

B&R LICENSE AGREEMENT / EULA (End User License Agreement) for Automation Studio, Automation Runtime, mapp Technology and related development tools

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“**B&R**” is B&R Industrial Automation GmbH, FN 111651 v, Austria, along with all its affiliated (subsidiary) companies.

By accepting these conditions, in particular by pressing/clicking the “Accept” button, and in any case upon installation and/or use of the *B&R* software which is subject to these conditions, you as the end user of the software declare that you agree in full and irrevocably to all of the following provisions.

1. General information

- a) This agreement and the following conditions/provisions (abbreviated as “**EULA**,” “**(this) agreement**”) is hereby concluded between *B&R* and the respective (corporate) end user, in particular a machine or plant manufacturer and/or system integrator, (abbreviated as “(the) **user**”), and regulates the conditions for use of the software indicated here.
- b) This EULA applies, as stipulated in section 2, to the following *B&R* software (collectively the “**(B&R) Software**”):
 - (i) “**(B&R) Automation Studio**”;
 - (ii) “Automation Runtime” and “mapp Technology” together with the associated runtime functions (collectively referred to as “**(B&R) Runtime Software**”);
 - (iii) Development tools related to (*B&R*) *Automation Studio* and (*B&R*) *Runtime Software* (in short: “**Development tool/s**”).
- c) This EULA applies to any *B&R software* for which the *user* is offered these terms for acceptance and agrees to them prior to installation.
- d) If the *user* does not accept and/or does not comply with this EULA, then the user may not use the *B&R software* and/or its respective *software functions*. In this case, the *user* shall not install the software.
- e) These conditions are directed towards commercial *users* of the *B&R software*. Use of the *B&R software* by private individuals is prohibited, with the exception of use in the context of education and training at educational institutions in accordance with the provisions of this EULA.
- f) The references contained in this *agreement* refer to the relevant points of the *agreement*.

2. Object of agreement

- a) The object of this *agreement* is the *B&R software*, which includes
 - (i) the development tool *Automation Studio*,
 - (ii) the *B&R runtime software* used directly in *Automation Studio* and/or with *Automation Studio* mechanisms or on a *B&R automation system*, including the associated runtime functions,
 - (iii) any *development tool*

each with the associated program documentation and other related written material.

- b) Unless otherwise expressly regulated in the following or otherwise emphasized, the provisions of this *agreement* apply in every case to each of the above software programs individually (or their parts) of the *B&R software*.
- c) The source code of the *B&R software* is not considered the subject of the agreement.
- d) Other services of *B&R* or of third parties attributable to *B&R*, such as, in particular, installation of *B&R software*, training sessions, instruction, support, education, etc., are not the subject of the agreement and shall be commissioned/ agreed separately.
- e) *B&R* hereby expressly notes 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 *B&R software* does not feature zero error tolerance. The functionality of the *B&R software* can also be adversely affected by factors over which *B&R* has no influence.

The only object or content of the *agreement* (and thereby the performance provided by *B&R*) is therefore the *B&R 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 complete ("one hundred percent") functionality of the *B&R software*, and must take appropriate precautions (such as backup systems, controls, etc.) at its own cost and under its own responsibility 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 *B&R software* or who use it or who could use it completely aware of these limitations on functionality in terms of the *B&R* performance and product descriptions, directions for use, references on the *B&R* website etc. *B&R* shall accept no liability for disadvantages of any kind that the *user* suffers through failure to take such precautions.

3. Intangible rights / Industrial property rights

- a) The *B&R 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. The *user* irrevocably acknowledges the limitations associated with these rights impacting the use of the *B&R software* and undertakes not to violate these property rights in any manner or to any extent. Each *user* is liable for violations by their assistants in this regard. Each *user* shall promptly report to *B&R* any violation of property rights to the *B&R software* and immediately cease any property rights violations. In addition, the *user* shall promptly inform *B&R* regarding any violation of property rights to the *B&R software* by third parties of which they become aware.
- b) The *user* shall 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*.

