

TERMS OF SALE

These Terms of Sale ("Terms of Sale") govern the relationship between HYBRID Software ("HYBRID") and the Customer ("Customer") and apply to all Products and Services offered by HYBRID, unless explicitly provided otherwise by HYBRID.

1. DEFINITIONS

"Agreement" means the agreement for the purchase and/or use of HYBRID Products or Services consisting of HYBRID's Offer, these Terms of Sale and – insofar applicable - the Software License Agreement, the Support and Maintenance Terms & Conditions, and any other document which is incorporated herein by reference.

"Affiliate" means any corporation, firm, partnership, or other entity that directly or indirectly controls, or is controlled by, or is under common control with HYBRID or Customer.

"Customer" means the legal entity that enters into an agreement with HYBRID for Products or Services.

"HYBRID" means the HYBRID contracting legal entity that fulfilled the Customer's order as identified in the Order Confirmation.

"Confidential Information" means information of the other party that is marked as confidential or that should be reasonably understood to be confidential. The structure and user interfaces of the Software and their underlying ideas and Documentation are always considered as HYBRID's Confidential Information. Such Confidential Information may include, but is not limited to, trade secrets, know-how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party.

"Documentation" means the user manual, in electronic code form, any technical release notes, and other technical supporting documentation accessible through HYBRID's data center or available upon request via HYBRID's Support Desk.

"Intellectual Property Rights" means patents, inventions, trademarks, domain names, rights in know-how, trade secrets, copyrights, copyrights on software, computer programs, database rights, rights related to copyrights, and any other intellectual and industrial property rights, whether registered or not and including without limitation the right to amend and further develop the objects of those rights and the right to assign the rights to third parties.

"Software License Agreement" means the applicable Software License Agreement applicable to the Product(s).

"Effective Date" means the date these Terms of Sale are electronically accepted, click-accepted or, if signed in hard copy by Customer, the date of last signature, or in the absence of any of the foregoing, these Terms of Sale shall be effective from the date an Order Confirmation is signed by Customer.

"Force Majeure Event" means an event beyond the affected party's reasonable control, including (without limitation) accidents, severe weather events, natural disasters, acts of God, actions of any government agency, epidemics, pandemics, acts of terrorism, failures in the Internet or other public networks or data traffic, strikes. A labor dispute shall be considered a force majeure event also when HYBRID is the target or a party to such an action. The force majeure events suffered by subcontractors are also be deemed as force majeure events.

"Price List" means HYBRID's then-current applicable and itemized Price List for Products and Services.

"Product" "Product" means standalone Software or optional Software module(s), or - as the case may be - a bundle of standalone software and/or optional modules and/or Services. The relevant Products are identified in HYBRID's Offer and are further described in the applicable Documentation. Products include without limitation HYBRID's STEPZ® PDF Editor and its modules, PACKZ® PDF editor and its modules, CLOUDFLOW® modular production workflow suite and its modules iC3D® suite and its modules, and color management solutions ColorAnt®, ZePrA®, and CoPrA®.

"Offer" means a commercial proposal, renewal notification, or any other proposal made by HYBRID for the use of the Products and/or the Services with reference to the relevant Product(s) and/or Services offered by HYBRID and including these Terms by reference.

"Order Confirmation" means any confirmation by the Customer of HYBRID's Offer (by way of signing the Offer or by any other confirmation of the Offer such as purchase orders, e-mails, confirmation letters, etc. referencing HYBRID's Offer or issued in response to HYBRID's Offer).

"Services" shall mean the training, installation, development, integration, repair, maintenance, support, and any other services provided to Customer by HYBRID pursuant to the Agreement.

"Software" means the machine-readable (object code) then current version of the computer programs or applications made available by HYBRID for licensing to the Customer.

"Territory" means the country in which the Customer's principal place of business is located.

"Third Party Software" any software, applications, libraries or modules owned or licensed by other parties than HYBRID.

2. CONTRACTING PROCESS; ORDER OF PRECEDENCE; CANCELLATIONS AND CONFIGURATION CHANGES**2.1 Contracting Process**

BY CONFIRMING AN ORDER, OR OTHERWISE INDICATING THE ACCEPTANCE OF THE AGREEMENT OR USING THE PRODUCT(S), THE CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO THESE TERMS OF SALE.

