

## Bosch Rexroth Corporation, United States

### 04.2022 Standard Terms & Conditions of Sale

Replaces: RA 09 859/01.2015

#### 1 DEFINITIONS AND SCOPE.

##### 1.1 Definitions.

In these Standard Terms (as defined below), “**BRUS**” means Bosch Rexroth Corporation and “**Customer**” means you, the customer to whom BRUS is providing Products, Software, Prototypes and/or Services (as each such term is defined below) subject to these Standard Terms. BRUS and Customer are collectively referred to herein as the “**Parties**” and individually, a “**Party**”. In addition to the terms defined in these Standard Terms, the following terms have the following meanings:

“**Affiliate**” means an entity that directly or indirectly controls, is controlled by or is under common control with a Party and as used herein, “**control**”, “**controls**” or “**controlled**” means: (a) fifty percent (50%) or more ownership or beneficial interest of income or capital of such entity; (b) ownership of at least fifty percent (50%) of the voting power or voting equity; or (c) the ability to otherwise direct or share management policies of such entity.

“**Customer Data**” means all data, information or other content and materials (a) transmitted or provided to BRUS by Customer or a third party on behalf of Customer, or (b) uploaded by or for Customer via the Product and Processed by or for Customer using the Services.

“**Documentation**” means all BRUS user installation guides, data sheets, application notes and instruction manuals published and generally made available by BRUS to Customer in writing that relate to the performance conditions and limitations, installation requirements, use limitations and maintenance of the Products, Software and/or Prototypes, including all updates, modifications and changes made thereto by BRUS from time to time.

“**Law**” means (a) any and all laws, statutes, regulations, ordinances, or subordinate legislation in force from time to time to which a Party is subject; (b) the common law; (c) any and all court orders, judgments, or decrees that are binding on a Party; and (d) any and all directives, policies, rules, or orders that are binding on a Party and that is made or given by a regulator, or other government or government agency, of, in the case of items (a) - (d) above, any country, or other national, federal, commonwealth, state, provincial, or local jurisdiction.

“**Malicious Code**” means code, configurations, files, scripts, agents or programs intended to cause undesired effects, harm or damage, including, for example, viruses, worms, time bombs and trojan horses.

“**Personal Data**” means any information relating to (a) any identified or identifiable natural person, and, (b) identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable data privacy Laws), where for each (a) or (b), such data is Customer Data.

“**Process**”, “**Processing**”, and “**Processed**” means any operation or set of operations performed upon Customer Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure or destruction.

“**Product(s)**” means any physical good or Software provided by BRUS to Customer and identified in the applicable Quotation or Purchase Order, excluding Prototypes.

“**Prototype(s)**” means the tangible results of Services performed under a Statement of Work and delivered to Customer by BRUS, but excluding all Intellectual Property Rights (as defined below) associated with the Prototype, unless otherwise mutually agreed to in writing by BRUS and Customer.

**“Purchase Order”** means an ordering document issued by Customer to BRUS that specifies the Product, Software, Prototype and/or Service and which is confirmed in writing by BRUS in accordance with these Standard Terms.

**“Quotation”** means a quotation for Products, Software, Prototypes, and/or Services issued to Customer by BRUS, which is subject to these Standard Terms.

**“Service(s)”** means any chargeable consulting services, repair services, implementation services, configuration services, technical support services, and/or other professional services provided by BRUS to Customer and identified in the applicable Quotation, Statement of Work or Purchase Order, which relates to the Products, Software and/or Prototype provided by BRUS to Customer, and which are subject to these Standard Terms.

**“Specifications”** means the design, performance, descriptions, parameters, requirements and other technical specifications of the Product, Software and/or Prototype set forth in the Documentation, which specifications may be amended or supplemented by BRUS in its sole and reasonable discretion, or other specifications agreed to by the Parties in writing.

**“Software”** means the applications, methodologies or programs developed by BRUS or licensed to BRUS by a Third Party Provider, available in source code, redistributable libraries or object code formats, and via various means of delivery, and all new versions, updates, revisions, improvements and modifications of any of the foregoing, that may be provided by BRUS to Customer and as identified in the applicable Quotation, Statement of Work or Purchase Order. For the sake of clarity, Software may perform specific functions related to accessing, enabling, developing, networking and maintaining BRUS Products, Software, Prototypes and/or Services and may include standalone software, firmware and software tools provided by BRUS to Customer.

**“Software Updates”** means any Software release intended to fix or correct known problems and which may provide new functionality or features.

**“Software Upgrades”** means any new version of the Software, which may include revisions, improvements and/or modifications.

**“Statement of Work”** means a document that specifies in writing the Services or work that Customer may purchase under these Standard Terms, and which may include, but is not limited to, any Specifications, description of Services or work, service level agreements and/or acceptance criteria that are applicable to the Services, and which document has been mutually agreed by both Parties in writing.

**“Third Party Providers”** means any and all licensors, suppliers, service providers and subcontractors of BRUS or its Affiliates.

## **1.2 Scope of Agreement; Order of Precedence.**

Sales of Products, Software, Prototypes and/or Services by BRUS to Customer are expressly subject to and conditioned upon the terms and conditions contained in these Standard Terms & Conditions of Sale, which include any provisions made available by BRUS via a hyperlink herein, and any terms set forth in the Quotation, Statement of Work, or Purchase Order, which collectively constitute a sales agreement entered into between BRUS and Customer (collectively, **“Standard Terms”**). If BRUS and Customer have explicitly agreed in writing via a signed agreement, to terms and conditions applicable to the sale of Products, Software, Prototypes and/or Services in exception or addition to these Standard Terms, then those terms and conditions (**“Independent Agreement”**) will apply to the sale of Products, Software, Prototypes and/or Services. In the event of a conflict, (a) the commercial terms of the Purchase Order will take precedence over any Independent Agreement, Quotation, or these Standard Terms; (b) the terms of an Independent Agreement shall take precedence over any Quotation or these Standard Terms; and (c) any Quotation shall take precedence over these Standard Terms.

## 2 ORDERS; CANCELLATION AND CHANGES.

### 2.1 Purchase Order.

BRUS' acceptance of any offer or Purchase Order from Customer is expressly conditioned on Customer's consent to these Standard Terms, which are part of and incorporated in any Purchase Order, irrespective of whether the Purchase Order references these Standard Terms. Any additional or different terms or conditions, or warranties, whether in a Purchase Order or another communication, understanding, or agreement, that in any way purport to modify these Standard Terms are expressly objected to and rejected and will not be binding on BRUS, unless expressly agreed to in writing signed by an authorized representative of BRUS; neither BRUS' subsequent lack of objection to any terms, nor the delivery of the Products, Software, Prototypes and/or Services, shall constitute an agreement by BRUS to any such terms. Customer is hereby notified of BRUS' express rejection of any terms inconsistent with Standard Terms or to any other terms proposed by Customer. Trade custom, trade usage and past performance are superseded by these Standard Terms, and shall not be used to interpret these Standard Terms. Customer's issuance of a Purchase Order or acceptance of, or payment for, the Products, Software and/or Prototypes when delivered and/or Services when provided will be deemed conclusive evidence of, and constitutes Customer's acceptance of and assent to BRUS' these Standard Terms. Customer's acceptance of any offer (or counter-offer) by BRUS is limited to these Standard Terms. BRUS may reject a Purchase Order in whole or in part for any lawful reason in its sole discretion. A Purchase Order will be deemed accepted by BRUS upon BRUS issuing a written order confirmation ("**Order Acknowledgment**"). No Purchase Order will be binding upon BRUS until accepted by BRUS. BRUS may, from time to time, specify a minimum order quantity and/or standard order increments for particular Products and Prototypes. BRUS may also, from time to time, specify the intervals between Purchase Orders for particular Products. If Customer requests Products and Prototypes in quantities, which do not meet BRUS' minimum order quantity, or standard order increment requirements, or Purchase Order interval requirements, BRUS may invoice Customer the extra cost incurred by BRUS in complying with Customer's request.

