

# TERMS AND CONDITIONS

The Terms and Conditions has been prepared in German and English – available on [http://www.volumegraphics.com/fileadmin/user\\_upload/documents/Flyer/VG\\_Terms\\_and\\_Conditions.pdf](http://www.volumegraphics.com/fileadmin/user_upload/documents/Flyer/VG_Terms_and_Conditions.pdf). In case of doubt the German version shall prevail.

## A.) VOLUME GRAPHICS LICENSE AGREEMENT

### 1. Scope of the Agreement

1.1 These Terms and Conditions apply to all License Agreements and pre-contractual obligations between Volume Graphics GmbH, Wieblinger Weg 92a, 69123 Heidelberg, Germany (“Licensor”) and the company’s customers (“Licensee”) relating to the software programs **VGStudio** and **VGStudio MAX** including supplied dongles (“Software”).

1.2 These Terms and Conditions shall moreover apply to all future License Agreements relating to Software provided by the Licensor and all additional Agreements concerning the provision of updates and services for the Software between the parties to the Agreement. In these cases these Terms and Conditions shall apply even if they are not expressly agreed again.

1.3 Other Terms and Conditions will not become part of the Agreement even if the Licensor does not expressly contradict them.

### 2. Conclusion of contract

If you agree to these licensing Terms and Conditions, please confirm your acceptance by ticking the check box next to the sentence “I have read and I accept the terms of the License Agreement”. If you do not agree to the conditions of this License Agreement by ticking the named check box, you will not be able to install and use the Software.

### 3. Subject of the Agreement

3.1 The sole subject of the License Agreement is the provision of the Software and the granting of the rights to use the Software according to Section 4. The Licensee is responsible for putting the Software into operation. The Licensor is not obliged to provide installation, maintenance or support services for the Software. Any such service will be the subject matter of a separate Update/Service Agreement.

3.2 The scope, type and quality of the Software is solely determined by the mutually signed License Agreement or the acknowledgement of an order by the Licensor. Subsequent modifications of the scope of services rendered are valid only if agreed in writing.

3.3 The Licensee has assessed that the specification of the Software complies with his demands and requirements before concluding the Agreement. The Licensee is familiar with the essential functional features and conditions of the Software.

3.4 The Licensee is not entitled to assignment of the source code of the Software.

### 4. Granting of Licenses

4.1 With the conclusion of a License Agreement, the Licensor grants the Licensee the non-exclusive, non-transferable right to use the Software subject to the following conditions:

(a) Node Locked License: With the purchase of a Node Locked License, the Licensee acquires the right to install and use the Software on only one (1) computer for each one (1) purchased license. After installation of the Software, a special Registration Key is generated as a part of the licensing process, allowing Software to be used on this specific computer. Subject to the terms and conditions of this License Agreement the Licensee is entitled to allow any individual to use the Software on the computer for which the Registration Key has been generated in accordance with the Terms and Conditions of this License Agreement.



(b) Network License (Floating License), (applicable for *VGStudio MAX* only): To use the Software in a Local Area Network or other network by a certain number of concurrent users, a so-called Floating License is required for every user.

(c) Evaluation License: The Licensor offers Evaluation Licenses (testing licenses) to potential customers. Evaluation Licenses are so-called Node Locked Licenses for use on one specific PC only. Unless otherwise agreed, an Evaluation License is valid for 30 days and not renewable. The Software product installed for evaluation purposes must be deinstalled and/or removed from the PC or any data carrier after the granted Evaluation License has expired, at the very latest three months after the initial installation of the Software product.

An Evaluation License is intended to serve a potential customer as basis for his/her decision about whether the product fits his/her needs. Any use, propagation or publication of materials or information, e.g. pictures, animations, measurement results or other results, generated with an evaluation license is prohibited.

(d) Dongle License: With the purchase of a Hardware Dongle License, the Licensee acquires the right to install and use the Software on any computer, in conjunction with one (1) Dongle provided to the Licensee by the Licensor.

After installation of the Software, a special Registration Key is generated as a part of the licensing process, allowing Software to be used on any computer in conjunction with a dongle as well as a license on and for this valid dongle.

