

General Terms and Conditions of Sale and Delivery of Goods Heidelberg Instruments Inc. - USA



Effective as of September 1, 2022

§ 1 Scope of application

The following Terms and Conditions of Sale and Delivery of Goods ("Terms and Conditions") by Heidelberg Instruments Inc. ("Heidelberg"), with offices located at 2539 W 237th St., Suite A, Torrance CA 90505 apply, as far as not explicitly stipulated otherwise in writing, to all transactions undertaken between Heidelberg and the customer in relation to the sale of goods and, in particular, in relation to offers, purchase and delivery contracts, orders, order confirmations and deliveries of goods. These also apply to any future business relationships even if they have not been expressly agreed again. Any deviating general terms and conditions or purchase order terms of the customer are not accepted, are hereby rejected and are of no force or effect, even if Heidelberg does not expressly object to them.

§ 2 Conclusion of contract

(1) Offers made by Heidelberg are non-binding provided they have not expressly been specified as binding in the wording of the offer. A contract under these Terms and Conditions only enters into force once it has been signed by both parties or once Heidelberg has accepted and confirmed the order to the customer in writing (by letter or e-mail). Customer acknowledges that all orders will be subject to approval and acceptance by Heidelberg in writing.

(2) Side agreements and amendments require mutual written confirmation in order to be effective.

§ 3 Scope of delivery, shipment, and transfer of risk

(1) The scope of goods for delivery (each a "Good" and collectively "Goods") shall be determined by the written order confirmation supplied by Heidelberg.

(2) Heidelberg expressly reserves the right to make technical changes compared to the features of the Goods agreed at the time the contract entered into. Any resulting price changes will be communicated to the customer for approval.

(3) Except as otherwise agreed to by the parties, Goods will be shipped promptly following its completion and the customer will bear all costs of shipping.

(4) Except as otherwise agreed by the parties or as otherwise provided herein, delivery of Goods is made "ex works" (EXW, Incoterms 2020) at the shipping address identified by the customer, and risk of loss will pass to the customer upon delivery of such Goods at the customer-specified location. If delivery is delayed due to any action or omission of the customer, or due to any circumstances described in § 4(4), the risk of loss with respect to a Good will pass to the customer once Heidelberg has communicated that Heidelberg is ready to ship the Good or that the Good is ready to be collected by the customer.

(5) As collateral security for the payment of the purchase price of the Goods, customer hereby grants to Heidelberg a lien on and security interest in and to all of the right, title and interest of customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code.

§ 4 Delivery deadline and force majeure

(1) Delivery deadlines that are not expressly agreed to in writing as binding shall be non-binding and are estimates only.

(2) Delivery timelines will start to run no earlier than after receipt of the documents required to determine the Goods, after receipt of the deposit by the customer, and after the customer has complied with its obligations under § 6.

(3) If delivery is delayed due to any action or omission of the omissions, including customer's value to provide appropriate instructions, documents, licenses or authorizations, or due to any circumstances described in § 4(4), the delivery deadline for such Goods will be deemed to have been met if the Goods have been provided for delivery, or if the Goods have been made available and the customer has been notified of their availability for pick-up by the customer, prior to the delivery deadline.

(4) Delivery deadlines with respect to a Good do not begin to run or are extended – if not newly agreed upon – to the extent of a delay resulting from circumstances outside the reasonable control of Heidelberg which circumstances affect the production or delivery of the Good including (i) Force Majeure Events which affect Heidelberg or sub-contractors, (ii) in the case of a valid contract amendment, if Heidelberg does not receive the technical or commercial documents in time or if such documents have subsequently been changed by the customer with Heidelberg's consent, or (iii) if the customer is in default in complying with its obligations. Heidelberg shall notify the customer in the event that any such circumstances occur. For purposes of these Terms and Conditions, "Force Majeure Events" means (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of the agreement between Heidelberg and the customer; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the reasonable control of the impacted party.

