

General Terms and Conditions of Sale

PLEASE READ THE FOLLOWING UPDATED TERMS AND CONDITIONS OF SALE CAREFULLY, AS PURCHASING, LICENSING AND/OR USING THE RELATED PRODUCTS, SOFTWARE, OR SERVICES INDICATES AGREEMENT WITH AND ACCEPTANCE OF THESE TERMS, which apply to any sales starting as of January 1st, 2023.

These are the updated, current terms and conditions of sale ("**Terms**") of 3DGence America, Inc. and/or its affiliates, agents and employees (collectively, "**3DGence**"), which apply to any sale of 3DGence products, licensing of accompanying software, and/or the provision of services (the terms "**Products**", "**Software**" and "**Services**", as defined below). You, on behalf of yourself as an individual, your employer, or another entity which has not previously accepted these terms (you and such entities, collectively, "**Customer**"), represent and warrant that Customer has full authority to accept, and has read, understood and agreed to, these terms. Notwithstanding anything herein to the contrary, any download, acceptance or use by Customer of any 3DGence Products, Software, and/or Services shall constitute an irrevocable acceptance of these Terms. If Customer does not agree to be bound by these Terms, then Customer shall promptly return Products, delete or return licensed Software and not use any related Services.

1. SALE AND PURCHASE; LICENSE

1.1. Products. 3DGence agrees to sell to Customer, and Customer agrees to purchase, the system(s) ("**System**"), System parts ("**Parts**"), proprietary or third party materials, and/or other consumables (collectively, "**Consumables**"), and/or other ancillary products (collectively, the "**Products**") and/or Services (as defined in Section 1.3 below) that are set forth in any purchase order or any other 3DGence-approved written purchase agreement tendered to 3DGence (each a "**Purchase Order**"), any and all of which shall be governed by these Terms, notwithstanding any conflicting or additional provisions in any such Purchase Order or other Customer communication. No purported waiver or other modification of these Terms will be effective unless, and only to the extent, specified by an express waiver or modification signed by the 3DGence CEO, or an executive officer of 3DGence with delegated authority. All other proposed modifications or waivers (whether whole or partial) of these Terms are hereby objected to and rejected in all respects.

1.2. Software and Documentation. If a Product includes the licensure of any 3DGence-provided software, which term shall include program code together with applicable technical documentation, containing specifications, instructions, and/or other information, including material printing profiles, accompanying such software or made available by 3DGence from time to time (collectively "**Software**"), 3DGence hereby grants to the Customer a non-exclusive, nontransferable, revocable, and limited license to use the Software for its internal purposes and solely in conjunction with the use of Product to which it relates. Customer acknowledges that the Software may also be subject to additional terms and conditions set forth in executable or electronic license agreements, which shall control and govern all such licensed Software use to the extent necessary to resolve any conflict with these Terms. Subject to the terms of such license agreements, all rights not expressly granted herein are reserved, and all other uses of the Software are subject to these Terms as well as the payment of any applicable Software license fees, including fees for specific Software functionalities, as identified by 3DGence in writing.

1.3. Services. From time to time, 3DGence agrees to offer and provide services related to the Products ("**Services**") that are identified in a Purchase Order, and Customer understands and agrees that such

services are offered and provided at all times subject to, and in accordance with, these Terms. Notwithstanding the foregoing, certain Services, including support and maintenance services, may be offered under, and made subject to, additional terms or conditions in a separate agreement (the “**Services Agreement**”), which, on full execution, shall control and govern to the extent necessary to resolve any conflict with these Terms.

1.4. Restrictions on Use. Customer agrees that it shall not directly or indirectly: (i) modify, enhance, adapt, translate, make improvements to, create derivative works based upon, disassemble, decompile, reverse engineer, reduce to any human or machine perceivable form, or circumvent any technological measure that controls access to or permits derivation of the source code of, the Software or any part thereof; (ii) reverse engineer the Products, any part thereof, or any composition made using the Products; (iii) rent, lease, sell, transfer, assign, or sublicense the rights granted hereunder, except in connection with the rental, lease, sale or transfer of the entire System; (iv) copy any part of the Software except for one (1) complete copy thereof for archival and/or back-up purposes, or as otherwise expressly authorized by 3DGence in writing; (v) change, distort, or delete any patent, trademark, copyright or other proprietary notices which appear in writing on or in a Product (or in any copies of Software); (vi) make or permit use of any trademark, trade name, service mark or other commercial symbol of 3DGence without its prior written consent; (vii) operate or make use of the Products in any way in violation of applicable laws and regulations; and/or (viii) take or permit any other action which could impair 3DGence’s rights, or damage the image or reputation of quality inherent in the Products, 3DGence’s business, reputation, Intellectual Property (defined below) or other valuable assets or rights. In the event Customer rents, leases, sells or otherwise transfers the Products to a third party, Customer agrees that it will require such third party to be bound by Sections 1.2 (Software and Documentation), 1.4 (Restrictions on Use), and 8 (Proprietary Rights) hereof as a condition of such rental, lease, sale or other transfer.