### 2.2 Cancellations/Changes by Customer.

Customer may cancel or change a Purchase Order within twenty-four (24) hours of issuance by Customer, unless such Products have already been issued for fulfillment as determined by BRUS in its sole discretion. All other Purchase Order cancellations or changes require BRUS' prior written consent. Without such required consent, a cancellation of or change to the Purchase Order will entitle BRUS to all remedies available by law or equity including, but not limited to, cancellation costs or increased prices. Customer shall indemnify BRUS against any loss, damage, or expense incurred by BRUS in relation to any cancellation or change of the Purchase Order by Customer in violation of this Section 2.2.

### 2.3 Cancellations/Changes by BRUS.

BRUS may cancel a Purchase Order or require full or partial early payment if: (a) the solvency or operation of Customer is in question, (b) Customer becomes the subject of any bankruptcy proceedings, (c) there is an appointment of a trustee or receiver for Customer, (d) Customer makes an assignment or other arrangement for the benefit of its creditors, or (e) if the Purchase Order conflicts in any way with the corresponding Quotation, or the Customer requirements on which the Quotation is based are no longer valid or correct, each as determined by BRUS in BRUS' sole discretion.

## 3 PRICES, PAYMENT TERMS AND TAXES.

### 3.1 Pricing.

Customer shall pay BRUS according to the prices made available by BRUS in writing or as set forth in the applicable Purchase Order. All prices are published and/or quoted in USD and are subject to the delivery terms defined in Section 4 below. All prices are subject to adjustment by BRUS at any time for changes in tariffs, economics, exchange rates, or Customer's volume forecasts, as applicable, or as otherwise provided in these Standard Terms. Such adjustment will be retroactive to prior Purchase Orders, even if already fulfilled by BRUS, if Customer's actual purchase volumes are below the Customer-provided or

Customer-agreed volume forecasts upon which BRUS based the prices for such Purchase Orders. Unless otherwise expressly provided in these Standard Terms, fees paid are non-refundable. Unless otherwise agreed by BRUS in writing, Customer shall reimburse BRUS for actual expenses (including travel and mileage) incurred by BRUS in performing any Services. BRUS will provide a summary of such expenses with the invoice for the associated Services.

### **3.2 Material Cost Increase.**

If BRUS' production or purchase costs for the Product or Prototype (including without limitation costs of energy, tariffs, equipment, labor, regulation, transportation, raw material, feedstock, or supplies) increases for any reason over BRUS' planned costs for the Product or Prototype as of the date BRUS accepted the applicable Purchase Order or Statement of Work, then BRUS may, by written notice to Customer of such increased costs, request a renegotiation of the price of the Product or Prototype under these Standard Terms. If the Parties are unable to agree on a revised Product or Prototype price within ten (10) business days after BRUS issues such notice, then BRUS may terminate any impacted Purchase Order on ten (10) business days' written notice to Customer without further liability or obligation.

### **3.3 Invoicing.**

Unless otherwise agreed upon between the Parties in writing, BRUS shall invoice Customer for the price of the Products, Software, Prototypes and/or Services any time on or after the date that BRUS ships the Products, Software, Prototypes and/or provides the Services, respectively. Any invoice errors must be disputed in writing by Customer within thirty (30) days of the invoice date, and are subject to correction by BRUS. Unless otherwise specified in writing, all remittances must be in a single payment in the full amount of the invoices (adjusted for any debit memos) and must be in accordance with the following requirements: (a) wire or electronic fund transfer (referencing the invoice number) and Customer must be the originator of the wire; (b) Customer company check (drawn on company account with company name); or (c) irrevocable letter of credit (referencing invoice number). Third-party checks, bank checks and foreign drafts will be accepted only if approved in advance in writing by an authorized representative of BRUS and must have accompanying documentation that references invoices being paid.

### **3.4 Payment Terms.**

Unless otherwise agreed upon between the Parties in writing or specified in the Quotation or Statement of Work, Customer shall pay BRUS for Products, Software, Prototypes and/or Services as invoiced by BRUS within thirty (30) days from date of invoice, without offset, counterclaim, holdback, deduction, or discount for early payment. Customer's failure to pay any undisputed amount when due will be deemed a material breach of these Standard Terms. Undisputed past due amounts will be subject to the maximum legal rate of interest or one and one-half percent (1.5%) per month, whichever is less. Customer shall pay all costs and expenses incurred by BRUS as a result of non-payment or delinquent payment by Customer, including without limitation collection costs, interest, and reasonable attorneys' fees. When requested by BRUS, Customer must promptly provide BRUS its most current financial statement information. If Customer defaults on any payment obligation to BRUS, or fails to meet BRUS' minimum credit standards, or if BRUS has reasonable doubt as to Customer's credit worthiness, BRUS may in its sole discretion take any of the following actions: (a) refuse, alter or suspend credit terms; (b) require payment by cash in advance or on delivery; (c) suspend production or shipment of the Products, Software, Prototypes and/or delivery or performance of Services; (d) request adequate assurance; and/or (e) pursue any remedies available at law or equity available to BRUS. If Customer becomes delinquent in payment on any BRUS invoice or refuses to accept shipments in accordance these Standard Terms, BRUS will have the right, in addition to all other available rights and remedies, to suspend performance, cancel any or all Purchase Orders, withhold further deliveries, and declare all unpaid amounts for Products, Software, Prototypes previously delivered and/or Services previously performed immediately due and payable. BRUS may cancel or modify Customer's credit terms at any time.

### **3.5 Set-Off.**

Customer may not set-off or recoup any amounts due (or that may become due), or are allegedly due from BRUS (or a BRUS Affiliate) to Customer, from its debts or amounts due to BRUS (or a BRUS Affiliate) however and whenever arising.

### **3.6 Taxes.**

BRUS' pricing excludes all sales, use, excise, value-added, and other similar taxes, charges and duties (including import and export duties). Customer will be solely responsible for all taxes imposed on Customer based upon applicable governing Law. BRUS agrees that no tax for which a valid exemption exists, based upon applicable governing laws, will be included in the pricing, nor subsequently charged. In order for valid sales and use tax exemptions to exist, Customer agrees to properly document and provide BRUS with applicable sales and use tax exemption certificates when requested by BRUS. Each payment to BRUS shall be made without withholding for any taxes, unless required by Law. Customer shall inform BRUS of any withholding tax obligation on payments due to BRUS under any invoice as soon as Customer becomes aware of such withholding tax obligation. If BRUS believes that it is eligible for exemption from, or reduction of, any U.S. withholding tax (or other withholding or similar tax of one or more other jurisdictions), BRUS shall deliver to Customer a completed, duly executed IRS Form W-9 or Form W-8 (or other appropriate form of all applicable jurisdictions as required under the Law of all applicable jurisdictions) valid through the date of payment. Customer shall pay any withholding tax not eliminated or reduced to the relevant taxing authority. Customer shall promptly deliver to BRUS a certificate evidencing the payment of any such withholding tax. Each Party will solely be responsible for its applicable tax administration based upon the legal responsibility of the tax per applicable Law.

### **3.7 Security Interest.**

Customer hereby grants to BRUS and BRUS reserves, a purchase money security interest in all present and future Products and Prototypes sold or delivered by BRUS to Customer under these Standard Terms, and all profits and proceeds arising from or related to the Products and Prototypes. Any such security interest shall be satisfied by payment in full of the invoiced amount. Customer must, on request from BRUS, execute promptly any documents and perform any other acts, at Customer's sole expense, that BRUS considers necessary or advisable to confirm, continue and/or perfect the security interests granted under these Standard Terms. Customer irrevocably authorizes BRUS to execute and file any financing statements covering all Products and Prototypes subject to the security interest granted under these Standards Terms. Notwithstanding the foregoing, a copy of the sale or channel agreement may be filed on behalf of BRUS with the appropriate authorities at any time as and for a financing statement.

## **4 PACKAGING, DELIVERY AND RISK OF LOSS.**

### **4.1 Packaging.**

Unless otherwise agreed upon between the Parties in writing or specified in the Quotation, standard packaging for continental United States domestic shipment is included in the agreed price. When special domestic or export packaging is requested, Customer will be charged for any additional expenses. Packages are clearly labeled to BRUS standards and labeled to conform to UN Model Regulations when containing hazardous materials.

