一般交易条款
大中华区

Please click here for the English version.

一般交易条款

本一般交易条款适用于大中华区（包括中国大陆、香港、澳门和台湾），有中文、英文两个版本，如果两个版本之间存在分歧，以英文版为准。中英文版本下载链接：www.volumegraphics.com/en/terms-conditions。

A) 唯迹（Volume Graphics）许可合同

1. 合同范围

1.1 本一般交易条款适用于唯迹（北京）科技有限公司（以下称"许可方"，营业地址：中国北京朝阳区东方东路19号5号楼，12层，D-01-0-1205 B单元）与大中华区的客户（以下称"被许可方"）之间所有业务关系与先合同义务，涵盖VGSTUDIO、VGSTUDIO MAX、VGinLINE、VGMETROLOGY、VGMETROLOGY ES 和 VGRECO 软件程序包括加密狗（以下称"软件"）以及由许可方提供的、与软件相关的其他服务，但是不包含任何附加的产品，如FlexNet（请见下方第4.1条）和VG供应商守护进程（VG Vendor Daemon）。

1.2 同时，本一般交易条款也适用于所有未来签署的、与许可方提供的软件相关的许可合同，及双方之间达成的、关于软件升级与服务的其他补充合同。即使在上述合同中未再次明确约定，本一般交易条款仍适用。

1.3 本一般交易条款适用于许可方现在及未来提供的所有货物与服务。与本一般交易条款存在冲突的被许可方的一般交易条款均不适用。即使许可方在收到被许可方的一般交易条款时未明确排除其适用时，此类条款也不适用。

2. 许可合同的签订/被许可方确认接受

软件安装时，点击"我已阅读并接受许可合同的所有条款"语句旁边的复选框，表示被许可方接受许可合同。若未点击该复选框，表示被许可方不接受许可合同中的条件，则无权安装并使用软件。

3. 合同内容

3.1 提供软件并按照第4条的规定授予软件使用权是许可合同的全部内容。被许可方负责将软件投入运行。许可方无义务提供软件安装、维修或技术支持服务。涉及任何安装、维修或技术支持服务的，均应另行签署升级/服务协议。

3.2 软件的范围、类型与质量由双方签订的许可合同或许可方发出的订单确认单独规定。服务范围的后续修改必须采用书面形式才有效。

3.3 在合同签订之前，被许可方须对软件的规格是否符合自身需求进行评估。被许可方应熟悉软件的基本功能特性与条件。

3.4 被许可方无权要求转让软件的源代码。

4. 许可证授予

4.1 被许可方签订许可合同并支付许可费后，许可方授予被许可方非独占、且不可转让的软件使用许可证，被许可方须按照以下条件使用软件。除非以下一般交易条款中有不同规定，否则被许可方的软件使用权不受限制。按照节点锁定许可证（a）、网络许可证（b）和试用许可证（c）不同的许可证方式，在每种许可证授予过程中，使用软件要求生成特定的许可密钥。若许可合同签订一年内，被许可方未获取许可密钥，则被许可方丧失软件的使用权。若被许可方未及时下载许可密钥，则无权要求返还任何已支付的许可费。

尽管软件的类型或许可模式，多个实例仅能由同一个用户使用，而不能由不同的用户使用。任何对软件的不当使用都会引起以下后果：

> 立即终止与被许可方签订的所有正在进行的许可协议；许可方无需另行发出单独的协议终止通知。
> 针对每个不符合规定的情形，被许可方均应支付给许可方5万欧元作为违约金。被许可方应在许可方第一次请求时支付。

（a）节点锁定许可证：若购买的是节点锁定许可证，则被许可方仅有权在一（1）台电脑上安装、使用一（1）个许可软件。软件安装后，在许可授予过程中将生成一个特定的许可密钥，该许可密钥允许在选定的一台电脑上使用软件。按照许可合同的规定，被许可方有权允许任何人根据许可合同的规定使用已生成许可密钥的电脑上的软件。

尽管软件的类型或许可模式，任何被许可方均不得通过任何远程连接（如VPN）使用安装在电脑上的软件的节点锁定许可证。

任何对软件的不当使用都会引起以下后果：
> 立即终止与被许可方签订的所有正在进行的许可协议；许可方无需另行发出单独的协议终止通知。
> 针对每个不符合规定的情形，被许可方均应支付给许可方5万欧元作为违约金。被许可方应在许可方第一次请求时支付。

（b）网络许可证（浮动许可证）适用于软件VGSTUDIO MAX, VGMETROLOGY和VGMETROLOGY ES。有两种不同类型的浮动许可证：

aa）浮动许可证：该许可证旨在用于局域网（LAN）内不同的电脑上。购买的工作端数量决定了软件并发实例的数量。即使是在同一台计算机上启动，每个实例只能视为一个工作端。多个实例仅能由同一个用户使用，而不能由不同的用户使用。由一台许可证服务器托管的所有工作端必须具有相同的附加模块配置。您将获得支持所有操作系统的VGSTUDIO MAX, VGMETROLOGY和VGMETROLOGY ES软件，允许您在异构局域网（heterogeneous LAN）中使用单个浮动许可证。许可证服务器需要一个带有固定IP地址的物理计算机。尽管软件的类型或许可模式，任何被许可方均不得通过任何远程连接（如VPN）使用安装在电脑上的软件的浮动许可证。

任何对软件的不当使用都会引起以下后果：

> 立即终止与被许可方签订的所有正在进行的许可协议；许可方无需另行发出单独的协议终止通知。
> 针对每个不符合规定的情形，被许可方均应支付给许可方5万欧元作为违约金。被许可方应在许可方第一次请求时支付。

网络许可证（浮动许可证）（仅适用于软件VGSTUDIO MAX）：一定数量的并发用户在局域网（LAN）或其他网络环境中使用该软件时，每位用户都需要一个浮动许可证。

bb）全球浮动许可证：该许可证旨在适用于可能属于任何TCP/IP网络环境中的不同电脑上。购买的许可证数量决定了软件并发工作端的数量。每个许可证的并发实例数量可能会有所不同，这取决于被许可方购买了哪种软件和附加模块。多个实例只能由同一个用户使用，而不能由不同的用户使用。

