



HEIDENHAIN Terms and Conditions of Purchase (August 29, 2016)

I. Scope of HEIDENHAIN's Terms and Conditions of Purchase (HEIDENHAIN's Terms and Conditions)

1. The HEIDENHAIN Terms and Conditions shall govern exclusively. All contracts concluded by HEIDENHAIN as purchaser or customer shall be subject to the HEIDENHAIN Terms and Conditions, unless expressly otherwise agreed in writing. Any and all conditions of the Supplier shall not be deemed an integral part of the contract, even if HEIDENHAIN fails to expressly contradict such conditions. Conditions of the Supplier shall only and insofar become part of the contract if HEIDENHAIN expressly agrees to their validity in writing. This approval requirement shall apply in any case, even if, in cognizance of the Supplier's General Terms and Conditions, HEIDENHAIN accepts shipments from the Supplier without reservations. The HEIDENHAIN Terms and Conditions shall particularly apply to contracts regarding the sale and/or supply of movable items (hereinafter referred to as goods), regardless of whether the Supplier manufactures these goods himself or purchases them from upstream suppliers (§§ 433 and 651 of the German Civil Code).

2. The respectively current edition of the HEIDENHAIN Terms and Conditions shall also serve as general agreement to future contracts with the same Supplier regarding the sale and/or supply of movable items, without HEIDENHAIN having to refer to them in each individual case; HEIDENHAIN shall inform the Supplier of any modifications to the HEIDENHAIN Terms and Conditions without delay.

3. Individual agreements reached with the Supplier in exceptional cases (including secondary agreements, amendments and modifications shall have priority over the HEIDENHAIN Terms and Conditions in any case. Written contracts or written confirmation from HEIDENHAIN shall be definitive for the content of such agreements.

4. References to the validity of statutory regulations shall only be for purposes of clarification. Therefore, even without such clarification, these statutory regulations shall apply, insofar as they have not expressly been adapted or ruled out by the HEIDENHAIN Terms and Conditions.

II. Conclusion of contract

1. No order issued by HEIDENHAIN shall be legally binding unless confirmed in writing. In the case of informal business transactions, any order issued by HEIDENHAIN shall be deemed a letter of confirmation for commercial purposes.

2. Unless expressly otherwise agreed in writing, failure on the part of HEIDENHAIN to react to suggestions, demands or documents submitted by the Supplier shall on no account be deemed to constitute consent.

3. The Supplier must inform HEIDENHAIN of obvious errors (such as typographical or mathematical mistakes) and incompleteness of the order, including order documents, for the purpose of correction or completion before concluding the agreement; otherwise the contract shall be considered invalid.

III. Scope and content of performance / rights of use / property rights

1. The performance obligations of the Supplier shall be based on the specifications forwarded upon conclusion of the contract or, in the absence of the same, on the particulars contained in quotations and brochures provided by the Supplier.

2. Unless expressly otherwise agreed in writing, any and all deliveries shall comply with the DIN and/or VDE standards prevailing at the time, as well as with other standards customary in the trade, including EU standards.

3. HEIDENHAIN shall accept delivery of the ordered quantity or number only. Short, excess or partial delivery shall not be permitted without the prior written consent of HEIDENHAIN.

4. The Supplier shall not—without the prior written consent of HEIDENHAIN—be entitled to have third parties, such as subcontractors, carry out services for which the Supplier is responsible. Unless otherwise agreed to in individual cases (such as the sale of goods in stock), the Supplier shall bear the procurement risk for his services.

5. HEIDENHAIN receives the irrevocable, simple, temporally and spatially unlimited, transferable and sublicensable right to use software and associated documentation for the purpose ensuing from the contract. The Supplier grants HEIDENHAIN an exclusive right of use to individual components of software that is adapted to the operational processes of HEIDENHAIN. The Supplier shall inform HEIDENHAIN in good time whether the software contains open-source software, in particular before the installation or initial operation of that software. The granting of rights is entirely compensated upon payment of the agreed remuneration.

6. HEIDENHAIN is entitled to apply at its own cost for industrial property rights for all rights ensuing in the fulfillment of the contract. This applies in particular to the granting of an exclusive license. Upon request by HEIDENHAIN, the Supplier shall provide all information and documents in as much as they are required for the application. The granting of rights is entirely compensated upon payment of the agreed remuneration.

