

HEIDELBERG GRAPHIC EQUIPMENT LIMITED

GENERAL TRADING TERMS AND CONDITIONS (effective April 2019)

1. GENERAL

1.1 In these Conditions the following words have the following meanings:
Acknowledgement: the written acknowledgement given by Heidelberg to the Buyer accepting the Buyer's order for the Goods set out in the Order Form;
Buyer: the person(s), firm or company who purchases the Goods from Heidelberg;
Conditions: means a reference to these terms and conditions;
Commissioning: the date on which the Goods have produced a complete, 'sale-ready', piece of work and **Commissioned** shall be construed accordingly;
Contract: any contract between Heidelberg and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;
Goods: any goods agreed in the Contract to be supplied to the Buyer by Heidelberg (including any part or parts of them);
Heidelberg: Heidelberg Graphic Equipment Limited;
Order Form: the written quotation and/or purchase order signed by the Buyer and submitted to Heidelberg as an offer to buy the Goods from Heidelberg; and
Site: the location for installation of the Goods specified by the Buyer in the Order Form.
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 In these Conditions references to delivery of the Goods shall be construed as delivery of the physical components of the Goods (but not the software used in the Goods) and Conditions consequent upon delivery shall be construed accordingly.
1.4 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.
1.5 In these Conditions a reference to a Condition is to a condition of these Conditions.
1.6 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 or on request from Heidelberg.

2. ACCEPTANCE

2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
2.3 These Conditions shall apply to all Heidelberg's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a board director of Heidelberg. Nothing in this Condition will exclude or limit Heidelberg's liability for fraudulent misrepresentation.
2.4 Each order for Goods by the Buyer from Heidelberg shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.
2.5 No order placed by the Buyer shall be deemed to be accepted by Heidelberg until the Acknowledgement is issued by Heidelberg.
2.6 The Buyer must ensure that the terms of the order and any applicable specification are complete and accurate.
2.7 Any quotation is given on the basis that no contract will come into existence until Heidelberg dispatches an Acknowledgement to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that Heidelberg has not previously withdrawn it.

3. PRICES

3.1 All estimates and quotations are net of VAT and import duties.
3.2 Heidelberg reserves the right to increase the Euro element of the price (defined as 80% of the Heidelberg list price prevailing at the date of the order) in the event that there is any increase in the Euro rate of exchange of more than 2.5 cents (€0.025), between the Heidelberg list price on the date of the order and the London market Euro rate of exchange on the day prior to the actual date Heidelberg pays for the Goods ("Payment Day"). Where appropriate the Buyer will be informed of the Payment Day. The Buyer has the option to fix the Euro element for all colour and multi colour printing presses prior to import into the UK by instructing Heidelberg in writing to purchase Euro for their behalf for each Payment Day. All prepress, single colour presses and bindery equipment is sold at a fixed price as per the Acknowledgement.
3.3 The quotation given on the Order Form excludes import duties, is inclusive of costs at the date of quotation of carriage, transit insurance, freight and the normal costs and expenses of installation or testing. Should, however an inspection of the proposed site for the installation of the Goods reveal that the cost and expense of installation will be abnormal on account of the need to effect alterations to, in or about, the site or to hire equipment from any other person or any similar cause, any costs and expenses attributable to such causes shall be met by the Buyer and the price of the Goods will be adjusted accordingly. Heidelberg shall endeavour to inform the Buyer of such probable further costs and expenses at the earliest practicable opportunity but any delay or failure by Heidelberg to do so shall not entitle the Buyer to refuse payment in whole or part of the extra costs and expenses.

