

License Terms for Gratuitous Simulation Models of Bosch Rexroth AG

Version: 11.02.2019

These Terms and Conditions of License apply to the provision of simulation models to the customer (hereinafter referred to as: "**Licensee**") by Bosch Rexroth AG, Zum Eisengiesser 1, 97816 Lohr a. Main, Germany, www.boschrexroth.de (hereinafter referred to as: "**Licensor**") for use free of charge for a limited period of time. The Licensee intends to utilize the simulation models to conduct system simulations for designing, dimensioning and validating specific components and systems for its own business operations. Separate license terms apply to other types of provision of simulation models. General terms and conditions of the Licensee do not apply, they are explicitly rejected. This shall apply even if, in connection with a purchase order or in other documents of the Licensee, reference is made to the Licensee's standard business terms and conditions and in this case, the Licensor does not explicitly object to them again

1. Definitions

- 1.1. *Affiliated Enterprise*: Every legal entity which is controlled by the Licensee, which controls the Licensee or which is jointly-controlled together with a Licensee. 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. *Backup Copy*: A copy of a simulation model which is produced in case the original model is damaged or inadvertently deleted.
- 1.3. *Black Box Model*: A simulation model in respect of which the Licensee is only granted access to selected parameters and variables. The functioning, model structure and equations are hidden.
- 1.4. *Bugfix*: Error correction.
- 1.5. *Commencement of License*: Upon the electronic transfer or download of the simulation model.
- 1.6. *Component Model*: A simulation model that maps a product from the Licensor's product range with its typical behavior. Component Models can, if applicable, also map other components of a customer system in accordance with customer specifications.
- 1.7. *Confidential Information*: Simulation models including the source code (with the exception of Open Source Software components) and the Documentation and the information included in Models and Documentation and other materials or information otherwise communicated which is/are marked by the Licensor as being "confidential" or which is/are otherwise to be considered as confidential.
- 1.8. *Documentation*: All the information required to be able to work with the Models as intended.
- 1.9. *FOSS*: Open Source Software and third party software under a royalty-free license.
- 1.10. *Generic Model*: A general simulation model the characteristics of which are specified by adjustable parameters.
- 1.11. *Patch*: A correction supplied to close security gaps or remedy errors including add-ons of functions.
- 1.12. *Update*: A new version of the Models containing improvements to the program or new and/or changed functionalities.
- 1.13. *Upgrade*: Renewal of the Models version with considerably expanded function.

- 1.14. *Year of Contract*: The first twelve (12) months starting from the beginning of the license in accordance with the contract and every successive twelve-month period.

2. Simulation models

- 2.1. The subject matter of these License Terms is the granting of the rights of use to simulation models of the Licensor (hereinafter referred to as: "**Models**") for a limited period of time for the purpose of conducting a system simulation for designing, dimensioning and validating specific components and systems for the Licensee's own business operation. The Models can be individual Component Models or system models consisting of Component Models and Generic Models. The Model description follows from the Documentation which will be made available to the Licensee on request prior to entering into the contract. The Documentation contains an overview of the Models' functionalities and system requirements. The information and graphical representations stored in the Models and the Documentation 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 Model is released or in the context of an Update, Upgrade, Patch or Bugfix. The information and graphical representations stored in the Models 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 Models shall support the Licensee in designing, dimensioning and validating its components and systems for its own business operations, however without checking the result technically or verifying the correctness of the calculation. This shall be undertaken by the Licensee. The compliance with the technical application limits of the mapped products will not be examined by the Models either. Simulation models always constitute a simplification of reality. It is not possible to warrant the correct nature of the Models or, in particular, the agreement of simulation results with measurement data.
- 2.2. The Models comprise the Model files and the corresponding Documentation and, if applicable, instructions on embedding the Models in a simulation environment. The subject matter of the agreement does not include the source code unless otherwise agreed and subject to sub-section 2.3. The Model shall always be regarded as a whole and individual part models may not be extracted from the whole and used separately. If part models are used separately, a

License Terms for Gratuitous Simulation Models of Bosch Rexroth AG

separate license agreement must be concluded in this respect.

- 2.3. The Models can possibly contain FOSS. The Licensee 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 Models are delivered at the latest.
- 2.4. Insofar as software products of third party providers which are not covered by FOSS are also provided together with the Models, such products may solely be used in connection with the Models. Special terms and conditions of use can possibly apply in this respect which the Licensee will be advised of in an appropriate form.
- 2.5. Insofar as the Models have been created with the help of software products of third party providers, special license terms possibly apply which are set forth in the Documentation and which the Licensee will be provided with on request.
- 2.6. The Licensor has the right to take technical measures to protect the Models against any unauthorized use, e.g. by means of program locks. The Licensee may not remove such protective mechanisms from the Models or work around them. It can be necessary to apply for a license key to activate the Models after installation and if the software and/or hardware environment is changed.