Notwithstanding the above, the Customer typically enters into an Agreement in the following manner:

- On request of the Customer, HYBRID will issue an Offer (in the form of a commercial proposal, renewal notification, or any other proposal made by HYBRID) for the use of Products and/or Services;
- HYBRID's Offer will specify the identity of the contracting legal entity of HYBRID, the relevant Products and/or Services, the key commercial terms and will include these Terms of Sale by reference;
- Customer shall confirm the Offer in an Order Confirmation (by way of signing HYBRID's Offer or by any other confirmation of HYBRID's Offer such as purchase orders, e-mails, confirmation letters, etc. referencing HYBRID's Offer or otherwise issued in response to Supplier's Offer);

These Terms of Sale shall apply, regardless of any additional or conflicting terms or other correspondence or documentation submitted by Customer to HYBRID, and any such additional or conflicting terms are deemed rejected by HYBRID. Unless they have explicitly been accepted in writing by HYBRID, the Customer's (general) purchase terms, procurement or RFP terms, purchase order(s) terms, or other terms shall not apply, even if referred to or submitted by the Customer.

2.2 Order of precedence

These Terms of Sale form an integral part of the Agreement. In case of a conflict between the different documents that make up the Agreement, the following order of precedence shall apply: (1) HYBRID's Offer, (2) these Terms of Sale, (3) the Software License Agreement, (4) the Support and Maintenance Terms & Conditions (insofar applicable), and (5) any other document incorporated by reference.

2.3 Returns, refunds and configuration changes

All sales are final. Except as provided in HYBRID's warranty statements, HYBRID does not accept returns or refunds unless HYBRID provided a Product other than as specified in the Order Confirmation.

Product configuration changes should be requested at least ten (10) days before the delivery date and shall be subject to (a) acceptance by HYBRID, and (b) an adjustment of the total invoice amount relating to the affected Product. HYBRID reserves the right to reschedule delivery in cases of configuration changes requested by Customer within ten (10) days of scheduled delivery.

3. SERVICES

HYBRID may provide installation, development, implementation, and training Services insofar as defined in the Order Confirmation. To the extent an Order Confirmation includes the provisioning of support and maintenance, the same shall be provided by HYBRID in accordance with and subject to HYBRID's Support and Maintenance (SMA) Terms and Conditions which form an integral part of this Agreement.

Customer may place an Order Confirmation for the various Services offered by HYBRID. Such Services, if accepted by HYBRID, shall be subject to these Terms of Sale, as well as the additional terms and conditions, including where relevant a statement of work that describes the deliverables and other terms applicable to such services unless an existing agreement is in effect in which case the terms of the existing agreement shall govern any such Services.

Unless explicitly agreed upon otherwise and in writing, all Intellectual Property Rights, including any development, resulting from HYBRID Services, shall at all times remain with HYBRID.

4. DELIVERY

Unless agreed otherwise, Products provided under this Agreement will be delivered exclusively via electronic means. The Products will be made available to the Customer through a designated secure data center, download link, email, or other electronic methods as determined by HYBRID at its sole discretion. HYBRID shall provide the Customer with appropriate access credentials, activation and license keys, or other necessary information required to access, download, and use the Products, as applicable.

The Customer acknowledges and agrees that the Products will not be delivered in the form of physical media such as CD-ROM's, DVDs, or USB drives. The Customer is aware that a suitable internet connection at its premises is required to (i) download the installation files for the Products and (ii) for verification of the access credentials and/or license key activation. Customer is further responsible for providing its own hardware and software to access, download, install, and use the Products in accordance with the terms of this Agreement and any applicable Software License Agreement.

HYBRID shall notify the Customer via email or any other agreed-upon communication method when the Products are available for download or access. The date of such notification shall be deemed the date of delivery of the Products ("Delivery").

