



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

The following terms and conditions apply to all software maintenance and support services provided by DR. JOHANNES HEIDENHAIN GmbH (hereinafter referred to as "HEIDENHAIN" or "the service provider") in order to maintain the software products (hereinafter referred to as "contractual software") specified in a quotation or agreement under these terms and conditions.

Any conditions stipulated by the contractual partner (hereinafter referred to as "the customer") will not become terms of the agreement, even if they are not expressly excluded by HEIDENHAIN.

1. General terminology

"Day" means a period of twenty-four (24) hours ending at midnight.

"Month" means one (1) calendar month.

"Workday" means each day on which commercial banks in the German federal state of Bavaria are open to the general public for business.

"Year" means a period of 365 days.

"Contractual software" means the software that is specified in the quotation or agreement and for which software maintenance and support are to be provided.

"Options" are as described in the quotation or agreement.

"Update version" is an improved software version within the major version stated in the quotation without significant changes to the functionality.

"Upgrade version" is a new software version within the stated major version, including modifications of the functions without significant changes to the overall functionality. New upgrade versions can enable the provision of new software options.

"Major version" is a new software version that includes significant changes above and beyond those of an update version or upgrade version, and is usually designated by a version number with a higher initial number.

"Software maintenance and support services" are the services described below regarding the software maintenance and support, particularly the services described in sections 2 and 3.

2. Software maintenance

Maintenance of the software comprises updates and upgrades with the following scope:

2.1 Updates

The service provider makes updates available. Provision of updates comprises service releases for and updating of the contractual software. Updates will be made available in electronic format. Access to the files is granted to a main contact person named in advance by the customer and, if necessary, to his deputy. The provision of updates can also be integrated in the annual upgrade version.

2.2 Upgrades

The service provider shall provide upgrade versions of the contractual software for the current major version at least once a year, provided that such major version has not been discontinued.

The provision of upgrades comprises the updating of the contractual software for full versions and service releases that are published during the validity period of the upgrade entitlement. Upgrades will be made available in electronic format. Access to the files is granted to a main contact person and, if necessary, to his deputy. Upgrades can include improved functionality as well as changed parameters. It must therefore be considered that different system requirements may apply to new upgrade versions; the compatibility of each upgrade must be assessed and ensured by the customer on his own responsibility before installation.

2.3 Technological changes, for example of the hardware, operating system, or standards, as well as economic considerations, may lead to changes in all product features as well as to the omission of

individual features in the context of a full version. Explicitly to be mentioned in this context:

- External reporting database,
- Structure of the internal database,
- Structure of the outward-bound interfaces, in particular of the external reporting database,
- Properties of the user interface,
- Properties for possibilities of backing up the configuration and data,
- Login procedures, etc.

2.4 All versions are approved and released only for specific operating systems. The customer must take this into account when updating or upgrading the version.

2.5 Maintenance of the software explicitly does not include new major versions; it only includes upgrades and updates within a major version (e.g., version 1.2.X to version 1.3, but not, e.g., version 1.3 to version 2.0). The transition to a new major version can be offered as a separate service, if desired.

3. Support

The service provider will make telephone support ("Helpline") available to the customer during the following regular business hours (CET) in German and English:

Monday – Thursday 8:00 a.m. – 12:00 p.m. and 1:00 p.m. – 4:30 p.m.

Friday 8:00 a.m. – 12:00 p.m. and 1:00 p.m. – 3:00 p.m.

Telephone number for the Helpline:

+49 8669 31-3107

On legal holidays the Helpline may not be available at all, or only to a limited extent. The holiday regulations of the German federal state of Bavaria shall apply. Written queries can be sent by e-mail to the following address:

3107@heidenhain.de

An error reported by telephone or in writing must include at least the following items:

- Detailed description of the error (including its reproducibility, if possible)
- Log files
- Version of the software
- Information about the software versions of the controls

Written queries will be processed during the business hours stated above. The customer will receive an answer as soon as possible.

The Helpline is staffed by well-trained and competent staff. While processing the query, the service provider shall endeavor to the best of his knowledge and belief to do what is technically and economically reasonable for him in order to find a solution for the customer. For issues that require a specialist, the Helpline will consult with the specialist as appropriate.

Some customer support queries can only be fulfilled through fundamentals training, consultations, or development services — such actions are not part of this agreement. The implementation of additional functionalities is also not part of this agreement.

