

# HEIDELBERG GRAPHIC EQUIPMENT LIMITED

## BUNDLE DEAL TERMS AND CONDITIONS (effective October 2018)

These Bundle Deal Terms and Conditions (“**Bundle Deal Conditions**”) shall be subject to the Heidelberg Graphic Equipment Limited (“**Heidelberg**”) General Trading Terms and Conditions in relation to the purchase of Equipment and to the Trading Terms and Conditions for Consumable Sales in relation to the purchase of Consumables both of which shall be deemed to form part of these Bundle Deal Conditions. In the event of any inconsistency between these Bundle Deal Conditions and the General Trading Terms and Conditions and the Trading Terms and Conditions for Consumable Sales, these Bundle Deal Conditions shall prevail.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Bundle Deal Conditions:

**Acknowledgement:** the written acknowledgement given by Heidelberg to the Buyer accepting the Buyer’s order for Consumables, Goods and/or Equipment set out in the Order Form;

**Agreement Term:** the term of the agreement as set out in the Order Form or as amended pursuant to Conditions 4.2 or 6.1 of these Bundle Deal Conditions;

**Buyer:** the person(s), firm or company who purchases the Goods/Consumables from Heidelberg;

**Conditions:** a reference to these terms and conditions;

**Consumables:** any consumable product as described in the Order Form, supplied or to be supplied by Heidelberg to the Buyer;

**Contract:** the contract between Heidelberg and the Buyer for the sale and purchase of Consumables and/or Equipment which contract is formed when the Acknowledgment is signed by Heidelberg and the Buyer and which shall be deemed to incorporate these Bundle Deal Conditions;

**Deposit:** the deposit payable for the Equipment pursuant to Condition 4.1.1;

**Equipment:** any goods agreed to be sold to the Buyer by Heidelberg in the Acknowledgement;

**Equipment Cost:** the price of the Equipment as set out in the Acknowledgment;

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by Heidelberg (including any part or parts of them);

**Installation Address:** the address set out in the Acknowledgement at which the Equipment shall be installed;

**Minimum Order Value:** the Buyer’s permitted minimum order for Consumables as set out in the Schedule to these Bundle Deal Conditions and Minimum Order Value per Quarter shall be construed accordingly;

**Month:** a calendar month and **Months** shall be construed accordingly;

**Order Form:** the written quotation and/or purchase order signed by the Buyer and submitted to Heidelberg as an offer to buy the Goods/Consumables from Heidelberg; and

**Quarter:** any period of three (3) consecutive Months ending on March 31, June 30, September 30 and December 31 (each a “**Quarter Date**”) provided that the first such period shall commence on the date of the Contract and end on the next succeeding Quarter Date; and

**Schedule:** the schedule attached to these Bundle Deal Conditions detailing the type of consumables, the agreed purchase volume, the agreed price and the installation date.

1.2 In these Conditions reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 Condition headings are for ease of reference only and shall not affect the construction or interpretation of these Conditions and words denoting the singular include the plural and vice versa.

1.4 In these Conditions a reference to a Condition is to a condition of these Conditions.

1.5 These Conditions expressly incorporate the terms and conditions of the Heidelberg End User Licence Agreement (“**EULA**”), a copy of which is available to download at [www.uk.heidelberg.com](http://www.uk.heidelberg.com) or on request from Heidelberg.

### 2. SUPPLY OF EQUIPMENT

#### 2.1 Equipment Lease

2.1.1 Heidelberg shall lease the Equipment to the Buyer with effect from the agreed installation date for use at the Installation Address upon and subject to these Bundle Deal Conditions.

2.1.2 At the end of the Agreement Term, provided the terms of these Bundle Deal Conditions have been complied with by the Buyer, Heidelberg shall deliver a final statement for the Equipment to the Buyer. Title to the Equipment shall pass automatically from Heidelberg to the Buyer upon receipt by the Buyer of Heidelberg’s final statement as aforesaid.

