

# Volume Graphics General Software License and Update/Maintenance Terms and Conditions

(North America: Canada, USA, Mexico)



## A.) Scope of Application

### 1. Languages

These General Software License and Update/Maintenance Terms and Conditions (North America: Canada, USA, Mexico) ("**Terms**") are drafted in English—retrievable from the Volume Graphics website at [www.volumegraphics.com/en/f/r/terms-conditions.html](http://www.volumegraphics.com/en/f/r/terms-conditions.html).

### 2. Scope of application of these Terms, General terms and conditions of Licensee

2.1 The General Terms and Conditions shall apply to all existing and future provision, use, and maintenance of software products (including, but not limited to the termination, expiration and conclusion of contracts) between Volume Graphics, Inc., 4944 Parkway Plaza Blvd., Suite 110, Charlotte, North Carolina 28217, United States of America ("**Volume Graphics**") and customers of Volume Graphics ("**Licensee**").

2.2 Training offers or other customized consulting services by Volume Graphics are subject to separate terms and conditions.

2.3 Any general terms and conditions of Licensee are hereby objected to. They shall not be recognized even if Volume Graphics does not expressly object to them again after receipt.

2.4 References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall apply insofar as they are not amended, supplemented, or expressly excluded in these Terms.

### 3. Subject matter of these Terms

The provisions set out in Part B.) ("**License Terms**") apply to the provision and use of existing and future Volume Graphics software products, including associated dongles, license keys, or user documentation, which are provided by Volume Graphics to Licensee for access and use and are subject to any License Agreement as may be entered into between Volume Graphics and the Licensee from time to time. The provisions set out in Part C ("**Maintenance Terms**") apply to update and maintenance services for Volume Graphics software products and are subject to any Maintenance Agreement as may be entered into between Volume Graphics and the Licensee from time to time. In addition to the License Terms and the Maintenance Terms, the general provisions set out in Part D ("**General Provisions**") apply. In the event of a conflict, the following order of precedence shall apply: Part A, Part B or Part C (as applicable to the services purchased), and Part D.

## B) Software License Terms

### 1. Services to be provided and services not included

1.1 If Licensee acquires a license for a Volume Graphics software product (hereinafter "**Software**"), Volume Graphics shall provide Licensee with a copy of the respective software product in object code as well as associated dongles, license keys, and user documentation and shall grant Licensee a right to access and use the Software in accordance with the terms of any agreements made at the time of acquisition of the license ("**License Agreement**") and the following license terms. In the event of any conflict between the terms of the License Agreement and these License Terms, the terms set out in the License Agreement shall prevail.

1.2 Licensee shall not be entitled to the transfer of the source program. Licensee shall not become the owner of the copyrights to the Software and the user documentation. The copyright, all industrial property rights and other intellectual property, including trade secrets, shall remain with Volume Graphics and its affiliates. Copyright notices, serial numbers, branding, and other features used for program identification must not be removed or modified.

1.3 Unless otherwise stipulated in the License Agreement, Licensee shall be provided with the Software in its latest version.

1.4 Except as otherwise provided, the Software is licensed “as-is”. Volume Graphics does not represent, warrant or assume any liability or guarantee that the use of the Software is suitable for achieving the purposes pursued by the Licensee or that the Software will be error free or without interruption.

1.5 Volume Graphics shall not be obligated to install or commission the Software at the Licensee's premises. Furthermore, without a separate update/service agreement, Volume Graphics shall not be obligated to provide maintenance services or technical support with regard to the Software.

## **2. Provision of the software, confirmation of the Terms**

2.1 Unless the provision of the Software on a data carrier has been expressly agreed upon, the Software shall be made available by download via a web account on the Volume Graphics web server to be set up for Licensee after conclusion of the contract. For the purpose of downloading, Licensee shall be granted access to the web account for a period of 12 days after the web account has been set up to complete any downloads.

2.2 LICENSEE MUST EXPRESSLY CONFIRM THE VALIDITY OF THESE TERMS WHEN LOGGING INTO THE PERSONAL WEB ACCOUNT AND/OR WHEN INSTALLING THE SOFTWARE—EVEN IF LICENSEE ENGAGES THIRD PARTIES TO PERFORM THIS.

2.3 Regardless of the license model, the Software must be installed on at least one computer of Licensee in order to be able to use it. If a Floating License pursuant to Section B.3.3 (c) is purchased, the installation of Flexera's FlexNet license server on a central network server of Licensee is also required.

2.4 Regardless of which license the Licensee has acquired, if the Software is provided before payment of the license fee, Licensee shall initially be granted a provisional license limited to eight weeks. After receipt of full payment, Licensee shall be granted a perpetual license, unless otherwise stated below or set out in the License Agreement.

2.5 Licensee shall provide complete and truthful information during the licensing process and use of the Software ("**Registration Data**"). Volume Graphics shall be entitled to process the information contained in the Registration Data in such a way as is necessary to be able to fulfill the License Agreement, these Terms and Conditions, any maintenance agreement and/or any other agreement in place between the Licensee and Volume Graphics from time to time.

## **3. Granting of right to use the Software**

3.1 Volume Graphics grants to Licensee, subject to a condition precedent until full payment of the agreed license fee, on the basis of either a dongle-bound license ("**Dongle License**"), a computer-bound license ("**Node-locked License**"), a network server-bound license ("**Floating License**"), a test license ("**Evaluation License**"), or a license intended for academic research and teaching ("**Academic License**") the non-exclusive, non-sublicensable, and non-transferable right to access and use the Software in accordance with the following terms and conditions for Licensee's internal business purposes.

3.2 The following special provisions apply to the respective agreed license models:

(a) **Dongle License**: When purchasing a Dongle License, Licensee is granted the right to use the Software on any computer, provided that the dongle provided to Licensee is used. After installation of the Software, a special license key is generated as part of the licensing process, which enables the use of the Software depending on the existence of a dongle and a valid license key generated for this dongle. Subject to the terms and conditions of the License Agreement, Licensee's employees, freelancers, agency workers, and legal representatives ("**Authorized Users**") may use the Software with the provided dongle for which the license key has been generated in accordance with these Terms; provided that Licensee shall be responsible for the actions of any Authorized Users.

Any duplication of the dongle or other technical interventions in the dongle are not permitted. The license key is only valid for the dongle for which it was generated. A transfer of the license key to another dongle is neither possible nor

permitted.

A dongle license issued for VGINLINE ("**VGINLINE Dongle License**") is only valid for the specific VGINLINE Installation for which it was purchased. Licensee shall specify such VGINLINE Installation in advance of the quote being prepared.

"**VGINLINE Installation**" shall be defined in this context as the combination of a single scanner, at least one evaluation computer, or at least one virtual machine as well as a VGINLINE setup consisting of at least one worker (execution program) and one workspace (an internal network directory). For each evaluation computer and/or for each virtual machine used with VGINLINE, a separate Worker including VGINLINE Dongle License and dongle must be purchased.

