

Hypertherm Software Special Terms and Conditions Applicable to Legacy Perpetual License with Maintenance to Subscription Switches

Effective Date: June 1, 2019

These Special Terms and Conditions applicable to specified legacy Perpetual license model to Subscription switch offers only ("Legacy to Subscription Switch Terms"), modify, supplement and amend the Subscription Agreement and Subscription Benefits Terms as provided herein. Except as expressly modified hereby, the Subscription Agreement and Subscription Benefit Terms remain in full force and effects in accordance with their terms.

Capitalized terms used herein but not defined shall have the meanings provided in the License and Services Agreement, Subscription Agreement, Maintenance Plan Agreement and Benefits Terms, as applicable.

1. Definitions.

"Legacy Maintenance Previous Version" means a Previous Version of Covered Software which is not listed as an eligible Maintenance Previous Versions on the current Maintenance Plan Previous Version Eligible Product List but which nonetheless qualifies as an eligible Maintenance Previous Version by reason of You (a) having previously legally licensed and Installed and Accessed that/those copy(ies) of that prior version from Hypertherm, and (b) Your Installation and Access of that/those copy(ies) does not exceed the total quantity of licenses to Install and Access that/those copies that You previously licensed from Hypertherm and actually Installed and Accessed in accordance with the Maintenance Plan Agreement and associated Previous Version Rights Benefits Terms.

"Listed Maintenance Previous Version" means a Previous Version of Covered Software which is listed as an eligible Maintenance Previous Versions on the current Maintenance Plan Previous Version Eligible Product List as provided in the applicable Previous Version Rights Benefits Terms.

"Legacy Switched Subscription Previous Version" means the Covered Software for a Previous Version listed on the Subscription Previous Version Eligible Product List for Your Legacy Switched Subscription.

"Perpetual License Entitlement" means a right to Install and Access the Licensed Materials for a perpetual term pursuant to the Hypertherm License and Services Agreement, which Licensed Materials include Covered Software that is subject to a current Hypertherm Maintenance Plan, and is eligible for migration to a Legacy Switched Subscription.

"Legacy Switched Subscription" means a Subscription to Covered Software (a) that is a substitute and complete and total replacement for Your Perpetual License Entitlement, (b) that is provided to You, the party who has acquired this Subscription for Covered Software, and (c) for which Hypertherm generally charges a separate fee or makes available solely to customers under a Relationship Program. Whether a Subscription for a particular Hypertherm software program is a Legacy Switched Subscription, and whether You have met the qualifications to purchase a particular Legacy Switched Subscription, are determined by Hypertherm.

2. Effect of Maintenance to Subscription Switches.

PLEASE NOTE: IF YOU ARE ESTABLISHED OR RESIDENT IN GERMANY, THE PROVISIONS OF THIS SECTION ("*Effect of Maintenance to Subscription Switches*") DO NOT APPLY TO YOU; INSTEAD PLEASE SEE SECTION ENTITLED "*Provisions for customers in Germany*") CONTAINED IN THE GERMAN LANGUAGE VERSION OF THESE LEGACY TO SUBSCRIPTION SWITCH TERMS.

2.1 Termination of rights: If Hypertherm or a reseller provides You with a Legacy Switched Subscription, upon the commencement of the Legacy Switched Subscription, all rights previously granted with respect to the Perpetual License Entitlement for which this Legacy Switched Subscription is being substituted will immediately terminate, and You hereby consent to such termination without further notice from Hypertherm.

2.2 All Use Under Perpetual License Ends. Upon termination of your Perpetual License Entitlement following commencement of the Legacy Switched Subscription (a) You must immediately cease all use of Your Perpetual License Entitlement, and (b) You will no longer have the right to Install, Access or otherwise use any Licensed Materials (as defined in the applicable Hypertherm License and Services Agreement) under the terms of that retired Perpetual License Entitlement (the “Original Licensed Materials”). You may be asked to return any security devices used to activate your Perpetual License Entitlement or email a license file confirming your perpetual license has been deactivated.

