

# General Terms and Conditions of Service Heidelberg Instruments Inc. - USA



Effective as of September 1, 2020

## § 1 Scope of application

The following General Terms and Conditions of Service ("Terms and Conditions") of Heidelberg Instruments, Inc. ("Heidelberg"), with offices located at 2539 W 237<sup>th</sup> ST., Suite A, Torrance CA 90505, apply, as far as not expressly stipulated otherwise in writing, to all services undertaken between Heidelberg and the customer as individual orders for the provision of services and, in particular to, all assembly, installation, repair, troubleshooting, maintenance, or instructional services. They also apply to any future business relationships even if they are not expressly agreed to again. Any deviating general terms and conditions of the customer are not accepted, even if Heidelberg does not expressly object to them. These Terms and Conditions do not apply to any services provided in the context of the fulfilment of the customer's claims for defects due to deliveries provided by Heidelberg.

## § 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. The contract only enters into force once it has been signed by both parties or once Heidelberg has confirmed the order to the customer in writing (by letter, fax, or e-mail) or, in particular where the customer places his order by telephone or orally e.g., in urgent cases, if Heidelberg has accepted the order by starting to provide the service.

(2) Side agreements and amendments require mutual written confirmation (by letter, fax, or e-mail) in order to be effective.

(3) The General Terms and Conditions of Sale and Delivery of Heidelberg apply in relation to all deliveries of products, spare parts, wear parts, consumables, tools, and software in the context of the provision of services. Under these Terms and Conditions, claims for defects must be asserted by the customer within of one year from delivery such parts or equipment, the intention of the parties being to reduce the applicable statute of limitations within which a claim may be brought.

## § 3 Assembly and installation as an individual order for the provision of services

The individual order for the provision of assembly and installation services comprises the assembly and installation of a machine or component that has been supplied fully assembled or that has been dismantled for transport purposes as well as its functional test in the agreed scope. The installation and start-up of software are also part of a machine installation.

## § 4 Repair and troubleshooting as an individual order for the provision of services

The services provided by Heidelberg in the context of an individual order for the provision of repair or troubleshooting services regularly depends on the technical requirements of said services. Unless expressly agreed otherwise, an individual order for the provision of services placed by a customer includes:

- carrying out all the work necessary, based on professional expertise and accepted engineering standards, to restore the machine or component to its working order;
- the delivery of all service parts required for this purpose pursuant to § 2 (3). Insofar as the service parts are included in the replacement procedure pursuant to § 6, the replaced service parts become the property of Heidelberg. The customer is obliged to return these replaced parts to Heidelberg;
- the installation of the service parts;
- functional testing of parts of equipment in relation to which repair or troubleshooting services have been commissioned; this does not, however, include functional testing of the equipment as a whole. Given that the time required for repair and troubleshooting of a machine or component depends, among other things, on its age and condition as well as the existing facilities available at the customer's business premises, it is not possible to make any binding statements regarding estimated duration and costs.

Prior to the execution of more extensive work or the installation of service parts Heidelberg will obtain the customer's consent if and to the extent

- a cost limit expressly set by the customer would have to be exceeded;
- the estimated repair cost would be distinctively disproportionate compared to the utility value of the equipment to be repaired.

## § 5 Other individual orders for the provision of services (machine maintenance, instruction etc.)

The individual order for the provision of services includes

- in the case of machine maintenance, the provision of maintenance services in accordance with the agreed upon scope;
- in the case of instruction or training services, instructing a person designated by the customer as to the operation and functioning of the machines, components or software to the extent necessary to achieve the purpose;
- in the case of oral user advice (e.g., provided by a member of the service staff on site or by telephone), providing or conveying available user knowledge; in relation to software, however, this is restricted to the latest and the preceding version only. In the case of more extensive consultancy projects or other services (e.g., the relocation of machinery, etc.) the scope of services and the fee are set out in the offer submitted by Heidelberg or in the respective service package.