### **4.2 Delivery Terms.**

All delivery dates are estimates only, and subject to prompt receipt of all necessary information from Customer that is requested from BRUS. BRUS' only obligation with respect to delivery dates is to make reasonable efforts to meet such delivery dates. Unless otherwise agreed upon between the Parties in writing or specified in the Purchase Order, all shipments shall be FCA (Incoterm, 2020) at BRUS plants/warehouses. Partial deliveries are permitted. BRUS may deliver Products and Prototypes in advance of the delivery schedule. If, for whatever reason, BRUS experiences Product and Prototype shortages, BRUS may hold or allocate Products and Prototypes among its customers as BRUS considers appropriate.

#### **4.3 Risk of Loss – Delivery.**

Risk of loss and title to the Products transfer upon completion of delivery of the Products per the applicable delivery term specified in Section 4.2 above. Notwithstanding the applicable delivery terms, BRUS will not be liable for any delays, breakage, loss or damage after having made delivery to the first transportation carrier. All claims for loss or damage in transit are to be made by Customer directly to the transportation carrier and the appropriate insurance carrier, if any, for such shipment. No deductions of any kind from the invoice amount shall be made. Risk of loss and title to the Prototypes shall be agreed by the Parties in the applicable Statement of Work.

#### **4.4 Inspection and Acceptance.**

Customer will inspect the Products within a reasonable period after shipment, such inspection of Products not to exceed fifteen (15) business days (“**Product Acceptance Period**”). Products will be presumed accepted unless BRUS receives written notice of rejection from Customer, explaining the basis for rejection within the Product Acceptance Period (“**Acceptance**”). Rejection may be based solely upon the failure of the Products to materially comply with the Specifications through no fault of Customer. All claims not made by Customer in writing as specified above and received by BRUS within the Product Acceptance Period will be deemed waived. Upon receipt of Customer’s written notice, BRUS will have the opportunity to inspect, evaluate and test the Product at Customer’s premises or require Customer to send the Product or adequate samples thereof to BRUS or to a person designated by BRUS for inspection, evaluation and testing. All rightfully rejected Products shall be returned to BRUS in accordance with the provisions set forth in Section 5.10. No inspection or any other actions by third-parties are authorized or will be paid for by BRUS without BRUS’ prior written consent.

Customer’s sole and exclusive remedy, and the entire liability of BRUS and its Third Party Providers for any rightful rejection of the Products during the Product Acceptance Period is, at BRUS’ sole option and expense, (a) the repair or replacement of the Product and/or Software; or (b) a credit equal to the purchase price of the Products in lieu of any obligation to repair or replace Products under this Section 4.4. BRUS will not be responsible for any costs or charges for or related to labor and/or parts incidental to the handling and attempted use of the Products.

#### **4.5 Installation and Commissioning.**

Customer is responsible for the proper handling, storage, installation and commissioning of Products and Prototypes in accordance with the Documentation. Such services may be available by BRUS or Third Party Providers, subject to and included in a Statement of Work or Purchase Order, or a mutual written agreement between Customer and BRUS.

#### **4.6 Acceptance, Installation and Testing.**

Where applicable, the Parties may include in a Statement of Work, a Systems Acceptance Test (SAT) process, including the time period(s) in which Customer will install, evaluate and test each Product and/or Prototype provided under such Statement of Work (“**SAT Acceptance Period**”). If there is no SAT process and SAT Acceptance Period set forth in a Statement of Work, the following acceptance testing process shall apply to the Products and/or Prototypes provided (including any Software): upon shipment of the Products, Customer shall evaluate and test such Products and/or Prototypes for a period of twenty (20) business days (“**System Acceptance Period**”) to determine whether the Products and/or Prototypes materially comply with the Specifications. Any extension to the System Acceptance Period requested by Customer must be approved in writing by BRUS. If the Products and/or Prototypes materially meet the Specifications and if required by BRUS, Customer will provide BRUS a written notice of acceptance (“**Systems Acceptance**”). If the Products and/or Prototypes do not materially meet the Specifications, through no fault of Customer, BRUS shall have the opportunity to inspect, evaluate and test the Products and/or Prototypes and cure any non-compliance with the Specifications within sixty (60) days, after which Customer shall evaluate and test such Products and/or Prototypes for an additional System Acceptance Period of twenty (20) business days. If, through no fault of Customer, BRUS cannot remedy the material non-compliance with the Specifications within the above-described timeframes, Customer may, by written

notice to BRUS (a “**Final Rejection Notice**”), reject the Products and/or Prototypes and terminate the applicable Purchase Order or Statement of Work. In such event, Customer’s sole and exclusive remedy, and the entire liability of BRUS and its Third Party Providers, will be to provide a credit to Customer within sixty (60) days of BRUS’ receipt of the Final Rejection Notice equal to that portion of the purchase price of the rightfully rejected Products which has been paid by Customer.

## **5 LIMITED WARRANTY.**

### **5.1 Product Warranty.**

With respect to a Product sold by BRUS to Customer hereunder (including firmware that is installed on, delivered with and not separable from a Product but excluding Software or Software components, the warranty for which is set forth in Section 5.3 below), and subject to Sections 5.5 through 5.10 of these Standard Terms, BRUS warrants: the Product to be free from defects in material and workmanship under normal operating conditions and proper application in accordance with the Specifications listed in the Documentation or Data Sheet, which accompanies such Product or are otherwise made available by BRUS in writing. The applicable warranty period is as follows (“**Product Warranty Period**”): Unless otherwise specified in writing by BRUS in a Quotation, Statement of Work or Purchase Order, the warranty period for all BRUS Products (excluding Software or Software components) shall be (i) eighteen (18) months after date of shipment from BRUS facility, or (ii) twelve (12) months after the Product is placed in service, whichever occurs first. BRUS may offer extended and/or conditional warranties for Products, systems, assemblies and power units only as specified in writing in either a Statement of Work or an official BRUS warranty program. Customer or Customer’s vendor-supplied items that are integrated or provided with Product systems, assemblies or power units are warranted per original Customer or its vendor’s original manufacturer’s warranty and warranty policy.

Customer’s sole and exclusive remedy and the entire liability of BRUS and its Third Party Providers for breach of warranty within the Product Warranty Period under this Section 5.1 is, at BRUS’ option and expense: (a) repair or replacement of Product; or (b) a credit equal to the purchase price (less a reasonable depreciation for use, damages and obsolescence) of the Product in lieu of any obligation to repair or replace the Product under this provision.

### **5.2 Prototype Warranty.**

BRUS shall have no liability for claims related to Prototype, including any Prototype testing, including Software contained in a Prototype and evaluation conducted by Customer. ALL PROTOTYPES ARE PROVIDED BY BRUS TO CUSTOMER “AS IS” AND “WITH ALL FAULTS”; BRUS DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND OR/FREEDOM FROM THIRD PARTY CLAIMS OR RIGHTS.

### **5.3 Software Warranty.**

Subject to Sections 5.5 through 5.10 of these Standard Terms, BRUS warrants, that, commencing from the date of first use of the Software license and for a period of ninety (90) days (the “**Software Warranty Period**”), the Software as delivered (excluding Software related to Prototypes) will substantially conform to and perform in accordance with the Documentation. This software warranty will apply unless BRUS provides a different software warranty for the specific Software in the EULA or Documentation associated with that Software, and such different software warranty shall solely apply. BRUS DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, VIRUS-FREE, FREE OF MALICIOUS CODE OR THAT ANY DEFECTS WILL BE CORRECTED. BRUS DOES NOT WARRANT THAT THE USE OF THE SOFTWARE WILL NOT BE IMPAIRED BY DOWNTIME, MAINTENANCE ACTIVITIES, FURTHER DEVELOPMENTS, UPDATES AND UPGRADES OR MALFUNCTIONS. IN ADDITION, BRUS DOES NOT WARRANT THAT THE SOFTWARE OR ANY EQUIPMENT, APPLICATIONS, OPERATING SYSTEMS OR NETWORK ON WHICH THE SOFTWARE IS USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK

OR THAT SUCH SOFTWARE WILL INTERACT WITH THIRD PARTY EQUIPMENT, DEVICES, APPLICATIONS, OPERATING SYSTEMS, NETWORKS OR OTHER SOFTWARE.

