

July 2019

## End User License Agreement

Microtemp WEB and app for iOS and Android

This is an End User License Agreement (“EULA”) between you and OJ Electronics A/S (“OJ Electronics”). By using the Microtemp app/WEB (“Software”) associated with the OJ Electronics thermostat (“Product”) you acknowledge that you have read and understand this agreement and agree to the terms of this EULA. **IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT USE THE SOFTWARE, AND YOU MUST UNINSTALL THE SOFTWARE FROM ANY DEVICE OWNED OR CONTROLLED BY YOU.**

**License.** Subject to the terms of this EULA and the Usage Rules set forth in the iTunes App Store Terms of Service or Google Play store Terms of Service – whichever applicable according to your use, OJ Electronics grants to you a restricted, nonexclusive, nontransferable, revocable license to install and use the Software, in machine executable object code form only, on one or more personal mobile devices using the iOS or Android mobile operating system which are owned and controlled by you. Such license is granted solely for personal non-commercial purposes. Except for the limited license expressly set out in this paragraph, nothing in the EULA should be interpreted or construed as conferring upon the user any license or other rights under the intellectual property of OJ Electronics, its licensors, affiliates, or any third party.

**Restrictions.** You agree not to, and will not assist other to: (i) use, copy, print, modify, adapt, create derivative works from, market, deliver, rent, lease, sublicense, make, have made, assign, pledge, transfer, sell, offer to sell, import, reproduce, distribute, or otherwise commercially exploit the Software; (ii) reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code, structural framework or the data records of the Software, or authorize any third party to do so; (iii) access the Software for purposes of developing, marketing, selling or distributing any product or service that competes with or includes feature substantially similar to the Software; (iv) loan, resell or distribute the Software, or any part thereof, in any way; (v) use, copy or store the Software on more than one mobile or tablet device; (vi) use the Software remotely over any server other than OJ Electronics’ server as a hosted product; (vii) disable or circumvent any access control or security measures in the Software; or (viii) use the Software in any way that does not comply with all applicable laws and regulations. You may not release the results of any evaluation testing of the Software to any third party without the express written authorization of OJ Electronics for each such release.

**Ownership.** OJ Electronics and its licensors and suppliers own all rights, title, and interest in the Software and its intellectual property rights. The Software is protected by copyright laws of the countries in the European Union and the copyright law of further countries. The Software is licensed, not sold, to you for use only under the terms of this EULA. There are no implied licenses in this EULA.

**Energy Savings.** Through the Software, OJ Electronics may provide information concerning your energy usage and recommend steps to take for savings. Such information is provided for informational purposes. OJ Electronics does not guarantee any specific level of energy savings or other monetary benefit from the use of the Software or any of OJ Electronics' products or services. Actual energy savings and monetary benefits vary according to factors beyond OJ Electronics' knowledge or control.

**Changes to the Software.** OJ Electronics reserves the right to modify or discontinue, temporarily or permanently, the Software or Product, without notice and without liability to you. OJ Electronics may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Software or related services ("Updates"). These Updates may be automatically installed without additional notice. You consent to these automatic updates. You acknowledge that you may be required to install Updates to use the Software and Product. If you do not agree to Changes to the Software, you must stop using the Software and Product. OJ Electronics does not have the obligation to make available Updates, upgrades, or support services of any kind relating to the Software, and that all Updates are provided at OJ Electronics' sole discretion.

**Suggestions.** Any suggestions, comments, ideas, improvements, or other feedback concerning the Software or Product (collectively, "Suggestions") provided by you to OJ Electronics shall be the property of OJ Electronics. OJ Electronics shall be free to use, disclose, reproduce, modify, license, transfer and otherwise utilize and distribute your Suggestions in any manner without any compensation to you.

**Personal Information.** You acknowledge that by using the Software, OJ Electronics may receive certain information about you, and may collect, use, and disclose such information in accordance with the terms and condition expressed in the Notification Form. For general information of the policy of OJ Electronics regarding privacy please refer to the Privacy Policy.

**Term and Termination.** This EULA and the license granted herein are effective on the date that you first use the Software and shall continue until terminated by you or OJ Electronics. Your rights under this EULA shall terminate automatically and without notice if you violate any of the terms of this EULA. Upon termination of this EULA, all rights granted to you herein shall terminate immediately and you must stop all use of the Software. You may terminate this EULA, effectively immediately, by submitting a written notice to OJ Electronics. The terms of the Warranty Disclaimer, Limitation of Liability, Indemnity, and Ownership included in this EULA shall survive the termination of this EULA.

## **General Legal Terms**

**Warranty Disclaimer.** YOUR USE OF THE SOFTWARE IS AT YOUR SOLE RISK. THE SOFTWARE IS PROVIDED ON AN "AS IS," "WHERE AS," AND "AS AVAILABLE" BASIS, WITH ALL FAULTS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF

MERCHANTABILITY, MERCHANTABLE QUALITY, TITLE, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS INCLUDING INTELLECTUAL PROPERTY RIGHTS, AND WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. NO WARRANTY IS MADE THAT (i) THE SOFTWARE WILL MEET YOUR REQUIREMENTS, (ii) ACCESS TO THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, (iii) RESULTS THAT MAY BE OBTAINED THROUGH USE OF THE SOFTWARE WILL BE ACCURATE OR RELIABLE, OR (iv) THE SOFTWARE IS OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND OJ ELECTRONICS DISCLAIMS ANY LIABILITY RELATING THERETO.

