

# HEIDELBERG GRAPHIC EQUIPMENT LIMITED - CUSTOMER SERVICE TERMS AND CONDITIONS (effective October 2018)

## 1. SERVICES PROVIDED

1.1 These Customer Service Terms and Conditions (the “**Conditions**”) shall be subject to the General Trading Terms and Conditions (effective October 2018) (the “**General Terms**”) from time to time of Heidelberg Graphic Equipment Limited (“**Heidelberg**”) which shall be deemed to form part of these Conditions where applicable and a reference to these Conditions shall include a reference to the General Terms. In the event of any inconsistency between these Conditions and the General Terms these Conditions shall prevail.

1.2 Heidelberg shall provide to the customer the services set out in the attached Equipment Schedule and more specifically described in the Services Schedule (the “**Services**”) subject to the terms and conditions set out below. The Services shall only be provided in respect of the equipment and/or software specified in the Equipment Schedule (the “**Equipment**”) and the customer shall not without the prior written consent of Heidelberg permit or authorise anyone other than Heidelberg to provide any maintenance or support services in respect of the Equipment for the duration of the Contract nor shall they permit or authorise anyone other than Heidelberg to move or relocate the Equipment.

## 2. HOURS WHEN SERVICES ARE PROVIDED

2.1 Heidelberg shall provide the Services during the hours specified in the Equipment Schedule. Where normal hours are quoted this means 08.00 to 17.15 Monday to Friday, exclusive of public holidays for helpdesk support.

2.2 The customer will make available to Heidelberg the Equipment within a reasonable period of time after the arrival of the Heidelberg personnel.

## 3. START AND DURATION OF AGREEMENT

3.1 Where the customer and Heidelberg enter into the Contract at the point of sale of the Equipment by Heidelberg to the customer (“**Point of Sale**”) the Contract shall take effect on the commencement date specified in the Equipment Schedule and shall, subject to earlier termination in accordance with Conditions 4, 6, 8 or 10 below, continue until the expiry of the period specified in the Equipment Schedule. In all other cases the Contract shall take effect on the commencement date specified in the Equipment Schedule and shall, subject to earlier termination in accordance with Conditions 4, 6, 8 or 10 below, be renewed automatically at the end of the period specified in the Equipment Schedule.

3.2 Where applicable either party may give to the other not less than three months written notice to expire at any time after the minimum period of one year from the commencement date.

## 4. PRICE

4.1 The price for the Services is specified in the Equipment Schedule (the “**Price**”).

4.2 If the Contract is entered into at the Point of Sale and the cumulative impression count which impacts on the cost and duration of the Services (made up of the annual impression counts set out in the Equipment Schedule) as determined by Heidelberg and the customer is subsequently exceeded, Heidelberg reserves the right to immediately terminate the Contract.

4.3 Excluding the circumstances covered under Condition 4.2

where the period of the Contract is for one year or more or where the Contract is automatically renewed under Condition 3.1 the customer agrees that the Price may change upon thirty days written notice at any time after the minimum period of one year has expired, or if the maximum annual impression count or maximum annual plate volume specified in the Equipment Schedule is exceeded within a twelve consecutive month period.

4.4 If the new charge is not accepted, i.e. not paid when due, this Contract may be terminated immediately without liability by Heidelberg on the date the new charge would have commenced.

4.5 The Price and all other charges under the Contract are exclusive of VAT and are payable within 30 days of receipt by the customer of Heidelberg’s invoice unless otherwise specified in the Equipment Schedule. The Price includes all call-out, labour and other charges except to the extent that such charges are stated in any attached schedule to be additional to the Price.

## 5. SERVICES NOT COVERED

Any service which is required as a result of any of the following is not covered under the Contract:

5.1 damage resulting from acts of God (including without limitation, fires, riots, strikes, floods or explosions);

5.2 interference from mains supplies or equipment not covered by the Contract;

5.3 any service, modification, removal of the Equipment to a new site, change or addition to the Equipment, whether hardware or software made without the prior written consent of Heidelberg;

5.4 environmental conditions outside those specified by Heidelberg for the Equipment; or

5.5 negligence, wilful damage, improper use of the Equipment, failure to comply with instructions or recommended procedures, fault or operator error by the customer.

