

**TERMS AND CONDITIONS OF SALES
AND SOFTWARE MAINTENANCE
HEIDELBERG ENGINEERING LTD**

The Buyer's attention is specifically drawn to the provisions dealing with:

- **Cancellation and postponement of orders (clause 5)**
- **Software and its maintenance (clause 6)**
- **Warranties (clause 9)**
- **Limitations of liability (clause 11)**

1. **INTERPRETATION**

In these Terms and Conditions (**Terms**), the following words and phrases shall have the following meanings:

Buyer: the person, firm or company who orders the Goods from the Company.

Company: Heidelberg Engineering Ltd.

Contract: the contract between the Company and the Buyer for the supply of the Goods which shall be deemed to incorporate these Terms.

Data: any data stored by the Buyer which relates to or is generated by the Goods or the Software.

Data Protection Law: the Data Protection Act 2018 or any subsequent national legislation on data protection, or, the GDPR (as defined below) which recently came into force, or any successor legislation or regulation if the GDPR and any national implementing laws or regulations are no longer applicable in the UK.

Date of Delivery: the date on which the Buyer takes delivery of the Goods in accordance with clause 4 below.

Device: the Heidelberg Engineering device, as produced by the Company and supplied as part of the Goods.

Device Software: the software supplied as part of the Device, including any version updates provided for the Device.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Goods: any goods agreed in the Contract to be supplied by the Company to the Buyer.

Insolvency Event: any event in which the Buyer becomes insolvent or enters into and/or itself applies for, and/or calls meetings of members and/or creditors with a view to one or more of a moratorium, administration, liquidation (of any kind, including provisional), or composition and/or arrangement (whether under deed or otherwise) with creditors, and/or have any of its property subjected to one or more of appointment of a receiver (of any kind), enforcement of security, distress, or execution of a judgment (in each case to include similar events under the laws of other countries).

Location: the location of the Goods.

Maintenance Agreement: the Company's standard maintenance terms and conditions, by which the Buyer may purchase maintenance services from the Company in respect of the Goods, or additional maintenance for the Management Software over and above the Management Software Maintenance Services.

Management Software: the software supplied separately from and in addition to the Device, including server software, integration software and custom development software and licences, including any version updates provided under the Management Software Maintenance Services.

Management Software Maintenance Fee: the maintenance fee payable annually in advance by the Buyer to the Company in respect of the Management Software Maintenance Services, as set out in clauses 6 and 7.

Management Software Maintenance Services: the software maintenance services set out in Schedule 1.

Order: an order placed by the Buyer for the supply of the Goods.

Place of Delivery: the place to which the Goods are to be delivered in accordance with the Sales Order Confirmation.

Sales Order Confirmation: the written communication from the Company to the Buyer which confirms the place and time of delivery of the Goods.

In these Terms, reference to any statute or statutory provision shall be construed as a reference to such statute or statutory provision as amended, modified, re-enacted or replaced from time-to-time.

2. **ORDERING**

2.1 Prior to the Buyer placing an Order, the Company will provide the Buyer with a quotation setting out reference numbers, descriptions of the Goods, pricing information and a validity period within which the Buyer can place an Order (the **Quotation**).

2.2 The Order constitutes an offer by the Buyer to purchase the Goods from the Company in accordance with these Terms. By placing an Order, the Buyer warrants that it is duly authorised to enter into the Contract.

2.3 The Company requires reference numbers, descriptions and pricing as they appear on the Quotation to be quoted in the Order to avoid errors.

3. **THE CONTRACT**

3.1 The Order shall only be accepted when the Company issues written acceptance of the Order at which point the Contract shall come into existence and the Buyer shall be authorised to enter into the Contract.

3.2 Subject to clause 6 below, the Contract shall be on these Terms to the exclusion of all other terms and conditions, including:

- (a) any such terms that are purported to be included or applied by the Buyer including those implied by trade, custom, practice or course of dealing;
- (b) any terms contained in the confirmation of the Order, purchase order or other document of the Buyer; and
- (c) any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's marketing materials or websites in respect of which the Buyer acknowledges are produced for the sole purpose of giving an approximate idea of the Goods described in them.

