

## **END-USER SOFTWARE LICENSE AGREEMENT**

This is a Software License Agreement (the "Agreement") concerning the license and use of ESAB Software ("ESAB Software") within certain machines and systems (collectively "ESAB Products") sold by ESAB, AB ("ESAB") by and between the company acquiring the Products ("Customer"), and ESAB. This Agreement and the purchase order terms and conditions contain the parties' entire understanding relating to the subject matter and supersede all prior or contemporaneous written or oral agreements or terms.

**1. USE OF ALL SOFTWARE IS SUBJECT TO LICENSE RESTRICTIONS. CAREFULLY READ THIS AGREEMENT. USE OF ESAB SOFTWARE INDICATES CUSTOMER'S COMPLETE AND UNCONDITIONAL ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. BY INSTALLING, COPYING OR OTHERWISE ACCESSING ESAB SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU ARE INSTALLING, COPYING, OR OTHERWISE ACCESSING ESAB SOFTWARE AS AN EMPLOYEE, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON CUSTOMER'S BEHALF. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CUSTOMER MAY NOT USE OR COPY ESAB SOFTWARE WHICH OFFERED TO CUSTOMER CONDITIONED ON CUSTOMER'S ACCEPTANCE WITHOUT MODIFICATION OF THE TERMS CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT PURCHASE ORDER TERMS AND CONDITIONS SHALL NOT APPLY.**

2. GRANT OF LICENSE. ESAB Software installed, downloaded, or otherwise acquired by the Customer in connection with the purchase of ESAB Products, or as a stand-alone purchase, including any updates, modifications, revisions, copies, documentation, setup files and design data ("Software") is copyrighted and confidential information of ESAB or its licensors, who maintain exclusive title to all Software and retain all rights not expressly granted by this Agreement. Customer agrees to not disclose, provide, or otherwise make available such confidential or copyrighted material in any form to any third party without the prior written consent of ESAB. Customer agrees to implement reasonable security measures to protect such confidential and copyrighted material. ESAB grants to Customer a nontransferable, nonexclusive license to use ESAB Software solely: (a) for Customer's internal business purposes; and (b) on the ESAB Product and associated computer hardware and at the site authorized by ESAB and (c) on one Customer processor approved in writing by ESAB ("Authorized Use").

3. PRODUCT IMPROVEMENTS. If Customer provides any feedback or requests any change or enhancement to ESAB Products, whether in the course of receiving support or consulting services, evaluating ESAB Products, performing beta testing or otherwise, any inventions, product improvements, modifications or developments made by ESAB (at ESAB's sole discretion) will be the exclusive property of ESAB.

### **4. RESTRICTIONS ON USE.**

4.1 Customer may copy ESAB Software only as reasonably necessary to support the Authorized Use. Each copy must include all notices and legends embedded in ESAB Software and affixed to its medium and container as received from ESAB. All copies shall remain the property of ESAB. Except for embedded software that has been embedded in executable code form in ESAB's Product(s), Customer shall maintain a record of the number and primary location of all copies of ESAB Software, including copies merged with other software, and shall make those records available to ESAB upon request. Customer shall not make Products available in any form to any person other than Customer's employees and on-site contractors (excluding ESAB competitors) whose job performance requires access and who are under obligations of confidentiality. Customer shall take appropriate action to protect the confidentiality of ESAB Software and ensure that any person permitted access does not disclose or use ESAB Software except as permitted by this Agreement. Customer shall give ESAB written notice of any unauthorized disclosure or use of the ESAB Software as soon as Customer becomes aware of such unauthorized disclosure or use.

4.2 Customer acknowledges that the ESAB Software contains source code which is proprietary and its confidentiality is of the highest importance and value to ESAB. Customer acknowledges that ESAB may be seriously harmed if such source code is disclosed in violation of this Agreement. Except as otherwise permitted for purposes of interoperability as specified by applicable and mandatory local law, Customer shall not reverse-assemble, disassemble, reverse-compile, or reverse-engineer any ESAB Software, or in any way derive any source code from ESAB Software that is not provided to Customer in source code form.

4.3. Customer shall not disclose or permit disclosure of ESAB's source code, in whole or in part, including any of its methods or concepts, to anyone except Customer's employees or on-site contractors (excluding ESAB competitors) with a need to know. Customer shall not copy or compile source code in any manner.

