

# Terms and Conditions for the Provision of Products of Bosch Rexroth AG Free of Charge

Version: 10.02.2021

These Terms and Conditions (hereinafter: "T&C") apply to the provision to the Customer (hereinafter: "CUSTOMER") for use free of charge of PRODUCTS of [Bosch Rexroth AG, Zum Eisengiesser 1, 97816 Lohr a. Main, http://www.boschrexroth.com](http://www.boschrexroth.com) (hereinafter: "BOSCH REXROTH"). Separate terms and conditions apply to other types of provision for use. 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 provision

- 1.1. The meaning set out in the Preamble and in sec. 21 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. BOSCH REXROTH has the right to revoke its offer at any time unless the CUSTOMER has accepted it.

## 2. Subject matter

- 2.1. The subject matter of these T&C is the provision for use on loan of PRODUCTS of BOSCH REXROTH.
- 2.2. Insofar as, under the circumstances of the contract entered into, this results in the provision for use of PRODUCTS of BOSCH REXROTH as a gift, these T&C shall apply by analogous application hereof, with the exception of secs. 8, 9.2, 11-13.
- 2.3. In case of provision for use of PRODUCTS as a gift the rights of use for SOFTWARE of sec. 7.6 shall be granted unlimited in time.
- 2.4. The provision for use of PRODUCTS as a gift can be revoked by BOSCH REXROTH at any time and without complying with a period of notice for a compelling reason [Kündigung aus wichtigem Grund] and/or in writing. A compelling reason exists, in particular, if the CUSTOMER violates rights of use of BOSCH REXROTH by using the PRODUCTS to an extent beyond that permitted under these T&C. BOSCH REXROTH reserves the right to claim damages.

## 3. Conclusion of the contract

The contract is concluded upon an agreement being entered into or, when orders are placed online, upon receipt of an order confirmation from BOSCH REXROTH or with the download of SOFTWARE.

## 4. Delivery

- 4.1. Delivery dates are nonbinding.
- 4.2. Delivery of the GOODS and the passing of risk are effected FCA place of dispatch of the plant supplying the GOODS (Incoterms® 2020), unless explicitly agreed otherwise. This also applies for provision of SOFTWARE per data medium or for SOFTWARE preinstalled on TARGET HARDWARE at delivery.
- 4.3. Alternatively, SOFTWARE is delivered and the risk passes at the election of BOSCH REXROTH either

by providing the SOFTWARE per download or by transmitting the information necessary to download it.

- 4.4. Unless otherwise agreed, SOFTWARE is delivered or made available for downloading in the version named in the DOCUMENTATION. The CUSTOMER is responsible for installation of the SOFTWARE. If the SOFTWARE is provided for use on a data medium or is pre-installed on TARGET HARDWARE, this might possibly not contain the version named in the DOCUMENTATION. The delivery obligation of BOSCH REXROTH shall be met by providing the actualization. The CUSTOMER is obliged to perform the actualization.
- 4.5. If non-compliance with the delivery periods is due to force majeure or to other disruptions for which BOSCH REXROTH is not accountable, e.g. war, terrorist attacks and acts, riots, epidemics, pandemics, natural disasters, extreme natural phenomena, import and export restrictions, limitations in energy supply, governmental measures or official directives, including those affecting sub-suppliers, the agreed delivery periods shall be extended. This also applies to industrial action affecting BOSCH REXROTH or its sub-suppliers. This includes also difficulties to procure raw material as well as inadequate or delayed deliveries by suppliers due to force majeure.

## 5. SOFTWARE

- 5.1. The description of the SOFTWARE is set out in the DOCUMENTATION which the CUSTOMER will be provided with on request before entering into the contract.
- 5.2. The SOFTWARE comprises, as far as feasible, the executable program code and the corresponding DOCUMENTATION in electronic form, and installation instructions unless the SOFTWARE self-installs or instructions on embedding the ENGINEERING SOFTWARE in a simulation environment. Subject to sec. 6.1, the source code does not form part of the subject matter of the contract. The Model shall always be regarded as a whole and individual part models may not be extracted from the whole and used separately.
- 5.3. BOSCH REXROTH has the right to take technical measures to protect the SOFTWARE against any unauthorized use, e.g. by means of program locks.

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CUSTOMER may not remove such protective mechanisms from the SOFTWARE or work around them. It can be necessary to apply for a license key to activate the SOFTWARE after installation and if the SOFTWARE and/or hardware environment is changed.