Subject to the Terms and Conditions of this License Agreement the Licensee is entitled to allow any individual to use the Software with the provided dongle for which the Registration Key has been generated in accordance with the Terms and Conditions of this License Agreement. Any duplication or technical modifications of the dongle are strictly prohibited.

Loss and/or theft of a hardware dongle after issuing of a license file coded on this hardware dongle is equivalent to losing the usage rights mentioned in Section 4.1.

However, the Licensee has the possibility (option) to protect himself/herself against loss and/or theft of the hardware dongle with the license file under purchased Update/Service Agreement or with a separate "Dongle License Protection" provided that the following conditions are met:

- (1) The Licensee has purchased a *VGStudio* Dongle License or a *VGStudio MAX* Dongle License of Version 2.2 or later (regardless of whether as initial or subsequent purchase or as a reorder or upgrade).
- (2) The Licensee has chosen the option "Dongle License Protection" under a purchased Update/Service Agreement or as a separate order.
- (3) If the Licensee already owns the Dongle License before ordering "Dongle License Protection" for it, the initial dongle has to be sent back to the Licensor before a new dongle covered by "Dongle License Protection" is sent to the Licensee.
- (4) All license fees due for the licensed Software including Dongle License, "Dongle License Protection" as well as – if purchased – Update/Service Agreement have been paid completely by the Licensee to the Licensor.

If all of the aforesaid conditions are met, the Licensee receives from the Licensor a hardware dongle and a temporary license file with a runtime of 12 months. 30 days before the expiration date of the license file the Software informs the Licensee that he/she should contact the Licensor in order to receive a new license file, again with a runtime of 12 months, if Licensee wants to extend "Dongle License Protection" under an Update/Service Agreement for this license or separately.

In the event of loss or theft of a hardware dongle, the Licensee provided he/she has purchased the "Dongle License Protection" has to pay for the new hardware dongle with a new license file at the rate of 2% of the gross list price of the respective software package per commenced month for the period between giving notice of the loss of a hardware dongle to Licensor and the end of the period of 12 months (= expiration date of the temporary license file).

The Licensor reserves the right to demand from Licensee appropriate unquestionable evidence of loss or theft if the hardware dongle is lost or stolen several times within the runtime of "Dongle License Protection".

4.2 Registration Key: The Registration Key is valid only for the computer or hardware dongle for which it has been generated or for the network on the server for which it has been generated. A transfer onto another computer/hardware dongle/network is not possible and not allowed.

4.3 Documentation/Manual and User Interface Language: Up to Version 2.0, the Software and its documentation was available in English and Japanese language only, from Version 2.1 it is also available in German.

After Version 2.2 is released, the Software as well as the related documentation will be available in French, Korean and Chinese.



4.4 With the License Agreement, the Licensee acquires the right to use the Software but not the right of ownership or any other rights to the Software itself. Subject to the usage rights mentioned in Section 4.1, the Licensor reserves all intellectual property rights and derivative rights to the Software and associated documentation. Unless otherwise agreed, the Licensor retains all ownership and other rights to all copies of the Software in any format or medium, including, but not limited to, any texts, sounds, images, photographs, videos, animations, graphics, documentation or other materials incorporated into or accompanying the Software. The Licensee understands that he/she has no right or ability to convey any ownership rights in the Software to any third party or to grant any license to use the Software to any third party.

## 5. General Restrictions on Software Usage

### 5.1 General Usage Restrictions.

(a) Outside the scope of § 69 e UrhG (German copyright law), the Licensee is not entitled to reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the Software. Neither the program nor its documentation may be altered in any way, including, without limitation, being extended, changed for use on other systems, or translated into other languages, except and only to the extent that such activity is expressly permitted by applicable law. The Licensee may not create derivative works based on the Software.

(b) The Licensee has no right to rent, lease, sell, sublicense or assign the Software or any underlying Software, technology or other information, including any printed materials relating to the foregoing. The Licensee agrees not to resell the Software or any rights to use the Software or access to the Software.

(c) Except as otherwise expressly set forth in this License Agreement, the Licensee is not entitled to copy, reproduce or distribute the Software, as a whole or in part.

