

Device Management/SaaS Terms and Conditions of Bosch Rexroth AG

Version: 28.09.2020

The Terms and Conditions set out below (hereinafter: “T&C”) apply to the use of software applications on the basis of Software as a Service (SaaS) (hereinafter: “SOFTWARE APPLICATION”) for a limited period of time in return for payment of a charge, provided by [Bosch Rexroth AG, Zum Eisengießer 1, 97816 Lohr am Main, Germany](#) (hereinafter: “BOSCH REXROTH”) to the customer (hereinafter: “CUSTOMER”). Standard business terms of the CUSTOMER shall not apply; they are hereby explicitly rejected. This applies even if, in connection with a purchase order or in other documents of the CUSTOMER, reference is made to its standard business terms and if BOSCH REXROTH does not explicitly reject them in this case.

1. General provisions

- 1.1. The meaning set out in the Preamble and in sec. 20 Definitions applies to the capitalized terms used in these T&C.
- 1.2. Amendments and supplements to these T&C must be made in written form. Emails do not comply with the written form requirement.
- 1.3. Quotations by BOSCH REXROTH are non-binding pending acceptance by the CUSTOMER.
- 1.4. The Contract is concluded upon an agreement being entered into or, upon receipt of an order confirmation from BOSCH REXROTH or upon activation of the USER ACCOUNT. Delivery times are non-binding.

2. Subject Matter

- 2.1. The subject matter of these T&C is the provision for a limited period of time in return of a payment of the SOFTWARE APPLICATION described in greater detail in the performance specification, if applicable, provision of the storage space necessary for this and the granting and/or procurement of usage rights to the SOFTWARE APPLICATION in return for payment of remuneration.
- 2.2. The SOFTWARE APPLICATION may be an ENGINEERING SOFTWARE. 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 products. 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 selection and dimensioning and/or configuration of products and/or for the software generated or changed with the help of the ENGINEERING product therefore lies solely with the CUSTOMER. A product order is placed solely on the basis of the catalogue details and of the DOCUMENTATION belonging to the product.

- 2.3. The SOFTWARE APPLICATION may contain FOSS. The CUSTOMER will be provided with an up-to-date list of the FOSS contained and the corresponding applicable FOSS license terms upon request before entering into the contract, however at the latest, when the SOFTWARE APPLICATION is made available. BOSCH REXROTH reserves the right to, over the course of introduce new or updated FOSS into the SOFTWARE APPLICATION. The corresponding FOSS license(s) will be provided. If the SOFTWARE APPLICATION contains a FOSS component, CUSTOMER’s dealing with such FOSS component shall be primarily governed by the corresponding FOSS license, with which CUSTOMER obliges to comply. FOSS included in the SOFTWARE APPLICATION has no impact on the sales price of the SOFTWARE APPLICATION and thus will be provided without license fee or any other monetary compensation. Beyond the fulfillment of its own license obligations stemming from included FOSS, BOSCH REXROTH does not render any support services that serve the fulfillment of the CUSTOMER’s license obligations stemming from included FOSS.
- 2.4. If, as part of the SOFTWARE APPLICATION, software products are also made available from third-party providers and these are not to be regarded as FOSS, BOSCH REXROTH reserves the right to transfer them subject to the corresponding exclusive terms and conditions of the third-party provider.
- 2.5. BOSCH REXROTH has the right to render the services described in sec. 2.1 through third parties (including AFFILIATED ENTERPRISES) as subcontractors.
- 2.6. The implementation of an interface integration with CUSTOMER’s existing system landscape is outside the scope of these T&C of Use and requires a separate agreement in writing between the Parties.
- 2.7. If explicitly agreed, BOSCH REXROTH shall make telecommunications services of a third-party provider available to the CUSTOMER that are necessary for connecting the UNIT. The area of the telecommunications connection is restricted to the transmission and reception areas of the mobile communications stations operated by the third-party provider and is subject to the respective applicable national provisions. If the mobile telecommunications connection is not adequate to ensure a stable data connection to the server in the area of use, the CUSTOMER shall provide a wired Internet connection (LAN). When the

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contract is entered into, BOSCH REXROTH is not obliged to ensure that an adequate data connection is possible. The CUSTOMER has no claims against BOSCH REXROTH based on the non-existence of an adequate mobile telecommunications connection in the area of use. The CUSTOMER is responsible for the telecommunication service being operated in accordance with the applicable national regulations. The CUSTOMER shall indemnify BOSCH REXROTH from any third party claims arising from any infringement of the applicable national regulations (e.g. use of a national sim-card).

- 2.8. IT-security properties and resultant measures arise out of an agreed description included in a separate document or out of the data sheet. Unless agreed otherwise, it is the CUSTOMER's responsibility to, by choosing adequate technical and/or organizational measures, ensure the IT-security of its systems when integrating or using the SOFTWARE APPLICATION taking into consideration the technical nature of the SOFTWARE APPLICATION. This applies in particular when the CUSTOMER is an operator of a critical infrastructure in the sense of sec. 2 sec. 10 German BSI-Act.

