

Supplementary Terms and Conditions for the Supply of Software of Bosch Rexroth AG (Edition: 2.1.2006)

These Supplementary Terms and Conditions for the Supply of Software shall exclusively apply for the handing over - for a limited period of use or for permanent use - of standard software (hereinafter called "Software") as part or in connection with the supply of the pertaining target hardware. As far as a breach of an obligation or the improper performance of the contract is not caused by the supply of the Software or these Supplementary Terms and Conditions for the Supply of Software do not contain conditions for a case to be solved, the General Terms and Conditions of Supplies and Services of Bosch Rexroth AG as valid from time to time shall apply. General Purchasing Conditions of the customer are herewith expressly rejected.

1. Use of the Software and the Pertaining Documentation

Software within the meaning of these Supplementary Terms and Conditions for the Supply of Software are serially supplied user programmes [from our scope of supply]. The handing over of a documentation is subject to an express written agreement. In case a documentation is handed over the word "Software" comprises in the following also the documentation.

Software supplied by BR is protected by copyright. BR or its licensor are exclusively the owners of all copyrights and rights of exploitation.

The customer of BR acquires upon effecting the consideration a right of use for the Software as mentioned in the contract documents and/or in the order confirmation and/or in the Software product sheet. The scope of the right of use which will be granted to the customer is arising from the respective license type and the respective Software type. The license type and the Software type are set out in the contract documents and/or in the order confirmation and/or in the Software product sheet. The customer is obliged to preserve the documentation of the Software license.

In addition to the foregoing the type, content and scope of the right of use are exclusively subject to the following conditions.

1.1 BR differentiates between:

- Single license: BR grants the customer the non-exclusive right to use the Software at the same time on only one device (target hardware) or at one workplace. This right of use is limited to the agreed period, if there is no such agreement the right of use is for an indefinite period.

- Multiple license: A multiple license comprises the acquisition of a defined number of single licenses as set out in the contract documents and/or the order confirmation and/or the Software product sheet.
- Copy license: A copy license is the express granting of the right to copy the Software in a definite number as set out in the contract documents and/or the order confirmation and/or the Software product sheet and to use the Software on a respective definite number of devices (target hardware) respectively workplaces at the same time. The customer has to observe the handed over application notes for the copying. The customer has to make records in respect of the whereabouts of all copies and to present these records to BR upon request.
- Network license / server license: The network license respectively the server license entitles the customer to install the Software on a network server and to use the Software on a definite number of devices (target hardware) respectively workplaces at the same time.

1.2 The customer may transfer the Software from one device (target hardware) respectively workplace to another device respectively workplace provided the Software can at any time only be used in accordance with the numbers of licenses acquired by the customer. The use of the Software on a network server is only allowed with a network license.

1.3 As far as a Software has been handed over to the customer for which BR has only a derived right of use granted by a third party ("Third Party Software") the rights of use as agreed between BR and the licensor shall apply additionally and in preference to section 1 of these Supplementary Terms and Conditions for the Supply of Software. BR will point out in the contract documents the existence of a Third Party Software and the rights of use agreed with the licensor. In case of an infringement of these rights of use by the customer, beside BR the licensor is also entitled to enforce its claims and rights deriving from the infringement in its own name.

1.4 BR grants the customer the - for good reasons - revocable right to transfer the rights of use granted to him to a third party if the customer abandons to use the Software. If the Software has been acquired with a device, the Software may only be transferred to a third party for use together with this device. In case of multiple licenses and copy licenses this applies with the restriction that these licenses may only be transferred from the customer to third parties, if they will be handed over in total with all devices (target hardware) which are destined to be used with the Software. The customer has to ensure that the third party will not be granted further rights of use in respect of the Software than the customer has acquired under this contract; the customer has also to ensure that the third party will be imposed with at least the obligations deriving from this agreement concerning the Software. In case of the transfer of the right of use to a third party, the customer is obliged to hand over to the third party all copies supplied to the customer or made by the customer or to destroy all copies. The customer is not entitled to grant sublicenses. In case the customer transfers his right of use for the Software,

he has also to hand over to the third party the contract documents / the order confirmation / the Software product sheet.

