

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

1. General Provisions

- 1.1 Only the following Terms and Conditions shall govern our deliveries and services. Terms and conditions opposing or deviating from our Terms and Conditions shall not apply unless we have expressly approved the application thereof in writing. Separate service conditions shall apply additionally to assembly and repair work. Separate software license terms and conditions for the licensing of software shall apply additionally in respect of software supplied by us, even if the software is part of a product supplied by us.
- 1.2 Oral agreements shall be invalid unless confirmed in writing by us before or at the time of the contract conclusion.
- 1.3 Offers are non-binding and subject to change, and are made subject to the proviso of self-supply as far as we offer components manufactured by third parties.
- 1.4 Unless otherwise stated in his or her order, the customer is bound by his or her offer for the duration of three weeks.
- 1.5 Contracts come into existence on the basis of a written order confirmation on our part or actual compliance by delivery of the goods or performance of services.
- 1.6 Cost estimates are not binding and subject to charge except as otherwise expressly agreed. Measurements, packaging measurement, weights, illustrations, simulation results and drawings are only binding for the construction of the products if this has been expressly confirmed in writing and remain our intellectual property at all times. Any use, duplication, reproduction, distribution and delivery to third parties, publication, and demonstration requires our express written consent.
- 1.7 The information contained in our price lists, catalogues, and other advertising materials does not constitute an offer and does not contain any information that determines the scope of our performance within the meaning of section 922 (2) ABGB, unless otherwise agreed in writing.
- 1.8 Our contractual partner is the person who commissions us, unless he or she discloses that he or she is acting on behalf of a third party and at the same time provides us with the contact details of the third party including a billing address. If the person who commissions us cannot prove the existence of a power of attorney, he or she is liable for all costs and claims arising in connection with the commissioning.
- 1.9 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into effect of our new terms and conditions of delivery.

2. Prices

- 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus value-added tax. Value-added tax will not be charged only in those cases where the conditions have been met for export shipments to be exempted from such tax.
- 2.2 In the absence of any special agreement, prices shall be deemed to be FCA dispatch place at the delivering plant (Incoterms® 2010) excluding costs of packaging.
- 2.3 We reserve the right to adjust our prices appropriately in the event of cost reductions or increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective bargaining agreements, or changes in the price of materials. Upon request we shall evidence such changes to the customer.

- 2.4 Spare parts and products which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus the charge for the service rendered by us, except where this is covered by warranty.
- 2.5 Services, in particular installation, maintenance and repair work, as well as training will be charged according to our hourly rates.

3. Delivery, Delivery Dates, Default

- 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties have been performed by the customer, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon, especially effecting agreed down-payments or opening of a letter of credit. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
- 3.2 In the event of a change of order, the delivery period shall begin anew upon confirmation of such change by us.
- 3.3 If non-compliance with the delivery date is due to force majeure or to other disturbances beyond our control e.g. war, terrorist attacks, import or export restrictions, including such disturbances affecting subcontractors, or any other circumstances not by our fault, such as delay, non-performance or improper performance on part of our suppliers, the delivery dates agreed upon shall be extended by the period of time of the disturbance. This also applies to industrial action affecting either us or our suppliers.
- 3.4 Delays in delivery do not entitle the customer to any claims, regardless of their legal nature.
- 3.5 If a customer is in default of acceptance or if a customer culpably violates its collaboration duties, we have the right to demand compensation for the damage incurred by us in this respect including further additional expenditure in an amount of 0.5 % of the price of the products for delivery per month or part thereof but not exceeding, on aggregate, 5 % of the price of the products for delivery. The contracting parties reserve the right to prove higher or lower costs of additional expenditure. The right to raise further claims on account of default of acceptance shall remain unaffected hereby.
- 3.6 Part shipments and corresponding invoices are admissible unless this is an unreasonable hardship for the customer.

