



## END USER LICENCE AGREEMENT

**Notice – Elektromotive Products may only be used subject to the following licence terms:**

**ELEKTROMOTIVE LIMITED** (COMPANY NUMBER 04676138) WHOSE REGISTERED OFFICE IS AT SCIENCE PARK SQUARE, BRIGHTON, BN1 9SB ("Elektromotive", "Our", "Us" or "We") OWN THE COPYRIGHT, TRADE MARK, TRADE NAMES, PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS SUBSISTING IN OR USED IN CONNECTION WITH THE PRODUCTS (DEFINED BELOW) INCLUDING ALL DOCUMENTATION AND MANUALS AND ALL OTHER COPIES OF SUCH DOCUMENTATION AND MANUALS WHICH YOU ARE AUTHORISED TO MAKE BY THIS END USER LICENCE AGREEMENT ("EULA"). WE AGREE TO LICENSE THE USE OF PRODUCTS TO YOU ("YOU") ONLY ON THE CONDITION THAT YOU ACCEPT ALL THE TERMS CONTAINED IN THIS EULA. PLEASE READ THIS EULA CAREFULLY BEFORE USING IT. BY USING THE PRODUCTS, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS ELEKTROMOTIVE IS UNWILLING TO LICENSE THE PRODUCTS TO YOU. YOU SHOULD NOT OPEN ITS PACKAGING AND IMMEDIATELY RETURN THE PRODUCTS AND ALL ACCOMPANYING ITEMS TO Elektromotive.

### TERMS AND CONDITIONS

#### 1 APPLICATION OF TERMS

- (a) Any supply or purchase of Our products ("Product") is subject always to this EULA.

#### 2 GRANT AND SCOPE OF LICENCE

- (a) In consideration of Your agreement to the terms of this EULA, We grant You a perpetual, non-exclusive right to use the Products in accordance with these terms and conditions.

#### 3 RESTRICTIONS ON USE

- (a) You may not, nor permit another to:
- (i) sub-license, assign, rent, lease, transfer or licence the Product or make or distribute copies of it in whole or part;
  - (ii) translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the Product;
  - (iii) make copies of the Product, in whole or part;
  - (iv) copy, adapt, modify, delete or translate the written material accompanying the Product in any way for any purpose whatsoever; or
  - (v) vary, delete or obscure any notices of proprietary rights or any Product identification or restrictions on or in the Product.
- (vi) Use the Products with 3<sup>rd</sup> party products not authorised for use with Elektromotive Products.
- (b) The use of the Products and the right to use Elektromotive's technology is subject to your having legally purchased or licenced the Products either through Elektromotive or one of Our authorised resellers.

#### 4 UNDERTAKINGS

- (a) You undertake to:
- (i) ensure that, prior to use of the Product by your employees or agents, all such parties are notified of this EULA, of its terms and their application to the Product;
  - (ii) hold all documents, user guides, drawings, specifications, data (including object and source codes), software listings and all other information relating to the Products, confidential and not at any time, during this EULA or after its expiry, disclose the same, whether directly or indirectly, to any third party without Our consent.

#### 5 WARRANTY

- (a) We warrant that (subject to the other provisions of these conditions) for a period of 12 months from the date of delivery, the Products shall be reasonably fit for its intended purpose.
- (b) We shall not be liable for a breach of any of the warranty set out in 5(a) unless:
- (i) You give written notice of the defect to Us within 365 days of the date the Product is first delivered to You. For the purpose of this provision, the delivery date will be the date that the Product is first shipped by Us or Our agent or reseller to You and not the date that it is received by any third party to whom You may sell or supply the Product to; and
  - (ii) We are given a reasonable opportunity after receiving the notice to examine the Product and You (if asked to do so by Us) return such Products to Our place of business for the examination to take place there.
- (c) We shall not be liable for a breach of any warranty in condition 5(a) if:
- (i) You make any further use of such Products after giving such notice of a fault; or
  - (ii) the defect arises because You failed to follow Our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or
  - (iii) You alter, repair or attempt to do either to such Product without Our written consent.
- (d) Subject to condition 5(b) and condition 5(c), if any Product does not conform with any of the warranties in condition 5(a) We shall, at Our option, repair or replace such Products (or the defective part) or refund the price of such Products at the pro rata Contract rate provided that, if We so request, You shall, at Your expense, return the Products or the part of such Products which is defective to Us.
- (e) If We comply with condition 5(d) it shall have no further liability for a breach of warranty in respect of such Product.
- (f) Any Products replaced shall belong to us and any repaired or replacement Products shall be guaranteed on these terms for the unexpired portion of the 12 month period.