4.4 Customer may not assign this Agreement or the rights and duties under it, or relocate, sublicense, or otherwise transfer the ESAB Products, whether by operation of law or otherwise ("Attempted Transfer"), without ESAB's prior written consent. Any Attempted Transfer without ESAB's prior written consent shall be a material breach of this Agreement and may, at ESAB's option, result in the immediate termination of this Agreement and/or the licenses granted under this Agreement. The terms of this Agreement, including without limitation the licensing and assignment provisions, shall be binding upon Customer's permitted successors in interest and assigns.

4.5 The provisions of this Section 4 shall survive the termination of this Agreement.

4.6 If the ESAB Software is sold as "time limited" (as part of a trial, pre-release, or subscription), then the Customer will be in breach of this Agreement by running the software past the allotted time. Any attempt to alter or disrupt time keeping on any device accessing the ESAB Software to circumvent the allotted time shall be considered a breach of this Agreement.

5. SUPPORT SERVICES. ESAB may provide Customer with updates and technical support for the ESAB Software when new versions of the ESAB Software are released.

6. OPEN SOURCE SOFTWARE ("OSS"). ESAB Products may contain OSS or code distributed under a proprietary third party license agreement, to which additional rights or obligations ("Third Party Terms") may apply. In the event of conflict between the terms of this Agreement and the Third Party Terms, the Third Party Terms will control solely with respect to the OSS or third party code. The provisions of this Section 6 shall survive the termination of this Agreement.

## 7. LIMITED WARRANTY.

7.1 ESAB warrants that during the warranty period its standard, generally supported ESAB Software, when properly installed in ESAB Products, will substantially conform to the functional specifications set forth in the applicable user manual. ESAB does not warrant that ESAB Software will meet Customer's requirements or that operation of ESAB Software or ESAB Products will be uninterrupted or error free. The warranty period is 90 days starting on the 15th day after delivery or upon installation, whichever occurs first. Customer must notify ESAB in writing of any nonconformity within the warranty period. For the avoidance of doubt, this warranty applies only to the initial shipment of ESAB Software under an Order and, unless expressly stated in writing by ESAB, does not renew or reset, for example, with the delivery of (a) ESAB Software updates or (b) authorization codes or alternate ESAB Software under a transaction involving ESAB Software. This warranty shall not be valid if the ESAB Software or ESAB Products have been subject to misuse, unauthorized modification, improper installation or Customer is not in compliance with this Agreement.

**7.2 ESAB'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY SHALL BE, AT ESAB'S OPTION, EITHER (A) REFUND OF THE PRICE PAID UPON RETURN OF THE ESAB PRODUCTS TO ESAB OR (B) MODIFICATION OR REPLACEMENT OF THE ESAB SOFTWARE THAT DOES NOT MEET THIS LIMITED WARRANTY. ESAB MAKES NO WARRANTIES WITH RESPECT TO: (A) SERVICES; (B) PRODUCTS PROVIDED AT NO CHARGE; OR (C) SOFTWARE UPDATES; ALL OF WHICH ARE PROVIDED "AS IS."**

**7.3 THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE EXCLUSIVE. ESAB MAKES NO OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ESAB SOFTWARE PROVIDED UNDER THIS AGREEMENT. ESAB SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY BY THE ESAB SOFTWARE.**

**8. LIMITATION OF LIABILITY.**

**TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL ESAB BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ESAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ESAB'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT RECEIVED FROM CUSTOMER FOR THE ESAB PRODUCT, INCLUDING THE ESAB SOFTWARE LICENSED UNDER THIS AGREEMENT, GIVING RISE TO THE CLAIM. IN THE CASE WHERE NO AMOUNT WAS PAID, ESAB AND ITS LICENSORS SHALL HAVE NO LIABILITY FOR ANY DAMAGES WHATSOEVER. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

**9. THIRD PARTY CLAIMS.**

9.1 Customer acknowledges that ESAB has no control over the testing of Customer's products, or the specific applications and use of the ESAB Products or ESAB Software. ESAB shall not be liable for any claim or demand made against Customer by any third party, except to the extent such claim is covered under Section 10 of this Agreement.

9.2 In the event that a third party makes a claim against ESAB arising out of the use of Customer's products, ESAB will give Customer prompt notice of such claim. At Customer's option and expense, Customer may take sole control of the defense and any settlement of such claim. Customer WILL reimburse and hold harmless ESAB for any LIABILITY, damages, settlement amounts, costs and expenses, including reasonable attorney's fees, incurred by or awarded against ESAB or its licensors in connection with such claims.