## § 6 Supply of service parts, replacement procedure

(1) Participation in the replacement procedure ("repair by exchange", RBE) If a service part is included in the replacement procedure provided by Heidelberg, the customer must return the replaced service part to Heidelberg. If, upon its receipt, Heidelberg discovers that it is not possible to repair the part in the producer's factory using commercially reasonable efforts, Heidelberg will invoice the customer for the difference in cost compared to that of the newly delivered part.

(2) Returning unused spare parts

If the customer wishes to return service parts that had been acquired but not used in return for a refund of the purchase price, Heidelberg will only accept the return provided the following conditions are met: If the service parts are received by Heidelberg, unopened in their original packaging, within 5 days from delivery of the new service part within the United States of America and within 10 days from delivery of the new service part abroad, Heidelberg will issue a credit in an amount equal to the purchase price paid or payable for such part and reserves the right to charge a fee for the return and the taking of the goods back into storage equal to the lesser of 15% of the purchase price and US\$500 per service part. If the service parts are returned to Heidelberg with an opened original packaging within 5 days from delivery of the new service part within the United States of America and within 10 days from delivery of the new service part abroad, Heidelberg will issue a credit in an amount equal to the purchase price paid or payable for such part and reserves the right to charge a fee for the return, the quality review required to be carried out at Heidelberg, and the taking back into storage equal to 25% of the purchase price. No credit will be issued for consumables and software or if the aforementioned conditions are not satisfied.

(3) Acceptance of service part orders

With the exception of U.S. federal holidays, Heidelberg is available for orders via telephone Monday to Friday from 8.00 a.m. until 6.00 p.m. (Pacific Time). Shipping costs in relation to the delivery of service parts are not included in the price. If the customer requires faster delivery (e.g., early delivery, courier, intercity express), this will be charged for separately.

## § 7 Fees

(1) A fee will be charged for all services offered and provided by Heidelberg in the context of individual orders for the provision of services unless Heidelberg expressly offers them free of charge as a gesture of goodwill. All fees are exclusive of, and customer is nonetheless responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by customer, including, without limitation, statutory value-added tax, excise duties, withholding taxes, duties or taxes on import and export, customs duties or similar taxes in force from time to time.

(2) The fee for individual orders for the provision of services, as well as travel costs to be borne by customers, are set forth in the schedule of standard cost rates as may be amended from time to time by Heidelberg. Travel times count as working times and are billed at 50% of the agreed upon hourly rate. The prices quoted by Heidelberg for the services are based on cost factors at the time the offer is made. If the relevant cost factors change after the individual order for the provision of services has been placed (including, for

example, due to changes in salaries and wages or changes in the price of materials), Heidelberg reserves the right to make reasonable adjustments to the fees charged upon 30 days prior written notice to the customer; provided that at least 3 months elapse between execution of the contract and performance of the services; provided further, that the prices applicable at the time when the performance of the service commences are deemed agreed. At the customer's request, Heidelberg will provide evidence regarding the relevant cost factors to the customer.

(3) Waiting times for which Heidelberg is not responsible are considered as work time and are charged up to a maximum of 8 hours per day. Entire working days lost during a service deployment for which Heidelberg is not responsible (e.g., due to clean room or process equipment malfunction), will be charged with 8 hours per day at 50% of the agreed upon hourly rate plus the lump-sum for travelling costs as well as accommodation costs as agreed.

(4) If the fee is to be calculated based on the schedule of standard cost rates, the service report to be signed off by the customer in this regard is used as the relevant basis. Working time and performance are recorded therein. Time will be billed in 15-minute increments, with any party 15-minute period worked rounded up. When placing an order, the customer may request a schedule of standard cost rates; provided that the same may be amended from time to time by Heidelberg in its sole discretion.

(5) If training is included in the price or is offered by Heidelberg in return for an additional fee, that fee does not include any travel, accommodation or subsistence costs of the customer and the participants nominated by the customer, which additional costs shall be borne by the customer.

(6) The prices for the sale of delivery items will be shown separately and their delivery is determined in accordance with the General Terms and Conditions of Sale and Delivery of Heidelberg.

