

# General Terms and Conditions

Valid from January 1, 2024



## A. General Part

### 1. Area of application

- 1.1 These General Terms and Conditions ("GTC") apply to all sales of Goods, sales of Services, licenses or sales of Software, and grants of access and use of Software as a Service between the customer and the Heidelberg Company, each as indicated in the Order Confirmation ("Customer" and "Heidelberg", respectively).
- 1.2 These GTC also shall apply to any future deliveries of Goods, Services, and Software and/or rights to access and use of SaaS (as applicable) by Heidelberg to Customer, ancillary to the primary Goods and Services (if any) purchased by Customer.
- 1.3 A Contract is only binding if Heidelberg accepts Customer's order in written form ("Order Confirmation"), or by Heidelberg sending the Goods or performing the Services. Once entered into, the "Contract" between Heidelberg and Customer shall consist only of these GTC and any Order Confirmation.
- 1.4 Any terms and conditions contained in any purchase order of Customer or other acknowledgment of this Contract which are different from or in addition to the terms and conditions of this Contract, and any schedules attached and signed by Customer, shall not be binding on Heidelberg whether or not they would materially alter this Contract and Heidelberg hereby rejects them.
- 1.5 Individual agreements expressed in the Order Confirmation take precedence over these GTC and the Special Parts of these GTC shall take precedence over the General Part.
- 1.6 Heidelberg will notify Customer in writing of any changes to the GTC. Unless Customer rejects such changes within sixty (60) days of the date of Heidelberg's notice, the changes shall be deemed accepted. If Customer timely reject the changes, Heidelberg may terminate the Contract at any time upon written notice.

### 2. Definitions

- 2.1 "Confidential Information" means any information disclosed by either Party to the other Party which has been designated as confidential or that reasonably should be considered confidential given the nature of the information or the circumstances of its disclosure. Heidelberg's Confidential Information includes, but is not limited to, any information regarding Heidelberg's or any of its Affiliates' products or services, operations, methods, techniques, pricing terms, specifications, manuals, training programs and procedures, computer programming, software, technology and trade secrets, and all similar information in whatever form. Confidential Information does not include any information that: (i) was publicly known prior to the time of disclosure by the disclosing Party; (ii) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party; (iii) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information; or (iv) becomes publicly known after disclosure through no action or inaction of the receiving Party.
- 2.2 "Customer Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the Software or Software as a Service or that incorporates or is derived from the processing of such information, data, or content by or through the Software or SaaS. For the avoidance of doubt, Customer Data does not include IoT Data or any other information reflecting the access or use of the Software or

Software as a Service by or on behalf of Customer or any Authorized User.

- 2.3 "Customer Systems" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.
- 2.4 "Equipment" means machines manufactured by Heidelberg including MCS, excluding spare parts, and consumables.
- 2.5 "Force Majeure" means any events beyond Heidelberg's control, whether or not they were foreseeable by either Party entering into this Contract, including strike, war, lockout, cyber-attacks, government intervention, energy and raw material shortages, transport bottlenecks or obstacles beyond the fault or control of Heidelberg, epidemics or pandemics (regardless of the WHO's declarations), operational impediments beyond the fault or control of Heidelberg (e.g., due to fire, water and machine damage or other natural disasters).
- 2.6 "Heidelberg SaaS Materials" means the Software as a Service, agreed specifications, User Documentation, and Heidelberg Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Heidelberg or any of its subcontractors in connection with providing Software as a Service or which otherwise comprise or relate to the SaaS or Heidelberg Systems. For the avoidance of doubt, Heidelberg SaaS Materials include IoT Data and any information, data, or other content derived from Heidelberg's monitoring of Customer's access to or use of the Software as a Service, but do not include Customer Data.
- 2.7 "Goods and Services" means the goods and services listed in the Order Confirmation or designation of goods or services (excluding Software as a Service) accepted by Heidelberg and performed by Heidelberg or delivered to Customer (the "Goods" and "Services", respectively).
- 2.8 "Heidelberg Systems" means the information technology infrastructure used by or on behalf of Heidelberg in performing the Software as a Service, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Heidelberg or through the use of third-party services.
- 2.9 "Intellectual Property" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 2.10 "Maintenance Update" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated User Documentation, that Heidelberg may provide to Customer from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not include any New Version.
- 2.11 "MCS" means machine control software and User Documentation necessary to operate the Equipment.
- 2.12 "New Version" means any new version of the Software that Heidelberg may from time to time introduce and market

generally as a distinct licensed product (as may be indicated by Heidelberg's designation), and which Heidelberg may make available to Customer at an additional cost under a separate written agreement.

- 2.13 *"Open Source Components"* means any software component that is subject to any open source license agreement, or any other license that is approved by the Open Source Initiative.
- 2.14 *"Party/Parties"* as indicated in the Order Confirmation means either Heidelberg or Customer, both as Parties, as indicated in the Order Form individually or both
- 2.15 *"SaaS"* means Software as a Service that Heidelberg makes available to Customer.
- 2.16 *"Services"* are provided by Heidelberg as specified in the Order Confirmation.
- 2.17 *"Software"* means any software that Heidelberg makes available to Customer inclusive of any Maintenance Updates thereto, excluding any MCS.
- 2.18 *"User Documentation"* means any manuals, instructions, or other documents or materials that Heidelberg provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of any Goods, Software or SaaS or Heidelberg SaaS Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

### 3. Contract formation

- 3.1 Offers from Heidelberg are non-binding requests for orders subject to these GTC.
- 3.2 Use by Heidelberg of any advance payments made by Customer prior to shipment shall not constitute acceptance by Heidelberg. Deposits are non-refundable in whole or in part if Customer cancels this Contract prior to delivery.
- 3.3 The Contract is subject to the condition precedent that there are no limitations or restrictions on the delivery and performance of this Contract under applicable law, and that all respective governmental permits, approvals, or other required documents which Heidelberg needs to perform the Contract have been obtained. Customer shall maintain in effect all licenses, permissions, authorizations, consents, and permits it needs to carry out its obligations under the Contract.
- 3.4 This Contract, when so accepted, shall comprise the entire agreement between Customer and Heidelberg and supersedes all contemporaneous or previous estimates, proposals, understandings and communications, both written and oral, between the Parties. Customer has conducted its own investigation with respect to the selection and purchase of the Goods and Services. Information in brochures and catalogues, as well as properties of samples and prototypes, are informational only and do not form a basis of this Contract. Customer has not relied on any statement or representation of Heidelberg which is not expressed in this Contract.

### 4. Intellectual Property

- 4.1 Except as expressly set forth herein: (i) this Contract does not grant either Party any rights, implied or otherwise, to the other's Intellectual Property; (ii) Heidelberg, its suppliers and licensors, retain all right, title and interest in and to the Software, and any copies thereof, including all enhancements, error correction, new releases, updates, derivations, and modifications thereto (collectively, "Heidelberg Intellectual Property"); and (iii) Customer, its suppliers, and licensors retain all right, title and interest in and to the Customer Data. Customer agrees to inform Heidelberg promptly of any infringement or other improper action with

respect to Heidelberg Intellectual Property that comes to Customer's attention.

### 5. Payment terms, prices and price adjustments

- 5.1 *Payment terms.* Payment terms shall be net fourteen (14) calendar days of the date of any invoice.
- 5.2 *Price.* The price of the Goods and Services shall be as provided in the Order Confirmation or if no special pricing has been specified in the Order Confirmation, the prices in Heidelberg's most recent price list at time of Order Confirmation or delivery (as applicable) shall apply.
- 5.3 *Taxes.* All prices are exclusive of all local, state and federal excise taxes, duties, and tolls, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use, and similar taxes, are exclusive of VAT and all customs duties and fees if applicable. Customer agrees to pay such taxes directly or reimburse Heidelberg for all such taxes, whether imposed on Customer, required to be collected by Heidelberg or imposed on the equipment or on Heidelberg in connection with this sale. Whenever applicable, such tax or taxes will be added to the invoice as a separate charge or invoiced separately. Customer agrees to pay all personal property taxes that may be levied against the Goods and Services.
- 5.4 *Price Adjustment.* It is agreed between the Parties that the prices or terms applying to the sale of Goods and Services, license of Software, and/or grant of access and use of SaaS hereunder may, by written notice, be revised by Heidelberg at any time prior to, but not later than, the date of shipment. Customer shall give to Heidelberg a notice in writing accepting such new price or cancelling the acquisition of the relevant Good, Service, Software or SaaS subject to such price increase or term revision within ten (10) calendar days after the date of the notice of revision of prices or terms whereupon Heidelberg shall return any downpayment which Heidelberg is holding hereunder in respect of the affected Good or Service and Customer shall return any affected Goods to Heidelberg.