2.1.3 The quantity and description of the Equipment shall be as set out in the Order Form.

#### 2.2 Buyer Responsibilities

2.2.1 The Buyer shall:

(i) insure and keep insured the Equipment to the full price against all risks to the reasonable satisfaction of Heidelberg with a reputable insurance company until the date that property in the Equipment passes from Heidelberg, and shall whenever requested by Heidelberg produce a copy of the policy of insurance;

(ii) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with Heidelberg’s instructions and

recommendations and in accordance with any applicable statute, statutory instrument or regulation from time to time in force;

(iii) without limitation to Condition 2.2.1(i), take such steps as may be necessary to ensure that the Equipment will at all times be safe and will pose no risk to health or safety when used;

(iv) at its own expense, maintain the Equipment in good and substantial repair and serviceable operating condition (fair wear and tear only excepted) including replacement of worn and defective parts and shall, save to the extent the same is covered by any maintenance agreement between the Buyer and Heidelberg, make good all damage to the Equipment whether or not occasioned by its own act or default or otherwise;

(v) keep Heidelberg fully informed at all times of all material matters relating to the Equipment;

(vi) retain the Equipment at all times at the Installation Address (marked as ‘property of Heidelberg’ and stored separately (at no cost to Heidelberg) from goods supplied to the Buyer by third parties so that they are easily identified as belonging to Heidelberg) and not move or attempt to move the Equipment or any part of it to any other location without Heidelberg’s prior written consent; and

(vii) permit Heidelberg by its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection.

2.2.2 The Buyer shall not without Heidelberg’s prior written consent:

(i) perform or permit any maintenance of, or any modification or addition to, the Equipment (save to the extent the same is not covered by any maintenance agreement between the Buyer and Heidelberg). Any such modification or addition shall upon being made become the exclusive property of Heidelberg provided that Heidelberg shall not become liable to make any payment or otherwise account to the Buyer in respect thereof;

(ii) part with control of, sell or offer for sale, pledge, mortgage, charge, underlet or lend the Equipment;

(iii) suffer or permit the Equipment to be confiscated, seized or taken out of the Buyer’s possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Buyer shall forthwith notify Heidelberg thereof and shall at the Buyer’s sole expense use its best endeavours to procure an immediate release therefrom and shall indemnify Heidelberg against all losses, costs, charges, damages and expenses, (including legal expenses) incurred by reason or in respect thereof;

(iv) do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Heidelberg in the Equipment (including attaching the Equipment to the Buyer’s premises in any way); or

(v) use the Equipment for any unlawful or immoral purpose.

### 3. SUPPLY OF CONSUMABLES

#### 3.1 Price of Consumables

3.1.1 All estimates and quotations are net of VAT.

3.1.2 The Buyer agrees that the price payable for the Consumables per unit specified shall be as set out in the Schedule attached hereto.

3.1.3 Heidelberg shall, in its sole discretion, be entitled to alter the price of any Consumables to reflect increased costs of procurement, production or delivery and import duties suffered by Heidelberg or other market conditions. Such adjustments may affect the Minimum Order Value and such change in the Minimum Order Value shall be negotiated and agreed in writing between Heidelberg and the Buyer.

#### 3.2 Minimum Order Value

The Buyer agrees to order each Quarter Consumables with a value in aggregate at least equivalent to the Minimum Order Value Per Quarter specified in the Schedule.

#### 3.3 Acceptance of Consumables Orders

An order of Consumables will be deemed to be accepted by Heidelberg only when Heidelberg issues an invoice in respect of such order to the Buyer.

#### 3.4 Purchase Obligation

The Buyer agrees to purchase Consumables specified in orders submitted by it if such orders are accepted by Heidelberg and to take delivery of the same in accordance with the usual delivery practices of Heidelberg.

### 4. PAYMENT

#### 4.1 Payment

4.1.1 The Buyer shall pay to Heidelberg the Deposit in full on the date the Contract is signed.

The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Heidelberg to the Buyer.

#### 4.2 Refund

If the Buyer shall have ordered and purchased such quantity of Consumables throughout the previously completed Quarter that exceeds the Minimum Order Value Per Quarter, Heidelberg may reduce the Agreement Term to reflect the increased repayment rate. If the Agreement Term is changed the Schedule shall be revised by Heidelberg and provided to the Buyer to reflect the changed Agreement Term and Minimum Order Value(s).

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### 4.3 VAT

Subject to Condition 4.2 above, the Buyer shall pay to Heidelberg an amount representing VAT at the standard rate in respect of the Equipment Cost, such payment to be made on the date the Acknowledgment is signed by Heidelberg against production of a VAT invoice.