(b) **Node-locked License:** When purchasing a Node-locked License, Licensee is granted the right to install and use the software on one computer per purchased license. After installation of the Software, a special license key is generated as part of the licensing process, which enables the use of the Software solely on that computer. Subject to the terms of the License Agreement, Licensee's Authorized Users may use the Software on the computer for which the special license key was generated in accordance with these Terms; provided that Licensee shall be responsible for the actions of any Authorized Users.

(c) **Floating License:** When purchasing a Floating License, Licensee is granted the right to install and use the Software on any computer of a network within the respective territory for which the license was issued ("**Licensed Territory**"). Floating Licenses may be acquired either for a specific location of Licensee ("**Local Floating License**") or for a specific country—in the case of Russia, Australia, India, Canada, the United States of America, and Mainland China for a specific geopolitical area of a country (referred to as a federal state, province, canton, region, federation district, or similar, depending on the country)—("**Country Floating License**") or for a specific time zone range ("**Continental Floating License**") or for worldwide use ("**Global Floating License**"). Subject to the terms and conditions of the License Agreement, Licensee's Authorized Users may use the Software in accordance with these Terms; provided that Licensee shall be responsible for the actions of any Authorized Users.

The use of the software is only permitted if both the Authorized User and the computer are located within the Licensed Territory and the right of use is not already exercised by another user. In order to be able to use the Software, the Authorized User must first retrieve the purchased license from the FlexNet license server each time the Software is started.

The use of the Software on the basis of a Floating License requires a permanent connection to the FlexNet license server, which is installed on a network server of Licensee. This connection is established each time the Software is started and maintained by retrieving the license from the FlexNet license server for the duration of use. In addition, the Software may be used for a maximum period of 7 days without connection to the network server (so-called "**Offline Borrowing**"). In the context of Offline Borrowing, the use of the Software on the respective computer over which the license was checked out for the purpose of Offline Borrowing is also permitted outside the Licensed Territory.

(d) **Evaluation License:** The Evaluation License—in form of either a Node-locked or a Floating License—grants Licensee a temporary right to use the Software solely for the purpose of internal, non-commercial, and non-scientific testing to determine whether the Software meets Licensee's requirements. The results generated during the evaluation process (e.g., images, animations, measurement or analysis results) may also only be used for internal evaluation of the Software and may not be used commercially or scientifically or published.

Unless otherwise specified in the individual case, an Evaluation License is valid for 30 days and cannot be extended. If a copy of the Software has been made available to Licensee for the purpose of evaluation and if Licensee does not acquire a commercial license for the Software after evaluation, the Software must be uninstalled from the computer and irretrievably deleted after expiry of the Evaluation License.

(e) **Academic License:** If Licensee is an educational institution and acquires a Dongle, Node-locked or Floating License in the form of an Academic License ("**Academic License**"), the following special terms shall apply unless otherwise agreed: (i) The Academic License grants Licensee a right of use solely for the purpose of academic research and teaching and Licensee may not use the Software under an Academic License for commercial purposes, in particular, for the provision of services to third parties, such as measurement services against payment. (ii) authorized users of an Academic License are the members of the respective educational institution, in particular its university

teachers, doctoral students, research assistants, and the students enrolled at the educational institution. (iii) Licensee may permit its authorized users to use the Software solely for the purposes of academic research and teaching. Academic research and teaching presupposes that the results of the research are published or in the public domain. Use for private research projects or projects subject to government regulation requires a commercial license.

3.3 With regard to remote access to the Software, the use of multiple instances of the Software and the use of dongle servers and comparable devices or software solutions, the following shall apply:

(a) **Remote Access:** In the case of a Dongle License or a Node-locked License, the use of the Software via remote access is not permitted; in the case of a Floating License, the use of the Software via remote access is permitted only if both the Authorized User and the computer that is being accessed are located within the Licensed Territory.

(b) **Use of Multiple Instances:** An Authorized User is permitted to start and run multiple Instances of the Software simultaneously on one computer. For the purposes of sentence 1, an Instance is a program start that can occur several times on one computer ("**Instance**"). In the case of Dongle Licenses and Node-locked Licenses, the use of multiple instances simultaneously on one workstation or evaluation computer by different users is prohibited, especially in the case of remote access. In the case of Floating Licenses, multiple instances of the Software may be started and run simultaneously on one workstation or evaluation computer by different Authorized Users—for example, by remote access of the Authorized Users, provided that the required number of Floating Licenses has been obtained. Each Authorized User requires a Floating License. If one and the same Authorized User accesses a workstation or evaluation computer via several workstation computers—either directly or remotely—and runs multiple instances of the Software while doing so, that the Authorized User requires a separate Floating License for each computer with which the Authorized User accesses the Software on the workstation or evaluation computer.

(c) **Dongle Servers and Comparable Devices or Software Solutions:** The use of the Software using so-called dongle servers or other devices or software solutions that provide dongle licenses via a network is prohibited.

3.4 If the Software is an upgrade from a previous version, Licensee may—subject to the provisions in Clause C.6.2—not continue to access and use the previous version of the Software once the upgrade version of the Software has been provided. Licensee shall permanently uninstall and irretrievably delete versions of the Software that have become surplus to requirements, obsolete license files and license keys, and any copies made thereof. Dongles and any existing original data carriers must be returned to the place of business of Volume Graphics.

#### **4. Dongle license protection**

4.1 In the case of a Dongle License, the loss and/or theft of the dongle after issuance of a license file encoded on this dongle is equivalent to the loss of the right to use the Software. Except in the case of a VGinLINE Dongle License, in order to prevent the loss of the right to use the software, Licensee has the option of securing the continued use of the software even in the event of a possible loss of the dongle by means of a special license issuance method, the so-called "**Dongle License Protection**". This requires that the licensee is the holder of a perpetual Dongle License for VGSTUDIO, VGSTUDIO MAX, VGMETROLOGY, VGMETROLOGY ES, or VGRECO in version 2.2 or higher.

4.2 When the fees for the Dongle License and the Dongle License Protection are fully paid, under the Dongle License Protection, instead of the perpetual license file, Licensee will receive from Volume Graphics a license file for the Dongle, which is limited to 12 months from the invoice date. The software will notify Licensee 90 days prior to the expiration of the license file that the license is about to expire, and that Licensee must therefore contact Volume Graphics to obtain a new license file. Depending on whether a Dongle License Protection is agreed on again or not, this license file is also limited to 12 months or unlimited.

4.3 In the event that a perpetual license file for the relevant Software has already been issued and sent to Licensee prior to the conclusion of the Dongle License Protection, Licensee shall return the dongle on which the license file has already been installed to Volume Graphics. Prior to receipt of the dongle at Volume Graphics' place of business, Volume Graphics is not obligated to provide Licensee with a dongle under Dongle License Protection. Licensee shall be responsible for the loss of the returned dongle in transit. If the dongle is lost in transit, Licensee may withdraw from the

Dongle License Protection and reclaim any payment already made for the Dongle License Protection; in this case, Volume Graphics is not obligated to issue a replacement dongle under Dongle License Protection. Licensee is therefore advised to take out appropriate transport insurance.

