

## **THERMO KING EQUIPMENT SOFTWARE LICENSE AGREEMENT**

**BY USING THERMO KING EQUIPMENT (“EQUIPMENT”) OWNED BY YOU OR THE ENTITY YOU REPRESENT (“YOU”), YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING TERMS:**

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT (“LICENSE”) CAREFULLY BEFORE USING THE EQUIPMENT OR DOWNLOADING A SOFTWARE UPDATE. BY USING THE EQUIPMENT OR DOWNLOADING A SOFTWARE UPDATE, AS APPLICABLE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE EQUIPMENT OR DOWNLOAD THE SOFTWARE UPDATE.

### **1. Software and Use Rights**

- a. The Equipment has controllers and other components that include software, firmware, applications, documentation, content, proprietary interfaces, protocols, proprietary messages, controller area network messages and other content that came with the Equipment, as may be updated or replaced by software updates, whether in read only memory, on any media or in any other form (the “Software”).
- b. Our Software is owned, provided and licensed by Thermo King Corporation and its affiliates (collectively referred herein as “Thermo King,” “our,” “us,” or “we”). Subject to the license expressly granted below, you obtain no right, title, interest, or other license in or to any Software, including but not limited to any copyright, patent, trade secret, trademark, or other proprietary rights therein.
- c. Subject to the terms and conditions of this License, Thermo King hereby grants to you, and you accept, a limited non-exclusive, non-sublicensable and terminable license to use the Software as installed on the Equipment for its intended purpose. Any removal, reproduction, reverse engineering or other unauthorized use of the Software in violation of this License is strictly prohibited. Hacking the Equipment or Software, installing unapproved software, or connecting the Equipment to unauthorized third party equipment may void the warranty for the Equipment. You agree that you shall not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
- d. Subject to the terms and conditions of this License, you are granted a limited non-exclusive license to download and install updates to the Software that may be made available by Thermo King. Thermo King may also provide automatic updates to the Software. By accepting this License, you agree to receive automatic updates without any additional notice. You also agree that when the Equipment is serviced by an authorized Thermo King service provider, the Software may be updated by the service provider without any additional notice.
- e. Thermo King reserves all rights not expressly granted in this License. For example, this License does not give you any right to, and you may not:
  - i. reproduce, modify, adapt, translate, or transmit any Software, in whole or in part;
  - ii. rent, lease, license, or otherwise provide access to any Software;
  - iii. transfer the Software (except as permitted by this License);

- iv. alter, remove, or cover trademarks or proprietary notices in the Software;
- v. decompile, disassemble, decrypt, unbundle, extract, or otherwise attempt or assist others to reverse engineer any Software;
- vi. connect, or enable a third party to connect, the Equipment to third party devices that aren't authorized by Thermo King to access or interact with the Software or Equipment; and
- vii. use, or assist a third party to use, Thermo King protocols, proprietary interfaces, or other intellectual property in the Software to design, develop, manufacture, license, or distribute third party devices or software to access or interact with the Software or Equipment.

## **2. Your Responsibilities**

- a. You agree to operate Equipment and Software in accordance with all manuals and guidelines. You agree to ensure that all Equipment and Software is operated by users who have the necessary understanding and know-how of transport refrigeration equipment including but not limited to remote 2-way operation of the transport refrigeration unit, when applicable.
- b. To the extent that Equipment or Software interfaces with mobile devices, you agree that you not use such mobile devices while driving and you will advise your operators not to use such mobile devices while driving. You acknowledge and agree that using mobile devices while driving is a dangerous activity, and therefore the use of mobile devices while driving is not advisable.

