

# Hypertherm Software

## General Terms

Effective Date: June 1, 2019

These General Terms apply to your account with Hypertherm and to our Offerings, and constitute a binding contract between us.

### 1. Acceptance

By accepting these General Terms during your account registration or subscription process, or by accessing or using our Offerings, you confirm your acceptance of these General Terms and other applicable Terms and your agreement to be a party to this binding contract. If you do not agree, you do not have the right to access or use our Offerings.

You agree to these Terms on behalf of the company or other legal entity for which you are acting (for example, as an employee or contractor) or, if there is no company or legal entity, on behalf of yourself as an individual (in either case, "You"). You represent and warrant that you have the right and authority (as well as the capacity—for example, you are of sufficient legal age) to act on behalf of and bind such entity (if any) and yourself.

Additional capitalized terms are defined in these Terms and in the "Definitions" section (Section 22) below.

### 2. Right of return for refund

For a limited period after You purchase or renew a subscription (the "Return Period"), (i) if You object to any of the terms set forth in these Terms, or (ii) if You object to the Hypertherm terms of purchase or auto-renewal (if any) applicable to the purchase or renewal of the subscription, or (iii) if You are dissatisfied (for any reason) with the Offering to which You subscribed, You may return the Offering and may qualify for a refund.

For orders placed directly with Hypertherm, Hypertherm will provide a full refund of Your subscription fees if You cease use and return the Offering within the Return Period set forth below. For orders placed through a reseller or other third party, please check the applicable return and refund policy of that third party.

Type	Subscription Term	Return Period (measured from the date of purchase or renewal)
New subscription, Renewal of an existing subscription, Addition of users to an existing subscription, Aligning subscription billing or renewal dates	Subscriptions longer than monthly (for example, annual)	30 days
	Monthly subscriptions	15 days

Your right of return for refund does not apply to all orders, including orders for cloud credits, consumption-based fees, consulting, advanced consulting, memberships, platform subscriptions or fees, extra-territorial rights and enterprise agreements. For more information please see our Right of Return Policy.

### **3. Additional agreements, special terms**

You may have an additional agreement signed directly with Hypertherm that supplements or amends these Terms (for example, an enterprise business agreement) (“Additional Agreement”). In addition, Offerings may be subject to special terms (“Special Terms”), including, for example, particular entitlements or restrictions on types of use. Special Terms may apply to a particular Offering or to a particular category of user (for example, students). The Special Terms are set forth in the Special Terms or in the Documentation for the Offering.

You agree to the Special Terms, if any, for an Offering that You subscribe to, obtain, access or use. If You do not agree to all such Special Terms, You may not subscribe to, obtain, access or use the Offering.

If there is any conflict between these General Terms and the Additional Agreement or Special Terms, the Additional Agreement or Special Terms will control in relation to their subject matter. If there is a conflict between the Additional Agreement and the Special Terms, the Additional Agreement will control in relation to its subject matter. Any arrangement with respect to an Offering is expressly conditioned on Your agreement to these Terms, and any further or different terms are rejected.

### **4. Account**

#### **4.1 Account Responsibilities**

To subscribe to an Offering, You may need an account. You are responsible for anyone who obtains, accesses or uses Offerings through You or Your account (including Your Authorized Users). This means (among other things) that You are responsible for Your Authorized Users’ compliance with these Terms, including their use of their accounts, as though each of the Authorized Users is You. In certain cases, Your Authorized Users may be required to set up individual accounts or otherwise agree to applicable terms in order to obtain, access or use Offerings, but that requirement does not affect Your responsibility for Your Authorized Users.

You are also responsible for the security of Your account and all activity associated with Your account. This means (among other things) that You (i) will ensure that only Your Authorized Users use Offerings associated with Your account, and (ii) will secure and not share user IDs or passwords (except with authorized account administrators). If You suspect unauthorized use of Your account, please contact [LicenseCorrespondence@Hypertherm.com](mailto:LicenseCorrespondence@Hypertherm.com).

You will ensure that all Your account information (including any information that You or Your Authorized Users provide in connection with Your registration for any Offering) is, and continues to be, true and complete.

#### **4.2 Account Benefits**

Your account is designed to provide a place for You to access and manage Your account information and obtain rights to Software, Web Services and other Benefits, including free benefits. Your account is designed to be accessible virtually anywhere, anytime via the web at <https://www.hypertherm.com> or at other successor or alternative Hypertherm sites.

Your account features may include:

- Single sign-in to Hypertherm sites and services
- Management of Your profile, security settings, linked accounts and preferences
- Management of Your subscriptions
- Access to Offerings
- Access to downloads and trials
- Access to technical support, learning resources and subscription news
- Usage information regarding Your subscriptions, cloud credits and analytics

## **5. You own your work**

You will retain Your ownership rights to files, designs, models, data sets, images, documents or similar material created by You or Your Authorized Users and submitted or uploaded to any Offering by You or Your Authorized Users.

## **6. Privacy**

Hypertherm is committed to protecting Your privacy and letting You know what Hypertherm will do with Your personal information. Hypertherm's Privacy Statement sets forth (i) how Hypertherm may collect, use, store and process personal information of or relating to You, and (ii) how you may request deletion of Your personal information. You acknowledge that You have read and understand the Privacy Statement, <https://www.hypertherm.com/policies/privacy/>.

## **7. Subscriptions**

Your subscriptions may include Software or Web Services or a combination of both Software and Web Services. Your subscriptions may also include additional Benefits.

### **7.1 Subscriber benefits**

You will be entitled to the subscriber Benefits that Hypertherm makes generally commercially available to users with the same subscription as You (including level, geography and other attributes). Subscriber Benefits may include, for example:

- Technical support
- Global travel benefits
- Home use benefits
- Rights to previous versions

- Access to forums, learning events, newsletters, webinars, galleries, and other educational resources
- Access to trial versions and APIs
- Rights to Updates, Upgrades and other additional Software
- Rights to Web Services

For more information about subscriber Benefits in general see **Subscription Benefits** page

## 7.2 Subscribing to an offering

When You subscribe to an Offering, Hypertherm will generally provide You with access to the Offering through Your account or, in certain cases, through an Hypertherm-authorized third party or other means. Certain Offerings may require You to provide additional information to set up and access such Offerings, and You agree to provide that information.

## 7.3 Length of subscription

Your subscription to an Offering will be for a fixed term of limited length, the length of which should be indicated at the time of purchase and should be reflected on Your confirmation of purchase or other Offering Identification. If no length is indicated, please contact us at [LicenseCorrespondence@Hypertherm.com](mailto:LicenseCorrespondence@Hypertherm.com) and we will determine and confirm the length of Your subscription term.

## 7.4 Renewal of subscription

At the end of Your subscription period for an Offering, You may be able to renew Your subscription to the extent, and on the same terms, that Hypertherm then generally makes commercially available to subscribers of such Offering in the same geography. Certain subscriptions may have the option of automatically renewing. If you would like to cancel any such automatic renewal, please see Cancelling Automatic Renewal for Subscriptions.

## 7.5 Switched subscriptions

If Your subscription is replaced by a successor or substitute subscription, the new subscription may be considered a Switched Subscription and, if so, will be subject to the Switched Subscription Terms.

## 8. Scope, Prior Terms, Maintenance Terms

These Terms do not apply to (i) subscriptions purchased before June 1, 2019, unless renewed on or after that date, or (ii) terms on which Hypertherm has agreed to provide maintenance for Software that was previously licensed to You on a perpetual basis. Rather, those subscriptions and maintenance arrangements continue to be subject to their existing terms, which are available at **Prior Subscription Terms, Maintenance Terms**.

