Section 1 Scope

Unless expressly stipulated otherwise in writing, these Terms and Conditions of Sale and Delivery apply to all offers, purchase agreements and orders concerning deliveries by Heidelberger Druckmaschinen AG, one of its subsidiaries or one of its sales partners (collectively referred to hereinafter as “Heidelberg”) to its customers if these are entrepreneurs in the sense of § 14 BGB (“Clients”). They also apply to future business relationships, even if they are relationships agreed again. The version of these Terms and Conditions applicable at the time of contract closing is decisive. Deviating terms and conditions of the Client are not accepted, even if they are not expressly disputed.

Section 2 Contract conclusion

(1) Offers by Heidelberg are subject to alteration and are non-binding, unless expressly described as binding in the text of the offer. An offer by the Client is considered as binding contract offer. The contract is only closed when Heidelberg confirms the order to the Client in writing or, in a specific case, when a written agreement is signed between the parties.

(2) Heidelberg assumes a warranty (especially in the meaning of §§443, 444, 639 BGB) only if this has been explicitly stated in writing in the order confirmation or in advertising statements.

(3) Heidelberg’s goods and services must be listed exhaustively in the order confirmation, including any supplements to it. Documents provided by Heidelberg in the context of contract initiation, such as illustrations and drawings, and statements made by Heidelberg regarding weight, space, power requirements and performance are decisive. Other documents such as prospectuses and catalog, and the properties of models and samples, are only binding insofar as they have been expressly agreed as a property of the delivery item. Information on the suitability and use of goods is made to the best of knowledge, but do not exempt the Client from performing its own tests and trials. Technical changes or improvements or design changes to the order confirmation are permitted if they are reasonable for the Client.

(4) If Clients have also requested the development of new products or other delivery services by Heidelberg, a separate development agreement between Heidelberg and the Client will regulate the specific details.

Section 3 Transport and passing of risk

(1) Risk passes to the Client as stated in the order (agreed INCOTERMS). If shipping is delayed on account of the Client’s conduct or due to a circumstance beyond Heidelberg’s control, risk passes to the Client on notification that the shipment is ready. If there is no official acceptance, the delivery item is deemed accepted after a period of 7 (seven) days.

(2) Unless agreed otherwise, Heidelberg is entitled to choose the nature of dispatch within the agreed period and Client has been informed. In all cases, Heidelberg or its suppliers will take out transport insurance for the Client and for its account that covers the risk of transporting the delivery items ex works to the agreed destination.

(3) In the event that commercial clauses are agreed, Incoterms apply as currently amended.

(4) Unless specifically agreed otherwise, the Client is responsible for compliance with statutory conditions and provisions on the import, transport, storage and use of goods. Heidelberg must be provided with the necessary permits, documents and information in good time prior to delivery.

Section 4 Delivery date and force majeure

(1) Delivery dates not expressly designated as binding are non-binding. At the earliest, delivery periods begin after fulfillment of all agreed performance obligations of the Client, in particular the receipt of all documents and information necessary for defining the content of the order, provided that the Client is contractually required to procure these, and after receipt of the agreed prepayment. A delivery date has been adhered to if the shipment is ready for dispatch within the agreed period and Client has been informed. In all cases, confirmed orders and delivery dates are subject to correct and timely self-delivery.

(2) Delivery periods are extended in the event of circumstances beyond Heidelberg’s control with a significant influence on the manufacture or delivery of the item; in particular, they are also extended in the event of war/warlike acts, seisure, embargo, natural disasters, labor disputes and other circumstances affecting Heidelberg or subcontractors (disruptions of operations for which they are not responsible) by the duration of the disruption of operations. If, despite all reasonable efforts, it is not possible to adapt the contract on account of a disruption of operations for which it is not responsible, Heidelberg is entitled to withdraw from the contract.

(3) If the delivery period is extended on account of the circumstances described above or Heidelberg is freed from its duty to deliver, the Client has no claims for liability of any kind against Heidelberg. Heidelberg is not liable for any disruptions of operations for which it is not responsible during the delay. Heidelberg is required to inform the Client of the occurrence of both circumstances.