- 5.4. The security level and resultant measures arise out of the description of the PRODUCT either provided before the conclusion of the contract or agreed in a separate document (e.g. in DOCUMENTATION or catalogue). 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 taking into consideration the technical nature of the SOFTWARE. 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.
- 5.5. 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 contain information on the technical application limits and/or compliance with norms and standards.
- 5.6. 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.
- 5.7. If and insofar as a copyrighted material is created for the CUSTOMER as a result of changing/generating software by using ENGINEERING SOFTWARE or if the CUSTOMER applies for/acquires a PROPERTY RIGHT based on the above change/creation, the CUSTOMER shall notify BOSCH REXROTH thereof without undue delay and grant to BOSCH REXROTH a non-exclusive, irrevocable license unlimited as to time and free of charge, which also confers upon BOSCH REXROTH the right to grant sub-licenses; with regard to PROPERTY RIGHTS the CUSTOMER shall grant a license to BOSCH REXROTH in a separate contract subject to customary market conditions.

## 6. FOSS & third party software

- 6.1. The SOFTWARE 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 is delivered. If the SOFTWARE 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.
- 6.2. BOSCH REXROTH reserves the right to, over the course of actualizations (including updates, upgrades, respectively patches or bugfixes) or a new version, introduce new or updated FOSS in-to the SOFTWARE. The corresponding FOSS license(s) will be provided at the latest with the delivery of the actualization. Furthermore, sec. 6.1. shall apply accordingly.
- 6.3. 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.
- 6.4. If 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. These software products may solely be used in connection with the PRODUCT.

## 7. Rights of use

- 7.1. The CUSTOMER does not have the right to use the PRODUCTS for a purpose other than the contractual purpose agreed and/or other than for use in conformity with the contract.
- 7.2. The PRODUCTS may only be further processed insofar as this corresponds to the original purpose of use or if BOSCH REXROTH has given separate permission.
- 7.3. Furthermore, without the explicit consent of BOSCH REXROTH in writing, the PRODUCTS may not, in particular, be reproduced, sold, transferred as security, leased, pledged or otherwise passed on or used for third parties.
- 7.4. Designations of the SOFTWARE, in particular copyright notices, trademarks, serial numbers and the like may not be removed, changed or otherwise rendered illegible.
- 7.5. Further, the CUSTOMER is not entitled to transport GOODS to a location other than the agreed place of use. In case of doubt, the place of use is considered to be at the order address of the CUSTOMER.
- 7.6. Upon delivery of the SOFTWARE, the CUSTOMER shall be given the non-exclusive right, limited in time, to use the SOFTWARE in accordance with the respective license type and in compliance with the

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specifications of the DOCUMENTATION pursuant to these T&C. The use is only permitted in the agreed countries of destination. In the absence of an explicit agreement, this is the country in which the CUSTOMER has its administrative seat.

- 7.7. As an exception to sec. 7.3 duplications of the Software are only permitted insofar as this is necessary for the contractual use. The CUSTOMER may make back-up copies of the Software in accordance with the state of the art to the extent necessary. Back-up copies shall be marked as such and marked with the copyright notice of the original Software insofar as this is possible. The use of the back-up copy is only permitted if the copy of the Software originally provided by the BOSCH REXROTH has deteriorated or perished. The CUSTOMER is also subject to these T&C in respect of the use of the back-up copy.
- 7.8. The CUSTOMER is not entitled, subject to sub-sec. 6.1, to edit, change, reverse engineer, decompile or disassemble the program code of the SOFTWARE or parts thereof or to otherwise establish the source code or to create derivative works based on the SOFTWARE. The mandatory, obligatory provisions of secs. 69d, 69e German Copyright Act (UrhG) shall remain unaffected.
- 7.9. The CUSTOMER may only engage third parties to conduct the measures in compliance with sec. 7.7, 7.8 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.
- 7.10. If BOSCH REXROTH voluntarily 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.

### 8. Ownership

- 8.1. BOSCH REXROTH remains owner of the PRODUCTS during the term of the contract.
- 8.2. Unless it has the consent of BOSCH REXROTH in writing, the CUSTOMER may not make the GOODS into the principal component or an accessory of another thing. If the GOODS has to be connected to real property or fitted into a building or plant as a matter of principle in order to be operated, then this shall only be performed for a temporary purpose within the meaning of sec. 95 German Civil Code (BGB) with the intention of separating it upon termination of the contractual relationship.

### 9. Remuneration

- 9.1. The PRODUCT shall be provided to the CUSTOMER free of charge.
- 9.2. BOSCH REXROTH reserves the right to collect a security deposit prior to supply. After the due return

of the PRODUCTS, the security deposit will be paid back to the CUSTOMER. BOSCH REXROTH has the right to offset claims under sec. 12 against the security deposit.