#### **§ 8 Payment**

(1) Payments shall be made by the customer without any deductions and free of any transaction charges to the designated account of Heidelberg. Unless specified otherwise in the offer or order confirmation of Heidelberg or agreed in writing, all payments are due immediately upon receipt of the invoice.

(2) In case of default of payment of the customer, Heidelberg shall be entitled to charge default interest on any outstanding balance at a rate of five percent (5%) per year.

(3) Any set-off or exercise of a right of retention by the customer is only permitted with regard to undisputed, acknowledged claims, or claims that have been upheld by a non-appealable order or judgment of a court of competent jurisdiction.

#### **§ 9 Grant of Lien**

(1) In order to secure claims that have arisen or arise for the benefit of Heidelberg due to services provided, the customer hereby grants a lien on and security interest in the machine or component that was the subject of the service (the "Collateral") in an amount equivalent to the invoice value of the service provided and until such time as the amounts due for such services are paid in full. Customer also hereby grants Heidelberg, and Heidelberg has the right to file Uniform Commercial Code Financing Statements in customer's state of incorporation and in each jurisdiction in which the Collateral may be located from time to time.

#### **§ 10 Cooperation obligations of the customer, deadlines**

(1) The customer undertakes to ensure that prior to the commencement of services by Heidelberg that all structural requirements are met at the site at which the machine or component are to be installed – in particular regarding the stability and evenness of the supporting surface, the footprint and height, the quality of the ambient air (purity, temperature, flow), access to the premises and electrical supply. If a fault report with subsequent repair order is submitted, the customer shall provide an exact description of the error.

(2) In case of installation, maintenance and repair work that may implicate an interference with the power supply, air lines, pipes for technical gases, cooling and other media, air conditioning and/or water or wastewater pipes, the customer shall ensure compliance with the relevant health and safety regulations, including, for example and without limitation, by calling in a qualified and licensed technician at the customer's expense.

(3) Apart from that, in the case of services provided by Heidelberg, the customer shall provide in a timely manner and at its own expense:

- the number of support staff deemed necessary by Heidelberg;
- devices, cranes, hoists, tools, equipment and supplies required for installation and commissioning;

- electrical power, lighting, heating / air conditioning, water, compressed air, vacuum, technical gases, cooling and other media, exhaust air;
- suitable and in particular dry and lockable rooms or lockers to store tools and supplied parts
- protective or clean-room clothing as required on site;
- suitable barrier options if there are any hazards in the area, (e.g., by laser beams) which cannot be ruled out otherwise in the context of the necessary work;
- suitable processing options (especially for developing and assessing necessary test exposures).

(4) The customer shall ensure that, before the start of the installation of a machine or component, all required parts are available on location and that all preparatory work has been carried out so as to allow Heidelberg's service engineers to start installation as soon as they arrive and without interruption.

(5) Before the start of and during the performance of any service by Heidelberg up to their completion, the machine must be free of the customer's production tasks. The customer shall inform Heidelberg without delay of any legal or factual changes affecting the individual order for the provision of services or its implementation.

(6) Deadlines that have not been expressly agreed upon in writing as binding shall be non-binding.

(7) A deadline is deemed to have been met if the service has been performed by the agreed-upon deadline.

(8) Agreed upon deadlines do not begin to run or are extended – if not newly agreed upon – if circumstances occur for which Heidelberg is not responsible and which affect the performance of the service by such period for which the circumstances in question subsist in particular (i) Force Majeure Events, natural disasters and labor disputes which affect Heidelberg or sub-contractors (disruptions to operations outside of a party's control), (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. "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 this Agreement; (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.

(9) If, owing to the occurrence of such circumstances described in § 10 (8), it is impossible to amend the contract despite all reasonable efforts, Heidelberg shall be released from its performance obligations.

(10) If deadlines are extended due to the circumstances described in § 10 (8), or if Heidelberg shall be excused and released from its performance obligations, the customer will not have any claims of any kind against Heidelberg resulting therefrom. Heidelberg is not liable for any disruptions to operations outside of its control even if they occur during a delay in delivery. Heidelberg shall notify the customer in the event that such circumstances occur.

