

**FUJIFILM OBJECT ARCHIVE
SUBSCRIPTION AND SUPPORT SERVICES TERMS AND CONDITIONS**

1. SCOPE.

1.1 These Terms and Conditions govern all proposals, quotations, invoices, statements of work, and all purchase orders applicable to subscriptions of FUJIFILM Object Archive software, including all components thereof (“**Object Archive Software**”) and professional implementation, maintenance and support services (“**Subscription Services**”) provided by FUJIFILM Recording Media GmbH (“**Fujifilm**”) to the purchaser identified on a sales order (“**Purchaser**”).

1.2 These Terms and Conditions, together with any terms and conditions set forth in the applicable sales order and any statement of work attached thereto, form the entire agreement between the parties (collectively, the “**Agreement**”).

1.3 No additional, different or inconsistent terms or conditions contained in any purchase order or other purchase documentation provided by Purchaser will be binding upon Fujifilm without its express written consent. Fujifilm’s failure to object to any term contained in any communication from Purchaser will not constitute acceptance of those terms. No purchase order shall be binding upon Fujifilm until accepted in writing.

1.4 The terms of the Agreement govern and supersede any other agreement or understanding between the parties with respect to Object Archive and Subscription Services, unless the parties have executed a separate written agreement for such Object Archive Software and Subscription Services, in which case such separate written agreement will prevail.

2. SUBSCRIPTION SERVICES.

2.1 Fujifilm shall provide the Subscription Services to Purchaser, either directly or through its affiliates or authorized third party resellers, during the Term of the Object Archive subscription period indicated on the applicable sales order at the level of Subscription Services purchased.

2.2 Purchaser’s use of the Subscription Services shall be subject to the terms of the **End User License Agreement (“EULA”)** posted at <https://www.fujifilm.com/de/en/business/data-management/downloads> on the date of installation.

2.3 Object Archive Software incorporates open source software code developed by third parties (“**Open Source Code**”). Open Source Code is subject to its own respective licenses (“**Open Source Licenses**”). A list of the Open Source Code and corresponding Open Source Licenses are included in the EULA. In the event of any conflict between the terms of the Agreement and any of the Open Source Licenses, the Open Source Licenses shall prevail with respect to the Open Source Code to which it applies. By using the Object Archive Software through the Subscription Services, Purchaser acknowledges and agrees to comply with the terms and conditions of the Open Source Licenses.

3. TERM; TERMINATION.

3.1 Purchaser shall issue a non-cancelable purchase order for the purchase of the Subscription Services, which shall commence upon installation of Object Archive Software, as the case may be under a separate statement of work (the “**Initial Term**”).

3.2 Upon expiration of the Initial Term, Purchaser may renew the Subscription Services for an additional period (each, a “**Renewal Period**”) at Fujifilm’s then-current prices and service terms for the Subscription Services, subject to execution of a sales order renewal by both parties. The Initial Term and each Renewal Period shall collectively be referred to herein as the “**Term**”.

3.3 Fujifilm may, from time to time during the Term, modify or discontinue the Subscription Services. In such event, Fujifilm will notify affected purchaser. In the event that Subscription Services are discontinued by Fujifilm without cause prior to expiration of the then-current Term, Fujifilm shall refund Purchaser the unused Service Fees paid by Purchaser for the Subscription Services remaining as of the effective date of termination.

3.4 Fujifilm shall have no obligation to provide Subscription Services after the effective discontinuance date.

3.4 Fujifilm may terminate the Subscription Services at any time upon notice to Purchaser if Purchaser is in material breach of these Terms and Condition or any terms contained in the Agreement.

4. SERVICE FEES.

4.1 Unless otherwise stated, pricing reflected in a quotation is valid for a period of thirty (30) days from the date thereof.

4.2 The fee for Subscription Services (“**Service Fees**”) shall be quoted to Purchaser and stated on the applicable Fujifilm or reseller invoice.

4.3 Service Fees are subject to change without prior notice

4.4 Service Fees are payable in Euro.

4.5 Service Fees do not include sales or use taxes, or any other duties, fees or charges applicable to Subscription Services. Any required tax, duties, fees or other charges required to be paid by Purchaser shall be identified as a separate line item on the invoice issued to Purchaser.

