

## Access key Terms and Conditions

### 1. Issue of Access key

- 1.1. You have been issued with an access key ("Access key") to operate Elektrobays, subject always to these terms and conditions.
- 1.2. The Access key shall at all times remain the property of Elektromotive and nothing in these terms confers upon You any proprietary rights in the Access key.

### 2. Restrictions on use

- 2.1. You may not, nor permit another to:
  - 2.1.1. sub-license, assign, rent, lease, transfer or licence the Access key or make or distribute copies of it;
  - 2.1.2. translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the Access key;
  - 2.1.3. make copies of the Access key, in whole or part;
  - 2.1.4. copy, adapt, modify, delete or translate the written material accompanying the Access key in any way for any purpose whatsoever;
  - 2.1.5. vary, delete or obscure any notices of proprietary rights or any Access key identification or restrictions on or in the Access key; or
  - 2.1.6. use any 3<sup>rd</sup> party product not authorised for use with the Access key.

### 3. Undertakings

- 3.1. You undertake to:
  - 3.1.1. ensure that, prior to use of the Access key by your employees or agents, all such parties are notified of these terms and conditions and their application to the Access key;
  - 3.1.2. hold all instructions, data and all other information relating to the Access key, confidential and not at any time, during these terms and conditions or after its expiry, disclose the same, whether directly or indirectly, to any third party without Elektromotive's consent.

### 4. Warranty

- 4.1. Elektromotive warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 24 months from the date of delivery, the Access key shall be reasonably fit to operate Elektrobay recharging stations.
- 4.2. Elektromotive shall not be liable for a breach of any of the warranties in these terms and conditions unless:
  - 4.2.1. You give written notice of the defect to Elektromotive within 2 years of the date the Access key is first to You. For the purpose of this provision, the delivery date will be the date that the Access key is first shipped by Elektromotive or its agent or reseller to You; and
  - 4.2.2. Elektromotive are given a reasonable opportunity after receiving the notice to examine the Access key and You (if asked to do so by Elektromotive) return the Access key to Elektromotive's place of business for the examination to take place there.
- 4.3. Elektromotive shall not be liable for a breach of any warranty in condition in these terms and conditions if:
  - 4.3.1. You make any further use of such Access key after giving such notice of a fault; or
  - 4.3.2. the defect arises because You failed to follow Elektromotive's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Access key or (if there are none) good trade practice; or
  - 4.3.3. You alter, repair or attempt to do either to such Access key without Elektromotive's written consent.
- 4.4. Subject to condition 4.2 and condition 4.3, if any Access key does not conform with any of the warranties in condition 4.1 Elektromotive shall, at Elektromotive's option, repair or replace such Access key (or the defective part) or refund the price of such Access key at the pro rata Contract rate provided that, if Elektromotive so request, You shall,

at Your expense, return the Access key or the part of such Access key which is defective to Us.

- 4.5. If Elektromotive comply with condition 4.4 it shall have no further liability for a breach of warranty in respect of such Access key.
- 4.6. Any Access key replaced shall belong to Elektromotive and any repaired or replacement Access key shall be guaranteed on these terms for the unexpired portion of the 12 month period.

