

Terms and Conditions of Sale

Systems and Engineering

1. Definitions

"Acceptance Tests" means (unless otherwise agreed in writing) the standard tests (identified in Rexroth's quotation) carried out by Rexroth at the place of manufacture during normal working hours.

"Change Control" means the process set out in Clause 3 Procedure.

"Change Order" means a purchase order form or other instruction from Rexroth which contains or incorporates the terms of any agreed change as described in Clause 3.

"Change Transmittal Confirmations" means Rexroth's acceptance, or counter-proposal, to a request for change or series of changes proposed by the Customer, in accordance with Clause 3 of these Terms.

"Commissioning" means the process by which any Products that are installed, or are complete or near completion are tested to verify if they function according to the commissioning terms recorded in the Specification.

"Contract" means a contract formed on the basis of Rexroth's Order Acknowledgment, following acceptance of the Customer's order for the sale and purchase of Products.

"Data Sheet" means the technical description of Goods as normally supplied by Rexroth and their standard components and capabilities.

"Deliverables" means all ancillary documentation relating to Goods, including without limitation drawings, manuals, certificates and schedules.

"Documentation" means all the information necessary to be able to work with the Software in accordance with the designated purpose.

"Engineering Software": Software with which certain Products can be selected, calculated, dimensioned and/or configured and/or a toolbox comprising Software components and development environment to support the Customer when creating/changing software.

"FCA" means that Rexroth places the Goods at the disposal of the Customer at the premises of Rexroth or another named place not cleared for export and not loaded on any collecting vehicle (INCOTERMS 2020).

"Force Majeure" means any act of God, fire, explosion, flood, earthquakes, epidemic or pandemic, war, riots, acts of terrorism, acts of Government or public authority (including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent), sabotage, civil commotion, strikes and industrial action (but excluding strikes or industrial action solely by the parties' own employees), defects or delays in deliveries by subcontractors caused by any of the foregoing and any other circumstances beyond a party's reasonable control.

"Goods" means machinery, equipment, hardware, material and plant and excludes Deliverables. Where applicable, such machinery, equipment, hardware, material and plant may be partially complete or form part of the Customer's order.

"Installation" means those installation requirements agreed between Rexroth and the Customer and recorded in the Specification.

"Licence Type" determines the scope of the Software use and the number of users. Rexroth distinguishes between the following Licence Types:

(a) Single/work station license: the Software may be used on one single Target Hardware device.

(b) Volume/multiple/multi license: a specific number of individual licenses.

(c) Network/server/copy or floating license: the Software may be installed on a network server and/or on any number of Target Hardware devices incorporated into the local network. In this case the Software may only be used simultaneously on a certain number of Target Hardware devices and/or workstations.

(d) Corporate license: the Software may be used at the agreed establishments of the Customer's undertaking.

"Products" means the Goods and/or Software;

"Non-Binding Submission" means a non-binding Rexroth estimate, proposal or quotation set out in Clause 2(c).

"order" means the Customer's delivery of an order for Products and/or services following receipt of Rexroth's estimate, quotation or proposal.

"Order Acknowledgement" means Rexroth setting out the terms and conditions of the Contract, including the Products' and/or services Specification, following acceptance of the Customer's order.

"Rexroth" means Bosch Rexroth Limited.

"Rexroth Change Notification" means notification by Rexroth to the Customer of any change to the Contract that Rexroth considers necessary."

"Shortfall in Licence Cover" means the use of the Software means beyond the agreed right of use.

"Software" means either stand-alone software contained in the scope of delivery from Rexroth or software flashed onto Goods or Target Hardware including but not limited to all operating systems, applications programmes, compilers, utilities and other programmes supplied under the Contract.

"Specification(s)" means technical, functional or product specification(s) (including any performance criteria drawings or description of features) agreed and submitted by Rexroth and if none are so expressly agreed as detailed in any Data Sheets or Documentation submitted by Rexroth.

"Terms" means these terms and conditions.

"Target Hardware" means Goods or a customer device on which the Software is installed.

2. Basis of supply of Products to Customers & Contract formation

(a) Products supplied by Rexroth are sold subject to these Terms which apply to the exclusion of all other terms whether express, implied by law or otherwise (including any terms printed on the Customer's order forms, in correspondence or implied by trade, custom, practice or course of dealing) unless expressly agreed to in writing by Rexroth. All references in these Terms to "written agreement" by Rexroth shall mean agreement in writing signed by a duly authorized representative(s) of Rexroth; no other employee or representative of Rexroth is authorised to agree to any variation or concession of these Terms, nor to make any representation regarding the Product



