

General Conditions of Sale (version: March 2023)

Article I: General Provisions, Formation of Contract

1. All deliveries made by HEIDENHAIN (Thailand) Ltd. (hereinafter: HEIDENHAIN), as well as any related services, shall be governed solely by these General Conditions of Sale.

Any general terms and conditions of the customer will not apply.

All software provided separately from the delivery of hardware is subject solely to the License Agreement of HEIDENHAIN (available at www.heidenhain.co.th).

2. Individualized agreements made with the customer on a case-by-case basis (including ancillary agreements, supplements and changes) always take precedence over these General Conditions of Sale.

3. Unless otherwise agreed, offers and cost estimates made by HEIDENHAIN are non-binding. When the customer orders a product, this is regarded as a binding contractual offer. If HEIDENHAIN accepts the customer's order (offer) through confirmation of the order (acceptance), then a contract is formed. This contract becomes binding for both contracting parties upon confirmation of the order by HEIDENHAIN.

4. Any changes, ancillary agreements or supplements require the express approval of HEIDENHAIN in writing in order to take effect.

Article II: Prices, Payment, Price Changes and Offset

1. All prices including packaging costs are DDP (Delivered Duty Paid) {"Price"}, Value Added Tax (VAT) shall be added at the then applicable rate.

2. Unless otherwise agreed, the purchase price must be paid within 30 days upon delivery and receipt of the invoice.

3. The cost of delivery including shipments, insurance (if apply) and customs clearance to the designated place of delivery shall be included in the Price.

4. In the event of any alteration being required by the customer in design or specification, HEIDENHAIN shall be entitled to make an adjustment of the contract Price corresponding to such alteration.

5. The customer shall only be entitled to offset claims, assert a right of retention or invoke a plea of non-fulfilment of contract if such claims are counterclaims that arise from the same contractual relationship or if such claims are undisputed or non-appealable.

Article III: Delivery Dates, Shipping and Delay

1. The punctuality of shipments shall be determined by the time of arrival at the designated place of delivery ("Designated Place of Delivery").

2. Delivery dates which have been marked as „binding“ or „confirmed“ in the offer, in the order confirmation or in the shipping documents shall constitute legally binding dates. Any other dates specified (e.g. marked as "planned" or "desired, etc.) are non-binding dates intended solely for the purpose of orientation.

3. Any delivery periods shall only be binding for HEIDENHAIN if all business- and technology- related questions of the contracting parties have been clarified and if the customer has fulfilled all of his obligations and duties to cooperate. If this is not the case, then the delivery period will be extended reasonably. This does not apply if HEIDENHAIN is responsible for the delay.

4. HEIDENHAIN is responsible for the delivery of goods from its premise, 88, 90 4th Floor Anek-Vunnee Building, Chaloe Phra Kiat Rama 9 Road, Nongbon, Pravate, Bangkok 10250 to the Designated Place of Delivery unless agreed otherwise in writing.

5. A delivery note or notes on receipt of the goods for HEIDENHAIN must be signed and the customer shall provide the signed receipt of the goods to HEIDENHAIN not later than three (3) working days. In the case that any defects found upon the time the customer receives of goods, the customer must provide a prompt notice to HEIDENHAIN in accordance with the Article V of this General Conditions of Sale.

6. HEIDENHAIN shall have the right to make delivery by instalments and in that event each delivery shall stand as a separate contract. Failure to make any instalment delivery shall not entitle the customer to repudiate either that separate contract or the whole contract.

7. Force Majeure

"Force majeure" refers to the occurrence of an event or circumstance that hinders one party from fulfilling one or more of its contractual obligations if and to the extent that the party affected by the hindrance demonstrates that (a) this hindrance is outside of the party's reasonable control and that (b) the hindrance was not reasonably foreseeable at the time the contract was concluded and that (c) the affected party could not have reasonably avoided or overcome the effects of the hindrance.