4. DELIVERY

4.1 Delivery of the Goods shall be made to the Buyer's place of business unless otherwise agreed in writing by Heidelberg.
4.2 Delivery of the Goods may in Heidelberg's opinion be suspended, restricted or delayed for reason of insufficient data or information supplied by the Buyer, strikes, lockouts, civil commotion, government control or requisition, fire, breakdown, storm, flood, drought, frost or any other cause beyond Heidelberg's control, or if deliveries are otherwise prevented or hindered from being made within any agreed or estimated time for delivery or installation. No such suspension, restriction or delays shall render Heidelberg liable in damages or justify cancellation or refusal of the Goods by the Buyer. All Goods are offered subject to prior sale. If Heidelberg deliver the Goods in more than one consignment although the Contract does not envisage split or instalment deliveries the Buyer shall not for that reason be entitled to refuse any or all of the consignment. Heidelberg will use reasonable endeavours to deliver the Goods by the agreed or estimated date but time of delivery or installation shall not be of the essence of the Contract.
4.3 Subject to the other provisions of these Conditions Heidelberg shall not be liable for any indirect or consequential loss (such terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Heidelberg's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days. Notwithstanding the foregoing Heidelberg shall endeavour to give the Buyer reasonable notice if Heidelberg becomes aware that there is going to be a delay in delivery of more than 30 days.
4.4 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or Heidelberg is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations (i) risk in the Goods will pass to the Buyer (including for loss or damage caused by Heidelberg's negligence); (ii) the Goods will be deemed to have been delivered; and (iii) Heidelberg may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

5. PASSING OF PROPERTY

5.1 The ownership of the Goods shall not pass to the Buyer until Heidelberg has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Goods; and (ii) all other sums which are or which become due to Heidelberg from the Buyer on any account (including where applicable interest on any sums not paid on the due date) and until such payments are made the Goods are held by the Buyer as bailee for Heidelberg.
5.2 If the Buyer shall sell or purport to sell the Goods so as to purport to pass a valid title to a third party the proceeds of such sale shall be held by the Buyer on trust for Heidelberg and if such proceeds are not paid to Heidelberg they shall be placed in a separate designated bank account.
5.3 The Goods shall be stored by the Buyer in a safe and proper manner and in such a way so as to distinguish them from goods not owned by Heidelberg and shall be separately identified in such manner as approved or directed by Heidelberg.
5.4 Until payment of the whole of the price of the Goods has been made by the Buyer to Heidelberg (including interest where applicable) Heidelberg shall have the right to demand the immediate return of the Goods and the Buyer grants Heidelberg, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
5.5 Where the Buyer's purchase of the Goods is financed (in whole or part) by a Finance House (as such term is defined in the Order Form) Heidelberg expressly reserves the right to transfer title to the Goods to the Finance House immediately on receipt from the Finance House of its agreed share of the financing of the price of the Goods.
5.6 Heidelberg expressly reserves the right to trace any Goods the price of which remains unpaid or any proceeds of the purported sale of such Goods into whomsoever's hands the same may pass.
5.7 Subject to Condition 5.1 the Buyer's right to possession of the Goods shall terminate immediately if:
5.7.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administrative order in respect of the Buyer, or any proceedings commenced relating to the insolvency or possible insolvency of the Buyer; or
5.7.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract and the EULA or any other contract between Heidelberg and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
5.7.3 the Buyer encumbers or in any way charges the Goods.
5.8 Each and every sub-condition of this Condition 5 shall be deemed to be separate from the remainder of these Conditions and severable accordingly.

6. RISK

6.1 Notwithstanding that the ownership in the Goods shall remain vested in Heidelberg or vest in a Finance House the Goods shall be at the risk of the Buyer immediately from the time of delivery to the Buyer or its agent or other person to whom Heidelberg has been authorised by the Buyer to deliver the Goods.
6.2 The Buyer shall immediately from the time of delivery insure the Goods and keep them insured to the full price against all risks and shall whenever requested by Heidelberg produce a copy of the policy of insurance.
6.3 Until such time as payment for the Goods has been made in full any monies received by the Buyer as a result of any insurance claim of whatever nature with regards to the Goods shall be held on trust for Heidelberg as if the same had been a payment received from a third party under Condition 5.2 above and shall upon receipt thereof by the Buyer be forthwith remitted to Heidelberg.
6.4 The Buyer is advised to obtain sufficient insurance against business interruption and/or any consequential loss arising under the Contract and the Buyer's attention is drawn specifically to Condition 9 in this regard.