Customer's sole and exclusive remedy and the entire liability of BRUS and its Third Party Providers for breach of warranty within the Software Warranty Period under this Section 5.3 will be, at BRUS' option and expense, (a) repair or replacement of the Product and/or Software, or (b) a credit for any licensing fees for the Software.

#### **5.4 Service Warranty.**

Subject to Sections 5.5, 5.7 through 5.10 of these Standard Terms, BRUS warrants that the Service will be performed in a professional and workmanlike manner, consistent with commercially reasonable standards in the industry. For any breach of warranty under this Section 5.4, Customer must provide a written claim within ten (10) business days after provision of the applicable Service specifying in reasonable detail the nonconformity with such warranty, and Customer's sole and exclusive remedy and the entire liability of BRUS and its suppliers for breach of warranty under this provision is, at BRUS' sole option and expense to use commercially reasonable efforts to re-perform the identified nonconforming Service. If BRUS concludes that re-performance of these nonconforming Service is impracticable for any reason, then BRUS will refund the fees paid by Customer to BRUS allocable to those nonconforming Service.

#### **5.5 Outside Warranty and Liability.**

Customer expressly acknowledges that BRUS is not responsible or liable for: (a) products, software, services, components or systems that BRUS has not supplied; (b) products, software, services, components originating from third parties that are supplied by BRUS under or at the direction of Customer; (c) any end product or software in which the Products or Software are installed or incorporated as a component or subpart; (d) conditions, changes, alterations, additions or applications to or for Products, Software or Services, unless made or specifically authorized in writing by BRUS; or (e) Customer's failure to perform maintenance to Product or Software (including firmware) as recommended by BRUS, or to otherwise comply with the Specifications and/or industry practices. BRUS shall have no liability, obligation or responsibility for components and systems over which BRUS has no control, including without limitation, contamination, incorrect power supply, pressures in excess of recommended maximum, products damaged or subject to voltage, humidity, or temperature outside of specified range, accident, abuse or misuse after shipment from BRUS's factory, Products or Software altered, disassembled or repaired by anyone other than BRUS personnel, personnel or persons so designated in writing by BRUS's Service Department prior to commencement of said work. Types of failures and/or damages that are not attributable to BRUS breach of warranty, and which are not considered by BRUS as part of its warranty include, but are not limited to, the failures and/or damages that result from or are attributable to the following:

- 5.5.1 Accident, abuse, neglect;**
- 5.5.2 Customer's improper storage or handling prior to installation and operation;**
- 5.5.3 Improper alignment, connection, configuration, orientation, assembly work, and pre-conditioning prior to or during Product's operation;**
- 5.5.4 Contaminants found in/on Product;**
- 5.5.5 From the action of, or deterioration from, contaminants in the form of air and fluid borne particles, solids, liquids, entrained gases, chemicals, and biological contaminants in Product's connected electrical, heating/cooling, flushing, lubrication, mechanical and fluid power systems;**
- 5.5.6 Operating and maintaining Product or Software in a manner or under service conditions outside of its Specifications or the Documentation without the prior written consent of BRUS, and then only in strict accordance to any/all additional or modified Specifications or Documentation pertaining to consent;**
- 5.5.7 Modifications and repairs of Product except for those provided by BRUS Services or BRUS' authorized Third Party Providers;**

- 5.5.8 **Pressurized cleaning or attributed to the use of excessive heat and force, aggressive abrasives, cleaners and/or solvents during cleaning of Product;**
- 5.5.9 **Any kind from erosive or corrosive action of any gases or liquids evidently encountered by the Product;**
- 5.5.10 **Excessive electrical potential, electrical current and magnetic fields emanating from Product's operating environment;**
- 5.5.11 **Product ordinary wear and tear.**

#### **5.6 Warranty Processing Procedure.**

For any Product or Software breach of warranty brought within the applicable Product Warranty Period or Software Warranty Period, as applicable, Customer shall promptly notify BRUS in writing and may request authorization to return such Product. Customer must provide a written explanation of the breach of warranty (the "**Warranty Claim**") as such warranty is set out in this Section 5, subject to the provisions of Section 5. Subsequently, BRUS through its inspection process must be satisfied that the claimed breach of warranty exists. For Warranty Claims where physical inspections of the Product are required, Customer must follow BRUS' return instructions as set forth in Section 5.10 of these Standard Terms, to return the Product to the designated BRUS' service facility at Customer's own risk and expense. BRUS shall have the right to request reasonable evidence of and impose reasonable requirements for inspection and evaluation of the Warranty Claim. Warranty repair or replacement by BRUS shall not extend or renew the applicable Product Warranty Period or Software Warranty Period, unless expressly stated in writing by BRUS. BRUS will not be responsible for labor and material costs of removal or reinstallation of Products and Software. Returned Products that are not defective, that are not subject to warranty coverage as described in this Section 5, or that contain missing or damaged parts, will be returned to Customer at Customer's sole expense, without credit, repair or replacement.

#### **5.7 Other Limited Warranties and No Other Warranties.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, BRUS MAKES NO OTHER WARRANTY OR REPRESENTATION TO CUSTOMER, EITHER EXPRESS OR IMPLIED, AND TO THE FULLEST EXTENT PERMITTED BY LAW, BRUS SPECIFICALLY AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ANY OTHER WARRANTIES ARISING FROM OR OUT OF ANY COURSE OF DEALING, USAGE OF TRADE, SPECIFICATION, PROPOSAL, PERFORMANCE OR CUSTOM, AND ANY STATUTORY WARRANTY ON HIDDEN OR LATENT DEFECTS.

If Customer or BRUS agent grants to an end user any warranty which is greater in scope, time period or labor allowance than the warranty stated herein, BRUS shall not be liable beyond the stated warranty. Except as otherwise provided under Section 5.6 above, equipment and accessories not manufactured by BRUS shall not be the responsibility of BRUS.

#### **5.8 Exclusive Remedy.**

EXCEPT AS OTHERWISE REQUIRED BY APPLICABLE LAW, THIS SECTION 5 PROVIDES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ALL CLAIMS, DAMAGES, LOSS OR INJURIES (WHETHER DIRECT, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL) BASED ON OR ARISING FROM ANY DEFECT, FAILURE, MALFUNCTION, BREACH OF WARRANTY OR ANY OTHER PERFORMANCE, NONCONFORMANCE OR NONPERFORMANCE OF ANY PRODUCT, SOFTWARE OR SERVICE, WHETHER THE CLAIM IS IN CONTRACT, EQUITY, INDEMNITY, INFRINGEMENT, WARRANTY, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY) OR OTHERWISE AND HOWEVER INSTITUTED.

### **5.9 Customer Warranty.**

Customer warrants that (a) Customer has the corporate power and authority to enter into, and perform its obligations under these Standard Terms; (b) Customer will not make any false, inaccurate, incomplete representation, advertisement or warranty, whether written or oral, to any third party relating to any Products, Prototypes, Software and/or Services and that it will not make a statement or reference related to BRUS without BRUS' express written permission and (c) Customer will perform all maintenance to Software (and firmware), including Software Updates, as recommended or otherwise made available without change by BRUS.