Unless proven otherwise, force majeure is assumed for the following events: war (whether declared or not), hostilities, attacks, actions of foreign enemies, large-scale military mobilizations, civil war, civil unrest, rebellions, revolutions, military or other forms of takeover, uprisings, acts of terror, sabotage, currency or trade restrictions, embargoes, sanctions, pandemics, epidemics, natural disasters or extreme natural events, nuclear incidents, explosions, fire, and destruction of equipment, as well as the prolonged failure of means of transport, telecommunications, information systems or energy, and general labor unrest such as boycotts, strikes or lockouts.

In cases of force majeure, the affected contracting party is exempted, starting at the time at which the hindrance renders its performance impossible, from its obligation to fulfill its contractual duties and from any liability for damages and from any other contractual remedy for breach of contract if prompt notice is provided. If prompt notice is not provided, then this exemption takes effect starting at the time at which notice reaches the other party. If the effect of the claimed hindrance or event is temporary, then the aforementioned effects apply only as long as the claimed hindrance hinders fulfillment of the contract by the affected party. If the duration of the claimed hindrance deprives the contracting parties to a considerable extent of that which they could have expected by virtue of the contract, then each party may terminate the contract by notifying the other party within a reasonable period. Unless otherwise agreed, the parties expressly agree that the contract can be terminated by the other party if the duration of the hindrance exceeds 120 days.

8. If HEIDENHAIN, through no fault of its own, does not receive, receive on time or in due form, from its suppliers' goods or services that are necessary for the processing or manufacture of the goods to be delivered to the customer, then HEIDENHAIN must notify the customer and may, within a reasonable period after initial occurrence of these supply-chain difficulties, withdraw from the contract. In the event of withdrawing from the contract, HEIDENHAIN must promptly reimburse the customer for its consideration, especially for any advance payments.

Article IV: Retention of Title and Transfer of Risk

1. Ownership of the supplied product (reserved goods) remains vested in HEIDENHAIN until all claims receivable from this contract have been paid in full. Until ownership has been transferred to the customer, the customer must treat the reserved goods with care and, at his own expense, sufficiently insure them at replacement value against damage from fire, water and theft.

2. Risk shall transfer to the customer after the goods are ready for unloading from the vehicle at the designated place of delivery.

3. The customer must not pledge the reserved goods to third parties or assign them by way of security. However, the customer may use the reserved goods and re-sell them in the ordinary course of business, but only if he is not in default with his payment obligations and only if the sale is made subject to the reservation that the title is not transferred to the third party until the third party has fulfilled its payment obligations.

4. Without further declaration on the part of the customer, the customer hereby assigns to HEIDENHAIN as a security all claims receivable arising from resale of the reserved goods to the customer's business partners. HEIDENHAIN accepts this assignment.

5. Until further notice, the customer is authorized to collect the assigned claims receivable. This shall not affect the right of HEIDENHAIN to collect the accounts receivable itself. HEIDENHAIN may withdraw the customer's authorization to collect accounts receivable if there is a good reason, including but not limited to default in payment, commencement of insolvency proceedings, bill of exchange protest or reasonable indications for over-indebtedness. In addition, HEIDENHAIN may, after issuing a warning and complying with a reasonable deadline, disclose the security assignment, utilize the assigned claims and require the customer to disclose the security assignment to his customers.

6. The processing, fashioning or transformation of the reserved goods by the customer shall always occur in the name of and on behalf of HEIDENHAIN. If the reserved goods undergo a manufacturing process with other goods that are not under ownership of HEIDENHAIN, then HEIDENHAIN obtains co-ownership in the new goods in proportion to the value of the reserved goods relative to the other manufactured goods at the time of processing. If the reserved goods are inseparably combined or mixed with other goods not under ownership of HEIDENHAIN, then HEIDENHAIN obtains co-ownership in the new goods in proportion of the value of the reserved goods relative to the other combined or mixed goods at the time of the combining or mixing. If the combining or mixing occurs in such a manner that the customer's goods are to be seen as the main goods, then it is hereby agreed that the customer will transfer proportional ownership to HEIDENHAIN. HEIDENHAIN accepts this assignment. The customer will keep safe for HEIDENHAIN any thereby arising sole ownership or co-ownership of the goods.