(5) If, owing to the occurrence of the circumstances described in § 4(4), it is impractical to amend the contract despite all reasonable efforts, Heidelberg shall be released from its performance obligations upon written notice by Heidelberg to the customer.

(6) If the delivery deadline is extended due to the circumstances described in § 4(4), or if Heidelberg is released from its performance obligations pursuant to § 4(5), Heidelberg shall have no liability, and the customer hereby releases Heidelberg from, any damages or losses arising from the delay or termination of performance obligations.

(7) Before the expiration of the delivery deadline, Heidelberg is entitled to make partial deliveries and issue invoices for those Goods that are delivered.

(8) To the extent the delivery of Goods is delayed either at the request of the customer or as a result of the customer's acts or omissions, including customer's value to provide appropriate instructions, documents, licenses or authorizations, or to extent of any delay in customer's retrieval of the Goods after being made available for pick-up pursuant to § 4(3), the customer shall be responsible for, and shall pay Heidelberg, such amounts as Heidelberg may determine for storage of the Goods (including, without limitation, insurance) during the period of such delay plus interest at a rate of 0.5% per month. In the case of storage by Heidelberg following notification that the Goods are available for pickup, interest at a rate of 0.5% per month will also accrue on the outstanding amount invoiced such Goods, starting one month after notification to customer that the Goods are available for pickup. If customer fails to pick-up the Goods within [30] days following Heidelberg's notification to customer pursuant to § 4(3) of the availability of the Goods for pickup, Heidelberg shall be entitled to dispose of the Goods in order to satisfy in whole or in part amounts owed by customer to Heidelberg.

§ 5 Delivery of software

(1) Insofar as software is included in the delivery scope, the customer is granted a non-exclusive right to use the delivered software including its documentation. The software is provided solely for use on or in conjunction with the Goods intended for such use. A use of the software on more Goods than have been purchased is not permitted.

(2) All copyrights, intellectual property rights and other rights to the software and the documentation shall remain with Heidelberg or its software suppliers. The customer is under an obligation not to remove or change any manufacturer's information – in particular copyright notices. The customer shall not copy, revise, or translate the software or convert it from the object code into the source code. Any other form of duplication, review, translation, dissemination, or other use of the software or granting of sub-licenses by the customer is not permitted.

(3) The complete transfer of the software or the rights of use of the software is permitted only in exceptional cases if the customer also transfers the Good on which the software is installed and has a legitimate interest in the transfer to a third party while renouncing its own use, e.g., in the event that the Goods is sold on. In this case, the customer is obliged to place the

purchaser under the contractual obligation to comply with any rights to which Heidelberg is entitled.

§ 6 Cooperation obligations, installation, assembly, and commissioning

(1) Unless otherwise specified in an order, all Goods are deemed accepted on delivery. If Goods are to be delivered subject to prior testing and acceptance by the customer at Heidelberg as specified in an order, then the installation, assembly, and commissioning at the customer site shall be undertaken by a technician of Heidelberg or by a person authorized by Heidelberg upon delivery of the Goods at the customer site.

(2) All the necessary preparations and measurements including access ways, surface space for machines and accessories, and connections for the Goods, shall be completed by the customer reasonably in advance of the technician's arrival in order to ensure that the technician is able to immediately commence with the installation, assembly and commissioning upon arrival. If requested by Heidelberg, the customer shall provide to the technician, at the customer's expense, qualified personnel, as well as all materials, devices, cranes, hoists and tools etc., necessary for the installation, assembly, commissioning and adjustment of the delivered Goods.

(3) The working time of the technician, and all costs and expenses incurred in connection with the installation, assembly and commissioning during the time the technician is present at, or traveling to and from, the customer's installation location, shall be borne by the customer. Any travel and waiting times shall count as working time.

(4) Should there be any delays in Heidelberg providing the goods or services because the customer has failed to fully meet its obligations under this § 6 in a timely manner, then all dates and deadlines that have been set for the provision of goods or services by Heidelberg shall be non-binding and, following a review by Heidelberg, the parties will cooperating in good faith to reach a new agreement between the contracting parties. The customer shall be obliged to reimburse (in accordance with Heidelberg's prices applicable at the time in question) any additional costs incurred by Heidelberg due to a failure by the customer to fulfil its obligations under § 6. The parties shall each be obliged to promptly notify one another in writing regarding any delays.

