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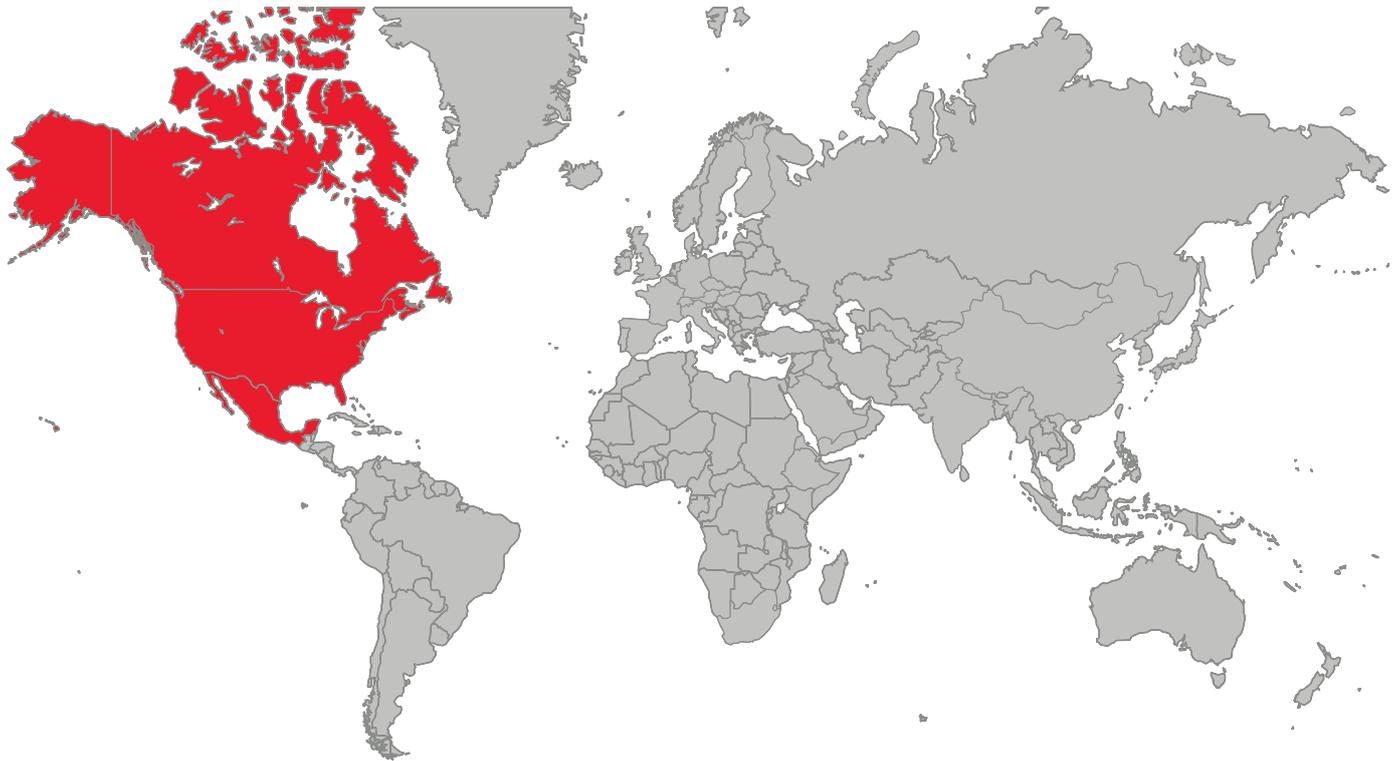
(North America: Canada, USA, Mexico)

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A.) Volume Graphics Software License Terms

1. Scope of application

1.1 Part A of these Terms applies to all existing and future Volume Graphics software products, including any accompanying dongles or license keys provided by Licensor to Licensee for use (collectively, the "**Software**"). The Software contains third-party products of which Licensee was notified prior to conclusion of the contract. Volume Graphics update and maintenance services are subject to Part B of these Terms. Training offers or other customized consulting services by Volume Graphics are subject to separate terms and conditions.

1.2 Part A of these Terms stipulates, in particular, the scope of Licensee's rights of use who has acquired a license to the Software, regardless of whether the license was acquired directly from Volume Graphics, an affiliated company, a distribution partner of Volume Graphics or of a company affiliated with it, separately or together with hardware or OEM products.

