

General Terms and Conditions for Software Work and Service of Bosch Rexroth AG

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These General Terms and Conditions apply to the provision of software work and service performances to the customer (hereinafter: "**Customer**") by Bosch Rexroth AG, Zum Eisengiesser 1, 97816 Lohr a. Main, www.boschrexroth.de (hereinafter: "**Provider**"). The Customer intends to implement the software and, if applicable, work results provided for use by the Provider for the Customer's own business operations. Separate terms and conditions shall apply to other types of work and services and/or provision of software for use. Standard business terms and conditions of the Customer shall not apply, those terms and conditions are explicitly objected. This shall apply even if, in connection with a purchase order or in other documents of the Customer, reference is made to the Customer's standard business terms and conditions and in this case, the Provider does not explicitly object to them again.

1. Definitions

- 1.1. *Affiliated Enterprise*: Every legal entity which is controlled by the Customer, which controls the Customer or which is jointly-controlled together with a 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. *Backup Copy*: A copy of a software which is produced in case the original Software is damaged or inadvertently deleted.
- 1.3. *Bugfix*: Error correction.
- 1.4. *Commencement of License*: Date when the remuneration has been paid in full by the Customer.
- 1.5. *Confidential Information*: Software and Work Results including the source code (with the exception of Open Source Software components) and the Documentation and the information included in Work Results, Software and Documentation and other materials or information otherwise communicated which is/are marked by the Provider as being "confidential" or which is/are otherwise to be considered as confidential.
- 1.6. *Documentation*: All the information required to be able to work with the Software and Work Results as intended.
- 1.7. *FOSS*: Open Source Software and third party software under a royalty-free license.
- 1.8. *Individual Software*: Software that is developed or adapted for a specific Customer (for distinction: see Standard-Software).
- 1.9. *License Data*: In the order documents, possibly a type key named as an order item of its own or a material number and license type in conjunction with the catalogue details valid at the time of the order and with the license sheet or device pass [Gerätepass] provided.
- 1.10. *Patch*: A correction supplied to close security gaps or remedy errors including add-ons of functions.
- 1.11. *Standard Software*: Software that has been developed or is adaptable (parametrizable) for a non-specific group of Customers, i.e. software not covered by sub-sec. 1.11. (for the distinction see: Individual Software).
- 1.12. *Target Hardware*: A device on which the software is or will be installed.
- 1.13. *Type of License*: Determines the scope of use of the software and the number of users, see sub-sec. 6.5.
- 1.14. *Underlicensing*: Use of the software in a manner exceeding the agreed scope and type of use agreed.
- 1.15. *Update*: A new version of the software containing improvements to the program or new and/or changed functionalities.
- 1.16. *Upgrade*: Renewal of the software version with considerably expanded function.
- 1.17. *Workaround*: A procedure circumventing a known malfunction of the software.
- 1.18. *Work Results*: All the works created individually for the Customer by the Provider including associated documentation excluding the (individual) software.

2. Performance

- 2.1. The subject matter of these General Terms and Conditions is the production and provision for use by the Provider of individual software for an unlimited period of time as well as other software work and service performances (hereinafter collectively: "**Performance**"). The Customer and the Provider shall agree on the details of rendering the Performance, e.g. Performance targets, subject matter, scope, content, locations, underlying factual and technical conditions, in a separate document. In this connection the parties shall specify in particular whether the respective subject matter is performance of a work or service. All the quotations of the Provider shall be non-binding unless otherwise explicitly specified in the quotation.
- 2.2. The owed Individual Software partially includes Standard Software (hereinafter collectively: "**Software**"). The Software shall always be regarded as a whole and individual parts may not be extracted from the whole and used separately. If parts are used separately, an independent separate license agreement must be concluded in this respect.
- 2.3. The Software comprises executable program code and corresponding Documentation in electronic form and the installation instructions if the Software does not install itself. Subject to the provisions of sub-sec. 2.4., the source code does not form part of the subject matter of the contract.
- 2.4. 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 Software is delivered at the latest.
- 2.5. Insofar as software products of third party providers which are not covered by FOSS are also provided together with the Software, such products may solely be

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used in connection with the Software. Special terms and conditions of use can possibly apply in this respect which the Customer will be advised of in an appropriate form.