The Customer is responsible for ensuring that their email address, contact information, and system requirements are up-to-date and compatible with HYBRID's delivery methods. HYBRID shall not be liable for any delays or failures in the delivery of the Products due to the Customer's failure to maintain accurate contact information and/or for Customer's failure to meet system requirements and internet connection.

5. PRICE, INVOICING, AND PAYMENT

5.1 Product Prices

Product prices shall be those specified in HYBRID's applicable, valid written price quotation in the Offer submitted by HYBRID to Customer. All prices are exclusive of any travel and accommodation expenses (in case of Services to be rendered on Customer premises), taxes, fees, and duties, or other similar amounts, however, designated, including without limitation value-added, sales, and withholding taxes which are levied or based upon the prices, charges, or upon these Terms of Sale. Customer shall pay any taxes related to Products provided pursuant to these Terms of Sale (except for taxes based on HYBRID's net income) or shall present an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.

5.2 Payment and invoicing terms - Services

Unless agreed otherwise, HYBRID will invoice annual fees for Maintenance and Support Services upfront, at the start of the relevant period. Any fees for renewal terms will be invoiced 30 calendar days prior to the commencement of the upcoming renewal term. HYBRID reserves the right to revise the price for annual fees for Maintenance and Support Services before any renewal period comes into effect, provided that such new price is communicated to Customer at least thirty (30) days before the applicable renewal date. In case Customer does not agree with such changed pricing, Customer may decide not to renew the Maintenance and Support Services.

Other Services such as Services provided on a time and material basis, shall be invoiced monthly based upon what was delivered.

5.3 Payment and invoicing terms – Products

Unless agreed otherwise, HYBRID will invoice fees for Products offered under a perpetual license model, 50% upon receipt of the Order Confirmation and 50% upon Delivery.

Subscription/rental-based license Products shall be invoiced periodically, at the start of the relevant period. Any fees for renewal terms will be invoiced 30 calendar days prior to the commencement of the upcoming renewal term. HYBRID reserves the right to revise the price for such subscription/rental-based license Product before any renewal period comes into effect, provided that such new price is communicated to Customer at least thirty (30) days before the applicable renewal date. In case Customer does not agree with such changed pricing, Customer may terminate the affected license in accordance with the Agreement

5.4 Payment delays

Upon and subject to credit approval by HYBRID, payment terms shall be thirty (30) days from the invoice date unless agreed otherwise in the Order Confirmation. All payments shall be made in the currency quoted in the Order Confirmation.

If at any time Customer is delinquent in the payment of any invoice or is otherwise in breach of the Agreement, HYBRID may, in its discretion, and without prejudice to its other rights, withhold (further) delivery of any order, and/or withhold the provision of the Products and/or Services (including taking measures such as suspending the functioning of the Products remotely), until complete and full payment has been received.

In case the Customer fails to pay an amount by its due date:

- any amount that remains unpaid on the due date shall automatically and without prior notice of default be subject to interest at eight percentage points on top of the interest rate applied by the European Central Bank to its most recent main refinancing operation (rounded up to the higher half percentage point). The interest shall in any case be a minimum of 10% per year.
- Customer shall be liable to pay a lump sum indemnity of 10% of the outstanding amount, with a minimum of 250 EUR to compensate for extrajudicial costs of recovery of outstanding amounts.

Failure to pay a single invoice on its due date, automatically and without prior notice entails that all remaining open invoices become due, even invoices for which the stated due date has not been reached. Previously granted payment conditions shall be disregarded. Partial payments are first set off against the payable interest on the delayed payment, secondly against the cost of collection, and lastly against the outstanding principal.

Customer grants HYBRID a security interest in Products purchased under the Agreement to secure payment for such Products. If requested by HYBRID, the Customer agrees to execute financing statements to perfect this security interest.

With the exception of Force Majeure all objections, remarks, protests, or disputes related to Customer invoices must be reported by a registered letter containing a clear statement of the reasons for the protest and within fifteen (15) days of the date of invoice. After the expiry of the fifteen (15) days term, the invoice shall be considered undisputed by the Customer. Payments are not subject to setoff or recoupment for any present or future claim Customer may have.