(d) Licensee agrees to use the Software in compliance with all applicable laws and regulations. Without limiting the foregoing, Licensee may not download or otherwise import or re-export the Software except in full compliance with all applicable laws and regulations including any laws on the exportation of Software technology.

5.2 The Licensee has no right to rent, lease, share, sell, sublicense, assign, export or otherwise transfer, distribute or disclose a Registration Key (License Key) to any third party.

5.3 With regard to access to and use of the Software, Licensee agrees to provide true, accurate, up-to-date and complete information about himself/herself as required by Licensor (information termed "Registration Data"). Licensor is entitled to use and disclose the information contained in the Registration Data as necessary to comply with applicable laws, legal requirements or to be able to fulfill this License Agreement. Moreover, Licensee agrees that the Licensor or his/her agent may use the Registration Data to provide Licensee with information regarding updates and new releases of the Software.

## 6. Time and place of performance

6.1 Any specification of delivery and performance times by the Licensor are without obligation unless described as binding in writing by the Licensor.

6.2 The delivery of goods or services may be delayed by the same number of days as payment has been delayed by the Licensee or as the Licensee has failed to provide the assistance required by the Licensor in order to fulfill his contractual obligations. Should the Licensor be prevented from performing the service by circumstances beyond his control, the time of performance is extended to an adequate start-up time after elimination of the hindrance.

6.3 Reminders and deadlines are valid only if received in writing.

6.4 The place of performance is the registered office of the Licensor.

6.5 The services to be provided by the Licensor within the framework of the License Agreement shall be deemed to have been provided at the time when the License Key has been supplied by the Licensor.

## 7. Terms of payment

7.1 The right to use the Software is granted to the Licensee subject to the payment of the agreed license fee to the Licensor or his distributor.

7.2 Value added tax at the rate valid at Licensor's registered office may be charged on prices quoted as applicable. Unless otherwise agreed, license fees are determined on the basis of the Licensor's price list valid at the time of conclusion of the License Agreement.



7.3 Except as otherwise agreed, the license fee is due on receipt of the invoice and payable net within 30 days from the invoice date. Standard delivery type is by download via Internet. Delivery via CD-ROM will be charged extra. The invoice will be sent by regular mail or e-mail (pdf). Web invoicing and similar special procedures are subject to a surcharge of 10%. Credit cards or any other kind of charge cards will not be accepted.

The legal provisions concerning the consequences of delayed payment shall apply. The defense of § 320 BGB (German civil law) remains unaffected.

7.4 The Licensee may balance his claims against the Licensor only if these are undisputed by the Licensor or legally ascertained. The Licensee has the right of retention only within the respective contractual relationship.

## 8. Particular duties of the Licensee

8.1 The Licensee is responsible for reporting any defects in the Software immediately after their discovery by providing a detailed description of the errors encountered.

8.2 The Licensee is responsible for saving all data and programs at intervals adequate for the respective application but at least once per day to ensure that these can be recovered with a reasonable amount of time and effort.

8.3 The Licensee is obliged to follow the maintenance instructions given by the Licensor.

8.4 The Licensee shall treat all information concerning the Software, methods and procedures for its development and all associated documentation, its contents, storage media and associated correspondence as confidential during and after expiry of the entire period of its use and shall not give access to it to any third party. This also applies to all information derived from a decompilation as permitted according to § 69 of the German copyright law. The Licensee undertakes to pledge his/her staff to confidentiality.

8.5 The Licensee shall take all precautions necessary to prevent third parties from unauthorised use or access to the Software.

8.6 The Licensee shall be liable for all damages caused by the violation of his/her duties from the License Agreement and these general terms and conditions towards the Licensor.

## 9. Warranty

9.1 The Licensor warrants that the Software developed by him is free from defects which would negate or substantially diminish its value or usability for the purpose for which it is intended according to the License Agreement. Further warranties are expressly excluded unless commitments were expressly designated as such. The Licensor does not assure any possible or potential uses in connection with other products, in particular software and hardware products. Corresponding investments shall be solely at the Licensee's own risk.