In the case of continuing payment obligations for Goods, Services, Software or SaaS by Customers, Heidelberg is entitled to adjust the scheduled prices by giving Customer thirty (30) calendar days' advanced written notice.

### 6. Heidelberg's Limited Warranties

- 6.1 As to any Goods sold to Customer, Heidelberg warrants to the Customer only, as original purchaser, as follows:
  - 6.1.1 *Equipment.* New press and finishing Equipment is warranted against defective parts or workmanship for a period of one (1) year from date of delivery. Prepress Equipment is warranted against defects in parts and workmanship for a period of ninety (90) days from date of delivery.
  - 6.1.2 Each of the warranties in clause 6.1.1 is conditioned on proper operation, lubrication and maintenance of the applicable Equipment as outlined in the operating manual supplied by the manufacturer with said Goods and will not apply if the Goods have been abused, or modified or if the Goods are interfered with or damaged by causes external to the Goods, such as vandalism, accident, power surges or acts of God. Customer may not and shall not impair safety by removing guards and/or safety interlocks. Heidelberg's sole obligation under the warranties given under clause 6.1.1 is, at its option, to (a) replace, repair or correct any defective parts or workmanship, or (b) to remove the Equipment at its own expense and refund any payments made by Customer, less depreciation, where it appears to Heidelberg's satisfaction that the defect was present at the time of delivery of the Goods. Customer waives any right, extending beyond the warranty given under clause 6.1.1, to claim against

Heidelberg for negligence in design, material, workmanship or installation, or otherwise (excluding claims of fraud).

- 6.1.3 *Used Equipment and Parts.* Unless otherwise agreed in writing signed by both Parties, all used equipment and parts are sold to Customer **AS IS WHERE IS** with all faults, unless otherwise indicated. If said Equipment is not in the possession of Heidelberg at this date, it is sold subject to Heidelberg's obtaining possession of the Equipment and title thereto.
- 6.1.4 *Goods not manufactured by Heidelberg.* All equipment, components, accessories, parts and consumables not manufactured by Heidelberg or one of its Affiliates (each a "Heidelberg Group Company") carry the warranty of the manufacturer only. Heidelberg is not responsible for and shall not provide, directly or indirectly, parts or service of any kind in respect of third-party equipment included in and arranged for under this Contract at Customer's specific request. **HEIDELBERG MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- 6.1.5 *Software and SaaS.* In respect of Software (excluding MCS) and SaaS, Heidelberg grants Customer the limited warranties set forth in Special Part D (Software and SaaS) hereto.
- 6.1.6 *Designs and Advice.* No warranty is made with respect to any design or technical advice provided by Heidelberg in connection with the sale of Goods or provision of Services, including any revisions, amendments and updates made by Heidelberg to any designs and/or design advice or any advice provided to Customer by Heidelberg.
- 6.1.7 *Production Speed.* Customer acknowledges and agrees that the speed or production rate which Customer is able to obtain with the Goods depends on a number of variables not under Heidelberg's control including, but not limited to, operator skill, equipment maintenance, the nature of the desired product, the ink, paper, film, and other materials used, ambient conditions, and the specific manner in which Customer uses the Equipment. Heidelberg cannot and does not make any representations or warranty concerning the speed at which Customer will be able to operate the Equipment or the amount of waste produced or volume or quality of production that Customer will achieve with the Equipment.
- 6.1.8 *Consumables.* Heidelberg makes no warranty under this Contract with respect to Consumables, consistency of quality, or the appropriateness of the Consumables to Customer's equipment or processes.
- 6.1.9 **EXCEPT FOR THE WARRANTIES STATED IN CLAUSE 6.1.1 AND REFERENCED IN CLAUSE 6.1.5 ABOVE, HEIDELBERG MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, SERVICES, SOFTWARE OR SAAS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF HEIDELBERG FOR**

## **DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE GOODS AND ANY SOFTWARE OR SAAS OR THE PROVISION OF ANY SERVICE.**

- 6.2 *Cooperation.* Customer shall cooperate with Heidelberg in efforts to identify and eliminate defects in the Goods or Software, including granting Heidelberg access to the Goods or Software directly and/or via remote data transfer (at Heidelberg's discretion).
- 7. **Data Disclaimer and Customer Indemnity**
- 7.1 **CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE OF THE GOODS, SOFTWARE, SAAS, AND SERVICES, THE ACTIVITIES OF ITS USERS AND FOR THE ACCURACY, INTEGRITY, LEGALITY, RELIABILITY AND APPROPRIATENESS OF ALL CUSTOMER DATA. CUSTOMER EXPRESSLY RECOGNIZES THAT HEIDELBERG DOES NOT CREATE OR ENDORSE ANY CUSTOMER DATA PROCESSED BY OR USED IN CONJUNCTION WITH THE GOODS, SOFTWARE, SAAS OR SERVICES. CUSTOMER FURTHER ACKNOWLEDGES THAT HEIDELBERG AND ITS AFFILIATES DO NOT PROVIDE BACKUP SERVICES FOR CUSTOMER DATA STORED ON CUSTOMER SYSTEMS AND CUSTOMER UNDERTAKES THAT IT SHALL BE SOLELY RESPONSIBLE FOR BACKUP OF ALL SUCH CUSTOMER DATA STORED ON CUSTOMER SYSTEMS OR THE GOODS**
- 7.2 Customer will, at Customer's own expense, indemnify, defend and hold Heidelberg, its Affiliates, and their respective officers, directors, and employees, ("Heidelberg Indemnitees") harmless from and against all losses, incurred by reason of Heidelberg's compliance with the instructions of Customer with respect to the ownership, custody, processing or disposition of the Customer Data by Heidelberg and arising out of or related to a third-party claim, suit, action, or allegation, as applicable. As used in this Contract, "Affiliate" means, with respect to either Party to this Contract, any entity that controls, is controlled by, or is under common control with the applicable Party through the exercise of voting power or otherwise.
- 8. **Nonconforming Goods**
- 8.1 Customer must inspect the Goods immediately upon receipt and, if applicable, within such time as necessary to make a valid claim against the carrier for any damage incurred during transit and in no event more than fourteen (14) calendar days of receipt of the Goods ("Inspection Period"). All Goods shall be in good order upon release to the carrier. **ALL CLAIMS FOR DAMAGE AND LOSS IN TRANSIT MUST BE FILED BY THE CONSIGNEE CUSTOMER AGAINST THE CARRIER CONSISTENT WITH THE SHIPPING POLICY.** Customer will be deemed to have accepted the Goods unless it notifies Heidelberg in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Heidelberg. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Customer's purchase order; (ii) product's label or packaging incorrectly identifies its contents; (iii) the quantity of the goods received is less than ordered.
- 8.2 If Customer timely notifies Heidelberg of any Nonconforming Goods, Heidelberg shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. If requested by Heidelberg, Customer shall ship, per

Heidelberg's instructions and Heidelberg's expense and risk of loss, the Nonconforming Goods to Heidelberg's facility identified in the instructions. If Heidelberg exercises its option to replace Nonconforming Goods, Heidelberg shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Heidelberg's expense and risk of loss, the replaced Goods. **CUSTOMER**

**ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS CLAUSE ARE CUSTOMER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS. EXCEPT AS PROVIDED UNDER THIS CLAUSE, ALL SALES OF GOODS TO CUSTOMER ARE FINAL, AND CUSTOMER HAS NO RIGHT TO RETURN PURCHASED GOODS TO HEIDELBERG.**

8.3 The quantity of any installment of Goods as recorded by Heidelberg on dispatch from Heidelberg's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence establishing a different quantity.

