

# General Terms and Conditions of Delivery and Services of Bosch Rexroth GmbH

## 1. General Provisions

1.1 These Terms and Conditions shall govern our deliveries and services to the exclusion of any other terms and conditions opposing or deviating from our Terms and Conditions unless we have expressly approved the application thereof in writing. In addition, separate service conditions shall apply to assembly and repair work, and separate software license terms and conditions for the licensing of software shall apply for software supplied by us, even if the software is part of goods supplied by us.

1.2 Verbal agreements shall not be effective unless confirmed by us in writing prior to or at the time of the contract conclusion.

1.3 Offers are non-binding and subject to change, and are made subject to punctual delivery to us by our sub-suppliers where we offer components manufactured by third parties.

1.4 Unless otherwise stated in the order, the customer is bound by its offer for the duration of three weeks.

1.5 The order shall be deemed to be accepted by us when we issue a written acceptance of the order or supply the goods or perform the services, whichever takes place earlier, at which point the contract comes into existence.

1.6 Cost estimates are not binding and subject to change except as otherwise expressly agreed. Measurements, packaging measurement, weights, illustrations, simulation results and drawings are only binding for the construction of the goods if this has been expressly confirmed in writing and remain our intellectual property at all times. Any use, duplication, reproduction, distribution and delivery to third parties, publication, and demonstration requires our express written consent.

1.7 The information contained in our price lists, catalogues, and other advertising materials does not constitute an offer and does not contain any information that determines the scope of our performance within the meaning of Section 922 (2) ABGB, unless otherwise agreed in writing.

1.8 Our contractual partner is the person who submits the order, unless this person discloses to be acting on behalf of a third party and, at the same time, provides us with the contact details of the third party including billing address. If the person who submits the order cannot prove the existence of a power of attorney, this person is liable for all costs and claims arising in connection with the order.

1.9 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into force of a new version of our terms and conditions of delivery.

## 2. Prices

2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus value-added tax. Value-added tax will be charged except where the conditions for an exemption such tax have been met.

2.2 In the absence of any special agreement, prices shall be deemed to be FCA dispatch place at the delivering plant (Incoterms® 2020) excluding costs of packaging.

2.3 We reserve the right to adjust our prices accordingly in the event of cost reductions or increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective agreements, or changes in the material prices. Upon request, we shall evidence such changes to the customer.

2.4 Spare parts and goods which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus the charge for the service rendered by us, except where this is covered by warranty.

2.5 Services, in particular installation, maintenance and repair work, as well as training will be charged at our hourly rates.

## 3. Delivery, Delivery Dates, Default

3.1 Commencement of delivery periods and compliance with agreed delivery dates are conditional upon the customer's performance of its collaboration duties, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and compliance with agreed payment terms (including effecting agreed down-payments or opening a letter of credit). If these conditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.

3.2 In the event of a change of order, the delivery period shall begin anew upon confirmation of such change by us.

3.3 If non-compliance with the delivery periods is due to force majeure or to other disruptions for which we are not accountable, e.g. war, terrorist attacks and acts, riots, epidemics, pandemics, natural disasters, extreme natural phenomena, import and export restrictions, limitations in energy supply, governmental measures or official directives, including those affecting sub-suppliers, the agreed delivery periods shall be extended by the period of time of the disturbance. This also applies to industrial disputes affecting either us or our suppliers.

3.4 Delays in delivery do not entitle the customer to any claims, regardless of their legal nature.

3.5 If a customer is in default of acceptance, or if a customer culpably violates its collaboration duties, we have the right to claim compensation for the damage incurred by us in this respect, including further additional expenditure, in an amount of 0.5 % of the product price for each month or part thereof up to a maximum of 5 % of the product price. The contracting parties reserve the right to prove higher or lower costs of additional expenditure. The right to raise further claims on account of default of acceptance shall remain unaffected hereby.

3.6 We may deliver the goods in instalments and issue corresponding invoices unless this is unreasonable for the customer.