3. Provision of SOFTWARE APPLICATION and storage space, USER ACCOUNT

- 3.1. With effect from the COMMENCEMENT DATE of the License, BOSCH REXROTH shall hold in readiness the then current version of the Software on server infrastructure provided by BOSCH REXROTH or its subcontractors, for use in accordance with the provisions of these T&C. During the term of the contract, BOSCH REXROTH shall provide CUSTOMER with the current version of a DOCUMENTATION for the SOFTWARE APPLICATION in electronic form.
- 3.2. CUSTOMER's access to the SOFTWARE APPLICATION shall be browser-based via the Internet or via an application interface set up by BOSCH REXROTH.
- 3.3. BOSCH REXROTH shall transmit the ACCESS DATA required for the access to the SOFTWARE APPLICATION to CUSTOMER, unless access is via independent registration (possibly by using the CENTRAL BOSCH ID).
- 3.4. If, for the use of some SOFTWARE APPLICATION a USER ACCOUNT is necessary, BOSCH REXROTH will provide this USER ACCOUNT to the CUSTOMER at the COMMENCEMENT DATE. The creation of an USER ACCOUNT is free of charge. Some Services enable registration using the CENTRAL BOSCH ID. In this case the CUSTOMER can use his CENTRAL BOSCH USER ID, if he has already successfully registered for a CENTRAL BOSCH USER ID. Otherwise, the CUSTOMER can set up a new CENTRAL BOSCH USER ID which enables him to use various independent services of the Bosch Group. In this case, the "General Terms and Conditions for the Registration and Use of a Central Bosch ID" shall apply additionally which the CUSTOMER will have to accept during registration for the CENTRAL BOSCH ID.
- 3.5. CUSTOMER shall change, without undue delay, all passwords allocated by BOSCH REXROTH into passwords known only to Customer. The USER ACCOUNT as well as ACCESS DATA (with the exception of the provision of sub-sec. 6.4) are non-transferable (including rental, lease, loan or sub-licensing). ACCESS DATA shall be kept in confidence and shall be protected by suitable and effective measures against access by third parties. The CUSTOMER will notify BOSCH REXROTH without undue delay if there is any reason to fear that unauthorized third parties have obtained or will obtain knowledge of the ACCESS DATA. BOSCH REXROTH is not responsible for the consequences of abuse of ACCESS DATA. CUSTOMER is liable for all acts performed using its USER ACCOUNT.
- 3.6. For the duration of the contractual relationship, BOSCH REXROTH shall keep storage space available to the extent that has been agreed, insofar as this is necessary for the intended use of the SOFTWARE APPLICATION.
- 3.7. The CUSTOMER is fully responsible for the USER CONTENT and the CUSTOMER REPOSITORY, in particular, the CUSTOMER shall comply with applicable law and before uploading the CUSTOMER shall ensure that the USER CONTENT does not contain any viruses, Trojans or other malware. BOSCH REXROTH is neither responsible for USER CONTENT nor for the CUSTOMER REPOSITORY. The operation of the SOFTWARE APPLICATION may not be impaired by USER CONTENT.
- 3.8. The DATA shall, insofar as is possible, be stored and regularly backed up by BOSCH REXROTH throughout the duration of the contractual relationship. CUSTOMER shall be solely responsible for his compliance with retention periods required under commercial and tax law.

4. Technical availability

- 4.1. BOSCH REXROTH owes the availability agreed in an SLA of the SOFTWARE APPLICATION and the availability of DATA at the Internet hubs of the respective Host-Provider of BOSCH REXROTH. The SOFTWARE APPLICATION is available when CUSTOMER can execute and use the main functions of the SOFTWARE APPLICATION. The availability of the SOFTWARE APPLICATION is defined as the percentage share of the time in which the SOFTWARE APPLICATION is available for use by CUSTOMER at the Internet hub of data center of BOSCH REXROTH or the respective Host-Provider of BOSCH REXROTH during the course of an observation period (unless otherwise agreed in the SLA, this is one YEAR OF CONTRACT) during the service availability period agreed in the SLA (unless

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otherwise agreed in the SLA, the support availability applies, see sub.-sec. 5.5). This definition applies accordingly to the calculation of non-availability. The availability shall be calculated according to the following formula: $\text{Availability} = (\text{Time of provision of the service (h)} - \text{non-availability (h)}) \div \text{Time of provision of the service (h)} \times 100$. Unless otherwise agreed in the SLA, an availability of 97.5% per YEAR OF CONTRACT shall be deemed agreed.

4.2. If the SOFTWARE APPLICATION is not available due to

- a) planned maintenance work (e.g. for Updates and Upgrades,
- b) other planned interruptions in operations,
- c) for other reasons for which BOSCH REXROTH is not responsible, such as malfunctions in the field of the provision, operation and support of CUSTOMER's communications connection (communications sections outside BOSCH REXROTH's data center), in particular due to a failure of CUSTOMER's Internet connection,

then for the purposes of calculating availability, the SOFTWARE APPLICATION shall be deemed to have been available during these times. BOSCH REXROTH shall plan maintenance work so as to ensure that the use of the SOFTWARE APPLICATION by the CUSTOMER is impaired as little as possible. The CUSTOMER must be given at least fourteen (14) calendar days advance notice of scheduled maintenance.

4.3. BOSCH REXROTH shall owe the availability of the functionalities of the SOFTWARE APPLICATION described in the Performance Specification only if the system requirements also regulated therein have been complied with by CUSTOMER. CUSTOMER shall be solely responsible for compliance with the system requirements. The provisions of sec. 14 shall apply accordingly to changes to the system requirements and to changes to the technical system of BOSCH REXROTH.

5. Support

5.1. BOSCH REXROTH shall provide first level support for CUSTOMER as first point of contact for INCIDENTS.

5.2. CUSTOMER is obliged to report INCIDENTS without undue delay, no later than on the next working day. An INCIDENT report must contain at least the following information:

- a) Functionality affected;
- b) Environment affected;
- c) Gateways affected;
- d) Date and time when the INCIDENT occurred;

- e) User name affected, if available;
- f) Categorization of the INCIDENT by CUSTOMER; and
- g) Description of the INCIDENT:
 - The measures which CUSTOMER has already taken to rectify the malfunction;
 - The behavior demonstrated due to CUSTOMER's measures to rectify the malfunction.

5.3. In connection with the FLS, an error ticket shall be created by BOSCH REXROTH at its reasonable discretion for each INCIDENT and each INCIDENT shall be allocated to the corresponding error category, unless otherwise agreed in the SLA.

