

TE TECHNOLOGY, INC. ("TE TECH")
License Agreement

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE OPENING THIS PACKAGE OR SIGNIFYING YOUR ACCEPTANCE BY CLICKING THE APPROPRIATE DIALOG BOX. OPENING THIS PACKAGE, CLICKING THE APPROPRIATE DIALOG BOX OR USING ANY PART OF THE SOFTWARE SIGNIFIES YOUR ACCEPTANCE OF (1) THESE TERMS AND CONDITIONS FOR THE LICENSED SOFTWARE, AND (2) THE TERMS OF ACCEPTANCE OF TE TECH FOR ANY PRODUCTS PURCHASED FROM TE TECH. IF YOU DO NOT AGREE WITH THEM, PROMPTLY RETURN THE PACKAGE UNOPENED AND UNUSED ALONG WITH ANY OTHER ITEM THAT WAS INCLUDED IN THE SAME PRODUCT NUMBER FOR FULL CREDIT.

You, as the Customer, agree as follows:

1. DEFINITIONS

"Application Software" shall mean those portions of the Licensed Software created by TE TECH.

"Designated Hardware" shall mean the one (1) hardware device, purchased from TE TECH, upon which Customer shall run the Licensed Software.

"Licensed Software" shall mean the Application Software plus any other software supplied by TE TECH pursuant to this Agreement.

"Third Party Software" shall mean software owned or licensed by a third party, including but not limited to operating systems, that is embedded within the Licensed Software or otherwise included with any product provided to Customer from TE TECH.

2. LICENSE

2.1 Except as provided in section 2.2 below, you are granted only a personal, non-transferable, nonexclusive license to use the Licensed Software only on the Designated Hardware. You may copy the Licensed Software into machine readable form for backup purposes or to support your use of the Licensed Software on the Designated Hardware. No other copies shall be made unless authorized in writing by TE TECH. You may not (i) reverse engineer, decompile, or disassemble the Licensed Software (except to the extent such foregoing restriction is expressly prohibited by applicable law); (ii) sub-license, lease, or rent the Licensed Software; (iii) distribute in part, modify, or create derivatives of the Licensed Software; (iv) amend, modify, or supplement Licensed Software with any additional code except for the purpose of further configuring the Licensed Software for use with Designated Hardware; or (v) directly or indirectly, export, re-export, download, or ship the Licensed Software in violation of the laws and regulations of the U.S. The Licensed Software, comprising proprietary trade secret information of TE TECH and/or its Licensor's, shall be held in confidence by Customer and protected from disclosure to third parties. No title to the intellectual property is transferred. You must reproduce and include all applicable copyright notices on any copy. Licensed Software shall not be copied, reproduced, or used for any other purpose outside of operation of the TE TECH hardware, and shall not be used on any other piece of hardware other than the TE TECH hardware with, or for, which it was provided. Notwithstanding the foregoing, in the event that you download the Licensed Software from the internet without purchasing Designated Hardware, the Licensed Software may only be used for evaluation purposes and must be deleted (including all copies) within fifteen (15) days of downloading. You may not use the Licensed Software with any other equipment other than the Designated Hardware without prior written approval from TE TECH. If no operating system software is included in the software provided under this Agreement, you must make provision for any required operating system software licenses. At its option, TE TECH may, upon request, provide the source code for the Licensed Software. The limited warranty provided in section 3 below shall be null and void immediately upon TE TECH providing the source code, or any portion thereof, to you.

2.2 If you are an authorized TE TECH distributor or an Original Equipment Manufacturer who incorporates the Licensed Software into your equipment for sale to an end user, or you use the Licensed Software to create redistributables, you may transfer the Licensed Software to an end user provided that the end user agrees to be bound by the provisions of this Agreement. You shall use your best efforts to enforce your agreement with customers made in accordance with this Section 2.2 and shall promptly report any violation or suspected violation to TE TECH. In the event that your customer violates any portion of this agreement, you agree to defend, hold harmless and indemnify TE TECH from any and all such claims. TE TECH may, at its option, bring suit against your customer to enforce the terms of this agreement, TE TECH's costs and expenses incurred as a result of such action (including reasonable attorneys' fees) shall be your responsibility.