(4) Before the end of the delivery period, Heidelberg is entitled to make part deliveries and issue interim invoices to a reasonable extent.

(5) If the dispatch or delivery of the delivery item is delayed at the request of the Client or on account of circumstances originating under the Client’s risk and responsibility, the Client must reimburse Heidelberg for costs incurred for storage and for interest on the capital invested for the delivery item. The claim for storage by Heidelberg is at least 0.5% of the outstanding invoice amount for each outstanding month, starting one month after notification that the shipment is ready; the Client has the burden of proving that the loss incurred was lower up to the statutory interest rate. Heidelberg reserves the right to claim reminder. In the event of default, default interest is calculated at the statutory rate or at least 9% per year; the Client has the right to prove that the loss incurred was lower up to the statutory interest rate. Heidelberg reserves the right to claim further damage caused by delay.

(6) In the event of payment by installment, Heidelberg is entitled to demand immediate payment of the entire residual purchase price if the Client is in default of two or more consecutive installments and the amount in default accounts for more than 10% of the purchase price. If there is legitimate doubt as to the Client’s ability to pay, in particular if it is in default of payment, Heidelberg further reserves the right to revoke the terms of payment granted, to deliver the delivery item only after receipt of the purchase price plus shipping costs, or to make delivery dependent on being granted other collateral.

(7) The Client is permitted to offset payments or exercise a right of retention only if it has claims that are undisputed, that it has acknowledged or that have been recognized by declaratory judgment.

Section 5 Delivery of software

If the delivery item is sold together with an electronic device, Heidelberg grants the Client a non-transferable and non-exclusive right to use the associated software. This entitles the Client solely to use the software as intended with the electronic device included with the delivery item. In particular, the Client does not have the right to distribute, reproduce or edit the software. By way of exception, the transfer of the software is permitted if the Client proves a legitimate interest in transferring it to a third party while giving up its own use, e.g. in the event of the resale of the delivery item. In such event, the Client is required to contractually compel the purchaser to respect Heidelberg’s rights. Otherwise Heidelberg’s terms and conditions for the transfer of the use of software apply as amended which are usually part of the contract for the transfer of use of software and can also be made available free of charge at any time upon request by the Client. The documents and programs necessary to operate the delivery item are the subject of copyright and intellectual property rights and remain the property of Heidelberger Druckmaschinen AG or its subsidiaries.

Section 6 Prices

Deliveries are made at the prices stipulated in the order confirmation, otherwise at the prices published in the applicable price lists. Unless agreed otherwise, all prices are ex works/place of dispatch, ex warehouse for spare parts and consumables. Unless stated otherwise, all prices are in euro and do not include packaging, transport, insurance, installation or instruction costs, or any state or official taxes and duties, including copyright duties and customs duties.

Section 7 Payment, default and offsetting

(1) Unless contractually agreed otherwise, payments must be made to Heidelberg in cash without any deduction as indicated in the invoice. For machinery, systems and equipment, a third of the purchase price is to be paid as a prepayment on receipt of order confirmation, a third 60 days before delivery and a third after invoicing.

(2) If payments are not paid within fourteen (14) days after receipt of appropriate invoices, the Client is in default of payment without requiring a separate reminder. In the event of default, default interest is calculated at the statutory rate or at least 9% per year; the Client has the right to prove that the loss incurred was lower up to the statutory interest rate. Heidelberg reserves the right to claim further damage caused by delay.

(3) In the event of payment by installment, Heidelberg is entitled to demand immediate payment of the entire residual purchase price if the Client is in default of two or more consecutive installments and the amount in default accounts for more than 10% of the purchase price. If there is legitimate doubt as to the Client’s ability to pay, in particular if it is in default of payment, Heidelberg further reserves the right to revoke the terms of payment granted, to deliver the delivery item only after receipt of the purchase price plus shipping costs, or to make delivery dependent on being granted other collateral.

(4) The Client is permitted to offset payments or exercise a right of retention only if it has claims that are undisputed, that it has acknowledged or that have been recognized by declaratory judgment.