5.4. If no other error categories are defined in the SLA, the following error categories shall apply:

- a) Error category 1: There is a category 1 error if the use of the SOFTWARE APPLICATION or of large parts thereof is not possible or is severely restricted, for example due to malfunctions, incorrect work results or excessively long response times (for example: if there are considerable discrepancies as compared with the Performance Specification, if DATA is wrongly or erroneously stored, if there are program aborts in functions).
- b) Error category 2: There is a category 2 error if, although the use of the SOFTWARE APPLICATION is not impossible or severely restricted, the restriction(s) of use, for example due to malfunctions, incorrect work results or excessively long response times, is/are nonetheless not merely insignificant.
- c) Error category 3: There is a category 3 error if the use of the SOFTWARE APPLICATION is not directly and/or significantly/considerably impaired, for example if the basic settings are unfavorably defined or if "nice-to-have functions" are missing.
- d) Other errors: In the event of errors which cannot be ascribed to the above categories, e.g. if merely minor errors arise which have no effect on the usability of the SOFTWARE APPLICATION, or in the event of queries or requests for improvements being made by the CUSTOMER, it is at the discretion of BOSCH REXROTH to take action.

5.5. The support availabilities are agreed in the SLA. Unless otherwise agreed herein, support shall be available Monday-Friday during BOSCH REXROTH's business hours from 08:00 a.m. to 4:30 p.m. CET/CEST, excluding public holiday in Baden-Württemberg.

5.6. The response time shall run during the support availability according to sec. 5.5 and commences with pro-

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vision of the required information as per sec. 5.2 Messages not received during the availability of support are deemed received at 8 a.m. the next day of support availability. Unless otherwise agreed in the SLA, the following response times shall apply to BOSCH REXROTH: error category 1 – 3: response time max. 12 hours.

- 5.7. The response time shall be deemed complied with if BOSCH REXROTH has sent CUSTOMER qualified feedback within the response time and rectification of the error has been commenced. On request, BOSCH REXROTH shall send CUSTOMER a non-binding estimate of the time expected to be required to rectify the error.
- 5.8. INCIDENTS which cannot be rectified by the FLS shall be transferred to the Second Level Support, if any, aiming to set up a temporary workaround.
- 5.9. CUSTOMER shall be informed of the processing status and of the solution at regular intervals until this has been implemented and the malfunction rectified. If, however, the qualification of the error ticket by BOSCH REXROTH should lead to the result that the malfunction is due to a service or performance by CUSTOMER pursuant to sec. 9 or to other reasons which are not attributable to BOSCH REXROTH, then the CUSTOMER shall have no right of support by BOSCH REXROTH.
- 5.10. Actualizations (upgrades, updates, patches or bugfixes) of the SOFTWARE APPLICATION shall be provided by BOSCH REXROTH as required and in accordance with the maintenance regulations in the SLA.

6. Rights of use

- 6.1. On the COMMENCEMENT DATE, CUSTOMER shall receive a simple, non-transferable and non-exclusive right, limited in time, subject to a charge, to use the SOFTWARE APPLICATION for its own business purposes in accordance with the provisions below and in compliance with the stipulations of the DOCUMENTATION and in the context of the functionalities. The use is only permissible in the agreed countries of designation. In the absence of a specific agreement, this is the country in which CUSTOMER has its registered place of business.
- 6.2. CUSTOMER may use the SOFTWARE APPLICATION only for the purpose set forth in in sec. 2.1 In particular, the following is only permitted if BOSCH REXROTH has given its prior consent in writing
 - a) permanent storage or duplication or
 - b) use of the SOFTWARE APPLICATION for training persons who are not employees of CUSTOMER.
- 6.3. In the context of use in compliance with the contract, CUSTOMER has the right to store and print out the (online) DOCUMENTATION provided whilst retaining

any PROPERTY RIGHTS notices that may exist, and to reproduce that number of copies thereof which is reasonable for purposes of this contract.

- 6.4. If so agreed in the individual contract, the CUSTOMER may, as an exception to sec. 3.5 and 6.1, also permit its customers to access the SOFTWARE APPLICATION, provided that this is solely in connection with the designated use of the SOFTWARE APPLICATION for business purposes of the CUSTOMER (e.g. in connection with a product offered by the CUSTOMER to its customers which contains access to functionalities of the SOFTWARE APPLICATION). The CUSTOMER shall obligate every person using the SOFTWARE APPLICATION and thus using ACCESS DATA provided to the CUSTOMER or to such person in connection with this Contract, to comply with the respectively applicable Terms and Conditions. The CUSTOMER is represented by each user and the user's acts and knowledge are attributable to the CUSTOMER. Further, after BOSCH REXROTH has given its prior approval in writing, the CUSTOMER has the right to transmit its DATA to service providers for the sole purposes of processing and visualization in management systems.
- 6.5. CUSTOMER is not authorized to use robots, spiders, scrapers or other comparable tools for data collection or extraction, programs, algorithms or methods to search for, access, acquire, copy or control the SOFTWARE APPLICATION. Further, CUSTOMER is not authorized to obtain access to non-public areas of the SOFTWARE APPLICATION or to the underlying technical systems, to test, scan or examine the SOFTWARE APPLICATION's vulnerability or to knowingly transmit USER DATA or CUSTOMER DATA with viruses or worms, Trojans or other contaminated or harmful components or to otherwise interfere in the proper functioning of the SOFTWARE APPLICATION.
- 6.6. Subject to sec. 2.3, CUSTOMER is not authorized to process, change, reverse engineer, decompile, or disassemble the program code of the SOFTWARE APPLICATION or parts thereof or to otherwise establish the source code or to produce derivative works of the SOFTWARE APPLICATION. The mandatory and compulsory provisions of sections 69d and 69e of the German Copyright Act (UrhG) shall, however, remain unaffected by this. The CUSTOMER may only engage third parties to conduct the measures in compliance with sec. 6.6 which are not competitors of BOSCH REXROTH, unless the CUSTOMER demonstrates that the risk of divulging important CONFIDENTIAL INFORMATION (especially function and design of the SOFTWARE APPLICATION) of BOSCH REXROTH is excluded.
- 6.7. If BOSCH REXROTH provides CUSTOMER with actualizations during the term of the contract, these shall also be subject to these T&C except insofar as they are the subject matter of a separate agreement.

