

SaaS Terms and Conditions for gratuitous Engineering Tools of Bosch Rexroth AG

Version: 18.10.2018

These Terms and Conditions apply to the provision of Engineering Tools to the customer (hereinafter referred to as: "**Customer**") by Bosch Rexroth AG, Zum Eisengiesser 1, 97816 Lohr a. Main, Germany, www.boschrexroth.de (hereinafter referred to as: "**Provider**") for use for a limited period free of charge on the basis of Software as a Service (SaaS). The Customer plans to use the software for the selection, dimensioning and/or configuration of specific products and/or generation of additional information for its own business operations. Separate license terms apply to different types of provision of software for use. General terms and conditions of the Customer do not apply, they are explicitly rejected.

1. Definitions

- 1.1. *Account*: The authorization to access controlled-access software of the Provider.
- 1.2. *Affiliated Enterprise*: Every legal entity which is controlled by the Customer, which controls the Customer or which is jointly-controlled together with the Customer. Control is deemed to exist where more than fifty percent (50 %) of the capital shares or voting rights is held or where the corporate management and policy are controlled either directly or indirectly on the basis of capital shares, by virtue of agreements or in any other way.
- 1.3. *Bugfix*: Error correction.
- 1.4. *Commencement of the License*: Upon use of the Software.
- 1.5. *Confidential Information*: Software inclusive of the source code (except for Open Source Software components) and other materials marked by the Provider as being "confidential" or which are otherwise to be considered as confidential.
- 1.6. *Customer Data*: All data, information, content or material submitted by the Customer or on behalf of the Customer in connection with use of the Software, if applicable, storage space and/or the Account. Customer Data also includes access data.
- 1.7. *Documentation*: All the information required to be able to work with the Software as intended.
- 1.8. *Engineering Tool*: Software with which specific products are selected, calculated, dimensioned and/or configured.
- 1.9. *FOSS*: Open Source Software and third party software under a royalty-free license.
- 1.10. *Patch*: A correction supplied to close security gaps or remedy errors including add-ons of functions.
- 1.11. *Service Description*: Description of the technical functionalities of the respective Software provided by the Provider.
- 1.12. *Update*: A new version of the Software containing improvements to the program or new and/or changed functionalities.
- 1.13. *Upgrade*: Renewal of the Software version with considerably expanded function.
- 1.14. *Usage data*: All automatically generated system data (e.g. log files, information on utilization or availability of the Software).

2. Subject Matter

- 2.1. The subject matter of these Terms and Conditions is the provision of the Provider's Engineering Tools (referred to as: "**Software**") described in greater detail in the Service Description by way of an SaaS model for the purpose of selecting, dimensioning, configuring and handling specific products and/or generation of additional information for the Customer's own business operations in the scope agreed, the necessary storage space as well as the granting or procurement of usage rights regarding the Software by the Provider for a limited period of time and free of charge. The information and graphical representations stored in the Software solely serve to describe the respective products and lose their validity when the products illustrated there or the corresponding technical Documentation are/is changed, at the latest, however, when a new version of the Software is released. The information and graphical representations stored in the Software are not intended for solely design or development purposes and cannot be transposed to components of the same or a similar construction of other manufacturers. The Software supports the Customer in the selection, dimensioning and/or configuration of specific products, however without checking the result technically or verifying the correctness of the calculation.
- 2.2. The Software can possibly contain FOSS. The Customer will be provided with an up-to-date list of the FOSS contained and of the FOSS license terms respectively applicable on request prior to entering into the contract or when the Customer accesses the Software the latest.
- 2.3. The Provider has the right to take technical measures to protect the Software against any unauthorized use, e.g. by means of program locks. The Customer may not remove such protective mechanisms from the Software or work around them.
- 2.4. The Provider reserves the right to modify the provided Software or to make it available on a fee basis, and to discontinue the provision the Software. The Provider will properly consider Customer's legitimate interests in doing so.
- 2.5. The Provider has the right to have the services performed according to sub.sec. 2.1 by third parties (including affiliates of Provider) as subcontractors.