**9. Indemnification of third-party claims**

9.1 Customer agrees to indemnify Heidelberg from claims of third parties, which arise in connection with an illegal use of the Goods, Services, Software or SaaS by Customer or with approval of Customer. The indemnification applies without limitation to disputes from data protection and unfair competition law or other breaches of any legal obligation, which fall into the area of responsibility of Customer.

9.2 Customer is responsible for providing a safe workplace and facility for employees and third parties. To the extent that personal injury or property damage occurs as a result of Customer's failure to operate or maintain the workplace or the equipment in accordance with all applicable safety laws, rules and regulations, industry standards, Heidelberg's instructions and recommended methods and procedures, or as a result of the change, removal or defeat of guards, safety devices or software provided by Heidelberg or others, or in connection with third-party equipment included in this contract, Customer will defend and indemnify Heidelberg and its employees, agents, successors, assigns and Affiliates from all liability, claims, costs or damages arising therefrom, including abuse or misuse of the Goods, Services or Software.

9.3 Subject to clause 10 and clause 9.4, Heidelberg agrees to indemnify Customer against claims of third parties, which result from the culpable infringement of Intellectual Property rights of third parties in respect of the Goods, Services and Software, provided that Customer:

9.3.1 informs Heidelberg immediately in writing about any such claim;

9.3.2 does not enter into any acknowledgement, agreement or settlement with respect to the claim without Heidelberg's prior written approval;

9.3.3 provides Heidelberg reasonable assistance in defending the claim; and

9.3.4 grants Heidelberg, to the extent legally possible, the power to avert, contest, settle or defend such claim.

9.4 Clause 9.3 shall not apply to the extent the alleged infringement arises from (a) combination, operation, or use of the Goods, Services, or Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by Heidelberg or specified for Customer's use in the Documentation; (b) modification of the Goods, Services, Software other than by Heidelberg in connection with this Contract; (c) use of any version of the Software other than the most current version or failure to timely implement any Maintenance Update, modification,

update, or replacement of the Software made available to Customer by Heidelberg; (d) use of the Goods, Services or Software after Heidelberg's notice to Customer of such activity's alleged or actual infringement, misappropriation, or other violation of a third party's rights; and (e) use of the Goods, Services, or Software (or User Documentation) by or on behalf of Customer that is outside the purpose, scope, or manner of use authorized by this Contract or in any manner contrary to Heidelberg's instructions.

**10. Limitation on Liability**

10.1 Subject to the applicable warranty period provided for herein, the limitation period for Customer to bring a claim hereunder is 1 year from the date the alleged cause of action has accrued under applicable law.

10.2 **IN NO EVENT SHALL HEIDELBERG BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, GOOD WILL OR REPUTATION, OR PROFIT, COSTS OF COVER, LOST DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT HEIDELBERG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**11. Force Majeure and non-timely delivery by pre-suppliers**

11.1 Unless otherwise expressly agreed by Heidelberg in writing, in the event of a Force Majeure or untimely delivery by a pre-supplier, Heidelberg shall be entitled to the following, provided that it has informed Customer in good time:

11.1.2 to postpone deliveries and services as long as such an obstruction exists; and

11.1.3 to withdraw from the Contract in whole or in part due to the part not yet fulfilled.

11.2 Untimely delivery by a pre-supplier means that Heidelberg does not receive deliveries or services from its pre-suppliers on time, through no fault of its own, despite proper and sufficient insurance cover before the conclusion of the Contract.

11.3 If a fixed delivery date is exceeded due to Force Majeure or untimely delivery by a pre-supplier, Customer is entitled to terminate the Contract in respect of the unfulfilled part of the Contract after expiry of a reasonable grace period not less than ninety (90) calendar days in accordance with clause 13.3 of this General Part. The right of termination shall apply also if no fixed delivery date was agreed and it is objectively unacceptable for Customer to adhere to the Contract due to such delay. Customer agrees that termination as provided for in this clause 11.3 of this General Part and return of any advance payments in respect of the unperformed portion of the Contract is the sole and exclusive remedy of Customer in the event of a Force Majeure or untimely delivery by a pre-supplier.

11.4 If Heidelberg's performance of its obligations under any sale or proposed sale of Goods, Services and/or license of Software or with respect to any Goods, Services and/or Software sold or licensed to Customer is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Heidelberg shall not be deemed in breach of any of its obligations or otherwise liable for any

costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

## 12. Customer Default and Heidelberg's Remedies

- 12.1 Time is of the essence as to payment. If (each an "Event of Default"):
- 12.1.1 any of Customer's payment obligations to Heidelberg under this Contract or to a Heidelberg Group Company under any other agreement is not paid promptly when due; or
  - 12.1.2 Customer becomes insolvent or ceases to do business as a going concern; or
  - 12.1.3 a petition in bankruptcy or for an arrangement or reorganization be filed by or against Customer and if such petition, if filed against Customer, is not dismissed within thirty (30) calendar days; or
  - 12.1.4 any property of Customer is subject to attachment and such attachment is not removed within thirty (30) calendar days; or
  - 12.1.5 a receiver is appointed for Customer; or
  - 12.1.6 on the death or incompetence of Customer; or
  - 12.1.7 dissolution, termination of existence, any change in corporate structure or controlling ownership of business, failure of Customer; or
  - 12.1.8 Customer breach of any provision hereof.
- Customer shall be in default hereunder and all unpaid installments (if any) shall at Heidelberg's sole discretion become immediately due and payable and thereafter interest shall accrue and be payable on the entire balance due at the rate equal to the lesser of the rate of 1.5% per month calculated daily and compounded monthly and the highest rate permissible under applicable law.
- 12.2 Upon Customer's default Heidelberg shall have all the rights and remedies of a secured creditor under applicable law, including in the United States the Uniform Commercial Code as then in effect, and any other law applicable to the Collateral and Heidelberg's rights therein. Heidelberg may require Customer to assemble the Collateral and return it to Heidelberg at a place to be designated by Heidelberg which is reasonably convenient to both Parties. Heidelberg will give Customer reasonable notice of the time and place of any public sale of the Collateral or of the time after which any private sale of the Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Customer shown on this Contract at least ten (10) calendar days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale and the like shall include reasonable attorneys' fees and other legal expenses. Waiver of any default shall not be a waiver of any other default; all Heidelberg's rights are cumulative and not alternative.
- 12.3 Heidelberg may sell the Collateral without giving any warranties as to the Collateral. Heidelberg may disclaim any warranties of title or the like, and any such disclaimer will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.
- 12.4 Heidelberg shall be entitled to suspend performance or terminate this Contract without any liability whatsoever to Customer if, at any time prior to the shipment of the Goods or performance of the Services covered hereby, if Heidelberg becomes aware of (a) a material adverse change in the financial position of Customer which would, in Heidelberg's opinion, affect Customer's ability to perform its obligations hereunder, or (b) the inability to obtain delivery of subject

Goods from Heidelberg's supplier. Heidelberg's sole obligation in either event shall be to return to Customer any down payment which Heidelberg is holding hereunder.