### **5.10 Return Goods Authorization Process.**

The BRUS Return Authorization Process (“**RGA Process**”) shall apply to all Products and/or Prototypes to be returned (collectively referred to as “**Return Product**”) to BRUS designated location or BRUS' designated Third Party Provider, which RGA Process is available upon request by Customer by contacting BRUS service at [www.boschrexroth.com/en/us/contact](http://www.boschrexroth.com/en/us/contact) or 1-800-REXROTH, and which is hereby incorporated by reference. Customer agrees to the terms and conditions of the RGA Process, which includes the requirement to obtain a Returns Good Authorization, provide a clear reason for the Return Product (including for rejections or breach of warranty claims), and to properly identify the Return Product itself. Customer is solely responsible for returning the Product free of contaminants, appropriately packaged, properly identified, pre-paid and insured for delivery at the designated location and freight method as instructed in the RGA Process. Title of Return Product remains unchanged, subject to the provisions of Section 3.7, unless a transfer of title is executed through the RGA Process. Disposition of the Return Product after receipt at the BRUS designated location shall be subject to the terms and conditions of the RGA Process. For Products rightfully rejected per Sections 4.4 or 4.6 or breach of warranty per Section 5, respectively, and returned by Customer, BRUS is responsible for shipping costs to the BRUS designated location in an amount not to exceed normal surface shipping charges. If BRUS reasonably determines that rejection or the return was improper, Customer will be responsible for all expenses incurred by BRUS arising from the improper rejection or improper warranty claim, including all BRUS costs for Product inspection, storage, shipping and disposal.

Customer is responsible for proper disposal of any Products, which shall be in accordance with the considerations or recommendations listed in the Documentation, if any.

### **5.11 Services and Repair.**

Quotations may be requested for non-warranty Product repair services, including Software, which service may be provided by BRUS or a Third Party Provider. The available scope of such services, the terms and conditions of such services, including warranty, may vary by Product and the business entity providing the services.

## **6 INTELLECTUAL PROPERTY RIGHTS/SOFTWARE.**

### **6.1 Intellectual Property Rights – Ownership.**

As between BRUS and Customer, BRUS exclusively owns and shall retain exclusive ownership of all right, title and interest worldwide, including all inventions (whether patented or not), patent applications and disclosures, patents, design rights, copyrights and copyrightable works (including, but not limited to, the right to reproduce and make copies of an original work, the right to prepare derivative works, the right to distribute copies to the public, the right to public performance, the right to public display and the right to public performance of sound recordings), trademark, service marks, trade names, domain name rights, mask work rights, know-how and trade secrets and all other forms of intellectual property and proprietary rights (collectively, “**Intellectual Property Rights**”) in and related to: (a) the Products, Services, Software and Prototypes and all updates, modifications, improvements and derivatives thereof; and (b) all other ideas, inventions (whether patentable or not), concepts, designs, methods, processes, software (including source code and object code), data (other than Customer Data) and works of authorship authored,

developed, conceived, reduced to practice or licensed by BRUS or an Affiliate thereof for or in connection with any Products, Software, Prototypes or the Services. No rights are granted to Customer hereunder other than as expressly set forth herein, and BRUS (and its licensors, where applicable) reserve all rights not expressly granted herein. For the avoidance of doubt, no right, title or interest to any of the Software's source code is granted under these Standard Terms. Customer shall not itself or assist or instruct others to attempt in any way to reverse engineer, copy/reproduce, decompile, disassemble, translate, fragment parts or otherwise obtain or attempt to obtain in any way access to the Product, Prototype, Software or to the Software's source code provided by BRUS without BRUS' prior written consent, except as required in accordance with Section 6.4 below. Customer shall not remove, change, alter or otherwise render unintelligible any designation of the Software, including copyright notices, trademarks, serial numbers and the like. Unless expressly agreed in writing by BRUS, Software and Prototypes will be treated as Confidential Information as defined in Section 9.

## **6.2 Third Party Intellectual Property Rights.**

To the extent the Products, Prototypes or Services (including, but not limited to, any Software contained therein) contain third party Intellectual Property Rights, BRUS only provides those rights which BRUS has lawfully obtained from such third party. To the extent that Customer provides any software to BRUS or directs BRUS to include any third-party software, Customer shall secure any and all third-party Intellectual Property Rights necessary for BRUS to use such software and Customer shall indemnify BRUS for all costs, expenses and damages caused by Customer's failure to secure the necessary Intellectual Property Rights in such software.

## **6.3 License Grant.**

BRUS hereby grants to Customer a non-exclusive, irrevocable, non-transferable, non-sublicensable, royalty free, perpetual license to use the Software delivered as firmware in Products or Prototypes solely in connection with the normal and intended use of the Products or Prototypes in accordance with all Documentation and as authorized under these Standard Terms and any applicable EULA (as defined below). This license shall be transferable only in the event of the sale or transfer of Products to a third party resulting in Customer's discontinuation of use. BRUS hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable right to use the Software (specifically excluding Software delivered as firmware in Products or Prototypes) solely in connection with the normal and intended use of such Software in accordance with all Documentation as authorized under these Standard Terms and any applicable EULA. Notwithstanding the foregoing grant, the Software is not sold to Customer. Unless otherwise expressly agreed in writing by BRUS, this Section 6.3 does not include a license or a right to use any Software Upgrades which may be provided from time to time at BRUS's discretion. Such Software Upgrades may be purchased separately and will not be considered part of the Software delivery of a previous version. BRUS reserves the right to make the availability of Software Updates and Software Upgrades conditional upon the existence of a valid software maintenance agreement between BRUS and Customer. In the event any Software contains a click-through, pop-up or other end-user license agreement (collectively, "**EULA**"), BRUS will notify Customer of such EULA at the time of Software delivery and, upon acceptance of the EULA or use of such Software by Customer, the terms of the EULA shall control over the terms of these Standard Terms. In the event Customer does not accept the EULA at the time of delivery, Customer shall not use the Product, Prototype and/or Services, and any use of the Software shall be considered an unauthorized use. To the extent such Product, Prototype and/or Services contain free or open source software, the OSS-Terms and Conditions (defined below) shall apply.

Subject to Customer's compliance with these Standard Terms, BRUS hereby grants to Customer a limited, non-exclusive license to copy, publish and transmit any Documentation provided to Customer by BRUS with the Product or Prototype solely for Customer's internal business purposes, and except as required in accordance with Section 6.4 below.

## **6.4 Open Source Software.**

To the extent such Product, Prototype or Services (including, but not limited to, any Software contained therein) contain free or open source software (collectively, “**OSS**”), such OSS may be subject to separate third-party OSS licensing terms and conditions (“**OSS-Terms and Conditions**”). Under such OSS-Terms and Conditions, BRUS may be required to provide the OSS-Terms and Conditions to Customer and Customer must comply with all of the applicable OSS-Terms and Conditions and fulfill all corresponding obligations of the applicable OSS-Terms and Conditions, especially if Customer further distributes, publishes or provides the Products, Prototypes or Services through sales or other transfer to third parties (including an end user or customer). Such obligations may include, for example, documentation obligations or obligations to provide the source code of any software in which the OSS has also been integrated. An overview of all OSS-components contained in the Products, Prototypes and/or Services, as well as corresponding license text of the OSS Terms and Conditions (of all originating OSS authors), are part of or are included with BRUS’ Documentation, Products, Prototypes and/or Support Service. New or updated Software component versions included in BRUS’ Products, Prototypes and/or Services may contain other and/or additional OSS. For such other and/or additional OSS, the same terms and conditions as applicable apply. Customer shall use commercially reasonable efforts to not combine or request BRUS to combine the other any software, goods and/or services (including, but not limited to, any Products, Prototypes, or Services, or any Software contained therein) with any OSS or other data in any manner, which would result in the other Party’s software, goods and/or services becoming subject to the terms of an OSS license. For any software provided to BRUS by or on behalf of Customer, Customer shall disclose in writing a list of all applicable OSS -Terms and Conditions, and third party software included in such software, at the time of delivery of such software to BRUS. Customer shall indemnify BRUS for all costs, expenses and damages caused by Customer’s failure to disclose OSS-Terms and Conditions and/or third party license terms in software provided by Customer, directed by Customer or on behalf of Customer.

## **6.5 Customer Feedback.**

If Customer provides any ideas, suggestions or recommendations to BRUS regarding the Products, Software, Prototypes, and/or Services (“**Feedback**”), Customer, on behalf of itself and its Affiliates and their customers and end customers, hereby grants to BRUS and its Affiliates a non-exclusive, irrevocable, paid-up, royalty-free, perpetual, worldwide license under and to all of Customer’s rights and interests that are incorporated in any Feedback to make, have made, use, sell, offer to sell, import, reproduce, display, perform or distribute any BRUS Products, Software, Prototypes and/or Services and such Feedback.

