into RAM for display on the screen of the terminal devices used for this purpose under the contract and to make the resulting copies of the GUI. The customer shall not be permitted to install or store the Software on data media (e.g. hard disks and the like), even temporarily.
3. The Software offers the customer the possibility to merge and store data, in particular the data of data points (in this case: sensors, for example) that capture specific data 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.
4. We shall not be responsible for establishing and maintaining the data and/or Internet link between the customer's IT systems and the Provisioning Point. The same shall apply to establishing and maintaining the data link between individual data points (cf. clause II.3) and the Provisioning Point and/or the Edge devices used and the Provisioning Point.
5. 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.
6. We will provide to the customer the login credentials required for using the Software enabling the customer to administer its own customer area. The customer may create the agreed number of user accounts in the admin area.
7. The Software may be used only by the agreed number of users. Use of a user account by more than one natural person (account sharing) is not permitted.
8. 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.
9. 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 agreed otherwise in an agreement stipulating otherwise.

10. Otherwise our confirmation of order and the Software specification shall be definitive with regard to the performance to be provided by the Software under the contract.

III. Provision of disk space

1. We will provide to the customer a defined amount of disk space on a server which can be accessed via the Internet and can be used as provided for by the designated use of the Software. The parties will set out further details in a separate agreement.
2. Clause II.4 shall apply accordingly to the provision of the disk space.

IV. Availability of the Software

1. The Software is operational 24/7, with an average annual availability of 98%. The calculation of the annual average is based on the business days in the state of Saarland, Federal Republic of Germany.
2. When calculating availability, downtimes for which we are not responsible shall be considered to be available times. Downtimes not attributable to us include, but are not limited to:
 - a) Downtimes due to scheduled or unscheduled maintenance work as defined in section V.;
 - b) Downtimes due to maintenance work agreed with the customer;
 - c) Downtimes due to operational disruptions caused by a force majeure event or other unavoidable events beyond our control which were unforeseeable even when exercising due care and which could not be averted with reasonable effort, which make our obligations under clause IV.1. significantly more difficult or impossible, whether in whole or in part, such as strikes, lockouts, exceptional weather conditions, power outages, operational or traffic disruptions and transport obstructions and which release us from our obligations under clause IV.1. for the duration of such an event.
 - d) Downtimes due to virus or hacker attacks, unless they result from our failure to take the agreed protective measures, or in the absence of an agreement, failure to take customary, standard protective measures;
 - e) Downtimes due to disruptions caused by the customer;
 - f) Downtimes due to software bugs in other software or due to faults triggered by other software;
 - g) Downtimes due to interruptions in or lacking bandwidth of the data link between the Software and the data points and/or Edge devices;
 - h) Downtimes caused by third parties.
3. The customer shall report to us any impaired availability of the Software (cf. clause XI.1.).
4. All availability figures are in reference to the quality to be provided by us with regard to the Software offered to the customer for use at the Provisioning Point. Any degradation in data transmission from this Provisioning Point to the customer and/or in the customer's own IT system is not covered by this availability.

V. Maintenance work

1. We are entitled to interrupt the availability of the Software for maintenance work.
2. We will schedule maintenance work so that impairments to the use of the Software by the customer are minimized to the degree that this is possible.
3. Scheduled maintenance work shall be announced in advance in good time.
4. We shall also be entitled to perform unscheduled maintenance work to the Software for good cause, e.g. when software operation is jeopardized. This includes, but is not limited to, emergency changes, e.g. application of security patches that are necessary for securing and maintaining operations and which must be applied immediately. We will notify the customer of any such unscheduled maintenance work without undue delay and carry it out so that impairments to service are minimized.

VI. Rights in processed data, data backups, indemnification against the claims of third parties

1. Being a technical service provider, we store content and data on behalf of the customer which the customer enters and saves when using the Software and makes available for retrieval. The customer undertakes not to upload any content or data that is criminal or otherwise unlawful and not to use other applications in connection with the Soft-

ware that contain viruses or other malware. In particular, the customer undertakes not to use the Software for the purpose of offering prohibited services or goods. The customer is the data controller for personal data relating to the customer and the customer's users and must therefore always verify whether it, the customer, has the necessary legal permissions to process such data using the Software. The customer is solely responsible for all content that is used by the customer or the customer's users, as well as any rights required for these purposes. As a general principle, we do not examine the content used by the Software.

2. To this extent, the customer undertakes to indemnify us and hold us harmless from and against any liability and costs, including, but not limited to, potential costs and actual costs incurred in legal proceedings in the event that claims are raised against us by third parties, including claims by the customer's employees, as the result of alleged actions or omissions on the part of the customer. We shall notify the customer of any such claims and, as far as legally possible, give the customer the opportunity to defend against the asserted claim. At the same time, the customer shall communicate to us without undue delay all information available to the customer concerning the facts that are the subject of the claim. This shall be without prejudice to claims for damages asserted by us going beyond this.
3. The customer shall grant to us the right, for the purpose of carrying out the contract, to duplicate the data to be stored on the customer's behalf by us, to the extent that this is required to provide the services under the contract.
4. We shall be entitled to store all data in a backup system or separate backup data center that is entered and saved by the customer when using the Software and made available for retrieval. To remedy disruptions, we shall also be entitled to make modifications to the data structure or data format.