4. License (rights), scope and use of the B&R software

- a) The *user* purchases (or receives when free of charge) usage rights for the *B&R software* exclusively in the form of permission that is paid, non-exclusive and transferable only in accordance with the provisions of this EULA (with the exception of *development tools* that are free-of-charge) according to the terms and conditions of this *agreement* (hereinafter referred to as a "**license**"). The *license* may be defined or designed differently depending on the software.

b) The following types of *licenses* are available for *Automation Studio*:

- (1) (“**Single License**”): A *single license* allows for the use of *Automation Studio* by exactly one user at a time. The *single license* is provided depending on its type on a technology guard/dongle (“**TG**”) or in a software container (“**SC**”). For the type *TG*, this permits multiple users to share the right to use *Automation Studio* on different workstations within the company by connecting the *TG* with the *single license* to the respective workstation computer. For the *SC* type, the right to use *Automation Studio* is connected to the installed workstation computer, and cannot be transferred. The *single license* allows for the commercial use of *Automation Studio* according to point 4.d).

The term of use for the *single license* is 365 days. The *single license* must be terminated at least 30 days before the end of the term of use. If it is not terminated promptly, the *single license* is extended automatically by 365 days in each case. The *single license* includes the right to receive upgrades and telephone support for the functions of *Automation Studio*.

- (2) “**Site license**”: The *site license* allows licensing of any number of users at the *user’s* specific company site. The users must be employed at the respective company site but can use *Automation Studio* regardless of their location (this includes internationally active service technicians, for example). Licensing takes place via activation over the Internet. The *site license* allows for the commercial use of *Automation Studio* according to point 4.d).

The term of use for the *site license* is 365 days. The *site license* must be terminated at least 30 days before the end of the term of use. If it is not terminated promptly, the *site license* is extended automatically by 365 days in each case. The *site license* includes the right to receive upgrades and telephone support for the functions of *Automation Studio*.

- (3) “**Corporate License**”: The *corporate license* is valid for all company sites of the *user*, and permits the licensing of all users employed by the company, including all associated companies. With the corporate license, *Automation Studio* may be licensed on a *B&R Automation PC* that is delivered with the machine if it can be guaranteed that only service personnel of the *user* working for the machine or plant manufacturer will have access to *Automation Studio*. Licensing takes place via activation over the Internet. The *corporate license* allows for the commercial use of *Automation Studio* according to point 4.d).

The term of use for the *corporate license* is 365 days. The *corporate license* must be terminated at least 30 days before the end of the term of use. If it is not terminated promptly, the *corporate license* is extended automatically by 365 days in each case. The *corporate license* includes the right to receive upgrades and telephone support for the functions of *Automation Studio*.

- (4) “**Resale license**”: With the *resale license*, the *user* as a machine manufacturer, plant manufacturer or systems integrator is permitted to resell a *single license* to its customers. This package is only intended for resale. This *resale license* does not expire. Licensing is provided on the *TG* or *SC*, depending on the type of *license*. In general, the *resale license* allows for commercial use of *Automation Studio* in accordance with point 4.d), but restricts that use as follows:

- No authorization to create a new project: the menu entry “New project” is deactivated.
- No authorization to download upgrades from the Internet.

- (5) “**Education license**”: This *license* is a *site license* and permits the licensing of any number of users for educational purposes at the site of the *user’s* educational facility. The *education license* expires automatically after 400 calendar days and cannot be extended. The *education license* is not permitted to be used for commercial purposes in accordance with point 4.d). The *education license* includes the right to receive upgrades and telephone support for the functions of *Automation Studio*.