7. Device Management

- 7.1. Insofar as it is agreed with BOSCH REXROTH, the CUSTOMER may manage UNITS via the SOFTWARE APPLICATION. Additional UNITS can, insofar as this is agreed upon with BOSCH REXROTH in advance, be signed on by giving advance notice of one week to the first day of the next month and UNITS that have already been signed on can be signed off with the same period of notice to the last day of the month. Signing on and signing off shall be in written form unless browser-based user subscription management is possible.
- 7.2. Other extensions to the scope of the Contract (e.g. the use of additional Apps) shall be coordinated individually.
- 7.3. In accordance with a separate agreement between the parties
 - a) the UNIT can be directly accessed via remote access for the purpose of remote diagnosis and/or repair and/or for installing updates by BOSCH REXROTH;
 - b) USER CONTENT, SOTA, FOTA and/or POTA can be flashed onto UNITS via the SOFTWARE APPLICATION or via the CUSTOMER REPOSITORY.
- 7.4. The CUSTOMER shall make suitable stipulations and take suitable actions to ensure that updates of software, including SOTA and FOTA and/or POTA, are only possible on its UNIT if this is in a SAFE STATE. This also applies to remote access by BOSCH REXROTH. The CUSTOMER is responsible for specifying the SAFE STATE. BOSCH REXROTH shall not be liable for any damage incurred by the CUSTOMER or third parties through infringements.
- 7.5. Necessary hardware required for this, provided for use or supplied by BOSCH REXROTH, shall be installed as specified, be kept in operation during business operation of the UNIT and otherwise kept in a serviceable condition.

8. Remuneration for the license

- 8.1. In accordance with the scope of use defined in these T&C, the remuneration agreed in a separate document, otherwise the remuneration set out in the price list of BOSCH REXROTH valid at the respective time, plus the statutory value added tax due and other statutory indirect tax as well as other surcharges and supplements thereon, shall be payable. Except as otherwise agreed, the remuneration shall be payable for the YEAR OF CONTRACT in advance, for the first time on the COMMENCEMENT DATE OF THE LICENSE.
- 8.2. Value-added tax may not be charged only in those cases where the prerequisites of a tax exemption are met. For deliveries to EU-member states the following shall apply: CUSTOMER shall without delay contribute to the proof of delivery. In particular, BOSCH

REXROTH may demand a receipt of delivery including date and signature. This receipt shall demonstrate at least name and address of the product recipient, quantity and usual commercial description of the goods, place and date of receipt of the product. Additionally, CUSTOMER shall provide its value added tax identification number. If the respective verification is not given, no VAT exemption for the supplies can be granted. If the CUSTOMER does not meet its obligations, it shall reimburse the resulting VAT and any additional charges imposed on BOSCH REXROTH by the respective authorities.

- 8.3. BOSCH REXROTH has the right to increase the remuneration for the license for the first time after expiry of one YEAR OF CONTRACT by giving three (3) months' advance notice in writing to expire at the end of a YEAR OF CONTRACT, however by up to an amount not exceeding the amount of BOSCH REXROTH's list prices generally valid at the time of the notification. The fee items respectively adjusted may not be further increased until, at the earliest, upon expiry of a further YEAR OF CONTRACT since the last price adjustment. In the event of the fees being adjusted, CUSTOMER has the right to give six (6) weeks' notice of termination to become effective on the effective date of the price adjustment, insofar as the increase exceeds ten percent (10%) of the license remuneration last applicable.
- 8.4. Unless otherwise agreed in writing, all of BOSCH REXROTH's invoices are payable at the latest 30 days after the receipt and due date thereof, without any deduction, by cashless transfer to a bank account notified by BOSCH REXROTH.

9. Duties of CUSTOMER to collaborate and provide information

- 9.1. CUSTOMER is responsible for its hardware and software environment being compliant with the system requirements of the SOFTWARE APPLICATION; in case of doubt, Customer shall obtain advice from BOSCH REXROTH or an expert third party before entering into the contract.
- 9.2. CUSTOMER is not authorized to deliberately use devices, Software or routines, which have a disruptive effect on the applications, functions or usability of the SOFTWARE APPLICATION or, with respect to other DATA, systems or communications, to deliberately destroy them, generate excessive load, harmfully intervene in them, fraudulently intercept or import them.
- 9.3. CUSTOMER is obliged
 - a) to obtain consent for customer-specific penetration tests by BOSCH REXROTH.
 - b) to keep all the copies of the DOCUMENTATION in a protected place.

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c) to check data and information for viruses and other malware prior to sending CUSTOMER DATA and USER CONTENT and information to BOSCH REXROTH and to implement anti-virus programs in accordance with the state of the art.

9.4. CUSTOMER shall ensure that he is fully entitled to use CUSTOMER DATA and USER CONTENT within the SOFTWARE APPLICATION, to make it available to BOSCH REXROTH and to grant the usage and exploitation rights as described under these T&C. The CUSTOMER shall seek any authorizations/permissions as necessary.

9.5. Without prejudice to BOSCH REXROTH's DATA backup pursuant to sec. 3.8, CUSTOMER is obliged to back up its CUSTOMER DATA and USER CONTENT on a regular basis. Every backup conducted by CUSTOMER shall be conducted so as to enable the CUSTOMER DATA and USER CONTENT to be restored at any time.

