

**GENERAL TERMS AND CONDITIONS (GTC) – May 2025**  
**B&R Industrie-Elektronik GmbH**  
(Grüner Weg 6, 61169 Friedberg, HRB 10390)

**1. Definitions**

*ABB:*

Means all companies of the ABB Group.

*Applicable Integrity Laws:*

See definition in clause 15.1

*B&R:*

B&R Industrie-Elektronik GmbH, Grüner Weg 6, 61169 Friedberg, Germany.

*Background Intellectual Property (BIP):*

Intellectual property owned or controlled by either of the *Parties* at the date of commencement of their business relationship.

*Contract Products:*

Standard and/or customized services/products from *B&R's* portfolio (hardware, software, services) to be provided due to an *Individual Order* (*Standard Product* and *Purchaser-specified Product*).

*Contract Year:*

One year from the beginning of the business relationship (contract) between the *Parties*, in case of doubt from the first *Order* (and thereafter one additional corresponding year each time).

*GTC:*

These General Terms and Conditions of *B&R*.

*Individual Order:*

Individual and binding contract (based on *Offer*, *Order*, *Order Confirmation*) on the delivery of *Contract Products*.

*Offer:*

*B&R's* nonbinding request to submit an *Order*.

*Order:*

*Purchaser's* request on the delivery of *Contract Products* based on an *Offer*.

*Order Confirmation:*

Acceptance of an *Order* by *B&R* with binding effect. It may deviate from the *Order*.

*Order Validity Period:*

5 working days within which *Purchaser* is bound to its *Order*.

*Parties:*

*B&R* and *Purchaser*.

*Production Site of B&R:*

Site of *B&R* in Austria.

*Property Rights:*

All immaterial rights (in particular industrial property rights and copyrights); = Intellectual

Property Rights.

*Purchaser:*

*B&R's contractual partner, even before concluding an Individual Order (agreement).*

*Purchaser-specified Product*

*A Standard Product enhanced by customization for the needs of the Purchaser or a product specifically designed according to the Purchaser's specification.*

*Restricted Person:*

See definition in clause 15.3

*Sanctions Agency:*

See definition in clause 15.2

*Standard Product:*

Any *Contract Product* from *B&R's* respectively valid product catalog ([www.br-automation.com](http://www.br-automation.com)).

## **2. Scope and Applicability**

- 2.1.** These *GTC* govern the legal, commercial and technical modalities for the supply of *Contract Products* to *Purchaser* on the basis of *Individual Orders*. In case a provision of these *GTC* is primarily aimed at hardware, such provision is nevertheless applicable to software or services accordingly.
- 2.2.** These *GTC* apply to all *Offers* made by and all *Orders* submitted to *B&R* and will become content of each *Individual Order*.
- 2.3.** *B&R* rejects the applicability of any terms and conditions of *Purchaser*.
- 2.4.** Any deviations from and amendments to these *GTC* and from/to an *Individual Order* only apply if and insofar as they have been accepted by *B&R* in writing.
- 2.5.** The following descending order of precedence shall apply: (i) these *GTC*; (ii) any written supplements to or deviations from these *GTC* or from or to any *Individual Order*; (iii) *Individual Order*; (iv) *Order Confirmation*.
- 2.6.** The *Parties* will comply with all mandatory legislation in their sphere.
- 2.7.** In case *B&R* shall - in each case - accept an affiliated company of *Purchaser* as authorized to put an *Order*, *Purchaser* shall hold *B&R* fully harmless for fulfilling all contractual obligations of such third party. Besides, these *GTC* shall apply accordingly with respect to any such third party.

## **3. Safety**

- 3.1.** The *Parties* shall comply with applicable safety and environmental regulations, including regulations, instructions and directions relating to order, safety, environment and control that apply locally in each respective case.
- 3.2.** Even when not explicitly requested by *B&R*, *Purchaser* assesses, evaluates and communicates any safety risk with regard to the equipment and/or systems to which the execution of services or delivery of *Contract Products* may relate, including respective in-house regulations or guidelines of *Purchaser*. Internal regulations or guidelines will not have a restrictive effect on these *GTC*. *Purchaser* shall be responsible vis-à-vis *B&R* for all disadvantages accruing therefrom.

#### 4. Termination

If (i) *Purchaser* fails to meet any of his obligations or fails to do so in time or properly, (ii) *Purchaser* is declared bankrupt, (iii) *Purchaser* requests suspension, (provisional) suspension and/or postponement of payment, (iv) *Purchaser* starts liquidation of his company, (v) the majority of the shares in *Purchaser* is transferred to a competitor of *B&R*, (vi) a competitor of *B&R* otherwise gains control of *Purchaser*, (vii) if *Purchaser's* assets are entirely or partially seized, or (viii) *Purchaser* is in breach of *ABB's* Code of Conduct (cf para 16), *B&R* may to its own discretion and at all times preserving any right to payment of costs, damage and interests suspend execution of any existing contractual relationship/duty (in particular *Individual Order*) or to legally terminate and/or dissolve it in whole or in part without prior notice of default by means of a written declaration.

#### 5. Specification and Use of Contract Products • Machine Safety • Services

5.1. The specification of each Standard Product is usually shown in *B&R's* respectively valid product catalogue ([www.br-automation.com](http://www.br-automation.com)). In case specifications are not stated there, any specifications for *Contract Products* have to be agreed upon by mutual signature. The availability of the *Contract Products* and spare parts is defined by the provisions of the respectively valid *B&R* product lifecycle (<https://www.br-automation.com/en/about-us/br-lifecycle>).

5.2. *Contract Products* are suitable for laws applicable at Production Site.

*Purchaser* will be responsible for the proper use of the *Contract Products*. *Purchaser* shall implement adequate training, instruction and documentation measures, following at least the guidelines set forth in any *B&R's* manuals. *B&R* is not obliged to test and/or provide warning with regard to special purposes or conditions of use for the *Contract Products*. *Purchaser* will be responsible for compliance with all industry-specific standards, safety requirements, conditions of service, patents in his sphere.

Machine safety is and stays the full responsibility of *Purchaser*. This in particular includes (i) risk assessment of the machine, (ii) specification of the needed safety functions, (iii) ensurance that the requirements as stated in the user manual are followed, (iv) validation of any safety function of the machine, and (v) identification and prohibition of any foreseen misuse of the *Contract Products*.

Machine safety is in no way included in *B&R's* scope of services. Any potential support provided by *B&R* in this regard shall be understood as non-binding recommendations only and shall not entail any responsibility whatsoever on the part of *B&R*.

In no event will *B&R*, its officers, directors, representatives, assigns, suppliers or subcontractors assume any responsibility or liability for the machine safety or work performed by *B&R's* application engineers on request of the *Purchaser*. *Purchaser* herewith confirms and agrees that *B&R* will have no liability for personal injury, death, direct or indirect damages, consequential damages of any type including but not limited to, operational interruption, loss of profit, loss of information and data. Further, *Purchaser* will hold *B&R* harmless and indemnify against any claims from third parties for any and all claims for damages for whatsoever reason in conjunction with machine safety or any services *B&R* provided to *Purchaser*.

5.3. In case of software development or similar services provided by *B&R*, *Purchaser* shall cooperate with *B&R* hereunder, including, without limitation, (i) providing *B&R* with reasonable facilities and timely access to hardware, supplies, information, and personnel of the *Purchaser*; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent

and timely fashion; (iii) providing a stable, fully functional environment which will support the services and allow *B&R* and *Purchaser* to work productively; and (iv) promptly notifying *B&R* of any issues, concerns or disputes with respect to the services.

*Purchaser* shall be responsible for the performance of its personnel and agents and for the quality of the work provided to *B&R* for purposes of the performance of the services.

*Purchaser* acknowledges and agrees that *B&R*'s performance is dependent upon the timely and effective satisfaction of the *Purchaser's* responsibilities hereunder and timely decisions and approvals of the *Purchaser* in connection with the services. *B&R* shall be entitled to rely on all decisions and approvals of the *Purchaser*.

*Purchaser* shall be solely responsible for, among other things: (i) making all management decisions and performing all management functions; (ii) designating a competent management member to oversee the services; (iii) evaluating the adequacy and results of the services; and (iv) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities. It is understood and agreed that services may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the *Purchaser*.

*Purchaser* acknowledges that *B&R* shall have the right to (i) provide consulting or other services of any kind or nature whatsoever to any person or entity as *B&R* in its sole discretion deems appropriate, and/or (ii) use any works of authorship or other intellectual property that may be included in the deliverables, to develop for itself, or for others, materials or processes that may be equal or similar to those produced as a result of the services. *B&R* therefore has the right to use the outcome of the services in any way it sees fit to its full discretion.

Unless otherwise expressly agreed, the source code shall remain the sole property of *B&R*. The *Purchaser* shall receive a non-exclusive right to use the results of the services.

## **6. Orders, Individual Orders and Quantities**

- 6.1.** *B&R* is not required to accept an *Order*.
- 6.2.** *Purchaser* is bound to any placed *Order* with *B&R* until expiration of the *Order Validity Period*. Any deviation in an *Order* from these *GTC* shall be null and void.
- 6.3.** *Purchaser* must submit its *Orders* to *B&R's* affiliates in the *Purchaser's* country. If *B&R* is not represented in such country, the *Order* shall be submitted to *B&R*.
- 6.4.** The *Individual Order* becomes effective when the *Order* is accepted. *B&R* may accept the *Order* through *Order Confirmation* or delivery. *B&R* may also accept an *Order* after the expiration of the *Order Validity Period*, unless *Purchaser* has cancelled its *Order*.
- 6.5.** *Purchaser* must examine each *Order Confirmation* without undue delay. When an *Order Confirmation* deviates from the *Order*, *Purchaser* must object within 5 working days of receipt, otherwise the *Order Confirmation* shall be deemed accepted.
- 6.6.** *Purchaser* shall only be entitled to cancel *Individual Orders* for convenience in case of a mutual agreement with *B&R* or to the extent that mandatory statutory provisions provide for a right of withdrawal. In case of a cancellation of the

*Individual Order, Purchaser* shall pay a cancellation fee as follows:

- (i) 50% of the purchase price of cancelled *Standard Products* in Product Life Cycle Phase “Active” or “Classic”
  - (ii) 70% of the purchase price of cancelled *Standard Products* in Product Life Cycle Phase “Limited” and beyond
  - (iii) 85% of the purchase price of cancelled *Purchaser-specified Products* in Product Life Cycle Phase “Active” or beyond; except the *Parties* agreed otherwise in advance.
- 6.7.** In the event of an unjustified return or refusal of the *Contract Products* by the *Purchaser*, *Purchaser* shall pay the full purchase price of the returned or refused *Contract Products*.
- 6.8.** *Purchaser* shall only be entitled to postpone the fulfillment of the *Individual Order* (e.g. delivery at a later date) in case of a mutual agreement with *B&R*. In case of a postponement, *Purchaser* shall pay 30% of the purchase price of the postponed *Contract Products*. A postponement of up to a maximum of 6 months is permitted.

## **7. Delivery, Installation and Start-Up**

- 7.1.** If delivery is not accepted by *Purchaser*, the risk shall in any case pass to *Purchaser* and acceptance shall be assumed.
- 7.2.** Only upon accepted request of *Purchaser*, *B&R* shall carry out the installation and start-up of the *Contract Products* against refund of all adequate (i) travel expenses, (ii) subsistence expenses and (iii) all adequate expenses for working times (including travelling and waiting times) as per the *Offer*. All and any permits required by authorities for installations and the operation of plants shall be provided by *Purchaser*.

## **8. Training**

Unless otherwise agreed in writing, *B&R* shall not be obliged to instruct or train *Purchaser* in the use of the delivered *Contract Products*. If *Purchaser* requests respective instruction and training, the adequate costs derived therefrom shall be borne separately by *Purchaser* as per the *Offer*. If not otherwise specified in the *Offer*, the training/instruction shall be usually carried out in the company facilities of *B&R*.

## **9. Delivery Periods (Delivery Dates) • Terms of Delivery • Packing**

- 9.1.** Basic delivery periods, which may be reasonably exceeded by *B&R*, result from the indicative values separately provided by *B&R* in the *Offer* and/or the *Order Confirmation*. *B&R* shall have the right to make partial deliveries and/or early delivery.
- 9.2.** Deliveries are made according to the Incoterms 2020 rules, FCA. International shipments shall be handled by *B&R* approved freight forward agencies only. Further information is available from the local *B&R* sales team upon request.
- 9.3.** *Contract Products* will be packed reasonably and properly.

## **10. Delay in Delivery • Force Majeure • Shortage of Goods**

- 10.1.** In case of (i) an agreed binding delivery date/period and (ii) a delay in delivery by more than one month, liquidated damages, a sum equivalent to 0.5 % for each full week following the agreed delivery date for the delayed *Contract Products* shall be charged, in total limited to a maximum of 5 % of the respective delayed *Contract*

*Products*. Entitlement to such liquidated damages is the *Purchaser's* sole and exclusive remedy arising from or in connection with such delay, except permitted by mandatory applicable law.

- 10.2.** Force majeure is any event inside and outside the organization and/or any circumstance that is not foreseeable and reasonably preventable; including, but not limited to, acts of God such as fire, earthquake, landslide etc. but also war or warlike circumstances, revolution, epidemics, pandemics, unrest, business disruptions, official measures, changes in law (e.g. but not limited to such as described in Clause 11.4), labor dispute, blackout, and similar comparable circumstances.

Force majeure events and delays in delivery by upstream suppliers arising out of such event do not give rise to an event of default and entitle the *Parties* to the corresponding extension of the deadlines. If the events leading to force majeure last longer than two (2) months without interruption or more than six (6) months in total, the Parties shall reach an agreement on how to proceed, e.g. time extension, full or partial termination of the Individual Order, taking into account the specific circumstances and their impact on the performance of the contract. If the Parties fail to reach such an agreement within a reasonable period of time, each Party shall be entitled to terminate the Individual Order within 30 days. Further legal claims are excluded.

In case of a withdrawal of the *Individual Order*, *B&R* shall be entitled to reimbursement for all costs incurred, in particular for *Purchaser-specified Products* already produced.

- 10.3.** Clause 11.4 second paragraph shall apply accordingly.

## **11. Prices (Payment) • Terms of Payment • Credit Approval • Retention of Title**

- 11.1.** Prices and terms of payment are determined by the *Order Confirmation*. In the event that the basis for price calculation changes for reasons beyond *B&R's* control – e.g. relevant legislative changes, rises in the cost of raw materials other relevant changes on the market and the like – *B&R* may unilaterally adjust the prices appropriately. *B&R* shall explain the change in circumstances.
- 11.2.** The price does not include any tariffs or duties which may now or hereafter be applicable. *Purchaser* agrees to pay or reimburse any such tariffs or duties, or *B&R's* reasonable estimated cost impact thereof, which *B&R* or its sub-suppliers are required to pay or collect.
- 11.3.** The agreed prices in the *Order Confirmation* can be subject to revision at any time, in the event of: (i) material increases in components, raw materials, or energy costs; or (ii) governmental actions such as new or increased tariffs or duties.
- 11.4.** The *Parties* agree that in the event of any change in laws, regulations or increases in tariffs or duty rates imposed, implemented or enacted after the Effective Date of the *GTC* or the *Order Confirmation* or change in interpretation of any laws, regulation, tariffs or duty rates affecting the cost of the scope of supply set forth herein and/or the time of performance or delivery of the same, *B&R* shall be entitled to an adjustment in the price reflecting the change in the laws, tariffs or duty rates or other costs and any necessary adjustment to the time of performance or delivery of the scope of supply.
- 11.5.** In case and insofar that no terms of payment are specified in the *Offer or Order*



*Confirmation*, payment shall be made by bank transfer to *B&R's* bank account within five (5) working-days of receipt of *B&R's* (pro-forma) invoice. Any payment shall be made at the expense and risk of *Purchaser*. Any assistants of *B&R* shall only be entitled to collect payments due to a separate written power of attorney of *B&R*. In any case *B&R* shall have the right of upfront payment by *Purchaser*, even before acceptance of an *Order* or any delivery.

- 11.6. All work shall be subject to credit approval by *B&R*. If *Contract Products* are not delivered at one time, *Purchaser* shall pay the unit price applicable to the *Contract Products* delivered.
- 11.7. Each shipment of *Contract Products* shall be considered a separate and independent transaction. *B&R* may, at any time, decline to make shipments or deliveries of *Contract Products*, or extend additional credit, except upon receipt of payment. Without limiting its rights or remedies, *B&R* shall have the right to halt or terminate *Contract Products* or any other service or support before receiving respective payments.
- 11.8. If in *B&R's* opinion *Purchaser's* financial condition or payment history makes *B&R* insecure as to payment for the *Contract Products* or services, *B&R* may require full or partial payment in advance.
- 11.9. Any payment or charge not received when due will bear interest at the rate of 1 % per month (12 % per year) from the date due.
- 11.10. The full purchase price set forth for the *Contract Products* shall not be subject to any set-off, deduction or counterclaim of any kind. *Purchaser* shall pay for all of *B&R's* costs of enforcing any claims (including reasonable attorneys' fees), including collection of amounts due for *Contract Products*. If *Purchaser* fails to make a payment on or before the due date for such payment, or becomes insolvent, all balances then due and owing to *B&R* shall become due immediately, notwithstanding any agreed upon payment periods. Any orders for *Contract Products* that have been confirmed by *B&R*, but not yet filled, shall in such cases become cancellable at the sole discretion of *B&R*.
- 11.11. Ownership over the *Contract Products* remains with *B&R* until the full payment agreed has been received. In the event of processing, combination or mixing with other items that do not belong to *B&R*, *B&R* acquires co-ownership of the newly manufactured item in the ratio of the invoice value of the goods subject to retention of title to the acquisition value of the new item. *Purchaser* shall be entitled to resell the goods subject to retention of title or the products made from them in the course of proper business operations. The claims arising from the resale against a third party with all ancillary rights are assigned to the *Purchaser* by way of security until all claims from *B&R* against the *Purchaser* have been fully repaid, without the need for a special agreement in the individual case
- 11.12. Without prejudice to any other remedies, *B&R* shall be entitled to immediate repossession of any *Contract Products* delivered by *B&R* if *Purchaser* fails to timely pay for such *Contract Products*, and *Purchaser* hereby permits *B&R* entry to *Purchaser's* premises for such purpose and waives any and all rights to notice or hearing prior to seizure of the *Contract Products* following default in payment.

## **12. Warranty (Liability For Defects)**

- 12.1. *B&R* warrants that at the time when the risk passes the *Contract Products* (i) meet the agreed specifications (due to clause 5.1) and (ii) are in accordance with the state of the art when first marketed and are insofar free from defects.

- 12.2.** The warranty period is 12 months from the date of delivery (passing of risk). After any improvement or replacement of the *Contract Products*, the original warranty period does not begin anew.
- 12.3.** The exclusive place of performance for the elimination of defects under the warranty shall be *B&R's* headquarter in A-5142 Eggelsberg or the *B&R* service center <https://www.br-automation.com/en-gb/about-us/locations/>) nearest to the *Purchaser*. *Purchaser* shall return defective *Contract Products* at its own expense. Returns shall travel on the risk of *Purchaser*.
- 12.4.** *B&R* will under no aspects whatsoever be liable for (i) suitability of the *Contract Products* for the use intended by *Purchaser*; (ii) normal wear and/or tear; (iii) improper handling, use, operation, storage, shipment or lack of maintenance, (iv) errors, including, but not limited to, software errors that are common without impairment of use and (v) functionality and/or performance of the *Contract Products* with respect to *Purchaser's* applications.
- 12.5.** *Purchaser* must inspect the *Contract Products* as follows: Upon delivery samples shall be picked and inspected without undue delay; if any defects are identified, the complete shipment must be inspected. Written notice of defects must be given within 7 working days from date of receipt at the latest. If a functionality problem or other defects are only identifiable at a later date, written notice of defects must be given no later than 7 working days from date of detection. *Purchaser* must provide evidence of the date the defect was detected.

If notice is not given or not given within the specified period of time, the *Contract Products* delivered shall be deemed accepted, and *Purchaser* can make no claims based on defects.

In particular with respect to any services provided by *B&R* - including recommended change orders, intermediate and final milestone deliverables (including *B&R* produced plans, drawing, specifications and other work details), and any work products – such services (work products) shall be deemed accepted by *Purchaser* 7 working days after completion and submission thereof to *Purchaser* for acceptance or comment, unless objections from *Purchaser* are provided to *B&R* in writing within such 7 working days period.

- 12.6.** The warranty covers free improvement (repair) or replacement of the defective *Contract Products* by flawless *Contract Products* according to *B&R's* choice. *Purchaser* is not entitled to any further claims for defect, in particular claims for avoidance of contract, price reduction or damages. Substitute performance by third parties is not permitted. The warranty obligations are fulfilled at *B&R's* expense (excluding cost of transport to *B&R*); expenses incurred by *Purchaser* in connection with the warranty will not be refunded.
- 12.7.** **There is no obligation for *B&R* to update (improve/repair) software provided to the *Purchaser*.**
- 12.8.** Insofar as *B&R* may provide any consultancy services (such as implementation/installation of hardware and/or software etc.), *B&R* shall not assume any liability therefore to the extent legally possible; in particular, *B&R* shall not be liable for the functionality of its software in customer-specific applications.
- 12.9.** With respect to software development or similar services provided by *B&R*, *B&R* warrants that it shall perform the services in good faith and in a professional manner. *B&R* disclaims all other warranties, either express or implied, including, without limitation, warranties of merchantability and fitness for a particular



purpose. The *Purchaser's* exclusive remedy for any breach of this warranty shall be for *B&R*, upon receipt of written notice given within 7 working days, to use diligent efforts to cure such breach, or, failing any such cure in a reasonable period of time, the refund of fees paid to *B&R* hereunder with respect to the services giving rise to such breach. *B&R* shall not assume any liability therefore to the extent legally possible.

### **13. Limitation of Liability**

- 13.1.** *B&R shall* regardless of the legal grounds (e.g. due to breach of duty, defects, default, tort, indemnification claim, infringement of property rights, recall action), *only be liable* to *Purchaser* in the event of fault and then per Individual Order and subject to proof of expenses actually incurred as follows:
- 13.2.** The total liability of *B&R* for whatever legal reason in connection with the respective Individual Order is limited to a maximum of 100% of the value of the Individual Order with the exception of Art. 13.3.
- 13.3.** *B&R's* liability to *Purchaser* is unlimited in cases of (i) acts of willful misconduct (iii) gross negligence (unless otherwise individually agreed), (iii) injury to life, body and health and (iv) in cases where unlimited liability is mandatory by law (e.g. product liability) and can not be limited.
- 13.4.** In the event of slight negligence, which is based on a slightly negligent breach of material contractual obligations, *B&R's* liability shall be limited to foreseeable damage typical for this kind of contract.
- 13.5.** *B&R* shall not be liable for other cases of slightly negligent.
- 13.6.** Notwithstanding any other provision of this GTCs, except in case of Art. 13.3, any liability for operational interruption, loss of use, loss of profit, loss of information and data, loss of production, loss of energy, loss of business, loss of use or for any indirect or consequential damages or losses of the same kind are excluded. Loss of profit includes the loss of a commercial opportunity that already constitutes a distinct asset for *Purchaser* at the time of the damage (e.g. due to an already existing agreement between *Purchaser* and a third party). *B&R* shall not be liable for financial losses of *Purchaser* in connection with work carried out and expenses incurred by *Purchaser* in the context of warranty.
- 13.7.** Claims for damages and reimbursement for expenses against *B&R* have a limitation period of 12 months after delivery of the *Contract Products*, or in the case of liability in tort from the date of knowledge or grossly negligent ignorance of the circumstance giving rise to the claim or the person liable to pay damages.
- 13.8.** Where the liability of *B&R* is excluded and/or limited, the same shall apply to its representatives, employees and other subcontractors.

### **14. Intellectual Property Rights**

- 14.1.** *Purchaser* acquires ownership in physical *Contract Products* (e.g. hardware, [reproduced] user manuals etc.).

Furthermore, *B&R* will grant *Purchaser* the non-exclusive right, unlimited in time, to use the training materials as provided (tutorial videos, text files, etc.) for internal training purposes. In particular, *Purchaser* shall be entitled to cut training materials itself and to transmit, send, perform and make available these training materials on the hardware/final product for internal training purposes by wireless or wired means. In this case, *Purchaser* guarantees that the cut training materials does not

create a misleading impression about the use and application of the contractual products and that no essential information is lost. Otherwise, *Purchaser* shall be liable for all damages, costs and losses (including all reasonable costs for legal prosecution and defense) incurred in this connection.

- 14.2.** *B&R* will grant *Purchaser* all necessary *Property Rights* so that *Purchaser* is able to use the *Contract Products* according to the contract. In case of an *Individual Order*, *Purchaser* must comply with the license terms that are applicable to the *Contract Products* at the time when the risk passes to *Purchaser*; the terms will be provided to *Purchaser* upon request. Applicable license terms are set forth under [www.br-automation.com/eula](http://www.br-automation.com/eula).

Without prejudice to the aforesaid, *B&R* remains the owner and/or sole holder of all *Property Rights* relating to the *Contract Products*. The licenses for use granted to *Purchaser* are covered by the agreed payment, unless otherwise agreed. *Purchaser* does not acquire any exclusive rights.

- 14.3.** *B&R* warrants that the *Contract Products* do not infringe any *Property Rights* of third parties in the countries of the European Union and in Australia, Brazil, China, India, Iceland, Japan, Canada, Mexico, Norway, Russian Federation, Switzerland, Singapore, South Korea, Turkey, United Kingdom and USA. All other countries have not been checked in this respect by *B&R*; clause 14.5. shall apply accordingly. *Purchaser* will support, at its own expense, *B&R* in this regard.

- 14.4.** *Purchaser* shall inform *B&R* of any (potential) infringement of property rights that becomes known to *Purchaser*. In this case and where infringement of third-party *Property Rights* is claimed, the *Parties* will, each at their own expense, cooperate and do everything to ward off such claims without undue delay. Such defense measures will be coordinated by *B&R*. Lawsuits will be pursued by *B&R*, unless this is impossible or unless otherwise agreed. If *Purchaser* pursues the lawsuit, constant coordination with *B&R* will be required, and *B&R*'s decisions must be adhered to. *Purchaser* shall not recognize any third-party claims or enter into settlements independently. If *Purchaser* does that, he must fully indemnify and hold *B&R* harmless in this respect. The *Parties* shall always inform one another, without undue delay, of any infringement claims and the resulting consequences.

- 14.5.** If according to a legally binding judgement the *Contract Products* infringe third-party *Property Rights*, and the use of the *Contract Products* is thereby impaired or made impossible, the following shall apply: (i) The *Parties*, under the coordination of *B&R*, shall initially endeavor to keep the necessary usage rights in effect. Any costs arising therefrom (including, but not limited to, license fees) shall be borne by *B&R*. (ii) If the usage rights cannot be obtained or can be obtained only on unreasonable conditions, *B&R* shall, at its own expense, change the relevant *Contract Products* in such a way or replace them by other (similar) products that there is no infringement of the relevant *Property Right*. This will enable the *Purchaser* to use the *Contract Products* (and/or other similar products). The agreed specifications shall be complied with in all material respects as far as possible. Insignificant deviations causing no functional problems shall each be considered *B&R*'s BIP. (iii) *B&R* may also exempt the *Purchaser* from any license fees payable to a third party for use of the *Contract Products*. (iv) Should all this be impossible, *B&R* will take the *Contract Products* back and refund the payment.

- 14.6.** *B&R* accepts no liability for changes to the *Contract Products* made by *Purchaser* or its customer. Nor will *B&R* accept liability for infringement of third-party *Property Rights* where the *Contract Products* are based, even partially, on *Purchaser* specifications or user-specific use of the *Contract Products*.

- 14.7.** Any claims of *Purchaser* other than those set forth in this clause 14. are excluded. *B&R's* liability is as set forth in clause 13.
- 14.8.** In all cases, *BIP* shall remain the property of the originating party. All inventions, discoveries, developments and improvements made or conceived in whole or partly (i) by *B&R* on its own or (ii) by *B&R* in conjunction of any service performance for *Purchaser* or with any input from *Purchaser*, shall each be considered *B&R's* BIP.
- 14.9.** *B&R* shall not be liable in any way whatsoever in case that the *Purchaser* infringes intellectual property rights of third parties due to or as a result of the specific use of the *Contract Products* provided by *B&R*. The *Purchaser* shall fully indemnify and hold *B&R* harmless in this respect, in particular with regard to any claims of third parties in this respect.

## **15. Integrity Provisions, Sanctions and Export Controls**

**15.1.** *Applicable Integrity Laws* means:

Anti-bribery and anti-corruption laws: including U.S. Foreign Corrupt Practices Act 1977 (as amended), UK Bribery Act 2010 (as amended), any legislation enacting the principles of the OECD Convention on Combating Bribery of Foreign Officials and any other applicable laws, rules, regulations, decrees and/or official governmental orders relating to anti-corruption, anti-money laundering and anti-tax evasion in relevant jurisdictions (collectively "*Anti-Bribery & Corruption Laws*"); and

Sanctions and trade control laws and regulations: any applicable laws, regulations, or administrative or regulatory decisions or guidelines that sanction, prohibit or restrict certain activities including, but not limited to, (i) import, export, re-export, transfer, or trans-shipment of goods, services, technology, or software; (ii) financing of, investment in, or direct or indirect transactions or dealings with certain countries, territories, regions, governments, projects, or specifically designated persons or entities, including any future amendments to these provisions; or (iii) any other laws, regulations, administrative or regulatory decisions, or guidelines adopted, maintained, or enforced by any Sanctions Agency on or after the date of the *Individual Order* (collectively, "*Trade Control Laws*"); and

Human rights and anti-modern slavery laws: including The Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO Core Conventions on Labor Standards, the UK Modern Slavery Act and other similar human rights, anti-human trafficking and anti-modern slavery laws and regulations (collectively, "*Human Rights Laws*").

**15.2.** *Sanctions Agency* means any governmental or regulatory body, instrumentality, authority, institution, agency or court that promulgates or administers Trade Control Laws including, but not limited to, the aforementioned governmental and regulatory bodies of (i) the United Nations, (ii) the United States of America (including the U.S. Department of Treasury Office of Foreign Assets Control, U.S. Department of State and U.S. Department of Commerce), (iii) the European Union or (iv) Switzerland.

**15.3.** *Restricted Person* means any entity or person included on a list (including U.S. and EU lists) of targeted parties, blocked parties, or persons subject to asset-freezing or other restrictions introduced under any applicable Trade Control Laws (and includes any entity that is directly or indirectly owned fifty (50) percent or more, in the aggregate or individually, or otherwise controlled by any *Restricted Person*).

- 15.4.** Both *Parties* will comply with all *Applicable Integrity Laws* in connection with the *Individual Order*. Both *Parties* shall also ensure that their respective employees, officers, directors, and any affiliates or third parties engaged in any manner in relation to the *Individual Order* shall undertake to comply with all *Applicable Integrity Laws* and the requirements set out in this Clause in connection with the *Individual Order*. Both *Parties* confirm that they have not violated, shall not violate, and shall not cause the other *Party* to violate, any *Applicable Integrity Laws* in connection with the *Individual Order*.
- 15.5.** The *Parties* confirm that they have not violated, shall not violate, and shall not cause the other *Party* to violate, any applicable *Trade Control Laws*. Each *Party* represents and warrants that, to the best of its knowledge, at the date of the *Individual Order* neither it, nor any of their respective directors or officers are a *Restricted Person*. Each *Party* agrees that it shall promptly notify the other *Party* if it becomes a *Restricted Person*.
- 15.6.** If, as a result of *Trade Control Laws* issued or amended after the date of the *Individual Order*, (i) the *Purchaser* or the end-user is/becomes a *Restricted Person*, or (ii) any necessary export license or authorization from a *Sanctions Agency* is not granted, the performance by *B&R* or by any affiliates or third parties engaged in any manner in relation the *Individual Order* becomes illegal or impracticable, *B&R* shall, as soon as reasonably practicable, give written notice to the *Purchaser* of its inability to perform or fulfil such obligations. *B&R* shall be entitled to either immediately suspend the performance of the affected obligation under the *Individual Order* until such time as *B&R* may lawfully discharge such obligation or unilaterally terminate the *Individual Order* in whole or in part from the date specified in the said written notice or from any subsequent date thereafter. *B&R* will not be liable to the *Purchaser* for any costs, expenses or damages associated with such suspension or termination of the *Individual Order*.
- 15.7.** In the event of suspension or termination, *B&R* shall be entitled to payment of the *Individual Order* and any reasonable associated costs necessarily incurred by *B&R* in regard to such suspension or termination including, but not limited to, all reasonable costs associated with suspending or terminating any subcontract placed or committed for goods or services in connection with the *Individual Order*.
- 15.8.** The *Contract Products* may be subject to foreign trade restrictions, including dual-use trade controls. The *Parties* undertake to obtain all the necessary licenses and/or permits from the competent authorities for the import or export of *Contract Products*. *Contract Products* that originate in the United States are subject to the U.S. Export Administration Regulations ("EAR") and must not be exported, re-exported, or transferred (in-country) without obtaining the necessary valid licenses/authorizations of the competent US authorities, including non-US items with controlled US content above the permitted de-minimis level and non-US items with controlled US content for which there is no de-minimis level.
- 15.9.** The *Purchaser* represents and warrants that the *Contract Products* are for civil use only and that it will not directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any *Contract Products* received from *B&R* to any *Restricted Parties*, or parties that operate, or whose end use will be, in a jurisdiction/region prohibited by *B&R* including Belarus, Crimea, Cuba, Iran, North Korea, Russia, Syria, as well as the Donetsk, Luhansk, Kherson and Zaporizhzhia regions of Ukraine (such list may be amended by *B&R* at any time). The *Purchaser* further represents and warrants that the *Contract Products* provided under the *Individual Order* or any applications (systems) shall not be installed, used, or applied in or in connection with (i) the design, production, use or storage of chemical, biological or nuclear weapons, space launchers or their delivery systems, (ii) any military applications or (iii) the operation of any nuclear facilities including, but not limited to, nuclear

power plants, nuclear fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores and research reactors, without the prior written consent of *B&R*.

- 15.10.** *Purchaser* shall immediately notify *B&R* in writing of any potential or actual breach of obligations set forth under *Applicable Integrity Laws*, the ABB Code of Conduct, or this clause by either the *Purchaser*, its affiliated parties or any third parties engaged by *Purchaser* in relation to the *Individual Order*. In the event of such notification or if *B&R* otherwise has reason to believe that a potential or actual breach has occurred, *Purchaser* agrees to cooperate in good faith with any audit, inquiries, or investigation which *B&R* deems necessary. During such audit, inquiries or investigation, *B&R* may suspend performance of its obligations until such time as *B&R* has received confirmation to its satisfaction that no breach has occurred or will occur. *B&R* shall not be liable to *Purchaser* for any claim, losses or damages whatsoever related to its decision to suspend or terminate performance of its obligations under this provision.
- 15.11.** *For* the avoidance of doubt, no provision in these *GTC* shall be interpreted or applied in a way that would require any *Party* to do, or refrain from doing, any act which would constitute a violation of, or result in a loss of economic benefit under, applicable *Trade Control Laws*.
- 15.12.** Notwithstanding the foregoing or any other provision in the *GTC*, in the event of any actual or imminent violation of *Applicable Integrity Laws* or material breach of obligations set forth under the ABB Code of Conduct or this clause, *B&R* shall, subject to mandatory provisions of applicable law, have the right to unilaterally terminate the *Individual Order* with immediate effect. Such termination would be without prejudice to all rights of recourse which could be exercised by *B&R*, and *B&R* shall not be liable to *Purchaser* for any claim, losses or damages whatsoever related to its decision to terminate performance of its obligations under this provision. Further, *Purchaser* shall indemnify *B&R* for all liabilities, damages, costs, or expenses incurred as a result of any such violation, breach and/or termination of the *Individual Order*. *B&R* may report such violations to relevant authorities as required by *Applicable Integrity Laws*.

## **16. Code of Conduct**

*Purchaser* must comply with the Code of Conduct of *ABB*, which is retrievable at <https://global.abb/group/en/about/integrity/standards/abb-code-of-conduct>

## **17. Nondisclosure**

- 17.1.** The *Parties* shall maintain the confidentiality of both the existence and content of their contractual relationships as well as all know-how, data and other information of which they become aware in whatsoever form and shall only make use thereof in such context.
- 17.2.** The *Parties* shall deal with the know-how etc. belonging to the other *Party* with the same care with which they deal with their own confidential information and restrict publication of the know-how etc. to employees, other auxiliary persons or third parties who are required to be aware of such know-how etc. The *Parties* shall not provide know-how etc. to others and/or make it public in another way, unless they have obtained prior written consent to do so. This requirement for consent does not apply to passing on know-how etc. to group companies, to the extent permitted by law.
- 17.3.** The *Parties* shall ensure that employees and third parties, including group companies, are subject to and comply with similar confidentiality obligations that



are no less stringent than the obligations that apply to the *Parties* in accordance with these *GTC*. This confidentiality obligation survives the termination of the respective *Individual Order* with a period of five (5) years. Know-how etc. that is publicly accessible or that becomes publicly accessible without being attributable to the receiving party, is not considered confidential information. The *Parties* shall identify confidential information as such as much as possible.

## **18. Governing Law • Dispute Resolution • Place of Jurisdiction**

- 18.1.** Each contractual relationship between the *Parties*, in particular each *Individual Order*, shall be governed exclusively by the substantive laws of Germany, giving no effect to the conflict of laws rules of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 18.2.** The exclusive place of jurisdiction for any dispute shall be the competent court of Mannheim.
- 18.3.** If the *Contract Products* are purchased directly or indirectly with federal, state, or local US government funding ("**US Government Contracts**"), the regulations of the **US Government Contracts Conditions** set forth under [www.br-automation.com/gtc](http://www.br-automation.com/gtc) apply.

## **19. Miscellaneous**

- 19.1.** The written form requirement will be met by the *Parties* transmitting the identical documents, each signed by them in the original, by telefax or in a digital format as scanned documents to the other *Party*.

The *Parties* acknowledge electronic signature (e.g. Adobe Acrobat Sign, DocuSign or similar which ensures identification of the issuer and the integrity of the document) applied by authorized persons, to be sufficient and binding for entering into an this contract or *Individual Order* thereunder and for any documents related to this agreement, including, without limitation, documents which require written form or which require to be signed by the *Parties*.

- 19.2.** *Individual Orders* must be transferred via trusted electronic systems (such as Electronic Data Interchange or the like) or in writing to be effective. Statements made in electronically transmitted documents - e.g. by telefax or email - will be sufficient for the written form.

No modification and supplement of any contractual relationship shall be binding unless it is in writing and signed by all *Parties*. This written form requirement is also met by the *Parties* transmitting the identical documents, each signed by them in the original, by telefax or in digital format as scanned documents to the other *Party*.

The written form requirement can only be waived in writing. Subsidiary agreements made orally shall not come into effect.

- 19.3.** If any individual provision of these *GTC* and/or the *Individual Orders* is invalid in whole or in part, the validity of the remaining provisions shall not be affected in any way. The *Parties* shall replace the invalid provision by a valid provision coming as close as possible to the economic purpose of the invalid provision. The same shall apply if these *GTC* and/or an *Individual Order* contains a loophole that needs to be closed.
- 19.4.** The headings to the clauses of these *GTC* are for ease of reference only and shall not affect the clauses' interpretation.



- 19.5.** Each *Party* may, after obtaining written approval, display the name and the logo of the other *Party* in reference lists.

## **20. Data Protection**

The Parties comply with the data protection laws - especially the GDPR (General Data Protection Regulation) and the BDSG (Federal Data Protection Act) - and process the personal data of employees made available to them in accordance with the principles of Art. 5 GDPR. The personal data will be processed for specific purposes, in particular for contract execution, and will then be deleted after the statutory retention periods have expired. The Parties shall take all necessary and appropriate technical and organizational measures in accordance with the state of the art to ensure the confidentiality, integrity and availability of this data. The transfer of personal data to a non-EU or non-EEA country will only take place after the guarantees set out in Chapter V of the GDPR have been applied.

Should a case of order processing or joint responsibility arise, the Parties undertake to enter into corresponding contractual agreements in accordance with Art. 28 para. 3; Art. 26 para. 1, sentence 2 and para. 2 GDPR.

For purely informational purposes, reference is made here to the ABB Privacy Policy for Business Partners, which can be viewed under this link [Privacy Policy for Business Partners | ABB](#). This must be made available to the Purchaser's affected employees.