- (b) No estimate, quotation or proposal issued by Rexroth to the Customer shall be deemed an offer which is capable of acceptance by the Customer to form a contract. Any order for Products placed by the Customer, whether such order is placed following Rexroth's issuance of an estimate, quotation, proposal or otherwise, shall in each case be deemed to be placed on these Terms and will constitute an offer by the Customer which Rexroth may accept or reject. Rexroth may accept the Customer's order by issuing an Order Acknowledgement to the Customer. If Rexroth does not accept the Customer's order, Rexroth may issue a counter-offer to the Customer in writing. The Customer's acceptance of Rexroth's counter-offer will form a Contract once Rexroth has issued a subsequent Order Acknowledgment. In each instance, binding Contract(s) between Rexroth and the Customer shall be formed solely on the basis of an Order Acknowledgment and these Terms.
- (c) A speculative estimate, quotation or proposal issued by Rexroth to the Customer marked as 'Non-Binding' (a "Non-Binding Submission") shall be subject to additional assessments and/or requirements, and may not be relied upon in its issued state and Rexroth makes no representations with respect to any Products and/or services delineated in such Non-Binding Submission. Rexroth does not provide any implied or express warranties with respect to any Non-Binding Submission and Bosch accepts no liability for any reliance placed on the information in a Non-Binding Submission, nor for the accuracy of any information or opinions contained in the document or for the omission of any material information. Should the Customer seek to use or rely on any information contained in a Non-Binding Submission, Rexroth accepts no resulting liability and excludes all liability to the maximum extent permitted by the laws of England and Wales. By requesting and/or receiving a Non-Binding Submission, the Customer acknowledges its acceptance of this clause. If the Customer elects not to accept the provisions of this clause, it shall return the Non-Binding Submission to Rexroth and undertakes not to act on the information contained within it. If the Non-Binding Submission is not accepted, these Terms shall continue to apply to any final Contract.
- (d) No amendments to the Customer requirements (including any change requested by the Customer to the Specification(s), the Products, the agreed scope of supply or intended use of the Products) received after Rexroth's acceptance of the Customer's order in accordance with Clause 2(b) above shall be binding on Rexroth unless the Change Control procedure has been followed.
- (e) In addition to the Terms for commissioning, installation, corrective maintenance and other services (e.g. repairs) rendered by Rexroth, the "Additional Terms and Conditions for Assembly Service, Repair, and other Services of Bosch Rexroth Limited" shall apply. These terms are available at <https://www.boschrexroth.com/en/gb/legal-notice/> or on request by the Customer.

3. Change Control

- (a) Customer Changes:
 - i) The Customer may submit its request for any change in writing to Rexroth.
 - ii) Rexroth may accept or reject such request. If it rejects the proposed change the Customer may cancel its order but in such event Clause 10 shall apply if cancellation takes place after formation of the Contract. Rexroth shall submit its Change Transmittal Confirmation for the requested change within 21 days of receipt from the Customer request or alternatively may consolidate all such requests received from the Customer in any period of one week and shall submit a Change Transmittal Confirmation for all requested changes within 14 days of receipt of the last change requested.
 - iii) Change Transmittal Confirmations shall be in writing and may include details of material revisions to the Contract (including, but not limited to, revised price, Specifications, lead times, delivery dates and other timetables for the performance of the Contract).
 - iv) The Customer shall have 5 days to respond to the Change Transmittal Confirmation from Rexroth.
 - v) If the Customer decides to accept the Change Transmittal Confirmation then the change and any consequential variation to the Contract will be confirmed by Change Order. If the Customer decides not to accept the Change Transmittal Confirmation it may cancel its order, in which case the cancellation provisions of Clause 10 shall apply if cancellation takes place after formation of the Contract.
 - vi) All Change Transmittal Confirmation and Change Orders shall be numbered sequentially and shall refer to the Customer's initial order and the Rexroth quotation and order confirmation (where applicable).
- (b) Rexroth Changes:
 - i) Following formation of the Contract, Rexroth may issue the Customer with a Rexroth Change Notification.
 - ii) A Rexroth Change Notification shall be in writing and may include details of material revisions to the Contract (including, but not limited to, revised price, Specifications, lead times, delivery dates and other timetables for the performance of the Contract).
 - iii) The Customer will have a maximum of 5 days to respond to a Rexroth Change Notification. If the Customer rejects the Rexroth Change Notification in writing it may cancel its order, in which case the cancellation provisions of Clause 10 shall apply. In the event the Customer fails to revert to the Rexroth Change Notification in writing by the close of the fifth day the Customer will be deemed to have accepted the contractual changes in the Rexroth Change Notification and Rexroth shall be permitted to initiate any such change without further correspondence with the Customer after this time.
 - iv) Until the Customer accepts the respective Rexroth Change Notification, Rexroth shall not be obligated to continue to work on the Contract and shall not be liable for any resulting (direct or indirect) delay or loss.

4. Prices

- (a) Unless special arrangements have been made with a Customer and confirmed in writing, the price payable for Products shall be Rexroth's quoted price or, in the absence of any quotation, the published list price of the Products (less any discount offered to the Customer in writing) at the time of despatch which, in the absence of written agreement to the contrary, shall be exclusive of VAT, packaging, or insurance to the point of delivery and carriage. A minimum order value may be imposed.
- (b) Rexroth reserves the right at any time (including prior to delivery following order) to withdraw, revise or vary (a) any discount offered to the Customer or (b) the quoted price or payment terms, to take account of a Customer's circumstances or increases in costs including (without limitation) costs of materials, carriage, labour or overheads, the imposition of any tax, duty or other levy and any variation in exchange rates. Any offer to keep quoted prices open will be subject to the foregoing.