Section 8 Retention of title

(1) Heidelberg reserves title to the delivery item until it has been paid for in full. Retention of title continues until all claims under the business relationship with the Client have been settled. If the item sold is processed or converted, this is always done for Heidelberg as the manufacturer. If Heidelberg’s (joint) ownership expires, the Client’s ownership of the resulting item passes to Heidelberg in the proportion of the value of the total receivable in accordance with section 8(2) to the value of the modified items. The Client holds Heidelberg’s property in safekeeping free of charge.

(2) If such reservation of title is not permitted by the law of the state in which the delivery item is located or can only be created by further agreements and declarations, Heidelberg has the equivalent rights to ensure its ownership that the relevant law allows. The Client must provide Heidelberg with every assistance so that it can take all necessary measures to ensure its ownership or equivalent rights (e.g. liens).

(3) At the request of the Client, Heidelberg will release the delivery item to the extent that Heidelberg’s collateral interests expire. These collateral interests expire when the recoverable value of the delivery item more than just temporarily exceeds the indemnity limit of 110% of the secured claims. The indemnity limit is presumed to have been reached when the value of the delivery item estimated by an assessor amounts to 150% of the secured claims at the time of the release request. This does not affect the right to prove that the delivery item has a different recoverable value.

(4) The following applies until full payment of the purchase price:
Section 9 Claims for defects – limitation period

[1] The Client is aware that the information (i) which has become known to him with the conclusion of the contract, (ii) which was not previously known to him and (iii) which acquires commercial value with the conclusion of the contract, (iv) which the Client has workpieces and materials provided for and has invested at the time of the conclusion of the contract and (v) which Heidelberg has agreed to use in the course of the work, is subject to confidentiality.

[2] The Client is aware that wording that is not discussed in the negotiation process and that Heidelberg has no opportunity to review or compare results or make a decision is subject to confidentiality.

[3] The Client is aware that the use of workpieces and materials for purposes specified in the contract or in common agreement with Heidelberg is subject to confidentiality.

Section 10 Liability for damages

[1] In the event of injury to life, limb or health as a result of a willful or negligent breach of duty by Heidelberg or one of its statutory representatives or vicarious agents, Heidelberg’s liability is governed by the statutory provisions.

[2] The following applies to other damages:

a) For damage caused by a willful or grossly negligent breach of duty by Heidelberg or one of its statutory representatives, vicarious agents or executive employments, Heidelberg’s liability is governed by the statutory provisions. For damages caused by gross negligence of non-executive employees, Heidelberg’s liability is limited to the foreseeable damage typical for the contract.

b) For damage caused by the violation of primary contractual obligations (obligations without fulfillment of which the performance of the contract would not be possible, and upon the fulfillment of which the partner usually relies or may rely) as a result of simple negligence on the part of Heidelberg, Heidelberg is solely liable for damage due to incorrect or negligent treatment, excessive use, unsuitable operating equipment, unsuitable positioning, in particular, the ground the delivery item is installed on, instability or inadequate protection of the power supply, chemical, electrochemical or electrical influences, weather and other natural elements.

[3] Heidelberg will bear the expenses necessary for supplementary performance, including in particular the costs of transport, travel, labor and materials for the place of delivery only, unless the delivery item has been brought to a different operational site at the Client’s request.

[4] The Client must bear the costs of the service work necessary to eliminate the disruptions described under a) to f) in accordance with the applicable conditions of service.

[5] The Client remains solely responsible for damage as a result of natural wear, incorrect or negligent treatment, excessive use, unsuitable operating equipment, unsuitable positioning, in particular, the ground the delivery item is installed on, instability or inadequate protection of the power supply, chemical, electrochemical or electrical influences, weather and other natural elements.

[6] Heidelberg’s liability is limited to the foreseeable damage typical for the contract.

Section 11 Business secrecy protection, Documents, production equipment, workpieces and materials provided

[1] The Client is aware that the information (i) which has become known to him with the conclusion of the contract, (ii) which was not previously known to him and (iii) which Heidelberg has agreed to use in the course of the work, is subject to confidentiality.

[2] Heidelberg’s liability is limited to the foreseeable damage typical for the contract.

Section 12 Business secrecy protection, Documents, production equipment, workpieces and materials provided

[1] The Client is aware that the information (i) which has become known to him with the conclusion of the contract, (ii) which was not previously known to him and (iii) which Heidelberg has agreed to use in the course of the work, is subject to confidentiality.