7. GUARANTEE

7.1 Where the Goods comprise prepress equipment such Goods shall be guaranteed for a period of six months (unless otherwise stated in the Acknowledgement) from the date of Commissioning against breakdown due to defective materials or workmanship in manufacture.
7.2 Where the Goods comprise reconditioned and second hand equipment such Goods shall (if a guarantee is given) be guaranteed for a period of not more than three months from the date of Commissioning against breakdown due to defective materials or workmanship in manufacture.
7.3 All other Goods shall be guaranteed against breakdown due to defective materials or workmanship in manufacture for a period of 12 months from the date the Goods are Commissioned (which date will be for the avoidance of doubt be prior to the formal demonstration under Condition 14).
7.4 Where Heidelberg is not the manufacturer of the Goods, it will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Heidelberg.
7.5 Any claim under this guarantee must be made within 10 working days of breakdown or damage and during the period of guarantee. Any work carried out by Heidelberg under this guarantee shall be carried out within 30 days of the Buyer's claim as above during normal working hours excluding Sundays and public holidays unless otherwise agreed in writing in advance with Heidelberg.
7.6 This guarantee is confined to replacement or repair at Heidelberg's option of the defective part and the repair of any damage to the Goods arising from the failure of the said part and in the event that Heidelberg fails within 60 days to replace or repair a defective part having been requested so to do the Buyer may claim for the direct losses arising solely from such failure.
7.7 Any Goods repaired will belong to Heidelberg and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the guarantee period.
7.8 This guarantee shall not operate in the case of defective parts or damage to the Goods by the use in or on such Goods of parts or accessories not supplied and fitted by Heidelberg.
7.9 The guarantee given above will not be binding upon Heidelberg (i) where defects have arisen through normal wear and tear, improper usage, accident or failure to undertake routine operator maintenance; (ii) where prior removal alterations or repairs have been carried out by any person or persons other than the service engineers of Heidelberg or its accredited agents; (iii) if the equipment is not stopped immediately the defect becomes

apparent or any attempt is made to restart the equipment before the repair has been carried out; or (iv) if the Buyer does not inform Heidelberg in writing of the damage or breakdown promptly or in any event within 10 working days.

7.10 This guarantee is personal to the Buyer and shall not be transferable to any other person or company whatsoever.
7.11 The Buyer agrees that it shall be a condition precedent to the operation of this Condition that the Buyer will comply with all reasonable requests of Heidelberg its service engineers or its accredited agents regarding the Goods or the Buyers property to minimise the risk of damage or breakdown or further damage or breakdown to the Goods.

8. LIMITATION OF LIABILITY – THE BUYER'S ATTENTION IS DRAWN PARTICULARLY TO THIS CONDITION

8.1 Heidelberg's obligations to remedy defects in the Goods under the guarantees and warranties set out in Condition 7 above shall be its sole liability (other than for death or personal injury caused by Heidelberg's negligence or fraudulent misrepresentation) to the Buyer for defects in the Goods after delivery. The guarantees given by Heidelberg are to protect against the unlikely event of manufacturing or Commissioning problems. Although Heidelberg can provide guidance on choice and use of machinery, the Buyer must ultimately rely on its own expertise and knowledge of its business hence Heidelberg shall have no liability (other than as provided for in the guarantees and warranties set out in Condition 7 above) regarding the fitness for purpose, satisfactory quality or merchantability of the Goods, whether express or implied, statutory or otherwise.
8.2 Heidelberg will be under no liability whatsoever for any loss or damage injury or expense caused by the Buyer's misuse of the Goods which arises by way of the Buyer's incompetence or negligence or any other cause which is the fault of the Buyer.
8.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
8.4 It shall be a condition precedent to the making of any claim against Heidelberg whether by action arbitration or otherwise that written notice of such claim shall have been given to Heidelberg by the Buyer within 21 working days of the Commissioning of the Goods or in a case where a claim is sought to be made in respect of Goods which have not been delivered within 10 working days of the date when it is alleged that they should have been delivered; if the Buyer shall fail to give notice of any claim arising out of or in connection with these Conditions within the period referred to above then all claims shall be deemed to be waived and absolutely barred.
8.5 Subject to Conditions 8.1, 8.2 and 8.3 Heidelberg's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price of the Goods as stated in the Acknowledgement.

