

SaaS Terms and Conditions of Use of Bosch Rexroth AG

Version: 06.08.2019

These Terms and Conditions apply to the use of software applications on the basis of Software as a Service (SaaS) by Customer (hereinafter: “**Customer**”) for a limited period of time in return for payment of a charge, provided by Bosch Rexroth AG, Zum Eisengiesser 1, 97816 Lohr am Main, Germany, www.boschrexroth.de (hereinafter: “**Provider**”). General business terms and conditions of Customer do not apply, they are explicitly rejected. This shall apply even if, in connection with a purchase order or in other documents of Customer, reference is made to Customer’s general business terms and conditions and Provider does not again explicitly reject them in this case.

1. Definitions

- 1.1. *Affiliated Enterprise*: Every legal entity which is controlled by Customer, which controls Customer or which is jointly-controlled together with 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.
- 1.2. *Bugfix*: Error correction.
- 1.3. *Central Bosch ID*: User ID of the single sign-on authentication service of Robert Bosch GmbH, Robert-Bosch-Platz 1, 70839 Gerlingen-Schillerhöhe, Germany, which enables the use of various independent services of the Bosch Group, for which Customer’s e-mail address with any e-mail provider is required.
- 1.4. *Commencement Date of the License*: Agreed date with effect from which the software application shall be made available.
- 1.5. *Confidential Information*: Software application inclusive of the source code (except for FOSS components) and other materials marked “confidential” by Provider or which are otherwise to be considered as confidential.
- 1.6. *Customer Data*: All the content of Customer transmitted to Provider by Customer in connection with the use of the software application, storage space and the User Account or which is possibly generated by Customer manually with the software application. The Customer Data also includes the access data.
- 1.7. *Documentation*: All the information required to be able to work with the software application in accordance with the intended use.
- 1.8. *Engineering Tool*: Software application with which specific products can be 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. *Performance Specification*: Description of the technical functional scope of the respective software application which Provider makes available to Customer.
- 1.12. *Service Level Agreement (SLA)*: Defines specific characteristics of a software application with respect to the availability and support which are made available by Provider.
- 1.13. *Update*: A new version of the software application containing improvements to the program or new and/or changed functionalities.
- 1.14. *Upgrade*: Renewal of the version of the software application with considerably expanded function.
- 1.15. *Usage Data*: All automatically generated system data (e.g. log files, information on utilization or availability of the software application).
- 1.16. *User Account*: Authorization to access the respective, if applicable controlled-access, software application of Provider.
- 1.17. *Year of Contract*: The first twelve (12) months with effect from the Commencement Date of the License in accordance with the contract and every subsequent twelve-month period.

2. Subject Matter of the Terms and Conditions

- 2.1. The subject matter of these Terms and Conditions is the provision for a limited period of time in return of a payment of the software application of Provider (hereinafter: “**Software**”) described in greater detail in the Performance Specification, as an SaaS model, if applicable, provision of the storage space necessary for this and the granting and/or procurement of usage rights to the Software in return for payment of remuneration.
- 2.2. The Software can be an Engineering Tool. In this connection the following applies: the information and graphical representations stored in the Engineering Tool solely serve to describe the products concerned and lose their validity when the products illustrated there and/or the corresponding technical Documentation are changed, at the latest however, when a new version of the Engineering Tool is released. The Engineering Tool supports Customer in the selection, dimensioning and/or configuration of specific products and/or in generating additional information, without, however, checking the result technically or verifying the accuracy of the calculation. The information and graphical representations stored in the Engineering Tool are not intended for purely design or development purposes and cannot be transposed to components of other manufacturers of the same or a similar type of construction.
- 2.3. The Software can possibly contain FOSS. An up-to-date list of the FOSS contained and of the FOSS license terms respectively applicable will be provided to Customer on request prior to the Commencement Date of the License or, at the latest, when access to the Software is provided. In this respect the “Supplementary Terms and Conditions of Offers and Sales of

Products with respect to Open Source Software” additionally apply in the version that is applicable at any one time which can be downloaded at: <https://www.boschrexroth.com/en/xc/home/legal>.