7. If the reserved goods are distrained or are subject to other attempted acquisition by third parties, then, as long as ownership has not been assigned to the customer, the customer must inform the third party about the ownership rights of HEIDENHAIN and promptly notify HEIDENHAIN in writing so that HEIDENHAIN can enforce its ownership rights.

8. At the customer's request, HEIDENHAIN must release securities owed to it if the realizable value of all security interests owed to HEIDENHAIN exceeds the amount of all claims by more than 20 %. When releasing these securities, HEIDENHAIN may choose between various security interests.

Article V: Defects of Quality/Warranty

1. The product to be delivered is free from defects if it exhibits the agreed quality (subjective requirement). This agreed quality is based on all product descriptions, technical specifications and other information provided by the manufacturer that are subject-matter of the individual contract or that were made public by HEIDENHAIN at the time the contract was concluded (particularly in catalogs or on our Internet home page).

2. Unless otherwise agreed by HEIDENHAIN in writing, the customer shall have no claim for defects which should be apparent on visual inspection at the time of receipt of the delivered goods unless the defects are brought to the attention of the driver of the delivery vehicle and are clearly marked on the signed copy of the delivery note at the time of receipt of the delivered goods. The customer acknowledges that rust, oxidation or discoloration is a defect which it is reasonable for the customer to be expected to notice at the time of delivery.

3. The customer shall have no claim for defects capable of being apparent on subsequent visual inspection (not being defects falling within condition under the paragraph 2 of this Article V) unless:

- (a) the customer inspects the delivered goods and notifies HEIDENHAIN by telephone, fax or electronic means before fixing or otherwise using the goods or cutting or removing bands and in any event within three (3) working days of arrival at its designated place of delivery and
- (b) a written complaint is made to HEIDENHAIN before fixing or otherwise using the delivered goods and in any event within seven (7) days of receipt of the goods or such shorter period as the carrier's conditions (if applicable) require specifying the defect and
- (c) HEIDENHAIN is given an opportunity to inspect the delivered goods and investigate any complaint before any use is made of the goods.

If a complaint is not made to HEIDENHAIN as herein provided then the delivered goods shall be deemed to be in all respects in accordance with the this General Conditions of Sale and the customer shall be bound to pay in full amount accordingly.

4. Defects will be repaired, replaced or provided again free of charge at the sole discretion of HEIDENHAIN. In the event of repeated failure of subsequent performance, the customer may, at its option, rescind the purchase contract or reduce the purchase price.

5. The customer shall have no claim in respect of defects not apparent on visual inspection at the time of delivery or within three (3) working days thereafter (and, for this purpose, rust, oxidation and discoloration shall be regarded as being a defect which is apparent on visual inspection at the time of delivery) unless:

- (a) a written complaint is sent to HEIDENHAIN as soon as reasonably practicable after the defect is discovered and no use ("use" for this purpose being taken to include any sale, disposal or the parting of possession) is made of the goods after the defect is discovered and no alteration made thereto before HEIDENHAIN is given an opportunity to inspect the goods in accordance with this Condition and
- (b) the complaint is sent within twelve (12) months of the date of delivery of the goods or in the case of items not manufactured by the company, within the guarantee period specified by the manufacturer of such item.

6. The customer shall not be entitled to any claim in respect of any repairs or alterations undertaken by the customer without the prior specific written consent of HEIDENHAIN nor in respect of any defect arising by reason of fair wear and tear or damage due to misuse or inadequate or unsuitable storage.

7. HEIDENHAIN shall not be liable for loss or damage suffered by reason of use or installation of the goods after the customer becomes aware of a defect or after circumstances which should reasonably have indicated to the customer the existence of a defect.
8. Under no circumstances is HEIDENHAIN obligated to replace expenses for the removal, installation or attachment of the remedied or replaced item. In addition, if the end customer is not a consumer, then all claims under a right of recourse are excluded.
9. Unless otherwise agreed in writing, claims for subsequent performance shall become time-barred 12 months after delivery.