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2. Provision of the Software, confirmation of the Terms

2.1 Unless the provision of the Software by delivery of 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. Licensee shall be granted access to the web account for a period of 12 days after the web account has been set up. If an update/service agreement is concluded, this period shall be extended until the end of the term thereof.

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 ON ITS BEHALF. FAILURE TO EXPRESSLY AGREE TO THESE TERMS MAY RESULT IN THE TERMINATION OF THIS LICENSE AND LOSS OF ANY RIGHT TO ACCESS AND USE THE SOFTWARE. LICENSOR SHALL BE ENTITLED TO WITHDRAW FROM THE LICENSE AGREEMENT AND LICENSEE SHALL NOT ACQUIRE ANY RIGHT TO ACCESS AND USE THE SOFTWARE.

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 is purchased pursuant to Clause 4.1 (c), the installation of the Flexera FlexNet License Server on a central network server of Licensee is also required.

3. Services not included in the contract

3.1 Licensor shall not be obliged to install or commission the Software at the Licensee's premises. Further, without a separate update/service agreement, Licensor shall not be obliged to provide maintenance services or technical support with regard to the Software.

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4. Granting of rights of use

4.1 Upon confirmation of these Terms pursuant to Clause 2 and payment of the agreed license fee, Licensor grants Licensee—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**") or a test license ("**Evaluation License**")—the non-exclusive right to access and use the Software, which is transferable only pursuant to Clause 5.1 (b) below, subject to the terms and conditions stated below. This right is granted for an unlimited period, unless otherwise stated in the following terms and conditions.

(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 during 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, Licensee acquires the right with the Dongle License to permit its employees, freelancers, agency workers and temporary workers ("**Employees**") to use the Software with the provided Dongle for which the license key was created in accordance with these Terms.

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 created. A transfer to another dongle is neither possible nor permissible.

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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

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(d) **Evaluation License**: The Evaluation License—in the form of either a Node-locked or a Floating License—grants Licensee a temporary and non-transferable 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 be published.

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4.2 The loss and/or theft of the dongle after the issuance of a license file encoded on this dongle shall mean the loss of the right to use the Software provided for in Clause 4.1 (a). However, Licensee shall have the opportunity to obtain protection against the loss of the dongle including the license file by means of a "**Dongle License Protection**" (either by separate order or within the scope of an update/service agreement concluded or yet to be concluded) if the following conditions are fulfilled:
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(2) In the event that an unlimited Dongle License including the associated dongle for the respective Software has already been issued and transferred to the Licensee prior to ordering the Dongle License Protection, the corresponding dongle must be returned to Licensor prior to sending a new dongle with Dongle License Protection.
(3) All license fees due for the Dongle License as well as the Dongle License Protection (including any concluded update/service agreement) are fully paid to Licensor by Licensee.
If all the aforementioned conditions are fulfilled, Licensee shall receive from Licensor a license file limited to 12 months in addition to the dongle. The Software will notify Licensee 90 days prior to the expiration of the license file so that Licensee can contact Licensor to obtain a new license file, which again will be limited to 12 months, if Licensee wishes to continue the Dongle License Protection option for this dongle license (as the case may be, as part of the update/service agreement). In the event of the loss or theft of the dongle, Licensee, if protected by the Dongle License Protection, shall pay 2% of the gross list price of the individually configured Software for the replacement of the dongle with associated license file per month or part thereof for the period between the notification of the loss of the dongle to Licensor and the expiry of the 12-month period (= validity of the license file).
In the event of multiple loss and/or theft of the dongle during the term of the Dongle License Protection, Licensor reserves the right to request evidence from Licensee that proves the loss and/or theft.

4.3 If the Software is an upgrade or update from a previous version, Licensee must have a valid license for the previous version in order to use the upgrade or update. All upgrades and updates are provided on a license exchange basis only. Licensee agrees that by using the upgrade or update, Licensee waives the right to access and use the previous version.

4.4 Regardless of which license Licensee has acquired, if the Software is provided before payment of the license fee, Licensee shall initially be granted a license limited to eight weeks. After receipt of payment, Licensee shall be granted an indefinite license.