使用全球浮动许可证时需要使用FlexeraFlexNet许可服务器（简称"FlexNet"），该FlexNet属于安装程序包的一部分，被许可方购买软件后需要下载它。被许可方还需要下载VG供应商守护进程，该进程与FlexNet一起使用时将允许许可证的导入。如果未下载FlexNet及安装VG供应商守护进程，将导致不能使用全球浮动许可证。

（c）试用许可证：许可方为潜在用户提供评估许可证（试用许可证）。试用许可证为只允许在特定一台电脑上使用的节点锁定许可证。若无其他规定，一个试用许可证的有效期为30天，且不可延长。试用许可证到期后，至迟在软件产品最初安装后三个月内，须将出于评估目的安装的软件产品从个人电脑或任何其他数据载体上卸载和/或移除。

提供试用许可证的目的在于作为潜在用户衡量软件产品是否符合其需求的基础。禁止使用、传播或公开发表评论试用许可证生成的任何材料或信息，如图片、动画、测试结果或其他结论。

尽管软件的类型或许可模式，但任何被许可方均不得通过任何远程连接（如VPN）使用安装在电脑上的软件的试用许可证。

任何对软件的不当使用都会引起以下后果:

> 立即终止与被许可方签订的所有正在进行的许可协议; 许可方无需另行发出单独的协议终止通知。
> 针对每个不符合规定的情形, 被许可方均应支付给许可方5万欧元作为违约金。被许可方应在许可方第一次请求时支付。

　(d) 加密狗许可证: 购买硬件加密狗的被许可方有权使用许可方提供的一 (1) 个加密狗在任何电脑上安装并使用软件。

软件安装后, 在许可授予过程中将生成一个特定的许可密钥, 该许可密钥允许被许可方利用加密狗和与加密狗对应的有效软件许可在任何电脑上使用软件。

在遵守许可合同规定的前提下, 被许可方有权允许任何人使用已按照许可合同规定配有加密狗并生成许可密钥的软件。严格禁止对加密狗作任何复制或技术修改。

尽管软件的类型或许可模式, 但任何被许可方均不得通过任何远程连接 (如VPN) 使用安装在电脑上的软件的加密狗许可证。

任何对软件的不当使用都会引起以下后果:

> 立即终止与被许可方签订的所有正在进行的许可协议; 许可方无需另行发出单独的协议终止通知。
> 针对每个不符合规定的情形, 被许可方均应支付给许可方5万欧元作为违约金。被许可方应在许可方第一次请求时支付。

若已生成授权文件的硬件加密狗发生丢失和/或被盗, 视为被许可方丧失第4条第1款所述的软件使用权。

但是, 在满足以下条件的情况下, 被许可方可 (选择) 通过签署升级/服务协议或单独的加密狗许可证保护使其已生成授权文件的硬件加密狗免于丢失和/或被盗:

　(1) 被许可方购买了 VGSTUDIO 加密狗许可证、 2.2 或以上升级版本的 VGSTUDIO MAX 加密狗许可证、VGinLINE 加
密狗许可证、 VGMETROLOGY 加密狗许可证或VGMETROLOGY ES 加密狗许可证。(无论该购买是否为初始购买、后续购买、重复购买或是升级)

　(2) 被许可方在升级/服务协议中选择了加密狗许可证保护或已单独定购了加密狗许可证保护。

　(3) 若被许可方在采购加密狗许可证保护之前已持有加密狗许可证, 则在收到新的含加密狗许可证保护的加密狗之前, 被许可方应将原有的加密狗交还给许可方。

　(4) 与被许可软件相关的所有应付许可费, 包括加密狗许可证、加密狗许可保护 (若已购买) 及升级/服务协议, 应已由被许可方全额支付给许可方。

若以上条件均已满足, 被许可方将收到许可方发的一个硬件加密狗和有效期为12个月的临时授权文件。授权文件到期前90天, 软件将通知被许可方联系许可方以再次取得新的、有效期为12个月的授权文件, 前提是被许可方希望单独或基于升级/服务协议延长加密狗许可证保护。

若硬件加密狗发生丢失或被盗, 已经购买加密狗许可证保护的被许可方可获得包含新授权文件的新硬件加密狗, (每月) 费用为相应软件包总标价的2%, 以被许可方通知许可方硬件加密狗丢失或被盗之日起至12个月 (即至临时授权文件到期之日) 期间内每个开始的日历月为计算单位。

若在加密狗许可证保护有效期内, 硬件加密狗发生数次丢失或被盗, 则许可方保留要求被许可方提供关于硬件加密狗丢失或被盗的适当、可信的证据的权利。

　(e) VGinLINE: 　VGinLINE 版本产品只能以第 (d) 项所述加密狗许可证的形式购买。授权VGinLINE 产品版本使用的加密狗许可证只针对特定安装有效 ("安装" 指的是将一台单独的CT设备与任一其他硬件相联); 被许可方须在VG发出报价前确定此类安装。VGinLINE装置至少包括一个VGinLINE 控制器 (编辑工具与控制器) 和一个VGinLINE 客户端 (软件程序)。其他组件还包括VGinLINE 工作区 (内部网络目录) 和VGinLINE 查看器 (显示工具)。与VGinLINE 结合使用

的每个工作站都应该配置一个VGinLINE 客户端。严格禁止将VGinLINE 加密狗许可证从一个VGinLINE 安装转移到其他安装，否则可能会导致任何担保责任的排除。在正常工作时间，且事先通知的前提下，若涉及许可方的正当利益，则许可

方有权检查被许可方住所，尤其是当出于确认被许可方是否只在一个安装中使用软件，以及此安装是否仍与报价中所列安装一致时。VGinLINE 的定价是浮动的，这取决于每次操作的具体细节和必要需求，与被许可方之前的采购和/或获得其他硬件加密狗许可证无关。

