



## DexTemp™ Thermometer License Agreement

This License Agreement is a legally binding contract (“Agreement”) between the customer identified in a purchase order (“you”) and Dexter Research Center, Inc., 7300 Huron River Drive, Dexter, Michigan 48130 (“Dexter”).

- 1. Information About the DexTemp Product.** A description of the DexTemp™ thermometer, including its features, requirements for operation, and instructions for software installation and use (collectively, “DexTemp Product” or “Product”), are posted to <http://www.dexterresearch.com/dextemp1000> (the “URL”). Those terms are incorporated into and made a part of this Agreement. The Product is designed for use by consumers for use in home projects and hobbies. It is not designed for applications involving personal health, public safety, or other applications more suited to complex and robust technology where high reliability is critical (for example, medical uses, power generation, aerospace and other industries). One component of the Product is DexTemp software (“Software”). The Software is in its initial release and all possible applications have not been tested.
- 2. Software Licenses.**
  - 2.1. License to Install and Execute Software.* Subject to the Mandatory Software Activation process described in Section 3, below, your payment in full of all Product fees and your acceptance of all terms of this Agreement, Dexter authorizes you to install and execute the Software on a computer owned or leased to you, or on which you are authorized to install software, and to make copies in machine-readable form for purposes of backup and disaster recovery. This license is nonexclusive, nontransferable, and for the duration of the copyright in the Software. You agree not to remove or destroy any proprietary rights marks or legends on or in the Software; transfer, distribute, sublicense, lease, export, or sell the Software; decompile, disassemble, or reverse engineer the Software; adapt or otherwise create derivative works based upon the Software. Dexter (and any licensors) retains all intellectual property rights in the Software. All rights not expressly licensed are reserved to Dexter and no rights may be implied.
  - 2.2. Portable or Home Computer Use for Software.* Notwithstanding Section 2.1, you may copy and install the Software on your portable computer or your home computer solely for your use *provided that* such copy is deleted when you are no longer an authorized user and if you transfer possess of your computer to another person.
  - 2.3. License to Use Sample Application Code, Output Files, and Run-Time Files.* As set forth in the Software documentation, in connection with the Software Dexter may provide materials identified as “sample code,” “sample application code,” or other components (“SAC”) for the purposes of designing, developing and testing web-based applications developed by you using the Dexter Software, Output Files, and Dexter Run-Time Files. You are permitted to copy and distribute SAC in compiled form (and not source code form), the Output Files, and the Dexter Run-time Files if you distribute them compiled with your application; you do not include SAC, the Output Files, or the Dexter Run-Time Files in any product or application designed for website or cloud-based development; and you do not use Dexter's name, logos or other Dexter trademarks to market your application. You hereby indemnify, hold harmless, and agree to defend Dexter from and against any loss, damage, claims or lawsuits, costs, expenses, fees (including attorney's fees) arising from any claims asserted against Dexter by third parties using your application.
- 3. Mandatory Software Activation.** The license rights granted under this Agreement may be limited to thirty (30) days after you first install the Software unless you supply information required to activate

your licensed copy in the manner described during the setup sequence of the Software. You may need to activate the Software through the use of the Internet or telephone and toll charges may apply. There are technological measures in the Software that are designed to prevent unauthorized use of the Software. You may also need to reactivate the Software if you modify your computer hardware, alter the Software, or install the Software on another computer. Product activation is based on the exchange of information between your computer and Dexter. None of this information contains personally identifiable information nor can they be used to identify any personal information about you or any characteristics of your computer configuration.

#### **4. Limited Product Warranty and Exclusive Remedies; AS IS Warranty for Educational Use.**

*4.1. Limited Warranty for Purchased Product.* Dexter warrants that for a period of ninety (90) days from the date of Acceptance of this Agreement the Product will be free of defects in materials and workmanship under normal use and will substantially conform to its published specifications at the URL. This limited warranty DOES NOT apply to any Product for which Dexter does not receive a license fee, if the Product is misused or modified by any person other than Dexter, or if the Product is used in any manner other than as authorized by this Agreement.

*4.2. Remedy.* If, during those ninety days, you determine that the Product does not materially conform, you shall follow the warranty procedures in the user manual and ensure that the Product is returned to Dexter in accordance with those procedures. Within ten (10) days after receipt, Dexter will either replace the Product, provide you with a workaround to avoid the nonconformance, or refund the purchase price for the Product and terminate this Agreement. The foregoing are the sole and exclusive remedies available to you in the event of nonconforming Product and no other remedies shall be implied.