4.5 In the case of a Node-locked License and a Dongle License, the use of the Software via remote access is not permitted; in the case of a Floating License, the use via remote access is only permitted if both the user and the computer are located within the Licensed Territory.

4.6 A user is permitted to start and run several Instances simultaneously on one computer. For the purposes of sentence 1, an "**Instance**" is a program start that can occur several times on one computer. The use of several instances simultaneously on a computer (including evaluation computer) by different users, especially in the case of remote access, is prohibited. Clause 4.5 shall otherwise remain unaffected.

5. General usage restrictions; registration data

5.1 Licensee shall not use the Software in any manner or for any purpose beyond the scope of the license granted in these Terms—regardless of whether the type of use is known or unknown at the time of acquisition of the license. Without limiting the foregoing, and except as otherwise expressly set forth in these Terms, Licensee shall not at any time, directly or indirectly: (a) copy or modify the Software, create derivative works based on the Software, or translate it into other languages, in whole or in part; (b) rent, lease, lend, sell, resell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, including the dongle, license key and associated documentation, in whole or in part; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (d) copy, create derivative works from, edit, adapt or extend the source code of the Software or its documentation in any way, modify the source code of the Software or its documentation, in particular for use on other systems, or translate the source code of the Software or its documentation into other languages, in whole or in part; (e) remove any proprietary notices from the Software; (f) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of Licensor or any other person or entity; (g) 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; (h) upload, email, post, publish or otherwise transmit any material that violates privacy rights, harasses any person, or constitutes unsolicited bulk email; or (i) use the Software in any manner or for any purpose that violates any applicable law or regulation. In particular, any download or other import and re-export of the Software is permitted only in accordance with all applicable laws and regulations, including the laws governing the export of software technology.

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

5.2 Licensee shall provide truthful information when placing an order and during the registration process ("**Registration Data**") and use of the Software. Licensor shall be entitled to process the information contained in the Registration Data in such a way as is necessary to be able to fulfill these Terms and any other agreements related to these Terms. Licensee consents to the storage and use by the Licensor of the e-mail addresses provided in the Registration Data for the purpose of communication within the framework of the contractual relationship. Licensee shall be entitled to revoke such consent; the revocation must be made to Licensor.

6. Time of performance, place of performance

6.1 Information provided by Licensor regarding delivery and performance dates shall not be binding, unless Licensor has designated them as binding in writing.

6.2 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 in the performance of the contract in a manner contrary to the terms of the contract. In the event that Licensor is prevented from performing the contract due to circumstances for which Licensor is not responsible, the performance period shall be extended to a reasonable start-up period after the obstacle has ceased to exist.

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

6.4 The place of performance shall be the registered office of Licensor.

7. Special obligations of Licensee

7.1 Licensee shall back up all data and programs at intervals appropriate to the application, but at least once a day, to ensure that they can be restored with reasonable effort.

7.2 Licensee shall comply with Licensor's instructions regarding any updates, upgrades or other maintenance services.

7.3 Licensee shall take all necessary precautions to prevent unauthorized access to or use of the Software by third parties.

7.4 Licensee shall be liable to Licensor for all damages resulting from any breach of its obligations under these Terms and shall indemnify and hold Licensor harmless from and against any and all third-party claims arising therefrom, regardless of their legal basis.

7.5 If Licensee exceeds the restrictions imposed on Licensee under Clauses 4 and 5 of Part A of these Terms when using the Software, Licensee shall pay liquidated damages for each case of infringement to be determined by Licensor at its reasonable discretion. The assertion of further claims and rights, in particular claims for damages, injunctive relief or rescission, shall remain unaffected by this.

8. Warranties

8.1 Each party hereby represents and warrants to the other party that: (a) it has the right, power, and authority to enter into this agreement and to fulfil the obligations to which it commits herein; and (b) the execution of these Terms by clicking "I Agree" or entering "Y" into the respective programming line will be sufficient to render these Terms as binding upon the Licensee.

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8.3 Licensor warrants that the Software will function substantially in accordance with any documentation and produce results substantially in accordance with any documentation for a period of 90 days after the delivery of the Software (the "**Warranty Period**").