4. Transfer of Risk

- 4.1 Delivery is effected FCA dispatch place at the delivering plant (Incoterms® 2010) except as expressly otherwise agreed in writing.
- 4.2 The choice of the type of delivery and the shipping route shall be at our discretion; this without any liability on our part to choose the cheapest or fastest type of delivery.
- 4.3 Transports shall take place at the risk and expense of the customer, even in case of partial deliveries.
- 4.4 For goods that are unloaded on site or are delivered at our expense the risk shall pass to the customer at the time of transfer to the carrier.
- 4.5 At the customer's request and cost we shall insure shipments against customary transport risks.
- 4.6 The place of performance shall be Linz, irrespective of where the actual delivery or service is performed.

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5. Complaints and Notification of Defects

- 5.1 The customer must notify us in writing immediately after receipt of the goods, of any recognisable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. Any hidden defects must be notified by the customer in writing immediately after discovery thereof.
- 5.2 Transport damage or shortages must be notified to us in writing within 24 hours after receipt of the goods, specifying the nature and extent of the damage, the number of the defective or missing goods and the specific product description.
- 5.3 The date of receipt by us of notification of a defect shall determine whether or not notification is in good time.
- 5.4 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred unless the customer can prove that it is not at fault regarding the unjustified notification of a defect.
- 5.5 Notifications of defects do not entitle the customer to partially or fully suspend his or her payment obligation.
- 5.6 Any warranty claims, avoidance on account of mistake and claims for damages shall be excluded if the notification of defects, transport damages or shortages is not received in good time.

6. Taking Delivery

The customer may not refuse to take delivery on account of minor defects.

7. Warranty

- 7.1 Warranty claims with respect to movable or immovable goods shall become time-barred after a period of six (6) months. The foregoing provision shall not apply insofar as longer time bar periods are mandatory by statute.
- 7.2 The time bar period for defects commences as follows:
- i) in case of products for vehicle and engine equipment on the date on which the product is put into use, i.e. in case of original equipment on the date of first registration of the vehicle and in other cases upon installation, but no later than 6 months after delivery of the product (date of transfer of risk);
 - ii) in all other cases upon delivery of the product (date of transfer of risk).
- 7.3 In the case of partial deliveries, the warranty period begins upon delivery of the respective instalment.
- 7.4 We must be granted the possibility of examining notified defects and recognizing the condition as such. The presumption of defectiveness according to Section 924 ABGB shall be excluded. If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, we may effect as primary means of warranty at our discretion either remedying the defect or delivering a defect-free product. The defective product has to be sent for repair either to us or to the nearest customer service unit for the respective product determined by us.
- 7.5 The time bar period shall be interrupted for the period of time necessary for the conducting of the primary means of warranty. The time bar period neither starts to run anew as a result of the completion of the remedy of the defect nor does it extend in any other way.

- 7.6 If the primary means of warranty should be abortive, the customer shall be entitled to - without prejudice to any claims to damages - rescind the contract or demand a reduction of the amount of payment in accordance with statutory provisions.
- 7.7 Claims by the customer on account of expenditure required for the purpose of primary means of warranty, in particular costs of transport, transportation, labour and materials, shall be excluded.
- 7.8 Warranty claims do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product. Further rights shall remain unaffected hereby.
- 7.9 The following are not deemed to be defects:
- ordinary wear and tear;
 - characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation and handling regulations or to excessive strain or use, improper operational means, commissioning or maintenance;
 - characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
 - non-reproducible software errors.
- 7.10 Claims on account of defects do not exist if the product is modified by third parties, due to the installation of parts of foreign origin or due to repairs that were commissioned without our consent unless the defect has no causal connection with the modification. We assume no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material. Any duty to warn is waived.
- 7.11 We are not liable for the quality of goods which are based on the design or choice of material by the customer and are under no obligation to warn the customer in this regard.
- 7.12 Claims to recourse against us by the customer shall only exist with respect to any hidden defects and insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory warranty claims, for instance accommodation agreements. Furthermore, the limitation period for any claims to recourse against us by the customer according to Section 933b ABGB shall be 30 months from the date of delivery of the good to the customer.
- 7.13 The customer shall give us or any third party engaged by us to perform our warranty obligation sufficient time and the possibility to carry out the warranty work. The customer may only carry out such work itself if we have given our prior consent or if Section 932 ABGB applies. We shall bear the costs within the framework of warranty to an extent which must be in a reasonable proportion to the value of the product in a defect free condition, the significance of the defect and/or the possibility of obtaining warranty by an alternative method; any costs in excess of this shall be borne by the customer.
- 7.14 In case of the unjustified assertion of warranty claims, especially in the case of replacement of the goods or rescission of the contract we shall be entitled to charge the customer an appropriate usage fee as well as compensation for the diminished value, however at least 25% of the agreed net payment.