### 10. Duties of CUSTOMER to collaborate and provide information

- 10.1. CUSTOMER is responsible for its hardware and software environment being compliant with the system requirements of the SOFTWARE; in case of doubt CUSTOMER shall obtain advice from BOSCH REXROTH or an expert third party before entering into the contract.
- 10.2. It is partially possible to use the SOFTWARE to influence or control an electronic system. Therefore, taking account of the risk analysis, the SOFTWARE may be operated (and if necessary, to be installed) solely by qualified specialist personnel.
- 10.3. The CUSTOMER shall inform BOSCH REXROTH of possible errors in the SOFTWARE without undue delay. In this context, the CUSTOMER shall provide all the necessary information at the request of BOSCH REXROTH. The CUSTOMER shall permit BOSCH REXROTH to access the SOFTWARE in order to troubleshoot and rectify the errors; at the election of BOSCH REXROTH this shall be either on premise and/or by remote access.
- 10.4. The CUSTOMER shall secure the SOFTWARE against being accessed by unauthorized third parties by taking suitable measures, in particular storing all the back-up copies of the SOFTWARE and the DOCUMENTATION in a safe place.
- 10.5. The CUSTOMER shall take reasonable precautions in case the SOFTWARE fails to work properly either in whole or in part (e.g. by means of daily data back-up, malfunction diagnosis, regularly examining the data processing results). Unless the CUSTOMER explicitly indicates otherwise in advance, BOSCH REXROTH may assume that there has been a back-up of all data of the CUSTOMER which BOSCH REXROTH can come into contact with.

### 11. Term and termination

- 11.1. If no fixed contract term has been agreed, both parties have the right to terminate the use on loan at any time with immediate effect by returning/requesting return of the PRODUCTS.
- 11.2. If a fixed contract term has been agreed, sec. 605 German Civil Code (BGB) and the right to terminate the contract for a compelling reason [Kündigung aus wichtigem Grund] shall each be unaffected.

### 12. Liability of the CUSTOMER

- 12.1. The CUSTOMER shall bear the costs of maintaining the GOODS and, in derogation from sec. 602 German Civil Code (BGB), is responsible for

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changes to or deterioration of the GOODS that are/is caused by use in conformity with the contract.

- 12.2. Damage occurring to or the destruction of the loaned PRODUCTS during the contract term shall be borne by the CUSTOMER and the CUSTOMER will be charged for them in an invoice from BOSCH REXROTH. Sec. 254 German Civil Code (BGB) shall be reserved.
- 12.3. The limitation period for claims by BOSCH REXROTH under this sec. 12 is 12 months.

### **13. Return**

- 13.1. Upon expiration of the contract term, the CUSTOMER is obliged to dispatch the GOODS, including the assembly and operating instructions and packaging, without undue delay in a proper, particularly cleaned condition and in full back to the dispatch unit of the supplying facility of BOSCH REXROTH at the CUSTOMER's own expense.
- 13.2. CUSTOMER shall delete or destroy all the data media, copies of the SOFTWARE including the back-up copies and the DOCUMENTATION provided for use and confirm this to BOSCH REXROTH in writing upon request.
- 13.3. The CUSTOMER undertakes that with respect to the return of the PRODUCTS, it waives any right of retention whatsoever, for whatever legal grounds. If the CUSTOMER has not complied with its obligations to BOSCH REXROTH under sec. 13.1 and/or 13.2 upon termination of the contract, the CUSTOMER is obliged to pay a lump-sum claim for damages equal to the list price of the PRODUCT. The CUSTOMER reserves the right to demonstrate less damage.

### **14. Defects as to quality/defects of title**

Except in the event of intent BOSCH REXROTH shall not provide any warranty for defects as to title or for defects as to quality.

### **15. Claims for DAMAGES**

- 15.1. BOSCH REXROTH shall be liable for damages solely in accordance with the provisions of statute for injury to life and limb, for damage based on the Product Liability Act, and for damage caused by intent by BOSCH REXROTH.
- 15.2. The foregoing restrictions of liability shall also apply to the personal liability of the employees, representatives and/or organs of BOSCH REXROTH.
- 15.3. A liability due to privacy laws remains unaffected.

### **16. Confidentiality**

- 16.1. 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 opera-

tions 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

- 16.2. The obligation to uphold secrecy pursuant to sec. 16.1 does not apply to CONFIDENTIAL INFORMATION which
- a) were already in the lawful possession of the CUSTOMER before being handed over by BOSCH REXROTH;
  - 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.
- 16.3. BOSCH REXROTH reserves all rights to the CONFIDENTIAL INFORMATION named in sec. 16.1.