4.6 Purchaser shall be responsible for payment of time and materials, and other reimbursable costs and expenses, including, but not limited to, travel, meals, lodging, and training incurred by Fujifilm in connection with Subscription Services performed under a statement of work.

4.7 Hardware, accessories or any third party products not manufactured by Fujifilm which is furnished to Purchaser in connection with Subscription Services will be invoiced upon delivery and payable in accordance with the terms of the applicable invoice.

5. TERMS OF PAYMENT.

5.1 Except as otherwise set forth in a statement of work signed by both parties, Service Fees for the entire Initial Term or Renewal Period, as applicable, shall be due and payable in full upon acceptance of purchase order.

5.2 Except as otherwise stated herein, Service Fees are non-refundable.

5.3 Payment not paid when due shall incur interest at the maximum rate permitted by law. In the event that payment of any Service Fee is delinquent, Fujifilm may suspend the Subscription Services without notice to Purchaser, and if Fujifilm is required to initiate efforts to collect delinquent accounts, Purchaser shall pay all costs of collection, including attorneys’ fees.

6. ACCEPTANCE.

6.1 Except as otherwise set forth in a signed statement of work, no acceptance terms will apply.

7. LIMITED WARRANTY; REMEDIES; DISCLAIMER.

7.1 Fujifilm represents and warrants to Purchaser that: (i) Object Archive Software will perform substantially in accordance with written documentation provided by Fujifilm with Subscription Services for a period of ninety (90) days after installation; and (ii) Subscription Services provided under a statement of work shall be performed by skilled individuals in a professional and workmanlike manner in accordance with applicable industry standards at the time of performance (each, a “**Warranty Period**”).

7.2 Fujifilm does not warrant that Object Archive Software, or any of the Subscription Services, are free from errors not materially affecting the performance or functionality thereof.

7.3 Fujifilm further disclaims any warranty or liability arising from or related to (i) any failure or malfunction of the Object Archive Software or Subscription Services related to the negligence, operator error, or any other misuse or abuse of the Object Archive Software, or any of the Subscription Services, by Purchaser, its employees or agents or causes other than ordinary use; (ii) any violation or failure of Purchaser to comply with these Terms and Conditions or the Agreement, including, but not limited to, use of the Object Archive Software or any of the Subscription Services not in accordance with the Documentation or written instructions provided by Fujifilm; (iii) any modification, alteration or adaptation of the Object Archive Software (or any Open Source Code contained therein), or any of the Subscription Services, by Purchaser, its employees or agents, or any third party other than Fujifilm; and (iv) any failure by Purchaser to promptly implement recommendations advised by Fujifilm with respect to the Object Archive Software, or any of the Subscription Services, in particular, if any potential claim of infringement could have been avoided by the use of a new release, upgrade, update or version correction to the Object Archive Software provided by Fujifilm to Purchaser; (v) any use of the Object Archive Software, or any of the Subscription Services, with third party products not provided by Fujifilm; (vi) issues related to any cloud service host provider; (vii) any customized deliverable created by Fujifilm for Purchaser, including, without limitation, Fujifilm’s compliance with any design, drawing, specification or instructions provided by Purchaser to Fujifilm; or (viii) use of Object Archive Software, and any Subscription Services, with unsupported third party tools or APIs.

7.4 If Fujifilm is notified within the applicable Warranty Period that the Object Archive Software, or any of the Subscription Services, do not substantially conform to the warranties set forth in Section 8.1 above, then the sole remedy of Purchaser, and the entire and exclusive liability of Fujifilm shall be limited to, at Fujifilm’s option: (i) modification, correction, updates, upgrades, or replacement of the affected Object Archive Software, or re-performance of the applicable Subscription Services, at no charge to Purchaser; or (ii) a pro-rata refund of the Service Fee paid by Purchaser for that unused or affected portion of the Subscription Services during the Warranty Period.

