



## StateMonitor Software Terms and Conditions: Digital Shop Floor (Version: August 2021)

### 1. Software

The following terms and conditions apply to all software products (hereinafter referred to as "Software") from DR. JOHANNES HEIDENHAIN GmbH (hereinafter referred to as "HEIDENHAIN") that are specified in a quotation under these terms and conditions.

A user is any legal or natural person who uses the software in the performance of professional or other activities on a commercial or freelance basis. The software is not intended for private use. Any conditions stipulated by the user will not become terms of the agreement, even if they are not expressly excluded by HEIDENHAIN. Subject to any deviating provisions within these conditions, the download, installation, and any other use of the software will constitute the user's consent to these terms.

The software will be provided to the user in the version designated in the quotation under these terms. This does not imply any obligation on the part of HEIDENHAIN to provide new program versions, updates, and/or upgrades. Periodic software maintenance and support require a separate agreement. The conditions detailed below also apply to all updates and upgrades of the software.

### 2. Rights and scope of use

#### 2.1 Types of licenses

The scope of use and duration of use conform to the type of license acquired by the user. The type of license arises out of the quotation under these terms:

"Trial license" refers to a license for a limited period as stated in the corresponding quotation. This license is for the use of the software at a specified corporate site and is issued solely for evaluation purposes. The concurrent operation of multiple instances of the software requires the prior written consent of HEIDENHAIN.

"One-time license" refers to a license for operation of the software at a specified corporate site for an unlimited period. The concurrent operation of multiple instances of the software requires the prior written consent of HEIDENHAIN.

"Rental license" refers to a license for operating the software at a specified corporate site for a limited time as stated in a quotation. Maintenance in accordance with separate maintenance conditions is included. In case of contradictions between the StateMonitor Software Terms and Conditions and the StateMonitor Maintenance Terms and Conditions, these Software Terms and Conditions have precedence. The concurrent operation of multiple instances of the software requires the prior written consent of HEIDENHAIN.

**2.2** The software will be provided to the user for its proper and intended use either on a data carrier or for download. The software is provided solely in machine-readable form (machine code). The user is not entitled to receive the source code.

#### 2.3 Hardware and system requirements

The user will be notified of the system requirements needed for use of the software. The user is solely responsible for fulfilling these system requirements. Because HEIDENHAIN cannot test the functionality of the software under all possible conditions of use, the user is also solely responsible for testing the software in a secure and shielded testing environment prior to using the software in his productive environment. This same condition also applies prior to the installation of updates and upgrades. Updates and upgrades (including those within the same software version) may change the hardware requirements.

Furthermore, HEIDENHAIN expressly reserves the right to modify the structure of the database (including the external reporting database) within the scope of an update without prior notification. Any costs arising therefrom (e.g., for systems created by the customer) cannot be invoiced to HEIDENHAIN.

### 2.4 Restrictions of use

#### 2.4.1 Use for data backup

The software is not designed for use in systems used for the seamless backup of data. The software is expressly not designed for operation on a highly available computer cluster. Therefore, the seamless documentation or backup of data is not included in the agreed characteristics of the contractually covered software. Any use of the software as a means of data backup, as well as any decisions made based on it, are at the sole risk of the user.

#### 2.4.2 Special applications

The use of the software in applications in nuclear power plants, aircraft, and spacecraft, as well as in medical applications in which persons may be injured, requires the prior written consent of HEIDENHAIN.

#### 2.4.3 Online operation

The software is not tested and released for use in an Internet environment but rather solely for operation within the company's own intranet.

#### 2.4.4 Beta versions and release candidates

For software products designated as beta versions or release candidates (RC), the following special conditions apply: software products designated as beta versions or release candidates (RC) are provided to the user free of charge, expressly as unfinished software versions still under development, and exclusively for trial and evaluation purposes. Any use for other purposes, in particular for productive purposes in or as part of production systems, is expressly prohibited.

The user shall ensure that, by using beta versions or release candidates (RC), no systems are affected that are in any way relevant to the safety of persons or goods.

HEIDENHAIN expressly emphasizes that the provided software does not contain all of the software functions intended for the final version. Accordingly, the user is not entitled to his given task being solvable with the beta version of the software.

Furthermore, it is not guaranteed that the functionality contained in the beta version / release candidate (RC) version will also be part of a final version.

Accordingly, the user hereby acknowledges that beta versions / release candidate (RC) versions of the software are made available without any guaranteed characteristics, intended use, or promises relating to safety whatsoever. Therefore, any information about the software is non-binding, even when otherwise stated. In addition, any suitability for the common use and usual characteristics is ruled out. Consequently, no corresponding warranty or guarantee can be granted for this software. Furthermore, this means that any such liability of HEIDENHAIN in case of damage will already be excluded due to the lack of any breach of a corresponding obligation. The use of the abovementioned software is solely at the user's own risk.

If HEIDENHAIN is held liable by a third party because the third party has suffered damage, then the user shall indemnify HEIDENHAIN against all justified claims resulting from this liability.