7. The provisions of the REACH Regulation (EC) No 1907/2006 as well as the RoHS Directive 2011/65/EU, including the relevant national implementation acts are to be complied with in full by the Supplier, regardless of whether they are relevant to the products to be supplied, including packaging; in particular, the Supplier is obliged to provide the necessary information and documentation completely and in a timely manner. This does not apply only inasmuch as the aforementioned requirements are not legally binding and deviations have been agreed upon in writing with HEIDENHAIN. If the Supplier's products, including the packaging, do not meet the aforementioned requirements, the Supplier must notify HEIDENHAIN in writing immediately, at the latest before delivery.

IV. Changes in performance

1. Should it become evident during execution of the contract that deviations from the specifications originally agreed are necessary or expedient, the Supplier shall notify HEIDENHAIN accordingly without delay. HEIDENHAIN shall then advise whether HEIDENHAIN agrees with the proposed modifications.

2. HEIDENHAIN shall reserve the right to request changes in performance following conclusion of the contract, provided that such changes may reasonably be expected of the Supplier or are usual in the trade. In the event that HEIDENHAIN requests changes in performance, it shall make reasonable allowance for any implications this may have, particularly with regard to increases or reductions in costs, and delivery dates.

V. Delivery dates and delayed delivery

1. The delivery date specified in the order issued by HEIDENHAIN shall be binding. If no delivery date specified is in the order, and no other date has been agreed to, then the delivery date shall be six (6) weeks from conclusion of the contract.

2. If it becomes evident to the Supplier that he will be unable to meet the delivery date, he shall be obliged to notify HEIDENHAIN immediately in writing, advising the reasons for the delay, as well as the estimated duration.

3. A delay in delivery shall in no way diminish HEIDENHAIN's statutory rights.

4. Independent of the rights mentioned in V.3. above, HEIDENHAIN shall be entitled to demand a contractual penalty from the first day of delay in delivery amounting to 0.5% for each week or part thereof, however in total no more than 5% of the overall contract value of the delivery, unless the Supplier is able to conclusively prove that HEIDENHAIN has incurred no damages whatsoever or damages that are substantially, i.e. at least 10%, lower than the amount of the penalty. This shall not preclude the possibility of HEIDENHAIN furnishing evidence of damages in excess of the contractual penalty stipulated in the first sentence hereof. Should HEIDENHAIN accept the delayed delivery, then HEIDENHAIN shall claim the contractual penalty at the latest with the final payment.

VI. Transfer of risk, documentation

1. Unless otherwise agreed in writing or stipulated in the order, deliveries shall be accepted only as DDP (delivery duty paid) to the address stated on the order. The respective delivery address is also place of fulfillment (obligation to provide). Risk shall not transfer until the goods are delivered at the place of fulfillment (usually the receiving department at HEIDENHAIN). If an acceptance procedure at such time has been agreed to, then it is decisive for the transfer of risk. In all other cases the statutory regulations of the German legislation concerning works and services shall also correspondingly apply to such acceptance procedure. Default of acceptance by HEIDENHAIN shall be equivalent to delivery or acceptance.

2. Should HEIDENHAIN be in default of acceptance, the statutory regulations shall take effect. The Supplier must, however, expressly offer his service to HEIDENHAIN even if a specific or definable calendar date has been agreed for an action or assistance by HEIDENHAIN (e.g. provision of material). Should HEIDENHAIN default on acceptance, the Supplier has the right to demand compensation for the extra costs incurred (§ 304 of the German Civil Code). Should the contract concern non-fungible goods (made to specification) to be manufactured by the Supplier, the Supplier shall only be entitled to further-reaching rights if HEIDENHAIN has obliged to provide assistance and is responsible for the failure to assist.

3. Each delivery shall be accompanied by a consignment note stating the order number and order item. Invoices should be sent to HEIDENHAIN simultaneously with dispatch of the goods. If the consignment note is missing or incomplete, HEIDENHAIN shall not be liable or responsible for the resulting delays in processing and payment.

XII Prices and payment

1. The price stated in the order shall be binding. All prices are understood not to include the statutory value-added tax.

2. Unless invoices include the order number and order item required for processing, they shall be deemed not received on the grounds of being impossible to process.

3. In the event of defective goods or performance, HEIDENHAIN shall be entitled to withhold payment until the contract has been duly completed without loss of any rebates, discounts or similar preferential terms of payment.

4. Payment for goods or services accepted without demur shall be made within 14 days of such acceptance and receipt of invoice, less 3% discount, or within 30 days net. For bank transfers, payment shall be deemed to have been made in time if HEIDENHAIN's bank receives HEIDENHAIN's transfer order before the payment deadline expires; HEIDENHAIN shall not be liable or responsible for delays caused by the banks involved in the payment transaction.