HYBRID reserves the right to use electronic invoicing methods, and Customer consents to the same. In case of electronic invoicing Customer shall be responsible to provide HYBRID with the correct and up-to-date email address to which the electronic invoices should be sent. The electronic invoice shall be deemed to be received on the same day as the sent date.

In the event that HYBRID provides deferred payments, then until HYBRID receives all payments due, the title to all Products under the Agreement shall remain with HYBRID. Customer is responsible to sign and execute all necessary documents and/or instruments to perfect HYBRID's claim of title in accordance with the above. Upon full payment, HYBRID will cooperate with Customer on necessary actions related to the transfer of title to Customer.

6. INTELLECTUAL PROPERTY RIGHTS, OWNERSHIP AND LICENSING

Customer acknowledges and agrees that the Products, the Documentation, the Services, and the results of the Services, any copies, modifications, translations, amendments, and derivatives thereof are protected by Intellectual Property Rights including copyright, owned by HYBRID and/or its third-party licensors.

HYBRID does not transfer to Customer any Intellectual Property Rights in the Products, the Services, and the results of the Services. HYBRID only grants, limited, non-exclusive, non-transferable licenses to use the Products, the Documentation, the Services, and the results of the Services for Customer's internal use in the Territory, in accordance with the applicable Software License Agreement and any limitations and specifications mentioned in HYBRID's Offer. All rights not expressly granted are reserved by HYBRID and its licensors. Any resale of Products or Documentation to any person is expressly prohibited. Customer may not sublicense any rights to distribute the Products or Documentation to any person or entity.

The HYBRID name, logo, and Product names are trademarks of HYBRID and no right or license is granted to use the. However, Customer may publicly identify HYBRID as a Software Provider without HYBRID's prior consent. HYBRID may use Customer's name for business development, advertising, and marketing purposes without Customer's prior consent but in accordance with any written brand guidelines provided by Subscriber to HYBRID from time to time.

Customer will not remove any proprietary notice or other legends from the Software and Customer will reproduce those notices and legends on any copies or partial copies that Customer is permitted to make.

Customer grants HYBRID a worldwide, unrestricted, permanent, non-revocable, transferable, sub-licensable, and free-of-charge right to use and incorporate into its Products and/or Services suggestions, feedback, enhancement requests, recommendations, corrections, or other feedback provided by Customer.

7. THIRD-PARTY SOFTWARE, PRODUCTS AND SERVICES DELIVERED IN CONNECTION WITH THESE TERMS OF SALE

In case HYBRID as part of the Agreement delivers Third-Party Software to Customer, such Third-Party Software and related documentation are separately licensed by the applicable third party, and Customer's rights and responsibilities with respect to such software or documentation shall be governed in accordance with the third party licensor's applicable software license.

Likewise, products and/or services of third parties shall be governed by the applicable third party's terms. If Customer chooses to order products and or services of third parties via HYBRID, Customer shall enter into one or more separate "click-accept" agreements or other third-party agreements as part of the ordering, fulfillment, installation, and/or download processes for such third-party products and services. For the avoidance of doubt, the third party shall be solely responsible for support, warranties, indemnities, and other terms and conditions applicable to such products and services. Such agreements shall supersede these Terms of Sale with respect to such third-party products and services.

8. WARRANTY

HYBRID warrants for a period of 90 calendar days after delivery (the "Warranty Period") that the Products will perform substantially in accordance with the accompanying Documentation provided that the Products are used under normal operating and maintenance conditions, as directed in the Documentation, and in compliance with this Agreement and the applicable Software License Agreement. The warranties set forth in this Agreement will not apply if defects arise out of an accident, neglect, misuse, failure of utilities, equipment failures, causes beyond HYBRID's control, or use other than ordinary use for which the Software is intended as described in the Documentation.

During the Warranty Period Updates and New Versions are free of charge and Customer has access to the support service. HYBRID has no obligation to provide any support and maintenance beyond the Warranty Period unless expressly agreed otherwise in the Order Confirmation. After the Warranty Period, maintenance and support shall be subject to a separate Support and Maintenance Agreement.