9. CONSEQUENTIAL LOSS – THE BUYER'S ATTENTION IS DRAWN PARTICULARLY TO THIS CONDITION

9.1 In any event notwithstanding anything contained in the Contract in no circumstances will Heidelberg be liable for any indirect or consequential loss or damage in contract, tort (including negligence or breach of statutory duty) or otherwise whatsoever or howsoever caused:
9.1.1 For any loss of profit, revenues or anticipated savings, loss of business, depletion of goodwill or otherwise; or
9.1.2 For any consequential damage of any nature whatsoever said to have occurred consequent upon the supply or the circumstances of the supply of the Goods or services here contracted to be supplied by Heidelberg to the Buyer.

10. PAYMENT

10.1 Where the Buyer pays a deposit to Heidelberg in respect of the Goods and the Buyer fails to pay the balance of the contract price or seeks to terminate the order, Heidelberg will retain all of the deposit. The Buyer acknowledges that the amount of the deposit is reasonable and that it is reasonable for Heidelberg to retain all of the deposit in the event of the Buyer's default, bearing in mind Heidelberg's anticipated costs and expenses.
10.2 If any payment is in arrears for or on account of or in respect of any Goods, spare parts, consumables or services or any instalment of Goods or part of an order delivered under this or any other contract between Heidelberg and the Buyer, Heidelberg shall have the absolute right without giving any notice to the Buyer to suspend further deliveries and services under this or any other contract.
10.3 If any payment or any part thereof pursuant to Condition 10.2 above shall remain in arrears for seven days after written demand sent by Heidelberg to the Buyer, Heidelberg shall have the right to cancel this and any other such contract without prejudice to all Heidelberg's rights and remedies to recover any monies then due and owing to Heidelberg from the Buyer which shall be due and payable forthwith without further time lapse or demand.
10.4 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 2013. The Buyer shall also reimburse Heidelberg all costs and expenses (including legal costs) incurred in the collection of overdue amounts.

10.5 Payments shall be considered in arrears if not made within the terms stated in the Acknowledgement.

10.6 Time for payment shall be of the essence.

10.7 No payment shall be deemed to have been received until Heidelberg has received cleared funds.

10.8 The Buyer is deemed to have accepted the Goods on commencement of production. For the purpose of this Condition, commencement of production is defined as the date when the Goods have been commissioned.

10.9 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.

11. STATEMENTS AND REPRESENTATIONS

Statements or representations of whatever kind and however made including but not confined to those as to weights, measurements, power consumption, performance, descriptions, details of designs, prices and charges and whether contained in drawings, floor plans, catalogues, advertisements, brochures, photographs, descriptive materials, verbal representation or otherwise are approximate only and shall not be binding upon Heidelberg or in any way form part of the Contract unless expressly stated to do so by Heidelberg in writing.

12. CONFIDENTIALITY

The Buyer (including its employees and agents) agrees that all commercial, financial or technical information relating to the Contract and which is disclosed in any manner or at any time by Heidelberg will be deemed to be secret or confidential and all or any such information may not be disclosed to any third party without the written consent of Heidelberg.

13. SUB-CONTRACT

Heidelberg reserves the right to sub-contract or assign any part of its obligation to the Buyer under the terms of the Contract to a competent third party, including but not limited to its obligation to deliver the Goods. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of Heidelberg.