- 2.4. Provider has the right to take technical measures, e.g. program locks, to protect the Software against any unauthorized use. Customer may not remove such protective mechanisms from the Software or work around them.
- 2.5. Provider has the right to render the services described in sub-sec. 2.1. through third parties (including Affiliated Enterprises of Provider) as subcontractors.
- 2.6. The implementation of an interface integration with Customer’s existing system landscape is outside the scope of these Terms and Conditions of Use and requires a separate agreement in writing between the Parties.

3. Provision of the Software and storage space

- 3.1. With effect from the Commencement Date of the License, Provider shall hold in readiness the then current version of the Software on server infrastructure (hereinafter: “**Server**”) provided by Provider or its subcontractors, for use in accordance with the provisions of these Terms and Conditions of Use. During the term of the contract, Provider shall provide Customer with the current version of a Documentation for the Software in electronic form.
- 3.2. Customer’s access to the Software shall be browser-based via the Internet or via an application interface set up by Provider.
- 3.3. For the access to and use of the Software, Provider shall transmit the access data required for the access to the Software to Customer, unless access is via independent registration (possibly by using the Bosch ID).
- 3.4. If a User Account is required for use of the Software, then Provider will make this User Account available for Customer on the Commencement Date of the License. The creation of a User Account is free of charge. The access data and the contractual relationship relating to the User Account are not transferable. Customer is liable for all acts performed using its User Account. Provider will inform Customer in an appropriate manner of the additionally applicable “Terms and Conditions of Registration and Use of Bosch Rexroth AG”.
- 3.5. With effect from the Commencement Date of the License, Provider shall keep storage space available for the Customer Data transferred to the Software by Customer throughout the duration of the contractual relationship to the extent that has been agreed, insofar as this is necessary for the intended use of the Software.
- 3.6. The Customer Data shall, insofar as is possible, be stored and regularly backed up by Provider throughout the duration of the contractual relationship. Customer shall be solely responsible for compliance with retention periods required of Customer under commercial and tax law.

4. Technical availability

- 4.1. Provider owes the availability agreed in an SLA of the Software and the Customer Data at the Internet hubs of Provider’s data center. The Software is available when Customer can execute and use the main functions of the Software. The availability of the Software is defined as the percentage share of the time in which the Software is available for use by Customer at the Internet hub of Provider’s data center during the course of an observation period (unless otherwise agreed in the SLA, this is one Year of Contract) during the service availability period agreed in the SLA (unless otherwise agreed in the SLA, the support availability applies, see sub-sec. 5.5). This definition applies accordingly to the calculation of non-availability. The availability shall be calculated according to the following formula: $\text{Availability} = (\text{Time of provision of the service (h)} - \text{non-availability (h)}) \div \text{Time of provision of the service (h)} \times 100$. Unless otherwise agreed in the SLA, an availability of 98.5% per Year of Contract shall be deemed agreed.
- 4.2. If the Software is not available due to (i.) planned maintenance work (e.g. for Updates and Upgrades), (ii.) other planned interruptions in operations, (iii.) unplanned maintenance work for an important reason or for other reasons for which Provider is not responsible, such as malfunctions in the field of the provision, operation and support of Customer’s communications connection (communications sections outside Provider’s data center), in particular due to a failure of Customer’s Internet connection, then for the purposes of calculating availability, the Software shall be deemed to have been available during these times.
- 4.3. Provider shall owe the availability of the functionalities of the Software described in the Performance Specification only if the system requirements also regulated therein have been complied with by Customer. Customer shall be solely responsible for compliance with the system requirements. The provisions of Section 13 shall apply accordingly to changes to the system requirements and to changes to the technical system of Provider.
- 4.4. Provider is only responsible for the proper functioning of its systems up to the Internet hubs of its data center.