The warranty does not cover any software, hardware, or materials not provided by HYBRID, or any combination of HYBRID's Products, Services, or Software with the same. Any modifications to the Software by any persons other than HYBRID will void the warranty described in this Agreement and cause an event of default under this Agreement.

DISCLAIMER OF WARRANTY. THIRD-PARTY SOFTWARE AND TRIAL SOFTWARE ARE PROVIDED ON AN "AS IS"

BASIS WITHOUT CONDITION OR WARRANTY OF ANY KIND, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EITHER EXPRESS OR IMPLIED. THE WARRANTIES AND HYBRID'S LIABILITY DESCRIBED IN THIS AGREEMENT ARE HYBRID'S EXCLUSIVE OBLIGATIONS AND THE CUSTOMER'S EXCLUSIVE REMEDIES. THEY ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO OTHER WARRANTIES, REMEDIES, OBLIGATIONS, LIABILITIES, RIGHTS, OR CLAIMS, WHETHER ARISING IN TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE ARE MADE OR GIVEN BY HYBRID, INCLUDING WITHOUT LIMITATION, ANY WARRANTY THE SOFTWARE IS ERROR OR BUG-FREE. NO WARRANTY, EXPRESS, IMPLIED, OR STATUTORY, IS MADE EXCEPT AS SET FORTH IN THIS AGREEMENT. HYBRID EXPRESSLY DISCLAIMS (AND CUSTOMER ACKNOWLEDGES THAT IT DISCLAIMS) ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. CONFIDENTIALITY

Customer and HYBRID acknowledge that they may each obtain Confidential Information in connection with this Agreement and their relationship. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and may use such Confidential Information solely for the purpose of furtherance of the business relationship between the parties as provided in these Terms of Sale.

Notwithstanding the above, HYBRID shall be authorized to disclose Customer's Confidential Information to HYBRID contractors or employees who have a legitimate business need to have access to such information.

Upon termination or expiration of these Terms of Sale (for any reason and at any time), the receiving party shall if so requested, immediately cease use of and return to the disclosing party or destroy all Confidential Information (including all copies thereof) in the receiving party's possession, custody, or control, provided that the receiving party may keep archival copies for regulatory purposes and to enforce its rights and subject to the obligations of confidentiality herein.

This Section 9 shall not apply to information which: (i) has entered the public domain except where such entry is the result of the receiving party's breach of these Terms of Sale; (ii) was rightfully in the receiving party's possession prior to disclosure under these Terms of Sale; or (iii) is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party.

The receiving party will be authorized to disclose Confidential Information as may be required by applicable law pursuant to a valid order issued by a court or government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party provides: (i) prior written notice to the disclosing party of such obligation; and (ii) the opportunity to oppose such disclosure.

10. CUSTOMER OBLIGATIONS

It is Customer's duty to inquire into the suitability of the Products and/or Services offered by HYBRID for its purposes, prior to entering into an agreement with HYBRID. The Customer is responsible for the (correctness of the) choice, use, management, and correct application of the Products and Services provided by HYBRID. HYBRID does not guarantee that the Products and Services it delivers are suitable for the purpose for which Customer purchased them.

In order to enable proper performance of the Agreement by HYBRID, Customer shall timely provide HYBRID with all relevant information and shall provide all cooperation to HYBRID. Where relevant, Customer will provide the necessary access to its premises or systems (e.g. via secure remote access). If, in the context of providing cooperation in the performance of an Agreement, the Customer deploys its own personnel, Customer warrants that such personnel shall have the necessary knowledge, expertise, and experience. Customer shall ensure that its systems shall comply with the minimum system requirements communicated by HYBRID mentioned in the Documentation and as communicated by HYBRID from time to time.

If Customer does not make available to HYBRID the required data, accesses, documents, equipment, software, materials, or employees or does not make such data, accesses, documents, equipment, software, materials, or employees available to in a timely manner HYBRID will be entitled to suspend the performance of the Agreement in whole or in part and HYBRID will also be entitled to charge the costs incurred as a result in accordance with its usual rates, without prejudice to HYBRID's right to exercise any other legal and/or agreed upon right.