## 9. Software

If You order Software for delivery, or You order an Offering that includes Software (for example, if a Web Service Offering requires client Software), the Software will at Hypertherm's discretion be made available for download through Your account or other electronic means or delivered to You by Hypertherm or an Hypertherm-authorized third party. Additional fees may apply for delivery of physical media or other tangible embodiments of Software. No matter how Software is delivered, Hypertherm will not be liable for any losses or other liability incurred by You or others due to late delivery or delivery to an incorrect address.

For any Offering consisting of Software that Hypertherm makes available or delivers to You, and subject to compliance with these Terms and all payment obligations, Hypertherm grants to You a nonexclusive, non-sublicensable, nontransferable license, for the period of Your subscription, to install and use the Software (and permit Your Authorized Users to install and use the Software) solely (i) in accordance with the Documentation for the Offering and any applicable Special Terms, if any, and (ii) within the scope of Your subscription, including the permitted number, License Type, Territory and other attributes specified for the type and level that You selected when subscribing for the Offering. If Your Offering Identification or other confirmation from Hypertherm of Your subscription does not specify one or more of those attributes, the license will be (a) a Trial Version; (b) for You as an individual or, if You are a company or other legal entity, for one named employee; and (c) for use only within the country or jurisdiction where You acquired the Offering. You may not install, access or use (or allow installation of, access to or use of) any Software other than as authorized by such license and these Terms, and any other installation, access or use is unauthorized.

During the period of Your subscription, Hypertherm may make available or deliver Updates or Upgrades to Software. All such Updates and Upgrades are subject to the same license and other terms as the Software to which the Updates or Upgrades apply. You are encouraged to promptly install and use all Updates and Upgrades made available to You during the subscription period. If You receive an Update or Upgrade for any Software, You may install and use both the previous version and the new version of the Software for testing and migration purposes for a maximum of 120 days (beginning on the first installation date for the new version), provided that, during such 120-day period, You do not use both versions concurrently for production use. After such 120 days, (i) Your (including Your Authorized Users') right to access and use such previous version will end, and (ii) You must stop all access to and use of the previous version (including all access and use by Your Authorized Users), uninstall all copies of the previous version, and, at Hypertherm's request, destroy any such copies or return them to Hypertherm or the reseller from which You acquired the Offering. For certain Offerings (because of Special Terms for the Offerings or because of exceptions granted by Hypertherm under certain circumstances), You may have certain rights to continue using and accessing previous versions after such 120-day period. Such rights, if any, are set forth in the Previous Version Rights (see **Subscription Benefits**).

For the duration of a subscription, You may make one archival copy of the Software to which You subscribed solely for Your backup and archival purposes.

Any Software (including any Update or Upgrade) that Hypertherm makes available or delivers to You is licensed for a limited subscription period, not sold, and You may not transfer or assign the license, except to the extent expressly permitted by applicable law notwithstanding a contractual prohibition to the contrary or as otherwise expressly permitted by Hypertherm in writing. Your subscription to a Web Service does not grant to You a license to the underlying Software used in providing the Web Service.

## **10. Web services**

If You subscribe to Web Services, Hypertherm will provide those Web Services to You for the period of Your subscription, subject to compliance with these Terms and all payment obligations. You may access and use the Web Services solely (i) in accordance with the Documentation for the Offering and any applicable Special Terms, if any, (ii) for Your internal business purposes, in the form made accessible and/or provided by Hypertherm, and (iii) within the scope of Your subscription, including the permitted number, Web Services Type, Territory and other attributes specified for the type and level that You selected when subscribing for the Offering. If Your Offering Identification or other subscription confirmation from Hypertherm does not specify one or more of those attributes, Your Web Service will be (a) a Trial Version; (b) for You as an individual or, if You are a company or other legal entity, for use by one named employee; and (c) for use only within the country or jurisdiction where You acquired the Offering. You may not access or use (or allow access to or use of) any Web Service other than as authorized by these Terms, and any such access or use is unauthorized.

Hypertherm will make the Web Services available to You consistent with the manner in which Hypertherm makes such Web Services generally commercially available to users with the same subscription as You (including level, geography and other attributes).

Web Services will be provided using processes and safeguards that are designed to help maintain the security of Your Content. Hypertherm from time to time may have external auditors prepare reports for Hypertherm subscriber on Hypertherm's adherence to its security controls for certain Hypertherm services. You may request from Hypertherm a copy of such reports applicable to a Web Service to which You subscribe, subject to Your agreement with Hypertherm on non-disclosure of and restrictions on use of such reports. Hypertherm expects to make available such reports no more frequently than once annually.

## **11. Access to and use of offerings**

### **11.1 General Access and Use Conditions**

Depending on the Offering, You may be required to log into Your account to activate, access or use (or to continue accessing or using) the Offering. Only You, including Your Authorized Users, may access or use an Offering. Access to and use of all Offerings is contingent on (among other things) Your timely payment of all applicable amounts, including any taxes and other fees, with respect to the Offerings and compliance with these Terms.

Some Offerings may cause Your Electronic Devices to automatically connect to the internet (intermittently or on a regular basis)—for example, to validate Your subscription, provide You with access to services (including third-party services) or download and install Updates or Upgrades, all without further notice to You. You agree to such connection and to validation of Your subscription and to the automatic downloading and installation of Updates and Upgrades. For some Offerings, You may be able to adjust Your Update or Upgrade settings (this is not available for other Offerings, including those for which automatic Updates or Upgrades are required for operation or security of the Offering).

Offerings do not include access to the internet or any other network or to any communications services or any hardware, software, storage, security or other resources necessary for accessing or using the Offerings. You and Your other suppliers and service providers are responsible for acquiring all such items and for their reliability, security and performance. Not all Offerings, and not all functions of an Offering (including those described in the Special Terms or Documentation), are available in all locations or languages.

### 11.2 Hypertherm APIs

When You subscribe to an Offering, Hypertherm may provide You with access to applications programming interfaces, software development kits, tools, libraries, scripts, sample source code and similar developer material specifically for use of such Offering (collectively, “APIs”). For any such APIs that Hypertherm makes available or delivers to You, and subject to compliance with these Terms and all payment obligations, Hypertherm grants to You a nonexclusive, non-sublicensable, nontransferable license, for the period of Your subscription, to use such APIs only (i) internally in conjunction with and for Your own authorized internal use of the Offering for which the APIs were made available, and (ii) in accordance with any Documentation for the APIs. Some APIs are subject to Special Terms, and Your license to the APIs is subject to those Special Terms. All APIs are confidential and proprietary to Hypertherm and may not be distributed or disclosed to any third party or used for any purpose other than as permitted by the Documentation for the APIs and the other requirements of these Terms (and any such other use is unauthorized). If You develop any applications, services, modules or components using all or any portion of the APIs (collectively, “Your Development”), You may use Your Development with third-party software or hardware (including porting Your Development to third-party platforms), but only if You remove from Your Development all elements of the APIs (including any elements based on the APIs) and Your Development (a) does not disclose, make available, incorporate or embody any part of the APIs, and (b) does not incorporate or embody any part of the Offerings or other Hypertherm intellectual property. If You wish to use Your Development for any use other than Your internal use with Your Offering (for example, for customers or any users other than You), You will need a separate Developer License.