4. **DELIVERY AND INSTALLATION**

4.1 Following confirmation of the Order in accordance with clause 3.1 above, the Company shall send the Sales Order Confirmation to the Buyer and if the Buyer is unable to take delivery on the date specified in the Sales Order Confirmation, then the Buyer must request a revised Date of Delivery within 7 days of the Sales Order Confirmation.

4.2 The time of delivery is not of the essence and any dates specified by the Company for delivery of the Goods in the Sales Order Confirmation (**Estimated Delivery Date**) are intended to be an estimate only. If no date is specified for delivery of the Goods in the Sales Order Confirmation, the Estimated Delivery Date shall be within a reasonable time. No delay in the delivery of the Goods will entitle the Buyer to terminate, rescind, or cancel the Contract or Order unless such a delay exceeds 90 days from the Estimated Delivery Date.

4.3 The Company shall not be liable under these Terms if the delay in delivery is caused by any failure by the Buyer to comply with these Terms.

4.4 Where applicable and on the Date of Delivery or other date to be agreed between the Company and the Buyer in writing (the **Installation Date**), the Company shall deliver the Goods to the Place of Delivery, install the Goods for the Buyer and integrate the Management Software with the Buyer's IT systems, provided that on the Installation Date, the Buyer has made available all necessary personnel, IT and telecommunications systems required for the Company to carry out the installation and Management Software integration.

4.5 Prior to the Installation Date, the Buyer shall ensure that its IT systems and premises are compatible and/or suitable to allow the Goods and Management Software to be installed.

4.6 If the Buyer fails to comply with clauses 4.4 and 4.5 above, the Buyer shall be:

- 4.6.1 responsible for storing the Goods until the new Installation Date to be agreed between the Company and the Buyer; and
- 4.6.2 liable for the expenses and/or costs incurred by the Company in attempting to install the Goods or Management Software in the amount of £995 exclusive of VAT.

4.7 Where applicable and on dates to be agreed between the Company and the Buyer in writing (the **Training Date(s)**), the Company shall provide user training for nominated personnel of the Company provided that on the Training Date(s), the Buyer has made available all necessary personnel, IT and telecommunications systems required for the Company to carry out the training.

4.8 If the Buyer fails to comply with clause 4.7 above, the Buyer shall be liable for any expenses and/or costs incurred by the Company in attempting to provide the training in the amount of £995 exclusive of VAT per day.

4.9 The parties acknowledge and agree that the costs in clauses 4.6 and 4.8 are reasonable and proportionate to protect the Company's legitimate interest in performance of the Buyer's obligations and are commercially justified in all the circumstances.

5. **CANCELLATION AND POSTPONEMENT**

5.1 If the Buyer cancels an Order for Goods and/or Management Software Maintenance Services (including training), or refuses to accept delivery or installation of the Goods, then the Buyer shall pay to the Company a non-refundable cancellation fee of 10% of the