4.2 许可密钥仅对生成许可密钥的电脑或硬件加密狗有效，或对生成许可密钥的服务器上的特定网络有效。不允许将许可密钥转移应用于另一台电脑/另一个硬件加密狗/另一个网络。

4.3 2.0 及之前版本的软件和相关文件仅提供英文和日文版。从2.1 版本开始，同时提供德语版；2.2 版本发布后，也将提供法文、韩文和中文版。被许可方无权要求许可方提供前述语言版本之外的其他语种的翻译版本。

4.4 依据许可合同被许可方只获得软件的使用权，而未获得软件的所有权或其他权利。在遵守第4条第1款中关于使用权规定的前提下，许可方保留与软件及相关文件有关的所有知识产权及其派生权利。若无其他约定，许可方保留以任何形式或媒介存在的所有软件复制品的所有权及其他权利，包括但不限于任何文本、声音、图像、照片、录像、动画、图形、文件或其他材料。被许可方确认其没有权利与能力将软件上的任何权利转让给第三方或者授予第三方使用软件的任何许可。

4.5 更新与升级: 如果某一软件为之前版本的更新或升级，被许可方必须拥有之前版本的有效许可证才能使用此更新或升级版本。所有向被许可方提供的更新与升级都基于许可证交换。被许可方同意使用更新或升级后的软件则表明其同意放弃之前版本的软件使用权。

5. 软件使用的一般限制

5.1 一般使用限制

(a) 被许可方无权进行反向工程、反编译、反汇编或其他试图识别软件源代码的行为。被许可方不得以任何形式修改程序及相关文件，包括但不限于出于在其他系统上使用的目的进行扩展或改变，也不得译作其他语言，只有相关准据法明确允许进行此类操作时可作为例外。被许可方不得基于软件创造其他衍生产品。在此明确排除中华人民共和国《计算机软件保护条例》第16条第3项规定的权利。

(b) 被许可方不得就软件、任何基础软件、技术或其他信息进行出租、出租、销售、授予分许可证或进行转让，包括任何相关的纸质材料。被许可方承诺不转让软件、软件的使用权及访问权限。

(c) 除非许可合同明确约定，否则被许可方不得整体或部分复制、再造或销售软件。

(d) 被许可方承诺，软件的使用符合所有相关法律法规的规定。同时在不限制前述规定的前提下，被许可方不得下载、进口或再出口软件，除非完全符合准据法所有相关规定及关于软件技术出口的全部规定。

5.2 被许可方不得将许可密钥出租、出售、转让、出口或以其他方式转移、销售或泄露给第三方，也不得与第三方共享许可密钥或授予第三方分许可证。

5.3 关于软件的访问和使用，被许可方承诺向许可方提供真实、准确、全面、最新的被许可方信息（统称"注册信息"）。许可方有权根据准据法相关规定及出于履行许可合同的必要性，使用和透露注册信息中的有关内容。并且，被许可方允许许可方或其代理人出于向被许可方提供软件更新或发布新版软件相关信息的需要，使用注册信息。被许可方可随时取消此项允许。

6. 履行时间与地点

6.1 任何关于许可方交付和履行义务时间的规定均不构成其义务，除非许可方书面表示此规定具有约束力。

6.2 若被许可方迟延支付购买费用，或被许可方未及时向许可方提供许可方履行合同义务所必要的支持，则许可方可延迟相同的天数交付货物或提供服务。若许可方因不可控的情形导致其不能提供服务，则许可方提供服务的时间延长至障碍消除后合理的时间重新起算。

6.3 催告或设定截止期限必须以书面通知做出才有效，包括传真和电子邮件形式。

6.4 许可方的注册地为履行地。

6.5 通过互联网下载是标准的软件交付方式。以DVD的形式交付须额外收费。许可方提供许可密钥时即视为许可方已提供其在许可合同框架下的服务内容。

7. 支付条款

7.1 被许可方向许可方或其经销商支付约定的许可费后，获得使用软件的权利。在分期付款的情况下，若被许可方未支付已到期的许可费，则软件的使用权终止（解除条件）。

7.2 增值税不包含在报价金额中，其税率按照许可方注册地的规定确定。除非另有约定，否则许可费应基于许可合同签订时有效的许可方价目表确定。

7.3 除非另有约定，否则许可方应在收到账单后，自账单记载之日起30天内支付许可费。账单以邮寄或电子邮件的方式（PDF形式）发出。采用网络账单及类似的特殊账单形式的须加收10%的附加费。不接受信用卡或任何其他形式的支付卡支付。

适用关于迟延支付的相关法律规定。《中华人民共和国合同法》关于法定抗辩权的规定不受影响。

7.4 被许可方只能主张抵消许可方无异议或法律允许的请求权。许可方只在同一合同关系中享有保留权。

8. 被许可方的特殊义务

8.1 发现软件存在任何瑕疵后，被许可方有义务立即告知许可方，并提供关于错误类型的详细描述。

8.2 被许可方有义务按照相应的应用方式，定期备份所有数据和程序，最低不应少于每天一次，以确保可通过合理的费用和人力成本恢复此数据和程序。

8.3 被许可方有义务遵守许可方提供的维护说明。

8.4 在软件使用期间以及期间结束后，被许可方都应将所有涉及软件、软件开发的方法和程序、相关文件及其内容、存储介质以及相关通信往来的信息视为保密信息，并且不得向第三方提供。同时，被许可方须采取措施保证其员工亦尽到保密义务。

8.5 被许可方应采取一切必要预防措施防止第三方未经授权使用或访问软件。

8.6 被许可方应承担因违反许可合同及本一般交易条款项下的义务给许可方造成的损失。

9. 担保

9.1 许可方保证，由其开发的软件（不包括FlexNet和VG供应商守护进程）不存在足以否定或削弱软件价值以及不能满足许可合同规定之使用目的的任何瑕疵。

明确排除许可方的其他担保责任，除非许可方另有其他明确承诺。许可方不保证软件与其他产品存在可能或潜在的联合用途，尤其是软件与其他硬件产品的联合使用。相应的尝试与投入带来的风险，应由被许可方独自承担。