2.3 Rights Under Maintenance Plan End. Upon commencement of Your Legacy Switched Subscription You will no longer have the right to Install, Access or otherwise use any Covered Software (including but not limited to Covered Software provided as either a Listed Maintenance Previous Version or a Legacy Maintenance Previous Version) under the terms of Your expiring Maintenance Plan (the “Original Maintenance Plan”).

2.4 Subscription Terms Govern. Upon commencement of Your Legacy Switched Subscription Your right to Install and Access Covered Software shall be as defined in the License and Services Agreement, Subscription Agreement, and Subscription Benefits Terms applicable to Your Legacy Switched Subscription, as amended by these Legacy to Subscription Switch Terms. Upon commencement of Your Legacy Switched Subscription you must set up and activate your Legacy Switched Subscription and, if required or applicable, assign Users.

2.5 Uninstallation Requirements. Except as set forth below in the Section titled “Exceptions to the Uninstallation Requirements”, You agree to Uninstall and destroy or return to Hypertherm all copies of the Original Licensed Materials and all copies of Covered Software provided to you pursuant to Your Original Maintenance Plan, including, but not limited to, the Listed Maintenance Previous Versions and Legacy Maintenance Previous Versions, and related security devices, within 120 days after commencement of Your Legacy Switched Subscription. Hypertherm reserves the right to require You to show satisfactory proof that all copies of any Original Licensed Materials, Listed Maintenance Previous Versions and Legacy Maintenance Previous Versions have been Uninstalled and, if so requested by Hypertherm, destroyed or returned to Hypertherm.

2.6 Unexpired Maintenance ETR. If You have either Global Extra Territory Rights or Regional Extra Territory Rights with an ETR Term that extends beyond the expiration of Your Original Maintenance Plan, such Extra Territory Rights terminate upon the commencement of Your Legacy Switched Subscription.

3. Exceptions to the Uninstallation Requirements.

PLEASE NOTE: IF YOU ARE ESTABLISHED OR RESIDENT IN GERMANY, THE PROVISIONS OF THIS SECTION (“Exceptions to the Uninstallation Requirements”) DO NOT APPLY TO YOU; INSTEAD PLEASE SEE THE SECTION ENTITLED “Provisions for Customers in Germany”) CONTAINED IN THE GERMAN LANGUAGE VERSION OF THESE LEGACY TO SUBSCRIPTION SWITCH TERMS.

3.1 Original Licensed Materials. If You do not want to Uninstall the Original Licensed Materials upon commencement of the Legacy Switched Subscription You may leave such Original Licensed Materials Installed, provided You agree to and fully and strictly satisfy and comply with all of the following requirements:

(a) Those Original Licensed Materials may include **only** Covered Software products that are also included in Your Legacy Switched Subscription; and

(b) Within 120 days after commencement of Your Legacy Switched Subscription you must Uninstall and destroy or return to Hypertherm all copies of any Original Licensed Materials for Covered Software products that are not included in Your Legacy Switched Subscription; and

(c) If at any time You Install the Covered Software for your Legacy Switched Subscription, you must immediately and permanently cease Accessing the corresponding Covered Software for Your Original Maintenance Plan and Original Licensed Materials, and within 120 days after Installing such Legacy Switched Subscription Covered Software, Uninstall such Original Licensed Materials and Covered Software for Your Original Maintenance Plan. For avoidance of doubt, at no time may you Access both Legacy Switched Subscription Covered Software, on one hand, and Original Licensed Materials and Covered Software for Your Original Maintenance Plan, on the other; and

(d) You promptly follow any instructions from Hypertherm with respect to modification of the Original Licensed Materials, which may include, but are not limited to, instructions to update the license files for such Original Licensed Materials on your systems and update to new license ID numbers to reflect Your Legacy Switched Subscription; and