VII. Rights to machine data and its use

1. All rights in the data that is captured by the Software in the data points ("machine data") and transferred by the customer to the disk space provided to the customer for processing by the Software ("Data Input") as well as all rights in the content and/or materials, applications, and other information that result from processing the Data Input by the Software, including the rights in aggregations, transformations and visualizations ("Data Output"), shall belong to the customer.
2. The customer shall grant us the non-exclusive right to use the Data Input and Data Output as follows:
 - a) during the contract term: for the operation of the Software, provision of support services and, as applicable, other services to be provided by us in this context as specified in the contract.
 - b) without limitation as to time and territorial scope and exclusively in anonymized form: for the purpose of quality assurance, improvement and continued development of the Software and support, and for the purpose of developing and improving similar offerings.
3. For the purposes set out in clause VII.2, we shall be entitled to make copies of and to process the Data Input and Data Output without obtaining the customer's consent in a specific case.
4. We shall be entitled to transfer the rights granted to us in clause VII.2, for the purposes set out in this clause, to our associated companies, our vicarious agents and companies engaged by us for fulfilling our obligations under the contract, and to issue sublicenses to them. However, we shall not be permitted to share the Data Input and Data Output with other customers.

VIII. 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.

IX. Term and termination of the contract

1. The contract term amounts to twelve (12) months. 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 shall amount 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 termination of the contract, we shall return to the customer all documentation and data media associated with this contract that have been provided to us and are still in our possession and delete the data stored in our systems, provided that this does not run counter to record retention and preservation requirements or rights.

X. 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. Separate fees shall be payable for any separately purchased support package that has been agreed. All prices are quoted exclusive of VAT at the current rate.
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. 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.
5. 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.

XI. 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 included service level agreement (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, and the customer alone, shall be responsible for making complete, regular backups of its data. Also, where the customer has provided data and documentation to us for the purpose of integration in the Software, we will not back this data up against loss.
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. Where the customer has provided to us protected content (e.g. graphics, trademarks and other copyright- and trademark-protected content), the customer shall grant to us all of the rights required to perform our obligations under the contract. In this context, the customer warrants that it owns all the requisite rights in the materials provided to us in order to grant us the associated rights.
6. The customer shall keep strictly confidential all of the login credentials provided to it, including, but not limited to, the login credentials for administering the customer's account, and ensure that any persons who are provided with the login credentials or a user account of their own do likewise.
7. 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.
8. When using our services, the customer undertakes to dispense with using any technologies that pose an undue burden to or load on our systems and equipment. We shall be entitled to take protective measures at our equitable discretion, e.g. limit the runtime of scripts. We will notify the customer without undue delay of any such actions and request that the customer removes or disables the technologies causing this. This shall not apply to servers that have been made available for the exclusive use by a single customer (dedicated hardware).

9. The customer may not engage in the following actions, in particular, using or involving the services provided by us:
- sending e-mails to third parties for advertising or promotional purposes;
 - attempting to gain unauthorized access to or to intrude into third-party systems (e.g. hacking);
 - web scraping, i.e. extraction of data on third-party IT systems using automated means (crawlers, spiders, bots and the like);
 - impairment of third-party systems by sending or forwarding data streams and/or e-mails (e.g. DoS/DDoS attacks / spamming / mail bombing);
 - spoofing of IP addresses, e-mail and news headers and dissemination of malicious software;
 - searching for open ports on networks (e.g. port sniffing and scanning).

XII. 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.

XIII. 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 for use 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 software products used by the customer that impact the Software.
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.

XIV. 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.

XV. Confidentiality

1. The parties shall keep confidential in perpetuity all information regarding the other party of which they have gained or may gain knowledge in association with the contract, namely information that has been designated as confidential or is recognizable as trade or business secrets (referred to below as "Confidential Information"), and not disclose it to third parties or record it or otherwise exploit it, unless the other party has expressly consented in writing to its disclosure or use or the information must be disclosed by operation of the law, court order or administrative ruling.
2. "Third parties" in terms of clause XV.1. shall not extend to companies that are associated with us and other companies that have been or may be engaged by us to perform our obligations under the contract, provided that sharing such information is required in order to properly fulfill our obligations under the contract. We undertake to bind these recipients to confidentiality in the same manner.
3. Information that shall not be deemed Confidential Information as defined by clause XV.1. shall include:
 - information that was already previously known to the other party without the information being subject to a confidentiality obligation,
 - information that is generally known or becomes known without breaching the confidentiality obligation,
 - information that was disclosed to the other party by a third party without breaching the confidentiality obligation.
4. The obligations set out in section XV. shall remain in full force and effect as long as the information is confidential as defined by section XV., however for a maximum period of five (5) years subsequent to the termination of our business relationship. This shall be without prejudice to any other applicable legal provisions. As to trade secrets, the above obligations shall remain in full force and effect indefinitely.

XVI. Engaging the services of third parties

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

XVII. 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 SaaS 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.