§ 7 Prices and terms of payment

(1) The order confirmation issued by Heidelberg is decisive for the determination of prices for all deliveries and services.

(2) All prices are quoted in United States Dollars (USD) or in any other currency specified in the order confirmation. Prices are net of, and customer will pay, any transport, packaging, insurance, installation, and instruction costs as well as value-added tax, excise duties, withholding taxes, duties or taxes on import and export, customs duties, or similar taxes applicable in law at the statutory rate from time to time in force. If training is included in the price or is offered by Heidelberg in return for an additional fee, this does not include any travel, accommodation or subsistence costs of the customer and the participants nominated by the customer. These costs shall be borne by the customer itself. The same applies to technicians' costs in accordance with § 6 (4) above.

(3) If a partial payment is agreed with the customer in an order with a final payment after the customer's acceptance, such acceptance is deemed to have been granted in case of any productive use of the Goods. Regardless of an acceptance, all payments by the customer are due no later than 3 months after delivery of the Goods.

(4) Any set-off or exercise of a right of retention by the customer is only permitted with regard to undisputed, acknowledged counterclaims or counterclaims that have been upheld and declared unappealable by a court of law.

§ 8 Retention of title

(1) All intellectual property rights in and to the Goods as well as all drawings, plans and system designs which Heidelberg produces in the context of contract initiation or implementation shall remain the property of Heidelberg. Any reproduction or transfer to third parties is prohibited; neither may these items be used by the customer or by a third party for the production of the Goods in question or misused in any other way. There are no implied rights.

(2) Heidelberg retains title to the respective Goods until it has received customer's complete payment. Furthermore, the retention of title shall continue until all claims resulting from the business relationship with the customer have been settled.

(3) While the retention of title is in place, the following shall apply:

a) The customer shall have the right to use the Goods, but he shall not be entitled to transfer it to third parties, to sell it or place encumbrances on it.

b) The customer shall ensure, at its expense, that the Goods remain free from any encroachment by a third-party (e.g., seizure) and shall immediately notify Heidelberg of any impending encroachments in writing, including those that relate to the customer's business premises. The customer shall be entitled to transfer title of its prospective entitlement for security purposes only with the consent of Heidelberg.

c) Moving the Goods to a different location shall require the written consent of Heidelberg and may only be effected by Heidelberg staff or their agents.

d) The customer shall ensure that the Goods are kept in the same condition as received, less reasonable wear and tear only. Furthermore, the customer shall insure the Goods for the benefit of Heidelberg, at the customer's expense, against damage from mechanical breakdown, fire, theft and water, and provide proof of insurance and payment of insurance premiums to Heidelberg on request.

e) After prior notice and during usual business hours, the customer shall allow Heidelberg or its agents the right to inspect the Goods and access to its premises for this purpose without claiming any payment in this regard.

§ 9 Limited Warranty and Disclaimer

(1) Heidelberg warrants that for a period of ninety (90) days from the date of delivery of the applicable Goods to customer the Software substantially conforms to its published specifications.

Heidelberg warrants that each hardware component of a Good will, for a period of one (1) year from the date of delivery of the Good to customer, be free from defects in material and workmanship under normal use.

(2) Customers sole and exclusive remedy and the sole and exclusive and entire liability and obligation of Heidelberg in the event of a violation of the warranty set forth herein is, at Heidelberg's option, to repair or replace any Good (or component) that fails during the warranty period at no cost to customer. The foregoing limited warranties extend only to the original customer (and not to any subsequent purchasers or third parties). The limited software warranty set forth above does not apply to any corrections or upgrades to the Software.

(3) As a condition of Heidelberg's warranty-related obligations, customer must notify Heidelberg of any warranty claim within the applicable warranty period set forth above and comply with Heidelberg's reasonable requirements in connection with such claim, including, without limitation, obtaining a return material authorization from Heidelberg.

