



## LICENSE CONDITIONS / EULA (End User license agreement) for Automation Runtime and mapp Technology – Runtime software

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BY OR WITH USING THE B&R RUNTIME SOFTWARE IN OR BY MECHANISMS OF THE B&R AUTOMATION STUDIO, YOU DECLARE THAT YOU COMPLETELY AND IRREVOCABLY ACCEPT ALL THE FOLLOWING CONDITIONS. IF YOU DO NOT ACCEPT THESE REGULATIONS AND/OR DO NOT COMPLY WITH THEM, YOU MUST NOT USE THE SOFTWARE AND/OR ITS FEATURES. USE OF THE SOFTWARE BY CONSUMERS WITHIN THE MEANING OF THE CONSUMER PROTECTION ACT IS IN ANY CASE PROHIBITED IRRESPECTIVE OF THAT; ACCORDINGLY, THESE CONDITIONS ARE ONLY ADDRESSED AT ENTREPRENEURS WITHIN THE MEANING OF THE CONSUMER PROTECTION ACT.

This agreement is between B&R and the respective (business) end user (referred to as "you" or "User" in the following) and governs the conditions for using the software referred to therein.

### 1. Object of the agreement

- a) Object of the agreement is (i) B&R runtime software which is used in Automation Studio and/or with mechanisms of Automation Studio and on a B&R automation system, (ii) any associated B&R runtime software tools (iii) the software documentation and (iv) other associated written material. This includes in particular, but not exclusively, software from the "mapp Technology" sections and "Automation Runtime", also referred to below (generally) as "software", "Automation Runtime" or "mapp".
- b) The source code is not part of the object of the agreement. - For this, see also point 3.j.
- c) Other services of B&R or of third parties attributable to these, such as, in particular, installation of the software, training sessions etc., are not the subject of the contract and must be commissioned/ agreed separately.
- d) B&R wishes to point out that it is not possible, given the nature of technology currently available, to create software that can function flawlessly in all application conditions, in all applications and/or in all combinations. In particular, no assurance can be given for software that it will function without interruption or completely flawlessly. The software does not feature zero error tolerance. The functionality of the software can also be adversely affected by factors over which B&R has no influence. The object or content of the agreement (and so subject of the agreement of B&R) is therefore only software which is essentially usable within the meaning of the program description and directions for use. Faults which do not impair or exclude this essential usability are not regarded from the outset as defects or defective performance. Accordingly, the User cannot rely upon 100% functionality and must take appropriate precautions (such as backup systems, controls, etc.) in order to avoid losses, especially to third parties. In particular, the User must demonstrably make third parties who may come into contact with the software or use it or could use it completely aware of these limitations on functionality in terms of our performance and product descriptions, directions for use, comments on our website etc. B&R accepts no liability for detriments of whatsoever kind which the User incurs through failure to take such precautions.

### 2. Intangible rights / Industrial property rights

The software governed by this agreement is copyright protected and/or protected by other industrial property rights either in favor of B&R or in favor of third-party companies. You irrevocably acknowledge the limitations associated with this in the use of the software and undertake not to violate these property rights in whatever manner and to whatever extent. Each User is liable for violations by his assistants in this regard. Each User must promptly report to B&R any violation of property rights and at least refrain



from this immediately. The User must not remove, alter or cover up information on copyrights, trademark rights or other commercial property rights or otherwise make them unrecognizable. The User is not allowed to translate accompanying documentation material for commercial purposes unless they have the explicit prior consent of B&R.