5. Delivery, Installation and Testing

- (a) Unless otherwise agreed in writing by Rexroth or set out in the Specification, all Goods will be supplied FCA and delivery shall take place on notification to the Customer that the Goods are ready for collection. This also applies for provision of Software per data medium or for Software preinstalled on Target Hardware at delivery. Alternatively, Software is delivered and the risk passes at the election of Rexroth either by providing the Software per download or by transmitting the information necessary to download it.
- (b) Rexroth will use reasonable efforts to deliver Products on the date agreed with the Customer or otherwise notified to the Customer in writing by Rexroth; delivery dates are intended to be estimates only and time for delivery shall not be made of the essence by notice. Rexroth shall be in no manner liable for any loss arising out of late or non-delivery. If no date is notified to the Customer, delivery will be within a reasonable time.



- (c) Rexroth will not be liable for any direct, indirect or consequential loss or costs or damages, charges or expenses caused by any delay in delivering Products nor will any such delay entitle the Customer to terminate or rescind the Contract. In case of delivery of Products by instalments, the Customer will not be entitled to treat the late or non-delivery of Products in any one instalment as a repudiation of the whole Contract.
- (d) The Customer will take delivery of Products on the delivery date agreed or notified. If for any reason the Customer will not accept delivery of Products on time, risk in the Products will pass to the Customer, the Products will be deemed to have been delivered, and Rexroth will store the Products at the cost of the Customer until actual delivery. Delivery subsequent to such a delay will be at the sole cost and risk of the Customer and shall be the Customer's responsibility to organise. Products not collected within 60 days of the due delivery date may be disposed of and the Customer may be invoiced for (and shall pay) the cost of disposal.
- (e) Where it has been agreed by the parties in writing that Rexroth will install the Products at the Customer's premises or for other Customer site work, the "Additional Terms and Conditions of Service for Commissioning, Installation, Corrective Maintenance and Other Services Rendered by Bosch Rexroth Limited" shall also apply.
- (f) Where machines or partly completed machines are being supplied, unless otherwise agreed, Rexroth shall provide the Customer with at least 14 days notice of its readiness to perform the Acceptance Tests. The Customer shall be entitled to attend the Acceptance Tests at a time to be agreed between the parties except that if no date is agreed within 28 days of the initial notice, Rexroth shall be entitled to proceed with the tests in the absence of the Customer and any report provided to the Customer shall be accepted as accurate and complete.
- (g) Where machines or partly completely machines are being supplied, if the Products fail to pass the Acceptance Tests on the first occasion Rexroth shall carry out such work as may be required to remedy any defect and repeat the Acceptance Test at its expense (including any reasonable expense of attendance incurred by the Customer's representative) within a reasonable time.
- (h) Where machines or partly completely machines are being supplied, additional inspection visits and special testing (including any tests on installation) may be arranged at the request and expense of the Customer.
- (i) Where the Customer is purchasing a machine or partly completed machinery from Rexroth they must adhere to all specified handling, installation, operation, maintenance and safety instructions in respect of Products supplied by Rexroth. The partly completed machinery supplied by Rexroth may only be put into operation when it has been established by the Customer that the machine into which the partly completed machinery is to be incorporated conforms to the provisions of EC Machinery Directive 2006/42/EC and/or Supply of Machinery (Safety) Regulations 2008 and/or any other applicable regulations or legislation. Please refer to the Rexroth web based database for generic information. Specific contract documentation will be supplied as a deliverable line as part of the scope of supply.
- (j) Unless otherwise agreed, Software is delivered or made available for downloading in the version named in the Documentation. The Customer is responsible for installation of the Software. If the Software is provided for use on a data medium or is pre-installed on Target Hardware, this may not contain the version named in the Documentation. The delivery obligation of Rexroth shall be met by providing the version of the Software named in Documentation.
- (k) Where Rexroth is servicing a machine or partly completed machinery, without intention of changing functionality, as specifically instructed by the Customer or its authorised representative Rexroth will adhere to all advised handling, installation, operation, maintenance and safety instructions. After completion of the requested work the partly completed machine or machine may only be put back into operation when it has been established by the Customer or its authorised representative that it conforms to the provisions of EC Machinery Directive 2006/42/EC and/or any other applicable regulations or legislation.
- (l) If any work is requested and it is deemed to be significant (changes system functionality from that originally intended by the machine manufacturer or as assessed by Rexroth) it is agreed that the Customer or its authorised representative will undertake and fulfill their legal responsibilities in respect to this change. This status must be recorded and corroborated by the Customer or its authorised representative. If this cannot be guaranteed by the Customer it is recommended that requested changes are fully assessed by Rexroth's Engineering Department prior to being undertaken. (Please note that this additional assessment may be chargeable).