- 1.5 The customer commits himself not to modify, to translate, to decompile or to disassemble the Software or parts thereof or to create other software derived from the Software or to expel parts of the Software. The customer must not remove alphanumeric codes from the data medium; in case the customer is entitled to duplication, the customer has to duplicate them unchanged. The customer may only decompile the Software subject to section 69 e Urheberrechtsgesetz (German Copyright Law) and under the condition that BR does not make available to the customer within a reasonable period of time set in writing, the necessary information for the interoperability of the Software with the customer's computer programmes.
- 1.6 The Software will be put into operation by the customer. Upon customer's request BR will give him support subject to an additional payment.
- 1.7 As far as there is no copy protection installed on the Software or the customer did not acquire a copy license, the customer is entitled to make a back up copy which must be used by the customer exclusively for security reasons. A copyright notice and a registration code installed on the Software must not be removed.
- 1.8 The handing over of the Software will be effected exclusively in a machine readable form (object code).
- 1.9 In case of the handing over of the Software via electronic media (e.g. Internet) the passing of risk takes place when the Software is leaving the area (e.g. during downloading) influenced by BR.

2. Defects of Quality

- 2.1 It is accepted that it is impossible to develop software working without any fault under all kinds of use and combinations. Therefore the operation and the function of the Software are subject to BR's Software descriptions at the time of concluding the contract. Further functions not expressly set out in BR's Software descriptions, e.g. the development of individual software or the adjustment of software products as well as guarantees or specific performances have to be expressly agreed upon in writing. The customer is responsible for the correct choice of the Software and the consequences of the use of the Software and the results intended or achieved by the Software. Only reproducible deviations from the product description proved by the customer shall be deemed to be defects of the Software. The Software shall not be deemed to be defective if the defect does not occur in the last version of the Software handed over to the customer and the use of this version by the customer is reasonable.
- 2.2 For a Software modified by the customer or a third party at an interface installed by BR, the warranty of BR ends at that interface. BR is under no obligation that the Software supplied is working with the data processing environment of the customer, especially that the Software is compatible with the customer's software and hardware products.

- 2.3 The customer has to undertake all reasonable measures to prevent or minimize consequences of defects of the Software. Notices of defects according to sections 377 and 381 paragraph 2 Handelsgesetzbuch (German Commercial Code) have to be made in writing without delay and as far as possible with a detailed description of the defect and the respective data processing environment. The customer has to make available to BR the documentation of the notice of the defect about the kind and the appearance of deviations from the specification of the Software with documents, which can be checked by BR; the customer has to cooperate with BR in sorting out the defect. The customer has to take care of securing programmes and data entered and to be processed in regular intervals. If the customer is in default with this obligation, BR is not liable for consequences deriving from this default, especially BR is not liable for the replacement of lost or damaged data or programmes. The foregoing does not alter the statutory provisions for the burden of proof.
- 2.4 Warranty claims become time-barred within 12 months. This period shall not apply in case section 438 paragraph 1 number 2 (buildings and things for buildings) and section 634 a (defects of buildings) BGB (German Civil Code) prescribe longer periods. The warranty period starts upon putting into operation / installing the Software, however, in any case at the latest 6 months after delivery or notice of readiness for despatch ex BR's works.
- 2.5 In case of defects of the Software within the warranty period, which affect not only insignificantly the value or the fitness of the Software, BR will examine the defects and, if the defects fall under BR's warranty obligation, BR will at its discretion remedy the defect or replace the defective Software by a new one. The remedy of defects in a programme consists either of demonstrating a by-pass of the defect which can be reasonably accepted by the customer or by the supply of a new revision (Update). Alternatively BR is free to supply a new Version (Upgrade). In case the customer does not grant BR the accessibility to the licensed material in order to fulfil the a.m. warranty obligation or the customer does not insert the Updates or Upgrades supplied by BR into the user environment, the warranty obligation of BR shall be deemed to be fulfilled. In case the remedy of a defect by replacement is unsuccessful despite several attempts, the customer is entitled to a proportionate reduction of the contract price or to a cancellation of the contract.
- 2.6 Claims of the customer due to the remedy of a defect, especially cost for transportation, labour and material are excluded as far as these cost are increased because the Software has been transported to another place as the customer's place of business, except the transportation of the Software to another place is appropriate under consideration of the normal use of the Software.
- 2.7 Further claims, especially claims for damages concerning other items than the Software, e.g. loss of data or faults in processing data, are excluded subject to section 4 below.