9.2 The Software has the agreed properties and quality usual for this type of Software. The Licensee acknowledges that errors in computer programs can never be completely excluded according to the current state of the technology. Any impairment of the functionality of the Software resulting from hardware defects, environmental conditions, operating errors a. o. is not considered to be a defect. Insignificant reductions in quality are not considered relevant.

9.3 Any defects must be communicated to the Licensor without delay in writing with a short description of the defect pattern. The Licensee shall examine the Software for obvious defects upon delivery. Obvious defects must be reported in writing within two weeks, in case of companies within one week from delivery and notified as defects, otherwise the warranty regarding these defects will be forfeited.

9.4 The Licensor shall remedy any defects within a reasonable period of time from receipt of a written notification by rectification or supplementary delivery at Licensor's choice. Should any notified defects be unascertainable during an examination by the Licensor or arise from maloperation or malfunctions for which the Licensor cannot be held accountable, the cost of examination or any additional costs shall be borne by the Licensee.

9.5 The Licensor guarantees that the use of the Software according to the terms of this License Agreement by the Licensee does not conflict with the rights of any third party. In case of legal defects, the Licensor warrants that he shall provide the Licensee with a legally acceptable right to use the Software or an equivalent Software. The Licensee shall inform the Licensor in writing without delay if a third party should lodge any claim to him regarding the property right to the Software.

9.6 Cancellation, reduction or claims for damages instead of performance are possible only if the Licensee has notified the Licensor of the defect in a precise manner and set a reasonable time limit for supplementary performance. Supplementary performance is deemed to have failed only after two



unsuccessful attempts. The regulations of § 323 Section 2 BGB (German Civil Law) remain unaffected. Any cancellation or declaration of reduction and claims for damages instead of performance shall be valid only in writing.

9.7 If the Software is extended or modified by the Licensee or any third party, any warranty shall cease unless the Licensee can prove that the respective modification or extension is not the cause or concurrent cause of the defect. The Licensor does not warrant for faults, malfunctions or damages caused by improper operation, use of unsuitable equipment or unusual operating conditions.

9.8 The period of warranty towards companies or other persons as defined by § 310 Section 1 BGB (German Civil Law) shall be one year, and two years towards consumers. The period of warranty shall begin at the time of the transfer of risk.

9.9 The contractual warranty for defects is limited to a period of one year from delivery or, insofar as this was agreed, acceptance respectively. This does not apply insofar as longer periods have been stipulated according to § 438 Section 1 No. 2, § 479 Section 1 and § 634a Section 1 No. 2 BGB (German Civil Law) or in cases of violation of life, body or health, intentional or gross neglect of duties by the Licensor or fraudulent concealment of a defect. The warranty period shall begin at the time of the transfer of risk. Any legal regulations regarding the suspension of statute of limitations, suspension of limitation and re-commencement of warranty periods shall remain unaffected hereby.

## 10. Liability

10.1 Licensor and his vicarious agents shall only be liable:

(a) without limitation for intentional wrongdoing and gross negligence;

(b) without limitation pursuant to the German legislation on product liability in case of personal injury or death;

(c) for ordinary and slight negligence, except in the cases named under (b), only for the violation of an essential contractual obligation, liability being limited to typical, foreseeable damage, at most to the extent of the paid license fee. Licensor shall not be liable for any indirect or consequential damages or damages due to futile expenditures for other products or the loss of business profits.

Any further liability is excluded.

10.2 The Licensor retains the right to object due to contributory negligence. In case of data losses the Licensor is liable only for the damages which would have occurred if proper backup copies of data had been created.

10.3 Insofar as the Licensee is entitled to claim for damages due to defects, these claims will become invalid after the period prescribed for material defects according to Section 9.9. For claims according to the law on liability, the statutory limitations apply.

## 11. Beta Versions or Pre-Releases

11.1 Licensor provides to valuable customers within specific development projects or before announcement of a new product release one or more beta version(s) or pre-releases for testing purposes. Licensee is not entitled to claim for the provision of such a version.