4.4 If the dongle is subject to Dongle License Protection, in the event of loss or theft of the dongle, Licensee has the option to obtain a replacement for the dongle together with the associated license file for the remaining term of the license file against payment of a corresponding fee. The fee consists of a fixed handling fee and a variable replacement fee for the license file amounting to 2% of the gross list price for the software in its individual configuration per month or part thereof for the period between the notification of the loss of the dongle to Volume Graphics and the expiry of the 12-month period (equaling the remaining term of the license file). The fee for the replacement of the dongle shall be paid by Licensee to Volume Graphics in advance.

4.5 Volume Graphics reserves the right to refuse a renewal of Dongle License Protection in the event of multiple loss and/or theft of the dongle within a twelve-month term of Dongle License Protection.

4.6 Volume Graphics is entitled, within the framework of its general product policy, to discontinue the product "Dongle License Protection" at any time or to adjust the conditions under which it generally offers Dongle License Protection on the market.

## **5. General restrictions on use**

5.1 Licensee shall not use the Software in any manner or for any purpose beyond the scope of the license granted herein. Without limiting the foregoing, and except as otherwise expressly set forth in these License Terms, Licensee shall not at any time, directly or indirectly: (a) copy, modify, or create derivative works of the Software or its documentation, in whole or in part, including translation into other languages; (b) rent, lease, lend, resell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, including any associated dongle, license key and documentation, in whole or in part; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (d) remove any proprietary notices from the Software; (e) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of Volume Graphics or any other person or entity; (f) use the Software as a service bureau, for outsourcing purposes, for time sharing purposes or otherwise make the Software available to any other person or entity for use in the third party's business operations; (g) upload, email, post, publish or otherwise transmit any material that violates privacy rights, harasses any person, or constitutes unsolicited bulk email; (h) use or utilize the Software in any way that violates any applicable law or regulation; or (i) download or otherwise import, export, re-export, divert or transfer the Software in violation of any laws or regulations governing the export of software technology.

5.2 Volume Graphics may suspend any user, remove or disable access to any material, information or data, or take other actions as it may deem necessary if Volume Graphics reasonably believes any of the foregoing restrictions have been violated.

## **6. Term, termination, and withdrawal**

6.1 Unless otherwise stated in these License Terms or unless the parties have agreed otherwise, Licensee is granted the right to use the Software for an unlimited period of time. In the case of such a perpetual license, ordinary termination as well as partial termination is excluded.

6.2 If Licensee is granted a temporary license, Licensee's right to use the Software shall end upon expiry of the agreed period of use. Unless otherwise agreed in writing, a temporary license has a term of 12 months, calculated from the first day of the month following the conclusion of the contract. If the parties have agreed on a license subscription, the term of the temporary license shall be extended by a further 12 months in each case, unless one of the parties terminates the license subscription with three (3) months' notice to the end of the current license period.



6.3 The statutory rights of Volume Graphics to withdraw from the contract or to terminate the contract due to breach of duty by Licensee shall remain unaffected. Volume Graphics is in particular entitled to withdraw from or terminate the licenses and rights granted to the licensee if (i) Licensee or any of its Authorized Users uses the Software beyond what is permitted under these Terms and does not remedy the infringement within a reasonable period of time after a warning from Volume Graphics, (ii) Licensee does not pay fees due—whether license fees or maintenance fees—within a reasonable grace period set by Volume Graphics, or (iii) Licensee seriously and finally refuses to pay these fees.

6.4 Any notice of withdrawal or termination must be sent by mail or by e-mail.

6.5 Upon termination of the license, irrespective of the legal reason for the termination of the license, Licensee is obliged to delete or destroy all copies of the Software in Licensee's power of disposition, including all license keys, and to return any dongles to Volume Graphics' place of business upon Volume Graphics' request.

## **7. License purchases and maintenance of temporary licenses**

7.1 If Licensee wishes to extend a license already acquired by Licensee and covered by an update/service agreement by additional licenses ("**License Purchase**"), Volume Graphics may only agree to such a License Purchase if Licensee also concludes an update/service agreement for the extended scope of the license or extends the existing update/service agreement to this extent.

7.2 If Licensee extends a license already acquired by Licensee and covered by an update/service agreement by so-called add-on modules or packages ("**License Extension**"), the update/service agreement for the Software shall be extended accordingly. Maintenance fees to be paid for the remaining maintenance term shall be paid by Licensee upon License Extension.

7.3 In the case of temporary licenses granted against payment, the maintenance services are included for the duration of the license in accordance with the maintenance conditions in Part C. of these Terms and are compensated for with the license fee. A separate conclusion of an update/service agreement is not required in this respect. The license fee for temporary licenses shall be invoiced and payable in advance for one contract year.

## **C.) Update/Maintenance Terms**

### **1. Validity of the maintenance conditions and subject matter of the maintenance agreement**

1.1 If Licensee concludes an update/service agreement ("**Maintenance Agreement**") for a Volume Graphics software product, Volume Graphics will provide the following services (hereinafter collectively referred to as "**Maintenance**" or "**Maintenance Services**") with respect to the software product identified in the Maintenance Agreement (hereinafter "**Software**"):

- > Creation of a maintenance account (Section C.2)
- > Provision of updates to the Software available during the term of the contract (Section C. 3)
- > Technical support within Volume Graphics' regular hours of availability for the installation and use of the Software with respect to a version not older than 12 months at the time of the request (Section C. 4).
- > Treatment of reproducible errors of the respective then-current version of the software outside any warranty obligations of Volume Graphics (Section C. 5)

1.2 No further services are owed by Volume Graphics under the Maintenance Agreement. In particular, Volume Graphics is under no obligation to provide the following services under the Maintenance Agreement:

- > Adaptation of the Software to a hardware or software environment changed by Licensee without the consent of Volume Graphics or adaptation of the Software to a changed operating system
- > Installation or commissioning of the software or of updates, upgrades, or patches

- > Treatment of errors which have been fixed by a new version of the Software or by an update, upgrade, or patch for the Software which has already been offered to Licensee, but which has been rejected by Licensee without legitimate reason
- > Services for a software product with a release status that is generally no longer maintained by Volume Graphics
- > Consulting services that go beyond technical support or error treatment
- > Instruction or training of software users
- > On-site services at Licensee's premises
- > Telephone hotline services outside the regular availability times

1.3 Volume Graphics shall provide the maintenance services upon the conclusion of the contract, but not before Licensee has notified Volume Graphics of the operational use of the Software. In case of doubt, the notification shall be made by requesting the license file.