Article VI: Guarantee

1. Beyond the 12-month warranty period, HEIDENHAIN grants the customer a free guarantee (hereinafter: "HEIDENHAIN guarantee") for all defects with regard to functionality, if the product is used properly. This guarantee takes effect immediately after the 12-month warranty period, meaning that the guarantee is valid starting at the beginning of the second year following the date of initial delivery (at the time of delivery to the Designated Place of Delivery to the customer).
2. Within the scope of the HEIDENHAIN guarantee, HEIDENHAIN guarantees that the product will be free of defects with regard to functionality for a period of 24 months after expiration of the 12-months warranty period. The criterion for this is the product specification valid at the time of delivery and/or the quality agreement agreed to with the customer and arising from the order confirmation.
3. In the presence of a defect that falls under the HEIDENHAIN guarantee in accordance with this Article, HEIDENHAIN will remedy the defect (cure). In the event of cure, the defective product shall, at the sole discretion of HEIDENHAIN, either be repaired by HEIDENHAIN or, if possible and reasonable for HEIDENHAIN, replaced.
4. The customer must provide prompt notice of defect. The customer must provide the most detailed description possible of the defect, the circumstances of its occurrence and its effects.
5. Any claims against HEIDENHAIN beyond those of cure are excluded from the HEIDENHAIN guarantee. In particular, the HEIDENHAIN guarantee does not encompass any claims for compensatory damages, installation costs or removal costs, or for reimbursement of futile expenses. This also applies if a defect ultimately cannot be remedied by means of a cure.
6. Any claims against HEIDENHAIN arising from the HEIDENHAIN guarantee are also excluded if the defect arose from any of the following:
 - The product was, without the express approval of HEIDENHAIN, repaired, refurbished or underwent maintenance by the customer himself or by a third party.
 - Rules regarding the operation or treatment of the product (e.g., operating instructions, accompanying documentation, etc.) were not complied with.
 - Unauthorized alterations or other modifications were performed on the product.
 - The product was damaged through human agency or external influences.
 - The product is being used for a purpose other than the contractually agreed and defined purpose (particularly in the accompanying documentation and operating instructions).
 - The customer did not promptly announce the defect.
 - The customer did not promptly provide an opportunity for a cure despite being requested to do so.
7. The customer and HEIDENHAIN will each pay a part of the overall transportation costs for the cure; the cost of transporting the product to the site of the cure will be paid by the customer, and the cost of the return transport will be paid by HEIDENHAIN. Transportation risks will not be covered by HEIDENHAIN.
8. The right to claim under a guarantee exists only if the relevant product is provided along with proof that the material defect or the defect in serviceability arose within the guarantee period.
9. If HEIDENHAIN does so repair the goods or supply substitute goods to the customer, the customer shall be bound to accept such repaired or substituted goods to the exclusion of any other remedy and HEIDENHAIN shall have no liability for any loss or damage whatsoever arising from the initial delivery of the defective goods or from the delay before the defective goods are repaired or the substitute goods are delivered or the purchase price reimbursed.

Article VII: Defect of Title

1. HEIDENHAIN assures, in accordance with this Article VII, that the delivered item is free from industrial property rights or third-party intellectual property rights in the country of the agreed delivery place. Each party to the contract will promptly notify the other party in writing if claims for violation of these rights are asserted against him. The provision in Article VII, Sentence 1, is not a guarantee but rather only an agreed quality in accordance with statutory warranty provisions. If usage of the product causes a breach of industrial property rights or intellectual property rights in Germany, then HEIDENHAIN will, at its own cost, obtain for the customer the right to further usage or modify the delivered item in a manner reasonable for the customer such that the property right is no longer breached. If this is not possible at economically reasonable conditions or within a reasonable period, then the customer may withdraw from the contract. Under the aforementioned conditions, HEIDENHAIN may also withdraw from the contract. In addition, HEIDENHAIN will release the customer from uncontested or legally established claims of the affected holder of the industrial property right.
2. If there is a breach in industrial or intellectual property rights, then the obligations of HEIDENHAIN stated in Article VII, Section 1, are exhaustive, subject to Article IX. They exist only if:
 - The customer promptly notifies HEIDENHAIN of the asserted breach of industrial or intellectual property rights.
 - The customer will support HEIDENHAIN to a reasonable extent in defending against the asserted claims or will enable HEIDENHAIN to perform modifications in accordance with Article VII, Section 1.
 - HEIDENHAIN retains the right to all defensive measures, including out-of-court settlements.
 - The defect of title is not due to an instruction of the customer
 - The breach of rights was not caused by unauthorized modification of the goods by the customer or by the customer's use of the goods in a manner that violates the contract.