## 13. Term and termination of continuing obligations

- 13.1 Unless otherwise provided in the Order Confirmation, the term of continuing Service, any Software license or grant of access and use of SaaS begins on the date specified in the Order Confirmation and continues for a period of 12 months and such term will be automatically extended by a further 12 month period unless notice of termination is provided no less than ninety (90) calendar days prior to the applicable renewal date ("Term").
- 13.2 The right to terminate for good cause remains unaffected. Good cause exists in the following cases:
- 13.2.1 the other Party repeatedly violates its obligations despite notification from the non-breaching Party; or
  - 13.2.2 Customer suffers an Event of Default (excluding an Event of Default under clause 12.1.8).
- 13.3 Any notice of termination must be made in writing. The receipt of any termination notice is effective on receipt and only if it is received by any applicable deadline.
- 13.4 Additionally, Heidelberg may terminate, suspend or limit a Service, Customer's Software license, or grant of access and use of SaaS without liability if Heidelberg provides Customer with written notice that it has a reasonable suspicion that Customer is using the Service or Software in a manner that is (i) unlawful or (ii) in breach its rights and obligations under Special Part D of these GTC (Software and SaaS) hereto, and in each case Customer does not cure the condition identified in such notice within five (5) business calendar days.

## 14. Confidentiality

- 14.1 The Parties agree: (i) to protect the other Party's Confidential Information by exercising the same degree of care that it exercises with its own confidential information, and in no event less than a reasonable degree of care; (ii) not to use the other Party's Confidential Information except in accordance with the Contract; (iii) upon written request by the other Party, to return or destroy the Confidential Information as instructed.
- 14.2 The obligations set out 14.1 above Part also apply to all material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of the Confidential Information and all electronic media or records containing or derived from the Confidential Information). The Confidential Information may not be investigated, worked back, reproduced, or decompiled without the other Party's prior written permission.
- 14.3 If either Party is required by law to disclose the information to any government or court, the other Party shall be promptly notified in writing to the extent permitted by law and the extent of such disclosure shall be kept to a minimum.
- 14.4 The Confidential Information may only be made available to Affiliates, their own employees, representatives, subcontractors, and consultants if this is absolutely necessary for the execution of the contract and they are accordingly obliged to maintain confidentiality. The disclosing Party remains responsible for the aforementioned recipients' adherence to the confidentiality obligations.

## 15. Compliance

- 15.1 Customer agrees to comply with the standards set forth in the Heidelberg Business Partner Code of Conduct ("Code of Conduct"), available at [www.heidelberg.com/compliance](http://www.heidelberg.com/compliance).

- 15.2 Customer agrees to take all necessary and appropriate measures to prevent corruption, ensure fair competition, and to protect health and safety of workers and children, as well as to prevent related crimes.
- 15.3 Customer agrees to pass on the Code of Conduct to its employees, subcontractors and third parties who are employed in connection with the fulfillment of contractual obligations and to make every effort to commit to them accordingly and regularly check adherence to the obligations.
- 15.4 Customer has a sole responsibility for compliance with legal and official regulations regarding import, transport, storage, and use of the Goods and Services in the country of shipment. In particular, the Goods and Services may be subject to the export control regulations of the United States of America, the Federal Republic of Germany, the European Union, or other states. Customer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Contract or any resale of the Goods by Customer. Customer assumes all responsibility for shipments of Goods requiring any government import clearance. Heidelberg may terminate this Contract if any governmental authority imposed antidumping or countervailing duties or any other duties or penalties on the Goods.

#### **16. Data protection**

- 16.1 The Parties agree to comply with applicable data protection legislation. Further details are set forth in Annex 1: <https://www.heidelberg.com/annex-data-protection>
- 16.2 Absent Heidelberg's agreement to process Customer's personal data, Customer must ensure that the dialogue boxes provided with the MCS, Software or SaaS are filled in as directed and in accordance with the applicable instructions, and ensure that no personal data is entered at this point.

#### **17. IoT Data usage and Customer Data**

- 17.1 In connection with the use of the Goods and Services, Internet of Things Data ("IoT Data") is transmitted to the Heidelberg Group and its appointed agents. These are in particular:
  - 17.1.1 machine and device-specific data or other technical data, e.g., software versions, totalizer status, licenses, machine configuration;
  - 17.1.2 technical job data, e.g., paper size, print speed, number of sheets and quality information, process flow information, volume data (i.e., about printing plate space use, TIFF area generated in production, and click count);
  - 17.1.3 usage data, e.g., technical consumption of resources or statements about use of functions, or information about use of the machines.

Under this clause 17.1, personal data will not be transferred.

- 17.2 Heidelberg is entitled to use the IoT Data without restriction, in particular (i) for the continuous improvement of existing products and services and for development of new products and services, and (ii) for commercial purposes toward Customer and third parties, e.g., benchmarking, consulting services and advertising.
- 17.3 When collecting and using the IoT Data, Heidelberg shall comply with all legal regulations, in particular in connection with business and trade secrets, as well as existing confidentiality agreements.
- 17.4 Customer will own all right, title and interest in and to the Customer Data. For any Customer Data processed by Heidelberg, Customer grants to Heidelberg an unlimited, and non-exclusive license to access and use the Customer Data without restriction, in particular (i) for the continuous improvement of existing products and services and for development of new products and services, (ii) for commercial

purposes toward Customer and third parties, e.g., benchmarking, consulting services and advertising, and (iii) to the extent necessary for Heidelberg to perform the Services hereunder. Customer agrees Heidelberg may create and use aggregated and anonymized data to develop its goods and services, provided that such aggregate and anonymized data shall not identify Customer or permit any third party to identify Customer and shall not include any Customer Confidential Information.

#### **18. Assignment and set-off**

- 18.1 Heidelberg is entitled to assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights and obligations under the Contract.
- 18.2 Customer is not entitled transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights and obligations under the Contract without Heidelberg's prior written consent.

#### **19. Severability clause**

Should any individual provision of the Contract be or become invalid or void under applicable laws or regulations such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. To the extent possible under applicable law, the Parties undertake to cooperate with one another in concluding an amendment to the Contract to give effect to any such invalid or void provision that would give effect to the intended economic purpose of such provision.

#### **20. Amendments**

No addition to, deletion from or modification of any of the provisions of the Contract shall be binding upon the Parties unless made in writing and signed by a duly authorized representative of each Party. Any such additions, deletions, or modifications must refer specifically to this Contract.

#### **21. Applicable law and place of jurisdiction**

- 21.1 All matters arising out of or relating to the Contract are governed by and construed in accordance with the laws applicable at Heidelberg's registered office without giving effect to any choice or conflict of law provision or rule (whether of the laws applicable at Heidelberg's registered office or any other jurisdiction) and without regard to the UN Convention on Contracts for the International Sale of Goods ("CISG") that would cause the application of the laws of any jurisdiction other than those of the laws applicable at Heidelberg's registered office. The CISG is excluded in its entirety.
- 21.2 Any legal suit, action or proceeding arising out of or relating to this Contract shall be instituted in the responsible courts at Heidelberg's registered office, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding, provide that Heidelberg may also pursue a claim hereunder before any other court of competent jurisdiction.

## B. Special Part: Sale of Goods

### 1. Area of application

1.1 This Special Part B (Sale of Goods) applies to all deliveries of Goods, e.g., machines including MCS ("Equipment") and the other products indicated in the Order Confirmation. MCS shall be treated as a Good hereunder. This Special Part does not apply to continuing obligations in respect of Services or Software.

### 2. Delivery (Incoterms, delivery dates, packaging, delay in delivery)

2.1 Delivery and transfer of risk of loss takes place EXW from the respective production site or the entropot/ warehouse of Heidelberg as per Incoterms® 2020.

2.2 Delivery dates are generally non-binding. Binding delivery dates must be expressly agreed upon. Heidelberg shall notify Customer of delivery dates in good time. Confirmed delivery dates are applicable only with timely delivery by pre-suppliers.

2.3 Delivery dates begin at the earliest after Customer has (a) paid and Heidelberg has received the agreed down payment and (b) fulfilled all its agreed cooperation obligations. Customer's cooperation obligations include the receipt of all permits, approvals, documents and information required for the delivery of the Goods and Services (insofar as Customer has to procure them).

2.4 As far as reasonable, Heidelberg is entitled to make partial deliveries, partial services and partial invoices before the delivery date communicated to Customer.