7.5 EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 7, OBJECT ARCHIVE SOFTWARE AND SUBSCRIPTION SERVICES ARE PROVIDED “AS IS” AND “WITH ALL FAULTS” AND FUJIFILM, ITS AFFILIATES, AUTHORIZED RESELLERS AND LICENSORS DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES, OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NEITHER FUJIFILM, ITS AFFILIATES, AUTHORIZED RESELLERS NOR LICENSORS SHALL HAVE ANY OBLIGATION TO PROVIDE ANY SOFTWARE MAINTENANCE OR SUPPORT SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY VERSION CORRECTIONS, BUG FIXES, UPDATES OR UPGRADES, WITHOUT THE EXPRESS WRITTEN CONSENT OF FUJIFILM.

7.6 NOTWITHSTANDING ANYTHING CONTAINED HEREIN, OPEN SOURCE CODE INCORPORATED INTO OBJECT ARCHIVE SOFTWARE IS PROVIDED “AS IS” BASIS AND “WITH ALL FAULTS” AND FUJIFILM, ITS AFFILIATES, AUTHORIZED RESELLERS AND LICENSORS DISCLAIM ALL WARRANTIES

OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH REGARD TO SUCH OPEN SOURCE CODE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

7.7 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE REMEDIES SET FORTH IN THIS ARTICLE 7 REPRESENT THE ENTIRE LIABILITY OF FUJIFILM, ITS AFFILIATES, AUTHORIZED RESELLERS AND LICENSORS, AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY BREACH OF WARRANTY CLAIM.

7.8 No written or oral statement made about Object Archive Software, or any of the Subscription Services, by any employee, representative or agent of Fujifilm will be binding upon Fujifilm, or modify the terms herein, unless expressly agreed to in writing.

8. LIMITATION OF LIABILITY.

8.1 Purchaser assumes all responsibility and liability for its use of the Object Archive Software, and the Subscription Services, and will defend, fully indemnify and hold harmless Fujifilm, its affiliates and each of their respective directors, officers, employees, agents, authorized resellers and licensors, from and against any loss, liability, damage, allegation, suits, settlements, costs and expenses (including attorneys' fees) from and against any claim arising out of or related thereto.

8.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL FUJIFILM, ITS AFFILIATES, AUTHORIZED RESELLERS OR LICENSORS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS OR OPPORTUNITY, CORRUPTION OR ALTERATION OF DATA, INTERRUPTION OR LOSS OF USE OR RECOVERY OF DATA, OR ANY OVERHEAD EXPENSES, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES) ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS OR THE AGREEMENT UNDER ANY BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE. 8.3 THE TOTAL MAXIMUM LIABILITY OF FUJIFILM, ITS AFFILIATES, AUTHORIZED RESELLERS, OR LICENSORS, AS APPLICABLE, SHALL BE LIMITED TO THE SERVICE FEE PAID BY PURCHASER FOR THE AFFECTED SUBSCRIPTION SERVICE UNDER THE APPLICABLE SALES ORDER. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

9. PROPRIETARY RIGHTS; CONFIDENTIALITY; PUBLICITY

9.1 Fujifilm, its affiliates and third party licensors retain their respective intellectual property rights in and to the Object Archive Software and Subscription Services, and all user documentation related thereto, in addition to any improvements, enhancements or modifications thereto, or derivatives thereof. Object Archive Software is protected by applicable intellectual property laws and treaties. Object Archive Software is licensed and not sold. User documentation related to Object Archive Software, and the Subscription Services, which is provided by Fujifilm to Purchaser or made publicly available on Fujifilm websites ("**Documentation**") is the property of Fujifilm and may not be copied or shared with any third party without Fujifilm's prior written consent.

9.2 In connection with the Subscription Services, Fujifilm may share information and materials with Purchaser that Fujifilm considers confidential and proprietary to it and/or its affiliates, including, but limited to, the Object Archive Software ("**Confidential Information**"). Purchaser will (i) hold Confidential Information in confidence and not disclose such Confidential Information to any third party, without Fujifilm's prior written consent, and (ii) not use any Confidential Information for any purpose except as necessary for the Subscription Services. Purchaser will treat all Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but with no less than a reasonable degree of care under the circumstances. Because damages alone shall not be adequate compensation for the loss or threatened breach of Confidential Information, Fujifilm, in addition to any other legal and equitable rights it may have, shall be entitled to seek injunctive or other equitable relief to prevent or restrain any potential unauthorized use or disclosure of Confidential Information by Purchaser.