## **7 Data Protection and Privacy.**

### **7.1 Customer Data.**

Customer represents and warrants that: (a) all Customer Data it provides to BRUS hereunder is owned by Customer or Customer has the right to provide such Customer Data to BRUS for use by BRUS in connection with these Standard Terms; and (b) any authorized Processing of Customer Data by BRUS does not and will not violate or infringe the intellectual property, privacy or publicity rights of any third party, or any applicable data privacy and security Laws.

### **7.2 License to Customer Data.**

Customer hereby grants to BRUS the right to use the Customer Data for the purposes of Processing such Customer Data in conjunction with the Products, Software, Prototypes, and/or Services, and/or performing all other obligations of BRUS under these Standard Terms. In addition, Customer hereby grants to BRUS a limited, non-exclusive, perpetual, irrevocable, royalty-free, non-transferable, worldwide license to use, and sublicense to Affiliates, agents, consultants and subcontractors within the same scope, the Customer Data, for the following purposes (a) to improve and enhance the Products, Software, Prototypes, and/or Services and for other development, diagnostic and corrective purposes in connection with the Products, Software, Prototypes, and/or Services; (b) the investigation of any accidents or claims related to a defect, failure, or alleged defect or failure of BRUS’ Products, Software, Prototypes, and/or Services; (c) the

defense of any claim against BRUS brought by Customer or any third party; and (d) any other purpose as mutually agreed in writing between the Parties.

### **7.3 Aggregated and Anonymized Data.**

The Software may collect and compile data and information related to its use which may be aggregated and anonymized, including compiling statistical and performance information related to the provision and operation of the Software (“**Aggregated and Anonymized Data**”). Aggregated and Anonymized Data shall only include data or information which (a) is anonymized and NOT identifiable to any person or entity; and (b) which does not reveal Customer’s identity. As between BRUS and Customer, all right, title, and interest in Aggregated and Anonymized Data, and all intellectual property rights therein, belong to and are retained solely by BRUS. Customer acknowledges that BRUS may compile Aggregated and Anonymized Data based on Customer Data collected, produced or otherwise processed by the Software. Customer shall not, and shall not assist any third party to, oppose, contest, restrict or otherwise challenge BRUS’ rights related to the Aggregated and Anonymized Data.

### **7.4 Protection and Privacy- Customer Data and Personal Information.**

To the extent BRUS Processes Customer Data , BRUS has implemented and maintains commercially reasonable administrative, physical, and technical safeguards designed: (a) to maintain the security, confidentiality and integrity of such Customer Data; (b) to protect such Customer Data from known or reasonably anticipated threats or hazards to its security and integrity, accidental loss, alteration, disclosure and all other unlawful forms of processing, and (c) so that they do not constitute unfair, deceptive or abusive acts or practices with respect to such Customer Data. The terms of the Data Protection Notice at <https://www.boschrexroth.com/en/us/data-protection-notice/> are hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data.

### **7.5 Protection and Privacy – Customer Requirements.**

Customer is solely responsible for procuring and maintaining its network connections and Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Products, Software, Prototypes, and/or Services including without limitation, modems, hardware, servers, software, operating systems, networking and web servers (“**Customer Equipment**”). Customer shall also be responsible for maintaining the security of the Customer Equipment, Customer account, passwords (including, but not limited to, administrative passwords) and files, and for all uses of Customer account or the Customer Equipment with or without Customer’s knowledge or consent.

## **8 INDEMNIFICATION.**

### **8.1 Indemnification – BRUS.**

Except as set forth below in Section 8.2 and 8.3, BRUS will defend any third party lawsuit or action against the Customer based on a claim that the Products, Software, Prototypes, and/or Services as delivered by BRUS directly infringes a valid U.S. patent or copyright, and indemnify Customer for any final judgment assessed against Customer resulting from such lawsuit, provided that Customer: (a) promptly notifies BRUS at the time it is apprised of the third-party claim; (b) provides any and all relevant materials and information related to the claim to BRUS; (c) cooperates and provides BRUS with reasonable assistance for the defense and disposition of the claim; and (d) gives BRUS exclusive control over the defense and resolution of the claim, using counsel of BRUS’ choice. Without BRUS’ prior written consent, BRUS will not be responsible for: (x) any compromise or settlement made by Customer; and (y) any defense fees or costs incurred by Customer or any expenses incurred by Customer for itself or on BRUS’ behalf.

### **8.2 Infringement Remedy.**

Subject to Section 8.5 of these Standard Terms, if a Product, Software, Prototype, and/or Service is held to constitute infringement or its use is enjoined, BRUS may, at its sole option and expense, and as Customer’s sole and exclusive remedy: (a) procure for Customer the right to continue using the Product,

Software, Prototype and/or Service; (b) replace the Product, Software, Prototype, and/or Service with a similar non-infringing product, software or service; (c) modify the Product, Software, Prototype or Service, or any portion thereof, so that it is non-infringing; or (d) accept return of the Product and/or Prototype and/or terminate Customer's rights to use or make use of the Products, Software or Service, and grant a Customer credit for the purchase price paid for the Product, Software or Service, less a reasonable depreciation for use, damages and obsolescence as applicable. In the event that BRUS believes that any of the Products, Software, Prototypes, or Service may be subject to a claim of infringement, BRUS reserves the right at its sole discretion to stop delivering or providing Customer access to the Product, Software, Prototype, Software or Service, and such stoppage will not be considered a breach by BRUS of these Standard Terms. THIS SECTION 8.2 STATES BRUS' ENTIRE LIABILITY, CUSTOMER'S SOLE RECOURSE AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT. ALL WARRANTIES RELATED TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS, IMPLIED OR OTHERWISE, ARE HEREBY DISCLAIMED.

### **8.3 Limitation on Infringement.**

BRUS will have no obligation or liability under this Section 8 and Customer shall indemnify, defend and hold BRUS Indemnified Parties harmless to the extent that any claim for infringement arises out of or results from any of the following: (a) Customer's designs, changes, drawings or specifications; (b) Products, Software, Prototypes, or Services used other than for the purpose for which BRUS intended; (c) combining any Products, Software, Prototypes, or Services with any article, component, hardware, system or software not provided by BRUS; (d) Customer's failure to promptly update any Software previously provided by BRUS or a third-party on its behalf; (e) the implementation of Standardized Technologies into the Products, Software, Prototypes, or Services, to the extent BRUS' indemnification obligation under this Section 8 stems from Standardized Technologies ; (f) the application or use of any Products, Software, Prototypes, or Services, which fail to comply with the specification or other written instruction from BRUS; or (g) any alteration, customization or other modification of the Products, Software, Prototype, or Services other than by BRUS. For the purposes of these Standard Terms, ("**Standardized Technologies**") means technical specifications or functions: (i) adopted by a standards organization (e.g. ETSI or IEEE), or (ii) defined by research institutes, industrial companies or market participants to ensure technical conformity or compatibility, or (iii) established by common practice in a particular field)

### **8.4 Indemnification – Customer.**

Customer shall, at Customer's sole expense, indemnify, defend and hold BRUS and its Affiliates, and their respective owners, shareholders, members, managers, directors, officers, employees, representatives, agents, subcontractors, contractors, successors and assigns (collectively, "**BRUS Indemnified Parties**") harmless against all losses, claims, liabilities, damages, causes of action, judgments, settlement payments, interest, awards, penalties, fines, costs and expenses (including without limitation reasonable court costs, reasonable attorneys' fees, and arbitration, mediation and expert fees and any recall costs and expenses) arising out of or relating to Customer's or Customer's Affiliate's, or their subcontractor's, supplier's, integrator's, end customer's or representative's: (a) negligent act or omission or willful misconduct; (b) breach of these Standard Terms or violation of applicable Law; (c) misuse or improper installation, storage, maintenance or use of the Products, Software, and/or Prototypes, including failure to implement Software Updates made available to Customer by BRUS; (d) incorporation of the Products, Software or Prototypes into another product or service; (e) changes, alterations or additions to Products, Software, Prototypes, or Services; or (e) Customer's relationship with any end user customer, including any dispute with an end user. Customer will be entitled to control the defense of such claim for which it is providing indemnity to any BRUS Indemnified Parties pursuant to this Section 8.4. At Customer's expense, BRUS will reasonably cooperate in the defense of the claim, including but not limited to promptly furnishing Customer with all relevant information within its reasonable possession or control. BRUS may participate in the defense at its own expense and through counsel of its choosing. Customer shall not admit liability or enter into any settlement without the prior written approval of BRUS.