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3. Provision of Software and storage space

- 3.1. With effect from the Commencement of the License, the Provider shall make available the then current version of the Software for use in accordance with the provisions of these Terms and Conditions on server infrastructure provided by him or its subcontractors (hereinafter referred to as "**Server**").
- 3.2. Access to the Software by the Customer shall be browser-based via the Internet or via an application interface set up by the Provider.
- 3.3. The Provider shall send the Customer the necessary access credentials required for access to and use of the Software, for which the Customer is responsible himself.
- 3.4. If an Account is required to get access to and to use the Software, the Provider shall make this Account available to the Customer after conclusion of this Terms and Conditions. The provision of an Account is free of charge. The Account and the access credentials are not transferable. The Customer is liable for all actions performed under his Account.
- 3.5. With effect from the Commencement of the License and for the duration of the contractual relationship, the Provider shall make storage space available for the Customer Data to the extent that this is required for the intended use of the Software.
- 3.6. Customer Data shall be stored and be regularly backed-up by the Provider throughout the duration of the contractual relationship, as far as possible. The Customer shall be solely responsible for compliance with retention periods required of the Customer under commercial and tax law.

4. Rights of use

- 4.1. With effect from the Commencement of the License the Customer shall be granted the simple, non-exclusive, non-transferable right to use the Software free of charge for a limited period in accordance with the following provisions and in compliance with the stipulations of the Documentation for its own business purposes. The use is only permitted in the countries of destination agreed. In the absence of an explicit agreement, this is the country in which the Customer has its registered office.
- 4.2. The Customer may use the Software only for the purpose indicated in sub-sec. 2.1. In particular, the following is only permitted if the Provider has given its prior consent in writing: (i.) the operation of a computer center for third parties (ii.) the temporary provision of the Software to third parties (e.g. as Application Service Providing, SaaS or Cloud Service), (iii.) the permanent storage or duplication, or (iv.) the use of the Software for training individuals who are not employees of the Customer.
- 4.3. Within this framework, the Customer is entitled to store and print the provided (online-) Documentation, whilst maintaining the existing copyright notices and, for the purposes of this contract, to reproduce that number of copies thereof which is appropriate.
- 4.4. Without the prior consent of the Provider in writing, the Customer is not entitled to make the Software and/or its Account available to third parties (including rental, lease, loan or sub-licensing). The Customer may not offer the selection and dimensioning of the respective

products and/or usage of generated additional information as a payable service without the prior consent of the Provider in writing.

- 4.5. The Provider makes the Software available as SaaS per remote access. The Customer is not authorized to utilize robots, spiders, scrapers or other similar data collection or extraction tools, to utilize programs, algorithms or methods to search, access, acquire, copy, or monitor the Software outside of the documented API endpoints. Furthermore, the Customer is not entitled to obtain access to non-public areas of the Software or to the technical systems on which the Software is based, to test, scan, or examine the vulnerability of the Software or to knowingly send Customer Data with viruses, worms, Trojans or other infected or harmful components, or to otherwise interfere in the proper functioning of the Software.
- 4.6. The Customer is not entitled, subject to sub-sec. 2.2., to edit, change, reverse engineer, decompile or disassemble the program code of the Software or parts thereof or to otherwise establish the source code or to create derivative works based on the Software. The mandatory, obligatory provisions of secs. 69d, 69e German Copyright Act (UrhG) shall remain unaffected by this, however. The Customer may not commission third parties who are competitors of the Provider to conduct measures which are in accordance with this sub-sec., unless the Customer proves that the danger of disclosing important business and trade secrets of the Provider (in particular functions and design of the Software) is ruled out.
- 4.7. If the Provider voluntarily provides the Customer with Upgrades or Updates or Patches or Bugfixes, these shall also be subject to these Terms and Conditions, except to the extent that they form the subject matter of a separate agreement.
- 4.8. All further rights to the Software not explicitly granted, in particular also including all the rights to the trademark, the business secrets or to other intellectual property in the Software, shall remain with the Provider. Designations of the Software, in particular copyright notices, trademarks, serial numbers and the like may not be removed, changed or otherwise rendered illegible.

5. Remuneration for the license

The Software shall be provided to the Customer free of charge.

6. Duties of the Customer to collaborate and provide information

- 6.1. The Customer is responsible for its hardware and software environments being compliant with the system requirements of the Software; in case of doubt the Customer shall obtain advice from the Provider or specialist third parties before entering into the contract.
- 6.2. The Customer is responsible for setting up an adequately dimensioned hardware and software environment. The Customer is not entitled to intentionally utilize devices, software or routines which have a disruptive effect on the Software, functions or usability of the Software or willfully destroy other data, systems or communications, generate excessive load, or harmfully interfere, fraudulently intercept or capture.