9.6. CUSTOMER shall release BOSCH REXROTH from all claims made against BOSCH REXROTH by third parties (including state bodies) owing to an infringement of sec. 9.4, 18.2 by the CUSTOMER.

10. Term, blocking and termination

10.1. Subject to an individual agreement, the product-specific provisions shall apply to the termination of use of the SOFTWARE APPLICATION. In the absence of such provisions, the use of the SOFTWARE APPLICATION can be terminated at any time by giving three months' notice to the end of the calendar month. Notice of termination must be given in written form.

10.2. If CUSTOMER breaches the provisions of these T&C, in particular the provisions of sec. 6, BOSCH REXROTH can, after giving CUSTOMER prior notification in writing, block CUSTOMER'S access to the SOFTWARE APPLICATION if the breach can be stopped as a result. The block shall be lifted as soon as the reason for the block no longer exists. If, despite having been given a corresponding warning from BOSCH REXROTH in writing, CUSTOMER should continue to or repeatedly breach these T&C, BOSCH REXROTH may terminate the contractual relationship for extraordinary grounds without complying with a period of notice, unless CUSTOMER was not responsible for such breaches. In this case the CUSTOMER shall have no entitlement to a refund of the license fees already paid. BOSCH REXROTH's right to claim further damages shall remain unaffected.

10.3. BOSCH REXROTH has the right to immediately block the use of the SOFTWARE APPLICATION and of the storage space if there is reasonable ground to suspect that the CUSTOMER DATA or USER CONTENT stored is unlawful and/or infringes third-party rights. There is reasonable ground to suspect unlawfulness and/or a rights infringement in particular if courts,

governmental authorities and/or other third parties inform BOSCH REXROTH thereof. BOSCH REXROTH shall notify the CUSTOMER of the block and of the reason for it. The block shall be lifted as soon as the reason for the suspicion is ruled out.

10.4. Further, the contract may be terminated in writing by either party for cause without compliance with a period of notice. Cause shall be deemed to exist in particular if

a) CUSTOMER is in arrears with two consecutive payments of remuneration for the license pursuant to sec. 8.1. or with a not inconsiderable part of this remuneration for two successive time periods or is in arrears in a period of time covering more than two time periods with a payment of remuneration corresponding to the remuneration for two time periods;

b) (there is a significant deterioration in the financial circumstances of CUSTOMER or if this is impending and as a result the performance of a payment obligation to BOSCH REXROTH is in jeopardy,

c) the CUSTOMER has applied for insolvency proceedings or comparable debt settlement proceedings to be opened with respect to its assets or

d) the criteria for insolvency or over-indebtedness have been met by CUSTOMER.

BOSCH REXROTH reserves the right to claim additional damages.

10.5. CUSTOMER's right to terminate the contract due to not being permitted use pursuant to sec. 543 (2) sentence 1 no. 1 German Civil Code (BGB) is excluded insofar as the creation of the use in conformity with the contract is not to be deemed to have failed. The creation of the use in conformity with the contract shall be deemed to have failed at the earliest after the second unsuccessful attempt to do so.

10.6. Statutory rights and claims over and above this shall not be restricted by the provisions contained in sec. 10.

10.7. Notice of termination or termination of the contractual relationship simultaneously denotes notice of termination/termination of the authorizations, registrations and of the USER ACCOUNT and, if applicable, of all User IDs provided for the CUSTOMER or end customers of CUSTOMER, as of the next possible date. The termination of this contractual relationship has no effect on the use of the CENTRAL BOSCH ID. For this it is necessary to have termination in accordance with the usage relationship of the contract terms underlying the use of the CENTRAL BOSCH ID.

11. Services upon termination

11.1. Upon termination of the contract, BOSCH REXROTH shall, at CUSTOMER's request, support

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CUSTOMER as far as possible in the export and backup of the CUSTOMER DATA, in return for payment of remuneration to be agreed separately.

11.2. In the event of termination of the contract, BOSCH REXROTH shall endeavor to support CUSTOMER on request, in the best possible way, in return for payment of remuneration, in the transition to a new service provider. The parties shall agree upon the details of this in a separate migration agreement.

12. Defects as to quality/defects of title

12.1. Only the description of the SOFTWARE APPLICATION provided by BOSCH REXROTH or agreed in a separate document (e.g. in the DOCUMENTATION) prior to the date of conclusion of the contract is authoritative for the quality of the SOFTWARE APPLICATION. In the event of updates to the SOFTWARE APPLICATION, the version of the description provided last shall be applicable. This shall especially encompass its IT-security features. The details contained therein are solely to be understood as Performance Specifications and not as guarantees. A guarantee is only provided if it is explicitly designated as such by BOSCH REXROTH prior to the date of conclusion of the contract. More far-reaching quality is not owed and does not derive, in particular, from public statements or advertising of BOSCH REXROTH or of its distribution partners.

12.2. BOSCH REXROTH does not provide a guarantee for errors in the SOFTWARE APPLICATION,

- a) caused by faulty application by CUSTOMER that could have been avoided if the DOCUMENTATION had been carefully consulted; inexistent or insufficient backup measures pursuant to sec. 9.5 which would have avoided DATA loss are to be considered as application errors;
- b) due to virus contamination or to other external influences for which BOSCH REXROTH is not responsible such as fire, accidents, power failure etc.;
- c) caused by the SOFTWARE APPLICATION being used in an operating environment which is different from that approved by BOSCH REXROTH or due to faults in the hardware, the operating system or to the software of other manufacturers;
- d) caused by the SOFTWARE APPLICATION having been subjected to independent modification by CUSTOMER or third parties.