4. Exclusions

The following items are not included in the scope of these services:

- General support of the customer on-site is not part of these maintenance terms and conditions. On-site services can be offered separately.
- Corrections of malfunctions that are not attributable to the contractual software but rather to external influences, operating or configuration errors, hardware or software from third-party suppliers or their interfaces. If requested by the customer, the service provider will also endeavor to correct such malfunctions within the scope of his abilities on the basis of a separate agreement and against remuneration.

- Control options that are necessary for correct use are not part of these terms and conditions (e.g., HEIDENHAIN DNC, etc.).
- Adaptation of software to the customer's requirements. Such services can be offered separately.
- Errors, malfunctions, etc., due to StateMonitor having been operated over the Internet (virus, etc.).
- Support for third-party software
- Functionality of interfaces to third-party software (e.g., changes to the data model structure), also but not only in reference to system requirements
- Training courses, workshops, seminars, or other obligations that are above and beyond the obligations of these maintenance terms and conditions.

Services that are not included in the scope of services under 2.f must be rendered by the service provider only if there is a separate agreement that covers them. These services will be invoiced based on the time spent on them in accordance with the valid price list plus travel costs and expenses. Likewise, expenses incurred as a result of the reporting of malfunctions that are due to an excluded circumstance will also be invoiced.

5. Cooperative obligations of the customer / prerequisites

The customer himself shall install the update or upgrade version of the contractual software furnished by the service provider, unless a separate agreement to this effect exists. The service provider will maintain only the newest and updated or upgraded version of the contractual software. The customer will adopt new upgrade versions for practical use within three (3) months after delivery. Upon expiration of this period, the obligation to maintain the previous version ends without reduction of the annual fee.

The customer shall install, ready for operation, new versions of third-party software required for the use of new upgrade versions of the contractual software at his own expense. Furthermore, the customer ensures the compatibility of his own system.

The service provider may also provide his services through the Helpline, by remote data transmission (e.g., via Webex), or on-site at the customer's premises. The customer shall provide the technical requirements and useful support services (such as remote data transmission equipment and programs, access, computing power, useful information, and documentation) at his own expense in each case.

The customer shall notify the service provider in writing of a contact person who shall exercise the customer's rights and obligations under the agreement on maintenance support services.

The customer shall ensure that errors in the system for which the customer is responsible have been excluded in advance and that the system requirements have been met.

The customer shall immediately inspect the services performed by the service provider upon receipt and shall immediately give notice of any deficiencies that arise. Deficiencies that cannot be detected in the course of a proper inspection must be reported to the service provider immediately after discovery.

6. Further support

Unless otherwise specified, any information, knowledge, advice, method, process, or procedure is provided or transmitted by the service provider to the customer on an "as is" basis and a "use at your own risk" basis without express authorization or implied guarantees or warranties. The service provider shall not be liable for any errors or omissions contained therein.

7. Warranty on software maintenance and support services

Warranty claims of any kind, provided there are any, shall not extend beyond the period of six (6) months.

If it turns out during the investigation of a defect notified by the customer or in the course of the rectification work that the notification

of defects was unjustified, the service provider may demand remuneration for the investigation and/or repair work in the amount of the applicable hourly rates. The hourly rates are based on the HEIDENHAIN Service Conditions, which can be viewed at <https://www.heidenhain.com/terms-of-business>.

Excluded from the warranty are any defects that are due to the fact that the customer has disregarded the specifications of the service provider, e.g., by installing the software in an Internet environment or by disregarding the system requirements.

8. Liability

8.1 The service provider is liable without limitation only for intent and gross negligence.

8.2 The service provider shall only be liable for simple negligence — except in the case of injury to life, limb, or health — if essential contractual obligations (cardinal obligations) are violated.

8.3 Liability for indirect and unforeseeable damage, loss of production and use, loss of profit, loss of savings, as well as financial losses due to third party claims is excluded in the case of simple negligence — except in the case of injury to life, limb, or health.

8.4 Any further liability than stipulated herein is excluded — regardless of the legal nature of the asserted claim. However, the above limitations or exclusions of liability shall not apply to no-fault liability prescribed by law (e.g., under the German Product Liability Act) or to liability under a no-fault guarantee.

8.5 Insofar as liability is excluded or limited, the same also applies to the personal liability of the employees, representatives, bodies, or agents of the service provider.