2.3 The Licensed Software may include Third Party Software licensed to TE TECH. Customer hereby acknowledges and agrees that any Third Party Software provided by TE TECH to Customer hereunder (a) shall not be modified and shall be used and/or used and redistributed or resold (to the extent permitted under Section 2.2) only embedded within the TE TECH hardware product as provided by TE TECH, (b) shall always contain and only be redistributed (to the extent permitted under Section 2.2) with all proprietary markings present as provided to Customer hereunder and under the same terms and conditions as set forth in this Agreement. All rights and benefits afforded to TE TECH under this Agreement shall apply equally to the owner of the Third Party Software (the "Third Party") and its licensors with respect to the Third Party Software. The Third Party and its licensors are intended third party beneficiaries of this Agreement, and the provisions of this Agreement relating to the Licensed Software, as the same incorporate the Third Party Software, are made expressly for the benefit of, and are enforceable by, the Third Party and its licensors. The Third Party and its licensors retain ownership of all copies of the Third Party Software. **Unless a pass-through warranty covering the Third Party Software is extended directly to you by the Third Party, all Third Party Software is provided "AS IS" without warranty of any kind, and each Third Party and its licensors disclaim all warranties, either express or implied, including but not limited to the implied warranties of merchantability, title, non-infringement or fitness for a particular purpose with regard to the Third Party Software. The Third Party shall not have any liability for special, indirect, punitive, incidental or consequential damages.**

2.4 EXCEPT AS PROVIDED IN SECTION 2.2 ABOVE, IF YOU TRANSFER POSSESSION OF ANY COPY OF THE LICENSED SOFTWARE TO ANOTHER PARTY WITHOUT WRITTEN CONSENT OF TE TECH, YOUR LICENSE IS AUTOMATICALLY TERMINATED. Any attempt otherwise to sublicense, assign or transfer any of the right, duties or obligations hereunder is void.

2.5 If the Licensed Software or associated documentation is provided to any U.S. Government entity, unit, or agency, the restrictions set forth at section 52.227-19(c) ("Commercial computer software - restricted rights") of the Federal Acquisition Regulations (FARs) shall apply. If the Licensed Software or associated documentation is provided to the U.S. Government, Department of Defense (DOD), or any entity, unit, or agency thereof, the restrictions set forth at section 252.227-7015 ("Technical Data -Commercial Items") of the DOD FAR Supplement (DFARS) shall also apply.

2.6 For rights granted in this Agreement, Customer shall pay to TE TECH the then-current product price (license fee) for each copy of the Licensed Software provided by TE TECH to Customer.

2.7 Customer shall pay all import duties and registration fees and all sales, use and excise taxes (and any other assessments in the nature of taxes however designated) on the Licensed Software or its license to use the Licensed Software, or resulting from this Agreement, exclusive of taxes based on TE TECH's net income.

2.8 Customer acknowledges that the Licensed Software, including, without limitation, TE TECH logos, trademarks and all information contained therein, is proprietary to TE TECH, is valuable, gives a competitive advantage to TE TECH, and could not, without significant expense and difficulty, be obtained or duplicated by others who have not been able to acquire the same through means expressly authorized in this agreement. You agree that, unless you first obtain the prior written consent of TE TECH, or unless required by law, you shall not communicate or disclose, directly or indirectly, to any person or firm, or use at any time, any of the TE TECH's proprietary information, except as provided in this Agreement. The provisions of the section, among certain others, shall survive the termination of this Agreement for whatever reason. The Licensed Software shall be and remain the exclusive property of TE TECH.

3. WARRANTY

3.1 Only if Customer has purchased Designated Hardware (the purchase price of which automatically includes the license fee), TE TECH warrants that the Application Software will be in substantial conformance with the specifications in the manual pertaining thereto as of the date of shipment by TE TECH. If, within ninety (90) days of date of shipment, it is shown that the Application Software does not meet this warranty, TE TECH will, at its option, either correct the defect or error in the Application Software, free of charge, or make available to Customer satisfactory substitute software, or, as a last resort, return to Customer all payments made as license fees and terminate the license with respect to the Application Software affected. TE TECH does not warrant that operation of the Application Software will be uninterrupted or error free or that it will meet Customer's needs. **All other portions of the Licensed Software are provided "as is" without warranty of any kind.**

3.2 TE TECH warrants that the media on which the Application Software is delivered will be free from defects in material or workmanship under normal use and service for a period of ninety (90) days from the date of delivery. If any defects are discovered in the media is discovered and reported by Customer within ninety (90) days after delivery TE TECH shall, at no cost to Customer, upon return of same to TE TECH, replace the media and deliver (electronically) to Customer a new and complete copy of the Licensed Software.

3.3 Any modification to the Licensed Software by the Customer without the express written consent of TE TECH shall void the warranty.