## **3. Use of Information**

- a. The Equipment or Software or both may collect and share information with Thermo King. You agree that you will comply with applicable laws regarding any information you provide to Thermo King via the Equipment or Software. By accepting this License and using the Equipment and Software, you agree that Thermo King may collect, use, and disclose such information to dealers, service providers and other third parties as described in the Trane Technologies Data Protection and Privacy Policy, available at <https://www.tranetechnologies.com/privacy-policy.html> and incorporated herein by reference, and the Thermo King Machine Information Policy, available at <https://europe.thermoking.com/tk-machine-information-policy/> and incorporated herein by reference. If you would like to opt-out of sharing machine information with Thermo King, please email Thermo King at [Opt-Out@ThermoKing.com](mailto:Opt-Out@ThermoKing.com). You agree that Thermo King may modify or update these policies at any time.
- b. If you enter into or agree, or have entered into or have agreed, to the terms of a separate telematics, service, mobile app or other agreement with Thermo King, the terms and conditions for the collection, use, and disclosure of information may be provided for in such other terms or agreement.

## **4. Transfer**

You may not rent, lease, lend, sell, redistribute, or sublicense the Software. You may transfer all of your license rights to the Software to another party in connection with the transfer of ownership of the Equipment, provided that the transfer must include the Equipment and the Software and the party receiving the Equipment and Software must agree that this License applies to the transfer and use of the Software.

## **5. Third Party Software**

The Equipment may contain other third party software that is licensed under separate applicable license, notwithstanding anything to the contrary in this License. Any requisite acknowledgement, notice and license information (“Third Party Software Notices”) will accompany the Equipment. The Third Party Software Notices may be provided in documentation, readme files, on a device display, via an embedded server, or on a website or mobile device that interacts with the Equipment.

## **6. Termination**

This License is effective until terminated. Your rights under this License will terminate automatically or otherwise cease to be effective without notice from Thermo King if you fail to comply with any of the terms of this License. Sections 3, 5, 6, 7, 8, and 10 of this License shall survive any such termination.

## **7. Disclaimer of Warranties**

THERMO KING MAKES NO WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, INCLUDING, TO THE EXTENT PERMITTED BY FEDERAL, STATE, AND LOCAL LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING THE SOFTWARE LICENSED HEREUNDER. THERMO KING CANNOT WARRANT DATA CONNECTIVITY, NETWORK AVAILABILITY OR UNINTERRUPTED OR ERROR-FREE SERVICES OF THE SOFTWARE.

THIS WARRANTY FOR THE SOFTWARE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

You agree that Thermo King is not liable for losses that may occur in cases of malfunction or nonfunctioning of Equipment or Software, failure to identify Equipment performance issues, or failure to recommend corrective action or that which are otherwise related to the Software.

## **8. Limitation of Liability**

To the extent not prohibited by applicable law, Thermo King or any of Thermo King’s affiliates, officers, employees, and agents shall have no liability for personal injury or any incidental, special, indirect, or consequential damages whatsoever, including, without limitation, damages for loss of profits, corruption or loss of data, business interruption, loss of use, damage caused to vehicles, contents, product cargo, or other property or any other commercial damages or losses, arising out of or related to your use or inability to use the Software or any third party software, applications, or services in conjunction with the Software, however caused, regardless of the theory of liability (contract, tort or otherwise) and even if Thermo King has been advised of the possibility of such damages.

In no event shall Thermo King’s total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty U.S. dollars (U.S.\$50).

## **9. Export Control**

The United States and other jurisdictions control the export of products and information. You agree to comply with such restrictions and not to export or re-export the Software or any portion thereof to countries or persons prohibited under the export control laws. By using the Software, you are agreeing that you are not in a country where such export is prohibited and that you are not on the U.S. Commerce

Department's Table of Denial Orders or the U.S. Treasury Department's list of Specially Designated Nationals.

#### **10. Miscellaneous**

- a. Thermo King may assign this License without your prior consent to any company or entity affiliated with Thermo King, or by an assignment associated with a corporate restructuring, merger or acquisition.
- b. You are responsible for compliance with the laws of your local jurisdiction regarding your use of the Software.
- c. **You represent and warrant that you have the right, authority, and capacity to accept and agree to this Software License Agreement on behalf of yourself or the entity you represent that owns the Equipment.**

Copyright 2020 Thermo King Corporation