- Purchase Price (as defined below), plus 100% of the Management Software Maintenance Fee. If the Buyer has paid for the Goods, then such cancellation fee may be deducted by the Company from any refund.
- 5.2 In the event that a Buyer postpones delivery of the Goods, then the Buyer shall pay to the Company a non-refundable holding fee of 1% of the Purchase Price (as defined below) per week until the Date of Delivery of the Goods. If the Buyer refuses to accept delivery within 60 days of the Sales Order Confirmation, then the Order shall be deemed to be cancelled and the Buyer shall pay the cancellation fee in clause 5.1 above less the applicable holding fees under this clause 5.2.
- 5.3 The parties acknowledge and agree that the fees in clauses 5.1 and 5.2 are reasonable and proportionate to protect the Company's legitimate interest in performance of the Buyer's obligations and are commercially justified in all the circumstances.
6. **SOFTWARE**
- 6.1 The Company is the owner of all right, title and interest in the Device Software and the Management Software (together, the **Software**) and does not transfer any proprietary rights or other interest therein to the Buyer. All of the rights in the Software and any updates/modifications thereto are the sole property of the Company. The Buyer is granted a limited, non-exclusive, non-transferable licence to use the Software in connection with the Goods with which it was supplied only.
- 6.2 For all Management Software, the Company shall provide the Management Software Maintenance Services to the Buyer.
- 6.3 In respect of the Management Software Maintenance Services, the Buyer shall pay the Company an ongoing annual Management Software Maintenance Fee in accordance with clause 7 below.
- 6.4 The annual Management Software Maintenance Fee shall be payable for as long as the Management Software is actively being used by the Buyer.
- 6.5 Any maintenance services for the Goods or for the Management Software over and above the Management Software Maintenance Services shall be subject to separate purchase by the Buyer and the terms of the Maintenance Agreement.
7. **PRICE AND PAYMENT**
- 7.1 The price for the Goods shall, unless otherwise agreed in writing in the Company's acceptance of the Order, be the price set out on the Quotation, provided the order is placed within the validity period as set out in the Quotation (the **Purchase Price**).
- 7.2 The annual Management Software Maintenance Fee shall, unless otherwise agreed in writing in the Company's acceptance of the Order, be 18% of the list price of the Management Software purchased as stated in the Quotation, provided the order is placed within the validity period as set out on the Quotation. The first annual instalment of the Management Software Maintenance Fee, which shall cover the 12 month period beginning from the Date of Delivery, will be paid at the same time as the Purchase Price; and the Management Software Maintenance Fee for each subsequent year shall be paid annually in advance on the anniversary of the Date of Delivery.
- 7.3 The Purchase Price and Management Software Maintenance Fee shall be exclusive of all costs of carriage and insurance and applicable VAT which the Buyer shall pay in addition. The Buyer shall pay the Purchase Price as the Company shall direct.
- 7.4 The Buyer shall make payment of the Purchase Price, the Management Software Maintenance Fee and any other sums associated with the sale, delivery, installation, training or repair of the Goods (including any fees payable pursuant to clauses 4.6, 4.8, 5 and 6 above or 9.7 below) within 30 days (unless otherwise stated in writing) from the date of the Company's invoice. Payment shall not be deemed to have taken place until the receipt by the Company of cleared funds.
- 7.5 If payment under this clause 7 is not received by the due date then, without limiting the Company's remedies under these Terms, the Buyer shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount.
8. **RISK IN AND OWNERSHIP OF THE GOODS**
- 8.1 Risk in the Goods shall pass to the Buyer on delivery.
- 8.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full, in cleared funds, the Purchase Price and all other sums pursuant to clause 7 above.
- 8.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods separately from all other goods of the Buyer or any third party in such a way that they remain identifiable as the Company's property;
- (c) not destroy or deface any identifying mark on the Goods or their packaging; and
- (d) maintain the Goods in satisfactory condition insured with the Company's interest noted on the policy and hold any proceeds of such insurance on trust for the Company and not mix them with any other money.
- 8.4 If, before title to the Goods passes to the Buyer, an Insolvency Event occurs, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limitation to any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
9. **WARRANTIES**
- 9.1 The Company warrants that the Goods shall perform in all material respects in accordance with the technical specifications of those Goods as set out in the relevant user manual for the following periods:
 - (a) in respect of the Software, 90 days from the Date of Delivery; and
 - (b) in respect of all other aspects of the Goods other than the Software, 12 months from the Date of Delivery.
- 9.2 If the Buyer wishes to make a claim under this warranty, the Buyer shall give written notice to the Company within 30 days of the discovery of the defect and give the Company a reasonable opportunity to inspect the Goods in question.
- 9.3 The Company shall have no liability under this clause 9 if a defect arises out of:
 - (a) use of the Goods by the Buyer after the notice given in clause 9.2 above;
 - (b) use of the Goods with computer equipment or materials not supplied or approved in writing by the Company;
 - (c) any maintenance, alteration, modification or adjustment performed by persons other than the Company or its employees or agents;
 - (d) the failure by the Buyer to back up the Data;
 - (e) the Buyer or a third party:
 - (i) moving the Goods; or
 - (ii) moving or otherwise transferring the location of the Software or the Data;
 - (f) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Goods;
 - (g) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Goods, or an error or omission in the correct use of that air conditioning or other environmental controls by the Buyer; or
 - (h) the neglect or misuse of the Goods.
- 9.4 To the extent permitted by the applicable law, the Company disclaims all other warranties, representations and/or conditions with respect to the Goods, either express or implied, including but not limited to any implied warranties, representations and/or conditions of satisfactory quality or fitness for any particular purpose.
- 9.5 The Company's liability under this clause 9 shall be limited to repairing the Goods in question.
- 9.6 Where applicable as required by clause 9.5, or where any Management Software Maintenance Services and ongoing training are to be carried out remotely or at the Location, and on such date to be agreed between the Company and the Buyer in writing (the **Repair Date**), the Company shall repair the Goods and/or provide the Management Software Maintenance Services for the Buyer at the Location, provided that on the Repair Date, the Buyer has made available all necessary personnel, IT and telecommunications systems required for the Company to carry out the repairs.
- 9.7 If the Buyer fails to comply with clause 9.6 above, the Buyer shall be liable for any expenses and/or costs incurred by the Company in attempting to provide the repairs or Management Software Maintenance Services in the amount of £995 exclusive of VAT.
- 9.8 The parties acknowledge and agree that the costs in clause 9.7 are reasonable and proportionate to protect the Company's legitimate interest in performance of the Buyer's obligations and are commercially justified in all the circumstances.
10. **RETURNED GOODS**
- Goods may be returned only with prior written consent from the Company. Goods must be returned carriage paid and insured in transit. The Company reserves the right to charge a handling fee.