## **2. Maintenance account, system manager**

2.1 Volume Graphics shall set up a web account on the Volume Graphics web server for Licensee for the duration of the Maintenance Agreement, which the Licensee can access via the Volume Graphics website ("**Maintenance Account**"). For this purpose, Licensee shall name a system manager with administrative rights as contact person immediately after the conclusion of the contract and provide Volume Graphics with his/her e-mail address. The data will be stored in the Maintenance Account and used for communication within the contractual relationship, in particular for the notification of the availability of new software versions.

2.2 Licensee shall inform Volume Graphics immediately of any changes in the person of the system manager.

2.3 Licensee shall keep the access data to the Maintenance Account confidential and store it safely. Licensee shall prevent third parties from obtaining knowledge of the access data.

## **3. Updates**

3.1 Volume Graphics shall provide Licensee with security updates, general error corrections, officially announced service packs and new releases of the Software (in each case individually and collectively "**Updates**"), and associated user documentation published during the term of the Maintenance Agreement. Updates are provided by download via the Maintenance Account. Available for download is the respective latest version of the Software. Licensee will be notified electronically of the availability of an Update.

3.2 Volume Graphics strives for a continuous further development of the software, which is regularly made available through updates. However, there is no entitlement to further development of the software, to extensive functional extensions or to changes in the form of new modules or module extensions. If Volume Graphics offers new modules or module extensions, these can only be acquired on the basis of a separate agreement and against additional payment.

3.3 Updates may require a new version of the operating system used by Licensee. Volume Graphics is not obligated to deliver or install new operating systems. The same applies with regard to any firmware or hardware required for the operation of the Software.

## **4. Technical support**

4.1 Volume Graphics shall provide technical support in German and in English language during the term of the Maintenance Agreement. Technical support is limited to assisting Licensee with specific technical questions relating to the installation use of the Software and is only owed to a reasonable extent to users of the Software who have familiarized themselves with the Software either through training or otherwise. Licensee shall inform Volume Graphics of the appropriate contact persons that are authorized to make support requests on behalf of the Licensee immediately after the conclusion of the contract (so-called "**Key Users**"). Licensee shall inform Volume Graphics of any changes in the person of any Key User immediately in writing.



4.2 Volume Graphics is not obligated to respond to requests made by means of communication other than by telephone or e-mail. Insofar as Volume Graphics provides technical support in individual cases using other means of remote communication or in additional languages, this shall be done solely as a gesture of goodwill and at its own discretion and shall not constitute a claim for the future, even in the event of reiteration.

4.3 Volume Graphics provides the respective current contact details of the Support team on the Volume Graphics website [www.volumegraphics.com/](http://www.volumegraphics.com/) (or under its successor URL) under the heading Support.

4.4 In order to receive technical support, Licensee must be authenticated as the holder of a Maintenance Agreement. Upon request, the Licensee shall provide Volume Graphics with all information required by Volume Graphics for the purpose of authentication. In particular, this includes the license identification number (Lic-ID) assigned to Licensee with respect to the Software.

## 5. Error handling

5.1 Volume Graphics agrees to treat errors in the Software that materially affect the use of the Software. An error within the meaning of these update/maintenance terms shall be deemed to exist if the Software, when used as intended in the intended system environment, does not exhibit the functionality of the Software as provided for in the license agreement and the user documentation. For errors of the Software that occur during the warranty period, the warranty provisions pursuant to Section D.5 of these Terms shall apply exclusively.

5.2 Error handling shall include narrowing down the cause of the error, diagnosing the error, and remedying the error itself. The obligation to remedy errors only exists with regard to reproducible errors.

5.3 Licensee's claim to error handling shall not exist if Licensee or a third party has made changes to the Software, unless the Licensee proves that the error is not caused by the changes.

5.4 Licensee's error notification must be sent by e-mail to the respective current support e-mail address or via the support request form on the website. The message must contain a precise description of the error and list any error messages of the Software.

5.5 Volume Graphics shall decide on the time and manner of error handling at its reasonable discretion, taking into account the nature and severity of the error and the impact of the error on Licensee's business operations.

Error handling may in particular be performed by the following remedial actions:

- > The provision of new versions of the Software. These may be provided in form of so-called service packs or patches, which are to be installed in addition to the Software, or in form of full versions, which require a new installation of the Software (in each case individually and together "**Patches**"). Patches will be provided via the Maintenance Account.
- > The remote maintenance via remote access to Licensee's systems so that changes can be made to the software itself or to its settings.
- > The identification of workarounds by means of which the error can be circumvented.

5.6 Volume Graphics does not guarantee that an error will be cured at all or within a certain period of time. Volume Graphics is not obligated to ensure a certain availability of the Software.

5.7 Licensee shall provide reasonable assistance to Volume Graphics in error handling. Upon request, Licensee shall provide all data and documents and give information on all information required by Volume Graphics for error analysis and error correction. This includes in particular error reports, logs, screenshots, test data as well as information on the system environment and the software license.

Furthermore, Licensee shall grant Volume Graphics remote access to the software and access to its own systems if this appears necessary in the context of error analysis and error correction. For this purpose, Licensee shall maintain the necessary hardware and system environment at its own expense and shall establish the necessary connection to the public data network.

If Licensee fails to comply with these obligations to cooperate, Volume Graphics shall not be responsible for any delayed or unfeasible error handling.

5.8 If, in the course of processing an error notification, it turns out that the reported error does not actually exist, Volume Graphics is entitled to demand separate reimbursement for the resulting expenditure in accordance with the price list valid at the time the service was provided.

## **6. Right of use**

6.1 Licensee's right to use any Updates, Patches, or other data and information provided by Volume Graphics under the Maintenance Agreement, including associated user documentation and any dongles, shall conform with the right to use the Software to be maintained and shall be granted to the Licensee subject to a condition precedent until full payment of the maintenance fee owed by Licensee.

6.2 License files provided by Volume Graphics under the Maintenance Agreement may—without Licensee having any claim thereto—be valid for several versions of the Software to facilitate the switch to a new version (at most, however, for versions of the current maintenance period as well as previous versions of the current and the preceding calendar year ). Software versions replaced by Maintenance Services may no longer be used by Licensee as soon as the respective current license file no longer supports their use; Section B.3.4 sentences 2 and 3 shall apply mutatis mutandis.

## **7. Term, termination, performance period**

7.1 Unless otherwise agreed, the Maintenance Agreement shall become effective upon the acceptance of the maintenance agreement offer submitted by Volume Graphics and shall have a minimum term of 12 months, calculated from the first day of the month following the conclusion of the Maintenance Agreement.

7.2 If the Maintenance Agreement incorporates an Auto-Renewal Agreement, the Maintenance Agreement shall be renewed after expiry of the minimum term for a further 12 months in each case, unless it is terminated by either party with three (3) months' notice to the end of a contractual year. If the Maintenance Agreement has a fixed term, the Maintenance Agreement ends with the expiry of the agreed term unless earlier terminated as provided in this Section 7.