### 3. Licensing rights, scope and use of the software

a) The User acquires, as an authorization to use the work, the non-exclusive, transferable right - but only subject to this EULA - against payment to use the software subject to the conditions of this agreement. All tangible and intangible rights of whatsoever type, especially intellectual property rights, the comprehensive copyright with all authorizations to all the programs, documents and information in connection with contract initiation and implementation, including warranties, support and care, remain exclusively with B&R or the author. This also applies where these objects have arisen by means of specifications and/or the collaboration of the User and irrespective of whether a contract is created between B&R and the User. The User therefore has solely the non-exclusive authorizations to use these objects as specified in these conditions.

b) Commercial use of the software is permitted solely subject to acquisition against payment of the technology guarding license (see point 3.h). Such commercial use takes place as soon as the software is used, in whatsoever way or manner, in Automation Studio. If the technology guarding license is not acquired (subject to point 3.h), the software may only be used for evaluation purposes (see point 3.i).

c) As the licensee, you may make copies of the software subject to the recognized codes of practice only for the purpose of data backup protection for internal purposes. A backup copy held on a mobile data storage device should be marked as such with the copyright notice of the original data storage device.

d) Under the license(s) you have been granted, you are allowed to create applications derived from the software provided that the type of software essentially enables this (software libraries, programming aids etc.). The application created as a result may be passed to third parties provided that this does not contravene point 3.b) and that there are no restrictions under point 8.

e) In the absence of an explicit alternative written agreement, transfer of licenses under these EULA is only permissible to the extent that this is part of the business activities of the customer in the form of a transfer to third parties (whether against payment or not) of the automation system projected with Automation Studio. At all events, transfer of the mapp software or of the corresponding license as a mere transfer (e.g. resale), whether against payment or not), is not permissible.

f) By acquiring the software, if applicable, you gain only title to the physical data storage device(s) on which the software is stored and title to the associated written material. For the software itself, you are granted the right of use solely within the framework of this agreement. The right of ownership, copyright and all other rights associated with the software belong solely to B&R or the author. In particular, B&R and/or the author reserve(s) all publishing, retransmission, editing, utilization, and any other rights that fall under the purview of copyright law for this software.

g) For all losses of whatsoever type which B&R and/or the author incur(s) through violation on your part of this contract, especially violation of the copyright of B&R or of a third party, the User is fully liable. This also applies for all such losses which B&R and/or the author suffer through persons accountable to the User, especially his assistants.

h) The license applies to machine manufacturing and plant engineers who use this software. The material number necessary for use of the software is provided on a technology guard (dongle) or is granted to the User electronically for standalone transfer to a technology guard. The automation system reviews the license for the business. Any violation of the license is indicated by the automation system. Depending on the use of the range of functions of the software, several material numbers may be necessary.

i) Use of the software for evaluation purposes is understood to mean use of the software with an automation runtime "ARsim" in evaluation operation.

j) The User or a third party integrated by them must not decompile the software subject to any mandatory rights that may be granted by statute and/or must not use the source code for their own purposes, not



alter this and not develop identical or similar software based on or using, either wholly or in part, the source code.

#### 4. Modifications and updates

- a) B&R and the author of the software are entitled at any time and at their discretion without prior warning or other notification to make software modifications and updates. Particular incompatibilities may result from this.
- b) B&R and the author of the software are not obliged to inform the User of any software modifications or updates.
- c) The User must not modify or edit the software in any way whatsoever. In particular, the User is not authorized to copy software, to adapt it for use on incompatible hardware or to edit it in any other way.