- 2.6. 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. It can be necessary to apply for a license key to activate the Software if the software and/or hardware environment is changed.

3. Rendering Performance, Delivery, Dates

- 3.1. Solely the Provider is responsible for organizing the rendering of Performance and solely the Provider has the right to give its employees instructions. This also applies if Performance is rendered on the premises of the Customer.
- 3.2. The Provider has the right to engage subcontractors at any time to render Performance. The Provider shall advise the Customer hereof in advance.
- 3.3. Delivery and Performance dates indicated by the Provider shall only be considered binding if they have been explicitly specified as being binding by the Provider in writing in advance.
- 3.4. The precondition for the commencement of and adherence to agreed dates for Performance is the fulfillment of the collaboration obligations, in particular the punctual receipt of all documents, approvals, examinations, releases to be supplied by the Customer, compliance with the terms of payment agreed, in particular with advance payments agreed. Further collaboration acts are agreed in section 8. Dates that have been agreed shall be extended accordingly in the event of non-compliance with the collaboration obligations. The period of extension shall be calculated on the basis of the duration of the delay of the non-contractual collaboration or information and of any other time-related effects ensuing therefrom, (e.g. taking account of the necessary start-up time).
- 3.5. If non-compliance with the dates for Performance is due to force majeure or to other events for which the Provider is not responsible, e.g. shortage of material, war, terrorist attacks, import and export restrictions, governmental orders, then the agreed time periods for Performance shall be reasonably extended by the duration of the impediment. This shall also apply to industrial action affecting the Provider.
- 3.6. If the Provider is in default pursuant to these contract terms, the Customer may, at the request of the Provider, declare within a reasonable period of time, whether the Customer insists on having Performance rendered or whether the Customer asserts its other statutory rights in accordance with secs. 9 and 13. The following applies to this:
 - a.) The Customer may only give notice of termination of the contract in accordance with the provisions of statute if and to the extent that the Provider is accountable for the delay.
 - b.) If the Provider is in default of Performance for reasons which the Provider is accountable for, the Customer may claim a compensation for the proven damage occurred. Further claims for damages by the Customer are excluded to the

extent set forth in section 13 in all cases of delayed Performance, even after expiry of an extended time period set for the Provider.

- 3.7. Except insofar as otherwise explicitly agreed, the Provider has the right to transmit the Work Results to the Customer by means of electronic transmission. If Performance is shipped, the delivery and prices shall be deemed to be FCA place of dispatch of Provider (Incoterms® 2010).
- 3.8. The Software shall be delivered in the version which is stated in the License Data. If the Software is provided on a data medium or installed on a Target Hardware, this might not contain the version stated in the License Data. In this case, the owed version shall be supplied in retrospect. The delivery and passing of risk of the Software shall be effected at the Provider's election and, unless otherwise agreed, either by virtue of transmission by e-mail or by virtue of making the Software available as a download and transmitting the information necessary for the download or by virtue of handing it over to the carrier for dispatch.
- 3.9. Sub-secs. 3.7. and 3.8. shall apply accordingly in the event of supplies in connection with supplementary performance pursuant to sub-sec. 11.9.

4. Change in Performance

- 4.1. If, while Performance is being rendered, the Customer should propose in writing changes to the agreed Performance, the Provider shall inform the Customer as swiftly as possible whether the change is possible and shall provide an initial estimate of the impacts which these will have on the contract, in particular on dates and the agreed remuneration.
- 4.2. If the change request requires a detailed examination by the Provider, the Provider shall inform the Customer of the estimated duration and costs of this detailed examination, the preliminary assessment of the prospects of realization and, if possible, the approximate impacts on the contract, in particular on dates and on the agreed remuneration.
- 4.3. The Customer shall bear the expenses accruing as a result of the change procedure including, in particular, examining the change request, preparing a change proposal, implementation of the change and any downtimes.
- 4.4. During the course of the procedure to change Performance, the Provider shall continue to render the Performance forming the subject matter of the contract without change unless the Customer instructs the Provider in writing that the work shall be discontinued or restricted pending a decision on the change to Performance or the parties reach a separate agreement on a detailed examination of the change request or on the change request itself.
- 4.5. If no agreement is reached or if the change procedure ends for a different reason, then the original scope of Performance shall remain unchanged. A change to Performance shall be documented by the parties in writing.