2. PAYMENT AND CANCELTION

2.1. Cancellation Rights and Procedures. Customer may cancel or modify a pending Purchase Order only by giving written notice thereof to 3DGence within two (2) business days after submission of the Purchase Order to 3DGence. Thereafter, Customer may not cancel or change any Purchase Order without 3DGence’s prior written consent, and such Purchase order would be considered binding.

2.2. Payments and Credit. Customer shall pay for the Products, Software and/or Services as and within the timeframes or on or before the date(s) specified in the Purchase Order and is not entitled to and shall not suspend payments, set off or otherwise deduct from any amounts invoiced by 3DGence. No rights to purchase Products on credit are conferred herein, and any extension, modification or withdrawal of credit and credit terms are reserved solely to 3DGence in its discretion. Except as otherwise agreed in the Purchase Order, all payments are due in US Dollars.

2.3. Remedies. In the event Customer is in default in the payment of any sum invoiced by 3DGence, then, without prejudice to 3DGence’s other rights and remedies: (i) all outstanding sums shall immediately become due and payable to 3DGence, notwithstanding any credit terms previously granted by 3DGence to the Customer; (ii) 3DGence may delay or suspend delivery of Products, Software and/or Services hereunder, or cancel any existing, pending or new orders and/or agreements with the Customer; (iii) 3DGence may retain any amount already paid to it by Customer; and (iv) 3DGence may recover its reasonable attorneys’ fees and other expenses incurred in enforcing

its rights and remedies hereunder. Any amounts not paid by Customer when due shall bear interest at the rate of two and one-half percent (2.5%) per month or the highest legal rate of interest (whichever is lower).

2.4. Taxes. All prices are exclusive of, and Customer shall pay, all applicable sales, use and other taxes or duties, including customs duties, imposed, or otherwise due, on the sale, purchase, lease or license of the Products, Software and/or Services, except for those taxes imposed upon 3DGence's net income.

3. TITLE, DELIVERY AND RISK OF LOSS

3.1. Transfer Terms. Delivery is made available Ex Works (Incoterms 2020) at 3DGence's designated facility, unless agreed otherwise by the parties in the Purchase Order, with respect to shipping costs, risk of loss and title transfer, except that regardless of the delivery method, no title transfer shall ever occur for any licensed Software associated with any Product sale. Notwithstanding delivery and the passage of risk and whether or not credit is extended for any Product purchase, the following shall apply:

3.1.1. If the applicable law (as determined according to Section 17 below) so permits, property in and title to Products shall remain with 3DGence, and shall not pass to Customer, until 3DGence has received payment of the full price and license fees (if applicable) for (a) all Products, Software and/or Services that are the subject of these Terms, and (b) all other goods and/or services supplied by 3DGence to Customer under any contract whatsoever. Payment of the full price and license fees shall include without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between 3DGence and Customer. Moreover, Customer shall keep the Products identified as retained until such retention lapses.

3.1.2. If the applicable law does not permit the arrangement described in Section 3.1.1 above, 3DGence hereby reserves in the Products (as well as all proceeds resulting from any sale thereof), and Customer grants and agrees that the Products shall remain fully subject to a first priority purchase money security interest, until 3DGence has received payment of the full price and license fees (if applicable) for all the items listed in paragraphs (a) and (b) of Section 3.1.1. Payment of the full price and license fees shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between 3DGence and Customer. Moreover, Customer hereby grants that (i) no hindrance to its granting of the above security interest exists in any of its third-party contracts; or (ii) in the event such a hindrance does exist, Customer shall assist 3DGence in exercising, and shall take all actions necessary to protect and maintain, such security interest.