5. Support

- 5.1. The Provider shall provide first level support (hereinafter: “**FLS**”) for Customer as first point of contact for malfunctions arising in the context of the Software (hereinafter: “**Incident**”).
- 5.2. Customer is obliged to report Incidents without undue delay, no later than on the next working day. An Incident report must contain at least the following information:
 - a.) Functionality affected;
 - b.) Environment affected;
 - c.) Gateways affected;
 - d.) Date and time when the Incident occurred;
 - e.) User name affected, if available;
 - f.) Categorization of the Incident by Customer; and

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- g.) Description of the Incident:
- The measures which Customer has already taken to rectify the malfunction;
 - The behavior demonstrated due to Customer's measures to rectify the malfunction.
- 5.3. In connection with the FLS, an error ticket shall be created by Provider for each Incident and each Incident shall be allocated to the corresponding error category, unless otherwise agreed in the SLA.
- 5.4. If no error categories are defined in the SLA, the following error categories shall apply:
- a) Error category 1: There is a category 1 error if the use of the Software or of parts thereof is not possible or is severely restricted, for example due to malfunctions, incorrect work results or response times (for example: if there are considerable discrepancies as compared with the Performance Specification, if data is wrongly or erroneously stored, if there are program aborts in functions).
 - b) Error category 2: There is a category 2 error if, although the use of the Software is not impossible or severely restricted, the restriction(s) of use, for example due to malfunctions, incorrect work results or response times, is/are nonetheless not merely insignificant.
 - c) Error category 3: There is a category 3 error if the use of the program is not directly and/or significantly/considerably impaired, for example if the basic settings are unfavorably defined or if "nice-to-have functions" are missing.
- 5.5. The Support availabilities are agreed in the SLA. Unless otherwise agreed herein, Support shall be available on weekdays during the Provider's business hours from 08:00 a.m. to 5:00 p.m. CET/CEST.
- 5.6. The response time shall run during the Support availability. Unless otherwise agreed in the SLA, the following response times shall apply to the Provider:
- a) Error category 1: Response time 1 hour;
 - b) Error category 2: Response time 4 hours;
 - c) Error category 3: Response time 12 hours.
- 5.7. The response time shall be deemed complied with if Provider has sent Customer qualified feedback within the response time and rectification of the error has been commenced. On request, Provider shall send Customer a non-binding estimate of the time expected to be required to rectify the error.
- 5.8. Incidents which cannot be rectified by the FLS shall be transferred to the Second Level Support (hereinafter: "**SLS**") of Provider or of a third party, if any, aiming to set up a temporary workaround. The SLS will be triggered by the FLS and ensures the response times.
- 5.9. Customer shall be informed of the processing status and of the solution at regular intervals until this has been implemented and the malfunction rectified. If, however, the qualification of the error ticket by Provider should lead to the result that the malfunction is due to a service or performance by Customer pursuant to Section 8 or to other reasons which are not attributable to Provider, then the error ticket will be sent back to Customer. In this case, Customer shall be responsible for resolving the problem itself.
- 5.10. Updates of the Software shall be provided, imported and implemented by Provider as required in accordance with the maintenance regulations in the SLA.
- 5.11. If the current version of the Software has defects in error category 1 or 2 which cannot be appropriately rectified by Provider, Provider can refer Customer to the use of a previous version of the Software if this is reasonably acceptable for Customer. In this case, the Support services for the previous version shall be prolonged.