5. Acceptance Procedure for Work

- 5.1. Within two (2) weeks of receipt of the Provider's written request for acceptance and provision of the Performance, the Customer shall undertake the acceptance test and prepare an acceptance record in

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writing. Within this period of time the Customer may examine the Performance to establish the compliance thereof with the contract and complain of any defects. In the event of a notification of defects, the Provider shall examine this and rectify the defects complained of. The acceptance procedure shall then recommence anew. The Provider has the right to participate in every acceptance procedure.

- 5.2. The Performance shall be deemed accepted if the Customer does not refuse acceptance in writing on account of defects within two (2) weeks of notification of readiness for acceptance and provision of the Performance or if the Customer uses the Performance in whole or in part, with the exception of use in connection with the acceptance test. Defects that are insignificant do not give rise to the right to refuse acceptance.
- 5.3. The Provider has the right to make self-contained parts of the Performance available for acceptance.

6. Rights of Use

- 6.1. Upon Commencement of the License, the Customer shall receive a non-exclusive right of use, unlimited as to time, to use the Work Results and provided Software for the purpose indicated in the Preamble and in accordance with the provisions of this document and in compliance with the documentation.
- 6.2. The permissible commercial use covers the installation, loading to the working memory, display and execution of the Software and the intended use of the Software by the Customer for its own business purposes. The Customer may transfer the Software from one device (target hardware) or workplace to another device (target hardware) or to another workplace if it is ensured at all times that the Software can only be used in accordance with the scope agreed for the respective license model.
- 6.3. Duplications of the Software are only permitted insofar as this is necessary for the contractual use. The Customer may make Backup Copies of the Software 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 Software insofar as this is possible. The use of the Backup Copy is only permitted if the copy of the Software originally provided by the Provider has deteriorated or perished. The Customer is also subject to these Terms and Conditions in respect of the use of the Backup Copy. Section 10 shall apply upon return of the Software.
- 6.4. The use of Work Results and of the Software 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 administrative headquarter.
- 6.5. The Provider distinguishes between the following License Types, the details of which derive from the License Data.
 - a.) In the case of a single user / workstation license, the Customer has the right to use the Software on one single Target Hardware device.
 - b.) In the event of a volume / multiple / multiple-user license, the Customer has the right to use a specific number of individual licenses.

- 6.6. Further, without the prior consent of the Provider in writing, the Customer may not offer as a service any services using the Software and Work Results, such as Software services or training courses for persons who are not employees of the Customer.
- 6.7. The Customer is not entitled to grant sub-licenses. The Customer does, however, have the right to transfer on to third parties the rights of use of the Software and Work Results granted to the Customer whilst relinquishing its own use. If Work Results and Software are acquired with a Target Hardware, it may only be passed on for use by third parties together with this Target Hardware. The Customer shall ensure that the third party is not granted any rights of use to the Software and Work Results that are more far-reaching than those the Customer is entitled to under these terms and that at least those obligations are imposed on the third party which derive from this Agreement with respect to the Software and Work Results. In the event of a transfer of a right of use to a third party, the Customer is obliged to surrender to the third party all the copies supplied to or made by the Customer or to delete them. If the Customer transfers its right of use, it shall also hand over the License Data and the Documentation to the third party.
- 6.8. The Customer has the right to reproduce and process the Work Results, to transfer them to other forms of presentation and to otherwise change, continue and supplement them. In this respect the provisions of sub-secs. 11.6.d. and 13.3 shall apply. The Customer is not entitled, subject to sub-sec. 2.4. and unless otherwise contractually agreed, to edit, change, reverse engineer, decompile or disassemble the Software or 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.
- 6.9. The Customer may not commission third parties who are competitors of the Provider to conduct measures which are in accordance with sub-sec. 6.8. (secs. 69d, 69e UrhG) 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.
- 6.10. If, in connection with supplementary performance or maintenance, the Provider provides the Customer with Upgrades, Updates and/or Patches or Bugfixes for use and/or a Software or Work Result, then these are also subject to these Terms and Conditions, except to the extent that they form the subject matter of a separate agreement. After installation of the new Software version, the Customer's rights to the previous version shall end after a one (1) month transition phase. When the Software is returned, Section 10 shall apply.
- 6.11. All further rights to the Software and Work Results not explicitly granted, in particular also including all the rights to the trade mark, the business secrets or to other intellectual property in the Software or Work Results, shall remain with the Provider. Designations of the Software and of the Work Results, in particular copyright notices, trademarks, serial numbers and the like may not be removed, changed or otherwise rendered illegible.
- 6.12. Notwithstanding the type of the grant of rights, the Provider shall remain entitled to