(4) The foregoing limited warranties do not apply if a Good: (i) has been altered or serviced, except by Heidelberg or a Heidelberg-authorized service provider; (ii) has not been installed, operated, repaired, or maintained in accordance with Heidelberg's instructions; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, (iv) is licensed for beta, evaluation, testing or demonstration purposes for which Heidelberg does not receive a payment of full Purchase Price; or (v) has been damaged or rendered defective by the use of parts not manufactured or sold by Heidelberg. Further, the foregoing limited warranties do not apply:

a) In relation to any second-hand machines or other second-hand items unless a liability for defects has expressly been agreed.

b) In relation to consumption and wear of materials and parts which, by their nature, are subject to inevitable and regular wear and tear.

c) If the Good is used in the customer's business in functional conjunction with hard- or software components already on site or that have been acquired from a third party, provided that the fault is caused by these or their lack of compatibility with the item delivered by Heidelberg. If Heidelberg has promised compatibility with third-party products, this only applies to the product version current at the time the promise was made and not to any older or future product versions (software upgrades, service releases or software updates) of this product.

d) If and to the extent that a fault is due to the fact that the customer has failed to ensure compliance with technical parameters which are set out in the documentation and any documentation supplementing this.

e) If and to the extent that a fault is due to the fact that the customer fails to undertake, or fails to commission a third party to undertake, the prescribed maintenance and service works in accordance with the requirements set out in the operating manuals or tampers or causes a third party to tamper with the Goods.

The customer shall pay for the service calls required to rectify the faults set out under a) to e) according to the applicable Terms and Conditions of Service of Heidelberg at the rates applicable from time to time.

(4) The customer remains solely liable for damage suffered as a result of inevitable and regular wear and tear, faulty or negligent handling, excessive use, unsuitable operating materials, unsuitable installation site in particular installation surface, lack of stability or inadequate electricity supply, chemical, electrochemical or electric influences, weather and other natural factors.

(5) EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY GRANTED IN SECTION 9, HEIDELBERG AND ITS THIRD-PARTY SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES AND GUARANTEES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE GOODS OR SERVICES DELIVERED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. THE GOODS ARE NOT FAULT-TOLERANT AND THE GOODS ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION, IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE GOODS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "HIGH RISK ACTIVITIES"). HEIDELBERG EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY AND ANY OTHER LIABILITY FOR HIGH-RISK ACTIVITIES.

(6) Heidelberg assumes no liability for any suggestions or advice provided to the customer by employees of Heidelberg as a courtesy outside the contractual scope owed; this applies correspondingly for any assistance provided in this context.

§ 10 Liability for damages

(1) THE COLLECTIVE AND AGGREGATE LIABILITY OF HEIDELBERG AND ITS THIRD-PARTY SUPPLIERS UNDER THESE TERMS AND CONDITIONS WILL BE LIMITED TO THE AMOUNT PAID FOR THE GOODS.

(2) THE PARTIES AGREE THAT THESE LIMITATIONS IN THIS SECTION 10 AND IN SECTION 11 BELOW SHALL APPLY EVEN IF THIS AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

§ 11 Liability for indirect losses or damages

EXCEPT IN CASES WHERE HEIDELBERG HAS ENGAGED IN WILFUL CONDUCT OR GROSS NEGLIGENCE, NEITHER HEIDELBERG NOR ITS THIRD PARTY SUPPLIERS WILL HAVE ANY OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, GOODS OR SERVICES FURNISHED TO CUSTOMER BY HEIDELBERG, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CUSTOMER. IN SUCH EVENT, THE LIABILITY OF HEIDELBERG AND ITS THIRD-PARTY SUPPLIER FOR SUCH DAMAGES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW IN SUCH JURISDICTION.

§ 12 Cancellation

(1) Once Heidelberg has accepted such order, except as set forth below and except as Heidelberg may otherwise agree with customer, each order is non-cancellable and binding.