3.2. Delivery. 3DGence will attempt to cooperate with Customer's requested delivery dates or other related delivery requests, but cannot and does not warrant quoted shipment or delivery dates or time frames and may fulfill ordered items by partial and incremental shipments, in its sole discretion. Customer acknowledges and agrees that all costs and obligations associated with shipment and delivery of Products shall be borne solely by Customer; that any insurance desired therefor shall be Customer's sole obligation and expense; and that 3DGence, shall not be liable for any direct, indirect or consequential damage or loss that the Customer may incur resulting from any delivery failure or

delay. Customer will notify 3DGence in writing within seven (7) calendar days following the date of delivery of any alleged Product defect or other Purchase Order discrepancies, and the Products and licensed Software shall be deemed to be accepted in the quantity specified on the bill of lading or commercial invoice and in good condition, and such acceptance will operate as a bar to claims against 3DGence, if no such notice is received.

4. **INSTALLATION.** Products that do not require installation by 3DGence may be installed by Customer and used at any time following delivery. 3DGence (or its authorized technical representative) will install those Products (including Software) or Parts designated as requiring installation by 3DGence or its authorized technical representative (such Products or Parts, "**3DGence Installed Products/Parts**"), at Customer's designated facility following receipt of all applicable payments related thereto. Prior to such installation, Customer, at its expense, shall complete all applicable Product site preparations for installation, as specified by applicable Product documentation and as required by applicable law, including, without limitation, all health and safety laws, as well as Customer's own health and safety policies, and shall thereafter provide such other assistance, services and facilities as may be requested by 3DGence (or its authorized technical representative) to complete such installation. 3DGence Installed Products/Parts shall not be handled, operated, opened, dismantled or used at any time prior to completion of required installation thereof, and then, initially in the presence and under the supervision of authorized 3DGence technical personnel.
5. **TRAINING.** During any Product installation required to be performed by 3DGence (or its authorized technical representative), and in consideration for Customer's payment of charges due (unless otherwise specified in the Purchase Order acceptance), 3DGence shall make available to qualified personnel of Customer basic training in the use and operation of the Products according to the applicable Product documentation. Subsequent to any such required Product installation, 3DGence may offer and provide such training services from time to time, in its sole discretion.

6. **PRODUCT WARRANTY**

6.1. Limited Warranty and Warranty Period. Solely during the then-current standard limited 3DGence warranty period applicable to the System, Software, Parts, Consumables, and Services, which periods (if any) are expressly identified as published by 3DGence in Product Warranty Period, published at [Product Warranty Period](#), the Product literature, the Purchase Order, Purchase Confirmation the Services Agreement (each such period, as applicable, the "**Warranty Period**") (In the event there is any discrepancy between the Warranty Period stated in Product Warranty Period and on any other document, the Warranty Period stated in Product Warranty Period shall prevail over any other document, unless expressly otherwise agreed by 3DGence in writing), 3DGence warrants as follows: (a) the System (excluding the Software), Parts and/or Consumable shall be free from defects in materials and workmanship; (b) the Software shall perform substantially in accordance with its published documentation, and (c) the Services shall be performed in a professional and workmanlike manner.

6.2. Limited Warranty Remedies. In respect of a valid warranty claim under Section 6.1 (Limited Warranty and Warranty Period) above, 3DGence, as its sole obligation and as Customer's sole remedy hereunder shall (A) in the case of the System (excluding Software), a Part, or Consumable, either repair or replace, at 3DGence's sole option, any such System, Part or Consumable with a new or refurbished conforming System, Part or Consumable, as determined by 3DGence in its sole discretion, provided

that (i) 3DGence, in its discretion, shall be entitled to re-acquire (at no cost to 3DGence except as expressly provided in clause (ii) below) the ownership of any such defective System, Part or Consumable that has been replaced; (ii) at 3DGence's request and cost and expense, Customer shall return to 3DGence any such replaced System, Part and/or Consumable within thirty (30) days; and (iii) 3DGence will be entitled to invoice the Customer for any such items not returned within this time period; (B) in the case of the Software, make commercially reasonable efforts to resolve inconsistencies between the functionality of such software and its published specifications; and (C) in the case of Services, as (and if) expressly set out in the applicable Services Agreement.