- (e) You acknowledge and agree that, notwithstanding the fact that Hypertherm has permitted you to leave the Original Licensed Materials Installed, your right to Access and use such Original Licensed Materials is no longer governed by Your Perpetual License Entitlement and instead is governed exclusively by the applicable Hypertherm Subscription Agreement as modified by these Legacy to Subscription Switch Terms, including, but not limited to, the non-perpetual, fixed-term nature of Your Legacy Switched Subscription; and
- (f) In the event You need to re-Install Covered Software included in Original Licensed Materials, which You have elected to not Uninstall in accordance with this Section 3.1 as of the commencement date of your Legacy Switched Subscription (such as in connection with a system failure or refresh), You must Install the Covered Software for Your Legacy Switched Subscription instead of re-Installing the Original Licensed Materials; and
- (g) You agree to promptly Uninstall the Original Licensed Materials and replace them by Installing the Covered Software under Your Legacy Switched Subscription if Hypertherm requests that you do so.

3.2 Maintenance Previous Versions. If You do not want to Uninstall the Covered Software for the Listed Maintenance Previous Versions or the Legacy Maintenance Previous Versions licensed under Your Original Maintenance Plan (collectively and separately, the “Original Maintenance Plan Previous Versions”) upon commencement of the Legacy Switched Subscription You may leave such Original Maintenance Previous Versions Installed provided you agree to and fully and strictly satisfy and comply with all of the following requirements:

- (a) Those Original Maintenance Plan Previous Versions may include **only** Covered Software products that are also included in Your Legacy Switched Subscription; and
- (b) Within 120 days after commencement of Your Legacy Switched Subscription You must Uninstall and destroy or return to Hypertherm or the reseller from which they were acquired all copies of the any Original Maintenance Plan Previous Versions for software products that are not included in Your Legacy Switched Subscription; and
- (c) If at any time You Install a Legacy Switched Subscription Previous Version, you must immediately and permanently cease Accessing any corresponding Listed Maintenance Previous Version or Legacy Maintenance Previous Version, as applicable, and within 120 days after Installing the Legacy Switched Subscription Previous Version, Uninstall any such Listed Maintenance Previous Version or Legacy Maintenance Previous Version. For avoidance of doubt, at no time may you Access both a Legacy Switched Subscription Previous Version, on one hand, and a corresponding Listed Maintenance Previous Version or Legacy Maintenance Previous Version, on the other; and
- (d) You promptly follow any instructions from Hypertherm with respect to modification of the Original Maintenance Plan Previous Versions, which may include, but is not limited to, instructions to update license files for such Original Maintenance Plan Previous Versions on your systems and update to new license ID numbers to reflect Your Legacy Switched Subscription; and
- (e) You acknowledge and agree that, notwithstanding the fact that Hypertherm has permitted You to leave the Original Maintenance Plan Previous Versions Installed, your right to Access and use such Original Maintenance Plan Previous Versions is no longer governed by the prior Maintenance Plan Agreement and instead is governed exclusively by the applicable Hypertherm Subscription Agreement as modified by these Legacy to Subscription Switch Terms, including, but not limited to, the non-perpetual, fixed-term nature of Your Legacy Switched Subscription; and
- (f) You acknowledge and agree that Hypertherm is not obligated nor shall You be entitled to request that Hypertherm provide you with, new media, new electronic fulfillment or new activations for any Original Maintenance Plan Previous Versions; and

(g) You agree to promptly Uninstall the Original Maintenance Plan Previous Versions and replace them by Installing the Covered Software for only those Previous Versions listed on the applicable Subscription Previous Eligible Products List, for your Legacy Switched Subscription, if Hypertherm requests that you do so.

4. Commencement Date for Legacy Switched Subscriptions.

For the purposes of this Agreement, Effective Date of Your Legacy Switched Subscription will be the date as determined by Hypertherm in accordance with its policies for entering Your Legacy Switched Subscription into the Hypertherm systems, which will generally be the day following the date of expiration of the Maintenance Plan for the extinguished Perpetual License Entitlement, or such other date as Hypertherm may specify.