## 4. Transfer of Risk

4.1 Delivery is effected FCA dispatch place at the delivering plant (Incoterms® 2020) except as expressly otherwise agreed in writing.

4.2 The choice of the type of delivery and the shipping route shall be at our discretion; this without any liability on our part to choose the cheapest or fastest type of delivery.

4.3 Transports shall take place at the risk and expense of the customer, even in case of deliveries in instalments.

4.4 For goods that are unloaded on site or are delivered at our expense, the risk shall pass to the customer at the time of hand-over to the carrier.

4.5 At the customer's request and cost, we shall insure shipments against customary transport risks.

4.6 The place of performance shall be Linz, irrespective of where the actual delivery or service is performed.

## 5. Complaints and Notification of Defects

5.1 The customer must notify us in writing of any recognisable defects immediately after receipt of the goods, . Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. Any hidden defects must be notified by the customer in writing immediately after discovery thereof.

5.2 Transport damage or shortages must be notified to us in writing within 24 hours after receipt of the goods, specifying the nature and extent of the damage, the number of the defective or missing goods and the specific product

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description.

5.3 The date of receipt by us of the notification of a defect shall determine whether or not notification is in good time.

5.4 If the notification of a defect is unfounded, we shall be entitled to claim compensation from the customer for any expenses we have incurred unless the customer can prove that it is not at fault regarding the unjustified notification of a defect.

5.5 Notifications of defects do not entitle the customer to partially or fully suspend its payment obligation.

5.6 Warranty claims, avoidance of the contract on the grounds of error and claims for damages shall be excluded if the notification of defects, transport damages or shortages is not received in good time.

## 6. Taking Delivery

The customer must not refuse to take delivery for minor defects.

## 7. Warranty

7.1 Warranty claims with respect to movable or immovable goods shall become time-barred after a period of six (6) months, unless a longer limitation period is mandatory by statute.

7.2 The limitation period for defects commences as follows:

i) in case of products for vehicle and engine equipment on the date when the product is put into use, i.e. in case of original equipment on the date of first registration of the vehicle, and in all other cases upon installation, but no later than 6 months after delivery of the goods (date of transfer of risk);

ii) in all other cases upon delivery of the goods (date of transfer of risk).

7.3 In case of partial deliveries, the warranty period begins upon delivery of the respective instalment.

7.4 We must be granted the possibility of examining notified defects and recognizing the condition as defective. The presumption of defectiveness according to Section 924 ABGB shall be excluded. If a defect arises during the warranty period and the cause of such defect already existed on the date of transfer of risk, we may, as primary means of warranty at our discretion, either remedy the defect or deliver a non-defective product. The defective product has to be sent for repair either to us or to the nearest customer service unit as determined by us for the respective product.

7.5 The limitation period shall be interrupted for the period of time necessary for conducting the primary means of warranty. The limitation period shall neither start anew as a result of the completion of the remedy of the defect, nor shall it extend in any other way.

7.6 In the event the primary means of warranty fail, the customer shall be entitled to - without prejudice to any claims to damages - rescind the contract or demand a reduction of the amount of payment in accordance with statutory provisions.

7.7 Claims by the customer for costs arising for the purpose of the primary means of warranty, in particular costs of transport, transportation, labour and materials, shall be excluded.

7.8 Warranty claims shall be excluded in case of inconsiderable deviations from the quality agreed upon, or in case of only minor impairment to the use of the product. Further rights shall remain unaffected hereby.

7.9 The following shall not be deemed to be defects:

- ordinary wear and tear;
- defects and conditions of the goods caused after the transfer of risk due to improper handling, storage or erection, non-compliance with installation and handling instructions or to excessive working conditions or use,

improper operational means, commissioning or maintenance;

- defects and conditions of the goods caused by force majeure or special external circumstances not provided for under the terms of the contract, or due to the use of the product beyond normal use or the use provided for under the terms of the contract;

- not reproducible software errors.