5. Unless otherwise agreed, the price includes all of the Supplier's services and ancillary services (e.g. assembly, installation) and all additional expenses (e.g. proper packaging, transport costs including transport insurance and third-party liability insurance). The Supplier shall be required to take back packaging upon demand by HEIDENHAIN.

6. HEIDENHAIN does not pay interest on arrears. The annual default interest is five (5) percentage points above the prime rate. Default of payment by HEIDENHAIN shall go into effect according to the statutory regulations; however, in possible derogation of these regulations, a written warning by the Supplier is required in any case.

7. HEIDENHAIN shall be entitled to its legal offset and retention rights as well as defense of unperformed contract. HEIDENHAIN shall particularly be entitled to withhold due payments as long as HEIDENHAIN still has rights against the Supplier because of incomplete or defective services.

8. The Supplier shall only have offset or retention rights in the event of res judicata or undisputed counterclaims.

VIII. Warranty

1. The Supplier hereby guarantees that all goods and/or services conform to state-of-the-art science and technology, the relevant legal provisions and the rules and regulations issued by authorities, industrial associations and trade associations. If, in individual cases, it is necessary to deviate from such regulations, the Supplier shall obtain the prior written consent of HEIDENHAIN. Such consent shall in no way diminish obligations under the warranty.

2. In the event that the Supplier has reservations regarding the type of construction requested by HEIDENHAIN, he shall immediately advise HEIDENHAIN accordingly in writing. This shall in no way influence the binding nature of the delivery date originally envisaged.

3. HEIDENHAIN's statutory warranty rights shall not be prejudiced in any way. This also applies to deficiencies of the owner's manual or operating instructions.

4. According to the statutory regulations the Supplier is particularly liable for the goods having the agreed quality at the time when the risk passes to HEIDENHAIN. In any case, those product descriptions that are the subject matter of the respective contract or are incorporated in the contract in the same way as these HEIDENHAIN Terms and Conditions—in particular due to identification or reference in the order from HEIDENHAIN—shall be valid as an agreement on the properties and condition. It shall be immaterial whether the product description originates from HEIDENHAIN, from the Supplier or from the manufacturer.

5. The commercial duty to examine and to notify defects shall be governed by the statutory regulations (§§ 377 and 381 of the German Commercial Code), save that the duty to examine by HEIDENHAIN is limited to defects that are obvious upon visual inspection of the incoming goods at HEIDENHAIN, including the delivery documents, or upon spot checks by HEIDENHAIN during quality control procedures (e.g. transport damage, wrong deliveries or short deliveries). No examination is required if an acceptance procedure has been agreed on. Apart from that, it depends on the extent to which examination is expedient according to proper business procedures, taking into account the circumstances of the particular case. The obligation to give notice of defects discovered at a later point in time remains unaffected. In all cases the objection by HEIDENHAIN (notification of defects) shall be deemed timely and without delay if it is delivered to the Supplier within fourteen (14) calendar days of discovery of the defect.

6. In derogation of § 442 Paragraph 1 Sentence 2 of the German Civil Code, HEIDENHAIN shall also have unlimited claims for defects if the defect was unknown as a consequence of gross negligence at the time the agreement was concluded.

7. The costs incurred by the Supplier for the purposes of testing and rectification (including any necessary disassembly and installation costs) shall be borne by the Supplier even if it transpires that there was in fact no defect. HEIDENHAIN's liability for damages shall remain unaffected despite an unjustified request to remedy a defect; therefore HEIDENHAIN shall only be liable if HEIDENHAIN was actually aware that there was no defect, or due to gross negligence was not aware of this fact.
8. Should the Supplier negligently fail to honor his obligation to subsequent performance—by either rectifying the defect (subsequent improvement) or supplying a non-defective good (replacement shipment) as HEIDENHAIN sees fit—within a reasonable period of time stipulated by HEIDENHAIN, HEIDENHAIN can remedy the defect itself and demand reimbursement of the costs required to do this or an appropriate advance payment from the Supplier. A deadline shall not be necessary in the event that subsequent performance by the Supplier shall be abortive or unacceptable for HEIDENHAIN (e.g. on account of special urgency, operating safety hazard or imminent occurrence of disproportionate damages); HEIDENHAIN shall inform the Supplier of such circumstances immediately, in advance if possible.
9. Furthermore, HEIDENHAIN shall be entitled to reduction of the purchase price or withdrawal from the contract according to the statutory regulations in the case of defects of quality and defects of title. In accordance with the statutory regulations, HEIDENHAIN is entitled to claims for compensation and reimbursement of expenditure.
10. The statutory warranty period shall apply, subject to the proviso that if the delivered goods are resold or used in the manufacture of HEIDENHAIN products, such warranty period shall not commence until the goods purchased from the Supplier are dispatched for the purpose of resale or the warranty period for the HEIDENHAIN products fitted with the goods begins for HEIDENHAIN's customer, however no later than 24 months following delivery of the goods to HEIDENHAIN.
11. Warranty claims to which HEIDENHAIN is entitled as purchaser in respect of any defect in the goods or services notified within the statutory warranty period shall expire 24 months after the complaint is submitted, but not prior to the end of such period.
12. In the case of parts which cannot remain operational while the defect is being investigated and/or remedied, any warranty period still in effect shall be extended by the duration of such interruption. If parts are replaced or defects remedied, the statutory warranty period for repaired or replacement parts shall recommence upon completion of the repair or upon receipt of the replacement parts by HEIDENHAIN.