Article VIII: Exclusion of Warranty

1. Claims for defects are excluded in case of insignificant deviations from the agreed quality, for insignificant limitation of usability, for damage arising from incorrect or negligible action after the passing of risk, for natural wear or damage, or for damage arising from unusual external factors not covered by the contract.
2. Claims for defects due to deviations from objective requirements are excluded if the product is an individualized product or if the product fulfills the subjective requirements.
3. Claims for defects do not exist if damage occurred because the customer failed to follow the operating instructions or other instructions from HEIDENHAIN, did not utilize qualified operating and/or monitoring personnel, did not perform regular maintenance and upkeep (which must be documented accordingly), did not perform the necessary software updates and/or did not comply with other instructions from HEIDENHAIN. For all work regarding service and delivery, the customer must comply with all manuals and instructions from HEIDENHAIN.
4. If changes are made to the goods, especially removal of the serial number, ID label or similar marking, or if parts are changed or materials are used that do not correspond to the original specification, then all warranties become void unless the customer proves that the defect did not arise therefrom.
5. For goods individually created for the customer (including software), claims for defects are excluded if the customer fails to first diligently test the product in a non-productive environment in accordance with generally accepted rules of technology or if the customer implements the product in a productive environment without prior successful testing and without first verifying the agreed specification.

Article IX: Liability

1. Unless otherwise provided for in these General Conditions of Sale, the following applies:
2. The liability of HEIDENHAIN for damages, regardless of its legal basis, is excluded. Under no circumstance shall the customer have any right to compensation for losses not incurred by the deliverable itself, such as loss of production, loss of use, loss of orders, lost profits, or other direct or indirect losses. The above does not apply in the event of willful intent and gross negligence. In the event of ordinary negligence, the exclusion of liability does not apply:
 - a) For damages arising from injury to life, limb or health
 - b) In accordance with the German Federal Product Liability Act
 - c) In the case of malice
 - d) In the case of guarantee
 - e) In the event of delay if a fixed time for delivery or the rendering of a service was agreed
 - f) For damages arising from violation of an essential contractual obligation (obligation whose fulfillment is required for proper performance of the contract and on compliance with which the contracting partner regularly relies and may rely); in this case, however, liability is limited to replacement of foreseeable, typical damage

The liability for ordinary negligence will however always be subject to statutory limitations of liability (e.g., diligence in one's own affairs; insignificant breach of obligation).

Article X: Limitation of Liability in Time

The customer's claims, regardless of their legal basis, expire in 12 months from the date of delivery of goods, except for claims arising from Article VI. for deliberate or malicious behavior, as well as claims in accordance with the Civil and Commercial Code, the statutory limitation periods apply. These statutory limitation periods also apply to defects of structures, buildings or edifices, as well as to delivered goods that, in accordance with their usual method of use, were used for a structure, building or edifice and caused it to be defective.

Article XI: Prototypes

If the product ordered by the customer is a prototype or a pre-serial product (hereinafter: "non-serial product"), then it was neither manufactured in the usual process of series production nor inspected and tested as a serial product. The use of non-serial goods is at the customer's own risk. The product is delivered in the form of a non-serial product at the customer's express wish. The customer must therefore take all required and reasonably expectable precautions in order to ensure that the non-serial product is not used in active production but only in sufficiently protected testing environments. For damage caused by non-serial goods, HEIDENHAIN is responsible only in the case of willful intent, gross negligence or injury to life, limb or health. The aforementioned also applies when HEIDENHAIN, for testing purposes, provides the customer with software applications that have not yet been released for productive use.