- alterations of the goods by the customer or any other party, unless the defect is not caused by this alteration;

7.10 Warranty claims shall be excluded if the goods have been modified - by a third party; or

- by installing parts not originating from or approved by us; or

- by repairing the goods without our consent; unless the defect is not caused by the modification.

We shall not be liable for defects resulting from the design or choice of material as instructed by the customer, and we shall be under no obligation to warn the customer in this regard.

7.12 Information, data and drawing samples included in general information or general instructions are for informational purposes only and shall not constitute any representation or assurance of specific properties of the goods.

7.13 The customer shall only have a right of recourse against us in the event of hidden defects and only to the extent that the customer has not entered into any agreements with its customer that go beyond the statutory warranty claims, e.g. goodwill agreements. In addition, the customer's right of recourse (pursuant to Section 933b ABGB) shall be limited to 30 months from the date of delivery of the goods to the customer.

7.14 The customer shall give us or any third party engaged by us to perform our warranty obligation sufficient time and the possibility to carry out the warranty work. The customer may only carry out such work itself upon our prior consent or if Section 932 ABGB applies. We shall bear the costs for such work to an extent that must be in a reasonable proportion to the value of the product in a non-defective condition, the significance of the defect and/or the possibility of obtaining warranty by an alternative method; any costs in excess of this shall be borne by the customer.

7.15 In case of unwarranted claims, especially where goods are replaced or the customer rescinds the contract, we shall be entitled to charge the customer a reasonable usage fee as well as compensation for the diminished value of the product, however at least 25% of the agreed net payment.

7.16 In all other respects, our obligation to pay damages and to compensate for frustrated expenditures caused by defects shall be governed by clause 9.. Any further-reaching or other claims than those covered by this clause 7 with respect to defects caused by fault shall be excluded.

7.17 The provisions of this clause 7 shall apply mutatis mutandis to defects of title provided they are not caused by the infringement of third party intellectual property rights.

## 8. Intellectual Property Rights and Copyright

8.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyrights (the "Intellectual Property Right") if the Intellectual Property Right is or was owned by the customer or by a company in which the customer holds, directly or indirectly, a majority of the shares or voting rights.

8.2 The customer must notify us immediately of any actual or alleged infringements of Intellectual Property Rights and of risks thereof and shall, where possible at our request -give us the sole authority to avoid, dispute,

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compromise or defend the claim (both judicial and extra-judicial proceedings). The customer must, at our request, provide us with reasonable support and give access to any relevant documents and records.

8.3 We are entitled, at our discretion, to obtain a right of use for a product infringing an Intellectual Property Right, to modify it so that it no longer infringes the Intellectual Property Right or to replace it by an equivalent substitute that no longer infringes the Intellectual Property Right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall be entitled to the statutory rights of rescission if the customer allowed us to carry out a modification. Subject to the aforementioned preconditions, we too shall have a right of rescission. Clause 7.12 shall apply accordingly. We reserve the right to carry out the measures as set forth in this clause 8.3, 1<sup>st</sup> sentence even if the infringement of the Intellectual Property Right has not been finally determined by a court of law or recognised by us.

8.4 Claims by the customer are excluded to the extent the customer is responsible for the infringement of the Intellectual Property Right or if the customer has not supported us to a reasonable extent in the defence against claims by third parties.

8.5 Claims by the customer are also excluded if the goods were manufactured in accordance with the specifications or instructions of the customer, or if the (alleged) infringement of the Intellectual Property Right ensues from the use in conjunction with another product not delivered or manufactured by us, or if the goods are used in a manner which we were unable to foresee. The customer shall indemnify us against any and all (alleged) third party claims arising from infringement of Intellectual Property Rights.

8.6 Our obligation to pay damages in case of infringements of Intellectual Property Rights is governed by clause 9 in all other respects.

8.7 Clauses 7.1 and 7.2 apply mutatis mutandis to the limitation period for claims based on infringements of Intellectual Property Rights.