7.3 The right to extraordinary termination for material cause as well as the rights of termination according to sections D.2.2 and C.9.1 shall remain unaffected. A material cause shall be deemed to exist in particular (i) if Licensee does not pay any applicable fees when due, or (ii) if Licensee or an Authorized User violates these Terms or any rights of Volume Graphics, including but not limited to if Licensee or an Authorized User uses the software beyond the extent permitted or violates the confidentiality obligations pursuant to section D.3.4 and D.3.5.

7.4 Any notice of termination must be sent by mail or by e-mail.

7.5 If Licensee has lawfully acquired several licenses for the Software and has concluded a Maintenance Agreement for the Software under these licenses, Licensee may only terminate the maintenance uniformly for the Software as a whole. The termination of the maintenance of the Software for one of the licenses only is not permitted.

7.6 Maintenance Agreements that are not concluded at the time the license for the Software to be maintained has been purchased or that are not concluded before the expiry of a currently existing maintenance agreement for its immediate follow-up period shall enter into force retroactively to the invoice date of the software license purchased by Licensee or to the day following the end of the term of the last maintenance agreement, as applicable. In this context, the date of conclusion of the contract in section C.7.1 shall be replaced by the effective date; otherwise, sections C.7.1 to C.7.4 shall remain unaffected.

If the maintenance-free period of a license is four (4) months or longer, the retroactive conclusion of a maintenance agreement pursuant to sentences 1 and 2 of this section C.7.6 shall not be considered if a new release version of the Software has been published in the meantime. In this case, an Upgrade of the Software to the latest release version is required before Licensee is able to conclude a maintenance agreement for the Software.

7.7 Maintenance services can only be claimed by Licensee during the term of the Maintenance Agreement. Volume Graphics is therefore only obligated to process error messages and technical enquiries from Licensee if they are received by Volume Graphics support within the term of the Maintenance Agreement. Likewise, Licensee can only obtain Updates and Patches during the term of the Maintenance Agreement. If Licensee has not downloaded the provided software versions during the term of the Maintenance Agreement or has not applied for the associated license key during this period, Volume Graphics shall not be obligated to provide the relevant software version and/or the associated license key.

## **8. Remuneration**

Licensee shall pay a maintenance fee for the maintenance services pursuant to Part C.) of these Terms. The maintenance fee is a flat fee (i) that takes into account the fact that Licensee is entitled to have defects remedied free of charge during the contractual warranty period, and (ii) that covers all maintenance services, irrespective of whether and how often Licensee makes use of them. It will be invoiced and payable in advance for one contractual year at a time.

## **9. Product discontinuation**

9.1 Volume Graphics is entitled to discontinue software products in whole or in part and to discontinue their technical support within the framework of its general product policy. If Volume Graphics discontinues the distribution of individual modules of the software to be maintained or the distribution of the software to be maintained in its specific configuration as a whole, Volume Graphics shall be entitled to terminate the Maintenance Agreement prematurely with three (3) months' notice to Licensee.

If Licensee has already paid the maintenance fee for the entire contract year in advance, Licensee will be reimbursed by Volume Graphics on a pro rata basis for the remaining maintenance period of the prematurely terminated contract year.

9.2 Insignificant changes to the Software or individual modules of the Software, in particular the addition, restriction or discontinuation of individual functions, are not covered by Section C.9.1. The existence of the Maintenance Agreement shall remain unaffected by this.

## **10. Changes to the scope of licenses and maintenance**

10.1 Section B.7.1 of the License Terms shall apply to a License Purchase; Section B.7.2 to a License Extension. For the termination of maintenance in the event that the Licensee has several licenses under maintenance, Section C.7.5 of these Maintenance Conditions applies. The maintenance of only a part of the licenses purchased by Licensee for software products for which Volume Graphics offers maintenance services generally on the market is not possible.

10.2 If Licensee does not acquire additional licenses or a license extension for the software that is subject to the Maintenance Agreement directly from Volume Graphics but from a company that is affiliated with Volume Graphics under company law, from an authorized sales partner or from any other third party, Licensee must notify Volume Graphics thereof immediately in writing.

## **11. Volume Graphics as subcontractor**

11.1 If Licensee enters into an update/service agreement in respect of the Software with an authorized distributor of Volume Graphics or any other third party, the respective contractual partner of Licensee shall be solely responsible for the maintenance. Insofar as the contractual partner does not provide maintenance services (such as technical support) in whole or in part itself but uses Volume Graphics or another company of the Volume Graphics Group locally responsible for Licensee (hereinafter each individually referred to as "**VG Company**" and collectively referred to as the "**VG Companies**"), the respective VG Company provides the maintenance services to Licensee as a subcontractor of the respective contractual partner.

The VG Companies are not responsible for the contractual promises of Licensee's contractual partner. This applies in particular to maintenance services that the VG Companies do not generally offer on the market themselves with regard to the Software. Within the scope of the maintenance services to be provided, the respective VG Company shall not provide any services beyond those set forth in this Part C.) of these Terms, in particular it shall not grant any rights of use to the software to be maintained beyond those set forth in Section C.6 of these Terms.

11.2 A current overview of the companies of Volume Graphics Group can be found on the Volume Graphics website at [www.volumegraphics.com/](http://www.volumegraphics.com/) under the heading Company/Contact.

## D.) General Terms for Licenses and Software Maintenance

### 1. Payment terms

1.1 Unless otherwise agreed or provided for herein, all fees and other amounts payable by Licensee under this agreement—whether license, maintenance, or other fees—shall be determined in accordance with Volume Graphics' price list valid at the time.

1.2 Unless expressly stated otherwise, all fees and other amounts payable are exclusive of taxes and similar assessments. Licensee is responsible for all sales, use, and excise taxes and all other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on Volume Graphics' net income.

1.3 Unless otherwise agreed, payments are due immediately upon receipt of the invoice without deduction and are payable within 30 days. Invoices shall be issued in writing by letter or electronically at the discretion of Volume Graphics.

1.4 Volume Graphics is not obligated to implement special invoicing procedures such as web invoicing procedures, e-invoicing procedures, and similar programs at the request of Licensee. If Volume Graphics agrees to such specifications of Licensee, Licensee shall reimburse the administrative expenses for this special service for each invoice in the form of a flat-rate surcharge of 5% on the net invoice amount, but not exceeding a maximum amount of USD 1,000 per invoice.

1.5 Payments must be made by bank transfer to Volume Graphics' bank account as shown on the invoice. Credit cards or any type of charge cards are not accepted. Any bank charges for transfers from abroad are to be borne by the Licensee.