9.3 The provisions of this Section 9 shall survive any expiration or termination of this Agreement.

**10. INFRINGEMENT.**

10.1 ESAB will defend or settle, at its option and expense, any action brought against Customer which alleges that any standard, generally supported ESAB Software acquired by Customer from ESAB infringes a patent or copyright or misappropriates a trade secret of a third party. ESAB will pay costs and damages finally awarded against Customer that are attributable to such action. Customer understands and agrees that as conditions to ESAB's obligations under this section, Customer must: (a) notify ESAB promptly in writing of the action; (b) provide ESAB all reasonable information and assistance to settle or defend the action; and (c) grant ESAB sole authority and control of the defense or settlement of the action.

10.2 If a claim is made under Subsection 10.1 ESAB may, at its option and expense: (a) replace or modify the ESAB Software so that it becomes non-infringing; (b) procure for Customer the right to continue using the ESAB Software; or (c) require the return of the ESAB Product and refund to Customer any purchase price or license fee paid, less a reasonable allowance for use.

10.3 ESAB has no liability to Customer if the claim or action is based upon: (a) the combination of ESAB Software (or ESAB Product hardware) with any product not furnished by ESAB; (b) the modification of the ESAB Software or ESAB Product other than by ESAB; (c) the use of other than a current unaltered release of the ESAB Software; (d) the use of the ESAB Software as part of an infringing process; (e) a product that Customer makes, uses, or sells; or (f) infringement by Customer that is deemed willful. In the

case of (f), Customer shall reimburse ESAB for its reasonable attorney fees and other costs related to the action.

**10.4 THIS SECTION 10 IS SUBJECT TO SECTION 8 ABOVE AND STATES THE ENTIRE LIABILITY OF ESAB, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR DEFENSE, SETTLEMENT AND DAMAGES, WITH RESPECT TO ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR TRADE SECRET MISAPPROPRIATION BY ANY ESAB SOFTWARE PROVIDED UNDER THIS AGREEMENT.**

**11. TERMINATION AND EFFECT OF TERMINATION.**

11.1 The license granted in Section 2 of this Agreement shall remain in effect as long as Customer uses the ESAB Software in an ESAB Product, unless terminated for any of the reasons set forth herein below.

11.2 ESAB may terminate this Agreement and/or any license granted under this Agreement immediately upon written notice if Customer: (a) uses, modifies, or transfers the ESAB Software in a manner that exceeds the scope of the license, or otherwise fails to comply with the licensing or confidentiality provisions of this Agreement, or (b) becomes insolvent, files a bankruptcy petition, institutes proceedings for liquidation or winding up or enters into an agreement to assign its assets for the benefit of creditors. For any other material breach of any provision of this Agreement, ESAB may terminate this Agreement and/or any license granted under this Agreement upon 30 days written notice if Customer fails to cure the breach within the 30 day notice period. Termination of this Agreement or any license granted hereunder will not affect Customer's obligation to pay for ESAB Products shipped or licenses granted prior to the termination, which amounts shall be payable immediately upon the date of termination.

11.3 Upon termination of this Agreement, the rights and obligations of the parties shall cease except as expressly set forth in this Agreement. Upon termination of this Agreement and/or any license granted under this Agreement, Customer shall ensure that all use of the affected ESAB Software ceases, and shall either return to ESAB or destroy ESAB Software in Customer's possession, including all copies and documentation, and certify in writing to ESAB within ten business days of the termination date that Customer no longer possesses any of the licensed ESAB Software or copies of ESAB Software in any form.

**12.CONTROLLING LAW, JURISDICTION AND DISPUTE RESOLUTION.** This Agreement shall be governed by and construed under the laws of the State of Delaware, U.S., and all disputes hereunder shall be submitted to the exclusive jurisdiction and venue in a State or Federal Court in Wilmington, Delaware.

**13.SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be void, invalid, unenforceable or illegal, such provision shall be severed from this Agreement and the remaining provisions will remain in full force and effect.

**14.MISCELLANEOUS.** This Agreement contains the parties' entire understanding relating to its subject matter and supersedes all prior or contemporaneous agreements. This Agreement may only be modified in writing, signed by an authorized representative of each party. Waiver of terms or excuse of breach must be in writing and shall not constitute subsequent consent, waiver or excuse.