9a. IP rights

All materials and all notes, recordings, drawings, designs, inventions, improvements, developments, discoveries, and trade secrets conceived, made, or discovered by the service provider's employees in or in connection with the performance of software maintenance and support services with respect to the service provider's equipment, software and/or services and all intellectual property rights therein shall be the sole and exclusive property of the service provider. The service provider shall be permitted to use any information, suggestions, or ideas provided by the customer and relating to the service provider's equipment, software and/or services without compensation or fee to the customer.

9b. Licenses and rights to and in respect of software provided for use

With regard to the updates and upgrade versions, precedence will be given to the StateMonitor Software Terms and Conditions in accordance with the license agreement on the use of the contractual software in the version valid at the time of the conclusion of the license agreement.

See the StateMonitor Software Terms and Conditions at: <https://www.heidenhain.com/terms-of-business>

The StateMonitor Software Terms and Conditions regarding the use of the contractual software remain expressly unaffected.

The customer must not make any copies of updates or upgrade versions, or transfer the updates or upgrade versions or the right to make copies thereof to any third party, or export the updates or upgrade versions without the service provider's prior written consent. The customer acknowledges that the contractual software as well as updates and upgrade versions contain trade secrets of the service provider, and in order to protect such trade secrets, the customer agrees not to disassemble, decompile, or reverse engineer.

10. Prices

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

Unless otherwise specified, the services will be invoiced per calendar year in advance. All prices are subject to the applicable value added tax.

If HEIDENHAIN changes the usual remuneration for the software maintenance and support 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 customer, 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 customer may terminate the contractual relationship extraordinarily with effect from the effective date of the price increase. If the customer does not terminate the agreement before the price increase comes into effect, the price increase shall become binding on the date determined by HEIDENHAIN.

11. Force majeure

Impediments to performance due to force majeure or due to unforeseen events for which HEIDENHAIN is not responsible, such as strikes, governmental directives, epidemics, etc., shall release HEIDENHAIN from the obligation to comply with the agreed performance for the duration and to the extent of the effects.

12. Confidentiality clause

The service provider and the customer shall treat as confidential vis-à-vis third parties all information, business transactions, and documents that a contractual partner makes available in connection with the agreement on software maintenance and support and that are thereby designated as confidential or in respect of which an interest in confidentiality is discernible ("confidential information") unless they have already become generally known in some other way. This obligation shall remain in force for three (3) years after termination of the agreement on software maintenance and support. The service provider and the customer shall impose a corresponding obligation on their employees affected by the agreement on software maintenance and support. The service provider is entitled to disclose confidential information to affiliated contractors and subcontractors to the extent that they are obliged to maintain confidentiality equivalent to this provision.

13. Termination

Upon termination of the right to use the contractual software (license agreement), the corresponding agreement on software maintenance

and support shall also terminate automatically with billing of the full annual fee.

The agreement on software maintenance and support will be concluded for a term of two (2) years unless otherwise agreed. It is automatically renewed for another year, unless the agreement is terminated via written notice given at least three (3) months prior to expiration.

This shall not affect the right of the parties to terminate the agreement on software maintenance and support for good cause. Good cause is present in particular if

- the customer is more than sixty (60) days in arrears with the payment of the annual fee.
- IP rights have been violated.
- the software has been modified.

If the customer has not ordered software maintenance and support from the service provider in whole or in part after the expiration of the warranty period of the contractual software, then the customer may enter into an agreement with the service provider for the future provision of software maintenance and support services, provided that the customer pays an amount equal to the maintenance fee that would have been incurred in the period during which the customer did not use the software maintenance and support, plus a surcharge determined by the service provider.

14. Miscellaneous

Unless otherwise expressly agreed, neither the customer nor the service provider may assign their rights or obligations under this agreement without the prior written consent of the respective other party.

During the term of the agreement on software maintenance and support and for one (1) year thereafter, the customer shall not solicit (directly or indirectly) any of the service provider's employees engaged to perform any portion of these services without the consent of the service provider. In the event of a breach of this obligation, the customer shall pay to the service provider a fee equal to 100 % of that employee's annual compensation.

15 . Governing law and jurisdiction

These terms and the contractual relationship between the customer 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 is also permitted to choose the jurisdiction of the customer's place of business.

16. 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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