9.2 软件具备同类型软件产品常规的属性与质量。被许可方确认，以目前的科技发展水平不能完全排除电脑程序出现错误的情形。因硬件瑕疵、运行条件限制或操作错误等造成的软件功能障碍，不认定为瑕疵。质量上的不显著障碍亦不认定为瑕疵。

9.3 任何瑕疵均应以书面形式被报告给许可方，并附上简要描述。交付时，被许可方应检查软件是否存在明显瑕疵。明显瑕疵应在交付之日起一周内书面告知许可方。不遵守前述规定的，则不再享有瑕疵担保请求权。

9.4 自收到书面告知之日起，在合理期限内，许可方可自行选择通过修理或更换的方式消除瑕疵。若经许可方检查发现无法确定瑕疵，或瑕疵系由于不能归因于许可方的不当操作或故障产生，则检查费用及任何额外费用应由被许可方承担。

9.5 许可方保证被许可方按照许可合同的规定使用软件不会与第三方的权利产生冲突。出现法律瑕疵时，许可方保证为被许可方提供法律允许范围内的软件使用权或替代软件。若第三方针对软件相关权利向被许可方主张任何请求权，被许可方应立即以书面形式通知许可方。

9.6 仅当被许可方将瑕疵精确地告知许可方，并且给予许可方合理期限进行继续履行后，被许可方才能主张退货、减价或损害赔偿以替代继续履行。两次继续履行均未成功，才视为继续履行失败。任何主张退货、减价或损害赔偿的以代替继续履行的请求均须采用书面形式才生效。

9.7 若被许可方或任何第三方对软件进行了扩展或修改，则许可方对此不承担任何担保责任，除非被许可方能证明相应的扩展或修改不是软件出现瑕疵的原因或并发原因。对因操作不当、使用不配套设备或非正常的运行条件产生的错误、故障或损失，许可方不承担责任。

9.8 担保期限（瑕疵担保）为一年，自风险转移时起算。若中国法律中存在关于更长期限的规定，或出现生命、身体或健康受到损害情形，抑或许可方有故意、重大过失或欺诈性隐瞒瑕疵的行为时则不适用瑕疵担保期限为一年的合同约定。

9.9 许可方不对Flexera Flexnet或VG供应商守护进程作任何形式的担保。但是，许可方将其可能享有的针对Flexera软件有限公司（位于英国Malvern House, 14-18 Bell Street, Maidenhead, Berkshire SL6 1BR）或其任何关联公司（符合德国股份法第15条的规定）的所有与被许可方购买软件有关的赔偿请求权转让给被许可方。唯迹将以各种方式协助被许可方请求此类权利。

10. 责任

10.1 许可方及其代理人仅在下列情况下承担责任：

(a) 故意或重大过失承担无限责任；

(b) 发生人身损害或死亡时，根据《中华人民共和国产品质量法》承担无限责任；

(c) 除（b）项情况之外，存在一般过失和轻微过失时，许可方仅针对根本违约的部分承担责任。责任应限于典型的、可预见的损失，且最大金额不超过被许可方已支付的许可费。针对任何间接损失、从属损失、对其他产品不必要的花费或利润损失，许可方不承担责任。

在此明确排除任何其他责任。

10.2 许可方保留拒绝承担共同过失责任的权利。若发生数据丢失，则许可方只对创建适当备份副本后仍会出现的损失承担责任。

10.3 被许可方有权主张瑕疵损害赔偿，但超过第9条第8款规定的标的物瑕疵担保期限后，被许可方的该项请求权即消灭。根据相关侵权责任法规定产生的请求权，适用相应的法定时效。

11. 测试版本或预发行版本

11.1 在特定的软件开发项目过程中或新产品发布之前，许可方向重要客户提供一个或多个测试版本或预发行版本进行试用。被许可方无权要求许可方提供前述版本的软件。

11.2 测试版和预发行版是即将发布的新版软件产品的初步版本。测试版软件已经过测试，但产品的开发与质量保证尚未最终完成，且相关文件未完成更新。测试版和预发行版为试用版本，就其内容，许可方不作承担任何保证。被许可方下载测试版或预发行版时，即表明其同意排除许可方的任何担保责任。特别排除因使用此类版本造成数据丢失或产生损害时许可方的责任。

11.3 测试版或预发行版只能用于测试，不得出于生产或商业目的使用。被许可方无权将软件的测试版或预发行版交与第三方。

11.4 预先发行阶段和/或记载于任何随附文件中的软件功能有可能在最终发布的软件产品中不存在。

11.5 许可方强烈建议在使用测试版或预发行版软件之前，对重要数据进行备份。测试版与预发行版软件只提供英文版本。提供测试版与预发行版软件能促进相关用户与许可方的软件开发团队之间的交流与信息互换。

11.6 除第11条项下涉及的各项权利以外，被许可方不享有与测试版和预发行版软件使用有关的其他权利。

12. 免责

因被许可方使用软件、违反本许可合同或侵害他人的任何权利导致第三方提出任何主张或请求，被许可方承诺保证许可方及其高级职员、董事、员工和代理人免为承担由此而产生的任何损失、费用与开支，包括合理的律师费。

13. 期限与终止

无论出于何种原因许可合同终止时，被许可方使用软件的权利即消灭。并且，若许可方要求，被许可方应删除或销毁其可支配的任何软件复制品，包括但不限于许可密钥。许可方的其他权利和救济措施不受影响。

14. 出口规则

被许可方承诺不将软件运送、传输或出口至被中华人民共和国、德意志联邦共和国、欧盟、美国的出口管理条例或其他出口法律、限制或规定（统称"出口法律法规"）实行禁运的任何国家或以任何上述出口法律法规禁止的方式使用软件。