8.8 Further reaching claims or claims other than those claims of the customer governed by this clause 8 for infringement of third party Intellectual Property Rights are excluded.

## 9. Claims to Damages

9.1 We shall only be liable to pay damages and compensation of frustrated expenditure (the “**Damages**”) for a breach of contractual and non-contractual obligations in case of

- (i) any wilful act or severe gross negligence,
- (ii) negligent or wilful injury to life, personal injury or injury to health,
- (iii) the acceptance of a guarantee,
- (iv) mandatory statutory liability pursuant to the Austrian Product Liability Act (Produkthaftungsgesetz); or
- (v) any other cases of mandatory legal liability.

9.2 The customer hereby expressly waives the assertion of claims for damages to property based on the Product Liability Act. If the customer resells the contractual goods to other businesses, the customer shall also procure for them and possible further contract partners to agree to such waiver. If the customer fails to procure for such waivers in the contractual chain, the customer itself shall indemnify and keep us indemnified, and shall bear all costs arising in connection with such claims. If the customer is held liable for a claim under the Product Liability Act, it hereby waives any recourse to us.

9.3 Damage claims for breach of material contractual duties shall be limited to foreseeable damages that are typical for the type of contract, except in the event of injury

to life, personal injury or injury to health, or in the event that we have accepted a guarantee. In no event shall we be liable for consequential damages, financial damage or loss of profit.

9.4 In case the customer asserts a claim for damages against us, it shall bear the onus of proof regarding causation and culpability.

9.5 Liability for damages exceeding the liability as provided for in clause 9 is excluded irrespective of the legal nature of the claim. This applies in particular to claims for damages arising from *culpa in contrahendo* (fault arising in conclusion of a contract), for other breaches of contractual obligations and to tort claims for compensation of property damage pursuant to Sec 1293 et seqq. ABGB.

9.6 Any exclusion of our liability shall also apply to the personal liability for damages of our employees, representatives and of persons contracted by us for the performance of our obligations.

## 10. Retention of Title and Right of Retention

10.1 We retain ownership of the delivered goods until receipt of full payment of all outstanding claims for the delivery of goods, regardless of their legal grounds.

10.2 If the goods for which we have retained title require maintenance work or inspection, the customer shall perform such at its own costs.

10.3 The customer is entitled to process our goods or connect them with other products within the customer's ordinary course of business. We shall acquire co-ownership in the products created as a result of such processing or connection as a security of our claims set forth in clause 10.1 above, and the customer hereby transfers co-ownership to us. As an ancillary contractual obligation, the customer shall store the goods to which we have retained title free of charge. The amount of our co-ownership share shall be determined by the ratio between the value of our goods (invoiced amount plus VAT) and the value of the product created by processing or connection at the time of such processing or connection.

10.4 The customer shall be entitled to sell the goods in its ordinary course of business against cash payment or subject to the customer retaining ownership of the goods. The customer hereby assigns to us all claims, including ancillary rights, arising or to arise from the resale in full, or, in case of co-ownership, in the amount equivalent to our co-ownership share. The customer shall record the assignment accordingly in its books or on its invoices (in case of an IT accounting system, a note must also be made in the 'open item list'). The assigned claims shall secure our claims as set forth in clause 10.1 above. The customer is entitled to enforce the assigned claims as long as the customer meets its payment obligations towards us. If the customer is in default of payment, it must immediately inform us in writing to whom he has sold the goods owned or co-owned by us, and what claims he is entitled to from the resale. The customer must notify the respective debtors of the assignment and shall, at his cost, provide us with all documents on the assignment of the claims. The customer is not entitled to any other disposal of the goods co-owned by us or subject to retention of title or of the claims assigned to us.

10.5 At our request, the customer must advise us forthwith in writing of the customers to which it has sold the goods owned or co-owned by us and of the claims resulting from such resale.