- (6) **“Student license”**: The *student license* is a *single license* and allows the *Automation Studio* to be used by only one user for the purpose of personal training. Commercial use of *Automation Studio* in accordance with point 4.d) is not permitted. The *student license* is valid for 400 days from the time of activation and must be extended on request if needed. The *student license* is only available to students who are properly registered with B&R. The *student license* includes the right to receive upgrades and telephone support for the functions of *Automation Studio*.
- (7) **“Evaluation license”**: *Automation Studio* can be downloaded at no cost from the B&R website www.br-automation.com. *Automation Studio* is then fully functional for 90 calendar days for evaluation purposes. Commercial use of the software in accordance with item 4.d) is not permitted with an *evaluation license*. The *evaluation license* expires automatically after 90 calendar days and cannot be extended. An *evaluation license* can be requested as many times as desired. The *evaluation license* does not include the right to receive upgrades and telephone support for the functions pursuant to point 2.a.
- c) The functions (“software functions”) of the *B&R runtime software* are accessible in *Automation Studio* under the menu option “Help” in the form of relevant B&R documentation (“**B&R documentation**”). The B&R documentation indicates which *licenses* are required for which *software functions* of the *B&R runtime software*, and for which scope of validity they are required in each case (hereinafter referred to as: “**B&R licensing regulations**”).

The user is solely liable and responsible for reviewing the applicable licensing requirements for the *software functions* of the *B&R runtime software* the user requires or otherwise uses based on the *B&R licensing regulations* for the applicable scope of validity. Based on this review, the *user* must demonstrably obtain the respective required *license* at its relevant price (for prices, see point 9 below) for each *software function* of the *B&R runtime software* it uses commercially for each scope of validity. The license must be obtained thus for each combination of the hardware and *B&R runtime software* (hereinafter referred to as: the “**B&R runtime system**”) provided by B&R to the *user*, or for each component of a B&R runtime system in accordance with the documented *B&R licensing regulations* for the version of the *B&R runtime software* used.

The material number required for use of the *B&R runtime software* (“**license number**”) will generally be provided to the *user* in paper form in the form of a license certificate. Some *licenses* or license certificates will be transmitted to the user in electronic form, at B&R’s discretion, although the *user* shall not be entitled to this; in this case, the *user* shall separately transfer the license data to a separately obtained *TG*; in this case, this transfer shall be a technical requirement in order to use the *software functions* of the *B&R runtime software*. Depending on the use of the range of functions of the *B&R runtime software*, several *license numbers* may be necessary.

The license certificates are used to verify that the *user* has obtained the *licenses* legally. The *user* must submit the license certificates upon request. The *user* is solely liable and responsible for providing the license certificates to the next license holder if the *B&R runtime software* is transferred, as verification that the licenses were obtained legally.

The *B&R runtime system* will only complete a verification to ensure the *user* has the required *licenses* for their intended operation in certain, exceptional cases. In such cases, a licensing violation by the *user* shall be indicated by the *B&R runtime system*; in addition, use of the *software functions* of the *B&R runtime software* or its scope of functions shall be technically restricted until the user legally obtains the required *licenses*.

Unless a *license* is obtained, the *B&R runtime software* may only be used for (i) evaluation and (ii) educational purposes; any other use is understood as commercial use in accordance with point 4.d).

- (i) Evaluation purpose
Use of the *B&R runtime software* for evaluation purposes is understood as use of the *B&R runtime software* with a *B&R runtime system* operated for evaluation purposes of the type “**ARsim**” as an unlicensed and therefore time-limited evaluation operation of *ARsim*.
 - (ii) Educational purposes
The use of *B&R runtime software* for educational purposes is understood to mean the use of *B&R runtime software* at educational institutions in the context of teaching (e.g. practical exercises, research projects, theses, dissertations, etc.).
- d) A description of the functionality (“**software functions**”) of the *development tools* can be found in the respective documentation.
- e) Commercial use of the *B&R software* (with the exception of free *development tools*, cf. section 4.d. and section 9.) is permitted only after purchase of the license required for such use..
- f) Use of *Automation Studio* is considered commercial use if
- (i) the automation system configured in *Automation Studio* is sold or made available to a third party in whole or in part, diagnosed or modified, with or without the goal of realizing profit; or
 - (ii) *Automation Studio* is used to create applications derived from it in case this is made possible by the type of the software product (software libraries, programming aids, etc.).

Use of *Automation Studio* is not considered commercial use if *Automation Studio* is not used for configuration of an automation system, but instead only to configure *B&R* hardware for control systems made by third-party manufacturers for connection via field buses.