#### 5. Warranty

- a) Provided that the software is used under the specified use and framework conditions, particularly in accordance with the program description and directions for use, B&R provides a warranty, subject to the regulations of this EULA, in respect of its freedom from defects with regard to the software functionality indicated in the program documentation.
- b) Under point 1.d), no defect is present in any case if there are malfunctions or faults which do not impair or exclude the essential usability of the software within the meaning of the program description or directions for use. Also, no warranty is given for minor and/or insignificant defects or curtailments, especially for those which do not impair the functionality or the agreed or customarily presumed usability of the software. Equally, no defect is present if the technical equipment of the User, such as supply lines, wiring, networks and similar, are not in a perfect and operational state or are not compatible with the supplied objects. B&R is also not accountable for a defect if it is due to a task definition specified by the User or to the inadequate or flawed duty to cooperate of the User or the functions do not satisfy the requirements of the User. Other matters not covered by the warranty include, in particular, any defects or damage attributable to the following: operational deterioration and normal wear and tear, improper use, operating error and negligent conduct by the User, operation with the wrong type of current and/or voltage and connection to unsuitable power sources, fire, lightning strike, explosion or grid-related voltage surges, humidity of any type, liquids of any type, wrong or faulty program, software and/or processing data and any type of wearing parts, unless the User can show that these circumstances are not the cause of the notified defect. The warranty will also not apply if the serial number, type description or other identifiers are removed or rendered unreadable. In particular, B&R does not furthermore guarantee that the software will sufficiently meet your demands and purposes or work with other programs that the User has chosen to use. The User is solely responsible for the proper selection, the consequences of using the software as well as the intended or desired results. f) No warranty claim exists if the defect results from unauthorized software modification or update by the User or in connection with derived applications (item 3.d)) or if the software is misused in any way or not used according to the purposes listed in the program documentation. Assured characteristics within the meaning of § 922 of the General Civil Code are those which B&R explicitly marks as such or explicitly assures. The technical data and descriptions in the product information do not in themselves constitute assurance of any particular properties. Therefore, B&R is also not liable for public statements or publicity of any type concerning the contractual goods within the meaning of § 922 of the General Civil Code and is not liable for the properties of product samples or prototypes of such products in current use. B&R gives no warranty in respect of the program functions satisfying the requirements of the User or of the said functions working together in the configuration selected by the User. If the User continues to use, without any compelling reason, the defective software, although the User knew or ought to have known of the defect or grants use of it to a third party in the context of a commercial use, although the User knew or ought to have known of the defect, the User declares to B&R at the same time that the User waives any claims with regard to this defect.
- c) B&R gives a warranty that the data storage device(s) on which the software is recorded is (are) free of material defects at the time of handover under normal operating conditions and with normal maintenance.



- d) Warranty claims can only be asserted within a 12 month warranty period from receipt of the software by the User (especially when downloaded).
- e) The User should promptly send B&R a written notification of defects, quoting the precisely the type and extent of the defect, such notification to arrive not later than five days since awareness of the defect and demonstrably within the warranty period specifying precisely the type and extent of the defect and with a precise description of the problem and substantiation (defect complaint, notice of defects). If a defect complaint is not raised, either at all or within the time limits, performance will be regarded as conforming to contract. In such a case, the User loses all claims, especially those arising from entitlement to the warranty and compensation.
- f) The warranty covers defect diagnosis and elimination. The User must notify potential malfunctions promptly and in detail. B&R will support the User in the search for the defect and its cause. If the User cannot prove that the defect is attributable to B&R, B&R will be entitled to charge the User for the services rendered in this respect. If B&R rejects in writing the defect complaint, the User should at all events assert the defects complained of in a court of law within six months or otherwise lose all warranty and compensation claims.
- g) Elimination of the defects is effected primarily by improvement or exchange. There can be no claim for price reduction or reimbursement (depending on the type and severity of the defect) unless B&R is in agreement with that or unless improvement or exchange is, in the opinion of B&R, not possible or not feasible. Improvement is effected at the discretion of B&R by defect elimination, by appropriate modification of the software, by delivery of a new program version, by supply of new software or by B&R indicating reasonable means of avoiding the effects of the defect. The User must support B&R as appropriate. A particular requirement for every defect elimination is that the User should furnish B&R with all necessary documentation and information and that the User should give B&R unrestricted access during the User's normal working hours (particularly to hardware and software). The User should in any case adopt a new program version, unless this demonstrably causes disproportionate and unacceptable adaptation and conversion problems for the User.
- h) If there is to be improvement or an exchange, the User should allow B&R the necessary time and opportunity to an appropriate extent. If the User refuses to do this or if this is curtailed in a disproportionate manner, then B&R is released from upholding the warranty. The User must allow B&R at least two attempts to make improvements. If allegations of defects by the User are unfounded, the User shall compensate B&R for the expense incurred through establishment of the absence of defects or for defect elimination.
- i) If improvement is effected, B&R will pay the costs of the work. The User will bear all the other costs of improvement and the incidental costs associated with the supply of replacements, especially any transport costs, unless these other costs are disproportionate to the contract value. B&R can at their own discretion refer the User, after assignment at the same time of their own claims against their own supplier and/or manufacturer, to the manufacturer and/or supplier for the assertion of claims. Such a reference or such an assignment replace fulfillment of all the claims due to the User against B&R in any case. As far as is contractually acknowledged, claims of the User are limited as to type and extent to the claims due to B&R against their manufacturer or supplier.
- j) If review of a notice of defects shows that no warranty event exists, B&R will be entitled to call for reimbursement of all expenditure. The costs of review and repair will be charged at the current service prices of B&R. Cost estimates are always subject to a charge.
- k) Liability is due solely at the registered office of B&R at 5142 Eggelsberg, Austria.
- l) No compensation of whatsoever kind for an (attempted or successful) defect elimination by the User or by third parties (substitute performance) will be entertained.
- m) §§ 924, 933b of the General Civil Code will not apply. The User has the burden of proof that there is in fact a defect.
- n) If the warranty has been correctly invoked, the User is only entitled to retain the expense necessary for effecting the improvement but not the whole invoice value.