## **8.5 LIMITATION ON LIABILITY AND REMEDIES.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE STANDARD TERMS AND EXCEPT FOR BRUS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: BRUS AND ITS AFFILIATES, AND THEIR RESPECTIVE OWNERS, SHAREHOLDERS, MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, CONTRACTORS, SUCCESSORS AND ASSIGNS SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING LOSSES OR DAMAGES: EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST SALES, LOSS OR CORRUPTION OF DATA, LOSS OF PRODUCT USE, LOSS OF BUSINESS, LOSS OF GOODWILL, DOWNTIME COSTS, DAMAGE TO ASSOCIATED EQUIPMENT, LOSS OF REPUTATION, LOSS OF DATA, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICES, OR CLAIMS OF CUSTOMER'S END USER CUSTOMERS, FOR SUCH DAMAGES OR LOSSES), EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES OR LOSSES WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL BRUS' TOTAL AGGREGATE LIABILITY ARISING OUT OF THESE STANDARD TERMS AND CONDITIONS OF SALE, WHETHER UNDER TORT, CONTRACT, WARRANTY OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO BRUS FOR THE PRODUCT GIVING RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING NOTICE OF THE CLAIM.

THE LIMITATIONS OF LIABILITY CONTAINED IN THESE STANDARD TERMS ARE A FUNDAMENTAL PART OF THE BASIS OF BRUS' BARGAIN HEREUNDER AND BRUS WOULD NOT ENTER INTO THESE STANDARD TERMS ABSENT SUCH LIMITATIONS. BRUS' rights and remedies set forth herein shall be in addition to any legal or equitable right or remedy available to BRUS. No waiver of any of BRUS' rights or remedies shall be effective without BRUS' express written consent.

## **9 CONFIDENTIAL INFORMATION.**

### **9.1 Confidentiality Definitions.**

Any non-public technical, financial or business information, trade secrets, content, or any other information provided by one Party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") directly or indirectly, orally or in writing that is: (a) marked confidential or proprietary, or (b) given the nature of the information or the circumstances surrounding its disclosure, reasonably should be deemed confidential ("**Confidential Information**") shall be held in confidence by the Receiving Party, not disclosed, and not be used by such Party except to the extent necessary to carry out its obligations or express rights hereunder, except as otherwise authorized by the Disclosing Party in writing. Confidential Information includes, but is not limited to these Standard Terms, Purchase Orders, Quotations, Statements of Work and any other agreements between BRUS and Customer relating to, and any information and data concerning the Products, Prototypes, Software and the Services. The Disclosing Party or its licensors retain all right in such Confidential Information. When applicable, all Specifications accompanying a Quotation are considered confidential to BRUS, therefore they are to be solely reviewed by personnel of the Customer on a need to know basis, unless otherwise authorized in writing by BRUS.

### **9.2 Obligations.**

The Receiving Party will use Confidential Information only in connection with its performance under these Standard Terms or any Quotation related thereto. The Receiving Party shall use the same degree of care to avoid any disclosure or use of the Confidential Information as it uses for its own confidential, proprietary and trade secret information, but in no case use less than a reasonable degree of care. The Receiving Party agrees to limit disclosure of Confidential Information to employees, contractors or agents and employees, contractors or agents of Affiliates having a specific need to know such Confidential Information in furtherance of its performance under these Standard Terms.

### **9.3 Exceptions.**

The confidentiality obligations under this Section 9 do not apply to any information that: (a) is generally known, or readily ascertainable by proper means, by the public other than through the Receiving Party's fault; (b) was known by or in the possession of the Receiving Party or its Affiliate at the time of disclosure as shown by the Receiving Party's and/or its Affiliates' files and records prior to the time of disclosure, other than as a result of any improper act or omission of the Receiving Party or its Affiliate; (c) is rightly received by the Receiving Party from a third-party not subject to any nondisclosure obligations with respect to the Confidential Information; or (d) is independently developed by an employee, agent or consultant of the Receiving Party or its Affiliates without reference to or use of the Disclosing Party's Confidential Information.

### **9.4 Compelled Disclosure.**

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent it is requested, ordered or required by a regulatory agency or any other government authority or a court to do so; provided the Receiving Party promptly notifies the Disclosing Party of such request, order or requirement (to the extent legally permitted) and provides reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party shall reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information. If such protective order or other remedy is not obtained, the Receiving Party shall furnish only that portion of the Confidential Information that is legally required and use commercially reasonable efforts to obtain assurance that confidential treatment shall be accorded the Confidential Information.

### **9.5 Reproduction and Return of Confidential Information.**

The Confidential Information provided by the Disclosing Party shall not be copied or reproduced without the Disclosing Party's prior written consent, except for such copies as may reasonably be required by the Receiving Party for its performance of its obligations under these Standard Terms. Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party (or its designees) all Confidential Information received from the Disclosing Party or certify that it has destroyed all Confidential Information, in whatever form, including written or electronically recorded information and all copies thereof (other than copies retained in automatic back-up and archive systems). Notwithstanding the foregoing, the Receiving Party shall be entitled to retain one copy of the Confidential Information with its legal counsel or other appropriate corporate representative to evidence the exchange of information hereunder and in connection with legal or statutory requirements. All such retained copies shall be subject to the use and disclosure restrictions set forth in this Section 9 of these Standard Terms for so long as the Confidential Information is retained.

## **10 TERM AND TERMINATION.**

### **10.1 Termination for Breach.**

Either Party may terminate these Standard Terms, a Purchase Order, Statement of Work or an accepted Quotation: (a) upon material breach of any material term of these Standard Terms by the other Party which is not remedied within thirty (30) days after written notice of such breach is issued by the non-breaching Party; or (b) if a Party becomes insolvent or makes an assignment for the benefit of creditors, or such Party institutes any voluntary proceeding under bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of the Party's property, then termination shall be automatic and immediate; however, in the event any such proceeding is initiated by a third-party against such Party, termination shall be automatic if such proceeding is not dismissed or cured by the Party within thirty (30) days after the filing thereof. Upon termination, all rights, licenses, consents and authorizations granted by a Party hereunder will immediately terminate, other than those expressly specified to continue after termination. The rights of termination provided herein

are not exclusive of other remedies that BRUS may be entitled to under these Standard Terms or in law or equity.

### **10.2 Payment upon Termination.**

In no event will termination relieve Customer of its obligation to pay any fees payable to BRUS for the period prior to the effective date of termination.

### **10.3 Surviving Provisions.**

Sections 1, 3.7 and 5 through 11 will survive any termination or expiration of these Standard Terms, any Purchase Order, Statement of Work or Quotation.

## **11 MISCELLANEOUS PROVISIONS.**

### **11.1 Posting Through BRUS Website.**

BRUS may modify these Standard Terms from time to time by posting revised Standard Terms to BRUS' Website at [www.boschrexroth.com/en/us/company/about-bosch-rexroth/terms-and-conditions/index](http://www.boschrexroth.com/en/us/company/about-bosch-rexroth/terms-and-conditions/index) (as revised from time to time, the "**Updated Standard Terms**"). Such Updated Standard Terms shall apply to all Purchase Order or Quotation revisions/amendments and new Purchase Orders or Quotations issued on or after the effective date of such Updated Standard Terms.

### **11.2 Waiver.**

No waiver of any of provisions of these Standard Terms shall be effective unless agreed to in writing signed by BRUS. No oral agreement, course of performance or other means other than such written agreement signed by both parties expressly providing for such waiver shall be deemed to waive any provision of these Standard Terms.