### 11.3 Use of Third-Material and Services

Hypertherm may provide You with content, designs, models, data sets, project information, documents, libraries, audio, links, data, applications and other software, services or similar material of a third party (collectively, “Third-Party Material/Services”) in connection with Offerings. Any such Third-Party Material/Services may be governed by different terms found in such Third-Party Material/Services (for example, in the “About Box” or a .txt file), on a web page specified by Hypertherm or in the Special Terms or Documentation for the Offering for which the Third-Party Materials/Services are provided (collectively, “Third-Party Terms”). If there are no Third-Party Terms, Your use must be (i) limited to the same terms as the Offering for which You received the Third-Party Material/Services, and (ii) solely in connection with Your use of such Offering. You take sole responsibility for determining, obtaining and complying with all Third-Party Terms. Hypertherm will have no responsibility for, and makes no representations and warranties regarding, (a) any Third-Party Material/Services or Your use of such Third-Party Material/Services, and (b) the Third-Party Terms or Your compliance with such Third-Party Terms.

### 11.4 Use of Your Content

In order for You to access or use certain Offerings, or for Hypertherm to provide You with certain services, You may wish to upload or otherwise share Your Content. Hypertherm personnel will not use Your Content except (i) at Your request, or with Your consent—for example, when providing You support, or addressing a technical issue or other request; (ii) in connection with providing and improving Offerings (including maintaining, securing, updating or otherwise modifying Offerings); or (iii) in connection with legal-related obligations, enforcement, investigations or proceedings (for example, in response to a valid subpoena). In general, Hypertherm does not screen or review content that is posted to any Offering, website or service or otherwise made available to Hypertherm. Hypertherm reserves the right, however, to screen and review Your Content, and may block or remove content for any reason, including because it is not in compliance with these Terms (for example, illegal, offensive or phishing-related postings or spam). When You provide or make accessible Your Content, You authorize Hypertherm and its designees to use, reproduce, modify, distribute and make available Your Content in connection with providing You with Offerings and allowing Hypertherm to fulfill its obligations and as otherwise permitted by these Terms.

You (a) are responsible for all of Your Content and for ensuring that Your Content and its use with any Offering comply with all applicable laws and regulations and these Terms, and (b) warrant that Your Content will not infringe or misappropriate any intellectual property or proprietary rights of any person or violate any applicable laws or regulations. Hypertherm recommends that You secure and protect Your Content by using appropriate encryption and security technology. You acknowledge that online services may suffer occasional disruptions or outages, and You may not be able to retrieve Your Content as a result. Hypertherm recommends that You regularly backup Your Content to Your own storage. You are at all times responsible for storing and maintaining any such backup copies of Your Content.

#### 11.5 Collaboration and Sharing of Your Content

Some Offerings permit You to collaborate with others, including sharing Your Content or publishing Your Content—for example, to a forum or to other services. If You choose to share or publish Your Content (whether by collaboration on or sharing files with a project, emailing, sharing a link, sharing files with other applications or services, posting in a forum or gallery or otherwise), then others (including, in some cases, the general public) may be able to use, sell, reproduce, modify, distribute, make available, display, transmit and communicate Your Content. Forums and galleries may be public, and submissions are generally public. Once You share or publish Your Content, suspending or terminating access will not delete or inhibit access to any of Your Content that was earlier copied, transferred or otherwise shared or published. If You do not want others to have any such access or any of those rights, do not use the sharing, publishing or other collaboration features of the Offerings and set Your permissions accordingly.

An Offering may feature links to third parties that offer services, software or other materials that complement such Offering. Such links are provided as a convenience to You. Hypertherm does not monitor or control what such third parties will do with Your Content. You are responsible for ensuring the appropriate level of access to Your Content by any third party. If You authorize any of Your information or Your Content to be shared with any third party, Hypertherm may make available Your information or Your Content to such third party; Hypertherm will, however, have no responsibility or liability for the actions of such third party, and all governing terms and conditions, including those regarding privacy, are between You and such third party.

## **12. Trial Versions**

Hypertherm may make available or deliver Offerings (or features of an Offering) labelled or offered as “not for resale,” “free,” “evaluation,” “trial,” “pre-release,” “beta” or another similar designation (collectively, “Trial Versions”). You may download, install, access or use Trial Versions only during the period and for the purpose of the trial, as expressly permitted by Hypertherm. Except as expressly set forth in the online or other Documentation for the Trial Version or applicable Special Terms, (i) the subscription period for the Trial Version will be limited to 30 days, (ii) Your use will be limited to non-commercial evaluation purposes with no rights to make available or distribute the Trial Version to any third party, and (iii) the use will be only by You as an individual or, if You are a company or other legal entity, by one named employee. Notwithstanding anything contained in these Terms or otherwise, (a) Hypertherm makes no commitments with respect to Trial Versions regarding any features, functions, service levels or data and provides no warranties of any kind with respect to Trial Versions, (b) Hypertherm may choose not to generally release any Trial Versions or convert any Trial Version into a product offering, and (c) Trial Versions may contain code that is not fully tested, including errors and faults that may cause total data loss or system failure. Subscriptions to Trial Versions do not include Subscription Benefits, and Hypertherm reserves the right, without any further notice, to end any Trial Versions at any time.

## **13. Websites**

Separate from its Offerings, Hypertherm may provide information on its general websites. You agree to use such Hypertherm websites in accordance with our [Website Terms of Use](#).

## **14. Feedback**

You have no obligation to provide Hypertherm with ideas for improvement, suggestions or other feedback (collectively, “Feedback”), whether in connection with a Trial Version or otherwise, unless otherwise specified in the Special Terms for an Offering. If, however, You provide any Feedback, You hereby grant to Hypertherm a non-exclusive, transferable, irrevocable, worldwide, royalty-free license (with rights to sublicense) to make, use, sell, offer to sell, reproduce, modify, distribute, make available, publicly display and perform, disclose and otherwise exploit the Feedback and any Offerings using the Feedback.

## **15. Limitations on use**

### **15.1 Offerings are tools**

The Offerings are tools and are intended only to assist You with Your design, analysis, simulation, estimation, testing and other activities and are not a substitute for Your professional judgment or Your own independent design, analysis, simulation, estimation, testing or other activities, including those with respect to product stress, safety and utility. Due to the large variety of potential applications for the Offerings, they have not been designed or tested for any specific uses, and it is Your responsibility to

determine whether the use of an Offering is appropriate for the purposes You pursue. Hypertherm will not be responsible or liable in any manner whatsoever for the results obtained through use of the Offerings, including any Output. You are responsible for Your (including Your Authorized Users') use of the Offerings and any results produced by the Offerings, including any Output. Your responsibilities include, without limitation, the determination of appropriate uses for the Offerings and the selection of the Offerings and other computer programs and materials to help achieve Your intended results. You are also responsible for establishing the adequacy of independent procedures for testing the reliability, accuracy, completeness, compliance with applicable legal requirements, and other characteristics of any Output, including, without limitation, all items designed with the assistance of the Offerings. You further acknowledge that the Offerings and Output may not achieve the results You desire within Your design, analysis, simulation, estimation, testing and other constraints.