6. Risk and Title to Products

- (a) Save as provided in Clause 5(e) above, risk passes to the Customer on delivery. This also applies for provision of Software per data medium or for Software preinstalled on Target Hardware at delivery. Alternatively, Software is delivered and the risk passes at the election of Rexroth either by providing the Software per download or by transmitting the information necessary to download it.
- (b) Ownership of Products supplied or provided to the Customer under any agreement shall not pass to the Customer until Rexroth has received in full (in cash or cleared funds):
 - i) all sums due to it in respect of the Products; and
 - ii) all other sums which are or which become due to Bosch from the Customer on any account.
- (c) Rexroth reserves title in all Products and other items which it supplies and provides (including, but not limited to, tools) until such time as all claims, fees, charges and expenses whatsoever resulting from the business relationship of Rexroth and the Customer have been paid in full; all Products shall be considered as part of one continuous supply transaction. If Rexroth is continuously invoicing, reservation of title shall serve as security for the balance of Rexroth's accounts receivable.
- (d) Rexroth shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from Rexroth.
- (e) If the Customer combines or mixes any Products in which Rexroth has reserved title with other items to form a new unit in such a way that one of the other items must be regarded as the main constituent, Rexroth shall have pro rata co-title in the new unit created, such co-title being in the ratio of the value of the Products co-owned by Rexroth to the value of the combined or mixed items at the time of such combining or mixing, and the Customer hereby transfers title and possession in the new unit. Rexroth hereby accepts this transfer.
- (f) The Customer shall keep possession of the sole or co-owned items which have thus been created for Rexroth in trust free of charge.
- (g) Subject to Clause 13(a) and Clause 15 if the Customer or third parties acting on behalf of the Customer process or modify the Products co-owned by Rexroth, this shall be deemed to have been carried out for Rexroth.
- (h) If the Customer acquires sole title in the new main unit created by way of such processing or modification, the parties shall be deemed to have agreed that the Customer hereby transfers to Rexroth co-title and possession therein in the ratio of the value of Products co-owned by Rexroth to the value of the combination or modification and that Rexroth hereby accepts such transfer. The Customer shall keep possession of the sole or co-owned items which have thus been created for Rexroth in trust free of charge.
- (i) If the Products owned by Rexroth have not yet been inextricably combined or mixed with other items or otherwise processed or modified since supply, their value at the time of combining, mixing, processing or modification shall be deemed to be the amount billed for the Products by Rexroth including statutory value-added tax.
- (j) The Customer is entitled to re-sell the Products within the ordinary course of business.



- (k) If the Customer re-sells the Products supplied, the Customer hereby assigns to Rexroth any claims which may inure to the Customer against the Customer's customers from the sale of the Products together with all ancillary rights until such time as all Rexroth's claims have been paid in full. Rexroth hereby accepts this assignment.
- (l) If the Customer and the Customer's customer have agreed on an open account the Customer hereby assigns its balance of its accounts receivable as acknowledged by the Customer's customer from time-to time or in the event of insolvency or bankruptcy of the Customer's customer the balance of its accounts receivable at this time to Rexroth which hereby accepts such assignment.
- (m) The reservation of title regarding the assignment of claims delineated in this section also applies to an item newly created by processing, modification, combination or mixing.
- (n) In any event the assignment shall be with regard to the entire claim of the Customer against its customer. The Customer has a revocable right to collect any receivables assigned. At the request of Rexroth the Customer shall notify third-party purchasers of the assignment and provide Rexroth with any information and documents which it needs to assert its rights.
- (o) At the Customer's request Rexroth shall release the securities held by Rexroth to the extent their realizable value exceeds 10% of the claims to be secured, whereby Rexroth may select the securities to be released.
- (p) If the reservation of title or any other provisions of this Agreement are invalid or unenforceable under the law of the country in which the Products are located, the parties shall be deemed to have agreed to whatever security corresponds most closely to the laws of England and Wales with respect to reservation of title under the law of that country. The Customer shall assist and support Rexroth in obtaining the security. If the reservation of title or any other provisions of this Agreement are not valid under the law of the country in which the Products are located unless it has been duly registered, the Customer shall arrange for or assist with such registration in Rexroth's favour without undue delay as soon as the Products have arrived in that country and shall notify Rexroth thereof unsolicited.