12.3. Defects in the SOFTWARE APPLICATION, including the DOCUMENTATION (e.g. the user manual/online manual), shall be rectified by BOSCH REXROTH within the specified response times after having been notified immediately of the defect accordingly by CUSTOMER. The same shall apply to other malfunctions in the possibility of using the

SOFTWARE APPLICATION for which BOSCH REXROTH is accountable. Any claims for damages are governed by sec. 13 of these T&C.

12.4. The provisions of this sec. 12 shall apply accordingly in the event of defects of title which are not based on an infringement of third-party rights according to sec. 15.

13. Claims for damages

13.1. BOSCH REXROTH shall be liable for damages in accordance with the provisions of statute based on a violation of contractual or non-contractual obligations only

- a) in the event of intent (Vorsatz) or gross negligence (grobe Fahrlässigkeit);
- b) in the event of a negligent or intentional injury to life or limb or health,
- c) on account of provision of a guarantee,
- d) in the event of a culpable violation of material contractual obligations; such contractual obligations shall be deemed material which, when performed, enable the proper execution of the contract altogether and which the CUSTOMER may regularly rely on compliance with,
- e) on account of mandatory liability pursuant to the German Product Liability Act (Produkthaftungsgesetz),
- f) for mandatory reasons related to data protection law, or
- g) on account of other mandatory liability.

13.2. The liability for damages of sub.-sec. 13.1 d) by a violation through simple negligence (einfach fahrlässige Verletzung wesentlicher Vertragspflichten) shall be limited to the amount of damage typical of the contract and foreseeable at the time when the contract was concluded. This applies accordingly for damages caused by persons engaged in the performance of an obligation of BOSCH REXROTH (Erfüllungsgehilfen) by simple negligence (einfache fahrlässige Verletzung). The amount of damages typical of the contract and foreseeable, based on violations of obligations by BOSCH REXROTH, corresponds to the amount of the remuneration paid by the CUSTOMER for one YEAR OF CONTRACT, but not, however, exceeding EUR 100,000. If the maximum amount of liability is not reached in one YEAR OF CONTRACT, this shall not increase the maximum amount of liability in the next YEAR OF CONTRACT.

13.3. Strict liability ("liability without fault" – "*verschuldensunabhängige Schadensersatzhaftung*") is excluded for defects which already existed when the contract was concluded.

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13.4. Any liability for damages beyond that provided for in sec. 13 is excluded – regardless of the legal nature of the claim established. In particular, BOSCH REXROTH shall not be liable for damage incurred by CUSTOMER due to its failure to back up in accordance with sec. 9.5 or for damage incurred because of the upload of USER DATA according to sub.-sec. 3.7.

13.5. The CUSTOMER is obliged to indemnify BOSCH REXROTH from and against all costs and disadvantages claimed and claims raised against BOSCH REXROTH by third parties on account of the infringement of their rights by CUSTOMER DATA or USER CONTENT or due to a violation of the law committed by CUSTOMER when using the SOFTWARE APPLICATION.

13.6. In addition, the CUSTOMER are obliged to refund to BOSCH REXROTH all the costs accruing due to the above infringement or violation, in particular the costs of reasonable legal defense, including the court costs and attorney fees. This does not apply if and to the extent that the CUSTOMER proves that he were not responsible for the above infringement or violation.

13.7. Insofar as the liability for DAMAGES by BOSCH REXROTH is excluded or reduced, this also applies to the personal liability for DAMAGES of the employees, representatives and of persons engaged in performance of an obligation (Erfüllungsgehilfen). With regard to telecommunications services, the limitations of liability pursuant to sec. 44a of the German Telecommunications Act (TKG) shall remain unaffected.

14. Changes to the Software and amendments to these T&C

14.1. BOSCH REXROTH reserves the right to adapt these T&C, the SLA and the SOFTWARE APPLICATION at any time in line e.g. with changes in technical or legal conditions, API compatibility or with regard to further developments of the SOFTWARE APPLICATION or technical progress, such adaptation also being effective in respect of existing contractual relationships, whereby the basic functionalities of the SOFTWARE APPLICATION shall be maintained.

14.2. CUSTOMER shall be notified of such changes in a suitable manner no later than thirty (30) calendar days before the planned effective date of the changes insofar as the adaptation involves a restriction in the usability or other not only insignificant disadvantages (e.g. adaptation expenses). If CUSTOMER does not object within thirty (30) days of receipt of the notification and continues to use the SOFTWARE APPLICATION after expiry of the period for objection, then the changes shall be deemed to have been effectively agreed as from the expiry date of the time limit. In the event of an objection, the contractual relationship shall be continued subject to the conditions applying hitherto. If an objection is raised,

BOSCH REXROTH is entitled to terminate the contractual relationship subject to a one (1) month notice period. CUSTOMER shall be advised in the change notification of its right to object and of the consequences.

15. PROPERTY RIGHTS and copyrights

15.1. BOSCH REXROTH shall be liable for claims resulting from an infringement of PROPERTY RIGHTS, if at least one PROPERTY RIGHT from the property rights family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.

15.2. The preconditions of a liability according to sec. 15.1 are that

a) the PROPERTY RIGHT is not or was not owned by the CUSTOMER or by an affiliated company (as defined in sec. 15 German Stock Corporation Act (AktG)) and

b) the CUSTOMER is not accountable for the infringement of PROPERTY RIGHTS.

15.3. Claims by the CUSTOMER are excluded if the SOFTWARE APPLICATION was produced in accordance with the specifications or instructions of the CUSTOMER or if the (alleged) infringement of the PROPERTY RIGHT derives from use in interaction with another product not originating from BOSCH REXROTH or if the SOFTWARE APPLICATION is used in a way which was not foreseeable for BOSCH REXROTH.