14. DEMONSTRATION

On completion of Commissioning of the Goods an engineer or operator acquainted with the mechanics and running of the Goods will demonstrate to the Buyer's skilled operator the functionality of the Goods. Within this period the Goods are to be considered as under the charge of the Buyer who shall supply all necessary materials (such as paper, ink, film, or the like), water and power at his/its own cost for the purpose of the demonstration. The amount of time required for the demonstration will be assessed by agreement between Heidelberg and the Buyer according to the Goods supplied and the level of knowledge of the Goods held by the Buyer's skilled operator and such time shall be confirmed in the Acknowledgement.

15. SERVICES SUPPLY

15.1 The Buyer will be responsible for the cost of providing adequate and appropriate electrical, gas, water, internet connectivity and/or other applicable supplies to the Goods in accordance with the specification of the Goods.
15.2 If the supplies referred to in Condition 15.1 are not in Heidelberg's sole opinion adequate at the agreed time of delivery Heidelberg reserves the right to recover from the Buyer all additional costs fees and expenses consequent upon and flowing from such inadequacy.

16. FLOORS AND FOUNDATIONS

16.1 It is the Buyer's responsibility to obtain and pay for all necessary technical reports surveys and guidance in relation to providing a foundation and floor which complies with Heidelberg's specification for the Goods to be installed. Heidelberg shall make available to the Buyer such data as it has within its knowledge or possession including details of experts (but excluding all liability regarding the adequacy of such experts) to assist the Buyer in fulfilling its responsibility provided herein.
16.2 In the event that the Goods cause any damage to the Buyer's foundations, floors, other surfaces or property then Heidelberg will not be responsible for any loss or damage howsoever caused.
16.3 The Buyer hereby undertakes to indemnify Heidelberg for and against any damage to the Goods and/or all losses incurred by Heidelberg caused by reason of the Buyer's foundations and/or floor which does not comply with Heidelberg's specification for the Goods to be installed.
16.4 If the floors and foundations are not in Heidelberg's sole opinion compliant with Heidelberg's specification pursuant to Condition 16.1 at the agreed time of delivery, Heidelberg reserves the right to recover from the Buyer all costs fees and expenses consequent upon and flowing from such non-compliance.

17. ENVIRONMENTAL CONDITIONS

It is the Buyer's responsibility to ensure compliance with any environmental specifications relevant to the operation of the Goods including but not limited to temperature and/or humidity specifications.

18. SPARES AND SERVICE

All replacement parts which may be required from time to time will be supplied under Heidelberg's General Terms and Conditions and the Buyer will pay Heidelberg for all spares and replacement parts at Heidelberg's prices applicable at the date of invoice and for its engineers at Heidelberg's hourly rate applicable at the date when the work is carried out. This will not apply to any work covered by Heidelberg's guarantee carried out during normal working hours or to any work carried out in accordance with an equipment service agreement. Payment shall be made for all replacement parts, spares and engineers' hourly rates within 30 days of the date of invoice.

19. REMOTE SERVICE

If the Goods are connected to the Heidelberg remote service system, the Goods will regularly send data to Heidelberg to be used by Heidelberg to analyse problems and diagnose errors in the event of disruption, for the continuous improvement of the quality of the Goods, for the purposes of customer relationship management and for other purposes such as benchmarking and consulting services by third parties selected by Heidelberg. Such data are primarily technical data specific to the machinery, devices and applications comprised within the Goods, such as software versions, totalizer status, licences, machine configuration and technical job data such as paper format, ink usage, print speed and number of waste sheets. Job data and personal data are not processed. Heidelberg shall pass the data sent to it by the Goods to selected third parties in anonymised form. When ordering the Goods, the Client expressly consents to the collection, transmission, storage and use of data by Heidelberg as described in this Condition 19.

20. SEVERABILITY

If any of the provisions of the Contract is found by an Arbitrator or Court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from the Contract and the remaining provisions of the Contract shall continue in full force and effect.

21. THIRD PARTY RIGHTS

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.

22. INTELLECTUAL PROPERTY

22.1 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.

22.2 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.

23. LEGAL CONSTRUCTION

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.

24. NOTICES

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.