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- a.) produce comparable Work Results and Software with the same functionalities and
- b.) continue to use, without limitation, the know-how obtained while rendering the Performance (confidentiality obligations pursuant to section 15 shall be unaffected hereby).

7. Remuneration, Maturity

- 7.1. The remuneration agreed in a separate document, otherwise the remuneration set out in the Provider's price list valid at the respective time, plus value added tax, is payable for the Performance in accordance with the scope of use defined in sec. 3 above.
- 7.2. Insofar as remuneration is agreed on a time and material basis and if this agreement does not contain any other provisions on invoicing, then the Provider shall issue a monthly statement to the Customer itemizing the hours and/or days of work completed in the preceding month and shall invoice these. If remuneration is agreed on a fixed price basis, the remuneration shall fall due in accordance with a separately agreed payment plan. If no such payment plan has been agreed, payments on account, each of equal amounts, shall be due for payment after (i.) commencement of the contract, (ii.) the first part delivery, (iii.) provision for acceptance and (iv.) acceptance.
- 7.3. Travel that is necessary for rendering the Performance of the Provider is not, unless otherwise agreed in writing, included in the remuneration agreed for the Performance. This shall be charged in accordance with the Travel Expense Guidelines of the Provider current at the time when the order is placed. The Customer will be sent a copy of the Travel Expense Guidelines on request. Travel time is deemed to constitute time spent on Performance and shall be invoiced on a time and material basis at fifty percent (50%) of the respective daily rate.
- 7.4. Unless otherwise agreed in writing, all of the 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 the Provider.

8. Duties of the Customer to Collaborate and Provide Information

- 8.1. The Customer shall be responsible for the Performance corresponding to its needs and wishes to the extent that this has not been explicitly made into a component part of the contract. Furthermore, the Customer is responsible for its hardware and software environments complying with the system requirements of the Software and Work Results. In case of doubt the Customer shall obtain advice from the Provider or specialist third parties before entering into the contract. The Customer is responsible for setting up an adequately dimensioned hardware and software environment and for installing the Software. At the Customer's request, if applicable, the Provider may conduct the installation in return for remuneration to be agreed separately. Prior to implementing the Work Results and Software, the Customer 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.
- 8.2. The Customer shall support the Provider in its Performance by means of appropriate collaboration acts. In particular, the Customer shall provide the Provider

with the information and data necessary for this free of charge and permit the Provider's employees to access its business premises to the necessary extent during its business hours. In addition, the Customer shall provide working materials, especially workplaces, computers, telephones, Internet connections and printers to an appropriate extent if the Performance is rendered on the Customer's business premises. It is expected that the machine is at the beginning of the commissioning electrically and hydraulically accurate and operable. It is also preconditioned that Customer's skilled staff members are available during the commissioning. The Provider reserves the right to bill for significant idle time for which the Provider is not responsible (e.g. because of incorrect wiring), based on the current hourly rate.