### 2.5 IP rights

The software is protected by copyright.

Subject to the payment of the agreed license fees, HEIDENHAIN shall grant the user the non-exclusive, non-transferable right to the intended use of the software for the purpose for which the software was intended and provided by HEIDENHAIN.

The user may operate the software solely at the site stipulated in the corresponding quotation.

Any further transfer of the software requires the prior written consent of HEIDENHAIN.

Unless otherwise agreed (e.g., in accordance with the following sections), the user may use the software on any suitable hardware

available to him within the company's own intranet. Simultaneous use of the software by the user is permitted (e.g., for use by multiple members of his staff). The provided software may also be used within a corporate network.

The software will be protected by a suitable software protection module (hardware- or software-based). This software protection module represents and restricts the right of use of the software. The loss of or damage of a software protection module amounts to a forfeiture of the right of use. HEIDENHAIN is not required to replace a lost software protection module. If a software protection module becomes damaged, HEIDENHAIN is required to replace it only if this damage was caused by a defect in the software protection module within the warranty period and only if this damage is not attributable to the user.

HEIDENHAIN reserves all rights to modify or further develop the software, regardless of whether such modifications or further developments are based on ideas, feedback, or other statements made by the user in connection with the software.

**2.6** Except in cases for which Section 69e of the German Act on Copyright and Related Rights (Decompilation) applies, the user shall not modify, perform reverse engineering on, translate, create derivative works of, disable functions of, or extract any elements of the software. The user shall not remove alphanumeric or other identifiers from the data carriers and shall transfer them in unchanged form to each backup copy.

Furthermore, the user shall not remove or modify copyright notices or other characteristics used to identify the software and the manufacturer.

### **2.7 Compliance with the license conditions / audits**

HEIDENHAIN reserves the right to integrate a software protection mechanism in order to monitor and record the use of the license granted under these terms. An automatic transmission to HEIDENHAIN will not occur unbeknownst to the user.

During the term of the license and within one (1) year following its termination or expiration, HEIDENHAIN may regularly verify compliance with the conditions herein by auditing the relevant data (accounts, records, computers, etc.) of the user. The user will be notified of a planned audit in advance within a reasonable time.

## **3. Third-party products / Open-source software**

**3.1** For software for which HEIDENHAIN owns only a derived right of use (e.g., open-source software or a third-party product), the terms of use agreed upon between HEIDENHAIN and its licensor, insofar as they affect the user (e.g., end-user license agreement), apply additionally to and take precedence over the terms stipulated in this section; any applicable terms taking precedence can be found in the software information.

**3.2** Any breach of the terms of use for third-party products by the user entitles not only HEIDENHAIN but also its licensor to assert claims and rights arising therefrom on their own behalf.

## **4. Claims for defects**

**4.1** With the exception of the terms in 2.4.4, HEIDENHAIN guarantees that the software will exhibit the substantial characteristics and functions in accordance with the description in the associated documentation for a period of 90 days beginning on the day on which the software is first provided to the user. HEIDENHAIN does not guarantee that the functions of the software will satisfy the specific requirements of the user. Liability for defects requires that the defect is reproducible. The user must provide a sufficient description of the defect.

**4.2** A material defect is not valid if it does not occur in the most recent version of the software provided to the user and if the user can be reasonably expected to use this version.

**4.3** If the software is defective, HEIDENHAIN will remedy the defect as it sees fit, either through improvement or replacement of the defective software (replacement performance).

HEIDENHAIN may remedy defects by providing a new copy, an update, or a new program version.

Alternatively, HEIDENHAIN may provide a hotfix or a service pack for the affected software. The user is not entitled to a particular type of remedy of the defect.

If the user made customizations to the software in a manner permissible within the scope of the acquired license, then the user shall ensure, at the user's own risk and expense, that these customizations of the software are compatible with the upgrade, hotfix, service pack, or the new program version, before installing upgrades, hotfixes, service packs, or new program versions. This also applies if HEIDENHAIN provided such a customization within the scope of a service agreement.

If a supplied data carrier or documentation is defective, then the user can demand only that HEIDENHAIN provide a non-defective replacement.

**4.4** Claims arising from a defect are not possible in the following situations:

- a) if there is only an insignificant deviation from the agreed characteristics
- b) if there is only an insignificant limitation to usability
- c) if the damage was caused by incorrect or negligent handling
- d) if the damage arose due to unusual extraneous influences not assumed in the agreement
- e) for modifications or enhancements performed by the user or third parties and the consequences arising therefrom, or
- f) with respect to the assumption that the software provided is compatible with the data processing environment utilized by the user.

**4.5** Notices of defects must be promptly given no later than two (2) weeks after delivery. Defects that could not be detected within this period, even under very close examination, must be promptly reported no later than two (2) weeks after their detection.

**4.6** Claims for damages are furthermore subject to the following "Liability" provision. Any further claims of the user arising from defects are excluded.