1.6 Licensee shall pay all fees and other amounts payable due on or before the date due without set-off or deduction. All late payments will bear interest at the less of 1.5% per month or the highest rate permitted under applicable law, plus all attorney's fees and other costs Volume Graphics incurs in collecting any amounts due from Licensee. If Licensee fails to pay any amount as and when due under these Terms, in addition to all other remedies available under these Terms or at law or in equity. Licensor may suspend the provision of the Software until Licensee has paid in full.

### 2. Price adjustment

2.1 Volume Graphics is entitled to adjust the periodic fees to be paid at its reasonable discretion. Adjustments may include changes due to wage or material costs.

2.2 Volume Graphics will inform Licensee in writing (e.g., by email) of price adjustments at least six (6) weeks prior to such adjustments becoming effective. The adjusted prices shall apply to license periods or maintenance agreement years that commence with or after entry into force of a price adjustment. A price increase shall be deemed to have been agreed if Licensee does not terminate the license subscription or the maintenance agreement within a period of 30 days from receipt of the notification towards the end of the current license period or contract year.

### **3. Special obligations of Licensee, confidentiality, liability of Licensee, contractual penalty**

3.1 Licensee shall protect itself adequately against data loss and shall back up the entire data stock at intervals appropriate to the application, but at least once a day, to ensure that the data can be restored with reasonable effort.

3.2 Licensee shall observe the instructions given by Volume Graphics for the installation of the Software or in the context of error correction measures, software upgrades, or maintenance services when using the Software.

3.3 Licensee must, install the Software in a separate test environment prior to its productive use and test it for functionality and usability for the purposes intended by Licensee, to reduce the risk of data loss or operational disruptions. This shall also apply to software versions which are provided within the scope of subsequent performance, error handling within the scope of the maintenance contract, or an update, upgrade, or patch.

3.4 Licensee shall treat all confidential information of Volume Graphics or a company affiliated with Volume Graphics that Licensee obtains knowledge of in connection with the performance of the agreements made between Volume Graphics and Licensee as confidential during the entire period of use of the Software and after discontinuation of its use, shall not make it accessible to any third party, and shall use it exclusively for the purpose of using the Software in accordance with the agreements.

This shall apply in particular to all confidential information about the Software, about methods and procedures used to create it, to documents and data carriers pertaining to the Software, their contents and associated correspondence as well as to all information obtained from a decompilation permitted by law.

Exempt from this obligation is information that can be proven (i) to have been lawfully known to Licensee without any obligation to confidentiality or restriction of use prior to notification by Volume Graphics, (ii) to have become known to Licensee at a later date from a third party without any obligation to confidentiality or restriction of use, without violation of any confidentiality agreement, legal requirement, or governmental order, (iii) to have already become public knowledge or generally accessible prior to being disclosed by Volume Graphics, or (iv) to have become public knowledge or generally accessible at a later date without this being due to a breach of this confidentiality obligation by Licensee or its Authorized Users.

Licensee shall oblige the Authorized Users to maintain confidentiality accordingly—even beyond the duration of existing employee or other cooperation agreements, unless they are already obligated thereto by law or otherwise on a contractual basis.

3.5 Licensee shall take the necessary precautions to prevent unauthorized access or access by third parties to the Software and the confidential Information as defined in Section D.3.4.

3.6 Licensee shall ensure and be liable that Authorized Users comply with the provisions of the License Agreement and/or the Maintenance Agreement and these Terms.

3.7 Licensee shall be liable to Volume Graphics for all damages resulting from the violation of its obligations from the License Agreement or the Maintenance Agreement or these Terms and shall indemnify Volume Graphics against all claims of third parties arising therefrom, irrespective of the legal grounds.

3.8 If Licensee or an Authorized User exceeds the restrictions imposed when using the Software, Licensee shall pay liquidated damages for each case of infringement to be determined by Volume Graphics at its reasonable discretion. The assertion of further claims and rights, in particular for damages, injunctive relief, or rescission shall remain unaffected by this. The contractual penalty shall be credited to any compensation for damages that has to be paid.

### **4. Time of performance, place of performance**

4.1 Insofar as deliveries and/or services of Volume Graphics require regulatory approval, in particular but not limited to an export license, respective agreements with Licensee shall only be concluded subject to a condition precedent of the granting of the regulatory approval. Licensee shall provide all declarations and evidence required for the regulatory

approval, in particular end-use declarations and/or import certificates. Licensee shall be responsible for obtaining any import license that may be required.

4.2 Information provided by Volume Graphics regarding delivery and performance dates shall not be binding, unless Volume Graphics has designated them as binding in separate written agreement, signed by Volume Graphics.

4.3 Delivery and performance periods shall be extended by the period of time in which Licensee is in default of payment or fails to cooperate as necessary for the performance of the contract in a manner contrary to the terms of the contract—in particular the acts of cooperation pursuant to section C.5.7. In the event that Volume Graphics is prevented from performing the contract due to circumstances for which Volume Graphics is not responsible, the performance period shall be extended to a reasonable start-up period after the obstacle has ceased to exist.

4.4 Reminders and any setting of deadlines shall be sent in writing, by fax or by e-mail.

4.5 The place of performance is the registered office of Volume Graphics.

## 5. Warranties

5.1 Volume Graphics warrants that for a period of 90 days after the delivery of the Software (the “**Warranty Period**”) (a) the Software is materially free from defects that would void or substantially reduce the value of the Software; and (b) that the Software will function and produce results substantially in accordance with any provided documentation.

5.2 Licensee must inspect and test all Software for evident defects and nonconformities upon delivery and provide written notice of any evident defect or nonconformity including a brief description of the nature of the defect or nonconformity within 10 days upon delivery, otherwise the warranty shall expire with regard to such evident defects or nonconformities. If during the Warranty Period a defect or nonconformity that was not identifiable during the inspection and testing becomes apparent later on, such defect or nonconformity must be reported in writing including a brief description of the nature of the defect or nonconformity within 10 days after discovery; otherwise, the warranty shall expire with regard to such non-evident defects or nonconformities as well.

5.3 If Licensee has notified Volume Graphics in compliance with section 5.2 above, Volume Graphics shall, at no additional charge, correct any defects and nonconformities and place or maintain the Software in compliance with the standards set forth herein. Volume Graphics will use commercially reasonable efforts to remedy any defects and nonconformities within a reasonable period of time after receipt of the written notification describing such defects and nonconformities in detail.

5.4 If Volume Graphics is unable to correct any defective or non-conforming Software, Volume Graphics shall at its own discretion either (a) promptly replace such Software with another Volume Graphics software that is substantially similar without charge to Licensee (b) terminate this license and promptly pay to Licensee the full license fee minus 1.5% per day of use before the defect was reported to Volume Graphics. All replacement software under this Section shall comply with the warranty provisions of these Terms for a period of 90 days from delivery.