3.4 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. **NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. NO WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE SHALL APPLY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, UNLESS CUSTOMER HAS PAID TE TECH A SEPARATE LICENSE FEE THEREFOR, TE TECH MAKES NO WARRANTIES AS TO THE LICENSED SOFTWARE, WHICH IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED.**

4. LIMITATION OF LIABILITY

4.1 IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL TE TECH OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE LICENSED SOFTWARE OR ANY PART THEREOF, OR ANY ASSOCIATED EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN TIME COSTS, OR CLAIMS OF CUSTOMER'S CUSTOMERS AND TRANSFEREES FOR SUCH DAMAGES EVEN IF TE TECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.2 EXCEPT AS PROVIDED IN SECTION 5, INDEMNITY, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL TE TECH'S LIABILITY TO CUSTOMER FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RESULTING FROM THIS AGREEMENT, OR FROM ITS PERFORMANCE OR BREACH, OR FROM THE LICENSED SOFTWARE OR ANY PART THEREOF, OR FROM ANY SERVICE FURNISHED HEREUNDER, EXCEED THE QUOTED CHARGES FOR THE LICENSED SOFTWARE. ANY SUCH LIABILITY SHALL TERMINATE UPON THE TERMINATION OF THE WARRANTY PERIOD AS SET FORTH IN SECTION 3.

4.3 If TE TECH furnishes Customer with advice or other assistance which concerns Licensed Software or any portion thereof supplied hereunder or any system or equipment on which any such software may be installed and which is not required pursuant to this Agreement the furnishing of such advice or assistance will not subject TE TECH to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

4.4 The products (hardware and software) to be licensed or sold hereunder are not intended for use in any application specifically prohibited in writing by TE TECH, including, without limitation, in any nuclear, chemical or weapons production facility or activity, or other activity where failure of the products could lead directly to death, personal injury or severe physical or environmental damage. If so used, TE TECH disclaims all liability for any damages arising as a result of the hazardous nature of the business in question, including but not limited to nuclear, chemical or environmental damage, injury or contamination, and Customer shall indemnify, hold harmless and defend TE TECH, its officers, directors, employees and agents against all such liability, whether based on contract, warranty, tort (including negligence), or any other legal theory, regardless of whether TE TECH had knowledge of the possibility of such damages.

5. INDEMNITY

5.1 Should the Application Software be held by a court to constitute patent or copyright infringement and its use is enjoined, TE TECH shall, at its expense and option, either procure for Customer the right to continued use, or replace same with a non-infringing product or part, or modify the Application Software so that it becomes non-infringing, or remove the software and refund the license charge pertaining thereto (less reasonable depreciation for any period of use) and any transportation costs separately paid by Customer. The foregoing states the entire liability of TE TECH for patent and copyright infringement by the Licensed Software or any part thereof.

5.2 The indemnity under the preceding paragraph shall not apply to any use of Application Software in conjunction with any other product in a combination not furnished by TE TECH as a part of this transaction. As to any such use in such combination, or any improper or unauthorized use, installation, or operation of the Application Software, TE TECH assumes no liability whatsoever for patent and copyright infringement and Customer will hold TE TECH harmless against any infringement claims arising therefrom (including, but not limited to, reasonable attorney's fees).

6. TERM AND TERMINATION

6.1 You may terminate the license granted hereunder at any time by destroying the Licensed Software together with all copies thereof and notifying TE TECH in writing that all use of the Licensed Software has ceased and that same has been destroyed.

6.2 TE TECH, upon thirty (30) days' notice, may terminate this Agreement or any license hereunder if Customer fails to perform any obligation or undertaking to be performed by it under this Agreement or if Customer attempts to assign this Agreement without the prior written consent of TE TECH. Within twenty (20) days after any such termination of this Agreement, Customer shall certify in writing to TE TECH that all use of the Licensed Software has ceased, and that same has been returned or destroyed, in accordance with TE TECH's instructions.

6.3 Sections 4, 6 and 7 of this Agreement shall survive any expiration or termination and remain in effect. Termination of this Agreement or any license hereunder shall not relieve Customer of its obligation to pay any and all outstanding charges hereunder nor entitle Customer to any refund of such charges previously paid.

7. IMPORT/EXPORT

7.1 If you intend to import or export (or re-export), directly or indirectly, whether electronically or otherwise, the software products or technical data relating thereto supplied hereunder or any portion thereof, it is your responsibility to assure compliance with U.S. and other applicable governmental import and/or export control laws and, if appropriate, to secure any required licenses or approvals in your own name. You are also responsible for the accuracy and completeness of any information or certification you provide for purposes of import or export control compliance.

8. GENERAL

8.1 This Agreement shall be governed by the laws of the State of Michigan, without regard to its conflict of law provisions. You agree that any civil action or claims which relate to this Agreement or the Licensed Software must be brought and maintained in a court of competent jurisdiction located in Grand Traverse County, Michigan, or, alternatively, the U.S. District court for the Western District of Michigan. You hereby waive venue in any other forum. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement

8.2 Should you have any questions concerning this Agreement, contact TE TECH by writing to: TE TECHNOLOGY, INC., 1590 KEANE DRIVE, TRAVERSE CITY, MI 49686.

8.3 YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. FURTHER, NO CHANGE OR AMENDMENT TO THIS AGREEMENT SHALL BE EFFECTIVE UNLESS AGREED TO BY WRITTEN INSTRUMENT SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF TE TECH.