10.6 The customer is not entitled to dispose of the

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goods co-owned by us or subject to retention of title. The customer must inform us without delay of any seizure or other impairment of rights with respect to the goods co-owned by us or subject to retention of title. The customer shall bear all costs incurred for terminating any third party access to the goods and for recovering of the same provided the goods cannot be seized by third parties.

10.7 Should the customer be in default of payment or culpably in breach of any other essential contractual obligation, we shall be entitled to demand payment of the entire outstanding debt. Irrespective of the agreement of a later due date for individual invoices or a bill of exchange, we shall be entitled, to the exclusion of any rights of retention of the customer, to reclaim possession of goods that are subject to retention of title. In the event we assert our right of retention, the customer shall grant us or our representatives immediate access to the goods under retention of title and shall surrender them. Notwithstanding any other mandatory legal provisions, the assertion of our right of retention shall only constitute a rescission of the contract if we expressly declare in writing that the contract is being rescinded.

10.8 After the return of goods, it is within our discretion either to sell the goods and subtract the sales proceeds from the customer's outstanding obligations or to take the goods back at the price originally invoiced to the customer minus any depreciation in value, and to charge the customer an appropriate remuneration for the use of these goods which shall be at least 25% of the purchase price.

10.9 The customer undertakes to insure all goods that are still in our ownership against all risks and shall produce proof of such insurance at our request.

10.10 We shall be entitled to withhold any goods that were handed over to us for repair until the settlement of all outstanding claims, and also for securing claims from other transactions. The customer hereby releases us from the obligation to perform any work within our warranty obligations for as long as the customer is in default of payment.

10.11 The customer shall have no right of retention of any legal nature.

## 11. Rescission

11.1 Notwithstanding any other contractual or statutory rights, if the customer is in breach of contract, in particular in case of default of payment, we have the right, following expiry of a reasonable extended deadline, to rescind the contract.

11.2 We are entitled to rescind the contract without setting an extended deadline if:

- (i) the customer's financial position deteriorates materially or threatens to deteriorate and, as a result, the performance of a payment obligation to us is jeopardized,
- (ii) the customer suspends its payments;
- (iii) the customer is insolvent or over-indebted.

11.3 We are also entitled to rescind the contract with immediate effect if such rescission is necessary for us in order to comply with national or international legal provisions (in particular, but not limited to, applicable export control laws).

11.4 In the event of rescission pursuant to clause 11, the customer shall not be entitled to any claims for damage or to any other rights or remedies as a result of the termination.

11.4 The rights and remedies provided under this clause 11 are in addition to, and not exclusive of, any rights or remedies provided by law.

11.5 In the event that we rescind the contract pursuant to clauses 11.1 or 11.2, we are entitled to a cancellation fee in the amount of 25% of the total purchase price as well as a claim for damages that exceed this amount.

## 12. Export Control Clause

12.1 Deliveries and services (contractual performance) shall be subject to any restrictions concerning the performance due to national or international export control regulations, in particular embargos or other sanctions. When exporting purchased goods, the customer undertakes to obtain the necessary export and customs permits and the like, and shall bear all costs in this regard. The originals of all export and customs papers and the like must be returned to us. The customer shall indemnify us against any and all costs which may arise from shipping- or customs duties. Delays due to export examinations or approval procedures render deadlines and delivery dates inapplicable. If necessary approvals are not granted or if the delivery and service are not capable of being approved, the contract shall be considered not concluded with respect to the parts affected.

12.2 When passing on the goods delivered by us (hardware and/or software and/or technology including the respective documentation, irrespective of the manner in which they are made available) or the work and services performed by us (including technical support of all kinds) to third parties in Austria and abroad, the customer must comply with the respectively applicable provisions of national and international (re-) export control law.

12.3 We shall not be liable for the legal admissibility of the export of the goods and the compliance with legal and technical provisions of the country of importation. Furthermore, we shall not be liable for compliance of the goods with the technical standard in the country of importation.