### 5. TERMINATION

#### 5.1 Right to terminate

Heidelberg shall have the right, without prejudice to any other right or remedy which may be available to it, to terminate the Contract (in whole or in part) at any time by written notice to the Buyer if:

- 5.1.1 the Buyer fails to make any payment due hereunder or in connection herewith on the due date for payment, and fails to remedy such non-payment within seven (7) days of receiving notice from Heidelberg requiring it to do so;
- 5.1.2 the Buyer commits any material breach of any obligation under these Bundle Deal Conditions which breach, if capable of remedy, the Buyer fails to remedy within fourteen (14) days of receiving notice from Heidelberg requiring it to do so;
- 5.1.3 the Buyer becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed in respect of it or the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of a debt or an order or resolution is made or passed for its dissolution or liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation;
- 5.1.4 any distress, execution or sequestration is levied or enforced upon any of the property, assets or undertaking of the Buyer and is not paid out, discharged, satisfied or removed within fourteen (14) days of receiving notice of any such distress, execution or sequestration;
- 5.1.5 any security created by a debenture, mortgage or charge given by the Buyer becomes enforceable;
- 5.1.6 any other lease or hiring or loan agreement entered into by the Buyer and containing provisions similar or having a similar effect to the provisions of this Condition 5 is terminated pursuant to any such provision;
- 5.1.7 the Buyer sells or otherwise disposes of the whole or any substantial part of its undertaking or assets;
- 5.1.8 the Buyer ceases or threatens to cease to carry on its business or a resolution is passed or a petition presented to any court for the winding up of the Buyer (in the event the Buyer is a company); or
- 5.1.9 the Equipment shall in Heidelberg's opinion be damaged beyond repair or shall be lost, stolen, seized or confiscated.

#### 5.2 Consequences of termination for cause

Upon termination of the Contract pursuant to Condition 5.1, or any other repudiation of the Contract by the Buyer and which is accepted by Heidelberg:

- 5.2.1 the Equipment shall no longer be in the Buyer's possession, custody or control with Heidelberg's consent, and the Buyer hereby grants Heidelberg, its agents and employees an irrevocable licence at any time to enter without notice and at the Buyer's expense any of the Buyer's premises where the Equipment is or might be stored to recover the Equipment and the rights granted to Heidelberg pursuant to this Condition shall survive termination of the Contract howsoever caused; and
- 5.2.2 the Buyer shall pay to Heidelberg on demand a sum equal to the aggregate of:
  - (i) all sums due but unpaid under the Contract at the date of such demand; and
  - (ii) an agreed compensation for loss of profit, a sum equal to the aggregate Minimum Order Value that would (but for the termination or repudiation) have been payable if the Contract had continued (assuming no discounts had been or were earned); and
  - (iii) any costs and expenses incurred by Heidelberg in recovering the Equipment and/or in collecting any sums due under the Contract (including without limitation any storage, insurance, repair, transport and remarketing costs); and
  - (iv) all amounts payable under Condition 6.2; and
  - (v) interest on all such sums calculated in accordance with the Contract; and

for the purposes of the preceding sub-Condition 5.2.1 the Buyer hereby acknowledges and agrees that any use whatsoever and howsoever that it shall have made of the Equipment under any equipment leasing or other arrangements with Heidelberg shall be deemed substantial use of such equipment amounting to good consideration and which would entitle Heidelberg to retake possession of the Equipment.

#### 5.3 Consequences of all terminations

Upon termination of the Contract for any reason prior to the end of the Agreement Term, the Buyer shall forthwith at its own expense deliver the Equipment to Heidelberg at such location as Heidelberg may require in good order and condition. The Buyer's responsibility under this Condition 5.3 shall be discharged only when it has received a receipt for the Equipment duly signed by an authorised representative of Heidelberg.