7. Warranty

- (a) Subject to Clauses 7(c) (d) and (f) below:
 - i) Rexroth warrants that Goods shall conform to the Specification of the Goods provided to the Customer by Rexroth, for a period of 12 months following delivery of the Goods or, where Rexroth has been contracted to install the Goods, for a period of 12 months from completion of installation provided always that the warranty period shall not exceed 18 months from delivery of the Goods unless completion of installation has been delayed due to the fault of Rexroth.
 - ii) Rexroth warrants that the Software shall conform to the Specification of the Software provided to the Customer by Rexroth for the warranty period of the Software set out in the Specification.
- (b) If the Goods, or any part of them, do not conform to the warranty in Clause 7 (a)(i) above Rexroth will, at its option, repair or replace the defective Goods or refund an appropriate part of the price provided always that the Customer shall inform Rexroth in writing of any alleged defect (including a description of the defect) as soon as it is discovered and shall afford Rexroth a reasonable opportunity after receiving such notice to examine the Goods. The Customer shall if requested return the Goods to Rexroth's premises for these purposes. Claims on account of defects are excluded if the defect is not notified in good time. If the notification of a defect is unjustified, Rexroth has the right to demand that the Customer reimburse the expenditure incurred by Rexroth unless the Customer demonstrates that it was not at fault with regard to the unjustified defect notification.
- (c) Rexroth shall not be liable for any breach of warranty where:
 - i) defects are due to causes beyond its reasonable control (force majeure) and in the case of Software including but not limited to virus contamination or, failure by the Customer or any third party to correctly store, apply, install or transport the Products, nor defects due to fair wear and tear or wilful damage or negligence by the Customer; or
 - ii) the Customer has or has attempted to repair or alter the Products; or
 - iii) the Products have not been maintained, installed, commissioned or operated in accordance with good engineering practice and all reasonable instructions and guidance provided by Rexroth in its drawings, Data Sheets, Documentation and manuals or otherwise) from time to time; or
 - iv) defects in the Products are due to the failure or design of other equipment of the Customer with which the Products interact, or failure of electrical supply or any other related services or systems; or
 - v) defects are due to any design, materials or third party Products stipulated or specified by the Customer or any materials provided by the Customer except to the extent that Rexroth has expressly accepted responsibility for the same in writing; or
 - vi) faults in the Software caused by application errors by the Customer and which could have been avoided had the Documentation been consulted carefully;
 - vii) errors which are based on the Software being used in an operating environment other than that approved by Rexroth or due to faults in the Target Hardware, the operating system or the software of other manufacturers;
 - viii) With respect to Software which the Customer or a third party expanded or changed via an interface intended for this by Rexroth, Rexroth is only liable for the defects occurring up to the interface;
 - ix) defects arise out of any Software or Software modifications except where such Software forms part of the Data Sheet for the Goods.
- (d) Products are selected by the Customer and the Customer shall be responsible for ensuring the accuracy of any order and the appropriateness or suitability of any Products selected. The Customer is particularly reminded that any test data supplied by Rexroth is so supplied for information and guidance purposes only and must be verified independently.
- (e) If the Software, or any part of them, do not conform to the warranty in Clause 7(a)(ii) above, and provided that the Customer has informed Rexroth in writing of any alleged defect in the Software (including a description time and detailed circumstances of the defect) as soon as it is discovered and shall afford Rexroth a reasonable opportunity after receiving such notice to examine the Software, a defect in the warranty period in Software forming part of the Data Sheet or Documentation in Software can be remedied at the discretion of Rexroth by means of update/patch/bug-fix/upgrade or by indicating a workaround; the latter only insofar as this is reasonably acceptable for the Customer, taking account of the effects of the defect and the circumstances of the work-around solution indicated. In the event that Rexroth is unable to remedy a material defect arising in the warranty period in Software forming part of the Data Sheet or Documentation within a reasonable time the Customer as its sole remedy shall be entitled to a full refund of the Contract price of the Software so affected. In case of Software, Rexroth shall not be liable in particular for any damage or loss whatsoever incurred by the Customer due to a failure to back-up data or due to incorrect operation or to usage not in compliance with the designated purpose. Claims on account of defects are excluded if the defect is not notified in good time. If the notification of a defect is unjustified, Rexroth has the right to demand that the Customer reimburse the expenditure incurred by Rexroth unless the Customer demonstrates that it was not at fault with regard to the unjustified defect notification.



- (f) Save as provided above, all warranties, conditions and terms implied by statute or common law (save for the condition implied by Section 12 of the Sale of Goods Act 1979) are excluded from any contract between Rexroth and the Customer to the fullest extent permitted by law. In particular, and without prejudice to the foregoing, Rexroth makes no warranties and shall not be liable in respect of goods or components or software manufactured or supplied by third parties outside the group of companies to which Rexroth belongs.

8. Liability

- (a) Subject to Clause 7(f) above and Clause 8(b) below:
- i) Rexroth's liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited, for any one default or series of related defaults to the lower of:
 - 50% of the total value of the Products, or
 - £250,000 in aggregate.
 - ii) Rexroth shall not be liable to the Customer for any loss of profit, loss of contract, loss or depletion of goodwill, loss of or damage to data, loss of opportunity or time, (loss of production or increased cost of working) or any costs and expenses or claims for indirect or consequential damage or loss whatsoever (however caused) which arise out of or in connection with the Contract.
- (b) Nothing in these Terms excludes or limits the liability of Rexroth for fraudulent misrepresentation or for death or personal injury caused by its negligence.