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- 6.3. When using the Software, the Customer is obliged to comply with the duty of care necessary for usage and to check the results generated with the Software to a reasonable extent before they are used. The technical responsibility for the selection and dimensioning and/or configuration of specific products therefore lies solely with the Customer. Technical verifications of functionalities of the selected products or product tests on compliance with standards shall be conducted by the Customer. The Customer shall carry out the professional assembly and execution of the products. A product order based on the use of the Software shall solely be placed on the basis of the catalogue details and of the documentation belonging to the product.
- 6.4. The Customer shall comply with the instructions provided by the Provider for the operation of the Software.
- 6.5. The Customer is obliged to store all the copies of the Documentation in a protected place.
- 6.6. The Customer shall change all passwords into passwords known only to him without undue delay and shall keep them confidential. The Customer is obliged to keep usage and access authorizations assigned to him secret, to protect them against access by third parties and not to disclose them to unauthorized users. These data shall be protected by suitable and effective measures. The Customer shall notify the Provider without undue delay in case of any suspicion that unauthorized persons might have obtained knowledge of access data and/or passwords. The Provider is not responsible for the consequences of misuse of user passwords.
- 6.7. The Customer is obliged to check data and information for viruses and other malware prior to sending data and information to the Provider and to implement anti-virus programs in accordance with the state of the art.
- 6.8. Irrespective of Provider's obligation to back up the Customer Data pursuant to sub.-sec. 3.6., the Customer is obligated to regularly back up his Customer Data. Each data back-up by the Customer shall be performed so that the recovery of the Customer Data is possible at all times.
- 6.9. The Customer shall bear the disadvantages that result from a violation of the aforementioned collaboration and information duties.

7. Term and Revocation

- 7.1. The grant of the rights of use can be revoked by the Provider at any time and without complying with a period of notice. In this case, the Provider will block the Customer's access to the Software and to the Account. Cause shall be deemed to exist in particular if the Customer violates rights of use of the Provider by using the Software over and above the scope permitted under these Terms and Conditions. The Provider reserves the right to claim damages.
- 7.2. Statutory rights and claims shall not be restricted by the provisions contained in sec. 7.

8. Services upon and after termination of the contract

- 8.1. On request of the Customer and for a fee to be agreed upon separately, the Provider will support the Customer upon termination with the export and saving of Customer Data, where possible.
- 8.2. In the event of termination of the contract, the Provider shall endeavor to support the Customer, on request and for remuneration, in the best possible way in the change to another service provider. The Parties shall agree upon the details in a separate migration agreement.

9. Warranty

- 9.1. Except in the event of intent or fraudulent intent [*Arglist*], the Provider shall not provide any warranty for defects of title or defects as to quality in the Software. In particular, the Provider does not owe the availability of the Software and of Customer Data at the Internet hubs of Provider's data center.
- 9.2. Only the description of the Software provided by the Provider prior to concluding the contract or agreed in a separate document, e.g. in the Documentation, is decisive for the quality of the Software. The details provided therein are solely to be understood as performance descriptions and not as guarantees. A guarantee is only given if it has been explicitly specified as such in writing by the Provider before the contract is entered into. Further quality is not owed, and, in particular, it does not derive from public statements or advertising of the Provider or its distribution partners.

10. Liability

- 10.1. The Provider shall be liable for damages solely in accordance with the provisions of statute for injury to life and limb, for damage based on the Product Liability Act, for damage caused by fraudulent conduct or intent by the Provider.
- 10.2. Further liability of the Provider is excluded, subject to provisions explicitly otherwise agreed in these Terms and Conditions.
- 10.3. Contributory negligence of the Customer must be taken into consideration.
- 10.4. The foregoing restrictions of liability shall also apply to the personal liability of the employees, representatives and/or organs of the Provider.
- 10.5. With regard to telecommunications services, the limitations of liability pursuant to Section 44a of the German Telecommunications Act (TKG) shall remain unaffected.

11. Data use and data protection

- 11.1. The Customer hereby grants to the Provider the right to use, for the purpose of executing the contract, the Customer Data, where available, filed in the storage space for use of the Software, in particular the right to reproduce such Customer Data for this purpose (e.g. for data back-up), to modify it and to provide such Customer Data for the purpose of accessing.
- 11.2. Furthermore, the Provider has the right to store, use, transfer and/or exploit all of the information contributed and generated by the Customer in connection with the Software, with the exception of personal data,

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for any purposes over and above the purpose of the contract, for instance for statistical, analytical and internal purposes. This right is unlimited and irrevocable. The Customer warrants that he has not made any agreements with third parties that prevents its use.