o) B&R gives a warranty solely that no industrial property rights or copyrights (referred to below as "protected rights") of third parties have been violated in the countries of the European Union and Iceland, Norway, Switzerland, Brazil, Japan, the USA and Canada. If B&R is liable to that extent and if use of the software is impaired or prohibited because of that, then B&R will either modify or replace the software at their discretion and expense such that it does not violate the protected right while essentially still retaining the agreed specifications or will release the User from the license fees for the use of contractual products as regards the third party. If B&R cannot do this under adequate conditions, B&R will accept returned software and refund the paid purchase prices. B&R can call for an appropriate level of compensation for the use of returned contractual products. The liability of B&R is furthermore contingent on the User promptly informing B&R in writing of the claims of third parties because of a violation of protected rights, on the User not recognizing the alleged violation and on pursuit of a dispute, include any out-of-court settlements, only by mutual agreement with B&R. If a violation of protected rights is based on the User or their third-party contracting partner modifying or having modified the software, then the User must release B&R from liability in this respect and completely indemnify and hold B&R harmless. Violations of protected rights because of a specific application use is also exclusively the responsibility of the User who must release B&R to this extent or completely indemnify and hold B&R harmless. The contracting parties are obligated to inform each other immediately of any known risk of violation or alleged violation, and to provide each other with an opportunity to react to such claims with the other's consent. To the extent that B&R is not liable for violations of protected rights, the User releases B&R from all associated claims of third parties or completely indemnifies and holds B&R harmless. Claims for losses and expenses of the User because of or in connection with violations of protected rights, irrespective of the legal basis, are limited by application mutatis mutandis of contractual point 6.b). No further claims of the User because of a violation of the protected rights of third parties can be entertained.

p) No warranty is given for any pledges in excess of those specifically effected in this agreement.

## 6. Compensation for damages

a) Claims for damages and rights of recourse, of whatsoever type, are excluded if

- (1) they are not due to personal injury; or
- (2) if the circumstances giving rise to the claim for damages or rights of recourse are not caused by willful intent or gross negligence by B&R; or
- (3) if some other disclaimer of liability is permissible under applicable laws.

b) In any type of gross culpability, the liability of B&R is limited per calendar year to 10 % of the turnover between the contracting partners during the previous 12 calendar months before the month in which the loss event occurred, however – subject to the expenditure actually incurred – at least 20,000.00 euro and no more than 50,000.00 euro per calendar year.