(11) If Heidelberg's performance of its obligations 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 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.

#### **§ 11 Claims for improper performance of the services**

(1) Heidelberg will execute the service with the necessary professional competence and care while taking into account the provisions of § 12 of these Terms and Conditions. In the event of a proven defect in the services performed due to a breach of duty of care, Heidelberg will repair or re-perform the faulty part of the service again without charge and customer will have no further or other rights or claims, including, without limitation, any warranty claims based on improper performance of the services.

(2) If, in the context of the provision of services by Heidelberg, deliveries are made or, by way of exception, the provision of a work or a work with materials supplied was expressly agreed upon, the customer shall only be entitled to raise claims for defects in accordance with § 9 of the General Terms and Conditions of Sale and Delivery of Heidelberg, which may be found at <https://heidelberg-instruments.com/terms-and-conditions/>. In accordance with these Terms and Conditions, the customer's claims for defects must be asserted within one year from delivery or acceptance, the

intention of the parties being to reduce the applicable statute of limitations within which a claim may be brought.

(3) EXCEPT FOR THE WARRANTY SET FORTH IN § 11 (1) ABOVE, HEIDELBERG MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (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.

#### **§ 12 Liability for damages**

(1) Heidelberg shall be liable, without limitation, for damages arising:

- as a result of non-compliance with a warranty by Heidelberg;
- due to the fraudulent concealment of a defect by Heidelberg; or
- as a result of an intentional or grossly negligent breach of duty by Heidelberg.

(2) Apart from that, Heidelberg's liability shall be limited or excluded as follows:

a) In the case of a breach of fundamental contractual obligations caused by simple negligence, liability is limited to the typical damage foreseeable at the time the contract is entered into. A fundamental contractual obligation is an obligation that the contract is meant to impose on Heidelberg in accordance with its content and purpose, or the performance of which is necessary to make the implementation of the contract possible and on the compliance of which the Customer regularly relies and is entitled to rely.

b) In case of a breach of non-fundamental contractual obligations caused by simple negligence and in case of any other breaches of duty caused by simple negligence, a liability of Heidelberg is excluded.

(3) Except as otherwise provided in § 12 (1), contractual damages claims by the customer against Heidelberg must be asserted within 12 months from the time the circumstances giving rise to the claim become known to customer, the intention of the parties being to reduce the applicable statute of limitations within which a claim may be brought.

(4) The aforementioned provisions in paragraphs 1 – 3 do not affect any change of the burden of proof to the customer's detriment.

(5) Heidelberg does not accept liability for any advice provided to the customer by Heidelberg's experts as a courtesy outside of the contractually agreed scope; this applies accordingly with regard to the provision of free assistance.

#### **§ 13 Liability for indirect losses or damages**

(1) Except in cases where Heidelberg has engaged in willful conduct or gross negligence, Heidelberg shall not be liable for indirect loss or damage caused by a defective delivery item such as production downtime, lost profits or increased materials consumption.

(2) IN NO EVENT SHALL HEIDELBERG BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, 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.

(3) IN NO EVENT SHALL HEIDELBERG'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO HEIDELBERG PURSUANT TO THE APPLICABLE PURCHASER ORDER OR ORDER CONFIRMATION.

#### **§ 14 Assignment**

The customer is not entitled to assign its rights under this contract without the prior written consent of Heidelberg, and any purported assignment in violation of this section is null and void. Heidelberg reserves the right to have certain individual services carried out by the staff of the manufacturers used by suppliers or by other authorized persons.

#### **§ 15 Place of jurisdiction and applicable law**

(1) Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the County of Los Angeles, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(2) All matters arising out of or relating to these Terms and Conditions are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

#### **§ 16 Severability clause**

If a provision in this contract 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 a valid provision that reflects the invalid provision as closely as possible in commercial terms.

#### **§ 16 Waiver**

No waiver by Heidelberg of any of the provisions of these Terms and Conditions is effective unless explicitly set forth in writing and signed by Heidelberg. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms and Conditions operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

#### **§ 17 No third-party beneficiaries**

These Terms and Conditions are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms and Conditions.