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7.15 Our obligation to pay damages and to compensate for frustrated expenditures on account of defects shall be governed by clause 9 in all other respects. Any further-reaching or other claims put forward by the customer than those covered by this clause 7 with respect to defects caused by fault are excluded.

7.16 The provisions of this clause 7 shall apply mutatis mutandis to defects of title which are not constituted by the infringement of third party industrial property rights.

8. Industrial Property Rights and Copyright

8.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.

8.2 We shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right 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.

8.3 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request - insofar as possible - allow us to conduct the litigation (including non-judicial proceedings).

8.4 We are entitled, at our discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to re- place it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall - insofar as the customer allowed us to carry out a modification - be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions we too shall have a right of rescission. The ruling set forth in clause 7.12 shall apply accordingly. We reserve the right to carry out the action at our disposal under the terms of sentence one of this clause 8.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognised by us.

8.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported us to a reasonable extent in the defence against claims by third parties.

8.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from us or if the products are used in a manner which we were unable to foresee. The customer shall indemnify us against any and all resulting entitlements or claims by third parties arising from infringement of intellectual and industrial property rights.

8.7 Our obligation to pay damages in case of infringements of industrial property rights is governed by clause 9 in all other respects.

8.8 Clauses 7.1 and 7.2 apply mutatis mutandis to the

time bar for claims based on infringements of industrial property rights.

8.9 Further reaching claims or claims other than those claims of the customer governed by this clause 8 on account of an infringement of third party industrial property rights are excluded.

9. Claims to Damages

9.1 We are liable to pay damages and compensation of frustrated expenditure (hereinafter referred to as damages) on account of a violation of contractual and non-contractual obligations only in case of

- (i) intent or severe gross negligence,
- (ii) in case of negligent or deliberate fatal injury, physical injury or injury to health,
- (iii) on account of assuming a guarantee,
- (iv) on account of compulsory statutory liability pursuant to the German Product Liability Act or
- (v) on account of any other compulsory liability.

9.2 The customer does expressly waive the assertion of claims for damages to property from the title of the product liability act. If the customer resells the purchased goods to other businesses, it is obligated to transfer above waiver also on its and possible further business partners. If such a transfer of claim waiver is omitted, the customer commits itself to keep us without harm and suit, and to take over all costs, which result in connection with such liable making. If the customer should be consulted for its part in the context of the product liability act, it renounces any recourse with regard to us.

9.3 The damages for a breach of material contractual duties are limited to foreseeable damage, typical for the type of contract, except in the event of fatal injury, physical injury or injury to health or on account of assuming a guarantee. In no event shall we be liable for consequential damages, financial damage or loss of profit.

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

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

9.6 Insofar as liability for damages is excluded with respect to us, this also applies to the personal liability for damages of our employees, representatives and of persons engaged by us in performance of our obligations.

10. Retention of Title and Right of Retention

10.1 We retain ownership of the delivered goods until full payment of all claims outstanding and arising from the business relationship, regardless of the legal grounds and irrespective of whether they relate to this or to previous transactions.

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

10.3 The customer is entitled to process our products or connect them with other products within the due course of the customer's business. By way of security for our claims set forth in clause 10.1 above we shall acquire joint ownership in the products created as a result of such processing or connection.