#### 15.2 Offerings are not designed for storage of sensitive personal information

The data storage functionality associated with Offerings is NOT suitable for the storage of Social Security numbers, credit or debit card numbers, financial account numbers, driver's license numbers, medical information or health insurance information; data about personal characteristics or other personal information, such as race or ethnic origin, religion or philosophical beliefs, political affiliation or opinions, genetic or biometric data, sexual orientation or trade union membership; or other information that may expose, or pose a risk of harm to, an individual if improperly disclosed or used (collectively, "Sensitive Personal Information"). Except as expressly required by Hypertherm (for example, a credit card number used to purchase a subscription), You will not upload or otherwise make available to Hypertherm any Sensitive Personal Information, including any files containing Sensitive Personal Information, in connection with Your use of any Offering.

#### 15.3 Acceptable use of offerings

You will access and use (and permit access to and use of) Offerings only in conformance with (and will comply with) all applicable laws. Except as expressly authorized by these Terms, including any Additional Agreement or Special Terms, or as otherwise expressly permitted in writing by Hypertherm, You will not:

Reproduce, modify, adapt, translate, port or create derivative works of all or any portion of any Offering, except as expressly permitted by applicable law notwithstanding a contractual prohibition to the contrary;

Sublicense, distribute, transmit, sell, lease, rent, loan or otherwise make available all or any portion of any Offering (including any functionality of any Offering) to a third party or provide any functionality of any Offering to a third party (whether on a service bureau basis or otherwise); and

Access or use any Offering on or through the internet (other than as made available by Hypertherm through the internet), any wide-area network (WAN) or any other non-local network; on or through any virtual private network (VPN); or on or through any application virtualization technology, remoting virtualization technology, web-hosting, timesharing, software as a service, platform as a service, infrastructure as a service, cloud or other web-based, hosted or similar service.

In addition, You will not:

- Remove any copyright, trademark, confidentiality or other proprietary rights notice from any Offering, Documentation or related material;
- Remove, disable or otherwise limit the effectiveness of any technical protection used by Hypertherm to (i) manage, monitor, control or analyze the installation of, access to, or use of any Offering or (ii) protect Hypertherm's intellectual property rights;
- Post, transmit or otherwise make available using the Offerings any information or material that is or may be:
  - false, libelous, defamatory, fraudulent or otherwise unlawful or tortious;
  - threatening, harassing, degrading, hateful or intimidating, or that otherwise fail to respect the rights and dignity of others;
  - obscene, indecent, pornographic or otherwise objectionable;
  - protected by copyright, trademark, design rights, trade secret rights, right of publicity or privacy, or any other proprietary right, without the express prior written consent of the applicable owner;
  - a national or state secret, classified information or any other information or material (including any photograph, drawing, plan or model) that is subject to official confidentiality treatment;
  - secret codes, countersigns, crypto-currency, passwords or other similar information;
  - advertising, spam, an offer to sell or buy any goods or services, a "chain letter" or any other form of solicitation; or
  - any malware (such as a virus, worm, Trojan horse, Easter egg, time bomb or spyware) or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, limit the use of, or monitor the use of, any hardware, software or equipment;
- Use the Offerings in any way that is fraudulent or otherwise unlawful or tortious, or has any fraudulent or other unlawful or tortious purpose or effect;
- Interfere with or disrupt the operation of any Offering or the servers or networks used to make any Offering available, including by hacking or defacing any portion of an Offering;
- Attempt to probe, scan or test the vulnerability of any Offering or to breach or circumvent any security or authentication measures used by any Offering;
- Use any Offerings as storage for "remote loading" or as a "door" or "signpost" to other web pages or internet resources, whether inside or beyond the sites through which the Offerings are provided;
- Impersonate any other individual or entity or falsely state or otherwise misrepresent Your affiliation with any person or entity;
- Use the Offerings in connection with any inherently dangerous application, including any application that could result in death, personal injury, catastrophic damage or mass destruction;
- Collect content or information, from or with an Offering, using automated means (such as any robot, spider, site search/retrieval application or other device to retrieve, index, "scrape," or "data mine");
- Use any Offering or the output of any Offering in connection with the training of a neural network or machine learning, deep learning or artificial intelligence system or software;
- Unbundle the component parts of any Offering for use separate from each other or on different electronic devices (except as may be expressly permitted in writing by Hypertherm); or

- Use or access Software made available as part of a Web Service separately from the applicable Web Service (except as may be expressly permitted in writing by Hypertherm).

## **16. Confidentiality**

You or Hypertherm (as the “Disclosing Party”) may disclose or make available Confidential Information to the other party (as the “Receiving Party”) in connection with these Terms. The Receiving Party will use the same degree of care as to the Disclosing Party’s Confidential Information that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and will (i) use the Confidential Information of the Disclosing Party only in connection with Offerings, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to the Confidential Information of the Disclosing Party to those of its employees, consultants, contractors, service providers, professional advisors and other individuals who need such access for purposes related to Offerings and who are subject to confidentiality obligations with the Receiving Party no less stringent than those in these Terms. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so. The Receiving Party will give the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and take reasonable steps to limit such disclosure. Hypertherm may also disclose Your Confidential Information to comply with any governmental or regulatory body request (including subpoenas or court orders), as part of a legal proceeding involving Hypertherm, or at Your request. If disclosure is made at Your request, You may be responsible for the costs of compiling and providing access to Your Confidential Information.

## **17. Hypertherm propriety rights**

You acknowledge and agree that Hypertherm and its licensors and suppliers will have all ownership of and all rights with respect to (i) the Offerings, Documentation, APIs, Metrics and other information or material provided or made available by Hypertherm to You and (ii) any copies of the foregoing, or any materials or other information based on, derived from or otherwise using any of the foregoing (including all rights under trade secrets, copyrights, trademarks, patents and all other intellectual property or proprietary rights relating to any of the foregoing). The structure and organization, the underlying algorithms and other internals, the protocols, data structures and other externals, and the source code of the Offerings and the APIs constitute proprietary and confidential information of Hypertherm, and You will not disclose such information to third parties, or use such information for any purpose other than as required for ordinary-course access to and use of the Offerings as set forth in these Terms, without Hypertherm’s prior written consent. Also, You agree not to access or attempt to access the Offerings by any means other than the interface Hypertherm provides or authorizes. In addition, You agree not to engage in any decompiling, disassembling or other reverse engineering or otherwise attempting to discover, learn or study the structure or organization, underlying algorithms or other internals, the protocols, data structures or other externals, or the source code of the Offerings or APIs, except as expressly permitted under applicable law notwithstanding a contractual prohibition to the contrary. Hypertherm may make available or provide access to other confidential and proprietary information (either marked as such or understood to be such under the circumstances). If You receive such information, You will not disclose it to any third party, or use such information for any purpose

other than as required for access to and use of the Offerings as set forth in these Terms, without Hypertherm's prior written consent.

You have only the rights expressly granted to You under these Terms (including any Additional Agreement or Special Terms). All rights not expressly granted are reserved by Hypertherm and its licensors and suppliers; Hypertherm and its licensors and suppliers expressly disclaim (and You agree not to assert) any other rights.

You agree not to take any action, or to authorize or encourage any third party to take any action (or cooperate with any third party in taking any action), inconsistent with the foregoing.

## 18. Warranty, disclaimers, limitations on liability

### 18.1 Limited warranty

Hypertherm warrants that, for any paid subscription, as of the date on which the subscribed-for Offering is made available to You and for 90 days thereafter or, if the subscription period is shorter, such shorter period ("Warranty Period"), the Offering will provide the general features and functions described in the end-user Documentation for the Offering. Hypertherm's entire obligation and liability, and Your sole and exclusive remedy, for Hypertherm's breach of this warranty will be for Hypertherm, at its option, (i) to attempt reasonably to remedy the breach or (ii) to refund amounts received for the affected subscription and terminate such subscription. You must bring any warranty claim for any Offering within its applicable Warranty Period.