## **5. Limitation of liability**

- 5.1. Subject to the provisions of condition 4 above and condition 5.3 below, the following provisions set out Elektromotive's entire financial liability (including any liability for the acts or omissions of Elektromotive's employees, agents and sub-contractors) to You in respect of:
  - 5.1.1. any breach of these conditions;
  - 5.1.2. any use made or resale by You of the Access key; and
  - 5.1.3. any representation, statement, tortious act or omission including negligence arising under or in connection with these terms and conditions.
- 5.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from these terms and conditions.
- 5.3. Nothing in these conditions excludes or limits Elektromotive's liability:
  - 5.3.1. for death or personal injury caused by Elektromotive's negligence; or
  - 5.3.2. under section 2(3), Consumer Protection Act 1987; or
  - 5.3.3. for any matter which it would be illegal for Elektromotive to exclude or attempt to exclude Elektromotive's liability; or
  - 5.3.4. for fraud or fraudulent misrepresentation.
- 5.4. Subject to condition 5.2 and condition 5.3:
- 5.5. Elektromotive's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these terms and conditions shall be limited to the price that was paid to Elektromotive for the Access key that You received or if more than one of the same Access key was received, then the total liability shall be the price paid to Elektromotive for one Access key; and
- 5.6. Elektromotive shall not be liable to You for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these terms and conditions.
- 5.7. Elektromotive's liability to You for any losses shall not exceed the amount originally paid for the Access key You have received. If more than one of the same Access key was received, then the price shall be the price of one Access key.
- 5.8. In no event will Elektromotive be liable to You for any indirect or consequential damages, or loss of profit, even if Elektromotive have been advised of the possibility of such damages. In particular, Elektromotive accept no liability for any programs or data made or stored with the Access key nor for the costs of recovering or replacing such programs or data.
- 5.9. You acknowledge and agree that the limitations contained in this condition are reasonable in the light of all the circumstances.
- 5.10. Elektromotive does not warrant that any software which accompanies any Access key will meet your requirements or that its operation will be uninterrupted or error free. Elektromotive exclude and expressly disclaim all express and implied warranties or conditions not stated in these terms and conditions (including without limitation, loss of profits, loss or corruption of data, business interruption or loss of contracts), so far as such exclusion or disclaimer is permitted under the applicable law. These terms and conditions does not affect your statutory rights.

## **6. Intellectual Property Rights**

- 6.1. All industrial and intellectual property rights ("Intellectual Property Rights") of whatever nature including without limitation patents, patent applications, trade marks and other service marks, trade mark applications, copyrights and related rights, trade names,

industrial designs and processes, rights in confidential information (including but not limited to Know How and trade secrets), rights in design, database rights, trade names and domain names, rights to inventions, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in computer software and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world in the Access key shall vest in and remain with Us.

- 6.2. You shall not act or omit to do anything or permit another to do anything which shall adversely affect Elektromotive's ownership of, or ability to exercise any of Elektromotive's Intellectual Property Rights and You must immediately notify Elektromotive of any infringement or threatened infringement of Elektromotive's Intellectual Property Rights.
- 6.3. You shall indemnify and forever keep Elektromotive indemnified against any breach of this condition 6.

## **7. Termination**

- 7.1. Your permission to use the Access key automatically terminates if you:
  - 7.1.1. fail to comply with any provision of these terms and conditions;
  - 7.1.2. destroy any Access key in your possession; or
  - 7.1.3. voluntarily return the Access key to us.
- 7.2. In the event of termination in accordance with this condition 7, You must destroy or delete all copies of materials accompanying the Access key from all storage media in your control.

## **8. Force majeure**

- 8.1. Elektromotive reserve the right to defer the date of delivery or to cancel these terms and conditions or reduce the volume of the Access key ordered by You (without liability to You) if Elektromotive ate prevented from or delayed in the carrying on of Elektromotive's business due to circumstances beyond Elektromotive's reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, You shall be entitled to give notice in writing to Elektromotive to terminate these terms and conditions.

## **9. General**

- 9.1. You may not assign, transfer, sub-contract or otherwise part with these terms and conditions unless You have sold the Access key in which case each sale will be on these terms and conditions and You must inform and provide a copy of these terms and conditions to such purchaser.
- 9.2. Elektromotive may assign these terms and conditions to any person, firm or company.
- 9.3. Each right and or remedy of Ours is without prejudice to any other right or remedies available to Us.
- 9.4. All communications and notices from You to Elektromotive must be in writing or confirmed in writing.
- 9.5. If any provision of these terms and conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these terms and conditions and the remainder of such provision shall continue in full force and effect.
- 9.6. Elektromotive's failure or delay in enforcing or partially enforcing any provision of these terms and conditions shall not be construed as a waiver of any of Elektromotive's rights under it. Any waiver by Elektromotive of any breach of, or any default under, any provision of these terms and conditions by You shall not be deemed a waiver of any

subsequent breach or default and shall in no way affect the other terms of these terms and conditions.

- 9.7. The formation, existence, construction, performance, validity and all aspects of these terms and conditions shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 9.8. You have read and understand these terms and conditions and agree that it constitutes the complete and exclusive statement of the Agreement between Elektromotive with respect to the subject matter of these terms and conditions.

***February 2010***