2.5 If dispatch or delivery is delayed at Customer's request or due to acts or omissions of Customer, Customer shall compensate Heidelberg for the costs of storage. If Heidelberg stores the Goods, it will be entitled to at least 0.5 percent of the outstanding invoice amount for each outstanding month, starting from one calendar month after 'ready-for-dispatch' notification. However, after expiry of a reasonable grace period, Heidelberg is entitled to use the Goods in another way and to supply Customer with substitute goods within a reasonably extended period of time.

2.6 Heidelberg takes back packaging delivered by Heidelberg to Customers within the European Union. Upon request, Heidelberg will provide details about the procedure. Customer bears the costs of this service.

### 3. Machine control software

3.1 MCS supplied with or for the operation of Equipment shall remain the property of Heidelberg. Subject to payment in full, Heidelberg hereby grants to Customer a royalty-free, non-exclusive, non-transferable license to use such MCS for the sole purpose of operating the relevant Equipment supplied pursuant to this Contract.

3.2 Customer shall not to modify or reverse engineer the MCS or disclose or deliver the MCS to any third party. If Customer sells or transfers the relevant Equipment to a third party, it shall return such MCS and all copies thereof to Heidelberg, unless such transferee agrees, in writing, to be bound by the provisions hereof. Customer and transferee shall provide such written agreement to Heidelberg prior to the transfer of the relevant Goods.

3.3 In terms of content, the right to use the MCS is restricted to control the relevant Equipment for the specified purpose and can only be transferred together with the relevant Equipment with Heidelberg's prior written consent.

### 4. Payment arrangements

Unless otherwise provided in the Order Confirmation, Customer shall pay fifty percent (50%) of price for any Equipment upon conclusion of the Contract (receipt of the Order

Confirmation or signature of the individual contract), forty percent (40%) of the price upon 'ready-for-dispatch' notification and ten percent (10%) of the price upon delivery.

### 5. Grant of Security Interest

5.1 In order to secure all payment and performance obligations of Customer under this Contract, including Special Part B (Sale of Goods) and Special Part C (Services), and all other contracts of Customer with Heidelberg, now, heretofore or hereafter owing to Heidelberg by Customer, whether or not evidenced by any note or other instrument and whether or not for the payment of money, due or to become due, now existing or hereafter arising, Customer hereby grants to Heidelberg a security interest in all of the Goods purchased hereunder, together with all attachments, replacements, substitutions, additions and proceeds in respect thereto (collectively, the "Collateral").

5.2 In the case of financing of the purchase price by third parties (especially, finance lease contract), Heidelberg shall enjoy a first priority lien on the Collateral until Heidelberg is paid in full.

5.3 Customer represents and warrants and agrees that except for the security interest granted hereby the Collateral is free from and will be kept free from any lien, security interest or encumbrance; that no financing statement covering the Collateral is on file; that, notwithstanding Heidelberg's claims to proceeds, Customer will not dispose of any of the Collateral or any interest therein or remove any thereof from the aforesaid location without the prior written consent of Heidelberg; to defend at Customer's own cost any action, proceedings or claim affecting the Collateral; to pay, after default, all delinquency, collection and other charges permitted by law; to pay reasonable attorneys' fees and other expenses incurred by Heidelberg in enforcing its rights after Customer's default; all attachments, accessories and parts shall become part of the equipment by accession.

5.4 Title to the Equipment and risk of loss to the Equipment passes to Customer when Heidelberg delivers the equipment to the EXW point (Incoterms® 2020). Unless otherwise indicated in the Order Confirmation, Heidelberg will arrange for freight and rigging and will provide transit insurance while the equipment is in transit to Customer.

5.5 Customer will procure forthwith and maintain "All Risk" property insurance on the Collateral for the full replacement cost of the equipment until payment in full plus such other insurance as Heidelberg may specify. If Customer fails to maintain the policies or certificates of insurance as required hereunder, upon prior written notice to Customer of Customer's failure to provide evidence of such insurance, Heidelberg may, at its option but without obligation to do so, procure such insurance at Customer's sole cost and expense. All costs associated with the placement of such insurance will be payable by Customer monthly, together with any unpaid balance under the Contract. Heidelberg's election to procure such insurance as described above, will not relieve Customer of its obligations regarding insurance under the Contract.

5.6 If permitted by law, Customer hereby authorizes Heidelberg, from time to time, to take any and all actions necessary to perfect its security interests in the Collateral, including filing one or more financing statements describing the Collateral and containing any other information required by law for the sufficiency or filing office acceptance thereof. Such information may include Customer's social security number, Federal Tax ID number or other organizational ID number. Customer shall not file a termination statement for any such financing statement filing without Heidelberg's prior written authorization.

5.7 Customer waives all exemptions and homestead laws and acknowledges receipt of a true copy of this security agreement.

5.8 Until the purchase price is paid in full, the following applies: Customer has the right to use the Goods, but not the right to transfer them to third parties;

A change of location of Goods requires the prior written consent of Heidelberg and may only be carried out by Heidelberg employees or representatives.

Customer shall ensure that the Equipment when relocated is in substantially the same condition in all material respects as the Equipment was in prior to such relocation. Customer must also insure the delivery item at its own expense in favor of Heidelberg against risks during transport and assembly, machine breakage, fire, burglary and water damage, as well as provide proof of insurance and premium payment upon Heidelberg's request.

Customer shall allow Heidelberg or its agents to inspect the delivery item and, for this purpose, to access the rooms in which it is located and shall undertake to provide assistance, if necessary, without claiming compensation for this action.

## **6. Trade-in Equipment**

6.1 In the event that Heidelberg agrees in writing to accept any trade-in Equipment, any trade-in allowance shall be subject to confirmation after inspection by a Heidelberg appointed representative. Heidelberg reserves the right to re-inspect the trade-in Equipment at any time up until delivery of new equipment, to assure it is in the same condition as it was at date of order. Should any damage have been incurred, beyond normal wear and tear, the trade-in Equipment will be subject to re- inspection and re-evaluation of the trade-in allowance by Heidelberg.

Customer represents and warrants to Heidelberg that it is the lawful owner of any trade-in Equipment, that it has good and marketable title to such Equipment, free and clear of all liens, encumbrances and charges, that it has the legal right to sell and transfer such Equipment to Heidelberg and that it will defend, at its own cost and expense, indemnify and hold Heidelberg harmless from any and all claims, demands or causes of action of any person in respect thereof.

## **C. Special Part: Service**

### **1. Area of application**

This Special Part C (Services) applies to the provision of service with agreed periods and to individual service orders.

### **2. Terms of payment**

In respect of any contracted Services with an agreed term, the service fees shall be calculated quarterly in advance, provided that any contracted Services for digital printing systems, shall be calculated based on actual consumption and invoiced quarterly in arrears.

### **3. Contract terms**

Notwithstanding clause 13.1 of Part A of these GTC, the term in respect of contracted Services for digital printing systems shall automatically expire at the end of the initially agreed contract term and shall not be subject to automatic continuation or renewal.

### **4. Performance**

The place of performance for Services is the location given in the Order Confirmation. Heidelberg's sole obligation with respect to Services is to provide the described services.

### **5. Subcontracting**

Heidelberg is entitled to freely engage subcontractors to perform any of the Services hereunder.



## D. Special Part: Software and SaaS

### 1. Area of application

This Special Part D (Software and SaaS) applies to (i) any Software that Heidelberg licenses or otherwise makes available to Customer, with the exception of MCS; or (ii) any right to access and use to SaaS.

### 2. General provisions

2.1 Use and access to any Software, or SaaS offering, provided by Heidelberg to Customer requires a user-based Heidelberg account. For creating the account, the applicable terms of use are available at [www.heidelberg.com/portal/en/terms](http://www.heidelberg.com/portal/en/terms).

2.2 Heidelberg will provide Customer with User Documentation in electronic form after the conclusion of the Contract (if applicable). The User Documentation can also be viewed while using the Software.

2.3 *SaaS Transition.* Heidelberg shall be entitled to cease releasing New Versions of any Software and convert to providing such functionality as SaaS in accordance with the relevant provisions of clause 5 of this Special Part D (Software and SaaS). Heidelberg will inform Customer about transition to SaaS no less than thirty (30) calendar days in advance of such transition.