[2] Heidelberg’s liability is limited to the foreseeable damage typical for the contract.

Section 13 Business secrecy protection, Documents, production equipment, workpieces and materials provided

[1] The Client is aware that the information (i) which has become known to him with the conclusion of the contract, (ii) which was not previously known to him and (iii) which Heidelberg has agreed to use in the course of the work, is subject to confidentiality.

[2] Heidelberg’s liability is limited to the foreseeable damage typical for the contract.

Section 14 Business secrecy protection, Documents, production equipment, workpieces and materials provided

[1] The Client is aware that the information (i) which has become known to him with the conclusion of the contract, (ii) which was not previously known to him and (iii) which Heidelberg has agreed to use in the course of the work, is subject to confidentiality.

[2] Heidelberg’s liability is limited to the foreseeable damage typical for the contract.
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either in its entirety or in its details and (iii) which is not readily accessible, is of
economic value to Heidelberg and protected by appropriate secrecy measures on
the part by Heidelberg. Therefore, Heidelberg has a justified interest in keeping
these information secret. Heidelberg furthermore retains title and copyrights to
cost estimates, drawings, system concepts and the entire documentation
provided on delivery. Any duplication, forwarding to third parties or publication is
permitted only with Heidelberg’s prior explicit written consent. Production
equipment manufactured or procured by Heidelberg for which the Client has not
paid the full price remain the property of Heidelberg.
(2) Before providing any production equipment or workpieces to Heidelberg, the
Client must inform Heidelberg of any industrial property rights that exist.
Production equipment or workpieces provided to Heidelberg will be kept by
Heidelberg in safekeeping in accordance with the rules of safekeeping (sections
688 et seq. of the Bürgerliches Gesetzbuch (BGB – German Civil Code). Heidelberg
can modify production equipment or workpieces provided by the Client at its own
expense and risk, if this appears necessary for technical reasons and the
workpiece is not altered as a result. After being notified by Heidelberg, the Client
must collect its production equipment from its plant within a reasonable time
period; section 3 applies accordingly. Heidelberg can destroy the production
equipment after this period.
(3) Workpieces to be processed and other materials provided must satisfy the
applicable specifications. The Client is liable for all damage caused by defective
parts. In particular, it bears the cost and risk of the replacement of parts rendered
unusable by rejects or production equipment that can only be used once that
creates rejects when used.
(4) The Client is required to provide materials plus an additional quantity of such
materials to compensate for production losses and to be able to complete the
order properly. The costs of production losses are borne by the Client.

Section 12 Remote service
To continuously improve products and services, as well as to develop new
products and services, Heidelberg will regularly transfer data generated or
gathered at customer’s premises, at Heidelberg’s premises, or in connection with
cloud services provided by Heidelberg or Heidelberg’s affiliated companies within
the meaning of § 15 Aktiengesetz (AktG – German Stock Corporation Act) to
Heidelberg or a service provider commissioned by Heidelberg. Interval and extent of
the transfers are agreed in Heidelberg’s sole discretion. This transfers involve
machine and device-specific or other technical data, such as software status,
totalizer status, licenses, machine configuration, technical job data such as paper
format, print speed, number of waste sheets and quality information, information
on process flow, information such as technical resources, use of features, or
on information obtained from.Heidelberg. Personal data is not transferred
based on this clause. Heidelberg is entitled to use this data (i) to provide services
to the customer, particularly to analyze problems and diagnose errors in the
event of malfunctions, to continually improve the quality of the delivery objects,
and to for the purpose of customer relationship management, as well as (ii) for
further commercial purposes with respect to the customer as well as to third
parties, such as benchmarking, consultancy services, promotional addresses, as
far as permitted by statutory provisions and to further improve existing and
developing new products. Heidelberg is entitled to pass this data on to third
parties in anonymized form and to utilize this data commercially. The right to use
the data described above is not limited in time and territory. Heidelberg is
entitled to assign all rights to this data to third parties.