### 18.2 Disclaimers

EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN THE "Limited Warranty" SECTION (Section 18.1) ABOVE, AND ANY EXPRESS WARRANTIES SET FORTH AS SUCH IN ANY ADDITIONAL AGREEMENT OR SPECIAL TERMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (i) THE OFFERINGS ARE PROVIDED "AS IS," AND (ii) HYPERTHERM AND ITS LICENSORS AND SUPPLIERS MAKE, AND YOU RECEIVE, NO WARRANTIES, REPRESENTATIONS, CONDITIONS OR COMMITMENTS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE OFFERINGS OR ANY OUTPUT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT OR OTHER WARRANTIES OR CONDITIONS IMPLIED BY STATUTE, OR ANY WARRANTIES OR CONDITIONS BASED ON A COURSE OF DEALING, USAGE OF TRADE OR INDUSTRY STANDARDS. Any statements about the Offerings (including any statements about their functionality or performance) or Output, or other communications with You, that are not contained in these Terms or any Additional Agreement or Special Terms are for information purposes only and do not constitute a warranty, representation, condition or other commitment. Without limitation as to the generality of the foregoing, Hypertherm does not warrant or otherwise commit that (a) the Offerings or Output, or the access thereto or use thereof, will be available, uninterrupted, error-free, secure, accurate, reliable or complete, (b) the Offerings will meet any particular performance or availability criteria, (c) Your Content will not be lost or damaged or (d) errors will be corrected or any particular support requests will be resolved to meet Your needs. Any reference to "unlimited" access, use, storage or otherwise with respect to an Offering is subject to the technical limitations of the Offering.

### 18.3 Limitations on liability

Neither Hypertherm nor any of its licensors or suppliers will have any liability (directly or indirectly) for any incidental, special, indirect, consequential or punitive damages; loss of profits or revenue; business interruption or loss of use; cost of procurement of substitute goods or services or other cover; failure of or defects in the Output; loss, corruption or deletion of (or failure to delete) data or Your Content; or damages resulting from Force Majeure (in each case, regardless of the legal theory for seeking such damages or other liability). In addition, the aggregate liability of Hypertherm and its licensors and suppliers with respect to any Offering or Output thereof will in no event exceed the amount paid or payable by You for the Offering in the one-year period before the events or circumstances giving rise to the liability first occurred.

The limitations on liability in these Terms will apply to the maximum extent permitted by applicable law to any damages or other liability, however caused and regardless of the theory of liability, whether based on contract, tort (including negligence and strict liability), indemnification, recourse, statute or otherwise, even if Hypertherm has been advised of the possibility of the liability and regardless of whether the limited remedies in these Terms fail of their essential purpose.

You acknowledge that the amounts payable for the Offerings are based in part on and reflective of the disclaimers of warranties and limitations on liability in these Terms and that such disclaimers and limitations are an essential element of the bargain between You and Hypertherm.

Nothing in these Terms purports to restrict or exclude Hypertherm's liability for (i) death or personal injury caused by Hypertherm's willful intent or gross negligence or (ii) Your damages or losses caused by Hypertherm's fraud.

### 18.4 Relationship to applicable law

Hypertherm does not seek to limit Your warranties, Your other rights and remedies, or the liability of Hypertherm for damages or losses to the extent the limits are not permitted by applicable law (such as statutory warranties, conditions, remedies or liabilities that cannot be excluded by applicable law). Nothing in these Terms restricts the effect of warranties, the liability of Hypertherm for damages or losses or other terms that cannot be excluded or otherwise modified under applicable law notwithstanding a contractual restriction to the contrary. These Terms give You specific legal rights, and You may also have other legal rights, which vary from jurisdiction to jurisdiction. For example, some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms may not apply to You. Some of these legal requirements are described in the "Country/Jurisdiction-Specific Terms" section (Section 23).

## 19. Indemnity

You will indemnify and hold harmless (and, at Hypertherm's request, defend) Hypertherm against any and all losses, liabilities, expenses (including reasonable attorneys' fees) suffered or incurred by Hypertherm by reason of any claim, suit or proceeding ("Claim") arising out of or relating to (i) Your Content; (ii) Your (including Your Authorized Users') use of Offerings, including any Output or other

results produced by such use; and (iii) Your (including Your Authorized Users') breach of these Terms (including any Additional Agreement, any Special Terms or any other applicable terms), including a Claim that asserts or purports to be based on Hypertherm negligence.

## **20. Term, termination, suspension**

These Terms become effective on the first date accepted in accordance with the "Acceptance" section (Section 1) and continue in effect indefinitely unless terminated in accordance with this "Term, Termination, Suspension" section (Section 20).

### **20.1 Your right to terminate**

You may terminate Your subscriptions and these Terms if Hypertherm is in material breach of these Terms (including any Additional Agreement, any Special Terms or any other applicable terms) and fails to cure such breach within 30 days after written notice of the breach.

### **20.2 Hypertherm's right to terminate**

Hypertherm may terminate any or all of Your subscriptions or other Offerings, these Terms and/or Your account, if (i) You have no current paid subscriptions; (ii) You have failed to timely pay any amounts (including fees and taxes) owing with respect to any Offerings or otherwise owing to Hypertherm; (iii) You (including any of Your Authorized Users) are in material breach of these Terms (including any Additional Agreement, any Special Terms, or any other applicable terms) and fail to cure such breach within 30 days after written notice of the breach; or (iv) You become subject to bankruptcy or insolvency proceedings, become insolvent, make an arrangement with or affecting Your creditors (including an assignment for the benefit of creditor) or commence a process of liquidation. These Terms will automatically terminate without further notice or action by Hypertherm if You go into liquidation.

### **20.3 Effect of termination of subscription**

Upon expiration or termination of a subscription or other Offering for any reason, Your rights with respect to that Offering, including any related Software license or subscription Benefits, will end. At that time, You will stop all access to and use of the Offering (including all access and use by Your Authorized Users) and uninstall any and all copies of materials related to such Offering (including any related Software, Documentation, APIs or other material from Hypertherm). In addition, at Hypertherm's request, You will destroy any such copies or return them to Hypertherm or the reseller from which You acquired the Offering. You will retain proof that You returned or destroyed all such copies. In connection with the expiration or termination of a subscription, (i) as a convenience to You for some Web Services, Hypertherm may provide You with a brief period (for example, 30 days) in which You may retrieve Your Content after expiration or termination of the Web Services, if You are in compliance with these Terms and pay the applicable fees, if any (for example, Hypertherm's then-current professional services fees for any assistance Hypertherm provides), and (ii) otherwise, Hypertherm may delete, without notice, any or all of Your Content, including backup and other copies thereof. For more information on post-expiration/termination content retrieval, please check with the individual Web Services Offering. This convenience for some Web Services, if available, does not relieve You of responsibility for retaining and securing complete copies of Your Content at all times.