Use of the *B&R runtime software* is considered commercial use if the *B&R runtime software* is used in any manner, whether in whole or in part, in *Automation Studio*, with the exception for use for evaluation and educational purposes.

- g) 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 of the *B&R software*, are retained exclusively by *B&R* or the copyright holder. In particular, *B&R* and/or the copyright holder therefore reserve all publishing, retransmission, editing, utilization, and any other rights that fall under the purview of copyright law for the *B&R software*.

All of this also applies where these objects or rights 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 the non-exclusive authorization to use these objects or rights as specified in these conditions only.

- h) As the licensee, the *user* may make copies of the *B&R software* subject to common engineering 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.
- i) Within the framework of the *license(s)* granted, the *user* is allowed to create applications derived from the *B&R software*, if the type of the *B&R software* generally allows for this (software libraries, programming aids, etc.). The application created in this manner may be provided to third parties, as long as this does not violate the conditions of point 4.b) and c), and insofar as there are no restrictions in accordance with point 10.

- j) Unless otherwise explicitly agreed in writing, transfer of *B&R runtime software licenses* under this EULA is only permissible to the extent that this is part of the business activities of the *user* in the form of a transfer to third parties (whether paid or free of charge) of the *automation system* created with *Automation Studio*. In any case, transfer of the *mapp Technology* or the corresponding *license* as a mere transfer (e.g. resale), whether paid or free of charge), is not permissible.

In any case, the following is inadmissible:

- (i) transfer of the *mapp Technology* or of the corresponding *license* as a mere transfer (e.g. resale), whether against payment or not, and
 - (ii) transfer against payment of free *development tools* or the corresponding *license* (e.g. resell), unless the *development tools* are a necessary part of an automation system transferred against payment to a third party.
- k) A transfer of *Automation Studio licenses* in accordance with this EULA is not permitted, with the exception of *Automation Studio resale licenses* (point 4. b) (4)). In particular, the *user* is prohibited from transferring or otherwise providing access to *licenses*, *Automation Studio* or associated materials to third parties, whether paid or free of charge.
- l) By acquiring the *license*, if applicable, the *user* only gains ownership of the physical data storage device(s) on which the *B&R software* is stored and ownership of the associated written material. The *user* only receives a right of use (*license*) to the *B&R software itself* in the scope or in accordance with the type of this agreement.
- m) The *user* is fully liable for all losses of whatsoever type which *B&R* and/or the copyright holder incur through violation of this agreement by the *user*, especially violation of *B&R's* copyrights or those of a third party. This also applies for all such losses which *B&R* and/or the copyright holder suffer through persons accountable to the *user*, especially its assistants.
- n) The *user* or a third party accountable to it may not decompile the *B&R software* unless otherwise granted a right to do so by law, and/or must not use the source code for their own purposes, may not alter the source code, and may not develop identical or similar software based on or using the source code, either wholly or in part.

5. License review / audit

- a) The *user* shall grant *B&R* an irrevocable right to review *B&R runtime systems* to which the *user* has access and/or which have been provided to third parties at any time and without prior notification, in order to ensure that the required *licenses* have been legally obtained. (= "**Audit**"). The *user* must ensure that such audits can be completed without restrictions on third parties in accordance with these regulations.
- b) *B&R* may carry out any audit in any technical format, at its own discretion. For the purposes of the audit, *B&R* is also entitled to complete an on-site audit with an appropriate number of employees at the location where the *user* uses the *B&R software* during normal operating hours. In addition, the audit may be carried out using other services of *B&R* in relation to the *B&R software*, in particular for support inquiries, for instance.
- c) *B&R* may make technical support dependent in whole or in part on prior verification that the required licensing rights have been obtained, at its own discretion. The *user* shall support *B&R* in doing all of this at its own cost to a reasonable extent, or shall grant *B&R* an appropriate opportunity to carry out the audit. In particular, the *user* shall provide relevant information, give access and statements and provide verifications in an appropriate format. *B&R* may use the services of third parties to carry out the audit, at its own discretion.