- 11.3. The Customer warrants that (i.) he and/or his licensors hold all rights to the Customer Data required for the granting of rights under these Terms and Condition (ii.) the Customer Data does not violate these Terms and Conditions or applicable laws and does not infringe the intellectual property of a third. The Provider is entitled to immediately block the Customer's use of the Software and the storage space if there is justified suspicion that the stored Customer Data is unlawful and/or infringes third-party rights. There is a justified suspicion of unlawfulness and/or of an infringement of rights in particular when courts, authorities and/or other third parties notify Provider thereof. The Provider shall then notify the Customer of the block, stating the reason for the block. The block shall be removed as soon as the suspicion has been refuted.
- 11.4. If personal data are processed by the Provider, the Provider shall comply with the statutory data protection regulations. In this case the details on the data collected and the respective processing thereof are set forth in the data protection statement of Bosch Rexroth AG.
- 11.5. If the Customer processes personal data, then the Customer guarantees that it is authorized to do so in accordance with applicable regulations, in particular in accordance with data protection regulations, and in the event of any infringement, the Customer shall indemnify the Provider from and against third party. The Customer is obliged to obtain the necessary consent from affected persons to the extent personal data are collected, processed or used within the Software and no statutory or other permission applies.

12. Confidentiality

- 12.1. The Customer undertakes to treat Confidential Information in confidence and not to disclose it to third parties unless this is necessary in order to exercise the rights the Customer is entitled to in accordance with these Terms and Conditions. In order to protect the Confidential Information the Customer shall apply the same measure of care (but not less than a reasonable measure of care) as it applies to its own Confidential Information.
- 12.2. The obligation of secrecy under sub-sec. 12.1 does not apply to Confidential Information (i.) which was already in the lawful possession of the Customer prior to being disclosed by the Provider; (ii.) which was or becomes public knowledge without any violation of duty by the Customer; (iii.) which the Customer lawfully received from third parties without any secrecy obligations; (iv.) which was disclosed to third parties by the Provider without any secrecy obligations; (v.) which was developed by the Customer itself; (vi.) which has to be disclosed by law; or (vii.) which is disclosed by the Customer with the prior consent of the Provider in writing.

13. Exportkontrolle

- 13.1. If, prior to supply, it should transpire that performance of the contract by the Provider faces obstacles due to national or international export control regulations, in particular to embargos or other sanctions, the Provider has the right to revoke or terminate the contract. Delays due to export examinations or permit procedures shall interrupt the delivery period unless the Provider is responsible for such delays.
- 13.2. If termination of the contract is necessary in order to comply with legal regulations of national or international law, the Provider has the right to give notice of termination of the contract with immediate effect unless the Provider is responsible for this.
- 13.3. The Customer undertakes to furnish all the information and documents that are required for the export or movement of the products to be supplied in accordance with the contract and other work results required for the purpose of the supply and which derive from the Customer's sphere of influence.
- 13.4. When passing on, transferring or otherwise providing to third parties for use in the domestic country and abroad the products to be supplied by the Provider in accordance with the contract and other work results, the Customer shall comply with the respectively applicable customs regulations and with the provisions of (re-) export control law and obtain the permits necessary for this.
- 13.5. The Software may not be used for the manufacture or development of rockets, chemical/biological or nuclear weapons.

14. General provisions

- 14.1. The courts of Stuttgart, Germany, shall have exclusive jurisdiction and venue insofar as this is legally permissible. The Provider reserves the right, however, to take legal action at a court with jurisdiction at the registered office or establishment of the Customer.
- 14.2. The present Terms and Conditions and all agreements in this respect between the Provider and the Customer shall be governed by German law excluding the conflict of laws provisions. The applicability of the UN Convention on Contracts for the International Sale of Goods is explicitly excluded.
- 14.3. If a provision should be or become ineffective, the effectiveness of the remaining provisions shall not be affected thereby. In this case the ineffective provision shall be replaced by a permissible provision approximating most closely the economic purpose of the original ineffective provision. This shall apply accordingly to any omissions.
- 14.4. Alterations and supplements to these Terms and Conditions must be made in written form. Emails do not comply with the written form requirement.

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