15.4. The claims against BOSCH REXROTH under this sec. 15 are subject to the condition that the CUSTOMER

a) informs BOSCH REXROTH without undue delay of the third-party claims raised,

b) provides BOSCH REXROTH with a copy of all respective correspondence with the claimant and courts without undue delay after receipt thereof,

c) provides BOSCH REXROTH with the information required to defend against the claim,

d) on request of BOSCH REXROTH, confer to BOSCH REXROTH the exclusive right to steer the conduct of the legal action by the CUSTOMER and the right to make the final decision on reaching any judicial or out-of-court settlements and

e) supports BOSCH REXROTH to an appropriate degree in averting third-party claims.

15.5. If the CUSTOMER is ordered to cease the use of the SOFTWARE APPLICATION or of a part thereof either by a final and absolute court judgment or if an preliminary injunction is served on the CUSTOMER, then in order to remedy the rights' infringement

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BOSCH REXROTH shall, at its discretion, either obtain for the CUSTOMER the right to continue to use the SOFTWARE APPLICATION, or replace or modify the PRODUCT whilst upholding the agreed functionalities. If the aforementioned alternatives cannot be realized by BOSCH REXROTH subject to reasonable conditions, both parties have the right to revoke the contract. Insofar as can be reasonably expected of the CUSTOMER, the revocation shall only be to the extent required to rectify the infringement of rights. BOSCH REXROTH reserves the right to take any of the measures provided by this sec.15.5, sentence 1, if the infringement of PROPERTY RIGHTS is not finally asserted or acknowledged by BOSCH REXROTH.

15.6. The obligation of BOSCH REXROTH to pay DAMAGES in the event of an infringement of PROPERTY RIGHTS is otherwise governed by sec. 13.

15.7. Further and other claims than those regulated in this sec. 15 by the CUSTOMER based on infringements of third party PROPERTY RIGHTS are excluded.

16. DATA use and data protection

16.1. BOSCH REXROTH shall have the right to use, store, copy, modify, analyze, provide or otherwise process DATA contributed, created and transmitted by the CUSTOMER or its end customer in connection with the SOFTWARE APPLICATION for contractual purposes during the contractual term.

16.2. BOSCH REXROTH shall have the right, to use DATA contributed, created and transmitted by the CUSTOMER or its end customer in connection with the SOFTWARE APPLICATION in anonymized form for machine learning and product improvement or product expansion. This right shall be unlimited, irrevocable free of charge and worldwide. The CUSTOMER warrants that it has not entered into any agreements opposing such use.

16.3. BOSCH 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 or its endcustomer in connection with the SOFTWARE APPLICATION, except for personal data, beyond the purpose of the contract for any purposes such as, for example, statistical, analytical and internal purposes. These purposes include, inter alia, the production, commercialization and distribution of the products and services of BOSCH REXROTH and, for example, statistical, analytical and internal purposes. This right shall be unlimited, irrevocable, free of charge and worldwide. The CUSTOMER warrants that it has not entered into any agreements opposing such use.

16.4. Insofar as personal data is processed, BOSCH 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 protection notice of BOSCH](#)

[REXROTH](#)) or its AFFILIATED ENTERPRISE of which the CUSTOMER will be advised in an appropriate manner.

16.5. Insofar as personal data is processed jointly by BOSCH REXROTH and the CUSTOMER within the meaning of Art. 26 GDPR, the rights and obligations and details of the data collected and the respective processing thereof shall be determined under an agreement to be entered into separately in compliance with Art. 26 (1) sentence 1 GDPR.

16.6. If the CUSTOMER processes personal data, the CUSTOMER guarantees that it has the right to do so in accordance with the applicable regulations, in particular under the data protection regulations, and in the event of a violation it shall indemnify BOSCH REXROTH from and against claims by third parties. The CUSTOMER is obliged to obtain consent required from the respective data subject insofar as personal data is collected, processed or used during utilization of the SOFTWARE APPLICATION and if no statutory or other basis for permission applies. If applicable, CUSTOMER shall impose its end customers within the scope of Art. 26 (1) GDPR. CUSTOMER shall ensure that the regulated fulfillment of the rights of the persons affected as well as information obligations comply with the agreement according to sec. 16.5.

16.7. The rights of BOSCH REXROTH under this sec. 16 also apply accordingly in favor of companies in the Bosch Group of companies.

17. Confidentiality

17.1. All the CONFIDENTIAL INFORMATION originating from BOSCH REXROTH shall be kept secret from third parties and may be made available only to those persons in the CUSTOMER's own operations who have a need to know the respective information for performance of the purpose of the contract and who are similarly committed to confidentiality. The respective CONFIDENTIAL INFORMATION shall remain the exclusive property of BOSCH REXROTH. CONFIDENTIAL INFORMATION may not be duplicated or used commercially without the prior consent of BOSCH REXROTH in writing. Upon request of BOSCH REXROTH, all CONFIDENTIAL INFORMATION originating from BOSCH REXROTH (if applicable, inclusive of any copies or records made) and loaned items which contain CONFIDENTIAL INFORMATION shall be returned to BOSCH REXROTH or fully destroyed without undue delay.

17.2. The obligation to uphold secrecy pursuant to sec. 17 does not apply to CONFIDENTIAL INFORMATION which

a) were already in the lawful possession of the CUSTOMER before being handed over by BOSCH REXROTH;

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- b) the CUSTOMER lawfully received from third parties without any secrecy obligations;
- c) are disclosed to third parties by BOSCH REXROTH without any conditions regarding secrecy;
- d) are developed by the CUSTOMER itself independently of the information received;
- e) have to be disclosed by law; or
- f) are disclosed by the CUSTOMER with the prior written consent of BOSCH REXROTH.