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- The customer hereby transfers such joint ownership to us now already. As an ancillary contractual obligation the customer shall store free of charge the goods to which we have retained title. The amount of our joint ownership share shall be determined by the ratio between the value of our product (invoiced amount plus VAT) and the value of the product created by processing or connection at the time of such processing or connection.
- 10.4 The customer shall be entitled to sell the goods in the normal course of business against cash payment or subject to his or her retention of title. We may revoke the rights of the customer as set forth in this clause 10.4 if the customer fails to duly comply with its payment obligations with respect to us, defaults in payment or suspends its payments. We shall also be entitled to revoke the rights of the customer as set forth in this clause 10.4 if the customer not only temporarily discontinues payments, the customer's financial circumstances deteriorate significantly or threaten to deteriorate, or in the event of the customer's insolvency or over-indebtedness.
- 10.5 At our request, the customer must advise us forthwith in writing of the customers to which it has sold the goods owned or jointly-owned by us and of the claims to which the customer is still entitled on the basis of such on-sale..
- 10.6 The customer is not entitled to dispose of the goods partially owned by us or subject to retention of title. The customer must inform us without delay of any distraints or other impairments of rights with respect to the goods to which we have full or partial title. The customer shall bear all costs incurred for the rescission of the measures and regain of the goods unless these can be recovered from third parties.
- 10.7 Should the customer be in default of payment or culpably in breach of any other essential contractual obligation we shall be entitled to demand payment of the entire outstanding debt. We shall be entitled to demand the surrender of goods that are subject to the retention of ownership, excluding any right of retention of the customer, even if a later due date has been agreed on for individual invoices or a bill of exchange. In the event of the assertion of the right of retention, the customer shall grant us or our delegate immediate access to the goods under retention of title and shall surrender them. If we make use of this right, notwithstanding any other mandatory provisions of law, this shall only constitute rescission of the contract if we expressly declare in writing that the contract is being rescinded.
- 10.8 After the return of goods it is within our discretion either to sell the goods and subtract the sales proceeds from the customer's outstanding obligations or to take the goods back at the price originally invoiced to the customer minus any depreciation in value, and to charge the customer an appropriate remuneration for the use of these goods which shall be at least 25% of the purchase price.
- 10.9 The customer undertakes to insure all goods that are still in our ownership against all risks and shall produce proof of the conclusion of such insurance at our request.
- 10.10 We shall be entitled to withhold any goods that were handed over to us for repair until the settlement of all outstanding claims, and also for securing claims from other transactions. The customer hereby releases us from an obligation to perform any work within our warranty obligations for as long as he or she is in default of payment.
- 10.11 The customer shall have no right of retention of any legal nature.
- ## 11. Cancellation
- 11.1 In the event of the customer's acting in breach of contract, in particular in case of default of payment, we have the right, notwithstanding our other contractual and statutory rights, to withdraw from the contract after expiry of a reasonable extended deadline.
- 11.2 We are entitled to withdraw from the contract without setting an extended deadline if:
- (i) the customer's asset position should deteriorate materially or threaten to deteriorate and, as a result, the performance of a payment obligation to us is jeopardized, or
 - (ii) if the customer suspends its payments;
 - (iii) if the customer is insolvent or overindebted.
- 11.3 We are also entitled to withdraw from the contract with immediate effect if such withdrawal is necessary for us in order to comply with national or international legal provisions (in particular, but not limited to, applicable export control laws).
- 11.4 In the event of withdrawal pursuant to clause 11 the customer is excluded from raising a claim for any damage or other rights on account of the termination.
- 11.4 Our statutory rights and claims shall not be restricted by the provisions contained in this clause 11.
- 11.5 In the event that we declare the rescission of the contract pursuant to clauses 11.1 and 11.2 we are entitled to a cancellation fee in the amount of 25% of the total purchase price as well as a claim for damages that exceed this amount.
- ## 12. Export Control Clause
- 12.1 Deliveries and services (contractual performance) shall be subject to the proviso that there are no obstacles to performance due to national or international export control regulations, in particular embargos or other sanctions. When exporting purchased goods, the customer undertakes, to obtain the necessary export and customs permits and the like and bear all costs in this regard. The originals of all export and customs papers and the like must be returned to us. The customer shall indemnify us against any and all costs which may arise from shipping- or customs duties. Delays due to export examinations or approval procedures render deadlines and delivery dates inapplicable. If necessary approvals are not granted or if the delivery and service are not capable of being approved, the contract shall be considered not concluded with respect to the parts affected.
- 12.2 When passing on the products delivered by us (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) and work and services performed by us (including technical support of all kinds) to third parties in Germany and abroad, the customer must comply with the respectively applicable provisions of national and international (re-) export control law.
- 12.3 We shall not be liable for the legal admissibility of the export of the products and the compliance with legal and technical provisions of the country of importation. Furthermore, we shall not be liable for whether the products comply with the technical standard in the country of importation.
- ## 13. Confidentiality
- 13.1 All of the business and technical information stemming from us (including characteristics which