(2) Heidelberg may terminate an order in whole or part if customer fails to pay all fees when due or otherwise fails to perform any of the other provisions of these Terms and Conditions. If an order is terminated pursuant to this clause, Heidelberg is entitled to cease delivery of the Goods under such order and/or to remove the Goods from the customer's premises. Furthermore, Heidelberg may claim reasonable compensation from the customer for any deterioration, destruction, or other loss of the Goods if they are not surrendered.

§ 13 Assignment

The customer is not entitled to assign and / or transfer its rights and obligations under this contract without written consent of Heidelberg.

§ 14 Service

If Heidelberg or Heidelberg's service company has taken on the provision of installation, instruction, or other services as well as the delivery of service parts, Heidelberg's General Terms and Conditions of Service apply as to such services.

§ 15 Confidentiality

(1) The contracting parties shall both keep confidential any facts, documents, and knowledge which the other contracting party discloses to them during the performance of the contract, provided the relevant

contracting party has identified the respective information as confidential or the information is of a nature that should reasonably be considered confidential ("Confidential Information"). The conclusion of this contract, its subject and content shall also be kept confidential by the contracting parties, except that Heidelberg may include customer's name in a list of references. Any publications regarding the conclusion of the contract may be issued by the customer only with the prior written consent of Heidelberg. Furthermore, the contracting parties undertake to use Confidential Information only for the purposes of processing the contract and to only make Confidential Information available to those staff members and advisors who require it in order to implement the contract and who are subject to the confidentiality obligation in the same way. In particular, they will not base their own developments on Confidential Information received or use it for the further development of their own products, nor will they register any intellectual property rights in relation to the Confidential Information or use it to object to an intellectual property right registration of the disclosing party.

(2) The obligation to maintain confidentiality and the restrictions on usage do not apply insofar as the Confidential Information in question demonstrably:

- constitutes state-of-the-art technology in the public domain or becomes part of state-of-the-art technology, in either case without any action on the part of the receiving party or
- was already lawfully known to the receiving party or is lawfully disclosed to customer by a third party entitled to do so, in either case without a confidentiality obligation or
- is independently developed by the receiving party without an exploitation or use of the Confidential Information.

Additionally, a disclosure of Confidential Information that must be revealed pursuant to mandatory statutory provisions or official orders will not be considered a breach provided that the receiving party promptly notifies the disclosing party of the requirement to enable the disclosing party to seek a protective order.

(3) If the contractual relationship and the cooperation of the contracting parties have come to an end, then each contracting party shall be under an obligation, at the other contracting party's request, to return the Confidential Information received to the other contracting party or to destroy it at its request. In this case, any data stored electronically shall be deleted in full, other than archival backups retained in the ordinary course of business, and which are not readily available, in which case such data shall remain protected hereunder.

(4) These obligations and restrictions on usage commence upon the first receipt of Confidential Information and end five years after the respective contract for whose implementation the Confidential Information was disclosed has been performed in full and any information identified as a trade secret will remain subject to these obligations and restrictions for so long as such information remains a trade secret.

§ 16 Export control provisions

The Goods may be subject to export control provisions of the Federal Republic of Germany, the European Union, the United States of America, or other countries. In the case of an export of the Good abroad, the customer shall comply with all applicable export laws and regulations.

§ 17 Place of jurisdiction and applicable law

(1) These Terms and Conditions will be governed by and construed in accordance with the laws of the State of California applicable to agreements entered into, and to be performed entirely, within California between California residents. Any suit hereunder will be brought solely in the federal or state courts in the Los Angeles County, California and customer hereby submits to the personal jurisdiction thereof.

(2) These General Terms and Conditions are not subject to the UN Sales Convention (CISG – United Nations Convention on contracts for the International Sale of Goods, entered into in Vienna on 11 April 1980).

§ 18 Severability clause

If any provision in these Terms and Conditions is or becomes ineffective in whole or in part, this does not affect the validity of the remaining provisions. The contracting parties shall work together to agree to a valid provision that reflects the invalid provision as closely as possible in commercial term.