6.3. Exclusion of Warranties. 3DGence's limited warranty obligations hereunder shall terminate and shall not apply where any Product or Software failure or other breach of warranty was caused by: (i) catastrophe, fault or negligence of the Customer; (ii) operation or use of the Products in violation of applicable laws or regulations; (iii) improper or unauthorized use; (iv) use of any non-certified consumables (polymer resins, powder, filaments, support material, cleaning materials, adhesives, or any other polymer suitable to be used by or with the Product), printing heads or Parts; (v) installation, modification or repair other than by 3DGence or its authorized technical representatives; (vi) removal of the Products from the original installation site, unless authorized by 3DGence in writing; (vii) unusual stress; (viii) power failure; (ix) deviation from 3DGence's recommended maintenance procedures; or (x) failure to maintain the prescribed environmental or other conditions at the installation site or any other failure to comply with applicable Product instructions and/or documentation.

6.4. Warranty Disclaimer. The warranties set forth in this section 6 (Product Warranty) are exclusive and in lieu of all other warranties, express, implied or statutory (including but not limited to any implied warranty of merchantability, fitness for a particular purpose, title or non-infringement). 3DGence disclaims that the operation of Software will be uninterrupted or error free, or that the functions therein will meet or satisfy the customer or user requirements or intended use. The remedies provided in section 6.2 (Limited Warranty Remedies) shall be customer's sole and exclusive remedy for any failure of 3DGence to conform with such limited warranty, and customer shall have no claim, except as aforesaid, against 3DGence or any other manufacturer, supplier or licensor of the products, software or related services, whether based in contract, tort, product or other strict liability, trade practices, or otherwise. Repair or replacement or refund (as elected by 3DGence) in the manner provided above shall constitute fulfillment of all liabilities of 3DGence with respect to its limited warranty, as well as for any claims based on or relating to the quality and performance of the products. Customer is solely responsible in all cases for selection of the product(s), software and services to achieve customer's intended results or for customer's particular applications.

6.5. Use of Unauthorized Parts and Non-Certified Consumables. In the event 3DGence determines that damage to a Product has been caused by the use of unauthorized Parts and/or non-certified Consumables, 3DGence may offer to diagnose and repair the Product or its components at 3DGence's then current maintenance restoration rates.

7. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:

7.1. Limitation of Liability for Direct Damages. Notwithstanding anything herein to the contrary, including without limitation 3DGence's indemnification liability under section 11, in no event shall 3DGence, or its affiliates, manufacturers, suppliers or licensors (as third party beneficiaries) be liable

for direct damages or other losses or liabilities directly relating to the products, software or services or otherwise arising out of, related to, or in any way connected with the same installation or other use of products or the provision of services, if and to the extent such direct damages or losses exceed the actual amount paid by customer for the specific Products or related Services that directly or indirectly caused the damages or other losses or liabilities claimed (provided that for any Services, the amount shall be limited to the amount paid for said Services during the twelve (12) months prior to bringing the claim), regardless of the form of action, whether based in contract, express or implied warranty, tort, product or other strict liability, trade practices, or otherwise, and regardless of whether any remedy set forth herein fails of its essential purpose.

7.2. Exclusion of Certain Damages. Notwithstanding anything herein to the contrary, in no event shall 3DGence or its affiliates, manufacturers, suppliers or licensors (as third party beneficiaries) be liable for any loss of revenue, loss of actual or anticipated profits, loss of contracts, loss of the use of money, loss of anticipated savings, loss of business, loss of opportunity, loss of good will, loss of reputation, loss of, damage to or corruption of data; or any other direct or indirect, special, incidental, consequential, reliance, exemplary, punitive, or other similar damages of any kind, whether foreseeable or unforeseeable, even if it is made aware of the possibility of such damages, and whether based in contract, express or implied warranty, tort, product or other strict liability, trade practices, or otherwise, and regardless of whether any remedy set forth herein fails of its essential purpose.

7.3. Limitation of Product Liability In Case of Commercial Use and of Improper Use. 3DGence shall not be liable for any damages relating to or caused by a Product used for commercial purposes and/or for damages caused by the use of a Product in violation of the instructions of use of such Product, or which is otherwise considered to constitute an improper use.

7.4. Limitation of Liability for Product Safety. Customer is aware that the Product and/or its use can be hazardous and can cause damage to health, property, environment etc. Customer therefore shall use the product only in full compliance with all instructions provided with the product as well as in compliance with all provisions of local law applicable on such product and its use. 3DGence shall not be liable for any damages incurred due to the non-compliance of customer with his obligations according to this provision.