c) Within the scope of the Product Liability Act, the User explicitly waives recourse to § 12 Product Liability Act with regard to B&R. The User undertakes to rule out with regard to any third party the liability to pay damages under the Product Liability Act to the extent that this is permissible under current laws. If this exclusion obligation is not observed, the User undertakes to indemnify and hold B&R harmless with regard to all claims of third parties of whatsoever type resulting from product liability. The User as reseller must take out sufficient insurance to cover product liability claims and indemnify and hold B&R harmless with regard to claims for compensation.

d) B&R can accept no liability for direct or indirect losses, consequential losses (especially consequential losses resulting from defects), interruptions to operations or work, loss of profit, computer breakdowns or malfunctions, loss of good will or company value and loss of information and data. Loss of profit is also to be understood in this instance as a missed commercial opportunity which at the time of the detrimental missed opportunity already constituted for the User a present, independent asset, e.g. by virtue of an already extant contract between the User and a third party.

e) Claims for losses and expenses against B&R lapse 12 months from receipt of the software by the User (especially in the case of download), in the case of delictual liability from the time of awareness or grossly





negligent unawareness of the circumstances justifying the claim or the person with liability to pay compensation.

f) The same limited or excluded liability applicable to B&R also applies to their representatives, employees and other auxiliary persons.

## 7. Payment and usage period

a) The payment due by the User for acquisition of a technology guarding material number and the associated use of the software can be seen in the B&R price list in force at the time.

b) By acquiring the technology guarding material number, the User is entitled to use the software under the terms of the agreement.

c) The goods (including software and data storage devices) remain the property solely of B&R (goods subject to retention of title) until satisfaction of all claims due to B&R against the User under the specific order, especially until completion of all payments including instances when individual parts have already been paid for.

d) Cancellation

B&R is authorized to dissolve the agreement if you should violate any of the provisions contained herein, in particular those that are specifically designed to protect B&R or the author of the software. The User is not entitled to return the license(s).

## 8. Export restriction

You acknowledge that the software and the associated technical data and services (referred to as "technology subject to export controls") are subject to import, export and re-export laws. You are responsible for the observance and application of these provisions. In addition to the domestic laws of your country, the regulations of the European Union and legal provisions of the United States of America are also applicable. This refers in particular, but is not limited to, applicable EC regulations for so-called dual-use products (esp. Regulation 428/2009, Regulation 2015/2420, VO 2015/2420, VO 2016/1969 as well as the respective amendments and any other regulation that supplements or supersedes these) and the Export Administration Regulations (EAR, US provisions for managing exports). You hereby agree to observe all relevant laws and not export, in violation of EU regulations and US law, any technology subject to export controls to any countries, organizations or persons for which an export license or other regulatory approval is required.

**THE USE OR PROVISION OF B&R PRODUCTS IN CONNECTION WITH ACTIVITIES - INCLUDING, BUT NOT RESTRICTED TO - THE DESIGN, DEVELOPMENT, MANUFACTURE, TRAINING OR TESTING OF CHEMICAL, BIOLOGICAL OR NUCLEAR WEAPONS OR ROCKETS, DRONES OR SPACE ROCKET LAUNCHERS, WHICH CAN SERVE AS LAUNCHERS FOR WEAPONS OF MASS DESTRUCTION, IS PROHIBITED UNDER CURRENT LEGISLATION.**

## 9. Addendum for test, advance, beta version software

a) Definition:

Test, advance, beta version software are terms referring to a preliminary version of B&R software which is still at development stage. This version of software includes (i) all associated updates and upgrades made available to you by B&R, (ii) all associated documentation and (iii) all accompanying services made available by B&R via the website or other communication channels. Test, advance, beta version software can be uniquely identified by referring to the version designator and is explicitly released for use upon inquiry by the User and the consent of B&R.

b) Liability disclaimer and restricted warranty:

(1) The sole purpose of test, advance and beta version software consists in eliciting feedback on their performance and in identifying defects (referred to below as "testing"). You expressly acknowledge that the version of the software is a test product that may include omissions, bugs, errors and other problems that can result in malfunctions or other disturbances, including but not limited to system crashes, interruptions and data loss. You are advised to exercise caution and in no way to rely on the



performance or function capabilities of test, advance, beta version software. No warranty is issued and no other liability of whatsoever type is accepted for this version of the software.