Customer shall notify HYBRID promptly of any breach or suspected breach of HYBRID's Software, Intellectual Property Rights, license(s), or third party license(s) and further agrees that it will, at HYBRID's request, assist HYBRID in efforts to preserve HYBRID's Intellectual Property Rights including pursuing action against any breaching third parties.

Customer shall be held liable to HYBRID for damages arising out of any breach of Customer's obligations under the Agreement, including but not limited to a breach of section Sections 5 (Price, invoicing, and payment), 6 (Intellectual Property Rights), 10 (Customer's obligations), 12 (records), 13 (Export, re-export, transfer & use), 14 (compliance with laws), 16 (data privacy), breach of the applicable Software License Agreement and/or Support and Maintenance Agreement; or failure to pay any amounts due to HYBRID under this Agreement.

11. TERM AND TERMINATION

11.1 Terms of Sale

These Terms of Sale shall enter into force on the date of the Customer's signature on the Order Confirmation and in any case at the latest at the time Customer first starts using the Products or the Services. These Terms of Sale shall continue in effect for an indefinite duration and shall continue to apply for at least as long as Customer is using Products or is receiving Services from HYBRID.

11.2 Product licenses Term

Products are offered under either (a) Perpetual Product Licenses, or (b) Subscription/Rental Product Licenses.

- (a) Perpetual Product Licenses are granted for the full duration of the Intellectual Property Rights with regards to the Products, against payment of the applicable one-time license fee, without prejudice to HYBRID's rights for termination provided hereafter.
- (b) Subscription/Rental Product Licenses are provided for the limited duration defined in HYBRID's Offer (e.g. annual periods) and against periodic payment of the agreed license fees. Upon expiry of the duration of the initial license term, or the then-current service term, the Subscription/Rental Product License shall be automatically renewed for successive terms equal to the initial license term subject to the current version of these Terms of Sale and the applicable Software License Agreement, unless at least forty-five (45) days prior to the date of any such renewal, either party shall have given written notice to the other of its intention not to renew the relevant Subscription/Rental Product License.

11.3 Services Term

Services may be offered (a) punctually, on a time and material or project basis, or (b) on a continuous/recurring basis (e.g. Maintenance and Support Services).

- (a) Occasional Services / Time and Material / project basis

Whenever the Parties agree that HYBRID will provide punctual services on a time and material or project basis, the agreement for the provision of such services will end upon the completion of the Services by HYBRID.

- (b) Continuous Service agreements / Maintenance and Support

Continuous Service agreements, such as Maintenance and Support agreements, will be valid and in force for the non-cancellable duration defined in HYBRID's Offer (and in the absence thereof for one year) against periodic payment of the agreed Services fees. Upon expiry of the initial service term or the then-current service term, the applicable agreement shall be automatically renewed for successive periods equal to the initial duration subject to the then-current version of these Terms of Sale and the applicable Maintenance and Support Terms, unless at least forty-five (45) days prior to the date of any such renewal, either party shall have given written notice to the other of its intention not to renew the agreement.

11.4 Termination

HYBRID may terminate the Agreement, the applicable Product License, or any part thereof (or, at its sole direction, choose to suspend both the Customer's access to the Service and/or Products as well as the performance of all or part of its obligations under this Agreement without cost or penalty) at any time and without prior court intervention, in the following situations:

- (a) if Customer defaults in any payment due to HYBRID and such default continues unremedied for at least thirty (30) calendar days after receipt by Customer of written notice thereof;
- (b) if Customer is in material default with respect to any other provision of this Agreement and such failure or default continues unremedied for at least thirty (30) calendar days after receipt of written notice. In case the breach by Customer is not capable of being cured or remedied, HYBRID may terminate the Agreement or any part thereof immediately;
- (c) in the event of the appointment of an assignee, referee, receiver, or trustee for the Customer under any insolvency law, or the attempted winding up, liquidation, or dissolution of the Customer for any cause, or should the Customer become the subject of any proceeding under any applicable bankruptcy, receivership, insolvency, winding up or liquidation laws, or if, in the reasonable opinion of HYBRID, the Customer becomes insolvent or bankrupt;
- (d) in the situations described in the applicable Software License Agreement or Support and Maintenance Agreement.