### 2.4 Customer's obligations

2.4.1 Customer must take appropriate technical and organizational measures to protect the Software or SaaS, including keeping Customer Systems up-to-date (e.g., by security updates).

2.4.2 Customer must ensure a suitable periodic backup of Customer Data and Customer Systems. Prior to any upcoming Heidelberg work or other services, Customer shall ensure that an appropriate data backup is carried out.

### 2.5 Customer Security Obligations

2.5.1 Customer shall not, and shall not permit any other person to, access or use the Software or Heidelberg SaaS Materials except as expressly permitted by this Contract and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not (i) sub-license, rent, sell, lease, distribute or otherwise transfer the Software or SaaS or any part thereof or otherwise use or allow others to use for the benefit of any third party (other than Customer's Affiliates); (ii) attempt to reverse-translate the Software program code into other codes (decompilation), reverse engineer, decompile, disassemble, or attempt to derive the source code or underlying ideas or algorithms of the Software or any portion thereof, except as required to be permitted by applicable law; (iii) modify, port, translate, localize or create derivative works of the Software or SaaS; (iv) use the Software or SaaS: (a) in violation of any law, statute, ordinance or regulation applicable to Customer; or (b) intentionally or willfully propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (v) remove or modify any acknowledgements, credits or legal notices contained in the Software or any part thereof; (vi) collect any information in respect of the Software using any automated means or gain or attempt to gain non-permitted access by any means to any Heidelberg computer system, network, or database; and (vii) file copyright or patent applications that include Heidelberg Confidential Information, which, for the avoidance of doubt, includes the Software or any portion thereof.

2.5.2 Customer (and not Heidelberg) will be responsible for establishing, monitoring, and implementing security practices to control the physical access to and use of the Software

or SaaS and all Customer Data therein, including personal data.

## 3. License of Software

### 3.1 Grant of License

All Software and User Documentation is licensed, not sold. Subject to payment of the applicable fees in full and compliance with the other terms and conditions of this Contract, Heidelberg grants Customer a simple, non-exclusive, non-sublicensable, non-transferable (except in compliance with clause A.18.2 of the General Part) license to use the Software and User Documentation by an Authorized User during the Term solely for its own internal business operations at the Customer's production location specified in the Order Confirmation (the "Designated Site"). Such permitted use is limited to the functions or other usage metrics stated in the User Documentation and/or Order Confirmation.

Unless otherwise stated in the Order Confirmation, Customer may install, use, and run one copy of the Software on Customer Systems for use by one Authorized User at a time at the Designated Site. Customer shall provide written notice to Heidelberg of the name of each new Authorized User not set forth in the Order Confirmation, and of any individuals who are no longer Authorized Users, immediately on adding, removing, or replacing any Authorized User. The total number of Authorized Users shall not exceed the number set forth in the Order Confirmation, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the license fees payable hereunder. Customer may make one copy of the Software solely for testing, disaster recovery, or archival purposes. Any copy of the Software made by Customer: (a) will remain the exclusive property of Heidelberg; (b) be subject to the terms and conditions of this Contract; and (c) must include all copyright or other Intellectual Property Rights notices contained in the original.

If Heidelberg makes a New Version of the Software available, Customer's license to use the prior version of the Software shall lapse (without further act of Heidelberg) as soon as Customer initiates productive use of modified Software.

If a license of Software is treated as a sale under applicable law, upon resale of the Software (including MCS), Customer may transfer rights to the Software and User Documentation in the form they were transferred to Customer by Heidelberg.

### 3.2 Modifications and adjustment

Heidelberg may update and further develop the Software at any time and may adapt it, in particular, due to changes in legal status, technical developments, or to improve IT safety. Heidelberg shall notify Customer about significant Software updates as soon as reasonably practicable.

Heidelberg is entitled to modify the Software in its sole discretion. In the event Heidelberg eliminates an essential characteristic or feature of the Software or ceases providing the Software for any reason (a "Material Modification"), including termination of Heidelberg's relationship with a third-party vendor, Heidelberg will inform Customer of such Material Modification at least sixty (60) calendar days in advance, to the extent reasonably possible and legally permissible, whereupon Customer may terminate the Software license in question by written notice to Heidelberg not later than within thirty (30) calendar days of the notification of such Material Modification. In the event Customer terminates the Software license due to a Material Modification, Heidelberg's sole obligation will be to reimburse Customer the amount of any fees paid in advance for the affected element of the Software equal to the pro rata share attributable to the remaining term covered by such advance paid.

### 3.3 Delivery and installation of the Software

Heidelberg performs its delivery by making the Software available on the Internet or, if agreed in the Order Confirmation, by installing the Software at Customer's premises, or by activating it, by transferring the required license keys to Customer and by providing digital access to the User Documentation.

Customer is responsible for installing the Software, including all Maintenance Updates made available to it by Heidelberg as soon as practicable after release. The Software installation instructions described in the User Documentation shall apply, in particular with regard to the hardware and software environment including access to the Internet to be maintained by Customer.

### 3.4 Terms of payment

Customer shall pay Heidelberg the fee agreed in accordance with the payment terms set out in the Order Confirmation. Upon receipt of the invoice, the invoice amount is due for payment.

### 3.5 Prinect News

Heidelberg sends messages to the Prinect Maintenance Centre installed in the Customer's network. The Prinect News can then be directly accessed via the Prinect Cockpit integrated in the Software. In addition, Customer has the opportunity to distribute the Prinect News via e-mail addresses specified by Customer. Such e-mail addresses are not visible to Heidelberg. Heidelberg only receives statistical feedback about the number of e-mail recipients entered in the Prinect Maintenance Centre per News category.

### 3.6 Limited Warranty

3.6.1 *Limited Warranty.* Subject to the conditions and exclusions set forth in clauses 3.6.1 and 3.6.2 below, Heidelberg warrants to Customer that for a period of one hundred eighty (180) calendar days from the date of installation of the Software (the "Software Warranty Period") the Software will substantially conform in all material respects to the specifications set forth in the User Documentation and/or the Order Confirmation, when installed, operated, and used as recommended in the User Documentation and in accordance with this Contract.

3.6.2 *Conditions.* The limited warranties set forth in clause 3.6.1 of this Special Part D (Software and SaaS) apply only if Customer: (a) notifies Heidelberg in writing of the warranty breach before the expiration of the Software Warranty Period; (b) has promptly installed all Maintenance Updates to the Software that Heidelberg previously made available to Customer; and (c) as of the date of notification, is in compliance with all terms and conditions of this Contract.

3.6.3 *Exclusions.* Notwithstanding any provisions to the contrary in this Contract, the limited warranty set forth in clause 3.6.1 does not apply to problems arising out of or relating to: (a) Software, or the media on which it is provided, that is modified or damaged by Customer or its agents; (b) any operation or use of, or other activity relating to, the Software other than as specified in the User Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology or service not specified for Customer's use in the User Documentation; (c) Customer's or any third party's negligence, abuse, misapplication, or misuse of the Software, including any use of the Software other than as specified in the User Documentation; (d) Customer's failure to promptly install all Maintenance Updates that Heidelberg has previously made available to Customer; (e) the operation of, or access to, Customer's or a third party's system or network; (f) any Open Source Components, beta software, software that Heidelberg makes available for testing or demonstration

purposes, temporary software modules or software for which Heidelberg does not receive a license fee; (g) Customer's breach of any provision of this Contract; or (h) any other circumstances or causes outside of the reasonable control of Heidelberg (including abnormal physical or electrical stress).

3.6.4 *Remedies.* If Heidelberg breaches, or is alleged to have breached, any of the warranties in clause 3.6.1, Heidelberg may, at its sole discretion and expense, take any of the following actions to remedy such breach: (a) replace any damaged or defective media on which Heidelberg provided the Software; (b) amend, supplement or replace any incomplete or inaccurate User Documentation; (c) repair or replace the Software. The foregoing remedies are Customer's sole and exclusive remedies and Heidelberg's sole liability under clause 3.6.1.