IX. Liability/limitation

1. The liability of the Supplier shall be governed by the statutory regulations. He shall on no account be exempt from liability, including in the event of ordinary negligence.
2. Statutory limitation shall apply; any shorter periods of limitation shall be ruled out.

X. Product liability

1. In the event that claims are brought against HEIDENHAIN on the grounds of infringing upon safety regulations or pursuant to German or foreign product liability regulations due to defects in HEIDENHAIN products resulting from faulty goods delivered by the Supplier, HEIDENHAIN shall be entitled to demand compensation from the Supplier for such damages insofar as these were caused by goods supplied by the latter. Furthermore, to the extent that the Supplier is responsible, he shall reimburse HEIDENHAIN according to the proportion of his contributory negligence for the costs of any precautionary exchange or recall measures which may prove necessary.
2. Should the Supplier be liable to third parties, and should claims arising therefrom be transferable, then in accordance with X.1. the Supplier shall indemnify HEIDENHAIN against any third-party claims and shall bear all associated costs incurred by HEIDENHAIN in connection therewith. Further-reaching legal claims, as well as those claims not covered by this indemnification in accordance with X.1., shall remain unaffected.
3. HEIDENHAIN shall, to the extent possible and reasonable, notify the Supplier of the content and extent of recall measures and give him an opportunity to comment. This shall not affect any further-reaching legal claims.
4. Along with adhering to the existing legal duties as well as those stipulated in the contract, the Supplier is obligated to continuously (including for the duration of the warranty) maintain at least the following liability insurance protection:
 - a) Business and product liability insurance with a minimum insured amount of ten million EURO for damage or injury caused to property or persons.
 - b) Coinsurance of the "product liability model" pursuant to the model terms and conditions of the GDV (German Insurance Federation), dated August 2008, for the full insurance sum in the sense of X.4.a) above, in which it is mandatory that the contents of sections 4.1 through 4.6 of the model terms must be agreed to and their territorial scope not be restricted.
 - c) The insurance coverage must also apply to exchange of individual components as well as to repairs while installed.
 - d) The "machine clause" (pursuant to section 4.5 of the extended product liability insurance of the model terms and conditions of the GDV [German Insurance Federation], dated August 2008) must be expanded to include at least "machine parts, molds, and tools as well as measuring, control and feedback systems."
 - e) Testing costs and sorting costs are to be fully insured both by business and product liability as well as by the required recall cost insurance.
 - f) The Supplier must ensure that risks concerning the delivered products are fully covered by the business and product liability.
 - g) Any existing claims for damages from HEIDENHAIN on the grounds of product liability shall remain unaffected by this, and are independent of the existence or validity of the required insurances.
5. The Supplier shall carry out quality controls of an appropriate kind and scope based on state-of-the-art technical standards and on request shall furnish HEIDENHAIN with evidence of the same. The Supplier shall conclude a quality-control agreement to this effect with HEIDENHAIN to the extent that such agreement is considered necessary by HEIDENHAIN.

XI. Proprietary rights of third parties

1. The Supplier hereby guarantees and assures that all deliveries shall be free from the property rights of any third parties and in particular that delivery and use of the items supplied shall not result in infringement of any patents, licenses or other third-party proprietary rights.
2. The Supplier shall indemnify HEIDENHAIN and HEIDENHAIN's customers against any third-party claims on the grounds of infringement of property rights and shall bear any and all costs incurred by HEIDENHAIN in connection therewith.
3. HEIDENHAIN shall, at the expense of the Supplier, be entitled to obtain permission from the rights holder to use the relevant items and services supplied, unless excessive costs would be incurred by the Supplier.

