

# XFROG INC

## END-USER SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS DOCUMENT CAREFULLY. BY INSTALLING THE SOFTWARE, YOU ARE AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS OF THE AGREEMENT, PLEASE DO NOT INSTALL THE SOFTWARE.

This is a legal agreement between You and XFROG INC

This Agreement states the terms and conditions upon which XFROG INC, offers to license the software together with all related documentation and accompanying items, which include, but are not limited to, the executable software programs, drivers, libraries, 3D models, 2D textures, documentation files, sample files, tutorials, video tutorials, and all data files associated with such programs (collectively, the "Software").

### LICENSE

Restriction on Usage of Non-licensed Versions, Licensing, and Upgrades

**This software cannot be used for any commercial purpose, without first purchasing a Permanent License from XFROG INC., or its authorized distributors. A Permanent Key, allows commercial use, and is a Permanent License for the current version of the Software. Future versions of the Software may require an upgrade purchase.**

Grant of License

The Software is licensed, not sold, to you, for use only under the terms of this Agreement. You own the disk or other media on which the Software is originally or subsequently recorded or fixed; but, as between you and XFROG INC.(and, to the extent applicable, its licensors), XFROG INC., retains all title to and ownership of the Software and reserves all rights not expressly granted to you.

For Use on a Single Computer

**The Software may be used by you, only on a single computer, by a single user. If you wish to have multiple users / multiple computers please contact us at [sales1@xfrog.com](mailto:sales1@xfrog.com)**

You may transfer the machine-readable portion of the Software from one computer to another computer, provided that

- (a) the Software (including any portion or copy thereof) is erased from the first computer, and
- (b) there is no possibility that the Software will be used on more than one computer at a time.

## Stand-Alone Basis

You may use the Software only on a stand-alone basis, such that the Software and the functions it provides are accessible only to persons who are physically present at the location of the computer on which the Software is loaded. You may not allow the Software or its functions to be accessed remotely, or transmit all or any portion of the Software through any network or communication line.

## One Archival Copy

You may make one (1) archival copy of the machine-readable portion of the Software for backup purposes only in support of your use of the Software on a single computer, provided that you reproduce on the copy all copyright and other proprietary rights notices included on the originals of the Software.

## No Merger or Integration

You may not merge any portion of the Software into, or integrate any portion of the Software with, any other program, except to the extent expressly permitted by the laws of the jurisdiction where you are located. Any portion of the Software merged into or integrated with another program, if any, will continue to be subject to the terms and conditions of this Agreement, and you must reproduce on the merged or integrated portion all copyright and other proprietary rights notices included on the originals of the Software.

## Transfer of License

You may transfer your license of the Software, provided that:

- (a) you contact us, with specific details of the proposed transfer and we agree to the proposed transfer.
- (b) you transfer all portions of the Software or copies thereof,
- (c) you do not retain any portion of the Software or any copy thereof, and,
- (d) the transferee reads and agrees to be bound by the terms and conditions of this Agreement.

## Limitations on Using, Copying, and Modifying the Software

Except to the extent expressly permitted by this Agreement or by the laws of the jurisdiction where you acquired the Software, you may not use, copy or modify the Software. Nor may you sub-license any of your rights under this Agreement.

## Decompiling, Disassembling, or Reverse Engineering

You acknowledge that the Software contains trade secrets and other proprietary information of XFROG INC and its licensors. Except to the extent expressly permitted by this Agreement or by the laws of the jurisdiction where you are located, you may not decompile, disassemble or otherwise reverse engineer the Software, or engage in any other activities to obtain underlying information that is not visible to the user in connection with normal use of the Software. In any event, you will notify XFROG INC of any information derived from reverse engineering or such other activities, and the results thereof will constitute the confidential information of XFROG INC that may be used only in connection with the Software.

## **Distribution of the Software**

This software may not be distributed without permission of XFROG INC. Please contact sales1@xfrog.com with any enquiry regarding distribution of Xfrog.

## **TERMINATION**

The license granted to you is effective until terminated. You may terminate it at any time by returning the Software (including any portions or copies thereof) to XFROG INC. The license will also terminate automatically without any notice if you fail to comply with any term or condition of this Agreement. You agree upon such termination to return the Software (including any portions or copies thereof) to XFROG INC, 20202 PACIFIC COAST HWY # 11, MALIBU CA. 90265.

Upon termination, XFROG INC., may also enforce any rights provided by law. The provisions of this Agreement that protect the proprietary rights of XFROG INC will continue in force after termination.

## **LIMITED WARRANTY**

XFROG INC. warrants, as the sole warranty, that the disks on which the Software is furnished will be free of defects, as set forth in the Warranty Card or printed manual included with the Software. No distributor, dealer or any other entity or person is authorized to expand or alter this warranty or any other provisions of this Agreement. Any representation, other than the warranties set forth in this Agreement, will not bind XFROG INC.