*4.3. Evaluation and Educational Use.* For Product that is made available for testing, demonstration, educational use, Dexter provides the Product **AS IS WITHOUT ANY WARRANTY WHATSOEVER. YOUR SOLE REMEDY IN THE EVENT OF NONCONFORMING PRODUCT IS TO CEASE USE OF THE PRODUCT AND ITS COMPONENTS, INCLUDING THE SENSORS AND SOFTWARE.**

#### **5. Disclaimer.**

**5.1. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, DEXTER DISCLAIMS AND YOU HEREBY WAIVE ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE. DEXTER DOES NOT REPRESENT OR WARRANT THAT THE PRODUCT WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTION. YOU ACKNOWLEDGE THAT THE PRODUCT IS NOT DESIGNED TO BE USED BY CONSUMERS FOR APPLICATIONS THAT INVOLVE RISK TO SAFETY OR LIFE. APPLICATIONS OTHER THAN THOSE IDENTIFIED AT THE URL ARE EXPRESSLY DISCLAIMED. NO THIRD PARTY, INCLUDING DEALERS AND RESELLERS OF DEXTER PRODUCTS, MAY BIND DEXTER TO ANY REPRESENTATIONS, WARRANTIES, PROMISES, OR CONTRACTUAL OBLIGATIONS.**

*5.2.* As used in Section 5.1, "Dexter" means Dexter, its officers, directors, employees, contractors, agents, affiliates, related business entities, licensors, resellers, dealers, successors, and assigns.

5.3. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, THE LIABILITY OF DEXTER IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

5.4. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

**6. Limitations of Liability For Damages.** Regardless of the form of action or theory of recovery, in no event shall Dexter be liable to you in connection with this Agreement, including your installation and use of the Software, for (a) any indirect, special, exemplary, consequential, incidental or punitive damages, even if Dexter is aware of the possibility of such damages; (b) lost profits, lost revenue, lost business expectancy, business interruption losses, or loss of data; and/or (c) direct damages in an amount in excess of the purchase price paid for the Product, which shall presume to depreciate over a period of three (3) years.

**7. Updates and Technical Support.** If offered by Dexter, you may purchase Software updates and technical support services at the terms set forth in the user manual.

**8. Intellectual Property Rights.** Dexter (and its licensors, as applicable) retains all intellectual property rights in the Product, including copyrights, trade secrets, trademarks, patents, and “know-how.” You own the intellectual property and data rights (to the extent applicable) to the information you generate through the use of the Product.

**9. Software Audit; Term and Termination.**

*9.1. Software License Audit.* You agree that Dexter may audit your use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse Dexter for all reasonable expenses related to such audit in addition to any other liabilities you may incur as a result of such non-compliance. Without limiting the foregoing, Dexter may elect to treat such noncompliance as a breach of this Agreement and violation of its intellectual property rights and may terminate this Agreement and seek damages for such unauthorized conduct.

*9.2. Termination.* You may terminate this Agreement, and your rights to use the Software, at any time by uninstalling it from your computer. Dexter may terminate this Agreement upon a material breach by you that is not cured within ten (10) days’ written notice. Upon termination of this Agreement, you shall immediately discontinue all use of the Software, and uninstall and/or remove any and all copies of the Software.

**10. Survival.** All provisions of this Agreement regarding intellectual property ownership, disclaimer of warranties, indemnification, and limitations of liability, shall survive any termination of this Agreement.

**11. Governing Law.** This Agreement is entered into and performed in Dexter, Michigan. It shall be governed by the laws of the State of Michigan (exclusive of its choice of law rules) and the federal

laws of the United States of America.

- 12. Dispute Resolution.** The parties shall attempt to resolve any disputes through good faith business negotiations. All disputes or claims arising out of or relating to this Agreement (including the breach thereof), other than claims of intellectual property, shall be settled by arbitration, to be conducted by a single arbitrator in Ann Arbor, Michigan, by and in accordance with the then effective commercial rules of the American Arbitration Association. The costs of the arbitration and the reasonable attorneys' fees of the prevailing party shall be included in any award rendered by the arbitrator. Judgment upon the award may be entered in any court having jurisdiction thereof. Neither party shall disclose the existence, content or result of any arbitration proceeding without the prior written consent of the other party. Any other action brought by either party related to this Agreement shall be initiated and maintained in Washtenaw County, Michigan, or in the U.S. District Court for the Eastern District of Michigan, Southern Division, and the parties expressly submit to the exclusive personal jurisdiction and venue of these courts.
- 13. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be deemed modified so as to make it valid in a manner consistent with the intent of the parties expressed in that section.
- 14. Assignability.** You shall not assign any of your rights or obligations under this Agreement without Dexter's prior express written consent, which consent will not be unreasonably withheld.
- 15. Force Majeure.** It shall not be a material breach of this Agreement, and neither party shall be liable to the other, if prevented from performing its duties or responsibilities under this Agreement by reason of any fire or other casualty, acts of God, earthquake, floods, explosions, interrupted power supply, sabotage, war, riots, acts of terrorism; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; strikes, court orders, laws, regulations, or orders of government or military authorities; or any other cause not within the control of such party whose performance is delayed.
- 16. Government Restricted Rights.** The Software is provided to non-DOD agencies with RESTRICTED RIGHTS and its supporting documentation is provided with LIMITED RIGHTS. Use, duplication, or disclosure by the Government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19. Manufacturer is Dexter Research Center, Inc., 7300 Huron Drive, Dexter, Michigan 48130. In the event the license is to a DOD agency, the government's rights in software, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202.
- 17. Integration.** This Agreement, including the Software information at the URL, constitutes the entire understanding of the parties with respect to the Software. It replaces, supersedes and merges all prior written and oral communications, representations, promises or understandings. This Agreement may be amended or supplemented only by a writing signed on behalf of both parties.

If you agree to be bound by the terms of this Agreement, click "I Agree."