Defects must be reported to Licensor immediately in writing, together with a brief description of the nature of the defect. Licensee must inspect and test all Software for evident defects upon delivery and provide written notice of any evident defect within 10 days upon delivery, otherwise the warranty shall expire with regard to such evident defects.

Licensor will use commercially reasonable efforts to remedy any defects within a reasonable period of time after receipt of the written notification. If during the Warranty Period, the Software is found to contain defects and Licensee has notified Licensor accordingly with a brief description of the defect, Licensor shall, at no additional charge, correct any defects and nonconformities and place or maintain the Software in compliance with the standards set forth herein.

If Licensor is unable to correct any defective or non-conforming Software, Licensor shall at its own discretion either (a) promptly replace such Software 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 Licensor. All replacement Software shall comply with the warranty provisions of these Terms for a period of 90 days from installation.

The foregoing warranty shall not apply to any failure of the Software to the extent such failure resulted from abuse or misapplication of the Software by Licensee or to any defects the Licensor is unable to reproduce or reveal after reasonable inquiry. In the event the warranty does not apply, the Licensor may, in its sole discretion, charge to Licensee the additional costs incurred in the inspection of the Software.

8.4 Licensor warrants that (a) it has the right to grant Licensee the right to access and use the Software; (d) it shall provide the Software and any related services in a professional, workmanlike manner; and (c) it has sufficient legal rights in and to any third-party software necessary to perform under these Terms.

8.5 The warranties in Clause 8.3 and Clause 8.4 above do not apply, whether or not in violation of these Terms, if Licensee (i) uses the Software on or in connection with any software not specified by Licensor or expressly authorized by Licensor in writing; (ii) modifies or damages the Software; or (iii) misuses the Software, including any use of the Software other than as specified in any documentation or expressly authorized by Licensor in writing.

8.6 Licensor does not guarantee any possibility of use or application in connection with other products, in particular software and hardware products. Such investments by Licensee shall be made solely at Licensee's risk.

8.7 The warranties listed in this Clause 8 DO NOT apply to any beta software, any software made available for testing or demonstration purposes, any temporary software modules or any software for which Licensee does not receive a license fee.

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In the case of a temporary license, Licensee's right to use the Software shall expire upon expiry of the agreed license period. At the request of Licensor, Licensee shall be obliged to delete or destroy all copies of the Software under Licensee's control, in particular including all license keys, and to return dongles to Licensor at its place of business.

10.2 Notwithstanding any term in these Terms or in any other agreement or document signed between the parties, Licensor may terminate any service provided to Licensee if Licensor is discontinuing or discontinues any such service, at any time by giving not less than fourteen (14) days' written notice to Licensee and stating its reason for the termination.

10. Miscellaneous

The General Provisions pursuant to Part C shall apply and are incorporated with this Part A into the Terms.

B.) Volume Graphics Update/Maintenance Terms and Conditions

If an update/service agreement is concluded with respect to the Software (the "**Update Agreement**"), the following provisions shall apply to the update and maintenance services regardless of whether the Licensee has been granted the right to use the Software by Volume Graphics, by any of its affiliates or by a distribution partner or other third parties:

1. Subject matter of the Update Agreement

1.1 Licensor shall provide the following services within the framework of an Update Agreement:
> Provision of new versions of the Software specified in the Update Agreement (if available within the Update Agreement term)
> Priority in the correction of reproducible Software errors
> Priority for technical Software support

1.2 New versions pursuant to Clause 1.1 shall mean officially announced service packs ("**Updates**") and major releases ("**Upgrades**") of the Software, as well as unscheduled new Software versions resulting from troubleshooting.

1.3 The Software shall be made available by download via a web account on the Volume Graphics web server ("**Update and Service Account**"). The Update and Service Account shall be set up for Licensee after conclusion of the Update Agreement for the term of the Update Agreement.

2. Service provider

Should the Update Agreement not have been concluded with Volume Graphics (either directly or indirectly via a distribution partner representing Volume Graphics), the services owed under the Update Agreement shall nevertheless be provided by Volume Graphics—in this case as a subcontractor. The data of Licensee necessary for the performance of the owed services—including personal data—must therefore be forwarded to Volume Graphics by Licensee's contractual partner. Notwithstanding the above, Licensee's contractual partner may provide part of the maintenance services to be provided (such as 1st level support) itself.