- 8.3. When using the Software and Work Results, the Customer is obliged to comply with the duty of care necessary for usage.
- 8.4. The Customer shall adhere to the instructions provided by the Provider for the operation of the Software and use of the Work Results.
- 8.5. It is partially possible for the Software to be used to influence or control an electronic system. Such actions can cause injury to life and limb or property damage. The Software shall therefore solely be operated by qualified specialist personnel. The Provider does not assume any liability for damage caused by incorrect operation or by use not in accordance with the designated use.
- 8.6. The Customer shall inform the Provider without undue delay of possible errors of the Work Results or Software. In this connection the Customer shall provide all the necessary information at the Provider's request. The Customer shall allow the Provider to access the Work Results or Software for the purpose of searching for and rectifying errors, this shall be either directly and/or by means of remote access at the Provider's election. More detailed provisions in this respect are to be found in section 11.
- 8.7. The Customer is obliged to take suitable measures to protect the Software and Work Results against access by unauthorized third parties, in particular to store all Back up Copies in a protected place.
- 8.8. The Provider has the right to examine whether the Software and Work Results are being used in compliance with the rights of use granted. To this effect the Provider may require the Customer to provide information, in particular on the period of time and extent of the use of the Software, and it may inspect the books and written records and the hardware and software of the Customer insofar as they reveal any details regarding the period of time and extent of the Software's use. To this effect the Provider shall be permitted to enter the business premises of the Customer during normal working hours after advance notice of at least two (2) weeks. The Customer shall ensure to a reasonable degree that the audit can be conducted by the Provider and shall collaborate in the audit. The Provider shall use all the information obtained during the audit only for the purpose of verifying the legality of the license use. The Customer may demand that the on-site audit be conducted by an agent of the Provider who is subject to professional secrecy. The costs of the audit will be borne by the Provider unless the audit should reveal that the Customer is Underlicensed. In such a case the Customer shall bear the costs of the audit. In the event of the Customer being

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Underlicensed, the Customer shall be additionally obliged to repay the unpaid remuneration on the basis of the list prices generally applicable to comparable services at the time of the audit plus a flat rate claim for damages of ten percent (10 %) of the value of the Underlicensing. In addition, the Customer shall discontinue any Underlicensing without undue delay. The Customer remains entitled to prove that the damage was lower.

- 8.9. The Customer is obliged to take reasonable precautions in case the Software and Work Results 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 Provider can assume that all the data of the Customer which it can come into contact with are secured, unless as the Customer explicitly indicates otherwise in advance.
- 8.10. The Customer shall bear any disadvantages and further additional costs incurred by the Provider due to a violation of the above obligations to collaborate and to provide information. Additional remedies and claims to which the Provider is entitled by statute shall remain unaffected by this. In particular the Provider is not responsible for any defects in Performance ensuing as a result of the non-contractual performance by the Customer of the above obligations (also not for any service credits/ contractual penalties). Reference is made to the extension of the agreed delivery dates provided for in sub-sec. 3.4.

9. Term and Termination

- 9.1. If no fixed term has been agreed for services, the contract can be terminated by either party by giving three (3) months' notice to expire at the end of a calendar quarter. The right of termination pursuant to section 627 German Civil Code (BGB) is excluded.
- 9.2. If the Customer terminates a contract for the performance of work in accordance with section 649 BGB, then the Provider may, at its election, assert the claims in accordance with section 649 BGB or demand instead of this, in addition to the remuneration for the work already performed, flat rate compensation of its expenses and of lost profit in an amount of fifty percent (50 %) of the remuneration owed on the work not yet performed on the date of termination. The Customer remains entitled to demonstrate that the amount to which the Provider is entitled pursuant to sec. 649 BGB is lower.
- 9.3. In the event of the Customer's behavior in breach of contract, in particular if the Customer is in default of payment, the Provider has the right, without prejudice to any other contractual and statutory rights, to terminate the contract without notice after expiry of an appropriate period of grace.
- 9.4. 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 (i.) the Customer violates rights of use of the Provider by using the Software or Work Results over and above the scope permitted under these Terms and Conditions and fails to discontinue the violation within a reasonable period of time following a warning by the Provider; (ii.) the Customer is in default of payment and an appropriate time period set has elapsed to no avail; (iii.) the opening of insolvency proceedings or of similar debt settlement proceedings has been applied for with

respect to the Customer's assets; (iv.) the criteria for insolvency or over-indebtedness have been met by the Customer. In the first case (sub-sec. 9.4. i.), the Customer has no entitlement to a refund of the license remuneration already paid. The Provider reserves the right to claim additional damages.