9. Delay

- (a) Rexroth shall not be liable for any failure to meet agreed delivery dates or other time stipulations for performance of contractual obligations in the event of Force Majeure or where such delivery or performance is dependent on some act to be done or information to be provided by the Customer or its representatives, employees, agents or subcontractors and the Customer has failed to do such act or to provide such information within a reasonable time, where the Contract has been suspended by Rexroth under Clause 11(b) or where delay is caused by the failure of any sub-contractor stipulated by the Customer to deliver or perform according to its Contract with Rexroth.
- (b) Subject to Clause 8(b) above, Rexroth will not be liable for any direct, indirect or consequential loss or costs or damages, charges or expenses caused by any delay in delivering Products nor will any such delay entitle the Customer to terminate or rescind the Contract. In the case of delivery of Products by instalments, the Customer will not be entitled to treat the late or non-delivery of Products in any one instalment as a repudiation of the whole Contract.

10. Cancellation

- (a) Once accepted by Rexroth a Contract may not be cancelled or terminated by the Customer except in the event of a material breach by Rexroth which (if capable of remedy) Rexroth has failed to remedy within a reasonable time of the Customer's written request to do so, or within a longer period otherwise agreed between Rexroth and the Customer in writing.
- (b) In the event of cancellation or termination without cause the Customer shall remain liable to compensate Rexroth for the full price of the Products subject only to Rexroth taking all reasonable steps to mitigate its loss.

11. Payment

- (a) Subject to any special terms agreed in writing with a Customer, payment of invoices is due (without set off, deduction, abatement or withholding) at the end of the month following the month of invoice.
- (b) If the Customer fails to pay any sums due to Rexroth when due then, in addition to any other right which Rexroth may have, Rexroth may (i) charge interest on overdue sums at the rate of 4% per annum above the base rate from time to time of Barclays Bank Plc from the due date until payment (before as well as after any judgement) calculated annually but accruing on a daily basis and/or (ii) delay, suspend or cancel any remaining part of the Contract (or any other contract) with the Customer and/or (iii) vary or withdraw any discount or credit offered to the Customer.
- (c) Rexroth shall be entitled to sue on the price notwithstanding the fact that title in the Products has not passed.

12. Governing Law and Jurisdiction

The Contract and these Terms shall be governed by and construed in accordance with the laws of England and Wales and Rexroth and the Customer each submit to the exclusive jurisdiction of the English courts in relation to any claim or dispute arising thereunder.

13. Intellectual Property and Software

- (a) Subject to Clause 15 and in the absence of written agreement to the contrary, all rights, title to, and interest in all Software and/or any intellectual property (including patents, copyright, design rights, and trade marks) and/or materials (including all plans, diagrams, specifications, designs, data, drawings and models) which are developed, designed, co-designed or generated by Rexroth in the performance of any Contract with the Customer and the supply of the Products, shall vest in and belong to Rexroth as legal and beneficial owner. Subject to Clause 15 the Customer is granted a perpetual, non-exclusive, non-sub-licensable right to the extent necessary to install, use and maintain the Products in accordance with its Specification (in the case of Software and in compliance with the specifications in the Documentation and in accordance with the respective Licence Type). The Customer is not permitted to reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Products, receive copies of source or object code or create derivative works based on the whole of or any part of the Software or incorporate the Software into any other software program not provided by Rexroth; and shall only use the Software in the operation of the Goods.
- (b) All rights, title to and interest in all intellectual property (including copyright, design rights, and trade marks) and materials (including all plans, diagrams, specifications, designs, data, drawings and models) which are developed, designed or generated by the Customer shall vest in and belong to the Customer.
- (c) Rexroth and the Customer will each, as and when required to do so by the other party, and at that other party's expense, execute or do or procure to be executed or done all instruments and things necessary for vesting such intellectual property and confirming all rights, title to and interest in the same as set out in Clauses 13(a) and 13(b) above. Each party shall indemnify the other in full in respect of all costs, claims, liabilities and expenses which that other party may incur in relation to any claim by a third party that the use of any such intellectual property or materials infringes the intellectual or other property rights of that third party.



14. Export Control

Deliveries and services (fulfilment of Contract) will only be executed under the proviso that their fulfilment complies with national or international export control regulations and does not violate any embargoes or other sanctions. The Customer commits himself to supply all necessary information and documents necessary for the export or transfer of any applicable Products to any EU member states. Delays due to export control assessments or export control licensing procedures shall invalidate terms and dates of delivery. When licenses are not granted, or the delivery and service is not licensable, these Terms become void in respect of the affected parts.