<p>11. LIMITATION OF LIABILITY</p> <p>11.1 Subject to clause 16 below, the Company shall not be liable to the Buyer whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:</p> <p style="padding-left: 20px;">(a) any loss (whether direct or indirect) of profits, business, revenue, or goodwill;</p> <p style="padding-left: 20px;">(b) any costs incurred by the Buyer in recovering or attempting to recover any Data which may have been lost or corrupted or for any damage resulting from the loss or corruption of the Data itself;</p> <p style="padding-left: 20px;">(c) any loss or liability arising or caused by any of the matters set out in clause 9.3; or</p> <p style="padding-left: 20px;">(d) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms.</p> <p>11.2 Subject to clause 16 below and without prejudice to clause 11.1 above, the Company's liability in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise arising out of the subject matter of the Contract shall not exceed the Purchase Price of the Goods.</p> <p>11.3 Nothing in these Terms shall exclude the Company's liability for death or personal injury or for fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.</p> <p>11.4 The Buyer hereby acknowledges that the terms and conditions of this Contract and, in particular, the limitations of liability contained in this clause 11 are reasonable in all the circumstances and having regard for the Purchase Price paid by the Buyer for the Goods.</p> <p>12. SUB-CONTRACTING AND ASSIGNABILITY</p> <p>12.1 The Company shall be entitled to, without the consent of the Buyer, assign or sub-contract any part of the Contract.</p> <p>12.2 The Buyer shall not be entitled to assign or sub-contract any part of the Contract.</p> <p>13. DATA PROTECTION</p> <p>13.1 The parties shall comply with all applicable requirements of the Data Protection Law.</p> <p>13.2 The parties acknowledge that, in providing or in order to provide the Management Software Maintenance Services under the Contract, the Company may have access to and, in limited circumstances, be required to process personal data (as the terms "process" and "personal data" are defined in Data Protection Law).</p> <p>13.3 Although the parties acknowledge that their respective status is determined by Data Protection Law, the parties are of the view that the Buyer is the controller and that the Company is the processor (as defined in Data Protection Law) in respect of such processing.</p> <p>13.4 In respect of any personal data processed by the Company in the course of providing or in order to provide the Management Software Maintenance Services, the Company shall:</p> <p style="padding-left: 20px;">13.4.1 process the personal data only on documented instructions from the Buyer, unless required to do so by EU law or the national law of an EU member state to which the Company is subject (and in such a case, the Company shall inform the Buyer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest);</p> <p style="padding-left: 20px;">13.4.2 ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;</p> <p style="padding-left: 20px;">13.4.3 implement appropriate organisational and technical measures as required pursuant to Article 32 of the GDPR;</p> <p style="padding-left: 20px;">13.4.4 respect the conditions for engaging another processor referred to in paragraphs 2 and 4 of Article 28 of the GDPR;</p> <p style="padding-left: 20px;">13.4.5 taking into account the nature of the processing, assist the Buyer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Buyer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;</p> <p style="padding-left: 20px;">13.4.6 assist the Buyer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to the Company;</p> <p style="padding-left: 20px;">13.4.7 at the choice of the Buyer, delete or return all the personal data to the Buyer after the end of the provision of services relating to processing, and delete existing copies unless EU law or the national law of an EU member state to which the Company is subject requires storage of the personal data;</p> <p style="padding-left: 20px;">13.4.8 make available to the Buyer all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR and allow for and contribute to</p>	<p>audits to the extent necessary to demonstrate compliance with such obligations, including inspections, conducted by the Buyer or another auditor mandated by the Buyer (in each case at the Buyer's cost).</p> <p>13.5 In relation to the processing of personal data, certain clinical and biographical data concerning patients/customers of the Buyer will be processed by the Buyer for the purposes of services provided by the Buyer to those individuals and will be retained for so long as such services require. The Buyer shall be solely responsible for obtaining all necessary consents to the collection, processing and retention of such data, and for all aspects of data security. Any processing by the Company shall be limited to incidental access to such data by reason of providing the Management Software Maintenance Services under the Contract.</p> <p>14. ENTIRE AGREEMENT</p> <p>14.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.</p> <p>14.2 Each party acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party which is not set out in the Contract.</p> <p>15. NO WAIVER</p> <p>Except as expressly provided in these Terms, no failure or delay by the Company in exercising any right or remedy relating to these Terms shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy by the Company shall preclude any further exercise of it or the exercise of any other remedy by the Company.</p> <p>16. FORCE MAJEURE</p> <p>If either party is subject to an event of force majeure, that is circumstances outside its reasonable control, including but not limited to acts of god, war, fire, industrial disputes or civil commotion, it shall notify the other and the first party's obligations under these Terms shall be suspended until it notifies the other party of the end of such event of force majeure.</p> <p>17. GENERAL</p> <p>17.1 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.</p> <p>17.2 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.</p> <p>17.3 These Terms and any dispute or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.</p> <p>17.4 The Company and Buyer irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).</p>
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SCHEDULE 1