- d) In general, the audit shall be carried out at the discretion of *B&R*; however, *B&R* must attempt to coordinate the audit with the *user* in advance.
- e) The *user* hereby obliges to obtain any necessary *licenses* promptly if required. Unless the *user* can prove that the *user* does not have *licenses* due to justifiable misconduct by the *user*, then *B&R* shall be owed a minimum contractual penalty regardless of culpability amounting to three times the licensing fee for each missing *license* for use by the *user*. *B&R* hereby reserves the right to any further claims.
- f) *B&R* reserves the right to evaluate the proper use of licenses that are used for educational purposes (e.g. feedback forms, project short descriptions of final theses, usage profile in the context of teaching, etc.).

6. Amendments / updates / discontinuations

- a) *B&R* and the copyright holder of the *B&R software* are entitled at any time and at their discretion without prior warning or other notification to make amendments and updates to the *B&R software* and provide these in the form of a new version. Particular incompatibilities may result from this. The *user* accepts and agrees to this condition. *B&R* reserves the right to make changes to licensing requirements or functions requiring licenses with new versions of the *B&R software*.
- b) *B&R* and the copyright holder to the *B&R software* are not obliged to inform the *user* of any changes or updates to the *B&R software*.
- c) The *user* must not modify or edit the *B&R software* in any way whatsoever. In particular, the *user* is not authorized to copy *B&R software*, to adapt it for use on incompatible hardware, or to edit it in any other way.
- d) *B&R* reserves the right to cease further development and support for the *B&R software* in its respective versions at any time (hereinafter referred to as “**discontinuation**”). Information on this option is provided under the “Help” function of the *B&R software* or at www.br-automation.com. The *discontinuation* may result in a lack of compatibility or functional restrictions between the individual versions of the *B&R software*. The *user* hereby accepts this condition, and shall be responsible for keeping up to date on *discontinuations* himself / herself.

7. Warranty

- a) Provided that the *B&R software* is used under the specified use and framework conditions, particularly in accordance with the program description and directions for use, *B&R* shall provide a warranty, subject to the regulations of this *EULA*, that the software is free from defects with regard to the *B&R software* function indicated in the program documentation. No warranty of any kind whatsoever shall be given for *B&R software* provided free of charge or for its *software functions*.
- b) In accordance with point 2.e), it is not considered a defect if there are malfunctions or faults which do not impair or exclude the essential usability of the *B&R software* within the meaning of the program description or directions for use. In addition, no warranty shall be given for minor and/or insignificant defects or curtailments of function, especially for those which do not impair the functionality or the agreed or customarily presumed usability of the *B&R 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 proper 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 specified by the *user* or due to the *user's* insufficient cooperation or failure to cooperate, or if 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 wear 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* shall furthermore not provide any warranty that the *B&R software* or its program functions shall fulfill the requirements and purposes of the *user* or shall work together with other programs selected by or other choices made by the *user*. The *user* is solely responsible for the proper selection, the consequences of using the *B&R software* as well as the *user's* intended or desired results. Finally, no warranty claim shall exist if the defect results from unauthorized software modification or update to the *B&R software* by the *user* or in connection with derived applications (point 4.g)) or if the *B&R software* is misused in any way or not used according to the purposes listed in the program documentation.

- c) Assured characteristics within the meaning of § 922 of the General Civil Code are only those expressly marked or assured by *B&R*. 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. 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* thereby declares to *B&R* that they waive any claims with regard to this defect.
- d) *B&R* shall warranty that the data storage device(s) on which the *B&R software* is recorded is (are) free of material defects at the time of handover under normal operating conditions and with normal maintenance.
- e) Warranty claims can only be asserted within a 12-month warranty period from receipt of the software by the *user* (especially when downloaded).
- f) Notification for defects must be submitted promptly, along with information on the type and scope of the defect, and at the latest within five days after the user becomes aware of them, during the warranty term and in writing, with verification, including exact information on the type and scope of the defect and a more exact description of the problem (notification of defect, defect complaints). If a defect complaint is not asserted, or not asserted promptly, then the service shall be considered as conforming to the contract; in this case, the *user* shall lose all claims, in particular resulting from the warranty title and claims for damages.
- g) The warranty covers defect diagnosis and elimination. The *user* must submit notification of potential malfunctions promptly and in detail. *B&R* will support the *user* in searching 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 its services rendered in this respect. If *B&R* rejects the defect complaint in writing, then the *user* should at all events assert the defects about which it submitted a complaint in a court of law within six months or otherwise lose all warranty and compensation claims.
- h) Elimination of the defects is provided 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 this or unless an improvement or exchange is not possible or not feasible in *B&R's* opinion. Improvement is provided at the discretion of *B&R* by eliminating the defect, by an appropriate modification of the *B&R software*, by delivering a new program version, by supplying new *B&R software* or by *B&R* indicating a reasonable way to avoid the effects of the defect. The *user* must support *B&R* as necessary. In particular, in order to eliminate any defect, the *user* must furnish *B&R* with all necessary documentation and information and the *user* should grant *B&R* unrestricted access (particularly to hardware and software) during the *user's* normal business hours. 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*.

- i) If an improvement or an exchange is to be carried out, the *user* must 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.
- j) If improvement is provided, *B&R* will pay for the costs of the labor. The *user* shall bear all the other costs of improvement and the incidental costs associated with supplying replacements, especially any transportation costs, unless these other costs are disproportionate to the contract value. *B&R* can at its own discretion refer the *user* to the manufacturer and/or supplier to assert claims, at the same time assigning its own claims against its own suppliers and/or manufacturers. Such a reference or such an assignment shall replace fulfillment of all the claims to which the *user* is entitled against *B&R* in any case. As far as they are allowed under the contract, the *user's* claims are limited in type and scope to the claims to which *B&R* is entitled against their manufacturer or supplier.
- k) If a notification of defects is submitted, and the review indicates that it does not fall under the warranty, then *B&R* is entitled to request reimbursement of any expenses incurred to determine that there is no defect, or to correct the defect. Review and repair costs shall be charged at *B&R's* respective valid service prices. Cost estimates are always subject to a charge.
- l) The warranty shall be granted solely at the registered office of *B&R* at 5142 Eggelsberg, Austria.
- m) No compensation of any kind shall be granted for an (attempted or successful) correction of defects by the *user* or by third parties (substitute performance).
- n) §§ 924, 933b of the General Civil Code will not apply. The *user* bears the burden of proof that there is in fact a defect.
- o) If the warranty has been correctly invoked, the *user* is only entitled to retain the expenses necessary for providing the improvement but not the whole invoice value.
- p) *B&R* shall exclusively guarantee that no industrial property rights or copyrights (hereinafter referred to as "property rights") of third parties are violated in the countries of the European Union, Australia, Brazil, China, India, Iceland, Japan, Canada, Mexico, Norway, the Russian Federation, Switzerland, Singapore, South Korea, Turkey, Great Britain (UK) and the United States (USA). If *B&R* is liable in this respect and if use of the *B&R software* is impaired or prohibited because of this, then *B&R* shall either modify or replace the *B&R software* at its discretion and expense such that it does not violate the property rights while essentially still retaining the agreed specifications, or shall release the *user* from the license fees for the use of the *B&R software* in regards to the third party. If *B&R* cannot do this under adequate conditions, *B&R* will accept the returned *B&R software* and refund the paid purchase price. *B&R* can request appropriate compensation for the use of returned contractual products from the *user*. The liability of *B&R* is furthermore contingent on the *user* promptly informing *B&R* in writing of third party claims due to a violation of property rights, and is contingent 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 property rights is based on the *user* or their third party contractual 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 property rights because of the application-specific 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. *B&R* and the *user* hereby undertake 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 property rights, the *user* shall release *B&R* from all associated claims of third parties or completely indemnify and hold *B&R* harmless. Claims for losses and expenses of the *user* because of or in connection with violations of protected rights are limited by application

mutatis mutandis of contractual point 8.b) irrespective of their legal basis. Further claims of the *user* because of a violation of the property rights of third parties shall be excluded.

- q) No warranty shall be given for any pledges in excess of those specifically effected in this *agreement*.

8. Compensation for damages and other liability

- a) Claims for damages and rights of recourse, of whatsoever type, are excluded if
 - (i) they are not due to personal injury; or
 - (ii) 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
 - (iii) 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 *B&R* and the *user* 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 in accordance with § 12 Product Liability Act with regard to *B&R*. The *user* undertakes to rule out the liability to pay damages under the Product Liability Act with regard to any third party, 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 any 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. Claims for damages for material damages to objects other than the *B&R software* which are suffered by a company shall be excluded in accordance with the above provisions. This limitation of liability must be transferred when the *B&R software* is transferred via a *resale license*; if this transfer is not carried out, the *user* shall be liable to *B&R* for any resulting disadvantages.
- a) *B&R* shall 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 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 a contract that already existed between the *user* and a third party.
- d) Claims for losses and expenses against *B&R* shall lapse 12 months from receipt of the software by the *user* (especially in the case of download), in the case of tortious liability from the time of awareness or grossly negligent unawareness of the circumstances justifying the claim or the person with liability to pay compensation.
- e) The same limited or excluded liability applicable to *B&R* also applies to their representatives, employees and other auxiliary persons.

9. Payment and usage period

- a) The payment due from the user to purchase a license (= "**price**") and associated use of the *B&R software* is indicated in the current *B&R price list*. For certain *development tool* licenses, there is an exception and no payment is to be made. The ability to charge for *B&R software* is a result of assigning an order number.

- b) The *user* must submit an inquiry to *B&R* stating its interest in purchasing the licenses it has defined for paid *B&R software* - along with the *B&R documentation* or *B&R licensing regulation* in the case of *B&R runtime software*. Based on this inquiry, the *user* shall receive an offer from *B&R* containing, in particular, the relevant net prices; *B&R* shall be bound to this offer for 60 calendar days from the time it is received by the *user*. The *user* can accept this offer within the binding period by sending *B&R* a written order (e-mail or fax are sufficient), by paying the entire offered price, or otherwise through an actual promise, or can do so tacitly. The contract/order for the licenses in question shall come into force upon acceptance by the *user*. Supplements or conditions of the *user*, in particular in the order, that deviate from the offer shall not be accepted and shall not apply to *B&R*. *B&R* shall send the *user* an order confirmation. In order to receive rights of use, the *user* must first pay the fee (= "**purchase (the license(s))**"). The payment must be made with no deductions.
- c) After purchasing a *license*, the *user* is authorized to use the *B&R software* in accordance with this *EULA*.
In the case of *B&R software* provided free of charge, the *user* is entitled to use such software in accordance with this *EULA* from the time of its installation.
- d) *B&R* may, at its own discretion, also offer the *user* the ability to purchase use of an unrestricted number of *licenses* for a set time period, and the *user* may make use of this offer and pay the fee for the offered *B&R software* for an unrestricted number of times during the set time period.
- e) The goods (including software and data storage devices) shall remain the sole property 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.
- f) This agreement is concluded for an indefinite term. *B&R* is authorized to dissolve this *agreement* if the *user* should violate any of the provisions contained herein, in particular those that are specifically designed to protect *B&R* or the copyright holder of the *B&R software*. The *user* may not return or terminate a *license* or *licenses*, unless the *user* is taking advantage of its option to promptly object to the extension for *licenses* with an automatic extension in accordance with this *EULA* (cf. point 4.b).
- g) *Licenses* with an automatic extension in accordance with this *EULA* shall be extended automatically – if automatic extensions are permitted in the *user's* country – by the respective term of use for the *license*. An additional payment for the respective extension period must be paid in accordance with the *B&R* pricing list, and *B&R* shall invoice the *user* for this payment. The *user* must cancel the respective license before the extension date (date of arrival at *B&R*) in order to prevent the extension from being taken or invoiced.

Licenses for *B&R software* installed on automation systems are granted for an unlimited term.
- h) If the respective *Automation Studio license* has expired, then the *B&R software* shall return to evaluation mode 90 days after the end of the valid term. From this time, the *user* shall no longer be allowed to use the software commercially.

10. Export restriction

- a) The *user* hereby acknowledges that the *B&R* technology, in particular the *B&R 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. The *user* is responsible for observing and complying with these provisions. In addition to the domestic laws of the country where the *user* is headquartered, 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). The *user* hereby agrees to observe all relevant laws and not export any *technology subject to export controls* to any countries, organizations or persons for which an export license or other regulatory approval is required in violation of EU regulations and US law.

- b) The use or provision of B&R products in conjunction with activities - including, but not limited to - design, development, manufacturing, training or testing of chemical, biological or nuclear weapons or rockets, drones or booster rockets that could be used to carry weapons of mass destruction - is prohibited, with reference to applicable laws.

11. Special provisions for unreleased versions of *B&R software*

- a) “**Test, advance, beta versions (of the B&R software)**” mean any preliminary version of *B&R software* that has not yet been generally approved and for which development is not yet completed. This version of the *B&R software* includes (i) all associated updates and upgrades made available to the *user* 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, and beta version B&R software* can be uniquely identified using the version ID and is explicitly released for use upon request by the *user* and only with the consent of *B&R*, in accordance with this EULA.
- b) The sole purpose of *test, advance, beta version B&R software* consists in eliciting feedback on their performance and in identifying defects (referred to below as “**testing**”). The *user* expressly acknowledges that the *test, advance or beta version of the B&R software* is a test product that may include omissions, bugs, errors and other problems that can result in system malfunctions or other disturbances, including but not limited to system crashes, interruptions and data loss. The *user* is advised to exercise caution and in no way to rely on the performance or function capabilities of *test, advance, or beta version of the B&R software*. The *test, advance, or beta version of the B&R software* and relevant documentation shall be provided to the *user* in its current form; *B&R* is not responsible for ensuring this is free from defects.
- c) In light of these special features, *B&R* shall provide no guarantee and no liability of any kind (with the exception of gross negligence) for any *test, advance or beta version of the B&R software* and its documentation. This applies in particular, but not exclusively, to tacit guarantees of marketability, suitability for a certain usage, satisfactory quality or the ability to combine the *B&R software* with other products or integrate it into these products. Nevertheless, where some legally mandatory liability may occur, points 7 and 8 apply in particular.

12. Non-disclosure

- a) The *B&R software* and all associated documents, data and information are considered confidential information and as such are trade or operating secrets of *B&R*. The *user* will treat the *B&R software* and/or all associated documents, data and information as confidential with regard to third parties and shall not give access to them to third parties without the prior written approval of *B&R*; this does not exclude transferring rights of use in accordance with relevant regulations or authorizations under this *agreement*.
- b) The *user* is obligated to handle the *B&R software* with the same care and confidentiality as his own company and business secrets but not less than the appropriate care expected by a prudent businessman. However, the *user* shall not be liable for the disclosure of confidential information if
 - (i) the information was already publicly known and accessible at the time it was disclosed or became publicly known and accessible afterward without culpability by the *user*; or

- (ii) the information was obtained and transmitted legally by a third party without violation of a non-disclosure agreement; or
- (iii) the information was demonstrably already known by the *user* before it was disclosed in a legal and non-confidential manner; or
- (iv) the *user* is obligated under mandatory law to disclose confidential information in court, official or other proceedings.

13. Data protection

For additional information about data protection, see the data privacy statement (see <https://www.br-automation.com/de-at/unternehmen/impressum/>).

14. Miscellaneous and 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 excluding 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 between the parties. There are no verbal ancillary agreements. All amendments and supplements to this *agreement* must be made in writing in order to be valid. This requirement of written form may only be waived by a written agreement. *B&R* hereby already repudiates any conditions of the *user* of any kind that are 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 if *B&R* does not specifically 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 agreement to deviating conditions of the *user*, specifically not even if *B&R* is aware of the contrary or deviating conditions of the *user* and does not express any reservations.
- 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 shall not be affected. In this case, the parties shall agree on a valid provision coming as close as possible from an economic standpoint to the intended purpose of the invalid regulation in place of the invalid provision or to fill in the loophole.