3. Scope of services

3.1 As holder of an Update Agreement, Licensee shall be provided an Update and Service Account. Licensee shall have access to this Update and Service Account via Licensor's website.

3.2 All new versions of the Software issued during the contract term of the Update Agreement shall be made available to Licensee by download via the Update and Service Account at no additional charge. Licensor shall not owe the installation or commissioning of a new Software version.

3.3 The Update Agreement shall further include the correction of errors in the Software. Should Licensee discover a Software error and notify Licensor of such error in a manner reproducible for Licensor, this error shall be corrected by Licensor with commercially reasonable priority. For this purpose, Licensee shall provide Licensor, at Licensor's request, with error reports and other data and protocols suitable for analyzing the error. If the error correction results in a corrected version of the Software, such version shall be made available as an update version to all holders of an Update Agreement via their Update and Service Accounts. The availability of such a version shall be communicated to the holders of an Update Agreement by electronic means.

3.4 Technical inquiries from Licensee shall be given the highest priority.

4. Confirmation of the Volume Graphics General Software License and Update/Maintenance Terms and Conditions

Licensee must confirm expressly the validity of the Volume Graphics General Software License and Update/Maintenance Terms and Conditions when logging into the personal web account and/or when installing the new version of the Software, even if Licensee engages third parties to perform this. If Licensee does not confirm this, Licensor shall be entitled to withdraw from the Update Agreement and Licensee shall not acquire any right to access and use any new version of the Software provided under this Update Agreement.

5. Contractual Software versions

5.1 An Update Agreement may generally only be concluded for the latest upgrade version of the Software. With the availability of a more current upgrade version than the one previously used by Licensee, an Update Agreement for this Software can therefore only be purchased together with a Software upgrade—except in the case of Clause 5.3.

5.2 Update Agreements which are not ordered at the same time as the purchase of the Software specified in the Update Agreement must be concluded retroactively as of the invoice date of the Software purchased by Licensee or—if Licensee has already concluded an Update Agreement for the Software at an earlier point in time—retroactively as of the day after the end of the term of the last Update Agreement.

5.3 Notwithstanding Clause 5.1, Licensee shall be entitled, despite the publication of a newer upgrade version of the Software in the meantime, to conclude the Update Agreement retroactively pursuant to Clause 5.2 for the purchased Software version and to receive the newer upgrade version of the Software within the scope of the Update Agreement if the period between the date of invoice of the Software purchased by Licensee or—if Licensee has already entered into an Update Agreement for the Software at an earlier date—between the end of the term of the last Update Agreement and the order of the Update Agreement is less than four (4) months.

6. Performance period

6.1 Licensee's claim to priority troubleshooting pursuant to Clause 3.3 shall only exist for the duration of the Update Agreement. Error reports and technical inquiries of Licensee therefore shall only have priority if they are received by Licensor's support team within the term of the Update Agreement.

6.2 Updates and upgrades may also only be obtained by Licensee during the term of the Update Agreement. If Licensee has not downloaded the provided Software versions during the term of the Update Agreement or has not requested for the associated license key during this period, Licensor shall no longer be obliged to provide the respective Software version and/or the associated license key. Licensee shall not be entitled to a refund of any license or update and service fees paid.

7. Term

7.1 Unless otherwise agreed, the term of an Update Agreement shall be one (1) year from the date of invoice. The term of an Update Agreement shall not be automatically extended; a new Update Agreement must be concluded for each subsequent period.

7.2 Notwithstanding any term in the Update Agreement or in any other agreement or document signed between the parties, Licensor may terminate any service provided to Licensee if Licensor is discontinuing or discontinues any such service, at any time by giving not less than fourteen (14) days' written notice to Licensee and stating its reason(s) for the termination.

8. Miscellaneous

The General Provisions pursuant to Part C shall apply and are incorporated with this Part B into the Terms.

C.) General Provisions

The General Provisions of this Part C shall apply to all license agreements and Update Agreements, supplementing the provisions of Part A and/or Part B of these Terms and Conditions, and are hereby incorporated into the Terms.