9.3 Purchaser shall not use the name, trademarks, logos or service marks of Fujifilm, or refer to Fujifilm or any of its affiliates, directly or indirectly, in any press release or other public communication, or for any other purpose, without the prior written consent of Fujifilm.

9.4 Purchaser shall not cause or permit the reverse engineering or reverse compilation of the Object Archive Software.

10. COLLECTION OF DIAGNOSTIC INFORMATION.

10.1 Fujifilm may collect certain diagnostic data ("**Diagnostic Information**") that is generated automatically during operation of Object Archive Software. Such Diagnostic Information is used by Fujifilm for the purposes of license management, failure handling and quality improvement (including collection of statistical data for new function development/function improvement). Diagnostic Information includes: (i) license audit file (data capacity, period of use, model of hardware (library/server), serial number); (ii) software/hardware log files (*i.e.*, trace information for failure handling and quality improvement, status-of-use file); and (iii) report file (*i.e.*, statistical data summarized by software from log files).

10.2 Except as otherwise stated in a separate agreement for maintenance and support services, no personally identifiable information or personal data will be collected from Purchaser during operation of Object Archive Software, without prior written consent.

11. MISCELLANEOUS

11.1 Purchaser is responsible for obtaining all necessary governmental permits, licenses, approvals and consents for the implementation and use of Object Archive Software and the Subscription Services.

11.2 The Agreement is governed by the laws of Germany without reference to conflict of laws principles. The United Nations Convention on Agreements for the International Sale of Goods will not apply to the Agreement. The sole jurisdiction and venue for all legal actions relating to the Agreement will be the competent court in Düsseldorf, Germany. Both parties consent to the jurisdiction of such courts with respect to any such actions. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees.

11.3 If a court of competent jurisdiction finds any provision of the Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of the Agreement will remain in full force and effect.

11.4 The parties are independent contractors.

11.5 Purchaser shall comply with all laws and regulations applicable to the Subscription Services. Purchaser will not import, export or re-export the Object Archive Software, or any Subscription Services, Documentation or any Confidential Information of Fujifilm except in full compliance with all applicable laws and regulations.

11.6 No modification or amendment of any provision of these Terms and Conditions or the Agreement will be effective unless in writing and signed by the parties' authorized representatives.

11.7 Notices or consents required hereunder shall be in writing and deemed given (i) if delivered personally, (ii) on the business day following transmission, if sent by facsimile followed by written confirmation (iii) if delivered via email when the recipient, by an email sent to the email address for the sender, acknowledges having received the sender's email; (iv) one business day after posting when sent via an express commercial courier; or (v) five business days after posting when sent via registered mail, postage prepaid to the address or business email address, as applicable, of the other party as set forth on this order or to such other address or business email address as a party may designate upon ten days' notice. Notices to Fujifilm shall be sent with a copy to Fujifilm Europe GmbH, Legal Department, Heesenstraße 31, 40549 Düsseldorf, Germany.

11.8 The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed as a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each such provision thereafter. The express waiver by either party of any provision of this Agreement will not constitute a waiver of any future obligation to comply with such provision.

11.9 Purchaser may not assign this Agreement without the prior written consent of Fujifilm. This Agreement will bind and inure to the parties and their successors and permitted assigns.

11.10 Fujifilm will not be liable to Purchaser or any third party for any loss, expense or damage caused by or resulting from any force majeure event or any cause or occurrence beyond the reasonable control of Fujifilm, including, without limitation, acts of God, fire, flood, war, labor disputes, infectious disease, epidemic, pandemic, governmental laws or regulations, shortage of power, raw materials or parts, or purchase orders exceeding Fujifilm's then-scheduled delivery or production capacity, or actions or inaction of Purchaser.

11.11 This Agreement, together with the EULA, sales order, any support and service level agreements, any Fujifilm Terms & Conditions and any statement of work entered into by the parties, contains the entire agreement of the parties with respect to the subject matter herein, and supersedes all other agreements or understandings, oral or written, related to the subject matter hereof.