3. Delivery

Unless otherwise agreed and in accordance with the provisions below, the Models shall be delivered in the version which is current at the time of delivery. The delivery and passing of risk of the Models shall be effected at the Licensor's election and, unless otherwise agreed, either by virtue of transmission by e-mail or by virtue of making the Models available as a download and transmitting the information necessary for the download. The Licensor shall supply a replacement if the Models are damaged or destroyed after passing of risk.

4. Rights of use

- 4.1. With effect from the Commencement of the License the Licensee shall be granted the non-exclusive, non-transferable right to use the Models free of charge for a limited period of time in accordance with the following provisions and in compliance with the stipulations of the Documentation. In this connection the Licensee has the right to import the Models into its simulation environment and to use them in a system simulation for designing, dimensioning and validating its components and systems. 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 Licensee has its administrative headquarter. The provision for use shall be wholly or partially as a Black Box Model, if applicable.
- 4.2. The Licensee may use the Models only for the purpose named in sub-sec. 2.1.
- 4.3. Duplications of the Models are only permitted insofar as this is necessary for the contractual use. The Licensee may make Backup Copies of the Models in accordance with the state of the art to the extent necessary. Backup Copies shall be marked as such

and marked with the copyright notice of the original Models insofar as this is possible. The use of the Backup Copy is only permitted if the copy of the Models originally provided by the Licensor has deteriorated or perished. The Licensee is also subject to these Terms and Conditions of License in respect of the use of the Backup Copy.

- 4.4. Without the prior consent of the Licensor in writing, the Licensee is not entitled to distribute the Models or to otherwise transfer them to third parties or to make them available to third parties (including rental, lease, loan or sub-licensing). Further, without the prior consent of the Licensor in writing, the Licensee may not offer as a service any services using the Models, such as simulation services or training courses for persons who are not employees of the Licensee.
- 4.5. The Licensee is not entitled, subject to sub-sec. 2.3., to edit, change, reverse engineer, decompile or disassemble the Models or the program code of the Models or parts thereof or to otherwise establish the source code or to create derivative works based on the Models. The use of the Models as a component for generating software products is not allowed. Separate use of part Models is not permitted (cf. sub-sec 2.2.). The mandatory, obligatory provisions of secs. 69d, 69e German Copyright Act (UrhG) shall remain unaffected by this, however.
- 4.6. The Licensee may not commission third parties who are competitors of the Licensor to conduct measures which are in accordance with sub-sec. 4.5. unless the Licensee proves that the danger of disclosing important business and trade secrets of the Licensor (in particular functions and design of the Models) is ruled out.
- 4.7. If the Licensor voluntarily provides the Licensee with Upgrades or Updates or Patches or Bugfixes, these shall also be subject to these Terms and Conditions of License, except to the extent that they form the subject matter of a separate agreement.
- 4.8. There is no right to support as a matter of principle. In particular there is no entitlement to provision of the Models for a specific version of a simulation environment.
- 4.9. All further rights to the Models not explicitly granted, in particular also including all the rights to the trade mark, the business secrets or to other intellectual property in the Models, shall remain with the Licensor. Designations of the Models, 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 Models shall be provided to the Licensee free of charge.

6. Duties of the Licensee to collaborate and provide information

- 6.1. The Licensee is responsible for its hardware and software environments being compliant with the system requirements of the Models; in case of doubt the Licensee shall obtain advice from the Licensor or specialist third parties before entering into the contract. The Models' operability has been tested with the simulation environments and their versions

License Terms for Gratuitous Simulation Models of Bosch Rexroth AG

indicated in the Documentation. Prior to implementing the Models, the Licensee shall thoroughly test them to ascertain that they are free of defects and, if applicable, that they are usable in the existing hardware and software configuration.

- 6.2. The Licensee is responsible for embedding the Models in the simulation environment used by the Licensee. At the Licensee's request, if applicable, the Licensor may conduct the installation in return for remuneration to be agreed separately.
- 6.3. When using the Models, the Licensee is obliged to comply with the duty of care necessary for usage and to check the results generated with the Models to a reasonable extent before they are used. Simulation Models always constitute a simplification of reality.
- 6.4. Technical proofs of functionalities of the products selected with the help of the simulation, and product tests relating to compliance with norms shall be conducted by the Licensee. The Models do not contain any information on the technical application limits of the mapped products. The Licensee shall carry out the professional assembly and execution of the products. A product order shall solely be placed on the basis of the catalogue details and of the documentation belonging to the product.
- 6.5. The Licensee shall comply with the instructions provided by the Licensor for the use of the Models, in particular the instructions on the modelling assumptions made. The Models shall always be supplied together with a Documentation and they possess the qualities described in the Documentation. In particular, the Documentation must be read before the Models are used.
- 6.6. The Licensee shall ensure that the simulation is only carried out by respectively qualified specialist personnel.
- 6.7. The Licensee is obliged to take suitable measures to protect the Models against access by unauthorized third parties, in particular to store all the copies of the Models in a protected place.
- 6.8. The Licensee is obliged to take reasonable precautions in case the Models do not work properly either altogether or in part (e.g. by means of daily data backup, failure diagnosis, regular monitoring of the data processing results). The Licensor can assume that all the data of the Licensee which it can come into contact with are secured, unless as the Licensee explicitly indicates otherwise in advance.
- 6.9. The Licensee shall bear the disadvantages that result from a violation of the aforementioned collaboration and information duties.