1. Payment terms

1.1 The right to access and use the Software and/or to update and maintenance services are conditioned upon payment of all fees by Licensee. Licensor shall pay all fees 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 Licensor 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 pursuant to the license agreement and/or the performance of services pursuant to the Update Agreement until Licensee has paid in full.

1.2 All fees and other amounts payable by Licensee under these Terms 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 Licensor's net income. Unless otherwise agreed, the fees shall be determined in accordance with Licensor's price list valid at the time the Licensee agrees to the Terms.

1.3 Unless otherwise agreed, any fees shall be due immediately upon receipt of the invoice and without deduction and payable within 30 days. Invoices shall be issued in writing by letter or by e-mail (PDF). Special invoicing procedures (such as web invoicing) shall only be possible with the express consent of Licensor and will incur a charge of 5% of the invoiced amount, up to USD 1,000. Credit cards or any kind of charge cards are not accepted.

2. Limitation of Liability

2.1 Consequential Damages Waiver. LICENSOR 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.

2.2 Limitation of Liability. EXCEPT AS OTHERWISE PROVIDED, THE AGGREGATE LIABILITY OF LICENSOR, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, SHALL IN NO EVENT EXCEED: (I) IF THE LICENSED SOFTWARE IS LICENSED FROM VOLUME GRAPHICS DIRECTLY, THE LICENSE FEE PAID BY LICENSEE TO VOLUME GRAPHICS FOR THE LICENSED SOFTWARE, (II) IF THE SOFTWARE IS LICENSED FROM A COMPANY AFFILIATED WITH VOLUME GRAPHICS, THE LICENSE FEE PAID BY LICENSEE TO THE AFFILIATED COMPANY FOR THE LICENSED SOFTWARE, OR (III) IF THE LICENSED SOFTWARE IS LICENSED THROUGH AN AUTHORIZED SALES PARTNER OF VOLUME GRAPHICS OR OF ANY OF ITS AFFILIATES THE LICENSE FEE PAID BY LICENSEE TO THE AUTHORIZED SALES PARTNER, AS APPLICABLE.

2.3 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.

3. Export regulations

3.1 Licensee represents and warrants that it is not located or domiciled in any country for which an embargo or other relevant trade restriction has been imposed under the export regulations of the Federal Republic of Germany, the European Union or the United States of America (hereinafter collectively referred to as "**Export Regulations**") and that it is not prohibited under the Export Regulations from receiving the Software and/or update and maintenance services with respect to the Software. If Licensor determines that, contrary to Licensee's representation, the licensing of the Software and/or the provi-

sion of update and maintenance services is subject to a sanction under the Export Regulations, Licensor shall be entitled to rescind these Terms.

3.2 Licensee agrees not to ship, transfer or export the Software to any country to which export is prohibited by the export regulations of the country in which Licensee is domiciled. All Licensee's rights to own and use the Software shall terminate immediately if Licensee fails to comply with this obligation.

3.3 Licensee shall bear sole responsibility for compliance with any and all relevant export regulations applicable to it and shall accordingly defend, indemnify and hold harmless Licensor for any violation of any such export regulations either by itself, its affiliates or its agents.

4. Confidential Information

4.1 In connection with these Terms, the Licensor may disclose or make available Confidential Information to the Licensee. "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that at the time of disclosure either (a) is marked as being "Confidential" or "Proprietary", (b) is otherwise reasonably identifiable as the confidential or proprietary information, or (c) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information, including all types of proprietary business or technical information, including but not limited to data, know-how, formulas, algorithms, processes, designs, drawings, schematics, plans, strategies, specifications, requirements, standards and documentation, reports, pricing, customer lists, market, marketing or demographic information, trade secrets, research, analyses, inventions, ideas and other types of nonpublic information, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. "**Confidential Information**" does not include information that is: (a) in the public domain other than due to a breach by Licensee or any other person or entity of a contractual commitment or other duty to the Licensor; (b) known to the Licensee prior to its receipt from the Licensor or obtained by the Licensee outside the scope of these Terms from a third party that has no obligation of confidentiality to the Licensor, in each case without breaching these Terms; (c) independently developed by the Licensee without use of or reference to the Confidential Information of the Licensor, provided that such independent development is contemporaneously documented in writing; or (d) disclosed by Licensee with the Licensor's prior written approval.