If Heidelberg makes Software available to Customer free of charge, such Software is provided **AS IS WHERE IS** with all faults and Heidelberg has no obligation to provide any support for such Software or continue to provide such Software. Heidelberg may cease providing and supporting any Software it provides free of charge at any time.

### 3.7 Remedy of warranty breaches

To enable Heidelberg to correctly rectify any performance issues in respect of the Software, Customer must: (a) notify Heidelberg in writing and adequately describe the detected defect so as to make them identifiable for Heidelberg; (b) provide documents necessary for rectification of the defect; (c) install updates provided by Heidelberg from time to time; and (d) use the Software in accordance with the Contract and not modify the Software in any way.

This Contract shall govern the provision by Heidelberg of any New Version or Maintenance Update to Customer.

### 3.8 Right of inspection and Compensation for Unauthorized Use

Heidelberg is entitled to check whether the Software is used in accordance with the GTC. For this purpose, Heidelberg may request information from Customer, especially about the period and extent of the Software's use. If Heidelberg is not able to do so remotely, Heidelberg may physically inspect the relevant hardware and software at Customer's premises. For this purpose, Customer agrees to grant Heidelberg access to Customer's premises during normal business hours upon reasonable advance notice by Heidelberg.

If Customer uses the Software beyond the scope of the license granted to it hereunder, Customer shall at Heidelberg's demand pay Heidelberg the amount equal to (a) the Software purchase price (if purchased) or (b) a twelve-month license (if licensed), for each event of Customer (i) enabling a person who is not an Authorized User to use the Software or User Documentation, (ii) producing an unauthorized copy of the Software or User Documentation, or (iii) using the Software on additional hardware. This clause is without prejudice to Heidelberg's right to recover other damages arising from breach of the permitted use of the Software and User Documentation.

Customer shall immediately notify Heidelberg of any unauthorized use of the Software by third parties, including a summary of all known pertinent information including such person's names and addresses and the nature and scope of such unauthorized use and its claims arising from such unauthorized use of the Software.

### 3.9 Third-party rights, prohibition of reverse engineering, return after termination

If Heidelberg does not own or is not directly entitled to copyright any of the Software parts or modules, Customer shall only have the rights of use granted by the rights owner

within the scope of the latter's terms of license and use. Without it being claimed to be complete and up-to-date, the content of these provisions can be regularly viewed via the graphical user interface of the Software, if it exists. Within the scope of the Contract conclusion, Customer is entitled to take note of the respective Software use and Software license conditions of the rights owner.

The copyright, all industrial property rights and other Intellectual Property including business secrets will be retained by Heidelberg or by the third party from whom Heidelberg received the right to distribute the Software and to grant the rights of use to Customer. It is prohibited to remove or change copyright notices, serial numbers, or other features used for program identification.

Customer is entitled to make changes, extensions, or other revisions to the Software. Such changes may only be used for Customer's own internal business operations. Customer is prohibited from passing on such of its own works to third parties, even free of charge, and from any other commercial use, including use of technical solutions or modules contained in the Software for purposes other than the contractually required use. Customer enables Heidelberg to check (inspect) such work upon request.

Upon termination of the user authorization (e.g., withdrawal, subsequent delivery, termination), Customer is obliged to return the Software with all existing copies and modifications of any kind. If no physical return of the Software and the copies is possible for technical reasons, Customer shall delete them and confirm its fulfilment of the above obligation to Heidelberg in writing.

### **3.10 Effect of Termination**

In addition to any other provisions of this Contract, upon termination of this Contract, or expiration of the Term, all rights, licenses and authorizations granted to Customer hereunder will immediately terminate and Customer will (a) immediately cease all use of and other activities with respect to the Software and User Documentation; (b) promptly deliver to Heidelberg, or at Heidelberg's written request destroy, and permanently erase from Customer Systems and devices Customer directly or indirectly controls, the Software, User Documentation and Heidelberg's Confidential Information, including all documents, files, and tangible materials (and any partial and complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged into other materials; and (c) certify to Customer in a signed written instrument that it has complied with the requirements of this clause 3.10.

## **4. Maintenance of Licensed Software**

### **4.1 Subject matter**

If agreed in Heidelberg's Order Confirmation, Heidelberg shall provide maintenance of the Software in accordance with the Contract. If Customer uses different modules of the Software, its maintenance can only be provided for the entire system consisting of all modules.

If maintenance services have been purchased by Customer, during the Term, Heidelberg will provide Customer with all Maintenance Updates and New Versions (including updated User Documentation) that Heidelberg may, in its sole discretion, make generally available to its licensees at no additional charge. All Maintenance Updates provided by Heidelberg to Customer are deemed Software. Customer does not have any right hereunder to receive any New Versions of the Software that Heidelberg may, in its sole discretion, release from time to time, but Customer may license any New Version at Heidelberg's then-current list price and subject to a separate license agreement, provided that

Customer is in compliance with the terms and conditions of this Contract.

Customer is not entitled to any extended functions of the Software beyond the original scope of Software acquired by Customer. Any such extended functions shall be ordered and paid for separately by Customer.

Heidelberg shall have no obligation to provide maintenance services unless Customer has acquired the most current New Version of the applicable Software.

The maintenance measures will be performed, as follows:

if Customer notifies Heidelberg of a reproducible, significant deviation of the Software from the User Documentation, Heidelberg shall eliminate the deviation by individual measures, by supplying replacement a New Version or by a Maintenance Update;

if a New Version can only be run after the Customer Systems are converted or retrofitted, Heidelberg may refuse to deliver the New Version and reduce its maintenance services for the existing Software version to maintaining its essential functions, and if Customer does not accept the conversions or retrofits within thirty (30) calendar days after having been notified by Heidelberg, Customer is still obliged to pay the agreed fees for the maintenance services in full; and

if it turns out during the maintenance that the deviation from the limited warranty was caused either by Customer's or a third party's unauthorized modification of the Software, or by Customer's use contrary to this Contract, or together with other software not maintained and supported by Heidelberg, Customer must pay separately and in addition for the services incurred, including travel costs, in accordance with the price list valid at the time of the service. In the case of Software updates, Customer's unauthorized modifications to the Software and special features resulting from its operating the Software together with the ones not maintained by Heidelberg cannot be taken into account.

### **4.2 Customer's obligations**

Customer shall provide reasonable cooperation and grant Heidelberg access to the Software on site or remote access to the Software (as applicable).

Customer is responsible for proper functioning of Customer Systems on which the Software is installed. Customer Systems must comply with the respective minimum technical requirements of the Software or SaaS and must be maintained and up to date (in particular, security patches).

### **4.3 Additional expenses, end of obligation to perform**

Heidelberg is only obliged to maintain the then current New Version of the Software. If Customer does not comply with its obligations (in particular, installation of updates of third-party software), Customer will pay any additional costs in accordance with Heidelberg's price list in its current version. If Customer rejects a Maintenance Update or third-party update, Heidelberg shall be released from its Software maintenance obligations under this Contract with regard to the affected Software.

If, without prior authorization, the Software was modified by Customer or a third party, or the Software location changes, or the Software was copied, or the Customer Systems are replaced (in whole or in part), the obligation to perform maintenance services will terminate.

4.4 If problems with the Software occur, Heidelberg offers support services to the agreed extent via remote maintenance, telephone, or e-mail to a qualified contact person designated by Customer within Heidelberg's normal business hours. Customer can request the information of the applicable business time (availability time) of Heidelberg.

#### 4.5 Rights of use

Customer's rights of use to New Versions and Maintenance Updates shall be equal to the rights of use to the penultimate version of Software subject to a right of maintenance. With respect to Customer's rights of use, the rights to the New Version and any Maintenance Updates shall replace the rights of the previous versions and other corrections after a reasonable transitional period, which shall not normally exceed one month.