11.2 Beta versions or pre-releases are preliminary software versions of the upcoming release. Beta versions are already tested, however the development and quality assurance are not finalized, and the documentation is not updated. Beta versions and pre-releases are testing versions for which Licensor does not provide any warranty with respect to the content. By downloading of such a version Licensee herewith agrees to any exclusion of warranty and liability by the Licensor. In particular, Licensor has no liability with respect to data loss or damages caused by the use of such a version.

11.3 Beta versions or pre-releases are intended for testing purposes only and may not be used for production or commercial purposes. Licensee is not entitled to pass it on to third parties.

11.4 Functionality available in pre-release phase and/or documented in any accompanying files might not be available in the final product release.

11.5 Licensor urgently recommends to back up important data before using the beta version or pre-release. Such version is available in English language only. The provision of such versions may improve the communication and exchange of information between the respective customer and the development team of the Licensor.

11.6 Beyond the rights mentioned in this Section 11 the Licensee has no further rights with respect to the beta version or pre-release.



## 12. Indemnification

Licensee agrees to indemnify and hold harmless Licensor, its officers, directors, employees and agents from any damages, costs and expenses, including reasonable attorneys' fees, arising from any claim or demand made by any third party due to or arising out of the use of the Software or breach of this License Agreement or violation of any rights of another.

## 13. Term, Termination

Upon any termination of this License Agreement, Licensee's right to use the Software immediately ceases and, if Licensor so requests, Licensee will delete or destroy any copies of the Software under Licensee's control, including, without limitation, any Registration Key. The remedies of this clause are without prejudice to any other rights or remedies which are available to Licensor.

## 14. General Provisions

14.1 The invalidity or unenforceability of one or more of the provisions contained in this License Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this License Agreement invalid or unenforceable whatsoever. Licensor's failure to exercise or enforce any right or provision of this License Agreement will not constitute a waiver of such right or provision.

14.2 This License Agreement constitutes the parties' final, exclusive and complete understanding and License Agreement with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings and License Agreements between the parties.

14.3 Any modifications and extensions to this Agreement are valid only in writing. The parties to the contract shall fulfill this written form requirement by transmitting documents in writing, in particular by fax or e-mail, unless other provisions have been made for specific declarations. The written form requirement may be waived only in writing.

14.4 Any rights arising to the Licensee from this License Agreement may be assigned only with the prior written consent of the Licensor. The rulings of § 354 HGB (German Commercial Code) shall remain unaffected hereby. The Licensor may assign all rights and obligations under this License Agreement to a subsidiary, affiliate or successor taking over all or a substantial part of its business and assets without the Licensee's consent. Licensor shall in this case ensure that no disadvantages shall arise to the Licensee from this assignment.

14.5 Licensor is moreover entitled to assign all duties to a third party. In this case Licensor continues to be liable towards the contractual party for the proper fulfillment of his contractual obligations towards the Licensee and the Licensee accepts any provided service as a service provided by the Licensor.

14.6 This License Agreement is governed by the laws of Germany without regard to its conflict of laws principles. The United Nations convention on Contracts for the International Sale of Goods and the Private International Law is expressly disclaimed. Licensee and Licensor agree to submit to the exclusive venue in, and jurisdiction of, the court of Mannheim, Germany, for all disputes arising from or in connection with this contract insofar as the Licensee is a merchant, a corporate body under public law or a special fund under public law. The same applies if the Licensee does not have an address for service in the Federal Republic of Germany.



## B.) VOLUME GRAPHICS UPDATE/SERVICE AGREEMENT

### Definitions:

“Product” shall mean the appropriate Volume Graphics Software program licensed to the customer, “Agreement” shall mean the Update/Service Agreement for the appropriate Product. Benefits provided under an Agreement are:

Access to an individual service account with:

- Product upgrades (if available during period of validity)
- Product snapshots (if available during period of validity)
- priority bug-fix support
- priority Product support

### Our commitment

An Agreement is the most inexpensive way to keep your Product up to date. Even if an upgrade version should not be available during the validity period of one Agreement, the cost for continuous Agreements will be more inexpensive than purchasing one or several separate upgrades.