4.2 As a condition to being provided with any disclosure of or access to Confidential Information, the Licensee shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with these Terms; (b) except as may be permitted under this Clause 4, not disclose or permit access to Confidential Information other than to its representatives, officer, directors, or employees who need to know such Confidential Information for purposes of the Licensee's exercise of its rights or performance of its obligations under and in accordance with these Terms and (c) are bound by equivalent confidentiality commitments; (d) hold in strict confidence all Confidential Information of the Licensor using the same safeguards as it uses to protect its own Confidential Information of comparable value or sensitivity, but in any event safeguards that meet or exceed a commercially reasonable degree of care; (e) not transfer, display or otherwise disclose or make available the Licensor's Confidential Information to any third party, unless otherwise permitted under these Terms; and (f) promptly notify the Licensor of any unauthorized use or disclosure of Confidential Information and take all reasonable efforts to prevent further unauthorized use or disclosure.

4.3 The Licensee may disclose the Licensor's Confidential Information in response to a valid court order, law, rule, regulation (including any securities exchange regulation), or other governmental action, provided that, to the extent permitted by law, (a) the Licensor is notified in writing reasonably in advance of the disclosure of the information, and (b) the Licensee assists the Licensor in any lawful attempt by the other to limit or prevent the disclosure of the Licensor's Confidential Information.

4.4 If Licensee discovers or is notified of a breach of a potential breach of the Licensor's Confidential Information, the Licensee shall (a) promptly notify the Licensor of such breach or potential breach (unless prohibited by court order or other legal requirement), (b) investigate and use commercially reasonable efforts to remediate the effects of such breach or potential breach, and (c) update its security practices in a manner designed to avoid recurrence of such breach or potential breach. Licensor (in addition to any legal or other remedies available to such party) may seek injunctive or other equitable relief to prevent or remedy a breach or threatened breach of this Clause 4.

5. Feedback

If Licensee or any of its employees or contractors sends or transmits any communications or materials to Licensor by mail, email, telephone, or otherwise, suggesting or recommending changes to the Software or documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions or the like ("**Feedback**"), Licensor is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such feedback. Licensee hereby assigns to Licensor on Licensee's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Licensor is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Licensor is not required to use any Feedback.

6. Miscellaneous

6.1 If any provision of these Terms is invalid or unenforceable for any reason and in any jurisdiction, this shall not affect the validity of the remaining provisions. Licensor's failure to exercise or enforce any right or provision of these Terms 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 Licensor.

6.2 These Terms, consisting of Part A, B, and C, constitute the final, exclusive and comprehensive agreement in respect of the subject matter thereof and supersede all prior and contemporaneous agreements, terms, understandings, usage of trade, or course of dealing between the parties, whether written or oral.

6.3 These Terms may only be modified by a written agreement, signed by both parties. Any of Licensee's general terms and conditions are hereby objected to. They shall not be recognized even if Licensor does not expressly object to them again after receipt.

6.4 Licensor may assign these Terms and its rights or obligations hereunder, in whole in part, including the use of third-party subcontractors. These Terms shall be binding upon, and inure to the benefit of the parties and their legal representatives, successors and permitted assigns.

6.5 Except as expressly provided herein, all rights and remedies will be cumulative and not exclusive of any other rights or remedies at law or in equity or otherwise.

6.6 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. The United Nations Convention on Contracts for the International Sale of Goods is expressly and entirely excluded. 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.

6.7 All notices, requests, consents, claims, demands, waivers and other communications ("**Notices**") hereunder must be in writing and addressed to Licensor at the address provided in the introductory part of these Terms and Conditions above or to Licensee at the address provided in the purchase orders (or to such other address as may be designated by the party giving notice from time to time in accordance with this Section). All notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt request, postage pre-paid). Except as otherwise provided in these Terms, the notice is effective only: (a) upon receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this Clause.

6.8 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.

6.9 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 PART A: Clauses 8 and PART C: Clauses 1, 2, 3, 4, 5, 6.1, 6.2, 6.3 and 6.5 shall survive the termination of these Terms.

6.10 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.

6.11 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 as of May 2020)