**Limitation of Liability.** YOU ACKNOWLEDGE AND AGREE THAT OJ ELECTRONICS, ITS SUBSIDIARIES, AFFILIATES, AGENTS, AND/OR REPRESENTATIVES SHALL NOT IN ANY EVENT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY LOSS OR INJURY OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR SIMILAR DAMAGES ARISING FROM YOUR USE OF THE SOFTWARE OR THE PRODUCT, PERFORMANCE OR NON-PERFORMANCE OF THE SOFTWARE OR PRODUCT, ERRORS, DEFECTS, OMISSIONS, DELAYS IN OPERATION OR TRANSMISSION OF THE SOFTWARE, AND/OR ANY OTHER FAILURE OR PERFORMANCE OF THE SOFTWARE, OR ANY MATERIALS, OPINIONS, OR RECOMMENDATIONS OF THIRD PARTIES ON THE SOFTWARE. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON OJ ELECTRONICS HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT IN NO EVENT SHALL OJ ELECTRONICS OR ANY OF ITS SUPPLIERS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY LOSS, DAMAGE, COST OR INJURY, ARISING OUT OF OR RELATING TO YOUR MISINTERPRETATION OR FAULTY INTERPRETATION OF ANY DATA GENERATED, CALCULATED, REPORTED OR DISPLAYED BY THE SOFTWARE OR PRODUCT.

YOU HEREBY AGREE TO WAIVE ANY AND ALL CLAIMS AGAINST OJ ELECTRONICS, AND ITS SUBSIDIARIES, AFFILIATES, AGENTS, AND/OR REPRESENTATIVES ARISING OUT OF YOUR USE OF THE SOFTWARE AND/OR PRODUCT OR ANY MATERIALS, OPINIONS, OR RECOMMENDATIONS OF THIRD PARTIES. TO THE EXTENT THAT YOU RESIDE IN A JURISDICTION THAT DOES NOT ALLOW THE WAIVE OF ALL CLAIMS IN THE MANNER SET OUT ABOVE, IN NO EVENT SHALL OJ ELECTRONICS' TOTAL LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO YOUR USE OF THE SOFTWARE OR PRODUCT EXCEED THE AMOUNT, IF ANY, PAID BY YOU TO OJ ELECTRONICS FOR USE OF THE SOFTWARE.

THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND WILL SURVIVE CANCELLATION

OR TERMINATION OF THIS EULA. IF APPLICABLE LAW DOES NOT ALLOW ALL OR ANY PART OF THE ABOVE EXCLUSIONS AND LIMITATIONS OF LIABILITY TO APPLY TO YOU, THE FOREGOING LIMITATIONS AND EXCLUSIONS WILL APPLY TO YOU TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**Indemnification.** You agreed to indemnify, defend, and hold OJ Electronics and its licensors and suppliers harmless from any claims, losses, liabilities, and demands (including costs and attorneys' fees) made by any third party from or arising out of (i) your use of the Software or Product, (ii) your violation of the terms of this EULA; or (iii) your violation of any law or rights of any third party.

**Jurisdiction / Governing Law / Choice of Forum.** Unless otherwise stated herein, the Terms and Conditions of this EULA shall be governed by and construed and enforced in accordance with the laws of Denmark, without regard to conflict of laws principles. Retten i Sønderborg shall be the sole and exclusive venue for any litigation, proceedings, or other action which may be brought or arising out of or in connection with this EULA. Any such disputes shall be finally settled through arbitration in accordance with the rules and regulation of the Danish Building and construction Arbitration Court (det danske Voldgiftsnævnet for Bygge og Anlægsvirksomhed). The language of the arbitration shall be English.

With regard to all users, the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this agreement.

**Severability.** If any part of this EULA or the application thereof to any person or circumstances is held to be invalid or unenforceable, such provision shall be construed, modified, or if necessary, severed to the extent necessary to be enforced to the fullest extent permitted at law and all the remaining portions, or the application of such part to persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby. Each part of this EULA shall be separately valid and enforceable to the fullest extent permitted by law.

**Export Control.** You may not use or otherwise export, re-export, or import the Software except as permitted by the United States laws and laws of the jurisdiction in which the Software was obtained. You agree to comply with all such laws and regulations, and agree and acknowledge that it is your responsibility to obtain authorization, as may be required, to export, re-export, or import the Software. You will indemnify and hold harmless OJ Electronics from any and all claims, claims, losses, liabilities, and demands (including costs and attorneys' fees) arising out of your violation of your obligations.

**U.S. Government Entities.** The software provided by OJ Electronics consist of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and quality as "commercial items" as defined in 48 C.F.R. 2.101. The software is provided to the United States Government: (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of united of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those

rights set forth in the Terms and Conditions with respect to the software, and any use of the software by the United States Government constitutes: (i) agreement by the United States Government that the software is “commercial computer software” and “commercial computer software documentation” as defined in this section; and (ii) acceptance of the rights and obligations herein.

## **General Provisions**

This EULA constitutes the entire agreement between OJ Electronics and you concerning your access to and use of the Software. The terms of this EULA may not be amended except in a writing executed by an authorized representative of each party. The failure of OJ Electronics to exercise or enforce any right or provision of the Terms and Conditions shall not constitute a waiver of such right or provision. This EULA will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns, and OJ Electronics shall have the right to assign its rights or obligations arising out of this EULA. You may not assign the rights or obligations arising out of this EULA to any third party, and any attempted assignment shall be void.

The rights and remedies of OJ Electronics set out in this EULA are in addition to any other rights or remedies OJ Electronics may have at law or in equity.

To the extent permitted by law, this EULA will be construed according to its plain meaning and not strictly for or against any of the parties.

OJ Electronics may be contacted at:

OJ Electronics A/S  
Stenager 13B  
DK-6400 Sønderborg  
Denmark  
Email: [oj@ojelectronics.com](mailto:oj@ojelectronics.com)

Effective Date: July the 1<sup>st</sup>, 2019.