7. Term and Termination

- 7.1. Except to the extent otherwise agreed, the contract shall be concluded for a fixed term of one Year of Contract. It shall be extended by a respective term of one additional Year of Contract unless terminated by giving three months' notice prior to expiry of the term.
- 7.2. The contract may be terminated by either party for cause without compliance with a period of notice. Cause shall be deemed to exist in particular if the Licensee violates rights of use of the Licensor by using the Models over and above the scope permitted under these License Terms and Conditions. The Licensor reserves the right to claim damages.

- 7.3. Statutory rights and claims shall not be restricted by the provisions contained in sec. 7.

8. End of contract

When the Licensee's right of use ends (e.g. by virtue of the end of the contract term, notice of termination or supply of a replacement), the Licensee shall delete or destroy all the data media, copies of the Models including the Backup Copies pursuant to sub-sec. 4.3. and the Documentation provided for use and confirm this to the Licensor in writing upon request. The same shall apply in the event of a replacement being supplied (sub-sec. 4.7.) for the previous Model versions.

9. Warranty

- 9.1. Except in the event of intent or fraudulent intent [*Arglist*], the Licensor shall not provide any warranty for defects of title or defects as to quality in the Models.
- 9.2. Only the description of the Models provided by the Licensor prior to concluding the contract or agreed in a separate document, e.g. in the Documentation, is decisive for the quality of the Models. 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 Licensor 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 Licensor or its distribution partners.

10. Liability

- 10.1. The Licensor shall only be liable for damages in accordance with the provisions of statute in the event of injury to life and limb, damage based on the Product Liability Act, for damage caused by fraudulent conduct or intent by the Licensor and for damage caused by gross negligence of the statutory representatives or managerial employees [*leitende Angestellte*] of the Licensor. The same shall apply accordingly for claims arising from an infringement of third party intellectual or industrial property rights or copyright.
- 10.2. Further liability of the Licensor is excluded, subject to provisions in these License Terms and Conditions explicitly providing otherwise.
- 10.3. Joint fault by the Licensee 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 Licensor.

11. Data use and data protection

- 11.1. The Licensor has the right to store, use, transfer and/or exploit all of the information contributed and generated by the Licensee in connection with the Models, with the exception of personal or company-related data, 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.

License Terms for Gratuitous Simulation Models of Bosch Rexroth AG

- 11.2. If personal data are processed, the Licensor 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.

12. Confidentiality

- 12.1. The Licensee 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 Licensee is entitled to in accordance with these Terms and Conditions of License. In order to protect the Confidential Information the Licensee 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. 12.1.12.1 does not apply to Confidential Information (i.) which was already in the lawful possession of the Licensee prior to being disclosed by the Licensor; (ii.) which was or becomes public knowledge without any violation of duty by the Licensee; (iii.) which the Licensee lawfully received from third parties without any secrecy obligations; (iv.) which was disclosed to third parties by the Licensor without any secrecy obligations; (v.) which was developed by the Licensee itself; (vi.) which has to be disclosed by law; or (vii.) which is disclosed by the Licensee with the prior consent of the Licensor in writing.

13. Export control

- 13.1. If, prior to supply, it should transpire that performance of the contract by the Licensor faces obstacles due to national or international export control regulations, in particular to embargos or other sanctions, the Licensor has the right to withdraw from the contract. Delays due to export examinations or permit procedures shall interrupt the delivery period unless the Licensor 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 Licensor has the right to give notice of termination of the contract with immediate effect unless the Licensor is responsible for this.
- 13.3. The Licensee undertakes to furnish all the information and documents that are required for the export or movement of the Models to be supplied in accordance with the contract required for the purpose of the supply and which derive from the Licensee'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 Models to be supplied by the Licensor in accordance with the contract, the Licensee 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 Models 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 Licensor reserves the right, however, to take legal action at a court with jurisdiction at the registered office or establishment of the Licensee.
- 14.2. The present Terms and Conditions of License and all agreements in this respect between the Licensor and the Licensee 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 of License must be made in written form. Emails do not comply with the written form requirement.

© Bosch Rexroth AG