7.5. Exclusion of Liability for Recommendations of Third Party Products. As far as 3DGence mentions or recommends a third party product, such mentioning shall be understood as the mentioning of an example of a group of products; it does not constitute an advertisement in favor of such product, nor does seller act as the distributor of such product. Customer shall remain fully responsible whether or not and to what extent he wants to acquire and use such product. In case customer acquires such third party product, customer shall enter into all necessary agreements and use the product in compliance with all applicable terms. 3DGence shall not be liable for any damage caused by such product or by the use of such third party product.

7.6. Exclusion of Liability for Third Party Products. 3DGence is only liable for the products manufactured by itself and only to the extent pursuant to these Terms. For avoidance of doubt, to the extent permitted by law, any non-3DGence manufactured products ("Third Party Products") even if such Third Party Products are sold by 3DGence to customer are provided "as is" with no warranties whatsoever, other than those warranties expressly provided to 3DGence by the provider of the applicable Third Party Product, to the extent that these can be provided by 3DGence. 3DGence in no

event shall be liable for any direct, indirect or consequential damage or loss that the Customer may incur resulting from purchasing, installation, and/or use of such Third Party Products.

7.7. Limitation of Actions. Any action against 3DGence relating to any alleged breach of warranty or any other alleged Product failure, must be brought within twelve (12) months after the cause of action accrues.

7.8. Indemnification and Hold Harmless. Customer agrees to indemnify, defend, and hold 3DGence harmless from all losses, damages and costs (including reasonable legal costs and attorney's fees) incurred in connection with (i) a breach by Customer of its obligations to timely pay and take delivery of Products, and (ii) any third party claims, including but not limited to intellectual property infringement claims resulting from the sale of Products to Customer or the handling, storage, processing or sale by Customer of products, services or other goods manufactured using the Products.

8. PROPRIETARY RIGHTS

8.1. Customer acknowledges that 3DGence is the sole owner of all Intellectual Property (as defined below) and trade secrets that relate to the Products and/or Software and the use thereof. No right or license in Intellectual Property is granted to Customer by implication, estoppel or otherwise other than that expressly set forth herein or in other written documentation provided by 3DGence. Except as required by law or as set forth in other written documentation provided by 3DGence, (a) Intellectual Property directed to all or part of a Product is licensed only upon purchase of the Product from 3DGence or its approved reseller and only for use of the specific Product so purchased; (b) Intellectual Property directed to a combination of Products (such as a System and Consumables) is licensed only upon purchase of the entire combination from 3DGence or its approved reseller and only for use of the combination of specific Products so purchased; (c) Intellectual Property directed to a method of using a Product is licensed only upon purchase of the Product from 3DGence or its approved reseller that necessarily performs the method and only for use in connection with the specific Product so purchased; and (d) Intellectual Property directed to a method of using a combination of Products (such as a System with Consumables) is licensed only upon purchase of the entire combination from 3DGence or its approved reseller that collectively necessarily perform the method and only for use in connection with the combination of specific Products so purchased. As used herein, "**Intellectual Property**" shall mean any and all 3DGence copyrights, patents, trademarks, trade names, logos, Software, documentation, technical and manufacturing techniques, concepts, methods, designs, specifications and other proprietary information relating to the Products. Notwithstanding any other provision of these Terms, any use herein of the terms "sale" or "purchase", or a similar term in connection with the Software, shall only refer to a "license in accordance with these Terms" of such Software.

8.2. Customer hereby grants to 3DGence a fully paid-up, royalty-free, worldwide, non-exclusive, irrevocable, transferable right and license in, under, and to any patents and copyrights enforceable in any country, issued to, obtained by, developed by or acquired by Customer that are directed to 3D printing equipment, the use or functionality of 3D printing equipment, and/or compositions used or created during the functioning of 3D printing equipment (including any combination of materials), that is developed using the Products and that incorporates, is derived from and/or improves upon the 3DGence Intellectual Property and/or trade secrets. As far as such rights cannot be licensed as a matter of applicable local law, Customer hereby waives any right to enforce such rights toward

3DGence. Such license, or where applicable waiver of the right to enforce, shall also extend to 3DGence's customers, licensors and other users of 3DGence's Products in connection with their use of 3DGence's Products.