Article XII: Proviso of Performance

1. Performance of the contract by HEIDENHAIN is subject to the proviso that performance is not prevented by any obstructions due to German, United States, Thailand or other applicable national, EU or international foreign trade regulations, nor by any embargoes or other sanctions.
2. The customer must supply all information and documents required for export, transport and import purposes.

Article XIII: Special Provisions for Software

If HEIDENHAIN products contain HEIDENHAIN software (hereinafter: "software") that is provided for use as part of a related hardware product or in conjunction with the delivery of a related hardware product, then the customer has the non-exclusive right for an unlimited period of time to use the software solely on the respective delivery product (hardware) in accordance with the related documentation, if any. The software (including any software options) is assigned to the hardware either via the device-specific serial number or via other means of identification defined by HEIDENHAIN (e.g., a system identification key, dongle). Resale of the software is permissible only in combination with the assigned hardware. The issuance of sublicenses is not permitted.

If the software contains components for which HEIDENHAIN owns only a derived right of use (non-HEIDENHAIN software), then the terms of use agreed between HEIDENHAIN and the relevant licensor apply as well and take precedence. If the software contains open source components, then the terms of use to which the open source software is subject apply as well and take precedence. HEIDENHAIN will make these terms of use accessible upon request.

Claims of the customer due to a defect are excluded if this defect does not occur in a different software version released by HEIDENHAIN and if the customer can be reasonably expected to use this version.

The above does not create any obligation for the provision of new program versions or updates.

Article XIV: Intellectual Property and Confidentiality

1. Any intellectual property rights or industrial property rights for designs, templates, sketches, samples, negatives, digital data, etc. (hereinafter "work materials"), are under sole ownership of HEIDENHAIN. The customer may not use these work materials without a prior explicit written agreement in which a suitable usage fee is established.
2. The customer is liable for ensuring that any goods manufactured by HEIDENHAIN in accordance with the customer's work materials, other specifications or instructions do not breach the rights of third parties, particularly any intellectual or industrial property rights. The customer is hereby obligated, at first request, to release HEIDENHAIN from any claims asserted against HEIDENHAIN by third parties due to alleged or actual breach of intellectual property rights and/or industrial property rights if HEIDENHAIN manufactured the product in accordance with the customer's work materials, other specifications or instructions.
3. Work materials that are required for the manufacture of the product and that are manufactured by HEIDENHAIN remain the property of HEIDENHAIN, even if the customer has contributed to the cost of their creation, whether financially or immaterially, such as through the provision of expertise. There is no obligation to hand them over.
4. If no separate confidentiality agreement was concluded between the parties, then both parties will keep confidential from third parties the knowledge, experience, documents, tasks, business processes and other information, as well as the concluding of the contract and its results, including after the duration of the contract, unless this information has become generally known through legally permissible means, or unless both parties have agreed in writing that the information may be shared.

Article XV: Termination

1. Without prejudice to any other rights or remedies to which it may be entitled, HEIDENHAIN may immediately terminate this and any other contract between HEIDENHAIN and the customer by written notice and without liability if the customer:
 - (a) fails to make any payment when due;
 - (b) breaches the terms of this General Conditions of Sale (and if remediable the breach has not been remedied within 7 days of receiving written notice requiring it to be remedied);
 - (c) persistently breaches any one or more terms of this General Conditions of Sale;
 - (d) ceases or threatens to cease to carry on business; and/or
2. Is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances.
3. If any of the events in the above paragraph 1 occurs, then the price of all goods or services rendered by HEIDENHAIN to the customer under this and any other contract between the HEIDENHAIN and the customer shall immediately become payable and the customer shall settle the payable amount within 30 days.

Article XVI: Legal Venue and Applicable Law

1. The sole legal venue for all conflicts arising directly or indirectly from this contractual relationship is under the jurisdiction of Thai courts.
2. This contract, as well as its interpretation, shall be governed by and in accordance with the laws of Thailand.

Article XVII: Severability

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this General Conditions of Sale shall be unaffected thereby and shall continue to be valid and enforceable.