HYBRID may further terminate the Agreement, the applicable Product License, or any part thereof, upon twenty (20) days' written notice in the event it becomes known that (i) Customer or an Affiliate or Customer's direct or indirect parent has acquired or intends to acquire a controlling interest in a third party, or (ii) Customer or its direct or indirect parent is to be acquired by a third party, or (iii) a controlling interest in Customer or its direct or indirect parent is to be transferred to a third party.

Customer may terminate this Agreement at any time and without prior court intervention if HYBRID is in material default with respect to any provision of this Agreement and such failure or default continues unremedied for at least thirty (30) calendar days after receipt by HYBRID of written notice.

11.5 Consequences of termination

Upon any termination of the Agreement or any part thereof, licenses to use the Products and any entitlement to receive Services shall immediately terminate and Customer shall cease to use the relevant Products and Services. Customer shall uninstall any installed terminated Products and shall return any Product Licenses keys to HYBRID. HYBRID may technically block or terminate any further use of affected Products remotely.

12. RECORDS

Customer shall keep full, true, and accurate records and accounts, in accordance with generally-accepted accounting principles, of each Product and Service purchased, and/or deployed, including information regarding Software usage and export or transfer. Customer shall make such records available for review by or on behalf of HYBRID upon fifteen (15) days' prior written notice, during regular business hours, at Customer's principal place of business.

13. EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS

HYBRID Products and Services may be subject to U.S. and local export control laws and regulations. The parties shall comply with such laws and regulations governing the use, export, re-export, and transfer of Products and technology and shall obtain all required U.S. and local authorizations, permits, or licenses.

14. COMPLIANCE WITH LAWS, INCLUDING ANTI-CORRUPTION LAWS

HYBRID expects and requires that all of its subcontractors, channel partners, consultants, agents, and other parties with whom HYBRID does business ("HYBRID Partners"), act at all times in a professional and ethical manner in carrying out their services and contractual obligations to HYBRID, or on HYBRID's behalf to a HYBRID Customer.

15. LIMITATION AND EXCLUSION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL HYBRID'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY PRODUCT OR SERVICE PROCURED UNDER THIS AGREEMENT, REGARDLESS OF LEGAL THEORY AND FOR ALL CLAIMS IN AGGREGATE, EXCEED THE PRICE PAID BY CUSTOMER UNDER THE AGREEMENT TO HYBRID DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT THAT FIRST GAVE RISE TO THE LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL HYBRID, REGARDLESS OF LEGAL THEORY, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO ANY LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, ANY DAMAGES RESULTING FROM BUSINESS INTERRUPTION, OR ANY OTHER CLAIMS BY A THIRD PARTY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF A HYBRID REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS, OR COSTS.

NOTHING CONTAINED IN THIS AGREEMENT LIMITS PARTIES LIABILITY IN THE EVENT OF DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE OR FOR THE TORT OF DECEIT (FRAUD), A BREACH OF SECTION 8 (CONFIDENTIALITY), OR ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

EXCEPT FOR CUSTOMER'S BREACH OF HYBRID'S INTELLECTUAL OR PROPRIETARY RIGHTS? NEITHER PARTY MAY BRING A CLAIM UNDER THESE TERMS OF SALE MORE THAN TWELVE (12) MONTHS AFTER THE EVENT THAT LED TO THE CREATION OF THE ACTION OR CLAIM.

EACH PARTY ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION 15 REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES UNDER THIS AGREEMENT AND THAT IN THE ABSENCE OF THOSE LIMITATIONS OF LIABILITY, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SIGNIFICANTLY DIFFERENT.

16. DATA PRIVACY

HYBRID may process personal data (including name, professional e-mail address, and telephone number) of relevant contact persons and users of the Products and/or Services with Customer when performing the Agreement.

Any processing of personal data by HYBRID is done in accordance with HYBRID's privacy policy, as available at <https://www.hybridsoftware.com/privacy-policy/>. Customer expressly confirms to have taken notice of HYBRID's privacy policy and accepts it. Customer shall be responsible for bringing the privacy policy to the attention of its relevant employees or representatives.