15. Software**(a) Open Source Software**

- (i) The Customer acknowledges that any open source software and third party software under royalty free licenses (together “Open-Source Software” or “FOSS”) directly or indirectly integrated or forming part of the Products or services or otherwise delivered by Rexroth is provided “as is” and has not been developed to meet the individual requirements of the Customer. All other conditions, warranties or other terms which might have effect between Rexroth and the Customer or be implied or incorporated into the Open-Source Software, whether by statute, common law or otherwise, are hereby excluded, including all implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- (ii) The FOSS in the Products may be owned by third party FOSS developers and subject to FOSS license agreements, herein referred to as “FOSS Licenses”. In utilising the Products, or in the event the Customer sells, distributes or otherwise delivers the Products to a third party, the Customer hereby acknowledges and agrees to comply with the terms and conditions of any such FOSS Licenses and to ensure that any third party recipient of the Products shall be notified of its continuing obligations as a sub-licencee or user of the particular FOSS License and agree to abide by its terms and conditions.
- (iii) In the event the Customer passes on a copy of the Products to another party, the terms and conditions of the respective FOSS Licenses shall apply to the distribution and sub-licensing or use of any included FOSS (in some cases, the particular FOSS License may provide a direct license from the author / licensor of the FOSS to the third party). The Customer acknowledges that it is responsible for obtaining all information in regard to any FOSS Licenses applicable to the Products, and Rexroth is not liable for the non-compliance of any such third party, nor is Rexroth obliged to grant or obtain any rights, sub-licenses or additional information in regard to a FOSS License unless the scope and usage rights of a particular FOSS License is mutually agreed and recorded in the terms of the Contract.
- (iv) The FOSS itself does not contribute to the sales price of the Rexroth product and is provided without royalty or monetary compensation.
- (v) Unless expressly stated in the terms of the Contract or any quotation, subsequent service and support related to or otherwise resulting from a FOSS license(s) is excluded in its entirety; any such service or support requested by the Customer shall require a separate agreement specifying such service or support and the fees payable.
- (vi) In the event that FOSS is integrated into the Products, the Customer acknowledges restrictions are in place to ensure that the FOSS remains a standalone code derived from a reference block from a unique Rexroth library, and the Customer agrees that it shall neither modify, alter or delete the FOSS, or any related code, it may receive access to.
- (vii) Rexroth reserves the right to, provide updates, up-grades, respectively patches or bugfixes or a new version, introduce new or updated FOSS into the Software.
- (viii) If software products are also made available from third-party providers and these are not to be regarded as FOSS, Rexroth reserves the right to transfer them subject to the corresponding exclusive terms and conditions of the third-party provider. These software products may solely be used in connection with the Products.

(b) Data use and data protection

- (i) Rexroth shall have the right, insofar as is permitted by law, to store, use, transfer and/or exploit all the information contributed and created by the Customer in connection with the Software, except for personal data, beyond the purpose of the Contract for any purposes such as, for example, statistical, analytical and internal purposes. This right shall be unlimited and irrevocable.
- (ii) Insofar as personal data is processed, Rexroth complies with the statutory data protection regulations. In this case, the details relating to the data collected and the respective processing thereof are set out in the data privacy statements of Rexroth.

(c) Subject matter of the licence/Software

- (i) The description of the Software is set out in the Documentation which the Customer will be provided with on request before entering into the Contract.
- (ii) The Software comprises, as far as feasible, the executable program code and the corresponding Documentation in electronic form, and installation instructions unless the Software self-installs. Subject to Clause 15(a), the source code does not form part of the subject matter of the Contract.

(d) Termination

- (i) On or before the end of and/or the termination of the Contract the Customer shall erase all data media, copies of the Software, including the back-up copies, and the documentation provided for use, or destroy these and confirm this in writing to Rexroth on request.



- (ii) Rights of use
- (iii) The Customer shall only use the Software in the agreed countries of destination. In the absence of an explicit agreement, this is the country in which the Customer has its registered office.
- (iv) The Customer may prepare and use back-up copies of the Software to the extent necessary for the proper use of the Software. Back-up copies must be marked as such and be marked with the copyright notice of the original Software as far as is possible. The Customer is also bound to these Terms with respect to its use of the back-up copy.
- (v) The Customer may only engage third parties to conduct the measures in compliance with Clause 15(e)(ii) which are not competitors of Rexroth, unless the Customer demonstrates that the risk of divulging important confidential information of Rexroth is excluded.
- (vi) If Rexroth provides the Customer with updates (including upgrades, updates and/or patches or bugfixes) and/or a new version of Software, these are also subject to the Terms, except to the extent that they are part of a separate agreement. Once the new Software version has been installed, the Customer's rights to the previous version shall end after a transition phase of one month. Clause 15(d) shall apply in the event of the Software being returned.
- (vii) The Customer may not grant sub-licenses. The Customer may, however, transfer the granted right of use to third parties, whilst discontinuing its own use, upon fulfillment of the following conditions:
 - (A) If the Software was acquired together with a Target Hardware device, the Software may only be passed on to third parties for use in connection with this Target Hardware. This applies to floating licenses (as set out in the definition of Licence Type), subject to the condition that they may only be transferred to third parties by the Customer if they are transferred in total and, if applicable, together with each Target Hardware device which the Software may be used on.
 - (B) The Customer shall ensure that the third party is not granted any further rights of use to the Software than those to which the Customer is entitled under these Terms and that at least those obligations arising from these Terms with respect to the Software are imposed on the third party. In the event of a right of use being transferred to a third party, the Customer is obliged to surrender to the third party all the copies supplied to or created by the Customer or to erase them. If the Customer transfers its right to use the Software, the Customer shall also hand over the Documentation to the third party.
- (viii) All further rights to the Software that are not explicitly granted, also including, in particular, all rights to the trade mark and to other intellectual property in the Software shall remain with Rexroth. Designations of the Software, in particular copyright notices, trademarks, serial numbers and the like may not be removed, changed or obliterated.