- 9.5. Notice of termination must be given in writing.
- 9.6. Statutory rights and claims shall not be restricted by the provisions contained in secs. 9.2-9.5.

10. Return

When the Customer'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 Customer shall delete or destroy all the data media, copies of the Software including the Backup Copies pursuant to sub-sec. 6.3., Work Results and the Documentation provided for use and confirm this to the Provider in writing upon request. The same shall apply in the event of a replacement being supplied (sub-sec. 6.10.) for the previous Software versions or Work Results. Sub-sec. 6.7. shall apply if the right of use ends because the Software have been transferred.

11. Warranty

- 11.1. When services are provided, the Provider does not assume any responsibility for a specific result of the Performance; this lies solely with the Customer. The Provider does not therefore provide a warranty for legal defects or defects as to quality with respect to Work Results or Software in connection with services, except in the case of intent or fraudulent deceit [*Vorsatz or Arglist*].
- 11.2. The Provider warrants with respect to the Work Results in connection with the performance of work and for the provided Software for use that these have the agreed quality in the respective warranty period.
- 11.3. Only the description provided by the Provider prior to the date of conclusion of the contract or agreed in a separate document (e.g. in the documentation) is authoritative with respect to the quality of the Software and Work Results in connection with a contract for work. The details provided therein are solely to be understood as performance descriptions and not as guarantees.
- 11.4. 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. The Provider is not obliged to provide support services that go beyond liability for defects. Furthermore, the Provider is not obliged to adapt the Software to changes in operating conditions or to technical and functional developments such as changes to the IT environment.
- 11.5. The warranty period for performance of work and for Software under a contract for work amounts to a period of twelve (12) months commencing on the date of acceptance (section 5). If the Software or Work Results are Software or Work Results that are to equip an indefinite/definite number of target hardware devices and/or workplaces, then the warranty period commences on the first date of acceptance of the Work Result or Software under a contract for work, irrespective of when the single software hardware

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combination is delivered to the Customer and accepted by him. In derogation from this the statutory warranty period shall apply insofar as the Provider is liable pursuant to sub-sec. 13.1.

11.6. In particular, the Provider does not provide a warranty for errors in the Software and Work Results,

- a.) Caused by faulty application on the part of the 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. 8.9. which would have avoided data loss;
- b.) Due to virus contamination or to other external influences for which the Provider is not responsible such as fire, accidents, power failure etc.;
- c.) Caused by the Software and Work Results being used in an operating environment which is different from that approved by the Provider or due to faults in the hardware, the operating system or to the software of other manufacturers; or
- d.) Caused by the Software and/or Work Results having been modified by the Customer or third parties without authorization.

11.7. In respect of software products which the Customer or a third party has expanded via an interface designated for this purpose by the Provider, the Provider shall be liable only for defects occurring up to the interface. No warranty is provided for a lack of interoperability of the Software provided for use with the system architecture used by the Customer, in particular with the software and hardware products used by the Customer.

11.8. The Customer is obliged to notify the Provider of defects without undue delay after discovery thereof. In the event of defects as to quality, this shall be done by describing the time when the defects occurred and the more detailed circumstances. If the Provider undertakes an error analysis at the Customer's request and if it transpires that there is no defect which the Provider is obliged to remedy, the Provider has the right to charge the Customer for the expenses incurred based on the respectively applicable hourly rates of the Provider.

11.9. In case of warranty, defects shall be rectified by the Provider within a reasonable period of time (supplementary performance). This shall be done at the election of the Provider by rectifying the defect by means of an Update/ Patch/Bug Fix/Upgrade or by supplying defect-free Software or Work Results or indicating a Workaround, the latter insofar as this is reasonable for the Customer taking account of the impacts of the defect and the circumstances of the Workaround solution indicated. In addition, sec. 13 shall apply to claims for damages for fault-based liability.