## **5. Liability**

**5.1** Claims for damages asserted by the user, regardless of their nature or legal ground, particularly those arising from the breach of duties resulting from the contractual obligations or from tort, are excluded.

**5.2** This does not apply if the following liability conditions apply:

- a) in accordance with the German Product Liability Act
- b) in the case of intent
- c) in the case of gross negligence on the part of owners, legal representatives, or senior managers
- d) in the case of malice
- e) in the case of non-compliance with an assumed guarantee
- f) due to culpable injury to life, limb, or health, or
- g) due to culpable violation of substantial contractual obligations.

However, the claim for damages resulting from the breach of substantial contractual obligations is limited to damage that is typical of the agreement and foreseeable, unless one of the other abovementioned cases applies.

**5.3** Irrespective of the abovementioned provisions, any liability for lost profits and production downtime is excluded, with the exception of claims for damages based on intentional action.

**5.4** For beta versions and release candidates, the provisions in 2.4.4 take precedence.

### **5.5 Data backup**

It is expressly emphasized that the user is solely responsible for saving and archiving the data stored in the software system. The creation of periodic backups is recommended in order to ensure that the data are saved as desired. Relevant mechanisms are provided by the software (e.g., database backup).

If liability is accepted on the part of HEIDENHAIN in accordance with the sections above, then the liability for loss of data is limited to the typical data restoration effort that would arise with the creation of periodic backups by the user commensurate with the risk.

## 5.6 Security

The user is solely responsible for the avoidance of security problems with regard to his systems and data, including products on his systems. The user shall, with all economically reasonable effort, exclude malware, viruses, spyware, and trojans. Claims for damages asserted against HEIDENHAIN arising or partially arising from security problems are excluded.

## 6. Prices

The remuneration for the service offered by HEIDENHAIN is based on the corresponding quotation.

Unless otherwise specified, all prices are subject to the applicable value added tax.

If HEIDENHAIN changes the usual remuneration for the use of the software in accordance with the currently valid price list for new customers, then HEIDENHAIN may adjust the remuneration agreed upon in the quotation accordingly. HEIDENHAIN may change the remuneration with a notice period of three (3) months by means of an adjustment declaration in text form to the user, but not more than once per calendar year. HEIDENHAIN shall determine the price adjustment, taking into account the currently valid price list for new customers at its reasonable discretion (Section 315 of the German Civil Code).

If the increase in remuneration is more than 10 % of the corresponding amount for the previous contractual year, the user may terminate the contractual relationship extraordinarily with effect from the effective date of the price increase. If the user does not terminate the agreement before the price increase comes into effect, the price increase shall become binding on the date determined by HEIDENHAIN.

## 7. Term and termination

**7.1** The term of the license is contingent upon the type of license as set forth in the quotation from HEIDENHAIN.

If a user purchases the "Rental license," then the term of the license will be renewed by one (1) year upon expiration of the minimum term of the license and upon expiration of every renewal period, unless one of the parties terminates the license in writing with three (3) months' notice to the end of the respective term of the license.

**7.2** HEIDENHAIN may, in writing, discontinue a license type or a license module with three (3) months' notice to the end of each calendar year. Upon discontinuation, the obligation of HEIDENHAIN for maintenance of the license type / license module expires.

**7.3** If the user culpably breaches one or more provisions of this license agreement, then HEIDENHAIN may terminate this agreement without notice.

**7.4** Upon termination of this agreement, the right of use of the provided software expires. The user shall return all provided original data carriers, backups, dongles, or other copies of the software stored on separate data carriers, along with the provided program documentation, to HEIDENHAIN and shall delete the software copies installed on the user's system. Upon request, the user shall confirm in writing and furnish proof in suitable form to HEIDENHAIN that all requested items have been duly returned and all requested data have been duly deleted.

The termination of the license does not affect the right of the user to use products that were created and/or further distributed in conjunction with the software.

## 8. Data collection and use of data

To some extent, the software offered by HEIDENHAIN gathers personal data that are collected and processed solely for the purposes of logging in and using the software functions. The user is solely responsible for using the software in his company in conformity with data protection rules and shall also obtain any relevant consent.

## 9. Export control

The user is solely responsible for complying with any applicable national and international foreign trade law regulations, as well as any other applicable export requirements. If, in conformity with these provisions, the user provides the software to a third party, then the user is solely responsible for complying with all applicable national and international foreign trade law regulations, as well as with any other applicable export requirements. To this extent, the user releases HEIDENHAIN from all obligations.

## 10. Governing law and jurisdiction

These terms and the contractual relationship between the user and HEIDENHAIN are governed by the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The sole place of jurisdiction is Traunstein, Germany. However, HEIDENHAIN may also choose the user's place of business.

## 11. Final provisions

Should any provision in these terms be or become invalid, this shall not affect the validity of the remaining provisions or agreements.

Any changes and modifications to these terms must be in writing. This also applies to this written form requirement itself. A waiver of the written form clause is permissible by way of an individual agreement.

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