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can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by us to be resold by the customer and it may only be made available to those persons within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain our exclusive property. Without our prior written consent such information may not be duplicated or commercially used. At our request all information stemming from us (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to us immediately in full or destroyed.

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

14. Payment Terms

- 14.1 Except as otherwise agreed in writing, payment shall be effected within 30 days of the invoice date without any deductions whatsoever. We may also, however, make delivery conditional upon contemporaneous payment (for instance cash on delivery or bank direct debiting service) or on pre-payment.
- 14.2 We are entitled to offset payments made against the oldest claim due, even if dedicated otherwise.
- 14.3 In case of delayed payment we are entitled to charge default interest at 8 percentage points above the base interest rate, but at least 12 % p.a. We reserve the right to assert a claim on account of further damage.
- 14.4 Payment by bill of exchange is only admissible following prior written agreement with us. We only accept bills of exchange and cheques on account of performance and they shall not be deemed to constitute payment until honoured. The costs of redeeming a bill of exchange or cheque shall be borne by the customer.
- 14.5 If the customer is in arrears in payment we shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and against which there is no defence. Furthermore we are also entitled to perform outstanding deliveries only against payment in advance or against provision of a security. This right shall not be barred by a deferral of payment or by the acceptance of bills of exchange or cheques.
- 14.6 The customer shall only have the right to offset counterclaims insofar as the customer's counterclaims are undisputed or ruled with res judicata effect by a court of law.
- 14.7 The customer shall only be entitled to withhold payments to the extent that its counterclaims are acknowledged or ruled with res judicata effect by a court of law.
- 14.8 The customer is obliged to bear our dunning expenses in the amount of up to EUR 20,00 per dunning letter plus VAT, and to bear the dunning expenses of any creditor protection agency and the costs of any intervening attorneys as far as they are deemed useful and necessary.

15. Miscellaneous

- 15.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and

Conditions. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision.

- 15.2 Amendments or additions to the contract including these Terms and Conditions must be in writing in order to be legally effective; the sending of emails fulfils this requirement. This also applies to the deviation from the written form.
- 15.3 The customer shall in no event be entitled to challenge or rescind the contract on account of mistake.
- 15.4 The place of jurisdiction for any legal disputes arising between us and the customer shall be a competent court in Linz. We are also entitled to take legal action at any other court where a legal venue of the contracting partner exists.
- 15.5 All legal relationships between us and the customer shall be exclusively governed by and construed in accordance with the laws of the Republic of Austria excluding the rules on the conflict of laws and the United Nations Convention on the International Sale of Goods (CISG).
- 15.6 We process the customer's personal data which he or she disclosed to us in the course of entering into the respective contract for the purposes of performance of the contract as well as advertising our products to the customer; the legal basis is Article 6 (1) (b) and (f) of the General Data Protection Regulation. The legitimate interest we pursue is the advertising of our products to the customer. Further information on the processing of personal data can be viewed on our website <https://www.boschrexroth.com/de/at/home/datenschutz>.

Dated: March 2018