6. Rights of use

- 6.1. On the Commencement Date of the License, Customer shall receive a simple, non-transferable and non-exclusive right, limited in time, subject to a charge, to use the Software for its own business purposes in accordance with the provisions below and in compliance with the stipulations of the Documentation and in the context of the functionalities. The use is only permissible in the agreed countries of designation. In the absence of a specific agreement, this is the country in which Customer has its registered place of business.
- 6.2. Customer may use the Software only for the purpose set forth in in sub-section 2.1. In particular, the following is only permitted if Provider has given its prior consent in writing: (i.) operation in a data center for third parties, (ii.) temporary provision of the Software (e.g. as Application Service Providing, SaaS or Cloud Service) for third parties, (iii.) permanent storage or duplication (iv.) use of the Software for training persons who are not employees of Customer.
- 6.3. In the context of use in compliance with the contract, Customer has the right to store and print out the (online) Documentation provided whilst retaining any protective rights notices that may exist, and to reproduce that number of copies thereof which is reasonable for purposes of this contract.
- 6.4. Without the prior written consent of Provider, Customer is not authorized to make the Software and/or its User Account available (including rent, lease, loan or sub-licensing) to third parties. Without the prior written consent of Provider, Customer may not offer the selection and dimensioning of the relevant products and/or use of the additional information generated by means of an Engineering Tool, as a service subject to a charge.
- 6.5. Provider shall provide the Software in the SaaS (Software as a Service) by means of remote access. Customer is not authorized to use robots, spiders, scrapers or other comparable tools for data collection or extraction, programs, algorithms or methods to search for, access, acquire, copy or control the Software outside the documented API end points. Further, Customer is not authorized to obtain access to non-public areas of the Software or to the underlying technical systems, to test, scan or examine the Software's vulnerability or to knowingly transmit Customer Data with viruses or worms, Trojans or other contaminated or harmful components or to otherwise interfere in the proper functioning of the Software.
- 6.6. Subject to sub-sec. 2.3., Customer is not authorized to process, change, reverse engineer, decompile, or disassemble the program code of the Software or

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parts thereof or to otherwise establish the source code or to produce derivative works of the Software. The mandatory and compulsory provisions of sections 69d and 69e of the German Copyright Act (UrhG) shall, however, remain unaffected by this. Customer may not engage third parties which are competitors of Provider to conduct measures which are in compliance with this section insofar as Customer does not demonstrate that the risk of divulging important business and trade secrets of Provider (in particular functions and design of the Software) is ruled out.

6.7. If Provider provides Customer with Upgrades, Updates, Patches or Bugfixes during the term of the contract, these shall also be subject to these Terms and Conditions of Use except insofar as they are the subject matter of a separate agreement.

6.8. All further rights to the Software that are not explicitly granted, in particular including all rights to the trade mark, the business secrets and other intellectual property in the Software, shall remain with Provider. Distinguishing marks of the Software, in particular copyright notices, trade marks, serial numbers and the like may not be removed, changed or obliterated.

7. Remuneration for the license

7.1. For the temporary provision and use of the Software in accordance with the scope of use defined in these Terms and Conditions of Use, the remuneration agreed in a separate document, otherwise the remuneration set out in the price list of Provider valid at the respective time, plus the value added tax due thereon, shall be payable. Except as otherwise agreed, the remuneration shall be payable for the Year of Contract in advance, for the first time on the Commencement Date of the License.

7.2. Provider has the right to increase the remuneration for the license for the first time after expiry of one Year of Contract by giving three (3) months' advance notice in writing to expire at the end of a Year of Contract, however by up to an amount not exceeding the amount of the Provider's list prices generally valid at the time of the notification. The fee items respectively adjusted may not be further increased until, at the earliest, upon expiry of a further Year of Contract since the last price adjustment. In the event of the fees being adjusted, Customer has the right to give six (6) weeks' notice of termination to become effective on the effective date of the price adjustment, insofar as the increase exceeds ten percent (10%) of the license remuneration last applicable.

7.3. Unless otherwise agreed in writing, all of Provider's invoices are payable at the latest thirty (30) days after the receipt and due date thereof, without any deduction, by cashless transfer to a bank account notified by Provider.

8. Duties of Customer to collaborate and provide information

8.1. Customer is responsible for its hardware and software environment being compliant with the system requirements of the Software; in case of doubt Customer shall obtain advice from Provider or an expert third party before entering into the contract.

