

## TERMS AND CONDITIONS OF SERVICE CARE AND START-UP CARE PACKAGES

**1. Acceptance.** These Terms and Conditions of Service Care and Start-Up Care Packages ("Terms") are applicable to Services provided by Company to Customer pursuant to this Service Care Package or Start-Up Care Package (hereinafter individually and collectively referred to as "Agreement") and are the sole and exclusive terms and conditions applicable to the subject matter covered in this Agreement. Company hereby objects to and rejects any other terms and conditions appearing on, incorporated by reference in, or attached to, Customer's orders or other documentation. CUSTOMER'S SIGNATURE ACKNOWLEDGES CUSTOMER HAS READ AND UNDERSTANDS THESE TERMS AND CONSTITUTES ITS ACCEPTANCE OF THESE TERMS.

### **2. Services.**

(a) Company shall provide maintenance services for the equipment identified in the Agreement ("Equipment") and repair services for the Equipment if the Equipment fails to conform to Company's specifications (collectively, "Services").

(b) For Care Packages that include replacement part coverage, replacement parts will be new or equivalent in performance to new parts, at no extra charge to Customer. Parts being replaced will be the property of Company. Customer acknowledges certain parts may be subject to discontinuance by the manufacturer, in which event Company's obligation shall be limited to making reasonable efforts to replace such discontinued parts with an equivalent part.

(c) Company shall provide Services during Company's normal business hours, 8:00 a.m. to 4:30 p.m. local time, Monday through Friday, excluding Company holidays. Company will provide Services on Customer's premises unless it is necessary to remove Equipment for Service, or a portion thereof, to the Company's repair depot for maintenance. Company shall obtain Customer's consent prior to removing Equipment.

(d) The following services are not included in this Agreement and Customer shall be charged separately for any such service, unless otherwise expressly provided in this Agreement: (1) maintenance of accessories or attachments; (2) maintenance of Equipment if Customer's modification of Equipment has materially increased cost of maintenance; (3) overhauling or rebuilding of Equipment; (4) replacement of continuous ink jet nozzles for Videojet Excel, Triumph or 37 series printers; (5) replacement of thermal transfer printheads if Customer uses supplies and other consumables not approved by Company for use with Equipment; and (6) de-installation or reinstallation of Equipment or any part thereof at Customer's request. This Agreement does not cover repairs or maintenance resulting from: (i) Customer misconduct, accident, neglect or misuse; (ii) failure of installation site to conform to Company's applicable specifications; (iii) failure or inadequacy of electric power, humidity or air control; (iv) Customer's use of supplies and other consumables not approved by Company for use with Equipment; (v) Customer's failure to follow operating procedures provided by Company; (vii) service or maintenance performed by a third party or an unauthorized representative of Company; and (viii) Force Majeure.

(e) For Customers using direct thermal application, 9550 printhead replacements under any Comprehensive or Protective Service Package shall not exceed three (3) times the number of units covered within a one (1) year period, commencing at the start of the Service Contract and ending at the conclusion of the contract year ("Printhead Replacement Limit"). Unless otherwise agreed in writing, Customer may elect to utilize the replacement printheads on any of the units covered under the applicable Service Package. This Printhead Replacement Limit shall automatically renew annually for Service Contracts exceeding a one (1) year commitment, provided however, in the event of termination or cancellation of any applicable Service Package, Customer must pay for any printhead replacements received.

### **3. Billing and Payment.**

(a) Payment is due within 30 days from Customer's receipt of invoice unless otherwise agreed in writing by Company. Company shall issue invoices at commencement of each Payment Period identified in this Agreement. Company reserves the right to assess a monthly service charge of 1.5% on overdue accounts. Company may require payment in advance if in its opinion Customer's financial condition reasonably appears to call for such action.

(b) The Rate identified in this Agreement is based on Company performing Services at the location identified in this Agreement. If Customer relocates Equipment or any part thereof, Company may increase the Rate if such relocation affects Company's cost of performing its obligations hereunder.

(c) Unless otherwise specifically indicated by Company, prices are exclusive of, and Customer agrees to pay, shipping and related fees, foreign, federal, state, local excise, sales, use, personal property or any other taxes or duties, except only taxes based on Company's income. Any certificates or other evidence of applicable exemptions to such taxes or duties must be provided to Company prior to invoicing or such taxes or duties will be charged to Customer; *provided, however*, if Company does not collect such items from Customer and Company is later requested or required to pay the same to any taxing authority, Customer shall promptly make payment to Company or directly to such taxing authority if requested by Company.

(d) If Equipment is located beyond 50 miles from the center of a Company Service City, Customer agrees to pay prevailing travel rates incurred by Company or Company's authorized representative in connection with performing its obligations hereunder.

(e) Payments are not subject to setoff or recoupment for any present or future claim Customer may have.