## 13. Confidentiality

13.1 All of the business and technical information which we directly or indirectly disclose (including characteristics that can be deduced from goods or software delivered, as well as other knowledge or experience) shall be kept secret and confidential insofar and as long as such information is not proven to be public knowledge, or determined by us to be resold to third parties by the customer. Confidential information may only be made available to those persons within the customer's own operation who have a need to be included in the use thereof and who are also committed to confidentiality; the information shall remain our exclusive property. Without our prior written consent, such information shall not be duplicated or commercially used. At our request at any time, the customer shall return or destroy immediately all confidential information (including, if applicable, any copies or duplicates prepared) as well as goods made available on loan.

13.2 The confidentiality obligation as set forth in clause 13.1 shall not apply to information that (i) was lawfully in the customer's possession before the information was disclosed by us; (ii) was, is, or becomes available to the customer on a non-confidential basis from a person who is not under any confidentiality obligation in respect of that information; (iii) is disclosed by us to third parties without any imposed confidentiality obligations; (iv) is developed by the customer independently of the information disclosed by us; (v) must be disclosed in accordance with law; or (vi) is disclosed by the customer with our prior written consent.

13.3 We reserve all rights to the information mentioned in clause 13.1 above (including copyright and the right to file applications for intellectual property rights such as patents, utility models, semiconductor protection etc.).

## 14. Payment Terms

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14.1 Except as otherwise agreed in writing, payment shall be effected within 30 days of the invoice date without any deductions whatsoever. We shall be entitled to make delivery conditional upon contemporaneous payment (for instance cash on delivery or bank direct debiting service) or on pre-payment.

14.2 We are entitled to offset payments made against the oldest claim due, even if dedicated otherwise.

14.3 In case of delayed payment we are entitled to charge default interest at 8 percentage points above the base interest rate, but at least 12 % p.a. We reserve the right claim further damage.

14.4 Payment by bill of exchange is only admissible following prior written agreement with us. We only accept bills of exchange and cheques by way of provisional performance but in no case instead of performance, and they shall not be deemed to constitute payment until honoured. The costs of redeeming a bill of exchange or cheque shall be borne by the customer.

14.5 If the customer is in arrears with payment, we shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and undisputed. Furthermore, we are entitled to request advance payment or provision of a security for outstanding deliveries. This right shall not be waived by a deferral of payment or by the acceptance of bills of exchange or cheques.

14.6 The customer shall only have the right to offset counterclaims insofar as the customer's counterclaims are undisputed or legally determined by a court of law.

14.7 The customer shall only be entitled to withhold payments to the extent that its counterclaims are acknowledged by us or legally determined by a court of law.

14.8 The customer is obliged to bear our expenses for written reminders in the amount of up to EUR 20,00 per reminder plus VAT, and to bear the expenses of any creditor protection association and any reasonable legal fees.

## 15. Miscellaneous

15.1 If one of the provisions of these Terms and Conditions and any further agreements should be or become ineffective, this shall not affect the validity of the other provisions of the Terms and Conditions. The parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.2 Amendments or additions to the contract including these Terms and Conditions must be in writing in order to be effective; email shall be sufficient. This also applies to the deviation from the written form.

15.3 The customer shall in no event be entitled to challenge or rescind the contract on the grounds of mistake.

15.4 The exclusive place of jurisdiction for any legal disputes arising between us and the customer shall be a competent court in Linz. We are also entitled to take legal action at any other court where a legal venue of the customer exists.

15.5 All legal relationships between us and the customer shall be exclusively governed by and construed in accordance with the laws of the Republic of Austria excluding the rules on the conflict of laws and the United Nations Convention on the International Sale of Goods (CISG).

15.6 We process the customer's personal data which the customer disclosed to us in the course of entering into the respective contract for the purposes of performance of the contract as well as advertising our products to the customer; the legal basis is Article 6 (1) (b) and (f) of the General Data Protection Regulation. The legitimate interest we pursue is the advertising of our products to the customer. For further information on the processing of personal data,

please refer to our website at <https://www.boschrexroth.com/de/at/home/datenschutz>.

Dated: March 2021