8.2. Customer is responsible for its hardware and software environment being adequately dimensioned. Customer is not authorized to deliberately use

devices, Software or routines which have a disruptive effect on the applications, functions or usability of the Software or, with respect to other data, systems or communications, to deliberately destroy them, generate excessive load, harmfully intervene in them, fraudulently intercept or import them.

8.3. When using the Software, Customer is obliged to comply with the duty of care necessary for the use and to examine the results generated with the Software to a reasonable extent before using them. The technical responsibility for the selection and dimensioning and/or configuration of specific products with the help of an Engineering Tool therefore rests solely with Customer. Customer shall carry out technical proof of the functionalities of the products selected and product tests with respect to compliance with standards. Customer shall conduct the professional assembly and execution of the products. A purchase order for the product based on the use of the Engineering Tool shall solely be on the basis of the catalogue details and the Documentation relating to the product.

8.4. Customer shall comply with the instructions given by Provider for the operation of the Software.

8.5. Customer is obliged to keep all the copies of the Documentation in a protected place.

8.6. Customer shall change, without undue delay, all passwords allocated by Provider into passwords known only to Customer. Customer is obliged to keep the usage and access authorizations assigned to Customer secret, to protect them against access by third parties and not to disclose them to unauthorized users. This data shall be protected by suitable and effective measures. Customer shall notify Provider without undue delay in case of any suspicion that unauthorized persons might have obtained knowledge of access data and/or passwords. Provider is not responsible for the consequences of abuse of access data.

8.7. Customer is obliged to check data and information for viruses and other malware prior to sending data and information to Provider and to implement anti-virus programs in accordance with the state of the art.

8.8. Without prejudice to Provider's obligation to back up data pursuant to sub-sec. 3.6., Customer is obliged to back up its Customer Data on a regular basis. Every data backup conducted by Customer shall be conducted so as to enable the Customer Data to be restored at any time.

8.9. Customer shall bear the disadvantages resulting from a violation of the aforementioned collaboration and information duties.

9. Term, blocking and termination

9.1. Except as otherwise agreed, the contract shall be agreed for a fixed term of one Year of Contract. It shall be automatically renewed for one additional Year of Contract unless terminated by giving three months' notice prior to expiration.

9.2. If Customer breaches the provisions of these Terms and Conditions of Use, in particular the provisions of Section 6, Provider can, after giving Customer prior notification in writing, block Customer's access to the Software if the breach can be stopped as a result. The block shall be lifted as soon as the reason for the block

no longer exists. If, despite having been given a corresponding warning from Provider in writing, Customer should continue to or repeatedly breach these Terms and Conditions of Use, Provider may terminate the contractual relationship for extraordinary grounds without complying with a period of notice, unless Customer was not responsible for such breaches. Provider's right to claim damages shall remain unaffected.

- 9.3. Further, the contract may be terminated in writing by either party for cause without compliance with a period of notice. Cause shall be deemed to exist in particular if (i.) Customer violates rights of use of Provider by using the Software over and above the scope permitted under these Terms and Conditions of Use and fails to discontinue the violation within a reasonable period of time following a warning by Provider; (ii.) Customer is in arrears with two consecutive payments of remuneration for the license pursuant to sub-sec. 7.1. or with a not inconsiderable part of this remuneration for two successive time periods or is in arrears in a period of time covering more than two time periods with a payment of remuneration corresponding to the remuneration for two time periods; (iii.) there is a significant deterioration in the financial circumstances of Customer or if this is impending and as a result the performance of a payment obligation to Provider is in jeopardy or (iv.) the criteria for insolvency or over-indebtedness have been met by Customer. In the first case (sub-sec. 9.3.i.) and in the case of sub-sec. 9.2., Customer has no entitlement to a refund of the license remuneration already paid. Provider reserves the right to claim additional damages.
- 9.4. Customer's right to terminate the contract due to not being permitted use pursuant to sec. 543 (2) sentence 1 no. 1 German Civil Code (BGB) is excluded insofar as the creation of the use in conformity with the contract is not to be deemed to have failed. The creation of the use in conformity with the contract shall be deemed to have failed at the earliest after the second unsuccessful attempt to do so.
- 9.5. Statutory rights and claims over and above this shall not be restricted by the provisions contained in Section 9.
- 9.6. Notice of termination or termination of the contractual relationship simultaneously denotes notice of termination/termination of the authorizations, registrations and of the User Account and, if applicable, of all User IDs provided for end customers of Customer, as of the next possible date. The termination of this contractual relationship has no effect on the use of the Central Bosch ID. For this it is necessary to have termination in accordance with the usage relationship of the contract terms underlying the use of the Central Bosch ID.