### The Agreement includes the following components/services:

1. A customer with a valid Agreement receives an individual password-protected account on the Volume Graphics web server. The customer will be able to access his account through our website.
2. All upgrades – minor as well as major release upgrades – becoming available within the validity period of the Agreement are available free of any additional charge for download from the customer’s web account. The Agreement is the most inexpensive way to keep a Product up to date. Even if no upgrade should be available within one year, the cost of upgrading to a new release will always be higher than the cost of all Agreements during the development period for a new release.
3. The Agreement offers short term bug-fix support for the Product. Any bug reported by a user with a valid Agreement will be processed with high priority. As soon as a bug-fix is available, all customers with a valid Agreement will be notified and will be able to download it from their web account on our web server.
4. Customers with valid Agreements will be provided with Beta versions for download. Beta versions are early development versions of upcoming Product releases. Beta versions have already been tested but are still undergoing development and quality assurance and do not yet include the updated documentation. By downloading this version, the customer agrees that it is provided as-is, without warranty. Volume Graphics does not assume any liability for data loss or damage that may occur from using Beta versions. We recommend users to back up all important data before using any Beta version of the Software. The Beta version is available in English only. The idea behind providing the customer with Beta version Software is to increase communication and the exchange of information between the customer and the Volume Graphics Software development team. Any feedback regarding Beta versions is highly appreciated. By supplying us with comments and feedback, customers have the chance to influence the development of the next generation of the Product at an early stage, ensuring that future releases will fit their needs even better.
5. Volume Graphics attaches great importance to providing the best possible support to all customers. However, support requests from customers with a valid Agreement will be processed with highest priority.



### **Availability of Update/Service Agreements**

An Agreement is available for the latest Product release only. With the availability of a new Product release, Agreements can be contracted only for this new release. Customers with a valid Agreement can upgrade the existing installation of the Product free of charge. Without a valid Agreement, customers owning a previous Product version would have to purchase a regular upgrade to the latest Product release before being eligible to contract an Agreement.

Any Agreement concluded shall always be valid from the day of purchase of the license or expiry of the previous Agreement. Any Agreement concluded at a later date will have to be concluded retrospectively, beginning at the date of the license purchase or expiry of the previous Agreement.

### **Period of validity and extension of an existing Agreement**

An Agreement shall be valid for one year as long as no other period of validity has been agreed between the customer and Volume Graphics. The period of validity of an Agreement will not be extended automatically. Any continuation will have to be specifically ordered, and a new Agreement will have to be concluded between the customer and Volume Graphics for every new one-year period. An Agreement can be continued if the customer acquires the extension no later than 30 days after his previous Agreement has expired. All services mentioned above will be provided under the new Agreement without interruption. In case of an Agreement being continued, the new Agreement will be valid from the day after the previous Agreement has expired, e. g. if the previous Agreement was valid until 2010-12-31, the new Agreement will be valid from 2011-01-01 to 2011-12-31. If the Agreement is not continued within 30 days after expiry, the customer will lose all the services from the moment his previous Agreement expires. Should a new Product release become available after the Agreement has expired, the customer will have to purchase a regular upgrade to the latest Product release before being eligible to contract a new Agreement.

## **C.) SOFTWARE TRAINING**

**In addition to our standard terms and conditions, the following regulations apply for Software Training.**

In case of cancellation of a training course by the participant, the following rules apply:

- In case of notification more than 4 weeks in advance of the scheduled date: 100 % refund of the training fee.
- In case of notification 2-4 weeks before the scheduled date: 50 % refund of the training fee.
- In case of notification less than 2 weeks before the scheduled date: no refund.

In case of rescheduling of a course by the participant, Volume Graphics attempts to find a new training date suitable for all participants. Should this fail and the currently scheduled course is reduced to less than 4 participants, the same rules apply as for cancellation of courses (see above).

In case of training at the customer's premises, Volume Graphics attempts to reduce travel and accommodation costs to keep the overall cost as low as possible. This might require early booking of tickets and/or hotel rooms. In addition to the charges noted above, the customer shall be liable to pay any third party cancellation fees arising from the cancellation or rescheduling of courses.



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