Within a reasonable transition period after making the New Version available to Customer no to exceed sixty (60) calendar days provided that the New Version or Maintenance Update is operational, all Customer's rights to the previous versions of the Software shall expire when the New Version or Maintenance Update is installed on the Customer Systems.

#### 4.6 Terms of payment

Customer shall pay Heidelberg the agreed fee for Software maintenance on the date given in the Order Confirmation pro rata until the end of the current calendar quarter, and then quarterly in advance at the beginning of each calendar quarter thereafter of the agreed service term.

If the Software maintenance fee is based on a certain percentage of the software license fee, the basis for calculating the software maintenance fee will be the current list price required by Heidelberg and not the price agreed with Customer.

### 5. Software as a Service (SaaS)

#### 5.1 Rights to Access and Use

5.1.1 **Ownership.** The Software and all of its content ("Content"), including all copyrights, patents, trademarks, service marks, trade names and all other Intellectual Property are owned or controlled by Heidelberg. All right, title, and interest in and to the Content and Intellectual Property available via the Software is the property of Heidelberg, and is protected by international copyright, trademark, trade dress, patent and/or other Intellectual Property and unfair competition rights and laws to the fullest extent possible. Heidelberg owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

5.1.2 **Access and Use.** For the term specified in the Order Confirmation, Heidelberg grants to Customer's Authorized Users a revocable, non-exclusive, non-assignable, non-transferable right to access and use the SaaS by means of a browser and the User Documentation for Customer's own internal contractual use, limited to Customer's production location specified in the Order Confirmation. Such contractual access and use is especially limited to the functions, users, or other usage metrics stated in the Order Confirmation. "Authorized Users" means Customer's employees and consultants who are authorized by Customer to access and use the SaaS and for whom access has been purchased under the Order Confirmation.

5.1.3 **Service Control.** Except as otherwise expressly provided in this Contract, as between the Parties (a) Heidelberg has and will retain sole control over the operation, provision, maintenance, and management of the Heidelberg SaaS Materials; and (b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Heidelberg SaaS Materials by any person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the SaaS systems or Heidelberg; (ii) results obtained from any use of the

Services or Heidelberg SaaS Materials; and (iii) conclusions, decisions, or actions based on such use.

5.1.4 **Authorized Users.** Only one Authorized User may access the SaaS at any one time. The identity of an Authorized User may be changed by notice by Customer to Heidelberg from time to time, provided that the number of Authorized Users may not be increased without the written consent of Heidelberg. Customer shall be liable for acts and omissions of its users, Affiliates and third parties, as well as for its own acts and omissions, in connection with the use of the SaaS. Moreover, Customer is prohibited from making the SaaS and User Documentation available to third parties.

5.1.5 **User Documentation License.** Heidelberg hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except with Heidelberg's prior written consent) license to use the User Documentation during the Term solely for Customer's internal business purposes in connection with its use of the SaaS.

5.1.6 **Reservation of all Rights Not Granted as to Content and Service.** These GTC include only narrow, limited grants of rights to use and access the Software and Content. No other right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. **ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY HEIDELBERG. ANY UNAUTHORIZED USE OF ANY CONTENT OR THE SOFTWARE IS PROHIBITED.**

#### 5.2 Terms of payment

Customer shall pay Heidelberg the fee agreed in the Order Confirmation. Upon receipt of the invoice, the invoice amount is due for payment.

#### 5.3 Service levels, maintenance time, troubleshooting

Heidelberg shall provide a total availability of SaaS services of at least 98% per year at the point of transfer to the Internet. "Availability" means Customer's ability to use all the main functions of the SaaS. This also includes maintenance and failure times if the troubleshooting time is adhered to. Times of minor faults are not taken into account when measuring the availability. Heidelberg's measuring instruments are determinative in measuring availability.

Heidelberg will inform Customer about its maintenance hours as soon as reasonably possible. In the case of critical security gaps and other maintenance critical for the operation, Heidelberg is entitled to carry out the maintenance at short notice at its reasonable discretion.

Customer must report any faults or Availability deficiencies to Heidelberg immediately. Heidelberg will acknowledge receipt of the fault message within the service hours and begin the cure process. Heidelberg will notify Customer of an estimated time period needed to cure the fault.

Nonmaterial faults will be eliminated at Heidelberg's discretion.

#### 5.4 Limited Warranties

5.4.1 **Limited Warranty.** Subject to the conditions and exclusions set forth in 5.4.2 below, Heidelberg warrants that the SaaS, as delivered, will perform materially in accordance with the specifications in the User Documentation and/or the Order Confirmation.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN CLAUSE 5.4.1, ALL SAAS AND HEIDELBERG MATERIALS ARE PROVIDED AS IS WHERE IS. HEIDELBERG SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING

THE FOREGOING, HEIDELBERG MAKES NO WARRANTY OF ANY KIND THAT THE SAAS OR HEIDELBERG MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED AS IS WHERE IS AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

5.4.2 **Exclusions.** Notwithstanding any provisions to the contrary in this Contract, the limited warranty set forth in clause 5.4.1 does not apply to problems arising out of or relating to: (a) any operation or use of, or other activity relating to, the SaaS other than as specified in the User Documentation, including any incorporation in the SaaS of, or combination, operation or use of the SaaS in or with, any technology or service not specified for Customer's use in the User Documentation; (c) Customer's or any third party's negligence, abuse, misapplication, or misuse of the SaaS, including any use of the SaaS other than as specified in the User Documentation; (d) the operation of, or access to, Customer's or a third party's system or network; (e) any Open Source Components, beta software, software that Heidelberg makes available for testing or demonstration purposes, temporary software modules or software for which Heidelberg does not receive a license fee; (f) Customer's breach of any provision of this Contract; or (g) any other circumstances or causes outside of the reasonable control of Heidelberg (including abnormal physical or electrical stress).

5.4.3 **Remedies.** If Heidelberg breaches, or is alleged to have breached, any of the warranties in clause 5.4.1, Heidelberg may, at its sole discretion and expense, take any of the following actions within a reasonable period of time to remedy such breach: (a) provide a Maintenance Update to minimize the service disruption or (b) release a new version of the Software to the Customer. The foregoing remedies are Customer's sole remedies and Heidelberg's sole liability under clause 5.4.1. Until a Maintenance Update or New Version is made available, Heidelberg shall use its reasonable endeavors to provide an interim solution to mitigate the impact of the breach.

## 5.5 Temporary restriction of access

Unless expressly prohibited under applicable law, Heidelberg shall be entitled to suspend or restrict access to the SaaS in whole or in part with immediate effect if Heidelberg detects at its reasonable discretion that the use of the SaaS by Customer, its Authorized Users and any other person may lead to a material impairment of the Software or SaaS, its users, other Heidelberg's Customers, or the rights of third parties in a manner that requires immediate action to prevent damage and losses. Heidelberg shall immediately inform Customer of such a suspension or restriction. If possible, Heidelberg will inform Customer in advance. Such suspension or restriction does not relieve Customer of its payment obligations. Heidelberg will cancel the suspension or restriction when the reason for it no longer exists.

## 5.6 Effect of Termination

In addition to any other provisions of this Contract, upon any expiration or termination of this Contract, (a) all rights, licenses, consents, and authorizations granted by either Party to the other hereunder will immediately terminate in respect of SaaS; (b) Heidelberg shall immediately cease all

use of any Customer Data or Customer's Confidential Information and (i) as soon as reasonably practicable return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Heidelberg directly or indirectly controls, provided that Heidelberg's obligations under this clause 5.6 do not apply to any IoT Data; (c) Customer shall immediately cease all use of any SaaS and Heidelberg SaaS Materials and (i) promptly return to Heidelberg, or at Heidelberg's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Heidelberg SaaS Materials or Heidelberg's Confidential Information; and (ii) permanently erase all Heidelberg SaaS Materials and Heidelberg's Confidential Information from all systems Customer directly or indirectly controls; and (iii) certify to Heidelberg in a signed written instrument that it has complied with the requirements of this clause; and (d) Heidelberg may disable all Customer and Authorized User access to the Heidelberg SaaS Materials.