## 20.4 Effect of termination of terms

Upon any termination of these Terms for any reason, (i) Your account and Your subscriptions and other Offerings, including those of Your Authorized Users, will immediately terminate, (ii) You will cease all access to and use of any Offerings (including all access and use by Your Authorized Users), and (iii) the effects described above with respect to expiration or termination of a subscription or other Offering will apply. Your payment obligations, ownership of Your work (as described in the “You Own Your Work” section (Section 5)), obligations with respect to APIs and Your Development (including those in the “Hypertherm APIs” section (Section 11.2)) and indemnity obligations (including those in the “Indemnity” section (Section 19)); the license as to Feedback (in the “Feedback” section (Section 14)); Hypertherm’s rights and Your obligations with respect to proprietary rights (including the rights and obligations in the “Hypertherm Proprietary Rights” section (Section 17)); the disclaimers and limitations on liability (in the “Limited Warranty, Disclaimers, Limitation on Liability” section (Section 18)); the governing law and dispute resolution provisions (in the “Contracting Hypertherm Entity, Governing Law, and Dispute Resolution” section (Section 21.4)); and Your responsibility for anyone who accesses or uses (or obtains) Offerings through You or Your account (including Your Authorized Users) (including the responsibility described in the “Account” section (Section 4)) will survive termination for any reason.

## 20.5 Hypertherm's right to suspend

If Hypertherm believes in good faith that Your Content or Your conduct or failure to act (including the conduct or failure of Your Authorized Users) may (i) pose a security risk or otherwise adversely impact Offerings, systems or other users; (ii) constitute or enable tampering with, removing, disabling or otherwise limiting the effectiveness of any technical protections (including any mechanisms for managing, monitoring, controlling or analyzing the installation of, access or, or use of any Offerings or protections of Hypertherm’s intellectual property rights); (iii) subject Hypertherm, any reseller or any other user to liability; or (iv) not comply with these Terms (including any Additional Agreement, any Special Terms or any other applicable terms), including failure to pay any amounts owing with respect to any Offerings, Hypertherm has the right, but not the obligation, to immediately disable or suspend Your access to and use of any Offerings and access to and use of Your Content. Unless Hypertherm reasonably determines that immediate action is prudent, Hypertherm will seek to notify You of the planned disabling or suspension before it takes effect.

## 21. Miscellaneous

### 21.1 Changes to the offerings

Hypertherm reserves the right from time to time to (and You acknowledge and agree that Hypertherm may) (i) modify or release subsequent versions of an Offering, or may discontinue an Offering and/or provide instead a substitute Offering; (ii) modify or discontinue the Benefits, features and functionality, or supporting services or availability with respect to an Offering, whether generally or in any geographic area or language; or (iii) add or modify license keys, authorizations or other means of controlling access to or use of the Offerings. Hypertherm will endeavor to inform You of major changes to the Offerings.

### 21.2 Changes to terms

To the maximum extent permitted by applicable law, Hypertherm reserves the right from time to time to (and You acknowledge that Hypertherm may) modify these Terms. Hypertherm will endeavor to notify You of any material modification to the Terms that may have a materially adverse effect on You ("Modification Notice"), and You will then have an opportunity to review such modification. Except as otherwise expressly set forth in these Terms (including any Additional Agreement or Special Terms), if any such modification has a material adverse effect on You and You do not agree to the modification, You may reject the modification by notifying Hypertherm of the rejection within 30 days of the Modification Notice. If You reject a modification under these circumstances, (i) Your access to and use of any Offerings affected by the modification will continue to be governed by the terms in effect immediately before the modification (except to the extent the modification was made for security, privacy or legal compliance reasons) until (a) the end of the then-current period for the subscription or other Offering, if applicable, or (b) 180 days after the Modification Notice, whichever is earlier; and (ii) Your rights to such Offerings, including any related subscription Benefits, will then terminate. In the event of such a termination by You, Hypertherm (or an applicable reseller) will refund the prorated portion of any prepaid fees applicable to the remaining term of Your subscription for the affected Offerings after the effective date of termination. Such date will be the end of the term of such Offerings. If the subscription is renewed or extended, it will be under the then-current Terms. Notices by You or Hypertherm will be provided as set forth below, except that You may also provide Your notice of rejection (within the 30-day period described above) to the email address, or in any other manner, specified in the Modification Notice.

Notwithstanding the forgoing, modifications to the Privacy Statement, Special Terms, Subscription Types, Subscription Benefits or other policies will be handled as described therein.

You acknowledge that Your commitments with respect to the Offerings and Subscription Benefits are not contingent on delivery of future features or functionality (or oral or written statements about future features or functionality).

### 21.3 Language of terms; Interpretation

The English language version of these Terms will be the version used when interpreting or construing these Terms, and any notices or other communications in connection with these Terms will be provided in the English language. Any reference in these Terms to "days" are to calendar days unless otherwise specified. The words "including" and "for example" or "e.g.," and words of similar import, are not limiting or exclusive and will be deemed followed by "without limitation," whether or not such language is included. Section and other headings are for ease of reference only and are not to be used to interpret the meaning of any provision. Any rights and remedies provided for in these Terms are cumulative and are in addition to, and not in lieu of, any other rights and remedies available under applicable law.

### 21.4 Contracting Hypertherm entity, governing law, and dispute resolution

Depending on where Your principal place of business is (or, if You are an individual, where You are resident), the Hypertherm Party contracting with You, the governing law and the forum for dispute resolution will vary. The governing law for these Terms, including any rights, obligations and claims of the parties, will be as specified below. Similarly, any dispute, claim or controversy arising out of or relating to these Terms, including the breach, performance, termination, enforcement, interpretation or validity of these Terms (and whether under contract, tort, including and strict liability, competition law

or otherwise), and including the determination of the scope or applicability of the dispute resolution provisions of these Terms, will be finally determined under the law, in the location and by the dispute resolution process specified below (except as may be specified in the "Country/Jurisdiction-Specific Terms" section (Section 23)).

Your principal place of business (or, if You are an individual, the place of Your residency)	References to "Hypertherm Party" means the following Hypertherm entity:	Governing law is:	Exclusive jurisdiction/forum for dispute resolution:
United States	Hypertherm, Inc., a New Hampshire corporation	(i) State of New Hampshire, and (ii) to the extent controlling, federal laws of the United States	(i) United States District Court for the New Hampshire, or (ii) Superior Court of the State of New Hampshire, County of Grafton
Mainland China, Hong Kong and Macau	Hypertherm (Shanghai) Trading Co., Ltd.	China	Arbitration before three arbitrators in China
Europe, the Middle East or Africa	Hypertherm Europe B.V.	The Netherlands	Courts of The Netherlands
Asia, Oceania or the Asia-Pacific region, other than Mainland China, Hong Kong and Macau.	Hypertherm (S) Pte Ltd.	Singapore	Courts of Singapore
Worldwide unless in a country or region described above	Hypertherm, Inc., a New Hampshire corporation	(i) State of New Hampshire, and (ii) to the extent controlling, federal laws of the United States	(i) United States District Court for New Hampshire, or (ii) Superior Court of the State of New Hampshire, County of Grafton

If You have any dispute with respect to an Offering or otherwise arising from or relating to these Terms (including any Additional Agreement, any Special Terms, the Hypertherm Privacy Statement or any other applicable terms), You will first seek to resolve the dispute informally with Hypertherm by providing notice of the dispute (including a description of the dispute and related documentation) in the manner described below for Notices and cooperating with Hypertherm to try to address the matter amicably. If the dispute is not resolved within 30 days of Hypertherm's receipt of the notice, either You or

Hypertherm may file a formal claim in the forum for dispute resolution described above (depending on Your principal place of business or, if You are an individual, Your place of residence).