XFROG INC. does not warrant that the functions contained in the Software will meet your requirements or that the operation of the Software will be uninterrupted or error-free.

EXCEPT AS STATED ABOVE IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED AS-IS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

You assume full responsibility for the selection of the Software to achieve your intended results, and for the installation, use and results obtained from the Software. You also assume the entire risk as it applies to the quality and performance of the Software. Should the Software prove defective, you (and not XFROG INC., or its distributors or dealers) assume the entire cost of all necessary servicing, repair or correction.

This warranty gives you specific legal rights, and you may also have other rights which vary from country/state to country/state. Some countries/states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. XFROG INC disclaims all warranties of any kind if the Software was customized, repackaged or altered in any way by any third party other than XFROG INC.

## **LIMITATION OF REMEDIES AND DAMAGES**

IN NO EVENT WILL XFROG INC., OR ITS LICENSORS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR LOST DATA ARISING FROM OR RELATING TO THE SOFTWARE OR THIS AGREEMENT, EVEN IF XFROG INC., OR ITS LICENSORS, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL XFROG INC., LIABILITY OR DAMAGES TO YOU OR ANY OTHER PERSON EVER EXCEED THE AMOUNT PAID BY YOU TO USE THE SOFTWARE, REGARDLESS OF THE FORM OF THE CLAIM.

## **U.S. GOVERNMENT RESTRICTED RIGHTS**

All Software and related documentation are provided with restricted rights. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subdivision (b)(3)(ii) of the Rights in Technical Data and Computer Software Clause at 252.227-7013. If you are sub-licensing or using the Software outside of the United States, you must comply with the applicable local laws of your Country, and be bound to this English language Agreement.

## **MANUFACTURER**

The Manufacturer of the Software is:

XFROG INC.  
8010 Padre Ln  
Los Angeles CA 90265

323 798-4602 (telephone)

## **GENERAL**

This Agreement is binding on you as well as your employees, employers, contractors and agents, and on any successors and assignees. Neither the Software nor any information derived there from may be exported except in accordance with the laws of the European Union, or other applicable provisions. This Agreement is governed by the laws of the United States of America. This Agreement is the entire agreement between us and supersedes any other understandings or agreements, including, but not limited to, advertising, with respect to the Software.

If any provision of this Agreement is deemed invalid or unenforceable by any country or government agency having jurisdiction, that particular provision will be deemed modified to the extent necessary to make the provision valid and enforceable, and the remaining provisions will remain in full force and effect.

For questions concerning this Agreement, please contact us at the address stated above or [sales1@xfrog.com](mailto:sales1@xfrog.com)

For questions on product or technical matters, please contact us at [sales1@xfrog.com](mailto:sales1@xfrog.com)

## **SPECIAL PROVISIONS APPLICABLE TO THE EUROPEAN UNION**

If you acquired the Software in the European Union (EU), the following provisions also apply to you. If there is any inconsistency between the terms of the Software License Agreement set out above and the following provisions, the following provisions shall take precedence:

**Decompilation:** You agree not for any purpose to transmit the Software or display the Software's object code on any computer screen or to make any hard copy memory dumps of the Software's object code. If you believe you require information related to the interoperability of the Software with other programs, you shall not decompile or disassemble the Software to obtain such information, and you agree to request such information from us at the address listed below. Upon receiving such a request, we shall determine whether you require such information for a legitimate purpose and, if so, we will provide such information to you within a reasonable time and on reasonable conditions.

**Limited Warranty:**

EXCEPT AS STATED ABOVE IN THIS AGREEMENT, AND AS PROVIDED BELOW UNDER THE HEADING "STATUTORY RIGHTS", THE SOFTWARE IS PROVIDED AS-IS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

**Limitation of Remedy and Damages:**

THE LIMITATIONS OF REMEDIES AND DAMAGES IN THE SOFTWARE LICENSE AGREEMENT SHALL NOT APPLY TO PERSONAL INJURY (INCLUDING DEATH) TO ANY PERSON CAUSED BY XFROG INC., NEGLIGENCE AND ARE SUBJECT TO THE PROVISION SET OUT BELOW UNDER THE HEADING "STATUTORY RIGHTS".

**Statutory rights:**

The European Union provides that certain conditions and warranties may be implied in contracts for the sale of goods and in contracts for the supply of services. Such conditions and warranties are hereby excluded, to the extent such exclusion, in the context of this transaction, as lawful under European Union Law. Conversely, such conditions and warranties, insofar as they may not be lawfully excluded, shall apply. Accordingly nothing in this Agreement shall prejudice any rights that you may have via European Union law.

**General:**

This Agreement is governed by the laws of the United States of America. This Agreement is the entire agreement between us and you agree that XFROG INC., will not have any liability for any untrue statement or representation made by it, its agents or anyone else (whether innocently or negligently) upon which you relied upon entering this Agreement, unless such untrue statement or representation was made fraudulently.