(2) THE TEST, ADVANCE, BETA-VERSION OF THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO YOU IN AN AS-IS STATE AND, AS FAR AS IS LEGALLY PERMISSIBLE, B&R GIVES NO EXPLICIT OR TACIT ASSURANCE OR WARRANTY WITH REGARD TO THIS SOFTWARE VERSION OR DOCUMENTATION. THIS APPLIES IN PARTICULAR BUT IS NOT LIMITED TO THE TACIT WARRANTY OF THE MARKETABILITY AND SUITABILITY FOR A CERTAIN USE: IN ADDITION, B&R EXPRESSLY EXCLUDES ANY WARRANTY IN CONNECTION TO THE NON-VIOLATION OF THE RIGHTS OF THIRD PARTIES, THE MARKETABILITY, THE SATISFACTORY QUALITY OR THE ABILITY TO INTEGRATE THE SOFTWARE WITH OTHER PRODUCTS. B&R ALSO ACCEPTS NO OTHER LIABILITY OF WHATSOEVER KIND.

(3) Nevertheless, where some legally mandatory liability may occur, points 5 and 6 apply in particular.

## 10. Non-disclosure

The attached software and all associated documents, data and information constitute confidential information. The User will treat the software and/or all associated documents, data and information as secret with regard to third parties and will not give access to them to third parties without the prior written approval of B&R; this does not exclude transference of the usage rights as specified in point 3e. The User is obligated to handle the software with the same care and confidentiality as his own company and business secrets but not less than the care expected in moderate measure by an ordinary company. The User is not liable for disclosure of confidential information, however, if the information a) was already publicly known and available at the moment of disclosure or has been made known publicly or is available without fault on the part of the User afterwards; or (b) is/was obtained and passed on by a third party legally without violating the non-disclosure obligation; or (c) can be proven to have already been legally known to the User on a non-confidential basis before it was made available; or (d) the User is obligated by mandatory legal provisions to reveal the confidential information in judicial, regulatory or other proceedings.

## 11. Data protection

For additional information about data protection, see the data privacy statement (see <https://www.br-automation.com/en/about-us/company-details/>).

## 12. Final provisions

a) This agreement is governed solely by Austrian substantive law excluding its principles on conflicts of law, to the extent that these refer to the application of foreign law and the UN Convention on Contracts for the International Sale of Goods. The sole place of jurisdiction agreed for all legal disputes arising from or in association with this agreement is the court responsible for B&R in A-5142 Eggelsberg, Austria.

b) This agreement constitutes all understandings of the parties. Verbal side agreements are not possible. All modifications of and amendments to this agreement shall be made in writing in order to be valid. This requirement of written form may only be waived by a written agreement. As of now, B&R repudiates any conditions of the User of whatsoever kind contrary to or deviating from these conditions, especially the General Terms and Conditions of Business of the User; B&R hereby expressly does not recognize such conditions, unless B&R had expressly accepted their application in writing. Non-acceptance also applies where B&R does not in a specific case repeat its repudiation of the deviating conditions of the User. The performance of a delivery or a service by B&R does not in any case constitute submission to deviating conditions of the User, particularly not even when B&R is aware of the contrary or deviating conditions of the User and does not express reservations about them.

c) If one or more provisions in this contract are or become legally invalid, either wholly or in part, or if a loophole is found, the validity of the other provisions of the agreement is not affected. In this case, instead of the ineffective provision or to close the loophole, a provision shall become effective and be deemed valid that comes closest to meeting the provision.