#### 6 LIMITATION OF LIABILITY

- (a) Subject to the provisions of condition 5 above and condition 6(c) below, the following provisions set out Our entire liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:
- (i) any breach of these conditions;
  - (ii) any use made or resale by You of any of the Products, or of any Products incorporating any of the Products; and
  - (iii) any representation, statement, tortious act or omission including negligence arising under or in connection with this EULA.

- (b) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Products Act 1979) are, to the fullest extent permitted by law, excluded from this EULA.
- (c) Nothing in these conditions excludes or limits Our liability:
  - (i) for death or personal injury caused by Our negligence; or
  - (ii) under section 2(3), Consumer Protection Act 1987; or
  - (iii) for any matter which it would be illegal for Us to exclude or attempt to exclude Our liability; or
  - (iv) for fraud or fraudulent misrepresentation.
- (d) Subject to condition 6(b) and condition 6(c):
  - (i) Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this EULA shall be limited to the price that was paid for the Products that You received or if more than one of the same Products was received, then the total liability shall be the price paid for one Product; and
  - (ii) We shall not be liable to You for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this EULA, even if We have been advised of the possibility of such damages
- (e) We accept no liability for any programs or data made or stored with the Products nor for the costs of recovering or replacing such programs or data.
- (f) We do not warrant that any software which accompanies any Product will meet your requirements or that its operation will be uninterrupted or error free. We exclude and expressly disclaim all express and implied warranties or conditions not stated in this EULA (including without limitation, loss of profits, loss or corruption of data, business interruption or loss of contracts), so far as such exclusion or disclaimer is permitted under the applicable law. This EULA does not affect your statutory rights.

## **7 INTELLECTUAL PROPERTY RIGHTS**

- (a) All industrial and intellectual property rights ("Intellectual Property Rights") of whatever nature including without limitation patents, patent applications, trade marks and other service marks, trade mark applications, copyrights and related rights, trade names, industrial designs and processes, rights in confidential information (including but not limited to Know How and trade secrets), rights in design, database rights, trade names and domain names, rights to inventions, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in computer software and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world in the Products vest in and are the sole ownership of Elektromotive or our licensors.
- (b) You shall not act or omit to do anything or permit another to do anything which shall adversely affect Our ownership of, or ability to exercise any of Our Intellectual Property Rights and You must immediately notify Us of any infringement or threatened infringement of Our Intellectual Property Rights.
- (c) You shall indemnify and forever keep Us indemnified against any breach of this condition 7.

## **8 TERMINATION**

- (a) The licence granted to You by this EULA to use the Products automatically terminates if you:
  - (i) fail to comply with any provision of this EULA;
  - (ii) destroy any Products in your possession; or
  - (iii) voluntarily return the Products to us.
- (b) In the event of termination in accordance with this condition 8, You must destroy or delete all copies of materials accompanying the Products from all storage media in your control.

## **9 FORCE MAJEURE**

- (a) We reserve the right to defer the date of delivery or to cancel this EULA or reduce the volume of the Products ordered by You (without liability to You) if We are prevented from or delayed in the carrying on of Our business due to circumstances beyond Our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, You shall be entitled to give notice in writing to Elektromotive to terminate this EULA.

## **10 GENERAL**

- (a) You may not assign, transfer, sub-contract or otherwise part with this EULA unless You have sold the Products in which case each sale will be on these terms and conditions and You must inform and provide a copy of this EULA to such purchaser.
- (b) We may assign this EULA or our rights in the Products to any person, firm or company.
- (c) Each right and or remedy of Ours is without prejudice to any other right or remedies available to Us.
- (d) All communications and notices from You to Us must be in writing or confirmed in writing.
- (e) If any provision of this EULA is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this EULA and the remainder of such provision shall continue in full force and effect.
- (f) Our failure or delay in enforcing or partially enforcing any provision of this EULA shall not be construed as a waiver of any of Our rights under it. Any waiver by Us of any breach of, or any default under, any provision of this EULA by You shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this EULA.
- (g) The formation, existence, construction, performance, validity and all aspects of this EULA shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- (h) You have read and understand this EULA and your use of our Products implies your agreement that it constitutes the complete and exclusive statement of the Agreement between us with respect to the subject matter of this EULA.