Section 13 Annulment of the purchase agreement
(1) In the event of the annulment of the purchase contract (e.g. due to the
withdrawal of one of the parties), the Client is required to deliver the delivery
item to Heidelberg in advance, without prejudice to the rest of the process
described below. Heidelberg is entitled to have the delivery item collected from
the Client’s premises; section 8(4) e applies accordingly.
(2) Furthermore, Heidelberg can demand reasonable compensation from the
Client for the deterioration or loss of the delivery item, or if it is impossible to
return the delivery item for a reason that occurred or occurs under the Client’s
risk or responsibility.
(3) Moreover, Heidelberg can demand compensation for the use or consumption
of the delivery item if the value of the delivery item decreases between the end of
its installation and its full, direct repossesion by Heidelberg. This reduction in
value is calculated as the difference between the total price as per the contract
and its fair value as determined by the sales proceeds, or an appraisal by a sworn
expert if its sale is not possible.

Section 14 Assignment
The assignment of the Client’s rights and/or the transfer of its obligations under
the contract are not permitted without Heidelberg’s written consent.

Section 15 Reverse engineering
The Client is prohibited from obtaining knowledge of the construction, technical
functionality and other properties that are not generally known or readily
accessible by observing, examining, dismantling or testing the delivery item (so-called reverse engineering). The Client acknowledges that this would be a
violation of Heidelberg’s business secrets. In the event of a breach of the
aforementioned obligations, the Client shall be liable to pay a no-fault contractual
penalty to Heidelberg in an appropriate amount for each case of breach and
waiving the defense of continuation of the breach, whereby Heidelberg shall
determine the amount at its reasonable discretion within the meaning of § 315
BGB (German Civil Code). The appropriateness of the contractual penalty can be
reviewed by the competent court in the event of a dispute. Heidelberg expressly
reserves the right to assert further legal claims and damages. This provision shall
apply for the duration of the concluded contract and for a period of three years
after the end of the contract term.

Section 16 Reverse engineering
Packaging of the delivery items which are delivered by Heidelberg to commercial
Clients within the European Union shall be taken back by Heidelberg at its site in
Wiesloch (Gutenberging, 69769 Wiesloch). The Client shall bear the costs for the
return.

Section 17 Export control provisions
The delivery items and software may be subject to the export control provisions
of the Federal Republic of Germany, the European Union, the United States
of America or other states. For this reason, every conclusion of the contract is
subject to the proviso that there is no ban on delivery and/or performance in
accordance with the relevant customs regulations or that the necessary official
approvals, authorizations or other documents which Heidelberg should require in
order to fulfill the contract are granted. In the event of the subsequent export of
the delivery item to another country, the Client is solely responsible for
compliance with the statutory provisions.

Section 18 Compliance
(1) The Client undertakes to comply with Code of Conduct of the Heidelberg-
Group in its respectively valid version. The Code of Conduct is available on the
website (www.heidelberg.com).
(2) The Client undertakes to take all necessary and appropriate measures to avoid
corruption and other criminal offences. In this respect, the Client undertakes to
obligate its employees, who are deployed in direct connection with the fulfillment
of its contractual obligations, to comply with the Code of Conduct and/or the
Group regulations expressed therein. The Client also undertakes to communicate
the Heidelberg’s Code of Conduct and the regulations contained therein to its
subcontractors or third parties directly involved in the fulfillment of its contractual
obligations and to make the best possible efforts to commit them accordingly and
to regularly check compliance with the obligations.

Section 19 Place of performance, Place of Jurisdiction, applicable law
(1) The place of performance for goods and services is where delivery is made or
where the service is to be performed. The place of performance for all other
obligations arising from the contract is the shipping location.
(2) The exclusive legal place of jurisdiction for contracts with merchants, legal
entities under public law or special funds under public law is Heidelberg.
(3) If the above terms and conditions do not contain a conclusive regulation,
German law applies, excluding the United Nations Convention on Contracts
for the International Sale of Goods (CISG) and the conflict of law provisions.

Section 20 Additions, partial invalidity
(1) Amendments/additions to contracts concluded under these terms and
conditions of delivery, and their cancellation, must be made in written form. This
written form requirement can only be waived in writing. There are no verbal side
agreements or assurances.
(2) If one of its provisions is or becomes void in full or in part, the rest of
the contract remains valid.