Management Software Maintenance Services

Schedule I - Service Charges Management Software Support



55 Marlowes, Hemel Hempstead, HP1 1LE

Switchboard + 44 (0)1442 502 330

Service	Service Charge	
	Description	Mandatory Service Plan
First Line Management Software Maintenance Training	Training of up to three nominated employees of the Buyer to carry out basic troubleshooting.	Implementation will include first line maintenance training. £110 per hour plus travel, ie, new employees
Management Software Administrator Training	Training the Buyer's personnel in using the goods.	Implementation will include first line maintenance training. £110 per hour plus travel, ie, new employees
Telephone Support	Fee charged for technical support provided by telephone.	Included. £110 per hour if contract lapses.
Remote IT Support	Fee charged for remote IT computer support. Requires internet access.	Included. £110 per hour if contract lapses.
Onsite IT Support	Fee charged for engineer to attend.	Not included. £110 per hour plus Travel.
Travel	Fee charged for travel to and from the location.	Not included. £110 per hour
Management Software Updates	Fee Charged for software updates. Patches - Includes fixes and changes. Provisioning only. Installation not included.	Portal download with remote support Included. Onsite installation quotation upon request
Management Software Upgrades	Fee charged for upgrades. Major upgrades of the software only (not hardware). Live time up date. New major versions and new functions (if not explicitly in quotation)	Portal provisioning download with remote support included. Onsite installation quotation upon request
Viewing Licence Updates	Fee Charged for viewing licence upgrades. Patches - Includes fixes and changes.	Portal provisioning download with remote support included. Onsite installation quotation upon request.
Data Transfer	Fee charged for transferring data onto new computers, platforms and servers.	Not included. £110 per hour plus Travel.
Data Recovery	Fee charged for the recovery or restoration of lost data if possible*	Not included. £110 per hour plus Travel.

*The Company shall use reasonable endeavours to recover any lost or corrupted Data, although such recovery is not always possible. In any event: (a) it remains the Buyer's responsibility to back up the Data; and (b) the Company shall not be liable for any failure to recover the Data or for any loss or corruption of further data whilst providing that service

1 day = 8 hours including travel time

All prices are exclusive of VAT