#### 5.4 No prejudice

Termination of the Contract shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

### 6. BREACH OF PURCHASING OBLIGATIONS

#### 6.1 Failure to place minimum order

6.1.1 Where, in any Quarter, the Buyer fails to order and/or purchase the Minimum Order Value Per Quarter of Consumables pursuant to Condition 3.2 then Heidelberg shall notify the Buyer that the Buyer must immediately pay the arrears attributable to such Quarter (or such part thereof as remains unpaid at such time) to Heidelberg, and Heidelberg shall submit an invoice (which the Buyer hereby acknowledges it shall be obliged to pay whether or not any Consumables are supplied pursuant to such invoice) for an amount equal to the Minimum Order Value Per Quarter less the price of Consumables ordered by the Buyer by reference to such Quarter pursuant to Condition 3.2.

6.1.2 The Minimum Order Value Per Quarter of Consumables may be renegotiated, at Heidelberg's discretion, between Heidelberg and the Buyer and the necessary amounts in the Order form and the Schedule shall be amended accordingly. Heidelberg shall charge the Buyer an administration fee for this supplemental amendment to the Order Form and the Schedule.

#### 6.2 Failure to supply following acceptance of order

Where, in any Quarter, the Buyer fails to order and/or purchase the Minimum Order Value Per Quarter as a result of Heidelberg's failure to supply the Buyer with Consumables for which it has accepted an order, where such failure:

6.2.1 is caused by circumstances beyond Heidelberg's control; or

6.2.2 follows termination of the Contract by Heidelberg pursuant to Condition 5,

then the Buyer shall pay to Heidelberg such amount(s) as, when aggregated with the value of all orders placed, shall result in the Buyer paying to Heidelberg, pursuant to the Contract, an amount equivalent to the Minimum Order Value Per Quarter in respect of the Quarter during which such failure arose and all previous Quarters.

### 7. DURATION OF AGREEMENT

This Contract shall commence on the date hereof and, unless terminated earlier in accordance with these Bundle Deal Conditions, shall continue in force throughout the Agreement Term.

### 8. ASSIGNMENT

8.1 The Buyer may not assign, sub-contract, transfer or otherwise dispose of any of its rights or licences arising under the Contract without the prior written consent of Heidelberg.

8.2 It is understood that Heidelberg contemplates assigning or mortgaging the Contract, and that any assignee of Heidelberg may assign the agreement. All rights of Heidelberg under the Contract may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, with prior written notice to the Buyer.

8.3 If Heidelberg assigns the Contract or the amounts due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Heidelberg hereunder or pursuant to any other agreement between Heidelberg or the Buyer (if any) shall excuse performance by the Buyer of any provision hereunder.

8.4 No assignee pursuant to condition 8.3 shall be obliged to perform any duty, covenant or condition required to be performed by Heidelberg under the terms of the Contract but no such assignment shall impair or diminish Heidelberg's obligations hereunder.

8.5 The Buyer hereby consents to any such documentation as Heidelberg or any such assignee may require and to furnish to any such assignee copies of any notices given by the Buyer under the Contract.

### 9. INTELLECTUAL PROPERTY

9.1 Save for the licence agreement between Heidelberg and the Buyer necessary for the operation of the Goods no right, title, interest or licence is granted under the Contract to the Buyer in any invention, patent, registered design, design right (whether registered or otherwise), copyright, moral right, database right, typographical right, know-how and trade marks (whether registered or not) and the goodwill therein and applications for any of the same and all rights of a similar nature throughout the world except the right to use or resell the Goods.

9.2 Nothing in the Contract entitles the Buyer to use the name of Heidelberg for any reason whatsoever when manufacturing or selling their own goods or finished products to any third parties without Heidelberg's prior written consent.

### 10. MISCELLANEOUS

10.1 The failure of any party to enforce or to exercise, at any time or for any period of time, any term of or any right arising pursuant to these Bundle Deal Conditions does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

10.2 Each party acknowledges and affirms that the Contract (together with any agreement referred to therein) contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to the Contract except as expressly stated in the Contract. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into the Contract (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in the Contract.

10.3 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of the Contract.

10.4 The Contract shall be construed according to the laws of England and the Buyer hereby agrees to submit to the sole and exclusive jurisdiction of the Courts of England. Should these Conditions be translated into any language other than English, this English version of the Conditions shall prevail over any translation.

10.5 All notices and other communications required or permitted to be given under the Contract shall be in writing and be delivered or transmitted to the intended recipient's address as specified in the Acknowledgement Form or such other address as any party may notify to the other for this purpose from time to time