10. Services upon termination

- 10.1. Upon termination of the contract, Provider shall, at Customer's request, support Customer as far as possible in the export and backup of the Customer Data, in return for payment of remuneration to be agreed separately.
- 10.2. In the event of termination of the contract, Provider shall endeavor to support Customer on request, in the best possible way, in return for payment of remuneration, in the transition to a new service

provider. The parties shall agree upon the details of this in a separate migration agreement.

11. Warranty

- 11.1. Only the description of the Software provided by Provider or agreed in a separate document (e.g. in the Documentation) prior to the date of conclusion of the contract is authoritative for the quality of the Software. The details contained therein are solely to be understood as Performance Specifications and not as guarantees. A guarantee is only provided if it is explicitly designated as such by Provider prior to the date of conclusion of the contract. More far-reaching quality is not owed and does not derive, in particular, from public statements or advertising of Provider or of its distribution partners.
- 11.2. Provider does not provide a guarantee for errors in the Software,
- a.) caused by faulty application on the part of Customer that could have been avoided if the Documentation had been carefully consulted; this also applies in the event of inexistent or insufficient backup measures pursuant to sub-sec. 8.8. which would have avoided data loss;
 - b.) due to virus contamination or to other external influences for which Provider is not responsible such as fire, accidents, power failure etc.;
 - c.) caused by the Software being used in an operating environment which is different from that approved by Provider or due to faults in the hardware, the operating system or to the software of other manufacturers;
 - d.) caused by the Software having been subjected to independent modification by Customer or third parties.
- 11.3. Defects in the Software, including the Documentation (e.g. the user manual/online manual), shall be rectified by Provider within the specified response times after having been notified of the defect accordingly by Customer, which notification shall be provided on the next working day at the latest. The same shall apply to other malfunctions in the possibility of using the Software for which Provider is accountable. Any claims for damages are governed by Section 12 of these Terms and Conditions of Use.
- 11.4. The provisions of this Section 11 shall apply accordingly in the event of defects of title which are not based on an infringement of third-party rights.

12. Liability

- 12.1. Provider shall be liable for damages in accordance with the provisions of statute in the event of injury to life and limb, for damage based on the German Product Liability Act, for damage caused by fraudulent conduct or intent or gross negligence [*Vorsatz* or *grobe Fahrlässigkeit*] by Provider and to the extent of a guarantee provided by Provider.
- 12.2. Without prejudice to liability under sub-sec. 12.1., Provider shall be liable for damages in an amount limited to the amount of foreseeable damage typical of the contract at the time when the contract was entered into with respect to damage otherwise due to a negligent violation of material contractual obligations and to damage caused by persons engaged by

Provider in performance of its obligations [Erfüllungsgehilfen]. Material obligations are obligations which, when performed, make the proper execution of the contract possible and which Customer may regularly rely on compliance with. The amount of foreseeable damage typical of the contract resulting from violations of duty by Provider corresponds to the amount of remuneration paid by Customer for one Year of Contract, not exceeding, however, a maximum amount of EUR 100,000. If the maximum amount of liability is not reached in one Year of Contract, this shall not increase the maximum amount of liability in the next Year of Contract.