9. **CONFIDENTIALITY.** Customer agrees to hold all confidential or proprietary information (including, without limitation, technology, software, ideas, know-how, processes, specifications, technical data, configurations, algorithms and trade secrets) which is disclosed by 3DGence (collectively, "**Confidential Information**") in strictest confidence, and agrees not to use any Confidential Information for any purpose outside the purchase, sale and use of Products, and not to disclose the Confidential Information to any third party, except to those employees of Customer who are bound by written restrictions at least as protective of 3DGence's Confidential Information as those provided herein, and who must be given access to the Confidential Information solely to use the Products in accordance with these Terms. Upon execution of a non-disclosure agreement satisfactory to 3DGence, its Confidential Information may also be disclosed to Customer's contractors who have been retained to perform services in connection with the Products, provided that Customer shall remain liable for any breach of such agreement, or damage or loss incurred as a result of such breach, by any such contractors.

10. DATA PRIVACY

10.1. For the purposes of this clause 10, "Data Protection Legislation" means Directive 95/46/EC, as transposed into domestic legislation of each Member State of the European Economic Area and in each case as amended, replaced or superseded from time to time, including without limitation by the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (GDPR) and any data protection laws substantially amending, replacing or superseding the GDPR following the exit of the United Kingdom from the European Union, and/or other applicable data protection or national/federal or state/provincial privacy legislation in force, including where applicable, statutes, decisions, guidelines, guidance notes, codes of practice, codes of conduct and data protection certification mechanisms issued from time to time by courts, any Supervisory Authority and other applicable authorities.

10.2. Customer shall comply with the Data Protection Legislation in its use of the Software and Services and in connection with its rights and obligations under these terms and conditions of sale.

10.3. Customer shall only disclose personal data (as defined by Data Protection Legislation) to 3DGence where strictly necessary for the performance of the Services and shall ensure that any such disclosures are compliant with Data Protection Legislation.

10.4. Customer shall use its best reasonable efforts to not do or permit anything to be done which might cause 3DGence to be in breach of the Data Protection Legislation.

11. INDEMNITY

11.1. Subject to the restrictions identified below, 3DGence shall assume responsibility for any suit or proceeding brought against Customer which is based on a third party claim that an unaltered Product (including its Software) or any Part thereof, supplied pursuant to these Terms infringes upon the third party's registered copyright, trademark or patent; provided, however, that 3DGence shall: (i) be given immediate notice in writing of the assertion of any such claim and of the threat or institution of any

such suit or proceeding; (ii) have sole authority to investigate, defend and/or settle the claim, suit or proceeding; and (iii) be given any such assistance as required for the investigation, preparation, defense and settlement of the claim, suit or proceeding, subject to reimbursement by 3DGence of Customer's reasonable out-of-pocket expenses. Without derogating from the foregoing obligation, if 3DGence believes that any Product (including its Software) may infringe, then 3DGence, at its election, may: (a) substitute or modify such Product which is alleged or determined to infringe so that it becomes non-infringing, while providing substantially similar performance; (b) obtain license rights for the continued use of the Product by Customer (at no additional cost to Customer); and/or (c) refund to Customer the purchase price paid for the infringing Product, less a depreciation allowance of twenty percent (20%) per year from the date of delivery. This Section 11.1, states Customer's entire remedy, and 3DGence's entire liability subject to the limitations on liability set out in Section 7.1 (Limitation of Direct Damages), for any such infringement or claim thereof, and shall control over any other conflicting or inconsistent provision in these Terms. Without the prior written consent of 3DGence, Customer shall not incur any cost or expense in connection with such claim, suit or proceeding or make any admission, or enter into any agreement, in connection therewith. 3DGence shall have no liability or obligation under this Section 11.1 for any infringement or claim thereof to the extent it is based upon: (I) production, sale or use of prototypes, outputs, or other results of the Products; (II) any method of using a Product (other than methods inherent in, and necessary for, the operation of, the Product as supplied); (III) the use of any Product with any consumables (polymer resins, powder, filaments, support material, cleaning materials, adhesives or any other polymer suitable to be used by or with the Product), supplies, equipment, device or software not authorized by 3DGence; (IV) the use of any Product which has been modified by Customer or any third party without obtaining 3DGence's prior written authorization; (V) the result of 3DGence's compliance with any of Customer's requested designs or specifications; (VI) circumstances giving rise to one or more warranty exclusions under Section 6.3 above; and/or (VII) Customer's continued use of any Product after receipt of notice of infringement (collectively, "**Exclusions**").