此外，若根据出口法律法规软件被归类为受管制的出口项目，则被许可方保证，被许可方非系禁运或受其他限制的国家（包括但不限于伊朗、伊拉克、叙利亚、苏丹、利比亚、古巴和北朝鲜）的公民，亦在禁运或受限国家无经营场所，同时，许可方亦不被任何出口法律法规禁止获得软件。前述禁运或受其他限制的国家。许可方授予被许可方与软件使用有关的所有权利都基于以下条件：若被许可方不遵守合同条款，则丧失所有与软件使用有关的权利。

15. 其他

15.1 许可合同个别条款的无效或不可执行性不会导致该条款在其他情况、条件或司法管辖区下仍无效或不可执行，也不会影响许可合同其他条款的效力。许可方不行使或执行任何权利或许可合同条款不代表许可方放弃该权利或该条款。

15.2 许可合同和本一般交易条款是合同双方就合同内容（见第3条）达成的最终的、唯一且完整的约定，取代合同双方之前和同时期达成的所有协定和许可合同。

15.3 除非通过其他条款作出特别约定，对许可合同的任何修改与补充，均须采用书面形式才生效。合同双方应通过书面传输文本形式的文件以达到上述书面形式要求（《中华人民共和国》合同法第11条），不包括电传、电报、传真、电子邮件及其他电子数据交换形式。前句规定也适用于放弃书面形式要求的情形。

15.4 许可合同项下被许可方享有的任何权利，必须事先取得许可方的书面同意才能转让。许可方有权将其许可合同中的全部权利与义务转让与其子公司、分支机构或继任其全部或大部分业务、资产的后继公司，无须征得被许可方的同意。但许可方须保证转让不会对被许可方造成不利影响。

15.5 许可方亦有权将其在本合同项下的义务转让给第三方。在这种情况下，许可方仍就合同方适当履行对被许可方的合同义务承担责任，并且被许可方认可其接受的所有服务均视为由许可方提供。

15.6 许可合同受中华人民共和国法律管辖，排除冲突规则的适用。明确排除《联合国国际货物销售合同公约》和国际私法的适用。许可方与被许可方一致同意，任何因违约导致的有关本协议的争议均提交位于北京的中国国际贸易仲裁委员会（CIETAC），按照中国国际贸易仲裁委员会现行有效的仲裁规则进行仲裁。仲裁裁决对双方均有法律约束力。仲裁地为北京。

B.) VG升级/服务协议

1. 定义

"软件"指的是许可给被许可方的特定的 VG 软件程序,"协议"指的是和前述特定软件有关的升级/服务协议。基协议,提供下列支持:

包含下列项目的个人网络账户访问权限:

> 软件升级 (如在有效期内可用)
> 软件的测试版或预发行版 (若在有效期内可用)
> 优先漏洞修复支持
> 优先软件支持

2. 协议包含以下服务内容:

2.1 基于有效协议,被许可方在VG的网络服务器上获得受密码保护的个人网络账户。被许可方可通过许可方的网站,访问自己的网络账户。

2.2 在协议有效期内,通过被许可方的网络账户可获取并下载所有已提供的升级服务,包括主要和次要的版本升级,无需支付任何额外费用。

2.3 协议为被许可方提供近期的软件漏洞修复支持。优先处理被许可方通知的软件漏洞。漏洞修复支持程序一经推出,将向所有签订有效协议的用户发出通知,用户可访问 VG 的网络服务器,在各自的网络账户中下载相应的程序。

2.4 被许可方可下载软件的测试版。测试版是即将推出的软件版本的早期开发版本。测试版已经过测试,但仍处于开发与质量的验证阶段,且不包含已升级的文件。被许可方若下载测试版,即表示其认可许可方对该测试版不承担担保责任。因使用测试版造成的数据丢失或其他损失,许可方不承担任何责任。许可方建议用户在使用任何软件的测试版之前备份所有重要的数据。测试版仅提供英文版本。提供软件测试版,旨在促进被许可方与许可方软件开发团队之间的交流与信息互换。

2.5 许可方高度重视为所有被许可方提供尽可能全面的支持服务。被许可方的技术支持请求享有最高优先性。

3. 升级/服务协议的适用性

协议仅适用于最新的软件版本。在新软件版本的销售期内,协议仅能针对该新软件版本订立。被许可方可免费升级现有安装的软件版本。若没有有效协议,则拥有旧版软件的被许可方须先通过购买正规升级获取最新版本的软件,才能订立相应的协议。

任何协议均自购买相应许可证之日或先前协议到期之日起生效。之后订立协议的,协议效力追溯至许可证购买之日或先前协议到期之日。

4. 升级/服务协议的有效期及延长

若升级/服务协议已订立,且被许可方已支付许可费及升级/服务费,则自下载软件许可密钥时起升级/服务协议即生效。若升级/服务协议订立一年之内被许可方始终未获取许可密钥,则免除许可方与升级/服务协议有关的任何义务,且在这种情况下,被许可方无权主张返还已支付的任何许可费。

若许可方与被许可方之间无其他约定,协议的有效期为一年,且不自动延长。延长协议期限,均须特别订购,就每一年度的有效期许可方与被许可方均须重新订立新的协议。若先前协议到期后 30 天内,用户要求延期的,则协议有效期可延长。上述所有服务内容不中断,均包含在新的协议中。在协议延期的情况下,新订立的协议自先前协议到期之日起生效,例如先前协议的有效期截至 2010年12月31日,则新协议的有效期为 2011年1月1日至 2011年12月31日。若先前协议到期

后30 天内，协议未延期的，则自先前协议到期时起，被许可方不再享有所有的服务内容。协议到期后发布新软件产品的，被许可方须先通过购买正规升级获取最新版本的软件，才能订立新协议。

C.) 软件培训

除上述一般交易条款以外，许可方提供的软件培训课程与研讨会符合以下规定:

用户须保证至迟在培训/研讨会开始前四 (4) 周时将参加培训和研讨会的人员（"参加者"）的培训/研讨费全额汇至许可方账户。以许可方收到付款的日期为准。

若未及时收到培训/研讨费，则许可方保留不允许参加者参加培训/研讨会的权利。但并不免除参加者仍须按照以下规定支付约定费用的义务。

若参加者取消参加培训，适用以下规定:

> 计划日期前 4 周或更早通知取消的: 全额退还培训费。
> 计划日期前 2-4 周通知取消的: 退还 50% 的培训费。
> 晚于计划日期前 2 周通知取消的: 不退还培训费。

若参加者提出重新安排培训课程的时间，许可方尽力另行安排适合所有参加者的培训时间。若未能另行找到合适的时间，且目前参加培训课程的人数减至不足 4 人，则适用关于取消培训课程的规定（见上述规定）。

参加者可提供证据证明许可方因取消培训课程遭受的损失低于被许可方须支付的取消费用; 若能证明前述情况，则参加者只须补偿相应较小的损失。

若在用户所在地进行培训，则许可方应尽量减少差旅费及住宿费以尽可能降低整体成本。为此，许可方应尽早预定车票和/或酒店。除上述已提及费用外，参加者应支付因取消或变更课程时间产生的第三方取消费。

Terms And Conditions
Greater China

请点击此处查看中文版本。

Terms And Conditions

The Terms and Conditions for Greater China (including Mainland China, Hongkong, Macao and Taiwan) are available in Chinese and English and can be downloaded on www.volumegraphics.com/en/terms-conditions. In case of doubt the English version shall prevail.

A.) Volume Graphics License Agreement

1. Scope of the Agreement

1.1 These Terms and Conditions apply to all business relationships and pre-contractual obligations between Volume Graphics (Beijing) Technology Co. Ltd., Unit D-01-0-1205 B, 12th floor, Building 5, NO 19, Dongfangdonglu, Chaoyang District, Beijing 100600, PRC on the one hand ("Licensor") and the company's customers located in China on the other hand ("Licensee") relating to the software programs VGSTUDIO, VGSTUDIO MAX, VGinLINE, VGMETROLOGY, VGMETROLOGY ES, and VGRECO including supplied dongles ("Software"), but not including any additional products, such as the so-called FlexNet (see 4.1 below) and the so-called VG Vendor Daemon and any other software-related services of the Licensor.

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

1.3 The Terms and Conditions set out below apply to all current and future deliveries of goods and services by the Licensor. Any contradictory Terms and Conditions of the Licensee are herewith excluded. They will not be accepted, even if Licensor does not expressly exclude them upon receipt.

2. Conclusion of Contract/Acceptance by the Licensee

The Licensee has accepted this Licensing Agreement by ticking the check box next to the sentence "I have read and I accept the terms of the License Agreement" when installing the Software. If the Licensee does not agree to the conditions of this License Agreement by ticking the named check box, the Licensee will not be entitled to install and use the Software.

3. Subject of the Agreement

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

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

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

3.4 The Licensee is not entitled to claim for assignation of the source code of the Software.

4. Granting of Licenses

4.1 Upon conclusion of a License Agreement and payment of the agreed license fee, the Licensor grants to the Licensee the non-exclusive, non-transferable right to use the Software subject to the following conditions. This right is unlimited unless stated otherwise in the Terms and Conditions below. The use of the Software according to the Node Locked License (a), the Network License (b) and the Evaluation License (c) each require the generation of a special License Key in course of the licensing process. The right of use to the Software ceases if the Licensee has not accessed the License Key within one year following the conclusion of the License Agreement. The Licensee has no claim for repayment of any paid license fees, if the Licensee has not downloaded the License Key in time.

Notwithstanding the type of Software or the licensing model, multiple instances must only be used by the same user, not different ones. Any such misuse of the Software will elicit:

> immediate expiration of all ongoing license agreements with the Licensee; no separate termination notification from Licensor is required;
> a contractual penalty of EUR 50,000 for each case of non-compliance, payable by Licensee upon first request of Licensor.

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

Notwithstanding the type of Software or the licensing model, no Licensee is permitted to use a Node Locked License of the Software installed on a computer by any kind of remote connection (e.g.: VPN).

Any such misuse of the Software will elicit:

> immediate expiration of all ongoing license agreements with the Licensee; no separate termination notification from Licensor is required;
> a contractual penalty of EUR 50,000 for each case of non-compliance, payable by Licensee upon first request of Licensor.

(b) Network licenses (Floating Licenses) are available for VGSTUDIO MAX, VGMETROLOGY and VGMETROLOGY ES. There are two different types of Floating licenses:

aa) Floating License: They are intended for use on different computers in a local area network (LAN). The number of seats purchased determines the number of concurrent instances of the software. Each instance, even if started on the same computer, counts as one seat. Multiple instances must only be used by the same user, not different ones. All seats hosted by one license server must have the same add-on module configuration. You will receive VGSTUDIO MAX, VGMETROLOGY or VGMETROLOGY ES for all supported operating systems, allowing you to use a single floating license in a heterogeneous LAN. The license server requires a physical computer with a fixed IP address. Notwithstanding the type of Software or the licensing model, no Licensee is permitted to use a Floating License of the Software installed on a computer by any kind of remote connection (e.g.: VPN).

Any such misuse of the Software will elicit:

> immediate expiration of all ongoing license agreements with the Licensee; no separate termination notification from Licensor is required;
> a contractual penalty of EUR 50,000 for each case of non-compliance, payable by Licensee upon first request of Licensor.

bb) Global Floating Licenses: They are intended for use on different computers which may be part of any TCP/IP network. The number of licenses purchased determines the number of concurrent seats of the software; the number of concurrent instances per license may vary depending on what Software and what additional modules the Licensee has purchased.

Multiple instances must only be used by the same user, not different ones.