Notwithstanding the foregoing, Hypertherm may apply for injunctive relief and other equitable remedies (or their equivalent) in any jurisdiction or forum.

## 21.5 Compliance

Hypertherm has the right to verify (electronically or otherwise) Your installation of, access to, and use of any Offerings, including installation, access and use by Your Authorized Users. As part of any such verification, Hypertherm or its authorized representative will have the right, on 15 days' prior notice to You, to inspect Your records, systems, and facilities, including machine IDs, serial numbers and other related information. Additionally, within 15 days of the verification request, You will, if requested, provide copies of all records and other additional information related to Your (including Your Authorized Users') installation of, access to, and use of the Offerings. If Hypertherm determines that Your installation, access or use is not in conformity with these Terms (including any Additional Agreement, Special Terms or other applicable terms), You will promptly remedy the noncompliance, which may include purchasing valid subscriptions to bring Your usage into compliance, and pay the reasonable costs of the verification. Hypertherm reserves the right to seek any other remedies available at law or in equity.

## 21.6 Force majeure

Neither party will be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including acts of God, earthquake, fire, flood, sanctions, embargoes, strikes, lockouts or other labor disturbances, civil unrest, failure, unavailability or delay of suppliers or licensors, riots, terrorist or other malicious or criminal acts, war, failure or interruption of the internet or third party internet connections or infrastructure, power failures, acts of civil and military authorities and severe weather ("Force Majeure"). The affected party will give the other party prompt written notice (when possible) of the failure to perform and use its reasonable efforts to limit the resulting delay in its performance.

## 21.7 Export

When You obtain, access or use an Offering, You must comply with the export control and international trade laws and regulations of the United States and of any other country whose laws apply to You or Your Content. You must not access or use any Offering from within a U.S. sanctioned location or if You appear on any U.S. government restricted parties list. You must obtain U.S. government and any other required authorization before You obtain, access or use, or allow any third party to obtain, access or use, any Offering for a U.S.-restricted end use. Restricted end uses include, but are not limited to, work on nuclear, chemical or biological weapons or on missile systems capable of delivering them. You must not upload or otherwise provide Hypertherm with any content or materials (including Your Content) that constitute classified information or that are subject to the International Traffic in Arms Regulations ("ITAR") or its foreign counterparts. You must not upload or otherwise provide Hypertherm with any content or materials that cannot legally be transferred from Your location to the United States or from the United States to Your location. You must not use any Offering to make Your Content or any other

content or materials available to any country, entity or other party that cannot legally receive them under U.S. and other applicable law.

#### 21.8 Government

For U.S. Government procurement, all Offerings that constitute or include Software are deemed to be commercial computer software as defined in FAR 12.212 and DFARS 227.7202, as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the Software by the U.S. Government will be solely in accordance with the license rights, restrictions and other terms set forth in these Terms (including any Additional Agreement or Special Terms).

#### 21.9 Assignment

You may not assign or otherwise transfer these Terms or Your rights or obligations under these Terms (whether by operation of law or otherwise) without Hypertherm's prior written consent, and Hypertherm may terminate these Terms (including Your rights under these Terms) if You are acquired by, or come to be controlled by, any other person or entity (whether by acquisition of shares, merger, or other transaction) without such written consent of Hypertherm. Hypertherm may assign or otherwise transfer these Terms (without Your consent or notice to You) as part of a reorganization, merger, sale of assets or other transaction that involves all or a portion of the Offerings or related business.

#### 21.10 No waivers

Failure to enforce or exercise any provision of these Terms is not a waiver of such provision, unless such waiver is specified in writing and signed by the party against which the waiver is asserted.

#### 21.11 Severability

If and to the extent any provision of these Terms is held unenforceable under applicable law, (i) such provision will be deemed modified to the extent reasonably necessary to conform to applicable law but to give maximum effect to the intent of the parties set forth in these Terms, and (ii) such provision will be ineffective only as to the jurisdiction in which it is held unenforceable without affecting enforceability in any other jurisdiction.

#### 21.12 Notices

Any notices by You to Hypertherm will be sent by postal mail or delivery service to Hypertherm, Inc., 21 Great Hollow Road, Hanover, NH 03755 USA, Attention: Chief Financial Officer. Such notices will be effective when received by Hypertherm.

Except as otherwise expressly stated in these Terms (including any Additional Agreement or Special Terms), any notices by Hypertherm to You will be provided (i) by email to the registered email address associated with Your account, (ii) by posting to Your account, (iii) by posting within an Offering (for example, through an in-Offering notification function or sign-in notification), (iv) by postal mail or delivery service to the address associated with Your account, or (v) in any other manner deemed reasonable by Hypertherm that involves specific notification to You. Notices from Hypertherm to You will, (a) in the case of notices by email, be effective one day after being sent and (b) in the case of other notices, five days after being posted or sent. You hereby agree to service of process being effected on You by registered mail sent to the address set forth on Your Customer Information Form (or, if no

Customer Information Form has been provided, Your last address known by Hypertherm) if so permitted by applicable law.

#### 21.13 Entire agreement

These Terms, including the Privacy Statement, any Additional Agreement and any Special Terms (which are incorporated by reference in these Terms), constitute the entire agreement between You and Hypertherm (and merge and supersede any prior or contemporaneous agreements, discussions, communications, representations, warranties, advertising or understandings) with respect to the subject matter hereof.

#### 21.14 DMCA

The Digital Millennium Copyright Act of 1998 (the “DMCA”) provides recourse for copyright owners who believe that material appearing on the internet infringes their rights under U.S. copyright law. If You believe in good faith that materials made available by or through Hypertherm infringe Your copyright, You (or Your agent) may send Hypertherm a notice requesting that Hypertherm remove the material or block access to it. If You believe in good faith that someone has wrongly filed a notice of copyright infringement against You, the DMCA permits You to send Hypertherm a counter-notice. Notices and counter-notices must meet the then current statutory requirements imposed by the DMCA. See <http://www.copyright.gov/> for details. Notices and counter-notices should be sent to:

Copyright Agent

Hypertherm, Inc.

21 Great Hollow Road

Hanover, NH 03755 USA

E-mail: [CorporateCommunicationsandBrandManagement@Hypertherm.com](mailto:CorporateCommunicationsandBrandManagement@Hypertherm.com)

Tel: +1 (603) 643.3441

Fax: + 1 (603) 643.5352

Hypertherm suggests that You consult Your legal advisor before filing a notice or counter-notice.

## 22. Definitions

Authorized Users means (i) You (if You are an individual) and (ii) identified individuals (such as Your individual employees, consultants and contractors and other individuals accessing and using an Offering for Your benefit) for whom You have acquired a subscription to an Offering. If an Offering allows You to designate Authorized Users for such Offering, You will be responsible for providing notice to, and obtaining agreement from, any such Authorized Users regarding the application of these Terms to their access to and use of such Offering prior to their access and use.

Hypertherm means Hypertherm, Inc., a New Hampshire (United States) corporation, together with its subsidiaries and other affiliates.

Hypertherm Party means the particular Hypertherm entity identified in the section entitled “Contracting Hypertherm Entity, Governing Law, and Dispute Resolution” (Section 19.4).

Benefits means any benefits made available to You or Your Authorized Users by Hypertherm. Benefits are typically based on the level or type of Offering for which You subscribe. Benefits may include access to Updates and Upgrades, rights to previous versions, additional Software or Web Services, Trial Versions, APIs, global travel rights, technical support, training, webinars, forums, events, galleries, newsletters and usage data. Benefits may also include account benefits such as single sign-on and management of Your profile, security settings, linked accounts and preferences.