5.5 The foregoing warranty shall not apply: (a) to any defect or non-conformance of the Software to the extent such defect or nonconformity resulted: (i) from abuse or misapplication of the Software by Licensee; (ii) from customizations or modifications to the Software by Licensee; or (iii) from Licensee’s use of the Software on or in connection with any hardware, data or software not specified by Volume Graphics or expressly authorized by Volume Graphics in writing; or (b) to any defects or nonconformities Volume Graphics is unable to reproduce or reveal after reasonable inquiry. In the event the warranty does not apply, Volume Graphics may, in its sole discretion, charge to Licensee the additional costs incurred in the inspection of the Software.

5.6 The warranties listed in this section D.5.1 – D.5.5 DO NOT apply to any beta software, any software made available for testing or demonstration purposes, or any software for which Volume Graphics does not receive a license fee. ALL SUCH SOFTWARE IS PROVIDED TO LICENSEE ON AN “AS IS” AND “WHERE IS” BASIS AND WITHOUT WARRANTY OF ANY TYPE OR KIND.



5.7 EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, VOLUME GRAPHICS DOES NOT MAKE ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE (INCLUDING BUT NOT LIMITED TO ALL PATCHES, UPDATES, AND MAINTENANCE), DOCUMENTATION, OR OTHERWISE REGARDING THE TERMS. VOLUME GRAPHICS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ABILITY TO USE WITH ANY HARDWARE OR SOFTWARE PRODUCTS AND NON-INFRINGEMENT.

5.8 THE REMEDIES SET FORTH IN THIS SECTION D.5 ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTS IN THE SOFTWARE.

### **5a. Intellectual Property Indemnification**

5a.1 Licensor shall indemnify, defend, and hold harmless Licensee from and against third-party claims arising out of an allegation that the Software or any portion thereof as furnished under this Agreement and used within the scope of the licenses granted to Licensee infringes or misappropriates such third party's valid patent, copyright or trade secret rights; provided that Licensee promptly notifies Volume Graphics of the claim, cooperates with Volume Graphics, and allows Volume Graphics sole authority to control the defense and settlement of such claim.

5a.2 If the Software becomes, or in Volume Graphics' opinion is likely to become, the subject of an infringement claim, Volume Graphics may, at its sole option and expense, either: (i) modify or substitute the Software, or component or part thereof, to make it non-infringing, (ii) obtain the right for Licensee to continue to use the Software, or (iii) terminate these Terms effective immediately upon giving notice to Licensee and promptly pay to Licensee the full license fee minus 1.5% per day of use before the defect was reported to Volume Graphics].

5a.3 Sections 5a.1 and 5a.2 shall not apply to the extent that the alleged infringement arises from: (i) use of the Software in combination with data, software, hardware, equipment or technology not provided by Volume Graphics or authorized by Volume Graphics in writing; (ii) modifications to the Software not made, instructed, or approved by Volume Graphics; (iii) use of any version or portion of the Software that is end of life or other than the most current available version of the Software delivered to Licensee; (iv) Licensee's misuse of the Software; (v) Licensee's use of any information, data, product or service outside the scope of the license or rights granted with respect to the Software; (vi) errors caused by the result of malfunctions in Licensee's equipment or systems; or (vii) failure to comply with any instructions or documentations provided by Volume Graphics.

5a.4 All liability will be limited by section D.6 of these Terms.

### **6. Liability**

6.1 Consequential Damages Waiver. VOLUME GRAPHICS SHALL NOT BE LIABLE TO LICENSEE OR TO ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THESE TERMS, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

6.2 Limitation of Liability. EXCEPT AS OTHERWISE PROVIDED, THE AGGREGATE LIABILITY OF VOLUME GRAPHICS, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, SHALL IN NO EVENT EXCEED:

(I) IN CASE OF PERPETUAL LICENSES, THE LICENSE FEE PAID BY LICENSEE FOR THE LICENSED SOFTWARE; AND (II) IN CASE OF TERM BASED LICENSES AND MAINTENANCE AGREEMENTS, THE GREATER OF (a) ONE HUNDRED US DOLLARS (\$100.00 USD) OR (b) THE AMOUNTS PAID BY LICENSEE DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM FIRST AROSE. IF 12 MONTHS HAVE NOT ELAPSED BETWEEN THE EFFECTIVE DATE AND THE DATE ON WHICH THE CLAIM FIRST AROSE, VOLUME

GRAPHICS' AGGREGATE LIABILITY WILL BE LIMITED TO 12 TIMES THE AVERAGE MONTHLY FEE PAID DURING THE ELAPSED PORTION OF THE TERM.

6.3 Limitation of Remedies. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THESE TERMS OR ANY LIMITED REMEDY HEREUNDER.

6.4 Time Period. CLAIMS UNDER THIS SECTION D.6 MUST BE MADE WITHIN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO THE CLAIM. IF SUCH LIMITATION PERIOD IS PROHIBITED BY LAW IN THE JURISDICTION WHERE THE CLAIM AROSE, THE CLAIM MUST BE MADE WITHIN THE STATUTORY LIMITATION PERIOD.

#### **6a. US government use**

If Licensee is a department, branch agency or instrumentality of the U.S. Government or is licensing the Software on behalf of the U.S. Government ("**Government**"), the following provisions apply to these Terms. If the Software is supplied to the Department of Defense ("**DoD**"), it is classified as "Commercial Computer Software" under clause 252.227-7014 of the DoD Supplement to the Federal Acquisition Regulations ("**DFARS**") (or any successor regulations) and the Government is acquiring only the license rights granted herein (the license rights customarily provided to non-Government users). If the Software is supplied to any department, branch agency or instrumentality of the U.S. Government other than the DoD, it is classified as "Restricted Computer Software" and the Government's rights in the Software are defined in clause 52.227-19 of the Federal Acquisition Regulations ("**FAR**") (or any successor regulations) or, in the case of NASA, in clause 18.52.227-86 of the NASA Supplement to the FAR (or any successor regulations).

#### **7. Audit**

Volume Graphics has a legitimate interest in preventing software piracy and is therefore entitled to verify the proper use of the Software, in particular whether the Licensee is using the Software qualitatively and quantitatively within the scope of the software licenses Licensee has acquired ("**Audit**"). In the case of VGINLINE dongle licenses, this also includes checking whether Licensee's VGINLINE Installation in use matches with the specific VGINLINE Installation for which the VGINLINE Dongle License was originally acquired. To this end, Licensee shall provide Volume Graphics with all requested information, allow inspection of relevant documents and records, and permit an audit of the hardware and software environment in use. Volume Graphics may carry out the audit on-site on the premises of Licensee during Licensee's usual business hours or have it carried out by third parties bound to confidentiality. Volume Graphics will use commercially reasonable efforts to ensure that the business operations are disrupted as little as possible by the on-site activity.

Each party shall bear the costs of an audit incurred by it. This shall not affect any claims of Volume Graphics due to a violation of the restrictions of use of a software license by Licensee, which is determined in the course of such an audit.