11.2. Customer shall defend, indemnify, and hold harmless 3DGence and its affiliates, and their employees, officers, and directors, against any claim, suit or proceeding arising out of or relating to any Exclusions; provided that Customer shall not settle any claim or enter into any agreement that affects 3DGence's rights or interests without 3DGence's prior written consent; and that if Customer does not diligently defend against such claim, suit, or proceeding, 3DGence shall be entitled to obtain its own legal counsel to direct the defense thereof at Customer's sole cost and expense.

12. **INSURANCE.** Customer will obtain and maintain adequate liability insurance on the Products against loss or damage from any external causes, with 3DGence named as an additional insured under all such policies.
13. **EXPORT COMPLIANCE.** Customer shall comply with all applicable laws, rules, and regulations with respect to, but not limited to, the use of the Product and/or Software. In addition, Customer expressly agrees to abide by all applicable foreign trade/export restrictions or similar rules as stated herein or referred to herein. Customer shall not transfer, re-transfer, export or re-export any Product (including any Software, Part, or consumable) or any related technology except in full compliance with all applicable export controls administered by the United States of America, Canada, the European Union, and other countries, as well as any applicable import and use restrictions, which laws, regulations, controls and restrictions may change from time to time. Without limiting the generality

of the foregoing, Customer shall not transfer, re-transfer, export or re-export such items to anyone on any Denied Parties List of any governmental entity, including but not limited to the list of Specially Designated Nationals of the U.S. Department of the Treasury; Denied Persons List or Entity List of the U.S. Department of Commerce's; or any lists maintained by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury or the U.S. Department of Homeland Security; or any such lists that may be revised from time to time, or for any use in chemical or biological weapons, sensitive nuclear end uses, missiles, etc. Customer represents it is not located in, under control of, or a national or resident of any country on any such list. Customer shall be solely responsible for determining compliance and obtaining all required approvals to facilitate the export of any products or technologies, including outside of the U.S., Canada, or the European Union, and 3DGence shall be under no obligation to notify Customer of any changes or updates to any laws, regulations, controls, restrictions or lists contemplated hereby. Customer shall immediately inform 3DGence of any trade/export restrictions, whether they be of United States, European Union, or other origin, which may impact 3DGence's compliance with internationally respected legislation, rules, protocols, advice or recommendations relating to trade/export restrictions. For clarity, in the event of any conflict between legislation of local origin and of U.S. origin, legislation of U.S. origin will prevail unless prohibited by mandatory legislation of local origin.

14. **U.S. GOVERNMENT USE.** If Customer is part of an agency, department, office, or other entity of, owned or created by the United States Government ("**Government**"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product or Software is further restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies, and the Defense Federal Acquisition Regulation Supplement as applied to defense and military agencies, for "commercial items", "commercial computer software", and "commercial computer software documentation." In accordance with such provisions, any use thereof by the Government shall be governed solely by these Terms.
15. **NOTICES.** All notices and communications between the parties shall be in writing and addressed and sent by: (i) email where delivery is verifiable by automated receipt; (ii) facsimile, where delivery is verifiable by automated delivery receipt; or (iii) by national or international overnight courier service where delivery receipt is provided to the addresses set forth in the Purchase Order, or to such other replacement addresses as may be provided from time to time by each party by written notice given in accordance with this Section 15. Any notice to 3DGence shall be to the attention of the CEO or other authorized contact identified in the applicable Purchase Order acknowledgment. Notice shall be deemed to have been duly received by a party as of the date such notice was delivered in accordance with any of the methods prescribed herein.
16. **ENTIRE AGREEMENT.** These Terms: (i) constitute the entire agreement and understanding between the parties regarding the terms of each Product sale, and supersede all prior and contemporaneous representations, promises, commitments, statements, agreements and understandings, written or oral, regarding the subject matter hereof; and (ii) may only be modified and/or waived by a written agreement executed by both parties. Notwithstanding the foregoing, these Terms may be modified by 3DGence from time to time and in its discretion (with legal effect only for all sales agreed after publication and not for previous agreements), by delivery of replacement Terms to Customer, or by posting such then-current Terms at [General Terms and Conditions of Sale](#).