Use of Global Floating Licenses requires the Flexera FlexNet Licensing Server (the "FlexNet") which is part of the installer package that Licensee may download after purchase of the Software. Licensee also needs to download a so-called VG Vendor Daemon, which together with the FlexNet will permit the import of the licenses. Use of Global Floating Licenses without download of the FlexNet and installation of the VG Vendor Daemon will not be possible.

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

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

Notwithstanding the type of Software or the licensing model, no Licensee is permitted to use a Evaluation License of the Software installed on a computer by any kind of remote connection (e.g.: VPN).

Any such misuse of the Software will elicit:

> immediate expiration of all ongoing license agreements with the Licensee; no separate termination notification from Licensor is required;
> a contractual penalty of EUR 50,000 for each case of non-compliance, payable by Licensee upon first request of Licensor.

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

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

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

Notwithstanding the type of Software or the licensing model, no Licensee is permitted to use a Dongle License of the Software installed on a computer by any kind of remote connection (e.g.: VPN).

Any such misuse of the Software will elicit:

> immediate expiration of all ongoing license agreements with the Licensee; no separate termination notification from Licensor is required;
> a contractual penalty of EUR 50,000 for each case of non-compliance, payable by Licensee upon first request of Licensor.

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

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

(1) The Licensee has purchased a VGSTUDIO Dongle License, a VGSTUDIO MAX Dongle License of Version 2.2 or later, a VGinLINE Dongle License, a VGMETROLOGY Dongle License or a VGMETROLOGY ES Dongle License (regardless of whether as initial or subsequent purchase or as a reorder or upgrade).

(2) The Licensee has chosen the option Dongle License Protection under a purchased Update/Service Agreement or as a separate order.

(3) If the Licensee already owns the Dongle License before ordering Dongle License Protection for it, the initial dongle has to be sent back to the Licensor before a new dongle covered by Dongle License Protection will be sent to the Licensee.

(4) All license fees due for the licensed Software including Dongle License, Dongle License Protection as well as—if purchased—Update/Service Agreement have been paid completely by the Licensee to the Licensor.

If all of the aforesaid conditions are met, the Licensee receives from the Licensor a hardware dongle and a temporary license file with a runtime of 12 months. 90 days before the expiration date of the license file the Software informs the Licensee that he/she should contact the Licensor in order to receive a new license file, again with a runtime of 12 months, if Licensee wants to extend Dongle License Protection under an Update/Service Agreement for this license or separately.

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

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

(e) VGinLINE: The product version of VGinLINE is only available as a dongle license, as described in (d). Dongle licenses issued for VGinLINE are only valid for the corresponding Installation (Installation meaning the combination of a single CT scanner and any other hardware); Licensee has to specify such Installation before VG sends out a quote. A VGinLINE setup, at a minimum, comprises of a VGinLINE Controller (an editor tool and controller) and one VGinLINE Worker (software program). Additional components include VGinLINE Workspace (an internal network directory) and VGinLINE Viewer (display tool). It is necessary to purchase a VGinLINE Worker for each work station used together with VGinLINE. Any transfer of a VGinLINE dongle license from one VGinLINE Installation to another is strictly prohibited, and may result in the voiding of any applicable warranties. Licensor is entitled to inspect—after giving prior notice and during normal working hours—Licensee's premises if there is legitimate interest on Licensor's behalf, especially in case Licensor intends to verify whether Licensee uses the Software in an Installation and if this Installation is still identical with the one in the quote. Pricing quotes for VGinLINE are dependent upon the details and necessary requirements of each operation and therefore vary, regardless of Licensee's prior purchases and/or previous receipt of other hardware dongle licenses from Licensor.

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

4.3 Up to Version 2.0, the Software and its documentation was available in English and Japanese only, from Version 2.1 it has become also available in German. After the release of Version 2.2, the Software as well as the related documentation has been available in French, Korean and Chinese. The Licensee is not entitled to demand translations into any further languages.

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

4.5 Updates and upgrades: If the Software is an upgrade or update to a previous version, Licensee must be the owner of a valid license to such previous version in order to use such upgrade or update. All upgrades and updates are provided to the Licensee on a license exchange basis. Licensee agrees that by using an upgrade or update he waives the right to use any previous version.

5. General Restrictions on Software Usage

5.1 General Usage Restrictions

(a) The Licensee is not entitled to reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the Software. Neither the program nor its documentation may be altered in any way, including, without limitation, being extended, changed for use on other systems, or translated into other languages, except and only to the extent that such activity is expressly permitted by applicable law. The Licensee may not create derivative works based on the Software. The right as stipulated in Art. 16 para. 3 of the Chinese Regulation on the Protection of Computer Software shall be excluded.

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

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

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

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

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

6. Time and Place of Performance

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

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

6.3 Reminders and deadlines are valid only if received in writing, by fax or e-mail.

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

6.5 Standard delivery type is by download via Internet. Delivery via DVD will be charged extra. The services to be provided by the Licensor within the framework of the License Agreement shall be deemed to have been provided at the time when the License Key has been supplied by the Licensor.

7. Terms of Payment

7.1 The right to use the Software is granted to the Licensee subject to the payment of the agreed license fee to the Licensor or his distributor. In case of successive License fees, the right to use the Software ends (resolutive condition) if the Licensee fails to pay license fees due to be paid.

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

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

The legal provisions concerning the consequences of delayed payment shall apply. Statutory defenses according to the Contract Law of the People's Republic of China remain unaffected.

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

8. Particular Duties of the Licensee

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

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

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

8.4 The Licensee shall treat all information concerning the Software, methods and procedures for its development and all associated documentation, its contents, storage media and associated correspondence as confidential during and after expiry of the entire period of its use and shall not give access to it to any third party. The Licensee undertakes to pledge his/her staff to confidentiality.