### **11.3 Compliance with Applicable Law.**

Each Party shall, at its sole cost and expense, comply with all applicable Laws and other requirements relating to or affecting these Standard Terms, the Products, Prototypes, Services (including their sale, transfer, handling, storage, use, disposal, export, re-export and transshipment) and/or Software.

### **11.4 Interpretation and Headings.**

No provision may be construed against BRUS as the drafting Party. Section headings are for convenience or reference only and will not affect the meaning or interpretation of these Standard Terms.

### **11.5 Notice.**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and, for (a) Notices sent to BRUS, addressed to Bosch Rexroth Corporation, 14001 South Lakes Drive, Charlotte NC 28272, Attention: Customer Service, and (b) Notices sent to Customer, addressed to the address set forth for the Customer on the face of the Purchase Order, in each case as such address may be updated from time to time by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Standard Terms, a Notice is effective only (x) upon receipt of the receiving party, and (y) if the party giving the Notice has complied with the requirements of this Section 11.5.

### **11.6 Force Majeure.**

In the event either Party is unable to fully perform its obligations hereunder (except for Customer's obligation to pay for Products, Prototypes, the Software and/or Services ordered) due to events beyond its reasonable control, that by their nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to labor strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, action by any governmental authority (whether valid or invalid), fires, floods, windstorms, earthquakes, natural disasters, tariffs, embargoes, explosions,

riots, acts of terrorism or sabotage, malicious damage, wars, electronic viruses, worms or corrupting microcode, or court injunction or order, shortage of supply or delay in delivery by BRUS' vendors, breakdown of plant or machinery, default of suppliers or sub-contractors, inability to obtain or secure: power, material, labor, transportation and equipment (collectively, "**Force Majeure Event**"), that Party shall be relieved of its obligations to the extent it is unable to perform. Timely notice of such inability to perform shall be given to the other Party. In the event of BRUS' inability to perform due to a Force Majeure Event, Customer shall be entitled to reduce its purchase obligations towards BRUS by the quantities purchased from other sources, but shall not have the right to terminate this Agreement. Upon a Force Majeure Event, BRUS shall have the right to allocate its inventory of Products and Prototypes to customers as determined by BRUS in its sole discretion.

### **11.7 Assignment.**

Neither Party may assign any rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. An internal corporate reorganization, which does not result in a change of control or beneficial owner, shall not be deemed an assignment under this provision.

### **11.8 Relationship of the Parties.**

Customer and BRUS are independent contracting Parties and nothing hereunder or in the course of performance of these Standard Terms shall grant either Party the authority to create or assume an obligation on behalf or in the name of the other Party, or shall be deemed to create the relationship of agency, joint venture, partnership, association or employment between the Parties.

### **11.9 Severability.**

In the event that any provision or portion of a provision herein is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction or by an arbitration panel in accordance with Section 11.10 below, the validity and enforceability of the remaining provisions shall not be affected, and in lieu of such provision, a provision similar in terms as is legal, valid and enforceable shall be added hereto.

### **11.10 Dispute Resolution; Governing Law.**

These Standard Terms, the Quotation, Statement of Work and/or Purchase Order and all disputes between the Parties arising out of or related thereto shall be governed by the laws of the State of Michigan except for its choice of law rules; the United Nations Convention on the International Sale of Goods shall not apply. BRUS and Customer acknowledge that these Standard Terms, the Quotation, Statement of Work and/or Purchase Order evidence a transaction involving interstate commerce. BRUS and Customer shall first endeavor to resolve through good faith negotiations any dispute arising under or related to these Standard Terms or with respect to the Products, Software, Prototypes, or the Services. If a dispute cannot be resolved through good faith negotiations within thirty (30) days, either Party may request non-binding mediation by a mediator approved by both Parties. If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, then, upon notice by either Party to the other, any and all disputes, controversies, differences, or claims arising out of or relating to these Standard Terms (including the formation, existence, validity, interpretation (including of this Arbitration clause), breach or termination thereof) or the Products, Software, Prototypes, or the Services shall be resolved exclusively through binding arbitration, except that either Party shall have the right, at its option, to seek injunctive relief, under seal to maintain confidentiality to the extent permitted by Law, (i) in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan, or (ii) pursuant to the American Arbitration Association Optional Rules for Emergency Measures of Protection. A request by a Party to a court of competent jurisdiction for such interim measures shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate. The Parties agree that any ruling by the arbitration tribunal on interim measures shall be deemed to be a final award for purposes of enforcement. The arbitration proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the AAA including application of the Optional Rules for Emergency Measures of Protection as amended from time to time, except as modified by this clause or by mutual agreement of the Parties, and shall be governed by the

United States Federal Arbitration Act. Within fourteen (14) days after the commencement of arbitration, each Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) business days of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. The arbitration shall be conducted in Detroit, Michigan, and the language of the arbitration shall be English. The arbitrators' award shall be final and binding. The arbitrators shall issue a written opinion setting forth the basis for the arbitrators' decision. The written opinion may be issued separately from the award by the arbitrators where necessary to preserve confidentiality. Each Party shall bear its own fees and costs, and each Party shall bear one half the cost of the arbitration hearing fees, and the cost of the arbitrator, unless the arbitrators find the claims to have been frivolous or harassing. Either Party may apply to have the arbitration award confirmed and a court judgment entered upon it. Venue for confirmation of or any challenge to the Arbitration Award shall be in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan and shall be done under seal to maintain confidentiality to the maximum extent permitted by law. The arbitrators shall have no authority to award punitive damages or any other damages excluded herein, to the maximum extent permitted by law. Except as may be required by Law, neither a Party, its counsel, nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

#### **11.11 Limitation Period.**

Except as provided in this Section 11.11, all claims must be made within the period specified by applicable Law. If the law allows the Parties to specify a shorter period for bringing claims, or the law does not provide a time at all, the claims must be made within eighteen (18) months after the cause of action accrues.

#### **11.12 Export Control.**

Activities undertaken by either Party pursuant to these Standard Terms shall at all times be consistent with all import and export and national security laws or regulations of the United States and any applicable foreign agency or authority. Neither Party shall import, export or re-export, or authorize the export or re-export of any product, technology, or information that it obtains or learns hereunder, or any copy or direct product thereof, in violation of any of such laws or regulations without the required license or approvals required thereunder.

#### **11.13 Government Contracts.**

If Products, Prototypes, the Software and/or Services are purchased under a government contract or sub-contract, Customer shall promptly notify BRUS of the provisions of any government procurement laws and regulations which are required to be included in the contract covering the Products, Prototypes, the Software and/or Services ordered, which BRUS must agree upon in writing. If compliance with such provisions increase BRUS' costs or liability, or encumbers any BRUS Intellectual Property Rights, BRUS shall be entitled, at its option, to adjust the prices accordingly, request separate payment of the additional costs, or terminate these Standard Terms and/or the applicable Purchase Order, in which case Customer shall be responsible for all costs incurred by BRUS prior to such termination. Subject to the provisions of this Section 11.13, BRUS represents that its performance hereunder is in compliance with the following provisions, as applicable and as may be amended from time to time (and same are incorporated herein by reference):

**11.13.1 The Fair Labor Standards Act,**

**11.13.2 Executive Order 11246, including section 202,**

**11.13.3 The Vietnam Era Veterans Readjustment Assistance Act of 1974,**

**11.13.4 Worker's Compensation, and**

**11.13.5 The Rehabilitation Act of 1973.**

#### **11.14 Entire Agreement.**

These Standard Terms and all other agreements incorporating these Standard Terms constitute the sole and entire agreement under which BRUS will sell and Customer will purchase the Products, Software, Prototypes and Services. Terms and conditions proposed by Customer that are different from or in addition to the provisions of these Standard Terms are hereby expressly rejected by BRUS and are not a part of these Standard Terms, any Purchase Order or accepted Quotation, Statement of Work and Customer's acceptance is expressly limited to the terms of this Standard Terms. These Standard Terms and all other agreements incorporating these Standard Terms constitute the entire agreement between BRUS and Customer with respect to the matters contained herein/therein and supersede all prior or contemporaneous oral or written agreements, representations and/or communications. These Standard Terms may be modified only by an amendment issued and signed by an authorized representative of BRUS.

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