Confidential Information means information not generally known to the public that is (i) made available or disclosed by a Disclosing Party to a Receiving Party in writing and (ii) designated by the Disclosing Party in the writing as Confidential. Hypertherm Confidential Information also includes the non-public aspects of (i) any Offering and any related product plans, technology and other technical information and (ii) business negotiations. Nonetheless, Confidential Information does not include (a) any information that (1) becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (2) was known to the Receiving Party before receipt from the Disclosing Party without breach of any obligation (and without a duty of confidentiality) owed to the Disclosing Party; (3) is received from a third party without breach of any obligation (and without a duty of confidentiality) owed to the Disclosing Party; or (4) was independently developed by the Receiving Party; (b) any of Your Content that You send to, or allow to be accessed by, a third party through an Offering; or (c) any Feedback.

Customer Information Form means a form completed by or on behalf of You and submitted to Hypertherm (or to a reseller), directly or indirectly, in connection with Your account, a subscription or other Offering.

Documentation means any end-user documentation (including online, printed or other documentation) and any technical or legal requirements for an Offering.

Electronic Devices mean (i) computers (whether desktop, laptop or tablet); (ii) virtual machines not accessed through a network connection; and (iii) mobile devices.

License Type means the license type specified by Hypertherm for a subscription (for example, single-user or multi-user). License Types are set forth on **Subscription Types**.

Metrics means data and other information regarding access to and use of any Offerings (including Your access and use). Metrics includes information regarding usage of features, functions, storage and indexes and information regarding usage, volume, type, storage and processing of Your Content (but not Your Content itself). If Metrics includes any personal information, treatment of such personal information will be pursuant to the [Privacy Statement](#).

Offerings means Software, Web Services and other Benefits provided by Hypertherm and any subscriptions for such items. Offerings includes free and other Trial Versions of Software, Web Services and other Benefits.

Offering Identification means one or more designations by Hypertherm that set forth (as applicable) the name of an Offering, the License Type or Web Services Type, and the permitted number, Territory and

length of Your subscription. The Offering Identification may be (i) provided in a written confirmation or other notice issued to You by Hypertherm, posted to Your account, transmitted via email, physically delivered or otherwise made available to You; (ii) located in the Software or on or with any Hypertherm packaging if the Software is delivered to You; or (iii) obtained from Hypertherm on request. Offering Identification does not include any designation, confirmation, packaging or other document provided by a reseller or other third party.

Output means all results, work product, designs, prototypes or other items created or generated by or through any use of any Offering, including any products, parts or services based on or using such results, work product, designs, prototypes or other items.

Software means any software or similar materials, including any modules, components, features and functions, made available by Hypertherm, whether or not provided as part of a subscription and whether or not provided for a fee. Software includes Updates and Upgrades.

Terms (including “these Terms”) means these General Terms and the other terms referenced in these General Terms, including the Special Terms, Hypertherm Privacy Statement and Additional Agreement (if any), together with any other applicable terms.

Territory means the country or jurisdiction where You acquired Your subscription. Hypertherm may indicate the applicable Territory in an Offering Identification. For additional information regarding the definition of Territory see the “Country/Jurisdiction-Specific Terms” section (Section 23). If You acquire Your subscription in the country or jurisdiction in which You are incorporated, chartered or otherwise organized, if You are a legal entity (or, if You are an individual, in the same country or jurisdiction as Your residence), You may qualify for additional geographies pursuant to Global Travel Rights benefits, see **Subscription Benefits**.

Trial Versions will have the meaning set forth in the “Trial Version” section (Section 12).

Updates means security fixes, hot fixes, patches and other updates (including new features, new functions and other modifications released between Upgrades), if and when made available to You by Hypertherm and determined by Hypertherm to constitute an update.

Upgrades means new versions of Offerings, or add-ons to or additional products associated with Offerings, if and when made available to You by Hypertherm and determined by Hypertherm to constitute an upgrade.

Web Service means a web- or cloud-based service made available by Hypertherm, whether or not provided as part of a subscription and whether or not provided for a fee.

Web Services Type means the Web Services type specified by Hypertherm for a subscription (for example, number of cloud credits). Web Services Types are set forth on **Subscription Types**.

Your Content means (i) any files, designs, models, data sets, images, documents or similar material submitted or uploaded to any Offering by You or Your Authorized Users and (ii) Your specific output generated from the use of any Offering based on Your own raw data or information.

## **23. Country-specific terms**

Notwithstanding the other terms of these Terms, if Your principal place of business is in (or, if You are an individual, You are a resident of) a country or jurisdiction identified below, the terms set forth below for such country or jurisdiction will apply to You:

### 23.1 Member states of the European Union

If You acquired Your subscription in a member country of the European Union or the European Free Trade Association, the applicable “Territory” for such subscription is all the countries of the European Union and the European Free Trade Association.

If Your principal place of business is in (or, if You are an individual, You are resident of) a Member State of the European Union and there are any court proceedings in a Member State between You and a third party relating to the use of an Offering, (i) You will inform Hypertherm promptly in writing of such court proceedings, and (ii) You will not serve Hypertherm with a third party notice regarding such proceedings unless Hypertherm requests in writing that You do so.

Also, nothing in these Terms purports to restrict or exclude (1) Hypertherm’s liability for death or personal injury caused by Hypertherm’s negligence or (2) statutory liability for products under the statute of a Member State of the European Union (e.g., the German Product Liability Act).

In addition, notwithstanding any limitations on Territory in these Terms, these Terms do not limit cross-border access or use (such as access or use in one Member State of the European Union of Offerings purchased in another Member State of the European Union) that is expressly authorized by applicable law.

### 23.2 Australia

The following provision may apply to You depending on Your circumstances:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

In addition to your other rights and remedies under law in relation to the Offerings, Offerings that are legitimately purchased also come with a 90-day limited warranty as set out in these Terms. For Australian customers, the warranty is given by Hypertherm (S) Pte Ltd, a Singapore company with principal offices at 994 Bendemeer Road, B-Central, #06-01, Singapore 339943, Republic of Singapore,, . If an Offering does not provide the general features and functions described in the Documentation in the 90-day period after delivery to You, please call +(65) 6841 2489 with details of Your product, serial number, place of purchase, details of the defect and Your return contact details.

Hypertherm will not be responsible for user error and may refer any such issues to a supporting reseller, if any. You may be required to return the Offering to the address we provide to You at the time, at Your own cost.

DESPITE ANYTHING ELSE IN THESE TERMS, IF ANY OFFERING IS SUBJECT TO THE MANDATORY WARRANTIES OR GUARANTEES OF THE COMPETITION AND CONSUMER ACT (CTH) OR OTHER APPLICABLE LAW IN AUSTRALIA (THE “LAW”), AND SUCH LAW PERMITS HYPERTHERM TO LIMIT ITS

LIABILITY FOR BREACH OF THESE WARRANTIES OR CONDITIONS, THEN HYPERTHERM'S LIABILITY FOR BREACH OF ANY SUCH WARRANTY OR GUARANTEE WILL BE LIMITED AT HYPERTHERM'S OPTION TO THE REPAIR, REPLACEMENT OR REPERFORMANCE (OR THE COST OF DOING SO) OF THE RELEVANT OFFERING.

### 23.3 Mainland China, Hong Kong, Macau and Taiwan

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