## 6. OVERHAULS

If in the reasonable opinion of Heidelberg an overhaul is necessary to keep the Equipment in a satisfactory operating condition, Heidelberg will submit quotation for the overhaul and all charges for resulting work will be additional to the Price. If the customer does not accept the quotation within 30 days Heidelberg shall be entitled to terminate the Contract without further notice.

## **7. THIRD PARTY LIABILITY**

The customer shall indemnify and hold Heidelberg harmless from and against all losses, claims, costs, expenses, damages and liabilities, including reasonable legal fees on a full indemnity basis, which Heidelberg may suffer or be held liable to pay in respect of death or personal injury resulting from negligent use or operation or deliberate misuse of the Equipment by the customer or the customer's agents, employees, licensees or invitees.

## **8. DEFAULT BY THE CUSTOMER**

8.1 If the customer fails to pay any charges due under the Contract within 30 days of the due date, or is in breach of any term or condition of the Contract and such default shall continue for a period of 10 days after written notice has been given by Heidelberg to the customer requiring the breach to be remedied, then Heidelberg may, at its option, and in addition and without prejudice to any other available remedies, declare the entire amount of unpaid charges immediately due and payable, or terminate the Contract by notice in writing with immediate effect, or both.

8.2 Heidelberg shall be entitled to interest upon all payments for the time being outstanding at an annual rate equal to 5% above the Bank of England base rate from time to time from the date that payment should have been made until the date of payment in full and whether before or after any judgement plus warehousing and all other costs. Heidelberg reserves the right to claim interest under the Late Payment of Commercial Debts Regulations 2002. The Buyer shall also reimburse Heidelberg all costs and expenses (including legal costs) incurred in the collection of overdue amounts.

## **9. LIMITATION OF LIABILITY**

9.1 Heidelberg has no obligation to the customer whether in contract, tort, for breach of statutory duty or otherwise beyond that of a duty to exercise reasonable skill and care in providing the Services.

9.2 In any event Heidelberg shall not be liable in contract, tort (including negligence or breach of statutory duty) or otherwise, and whatever the cause thereof: (i) for any loss of profit business contracts revenues or anticipated savings, or (ii) for any special, indirect or consequential damage of any nature whatsoever suffered by the customer or any third party arising from the provision of the Services.

9.3 The liability of Heidelberg to the customer or any third party for physical property damage whether in contract, tort or otherwise caused by the breach or non-performance of any obligation or duty owed by Heidelberg shall in respect of any one incident or series of connected incidents attributable to the same cause be limited to and shall not exceed in any circumstances the Price. The liability of Heidelberg for death or personal injury resulting from the negligence of Heidelberg or its employees acting in the course of their employment shall not be limited.

9.4 In all other cases Heidelberg's liability to the customer shall not exceed the aggregate of payments received by Heidelberg from the customer under the Contract.

## **10. FORCE MAJEURE**

10.1 If either party is affected by any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other industrial action) it shall not be deemed to be in breach of the Contract, or otherwise be liable to the other, for any delay in performance or non-performance of any of its obligations under the Contract, to the extent that the delay or non-performance is due to such circumstances, and the time of performance of the obligation shall be extended accordingly.

10.2 If either party claims any of the above mentioned circumstances and is accordingly relieved from performing any of its obligations under the Contract for a continuous period in excess of 3 months or for an aggregate period in excess of 90 days, then the other party may notwithstanding any other provision in the Contract, terminate the Contract without liability by giving to the other not less than 30 days written notice.

## **11. ASSIGNMENT**

The Contract may not be assigned, transferred, sublet or pledged by the customer without the prior written consent of an authorised representative of Heidelberg.

## **12. LEGAL CONSTRUCTION**

The Contract shall be construed according to the laws of England and the Customer 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.

## **13. AMENDMENTS**

The Contract including its schedules may be amended only in writing signed by an authorised representative of Heidelberg.

## **14. GENERAL**

14.1 Heidelberg may sub-contract or assign some or all of the Services provided under the Contract either in whole or part, without the customer's consent.

14.2 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

14.3 Failure by Heidelberg to exercise any of its rights under the Contract shall not be a waiver or forfeiture of such rights.

14.4 All schedules referred to in this Contract form part of the Contract but in the event of any inconsistency between any provision in a schedule and any provision in this Contract, the latter shall prevail over the former.

14.5 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 Equipment Schedule or such other address as any party may notify to the other for this purpose from time to time.