#### **8. Feedback**

If Licensee or an Authorized User of Licensee provides Volume Graphics with recommendations or suggestions to Volume Graphics concerning the Software or its documentation, for example, suggestions for improvement with respect to existing modules or individual functions or ideas and suggestions for future developments of the Software, which may also include suggestions with respect to possible synergy effects to be achieved with other products and services of other companies of the Hexagon Group ("**Feedback**"), Volume Graphics as well as the companies of the Hexagon Group associated with it under company law may freely use such Feedback. By submitting the Feedback, Licensee and/or its Authorized Users irrevocably grant Volume Graphics a perpetual, worldwide non-exclusive, royalty-free, sub-licensable, and transferable right that is unrestricted in subject matter to modify, distribute, or otherwise use such Feedback in any manner. However, Volume Graphics is under no obligation to use any Feedback.

#### **9. Export provisions**

9.1 Licensee represents and warrants (i) that Licensee is not located or domiciled in any country to which an export of the Software or of the Maintenance Services to be rendered by Volume Graphics is generally prohibited under the applicable laws in respect of economic and trade sanctions or the applicable export control laws and regulations,

including but not limited to the relevant laws of the Federal Republic of Germany, the European Union, the United Kingdom or the United States of America (hereinafter collectively referred to as "**Export Regulations**") and (ii) that Volume Graphics is not prohibited from delivering the Software to Licensee or from providing Maintenance Services to Licensee under the Export Regulations or a sanction imposed on the basis thereof.

If, at a later point in time during an ongoing contractual relationship, an Export Regulation is issued or a sanction is imposed under the Export Regulations that prohibits Volume Graphics from delivering the Software to Licensee or from providing Maintenance Services to Licensee, Licensee must inform Volume Graphics thereof immediately.

9.2 Volume Graphics shall not be obligated to fulfill contracts in violation of Export Regulations. If Volume Graphics determines that the delivery of the Software or the provision of Maintenance Services would violate Export Regulations, Volume Graphics shall be entitled to suspend such delivery and to end the contractual relationship with immediate effect.

9.3 Licensee agrees not to ship, transfer, or export the Software to any country to which an export is prohibited under the Export Regulations or a sanction imposed under the Export Regulations. All rights of Licensee to possess and use the Software shall terminate upon Licensee's breach of this obligation.

9.4 Licensee shall indemnify Volume Graphics upon first demand against all claims asserted by third parties, in particular authorities or organizations, against Volume Graphics or a company affiliated with Volume Graphics under company law due to a violation of the Export Regulations by Licensee, due to an incorrect or incomplete statement by Licensee relevant under export control law or in connection with an incorrect representation or a delayed or omitted notification by Licensee within the meaning of section D.9.1 and shall compensate Volume Graphics for all damages incurred by Volume Graphics or a company affiliated with Volume Graphics under company law in this connection.

## **10. Data protection**

10.1 Volume Graphics shall comply with the data protection regulations, in particular if access is granted to Licensee's business or hardware and software. Volume Graphics shall ensure that its designated agents also comply with these provisions. Volume Graphics does not intend to process or use personal data on behalf of Licensee. A transfer of personal data may only take place in exceptional cases as a secondary consequence of the contractual performance of Volume Graphics.

10.2 Information on the processing of personal data by Volume Graphics can be found on the Volume Graphics website at <https://www.volumegraphics.com/en/fr/privacy.html> (or a successor URL). The privacy notice is retrievable in its current version. Licensee will be informed by e-mail of any significant changes to the data processing.

## **11. Transfer of the agreement**

Neither party may assign or otherwise transfer any applicable agreement between Volume Graphics and Licensee without the prior written consent of the other party; *provided that* Volume Graphics may assign or transfer any applicable agreements between Volume Graphics and Licensee to an affiliate, parent or subsidiary without the consent of Licensee.

## **12. Adaptation of these Terms**

12.1 Volume Graphics may amend or supplement these Terms at any time. Continued use of the license shall be deemed to be Licensee's acceptance of the revised Terms.

12.2 Licensee shall be notified of any amendments or supplements within the meaning of Section D.12.1 no later than six (6) weeks before they come into force by e-mail to the last known e-mail address of the person responsible for the system pursuant to Section C.5.1. The amended or supplemented Terms shall become an integral part of the existing agreement between the parties and shall, upon entry into force, replace the Terms applicable to the agreement up to that point in time.

### **13. Miscellaneous provisions**

13.1 If any provision of these Terms, a License Agreement or a Maintenance Agreement is invalid or unenforceable for any reason and in any jurisdiction, this shall not affect the validity of the remaining provisions. The failure of Volume Graphics to exercise or enforce any contractual right or provision shall not constitute a waiver of such right or provision. The express waiver of any right or remedy in a particular instance will not constitute a waiver of that right or remedy in any other instance. No waiver will be effective unless made in writing and signed by an authorized representative of Volume Graphics.

13.2 These Terms together with the License Agreement or the Maintenance Agreement, as applicable, constitute the final, exclusive, and comprehensive agreement with respect to the Software or the Maintenance Services for the Software and supersedes all prior and contemporaneous agreements between the parties with respect thereto.

13.3 In the event of any inconsistency between these Terms and the terms of any License Agreement or Maintenance Agreement, the terms of the relevant License Agreement or Maintenance Agreement shall prevail over these Terms or Conditions.

13.4 Verbally agreed amendments or supplements to the agreements made between Volume Graphics and Licensee including these Terms are invalid. Agreements made in electronic form shall at least be provided with a simple electronic signature to prove their authenticity (e.g., using DocuSign or AdobeSign).

13.5 Volume Graphics is entitled to have all obligations fulfilled by third parties on behalf of Volume Graphics. If Volume Graphics utilizes any third parties to fulfill its obligations under these Terms or any agreement between the parties, Licensee shall accept the performance rendered as the performance of Volume Graphics.

13.6 The agreements made between Volume Graphics and Licensee including these Terms shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina, without regard to conflict of laws principles. Any and all actions, suits or judicial proceedings upon any claim arising from or relating to these Terms shall be instituted and maintained in the State of North Carolina. The United Nations Convention on Contracts for the International Sale of Goods is expressly and entirely excluded.

13.7 Any and all actions, suits or judicial proceedings upon any claim arising from or relating to these Terms shall be instituted and maintained in the State of North Carolina.

13.8 Each of the parties shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence the full intent and meaning of these Terms.

13.9 The provisions of these Terms that by their nature and context are intended to survive the performance and termination of these Terms shall so survive the completion of performance and termination of these Terms, including the making of any and all payments due hereunder. In particular, and without limitation, the terms set forth in Section D.1, D.3, D.5, D.6, D.8, D.11, and D.13 shall survive the termination of these Terms.

13.10 Except as expressly stated otherwise in these Terms, each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of these Terms and any other agreements incidental to or referred to in these Terms.

13.11 Nothing in these Terms and no action taken by the parties pursuant to these Terms shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture or other co-operative entity.

(Status: June 27, 2022)