XII. Reservation of title, contribution of materials, samples, models, tools

1. HEIDENHAIN shall reserve the title to all parts contributed to the Supplier. Any processing and reforming undertaken by the Supplier shall be on behalf of HEIDENHAIN. In the event that the goods contributed are processed together with other items not belonging to HEIDENHAIN, HEIDENHAIN shall acquire part ownership of the new object based on the value of the goods contributed in proportion to the value of other items processed at the time of such processing.
2. HEIDENHAIN shall reserve the title as well as all proprietary rights to samples, models, tools, product information, documents etc. paid for or provided by HEIDENHAIN. The Supplier shall be obliged to use such samples, models and tools solely for the manufacture of goods ordered by HEIDENHAIN.
3. Contributed substances and materials (e.g. software, finished products and semifinished products), templates, samples and other objects must be stored separately—unless they are being processed—at the Supplier's cost, and are to be protected to a reasonable extent from loss and destruction.
4. Orders for tools shall be subject to HEIDENHAIN's Supplementary Terms and Conditions for Tooling Contracts.
5. The transfer of title to the goods to HEIDENHAIN shall take place unconditionally and regardless of the payment of the price. However, should HEIDENHAIN in an individual case accept the Supplier's offer to transfer the title on condition of payment of the purchase price, then the Supplier's retention of title shall expire at the latest when the purchase price for the supplied goods is paid. In the proper and orderly course of transactions, HEIDENHAIN—even before payment of the purchase price—shall remain entitled to resell the goods under the assignment of future claims resulting from this demand (alternatively: simple and extended retention of title for resale shall be valid). Excepted from this in any case are all other forms of retention of title, particularly the extended or forwarded retention of title, as well as the retention of title extended for further processing.

XIII. Confidentiality

1. The contracting parties shall be obliged to keep secret and confidential all information relating to their co-operation within the scope of this agreement and use it solely for the purposes of this agreement, unless such information is in the public domain, has been lawfully acquired by a third party or arrived at independently by a third party. Classified information shall include in particular technical data, purchase volumes, prices and information pertaining to products and product developments, as well as present and future research and development projects, customer data and all information relating to the company of the other contracting party.
2. Furthermore, the Supplier shall be obliged to keep secret and confidential all illustrations, drawings, calculations and other documents and not disclose the same to third parties without the express consent of HEIDENHAIN, except if the information contained therein is in the public domain.
3. The Supplier shall also pass on the preceding obligation of confidentiality to his employees and subcontractors.
4. The obligations defined in XIII. shall expire five (5) years after expiration of the last contract between the respective parties, and to which these HEIDENHAIN Terms and Conditions apply.

XIV. Assignment

Assignment of any outstanding claims against HEIDENHAIN on the part of the Supplier shall not be effective vis-à-vis HEIDENHAIN unless HEIDENHAIN receives prior written notification of the assignment and confirms its agreement in writing.

XV. Export control

The mandatorily applicable provisions of export law shall apply exclusively. In addition, the Supplier shall actively inform HEIDENHAIN in written form of any mandatorily applicable authorization requirements for (re)exports of his goods according to German, European, U.S. export and customs regulations as well as the export and customs regulations of the country of origin of his goods before conclusion of the contract. For goods subject to export licensing, the Supplier shall provide a written declaration in particular for the items of merchandise concerned with all necessary information.

XVI. Final provisions

1. As soon as an interim receiver is appointed to wind up the affairs of the Supplier or insolvency proceedings are opened in relation to the Supplier's assets, HEIDENHAIN shall be entitled to rescind the contract in whole or in part.
2. These HEIDENHAIN Terms and Conditions and all legal relationships between HEIDENHAIN and the Supplier shall be subject solely to the law of the Federal Republic of Germany with the exclusion of international uniform law, particularly the UN Convention on the International Sale of Goods. The prerequisites for and the effects of retention of title shall be governed by the law in force at the place where the goods are stored if, under that law, the choice of German law would be inadmissible or invalid.
3. Should any individual clauses of these HEIDENHAIN Terms and Conditions be void, this shall not prejudice the operating effect of the remaining provisions. The voided clause shall be replaced by an acceptable clause whose sense and purpose most nearly approximates the voided clause.
4. Place of jurisdiction shall be Traunstein, Germany. HEIDENHAIN shall reserve the right to institute legal proceedings at any other place of jurisdiction permitted by law.

End of contractual provisions

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