### **17. Reverse engineering**

- 17.1. Without prior consent of BOSCH REXROTH, the CUSTOMER may not undertake any observation, examination, back engineering or testing (so-called reverse engineering) of a PRODUCT provided for use by BOSCH REXROTH.
- 17.2. Additionally to sec. 17.1., with respect to SOFTWARE, the CUSTOMER is not entitled, subject to sec. 6.1, to process, change, reverse engineer, decompile or disassemble the program code thereof of parts therefrom or to otherwise establish the source code or to produce works derived from the SOFTWARE. The obligatory, mandatory provisions of sections 69d, 69e German Copyright Act (UrhG) shall remain unaffected by this.

### **18. Use of DATA and data protection**

- 18.1. 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 for contractual purposes during the contractual term.
- 18.2. BOSCH REXROTH shall have the right, to use DATA contributed, created and transmitted by the

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CUSTOMER or its end customer in connection with the SOFTWARE 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.

- 18.3. 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 in connection with the SOFTWARE except for personal data, beyond the purpose of the contract for any purposes such as, for example, statistical, analytical and internal purposes. 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.
- 18.4. If personal data is to be transmitted by CUSTOMER to BOSCH REXROTH (this also includes pseudonymized data), the CUSTOMER shall ensure that the applicable provisions of data protection law are complied with. The CUSTOMER is obliged to obtain any consent that is required from the data subject affected insofar as personal data is processed and if no statutory or other basis for permission applies. In the event of a violation, the CUSTOMER shall indemnify BOSCH REXROTH from and against any claims by third parties.
- 18.5. Insofar as personal data is processed, BOSCH REXROTH and/or its AFFILIATED COMPANY comply with the statutory data protection regulations. In this case, the details relating to the data collected and the respective processing thereof are set out in the data privacy statements of BOSCH REXROTH (<https://www.boschrexroth.com/en/dc/data-protection-notice/>) or its AFFILIATED COMPANY of which the CUSTOMER will be advised in an appropriate manner.
- 18.6. 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.
- 18.7. The rights of BOSCH REXROTH under this sec. 18 also apply accordingly in favor of companies in the Bosch Group of companies.

### 19. Export control

- 19.1. 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.

- 19.2. The delivery period is suspended in the event of delays due to export examinations or approval processes unless BOSCH REXROTH is accountable for this.
- 19.3. The CUSTOMER undertakes to furnish all the information and documents required for the access to the SOFTWARE for the export or movement of the SOFTWARE and DATA or the integration of service provider in accordance with the contract, unless this lies in the sphere of influence of BOSCH REXROTH.
- 19.4. In the event of revocation pursuant to sec. 19.1, the CUSTOMER's right to claim compensation or to claim further rights on account of the revocation is excluded.
- 19.5. When the PRODUCTS supplied by BOSCH REXROTH (including technology and the corresponding documents, irrespective of the manner in which they are made available) and works and services rendered by BOSCH REXROTH (including technical support of all kinds) are handed over, transferred or provided for use in any other way to third parties nationally or internationally, the CUSTOMER shall comply with the respectively applicable provisions of national and international (re) export control law.

### 20. Miscellaneous provisions

- 20.1. If a provision should be or become ineffective, the effectiveness of the remainder of the provisions shall remain unaffected hereby. 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 gaps of the T&Cs.
- 20.2. 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.
- 20.3. 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.
- 20.4. These T&Cs are available and binding in both, German and English language. In case of discrepancies the German version shall prevail.

**21. Definitions**

- 21.1. **AFFILIATED COMPANY:** 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.
- 21.2. **DATA:** Collective term for all the data exchanged and processed under the provision of PRODUCTS free of charge.
- 21.3. **DOCUMENTATION:** All the information required to be able to work with the software application in accordance with the intended use.
- 21.4. **ENGINEERING SOFTWARE:** SOFTWARE with which certain products can be selected, calculated, dimensioned and/or configured and/or a toolbox comprising Software components and development environment to generate additional information and/or to support the CUSTOMER when creating/changing SOFTWARE.
- 21.5. **FOSS:** Free and Open Source SOFTWARE and third-party software under a royalty-free license.
- 21.6. **CONFIDENTIAL INFORMATION:** Information in accordance with sec. 2 no. 1 of the German Trade Secrets Act (GeschGehG).
- 21.7. **PRODUCT:** GOODS and/or SOFTWARE.
- 21.8. **DAMAGES:** Damages and reimbursement of futile expenditure as defined in sec. 284 German Civil Code (BGB).
- 21.9. **PROPERTY RIGHT:** Industrial property right or copyright of a third party or of the CUSTOMER.
- 21.10. **SOFTWARE:** Either stand-alone software contained in the scope of delivery from BOSCH REXROTH or software flashed onto GOODS or TARGET HARDWARE.
- 21.11. **GOODS:** Material items for delivery contained in the scope of delivery of BOSCH REXROTH.
- 21.12. **TARGET HARDWARE:** GOODS or a customer device on which the SOFTWARE is installed.