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

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

9. Warranty

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

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

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

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

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

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

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

9.8 The period of warranty (warranty for defects) shall be one year. The period of warranty shall begin at the time of the transfer of risk. The limitation of the contractual warranty for defects to a period of one year does not apply insofar as longer periods have been stipulated in Chinese Law or in cases of violation of life, body or health, intentional or gross neglect of duties by the Licensor or fraudulent concealment of a defect.

9.9 Licensor does not grant any kind of warranty in relation to the Flexera Flexnet or the VG Vendor Daemon. However, Licensor assigns to Licensee all compensation claims he may have against Flexera Software Ltd., Malvern House, 14-18 Bell Street, Maidenhead, Berkshire SL6 1BR, United Kingdom or any of its affiliated companies (within the the terms of Article 15 of the German Stock Corporation Act (§ 15 Aktiengesetz) in relation to Licensee's purchase of Software. VG will assist Licensee in every way in order to assert such claims.

10. Liability

10.1 Licensor and his vicarious agents shall only be liable:

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

(b) without limitation pursuant to the Chinese Product Quality Law in case of personal injury or death;

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

Any further liability is excluded.

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

10.3 Insofar as the Licensee is entitled to claim for damages due to defects, these claims will become invalid after the period prescribed for material defects according to Section 9.8. For claims according to the law on liability, the statutory limitations apply.

11. Beta Versions or Pre-Releases

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

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

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

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

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

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

12. Indemnification

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

13. Term, Termination

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

14. Export Rules

Licensee agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the People's Republic of China, Federal Republic of Germany, the European Union or the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, Licensee represents and warrants that Licensee is not a citizen of, or located within, an embargoed or otherwise restricted nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba and North Korea) and that Licensee is not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this agreement.

15. General Provisions

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

15.2 The License Agreement including these Terms and Conditions constitute the parties' final, exclusive and complete understanding with respect to the subject matter hereof (see clause 3) and supersede all prior and contemporaneous understandings and License Agreements between the parties.

15.3 Any modifications and extensions to this Agreement are valid only in writing. The parties to the contract shall fulfill this written form requirement by transmitting documents in writing (Section 11 of the Contract Law of the People's Republic of China), excluding facsimile, telex, e-mail, telegram and any other electronic message, unless other provisions have been made for specific declarations. This shall also apply to a waiver of the written form requirement.

15.4 Any rights arising to the Licensee from this License Agreement may be assigned only with the prior written consent of the Licensor. The Licensor may assign all rights and obligations under this License Agreement to a subsidiary, affiliate or successor taking over all or a substantial part of its business and assets without the Licensee's consent. Licensor shall in this case ensure that no disadvantages shall arise to the Licensee from this assignment.

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

15.6 This License Agreement is governed by the laws of the People's Republic of China without regard to its conflict of laws principles. The United Nations convention on Contracts for the International Sale of Goods and the Private International Law is expressly disclaimed. Licensee and Licensor agree to submit. for all disputes and controversies arising in regards to or in connection with the present Agreement as a consequence of a breach of the contract to China International Economic and Trade Arbitration Commission (CIETAC) in Beijing for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award shall be legally binding for both contractual parties. Beijing shall be agreed as place of venue for any arbitration proceedings.

B.) Volume Graphics Update/Service Agreement

1. Definitions

"Software" shall mean the appropriate Volume Graphics Software program licensed to the Licensee, "Agreement" shall mean the Update/Service Agreement for the appropriate Software. Benefits provided under an Agreement are:

Access to an individual web account with:

> Software upgrades (if available during period of validity)
> Software beta versions or pre-releases (if available during period of validity)
> priority bug-fix support
> priority Software support

2. The Agreement includes the following Components/Services

2.1 A Licensee with a valid Agreement receives an individual password-protected account on the Volume Graphics web server. The Licensee will be able to access his web account through the website of the Licensor.

2.2 All upgrades—minor as well as major release upgrades—becoming available within the validity period of the Agreement are available free of any additional charge for download from the Licensee's web account.

2.3 The Agreement offers short term bug-fix support for the Software. Any bug reported by a Licensee will be processed with high priority. As soon as a bug-fix is available, all customers with a valid Agreement will be notified and will be able to download it from their web account on our web server.

2.4 Licensee will be provided with beta versions for download. Beta versions are early development versions of upcoming Software releases. Beta versions have already been tested but are still undergoing development and quality assurance and do not yet include the updated documentation. By downloading this version, the Licensee agrees that it is provided as-is, without warranty. The Licensor does not assume any liability for data loss or damage that may occur from using beta versions. The Licensor recommends users to back up all important data before using any beta version of the Software. The beta version is available in English only. The idea behind providing the customer with beta version Software is to increase communication and the exchange of information between the Licensee and the software development team of the Licensor.

2.5 The Licensor attaches great importance to providing the best possible support to all Licensees. However, support requests from Licensees will be processed with highest priority.

3. Availability of Update/Service Agreements

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

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

4. Period of Validity and Extension of an Update/Service Agreement

The Update/Service Agreement becomes effective upon download of the License Key for the Software, provided that an Update/Service Agreement has been concluded and the Licensee has paid the agreed license, update and service fees. If the Licensee has not accessed the License Key within one year after conclusion of the Update/Service Agreement, Licen-

sor is exempt from any obligation in connection with the Update/Service Agreement. In this case, the Licensee has no claim for repayment of any paid license fees.

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

C.) Software Training

The following regulations shall apply to the Licensor's software training courses and workshops in addition to above Terms and Conditions:

The customer shall ensure that the training/workshop fee issued for the person taking part in the software training courses and workshops ("Participant") is paid in full into Licensor's bank account no later than four (4) weeks prior to the start day of the training/workshop. The decisive date shall be receipt of payment by the Licensor.

The Licensor reserves the right to exclude Participants from the training/workshop if the training/workshop fee is not received in due time. The Participant is however not exempt from the obligation to pay the agreed fee subject to the following regulations.

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

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

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

The Participant is entitled to prove that the Licensor has suffered less damage due to cancellation than the above mentioned cancellation fees; in that case the Participant shall compensate this smaller damage.

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