(e) Obligations of the Customer to collaborate and provide information

- (i) The Customer is responsible for its hardware and software environment being compliant with the system requirements of the Software. For avoidance of doubt, the Customer shall obtain advice from Rexroth and/or from specialist third parties before entering into the Contract.
- (ii) It is partially possible to use the Software to influence or control an electronic system. Therefore, taking account of the risk analysis, the Software may be operated (and if necessary, to be installed) solely by qualified specialist personnel.
- (iii) The Customer shall inform Rexroth of possible errors in the Software without undue delay. In this context, the Customer shall provide all the necessary information at the request of Rexroth. The Customer shall permit Rexroth to access the Software in order to troubleshoot and rectify the errors; at the election of Rexroth this shall be either on premises and/or by remote access.
- (iv) The Customer shall secure the Software against being accessed by unauthorized third parties by taking suitable measures, in particular storing all the back-up copies of the Software and the Documentation in a safe place.
- (v) Rexroth has the right to examine whether the Software is being used in compliance with the Licence Type. To this end, Rexroth may require information from the Customer and inspect the books and documents, including the Customer's hardware and software environment, insofar as, as a result, details can be obtained on the extent of usage of the Software. To this end Rexroth shall be granted access to the Customer's business premises during normal working hours after having given advance notification of at least two weeks. The Customer shall ensure, to an extent that can be reasonably expected, that the audit can be conducted by Rexroth and shall collaborate in the audit. Rexroth shall use all the information it acquires during the audit only for vetting compliance with the Licence Type. The Customer may demand that the audit be conducted on site by an agent of Rexroth committed to professional secrecy. The costs of the audit shall be borne by Rexroth unless the audit reveals that there is a Shortfall in Licence Cover. In this case the Customer shall bear the costs of the audit.
- (vi) In the event of a Shortfall in Licence Cover, the Customer shall pay the unpaid remuneration on the basis of the valid general price list for comparable services at the time when the short-fall is discovered plus liquidated damages in an amount equal to 10% of the value of the Shortfall in Licence Cover. The Customer may evidence that the damage was lower. In addition, the Customer shall discontinue every Shortfall in Licence Cover without undue delay.



- (vii) The Customer shall take reasonable precautions in case the Software fails to work properly either in whole or in part (e.g. by means of daily data back-up, malfunction diagnosis, regularly examining the data processing results). Unless the Customer explicitly indicates otherwise in advance, Rexroth may assume that there has been a back-up of all data of the Customer which Rexroth can come into contact with.

(f) Engineering Software

- (i) The information and graphical representations stored in the Engineering Software serve solely to describe the respective Products and lose their validity when the Products represented there and/or the corresponding technical Documentation are/is changed, at the latest, however, when a new version of the Engineering Software is issued. The information and graphical representations stored in the Engineering Software are not intended for any constructional or development purposes independent from the Products.
- (ii) Other than set out in the Specification, Engineering Software does not verify the generated results on the accuracy of the calculation or of the software generated or changed and/or to its executability and suitability for application. The responsibility for the use and operation of the Engineering Software and/or the selection and dimensioning and/or configuration of the Products and/or for the software generated or changed with the help of the Engineering Software therefore lies solely with the Customer unless otherwise agreed in writing by the parties. A Product order is placed solely on the basis of the catalogue details and of the Documentation belonging to the Product.
- (iii) If and insofar as a copyrighted material is created for the Customer as a result of changing/generating software by using Engineering Software or if the Customer applies for/acquires a property right based on the above change/creation, the Customer shall notify Rexroth thereof without undue delay and grant to Rexroth a non-exclusive, irrevocable license unlimited as to time and free of charge, which also confers upon Rexroth the right to grant sub-licenses; with regard to property rights the Customer shall grant a license to Rexroth in a separate contract subject to customary market conditions.

16. Miscellaneous

- (a) Contracts with Customers are not intended to benefit any third party whether named and identified in the Contract or not and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.
- (b) The Customer shall not assign or subcontract the Contract without Rexroth's prior written consent. Rexroth shall be entitled to assign or subcontract the Contract.
- (c) The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- (d) If any part of the Contract becomes invalid, illegal or unenforceable the parties shall in such event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in the Contract.
- (e) Any notice required to be given pursuant to the Contract shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to and address outside the country of posting) to the address of the relevant party set out in the Contract or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).
- (f) Confidentiality
- i) Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 16(f)(ii);
- ii) Each party may disclose the other party's confidential information:
- (A) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 16(f); and
- (B) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- iii) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

Acknowledgement of acceptance of these Terms and Conditions of Sale:

Signed by:

Date:

Signature:

On behalf of:

Return to: Bosch Rexroth Limited, 15 Cromwell Road, St, Neots, Cambridgeshire. PE19 2ES

Registered company number: 768471. Registered office: 15 Cromwell Road, St. Neots, Cambridgeshire, PE19 2ES. England