- 12.3. Strict liability ("liability without fault" – "*verschuldens-unabhängige Schadensersatzhaftung*") is excluded for defects which already existed when the contract was concluded.
- 12.4. More far-reaching liability of Provider is excluded subject to explicitly deviating provisions in these Terms and Conditions of Use. In particular, Provider shall not be liable for damage incurred by Customer due to its failure to back up data in accordance with sub-sec. 8.8.
- 12.5. Joint fault by Customer must be taken into consideration.
- 12.6. The foregoing limitations of liability shall also apply to the personal liability of employees, representatives and/or corporate bodies [*Organe*] of Provider.
- 12.7. With regard to telecommunications services, the limitations of liability pursuant to Section 44a of the German Telecommunications Act (TKG) shall remain unaffected.

13. Changes to the Software and amendments to these Terms and Conditions of Use

- 13.1. Provider reserves the right to adapt these Terms and Conditions of Use, the SLA and the Software at any time in line with changes in technical or legal conditions, API compatibility or with regard to further developments of the Software or technical progress, such adaptation also being effective in respect of existing contractual relationships, whereby the basic functionality of the Software shall be maintained.
- 13.2. Customer shall be notified of such changes by email or in another suitable manner no later than thirty (30) calendar days before the planned effective date of the changes insofar as the adaptation involves a restriction in the usability of data generated to date or other not only insignificant disadvantages (e.g. adaptation expenses). If Customer does not object within thirty (30) days of receipt of the notification and continues to use the Software after expiry of the period for objection, then the changes shall be deemed to have been effectively agreed as from the expiry date of the time limit. In the event of an objection, the contractual relationship shall be continued subject to the conditions applying hitherto. If an objection is raised, Provider is entitled to terminate the contractual relationship subject to a one (1) month notice period. Customer shall be advised in the change notification of its right to object and of the consequences.

14. Third party rights

- 14.1. During the term of contract, Provider warrants in accordance with the provisions below that the Software does not infringe any third-party rights:
 - a.) If third parties should assert a claim against Customer due to an infringement of their rights, Provider shall indemnify Customer from and against all claims for damages resulting therefrom established by a final and non-appealable court judgment and for which Provider is responsible, including court costs and the costs of legal defense which are eligible for refund pursuant to the provisions of the German Code of Civil Procedure [*Zivilprozessordnung*]. Provider shall support Customer in the judicial and extrajudicial resolution of such disputes with third parties.
 - b.) If either (i.) a final and non-appealable judgment is returned against Customer or (ii.) an interim injunction is served on Customer, enjoining Customer from using the Software or a respective part of it, Provider shall, in order to rectify the infringement of rights, at its discretion either obtain for Customer the right to continue to use the Software, or else replace or modify the Software whilst retaining the agreed functionalities or, if neither of the alternatives stated above is feasible for Provider under equitable conditions, terminate Customer's rights to the Software in writing. Insofar as is reasonable for Customer, the termination shall only be to the extent that is necessary to prevent the infringement of the rights.
- 14.2. The claims of Customer under this Section 14 are subject to the condition that (i.) Customer advises Provider without undue delay of the third-party claims brought, (ii.) Customer provides Provider with a copy of all the correspondence in this respect with the claimant and the courts and always without undue delay after receipt thereof, (iii.) Customer provides Provider with the information required to defend against the claim and (iv.) the exclusive right to control the conduct of the lawsuit by Customer and the right to take the final decision on entering into any possible judicial and extrajudicial settlements remains with Provider.
- 14.3. In the event that, in the opinion of Provider or a third party, the Software infringes third party rights, Provider has the right, at its discretion, taking the interests of Customer into appropriate consideration, to replace or modify the Software whilst retaining the agreed functionalities, in order to remedy the alleged or presumed infringement of rights.

15. Data use and data protection

- 15.1. Customer hereby grants to Provider, if available, the right to use the Customer Data stored in the storage space for the purpose of using the Software, to execute the contract, in particular to reproduce such Customer Data for this purpose (e.g. for data backup), to modify it and to provide such Customer Data for the purpose of accessing it.