3. Defects in Rights

If not agreed otherwise, BR is only obliged to secure that the delivery of the Software in the country of the place of supply is free from industrial property rights and copyrights (hereinafter called "property rights") of third parties. In case a third party is asserting a claim against the customer in respect of an infringement of property rights by the Software used in accordance with the contract, BR is liable towards the customer in case of Software handed over for an indefinite period within the periods set out under section 2.4, in case of Software handed over for a limited period within the statutory period of limitation, as follows:

- 3.1 BR is entitled at its choice and at its cost to acquire either a right of use for the respective Software, or to modify the Software in such a way that there is no breach of third party property rights or to replace the Software. In so far section 2. shall apply accordingly. The liability of BR for damages is subject to section 4.
- 3.2. The obligations of BR as set out above do only exist, if the customer is informing BR of the claims asserted by third parties without delay in writing, if the customer does not acknowledge any breaches of third parties property rights and all defence activities and negotiations for a compromise are reserved for BR. In case the customer abandons the use of the Software for reduction of damages or other important reasons, the customer is obliged to point out to the third party, that the abandonment of use does not mean an acknowledgement of a breach of a third party property right.
- 3.3. Claims of the customer are excluded, if the customer is responsible for the breach of the third party property right, or the breach of the third party property right is caused by specific instructions of the customer, or a use of the Software by the customer not foreseeable by BR, or a modification of the Software made by the customer, or the use of the Software by the customer together with a hardware not supplied by BR.
- 3.4. In case of other defects in rights section 2. shall apply accordingly.

4. Liability

Unless otherwise stated in these Supplementary Terms and Conditions for the Supply of Software BR is only liable for damages and compensation of useless expenses within the meaning of section 284 BGB (German Civil Code), hereinafter called "damages", due to breach of contractual or extra-contractual obligations caused by intent or gross negligence of statutory representatives or of employees of BR or in case of death, bodily injury or injury of health or the assumption of a guarantee or the risk of purchasing, or breach of essential contractual obligations or compulsive liability under the Produkthaftungsgesetz (German Product Liability Law) or other compulsive liability. The compensation of damages for the breach of essential contractual obligations is limited to the typical foreseeable damage under the contract, unless the damage is caused by intent or gross negligence of statutory representatives or of employees of BR or in case of death, bodily injury or injury of health or the assumption of

a guarantee or the risk of purchasing. The a.m. provisions do not alter the statutory provisions for the burden proof to the detriment of the customer.

5. Termination

- 5.1 The right to use the Software terminates automatically without a notice of termination, if the customer is in breach of any essential provision of these Supplementary Terms and Conditions for the Supply of Software.
- 5.2 Upon termination of the contract the customer is obliged to return or to de-story all originals and duplications and part-duplications of the supplied Software and the pertaining documentation, and to confirm this in writing.

6. Export Restrictions

- 6.1 The export of the Software and the documentation may - e.g. due to its kind or its use - be subject to the consent of state authorities (see also our respective notices in order data, delivery sheets and invoices).
- 6.2 In case the customer is transferring the Software, the customer is responsible for the observance of export restrictions due to laws or orders of state authorities and the customer has to exempt and to hold harmless BR from the respective obligations.
- 6.3 In case of non-compliance with the a.m. provisions by the customer, BR is entitled to damages and to cancel currant contracts.

7. Other conditions

- 7.1 Place of jurisdiction is, at BR's discretion, the seat of the court competent for the seat of BR or for the seat of BR's works executing the order in case the customer is a merchant or he has no seat within the Federal Republic of Germany. BR is also entitled to sue the customer before the courts competent for his seat or his place of business.
- 7.2 The contract is subject to the laws of the Federal Republic of Germany. The German laws of conflict do not apply as far as these laws refer to foreign laws. The Haag Uniform Laws and the United Nations Convention on Contracts for the International Sale of Goods or any other conventions for the sale of goods do also not apply.
- 7.3 If, notwithstanding section 7.2, in case of contracts with customers in other countries, provisions of these Supplementary Terms and Conditions for the Supply of Software are invalid due to provisions of laws of the customers' countries, instead of these invalid provisions such valid provisions shall be deemed to be agreed upon, the meaning of which comes as close as possible to the meaning of the invalid provisions. If necessary, the customer is obliged to undertake all measures to achieve this target.