12. Third Party Rights

12.1. During the warranty period the Provider warrants, in accordance with the provisions set forth below, that the Work Results under a contract for work and any Software provided for use under a contract for work do not infringe any third-party rights:

- a.) If third parties should bring a claim for an infringement of their rights against the Customer, the Provider shall indemnify the Customer from and against all claims for damages resulting

therefrom established by a final and non-appealable court judgment and for which the 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*]. The Provider shall support the Customer during the judicial and extrajudicial settlement of such disputes with third parties.

- b.) If (i.) a final judgment is returned against the Customer or (ii.) an interim injunction is served on the Customer enjoining the Customer from using the Software or Work Results or at least part of it, the Provider shall, in order to cure the infringement of rights, at its discretion either obtain for the Customer the right to continue to use the Software or Work Results or replace or modify the Software or Work Results whilst upholding the agreed functionalities or, if neither of the alternatives named is realizable by the Provider subject to reasonable conditions, terminate the Customer's rights to the Software or Work Results in writing. Insofar as is reasonable for the Customer, the termination shall only be effected to the extent that is necessary to prevent the infringement of the rights.

12.2. The claims of the Customer under this sec. 12 are subject to the condition that (i.) the Customer advises the Provider without undue delay of the third party claims brought, (ii.) the Customer provides the 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.) the Customer provides the Provider with the information required to defend against the claim and (iv.) the Provider reserves the exclusive right to control the conduct of the lawsuit by the Customer and the right to take the final decision on entering into any judicial and extrajudicial settlements.

12.3. In the event that, in the opinion of the Provider or a third party, the Software or Work Results infringe third party rights, the Provider has the right, at its own discretion taking the interests of the Customer into adequate consideration, to replace or modify the Software or Work Results whilst upholding the agreed functionalities in order to remedy the alleged or presumed infringement of rights.

13. Liability

13.1. The Provider 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 Provider and for damage caused by gross negligence of the statutory representatives or managerial employees [*leitende Angestellte*] of the Provider.

13.2. Without prejudice to the liability under sub-sec. 13.1. the 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 for damage caused by a violation of material contractual obligations through simple negligence and for damage caused by persons engaged in the performance of an obligation of the Provider [*Erfüllungsgehilfen*]. Material obligations are obligations which, when performed, make the proper execution of the contract at all possible and which the Customer

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may regularly rely on compliance with. With respect to liability subject to this sub-sec. 13.2. and taking account of the type and scope of the Performance to be rendered under this contract, the parties agree on a maximum amount of liability of EUR 50,000 per claim, not exceeding, however, a maximum amount of EUR 100,000 per calendar year. If the maximum amount of liability is not reached in one Year of Contract, the maximum amount of liability shall not increase in the following Year of Contract.

- 13.3. Any further liability of the Provider is excluded unless provisions of these Terms and Conditions explicitly state otherwise. In particular, the Provider shall not be liable for damage which the Customer incurs due to a failure to secure data pursuant to sub-sec. 8.9. or for damage caused due to processing or to other changes named in sub-sec. 6.1.
- 13.4. Joint fault by the Customer must be taken into consideration.
- 13.5. The foregoing restrictions of liability shall also apply to the personal liability of the employees, representatives and/or organs of the Provider. They shall also apply to the liability of the Provider with regard to compensation for wasted expenditure and to indemnification obligations.

14. Data Use and Data Protection

- 14.1. 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 and Work Results, 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.
- 14.2. If personal data are processed, 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.

15. Confidentiality

- 15.1. 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.
- 15.2. The obligation of secrecy under sub-sec. 15.1. 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.

16. Export Control

- 16.1. If, prior to supply or provision of the service, 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 withdraw from the contract. Delays due to export examinations or permit procedures shall interrupt the delivery period unless the Provider is responsible for such delays.
- 16.2. 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.
- 16.3. In case of termination pursuant to sec. 16.1. or 16.2., the Customer's right to claim compensation or to claim further rights because of the termination is excluded.
- 16.4. 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.
- 16.5. 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.
- 16.6. The Software and Work Results may not be used for the manufacture or development of rockets, chemical/biological or nuclear weapons.

17. General Provisions

- 17.1. 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.
- 17.2. 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.
- 17.3. 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.
- 17.4. 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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