Provider is further entitled to store, use, transfer and/or utilize all the information, Customer Data and Usage Data, excluding personal data, entered and generated by Customer in connection with the Software, over and above the object of the contract, for any purposes such as for statistical, analytical and internal

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purposes. This right is unlimited in time and irrevocable. Customer warrants that it has not concluded any agreement with third parties which conflicts with this use.

- 15.3 Customer warrants that (i.) Customer and/or Customer's providers hold all rights to the Customer Data that are required for the granting of rights under these Terms and Conditions of Use; and that (ii.) the Customer Data does not violate these Terms and Conditions of Use or applicable laws and does not infringe the intellectual property of a third party. Provider is entitled to immediately block the 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. Provider shall then notify Customer of the block, stating the reason for the block. The block shall be removed as soon as the suspicion has been refuted.
- 15.4 If Provider processes personal data, Provider shall comply with the provisions of data protection law. In this case the details on the data collected and the respective processing thereof are set forth in the Data Protection Notice of Bosch Rexroth AG.
- 15.5 If Customer processes personal data, then Customer guarantees that it is authorized to do so in accordance with the applicable regulations, in particular in accordance with data protection regulations, and, in the event of any infringement, Customer shall indemnify Provider from and against third-party claims. To the extent that personal data is collected, processed or used in connection with the use of the Software, Customer is obliged to obtain any permission that is required from the respective data subject unless statutory or other permission applies.

16. Confidentiality

- 16.1. Customer undertakes to treat Confidential Information in confidence and not to disclose it to third parties unless this is necessary to exercise the rights accruing to Customer under these Terms and Conditions of Use. Customer shall apply the same measure of care to protect the Confidential Information (but not less than a reasonable measure of care) as it applies to its own Confidential Information.
- 16.2. The obligation of secrecy under sub-sec. 16.1. does not apply to Confidential Information (i.) which was already in the lawful possession of Customer prior to being disclosed by Provider; (ii.) which was or becomes public knowledge without any violation of duty by Customer; (iii.) which Customer lawfully received from third parties without any secrecy obligations; (iv.) which was disclosed to third parties by Provider without any secrecy obligations; (v.) which was developed by Customer itself; (vi.) which has to be disclosed by law; or (vii.) which is disclosed by Customer with the prior consent of Provider in writing.

17. Export control

- 17.1. If, prior to the Commencement Date of the License, it should transpire that performance of the contract by Provider faces impediments due to national or international export control regulations, in particular to embargos or other sanctions, Provider has the right to withdraw from or terminate the contract. Delays due to export examinations or permit procedures shall interrupt the delivery period unless Provider is responsible for such delays.
- 17.2. Provider further has the right to terminate the contract without notice, if such termination is necessary to comply with national or international legal provisions, unless Provider is accountable for this.
- 17.3. Customer undertakes to furnish all the information and documents that are required for the export/movement or for provision of the Software to be provided in accordance with the contract and other work results required for the purpose of provision, and which derive from Customer's sphere of influence.
- 17.4. When passing on, transferring or otherwise providing to third parties the Software and other work results to be supplied by Provider in accordance with the contract, for use in the domestic country and abroad, Customer shall comply with the respectively applicable provisions of customs and (re) export control law and obtain the permits necessary for this.
- 17.5. The Software may not be used for the manufacture or development of rockets, chemical/biological or nuclear weapons.

18. General provisions

- 18.1 The courts of Stuttgart, Germany, shall have exclusive jurisdiction and venue insofar as this is legally permissible. Provider reserves the right, however, to take legal action at a court with jurisdiction at the registered office or establishment of Customer.
- 18.2 The present Terms and Conditions of Use and all agreements in this respect between Provider and 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.
- 18.3 If any 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 agreement approximating most closely the economic purpose of the original ineffective provision. This shall apply accordingly to any omissions.
- 18.4 Alterations and supplements to these Terms and Conditions of Use must be made in written form. Emails do not comply with the written form requirement.