### **4. Customer's Obligations.**

Customer shall, at its expense: (1) exercise reasonable care in operation and normal maintenance of Equipment; (2) operate Equipment within Company's published specifications (including, without limitation, all environmental specifications); (3) maintain Equipment in conformance with Company's maintenance standards, which shall include following and performing Company's recommended customer care and cleaning program between calls of Company's service representative; (4) properly maintain installation site and operating environment; and (5) provide necessary utility services for use of Equipment in accordance with Company's specifications.

**5. Limited Warranties.** Company represents and warrants that the Services will be performed in a professional and workmanlike manner in accordance with applicable industry standards. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND COMPANY GIVES NO OTHER WARRANTIES IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. No employee or agent of Company, other than an officer of Company by way of a signed writing, is authorized to make any warranty in addition to the foregoing. Customer's sole and exclusive remedy for breach of warranty shall be repair or replacement.

**6. Remedies and Liability.** Without waiving any other rights or remedies available to it under applicable law or otherwise, Company may defer provision of Services hereunder or under or pursuant to any other contract with Customer, until all past-due accounts of Customer are fully satisfied. Company's rights and remedies herein are in addition to, and not in lieu of, any other rights or remedies Company may have at law or in equity. IN NO EVENT WILL COMPANY BE LIABLE FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, THIRD PARTY OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION THOSE BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL, EQUITABLE OR STATUTORY CLAIM, CAUSE OF ACTION OR LEGAL THEORY. EXCEPT AS OTHERWISE PROHIBITED BY LAW, COMPANY'S MAXIMUM LIABILITY HEREUNDER REGARDLESS OF LEGAL THEORY WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO COMPANY PURSUANT TO THIS AGREEMENT. Company will not be liable for any damages or costs resulting from any delays in performance.

### **7. Term.**

(a) This Agreement is effective as of the Effective Date identified in this Agreement. If this Agreement is a Start-Up Care Package, the term is 9 months from the Effective Date. If this Agreement is a Service Care Package, the term is identified in this Agreement.

(b) Either party may terminate this Agreement at any time and for any reason upon 30 days prior written notice to the other party on the terminating party's letterhead, signed by an authorized individual and sent by facsimile, first class, or certified mail, subject to the restrictions herein.

(c) The parties acknowledge and agree that the Agreement Term identified in this Agreement is the essence of Company's pricing and Company will suffer losses if this Agreement is terminated prior to the expiration of such Agreement Term. In the event of termination during the Agreement Term, the Customer shall pay an early termination fee to reimburse Company for such losses, which fee is to be construed as liquidated damages and not as a penalty. The early termination fee will be computed as follows: Months Remaining in Agreement Term x Monthly Rate (Pro-Rated for Annual/Quarterly Agreements) x 65%. This early termination fee shall not apply in the event of early termination of an Agreement during a renewal term.

**8. Force Majeure.** Except for Customer's payment obligations, neither party shall be liable for delays in performance or nonperformance, in whole or in part, resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, embargo, acts of the government, or other similar causes ("Event"). In such event, the party delayed shall promptly give notice to the other party. The party affected by the delay may: (a) extend the time for performance for the duration of the event, or (b) cancel all or any part of the unperformed part of this Agreement and/or any Purchase Order if such Event lasts longer than sixty (60) days. If an Event affects Company's ability to meet its obligations at the agreed upon pricing, or Company's costs are otherwise increased as a result of such Event, Company may increase pricing accordingly upon written notice to Customer.

**9. Assignment; Successors and Assigns.** Customer may not assign this Agreement without Company's prior written consent. Any assignment contrary to this Section shall be null and void. This Agreement shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**10. Governing Law; Venue; Actions; Attorneys Fees.** This Agreement is governed by and construed in accordance with the laws of the State of Illinois without regard to conflicts of laws provisions. The parties consent to the sole and exclusive venue and jurisdiction of the federal and state courts situated in or having jurisdiction over DuPage County, Illinois. Any action brought by Customer pursuant to this Agreement must be commenced within the earlier of one (1) year from the date of delivery of Services or occurrence of the event giving rise to the claim, or such claim will be forever barred. In the event of any legal dispute, the substantially prevailing party shall be entitled to all reasonable costs incurred, including but not limited to collection costs, attorneys' fees and costs of suit.

**11. Entire Agreement; Modifications; Waiver.** These Terms are the only terms and conditions applicable to this Agreement, there being no other promises, terms, conditions, or obligations, referring to the subject matter not contained herein. If any provision of these Terms to any extent is declared invalid or unenforceable, the remainder of these Terms will not be affected thereby and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. Company's failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder. If any term herein is declared invalid or unenforceable to any extent, the remainder of these terms will not be affected thereby, and each term herein will continue to be valid and enforceable to the fullest extent permitted by law.