18. Export control

- 18.1. If it should transpire that contractual performance by BOSCH REXROTH has become impossible or been rendered difficult due to national or international export control regulations, in particular embargos or other sanctions, BOSCH REXROTH has the right to revoke or terminate the contract without setting a grace period. The delivery period is suspended in the event of delays due to export examinations or approval processes unless BOSCH REXROTH is accountable for this.
- 18.2. The CUSTOMER undertakes to furnish all the information and documents required for the access to the SOFTWARE APPLICATION, for the export or movement of the SOFTWARE APPLICATION and DATA or the integration of service provider in accordance with the contract, unless this lies in the sphere of influence of BOSCH REXROTH. The CUSTOMER shall comply with the respectively applicable provisions of customs and (re-) export control law.
- 18.3. With respect to USER CONTENT and the CUSTOMER REPOSITORY, the CUSTOMER is obliged to comply with the export control regulations that are valid nationally and/or apply internationally. In connection with the CUSTOMER REPOSITORY, BOSCH REXROTH does not, in particular, examine whether software requirements are permissible under export control law. Solely the CUSTOMER is responsible for examining the legal permissibility of the download from the CUSTOMER REPOSITORY.

19. Miscellaneous provisions

- 19.1. The courts of Stuttgart, Germany, (for proceedings before the local court, this is the Amtsgericht (local court) in 70190 Stuttgart) shall have exclusive jurisdiction and venue insofar as this is legally permissible. BOSCH REXROTH reserves the right, however, to take legal action at a court with jurisdiction at the registered office or establishment of CUSTOMER.
- 19.2. Solely German law shall apply to all legal relations between BOSCH REXROTH and the CUSTOMER, excluding the conflict of laws provisions. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be explicitly excluded.

- 19.3. If any provision should be or become ineffective, the effectiveness of the remaining provisions shall not be affected thereby. In this case the ineffective provision shall be replaced by a permissible agreement approximating most closely the economic purpose of the original ineffective provision. This shall apply accordingly to any omissions.

20. Definitions

- 20.1. ACCESS DATA: The data required for the USER ACCOUNT, especially user name and password.
- 20.2. AFFILIATED ENTERPRISE: Every legal entity which is controlled by BOSCH REXROTH, which controls BOSCH REXROTH or which is jointly-controlled together with BOSCH REXROTH. Control is deemed to exist where more than fifty percent (50 %) of the capital shares or voting rights is held or where the corporate management and policy are controlled either directly or indirectly on the basis of capital shares, by virtue of agreements or in any other way.
- 20.3. CENTRAL BOSCH-ID: User ID of the Single Sign-On Authentication Service of Bosch.IO GmbH, Ullsteinstrasse 128, 12109 Berlin, Germany, enabling the use of various independent services of the Bosch Group and which requires the CUSTOMER's e-mail address with any e-mail provider.
- 20.4. COMMENCEMENT DATE OF THE LICENSE: Agreed date with effect from which the software application shall be made available.
- 20.5. CONFIDENTIAL INFORMATION: Information in accordance with sec. 2 no. 1 of the German Trade Secrets Act (GeschGehG).
- 20.6. CUSTOMER DATA: All the CUSTOMER content except for USER CONTENT which the CUSTOMER generates or transmits to BOSCH REXROTH in connection with the use of the SOFTWARE APPLICATION. CUSTOMER DATA also includes the ACCESS DATA for the SOFTWARE APPLICATION.
- 20.7. CUSTOMER REPOSITORY: Storage space provided by the CUSTOMER for storing USER CONTENT on third-party servers. By using the Device Management System, the CUSTOMER can instruct the UNIT to request software stored in the CUSTOMER REPOSITORY.
- 20.8. DATA: Collective term for all the data exchanged and processed under these T&C.
- 20.9. DOCUMENTATION: All the information required to be able to work with the software application in accordance with the intended use.
- 20.10. ENGINEERING SOFTWARE: SOFTWARE APPLICATION with which certain products can be selected, calculated, dimensioned and/or configured and/or a toolbox comprising Software components and development environment to generate additional

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information and/or to support the CUSTOMER when creating/changing SOFTWARE *APPLICATION*.

- 20.11. FLS: First Level Support.
- 20.12. FOSS: Free and Open Source SOFTWARE, in particular software under an approved license of the Free Software Foundation (FSF) or the Open Source Initiative (OSI).
- 20.13. FOTA: Firmware over the Air; automated firmware update of the UNIT via the SOFTWARE APPLICATION.
- 20.14. INCIDENTS: Malfunctions occurring in the context of the SOFTWARE APPLICATION.
- 20.15. POTA: Parameter over the Air; automated parameter update for the UNIT via the SOFTWARE APPLICATION.
- 20.16. PROPERTY RIGHT: Industrial PROPERTY RIGHT or third-party copyright.
- 20.17. SAFE STATE: A state of the UNIT defined by the CUSTOMER enabling the UNIT's software and/or SOTA/FOTA to be updated without influencing the danger-free and designated operation of the UNIT.
- 20.18. SERVICE LEVEL AGREEMENT (SLA): Defines availability and support of BOSCH REXROTH.
- 20.19. SOTA: Software over the Air; automated software update of the UNIT via the SOFTWARE APPLICATION.
- 20.20. UNIT: Relevant system or component that is managed using the SOFTWARE APPLICATION.
- 20.21. USER ACCOUNT: Enables access to and use of the relevant SOFTWARE APPLICATION.
- 20.22. USER CONTENT: The CUSTOMER's own data and/or software which the CUSTOMER can (via CUSTOMER REPOSITORY, if applicable) upload for its own use or the use of its end customers and/or which can be flashed onto the UNITS – insofar as this is available as a function of the SOFTWARE APPLICATION.
- 20.23. YEAR OF CONTRACT: The first twelve (12) months with effect from the Commencement Date of the License in accordance with the contract and every subsequent twelve-month period.