17. JURISDICTION

17.1. For all Customers: (i) these Terms shall be governed by and construed under the internal laws of the State of Texas, USA, without reference to its choice of law rules; and (ii) Customer irrevocably consents to the exclusive jurisdiction and venue of the applicable federal or state courts located in Dallas County, Texas, and agrees to file any action brought by it hereunder only in the competent federal and/or state courts located in such county. With respect to the above jurisdiction rules, Customer hereby agrees to the exclusivity of such applicable jurisdictions and irrevocably waives any personal, subject matter, inconvenient forum or other objections thereto. Notwithstanding the foregoing, Customer also hereby consents to the jurisdiction of any court(s) of competent jurisdiction in which 3DGence seeks equitable or injunctive relief for the breach of any of these Terms and in all cases waives any applicable right to a jury trial. Customer shall be liable for all costs incurred by 3DGence (including attorneys' fees or other costs) in connection with the collection of any past due amounts owed by Customer.

17.2. The United Nations Convention for the Sale of Goods shall not apply to any transaction hereunder.

18. FORCE MAJEURE. Neither 3DGence or Customer shall be liable for any breach, non-performance, or delay in performance hereunder caused by a Force Majeure Event, provided the impacted party promptly notifies the other party, stating the period of time the occurrence is expected to continue and uses commercially reasonable efforts to end the failure or delay in its performance. 3DGence shall be relieved of its obligation to supply Products not supplied hereunder due to a Force Majeure Event, (and shall not be required to procure replacements for such Products), and Customer shall be relieved of its obligation to purchase any quantity not supplied hereunder due to a Force Majeure Event. In no event shall a Force Majeure Event relieve the Customer of its obligation to make full and timely payment for Products and/or Services delivered hereunder, and 3DGence shall not be relieved of its contractual commitments to make payments to the Customer (e.g. earned rebates, refunds, etc.). 3DGence reserves the right, in its sole discretion, to determine during a Force Majeure Event: (i) the allocation of such Products or Services to Customer and/or its Affiliates for their internal use and to its customers (whether or not under contract), (ii) the order of priority in terms of delivery of such Products or Services, and (iii) the right to cancel Product or Service orders where delivery dates cannot be met.

19. GENERAL. The parties hereto are independent contractors and nothing herein shall be construed as creating a partnership or granting the right to bind the other. Customer may not assign or transfer these Terms or the rights granted hereunder, except with 3DGence's prior written consent. Subject to the foregoing, Customer's rights or obligations under these Terms shall be binding upon and benefit each party's respective permitted successors and assignees. Designated third-party beneficiaries may also enforce the Terms relating to their rights. 3DGence reserves the rights to terminate and revoke these Terms and terminate its relationship with Customer at any time following Customer's breach of any of these Terms, and such termination shall be effective immediately upon written notice thereof to Customer. Upon termination for any reason, Customer shall immediately cease use of any Software not embedded within the Systems, delete or destroy all copies in its possession, including that which may have been provided to contractors or consultants, and execute and deliver to 3DGence a certification evidencing same. The unenforceability of any provision or part of provision of these

Terms adjudged by any court of competent jurisdiction shall in no way affect the enforceability of any other provision hereof, which shall remain in full force and effect. Any failure by either party to exercise any right or remedy under the Terms does not constitute a waiver, or signify acceptance, of the event giving rise to such right or remedy. Any waiver or other alleged modification or amendment by 3DGence of any provision of these Terms must be in writing and signed by the CEO, or an executive officer of 3DGence with delegated authority, to be valid. Provisions which by their nature should survive termination of the parties' business relationship and any agreements between or among them, including, but not limited to, Sections 1.4 (Restrictions on Use), 2 (Payment and Cancellation), 3.1 (Transfer Terms), 6.3 (Exclusion of Warranties), 6.4 (Warranty Disclaimer), 7 (Limitation of Liability), 8 (Proprietary Rights), 9 (Confidentiality), and 13 (Export Compliance) through 17 (Jurisdiction) and 19 (General) shall so survive indefinitely. To the extent that these Terms are accepted electronically, Customer hereby waives any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law. Additionally, 3DGence may request modifications to Customer's purchase orders as it relates to shipping terms, risk of loss and/or payment terms without affecting or negating the enforceability of the remaining provisions set forth herein.