HYBRID shall ensure that the personal data of employees and representatives of Customer are processed within the framework of the execution of this Agreement, for the following business purposes: (i) development and improvement of HYBRID's Products and/or Services; (ii) contract and relationship management, (iii) conflict management and legal disputes; (iv) verification of Customers use of the Products and Services, and (v) compliance with legal obligations.

17. MISCELLANEOUS

Choice of Law. The validity, interpretation, and performance of the Agreement shall be governed by construed in accordance with the laws of HYBRID's contracting legal entity, excluding its choice of law provisions and the UN Convention on Contracts for the International Sale of Goods.

Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to the Agreement, or the breach, termination, or validity thereof, shall be finally settled by the Courts of the registered seat of HYBRID, provided that either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

Preliminary Relief. At any point, after a dispute has arisen, in the event interim or provisional relief is necessary to protect the rights or property of a party under Section 6 of these Terms of Sale or otherwise prior to the resolution of the dispute, either party may, without waiving any process or remedy under these Terms of Sale, seek such relief from any court of competent jurisdiction.

Force Majeure. Neither party shall be liable for any delay or failure in non-monetary performance obligations due to a Force Majeure Event. The time for performance of the obligations and rights of the defaulting party shall be extended for a period equal to the duration of the Force Majeure Event.

No Waiver. The waiver by either party of any right provided under these Terms of Sale shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms of Sale.

Assignment and subcontracting. Customer may not assign the Agreement to a third party, without the prior written consent of HYBRID. HYBRID may assign the Agreement or any of its rights based on the Agreement without the consent of the Customer to any third party. HYBRID may subcontract its duties. HYBRID shall be liable for the work of its subcontractors as for work of its own.

Severability. If one or more terms of the Agreement or part thereof become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, the Parties shall enter into good faith discussions about a replacing term or clause best approaching the parties' initial intention. In case the Parties do not reach an Agreement, the competent court shall limit the illegal or unenforceable clause to what is at maximum permitted under applicable law. All remaining terms shall remain in full force and effect. However, if this paragraph is invoked and, as a result, the value of the Agreement is materially impaired for either party, then the affected party may terminate the Agreement by written notice with immediate effect.

No Agency. These Terms of Sale do not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of these Terms of Sale. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

Entire Agreement. These Terms of Sale, together with the applicable Software License Agreement and Support and Maintenance Terms, the Offer, and the Order Confirmation, constitute the complete agreement between the parties concerning the subject matter and replace any prior oral or written communications between the parties except as agreed in writing between the parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied.

Future Products and Services. For any Products and Services included in the Price List, including Products and Services which become or have become HYBRID Products or Services as a result of an acquisition by HYBRID of another entity or business activity, HYBRID may stipulate certification, installation, or training requirements for Customer prior to allowing Customer to purchase such Products and/or Services. HYBRID reserves the right, during the term of these Terms of Sale, to license and distribute additional Products. Such Products may be licensed under additional or different license terms which will be made available to Customer at the time such Products are ordered by or provided to Customer.

Notices. All notices required or permitted under the Agreement shall be in writing. Notices will be deemed to have been given (i) one day after deposit with a commercial express courier specifying next-day delivery; or (ii) two days for international courier packages specifying two-day delivery, with written verification of receipt.

All communications shall be sent to the parties' addresses shown on the Order Confirmation or to such other address as may be designated from time to time by a party by giving at least fourteen (14) days' written notice to the other party.



Notwithstanding the above, notices from HYBRID regarding general changes in pricing, terms, Products, Services, policies or programs may also be by posting on HYBRID's Website (or any other website used by HYBRID) or by email.

Survival of Certain Provisions. The obligation to pay all accrued fees, to respect each Party's proprietary rights and Intellectual Property Rights, indemnification obligations, the limitations of liability and the confidentiality obligations shall survive the termination of the Agreement by either Party for any reason.

Headings. The titles and headings of the various sections and paragraphs in these Terms of Sale are intended solely for convenience of reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement.