

US Government Contracts Conditions – December 2023
B&R Industrial Automation GmbH
(FN 111651 v, A-5142 Eggelsberg)

These regulations apply in addition to the B&R General Terms and Conditions (set forth under www.br-automation.com) only if the *Contract Products* are purchased directly or indirectly, with federal, state, or local US government funding.

(a) Unless expressly and specifically stated otherwise by *B&R* herein:

- (i) all *Contract Products* provided by *B&R* under *Individual Orders* meet the definition of “commercial product,” “commercial computer software,” “commercial service” and/or “commercial-off-the-shelf item” (“COTS”) as defined in the US Federal Acquisition Regulation (“FAR”) Subpart 2.101;
- (ii) consistent with FAR 12.212, all commercial computer software and commercial computer software documentation are acquired by *Purchaser* under *B&R’s* standard commercial software licenses;
- (iii) to the extent that any US domestic preference requirements, whether Buy America Act (“BAA”)(41 U.S.C. § 8301 – 8305, as amended) or Build America, Buy America (“BABA”)(Pub. L. 117-263, § 58, December 23, 2022,), or Trade Agreements Act of 1979 (“TAA”)(Pub. L. 96-39, §1(a), July 26, 1979) or any other, may be applicable to *Individual Orders*, the country of origin of *Contract Product* is unknown, and *B&R* cannot and shall not be obligated to provide any certification of conformity therewith;
- (iv) there are no prevailing wage requirements attached to *Individual Orders*; that is,(i) any Services provided by *B&R* are exempt from the Service Contract Labor Standards (“SCA”)(41 U.S.C. § 6701 -6707, as amended)(as provided in FAR clause 52.222-41), (ii) any Services provided by *B&R* for the construction, alteration or repair of public buildings or public works are exempt from the Davis-Bacon Act (“DBA”)(40 U.S.C. §§ 3101-9507, as amended) (as provided in FAR clause 52-222-6), and (iii) no state or other local prevailing wage laws apply;
- (v) there are no Security or Safeguarding of Covered Contractor Information Systems requirements as provided by FAR Subpart 4.0404(a) and 4.1903, respectively; that is FAR 52.204-2 and 52.204-21, respectively, do not apply to *Individual Orders*; and
- (vi) any applicable FAR Subpart and/or provision and/or clause referenced in this Article 27 shall be as of the effective date of *Individual Orders*.

- (b) *Purchaser* shall notify *B&R* in writing, prior to the execution of *Individual Orders*, or if this *Agreement* is a master ordering agreement, prior to Supplier's acceptance of any order submitted hereunder, if (1) any of the Services provided hereunder are subject to federal, state or local prevailing US wage laws, as described in Article 27 (a)(iv) or (2) the security regulations set forth in Article 27(a)(v) apply. *Purchaser* shall defend, indemnify and hold *B&R* harmless from and against all losses, liabilities, cost, expense (including attorneys fees and expenses of litigation and/or settlement), damages, allegations, claims and causes of action arising from *Purchaser's* failure to notify *B&R* in writing in accordance with this Article 27(b).
- (c) If *Purchaser* is an agency of the U.S. Government, then:
- (i) as permitted by FAR Subpart 12.302, all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with this Agreement's terms and conditions and
 - (ii) all subparagraphs of FAR 52.212-5 apply only to the extent applicable to the sale of COTS and/or commercial items and as appropriate for the Agreement price.
- (d) If *Purchaser* is procuring the *Contract Products* as a prime contractor or subcontractor at any tier, on behalf of any agency of the U.S. Government, then FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable to the sale of COTS and/or commercial items and as appropriate for the contract price.