

B&R LICENSE AGREEMENT / EULA (End User License Agreement) for *APROL* and associated (related) Development Tools

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"**B&R**" means B&R Industrial Automation GmbH, FN 111651 v, Austria, and any related (subsidiary) company.

By accepting these terms and conditions, in particular by pressing/clicking the "Accept" button, but in any case by any installation and/or use of *B&R*'s software that is subject to these terms and conditions, you, as the end user of this software, fully and irrevocably agree to all of the following stipulations.

1. General information

- a) This agreement concerning the present terms and conditions / stipulations (abbreviated with "**EULA**" or "**(this) agreement**") is concluded between *B&R* and the respective (business) end user, in particular a machine and system manufacturer and/or system integrator, (abbreviated: "(the) **User**") and governs the terms and conditions for the use of the software referred to herein.
- b) This EULA applies, as stipulated in section 2, to the following *B&R* software (collectively abbreviated as "**(B&R) Software**"):
 - (i) "**(B&R) APROL**";
 - (ii) "Automation Runtime" together with the associated runtime functions (collectively abbreviated as "**(B&R) Runtime Software**");
 - (iii) Development tools related to (*B&R*) *APROL* (abbreviated as "**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 comply with this EULA, the *User* may not use the *B&R Software* and/or its respective *Software Functions*. In this case, the *User* must refrain from any type of installation.
- e) These terms and conditions are only intended for business *Users* of *B&R Software*. The use of *B&R Software* by private persons is prohibited, with the exception of use in the context of education and training at educational institutions in accordance with the stipulations of this EULA.
- f) References contained in this *Agreement* refer to the corresponding items in this *Agreement*.

2. Object of agreement

- a) The object of this Agreement is the *B&R Software*, i.e.
 - (i) the *APROL* system software,
 - (ii) the *B&R Runtime Software* used directly in *APROL* and/or with *APROL* mechanisms or on a *B&R* automation system, including the associated runtime functions, as well as
 - (iii) Any Development ToolTogether with any associated program documentation and other related written material.

- b) Unless expressly provided otherwise below or otherwise emphasized, the stipulations of this *Agreement* each apply to each of the aforementioned software (or parts thereof) of the *B&R Software*.
- c) The source code of the *B&R Software* shall not be the subject matter of this Agreement.
- d) Further services provided by *B&R* or third parties attributable to *B&R*, in particular such as the installation of *B&R Software*, training, briefings, instructions, support, etc., shall not be subject matter of the contract and must be ordered/agreed upon separately.
- e) *B&R* explicitly points out that it is not possible, given the nature of technology currently available, to create software that can function flawlessly in all application conditions, in all applications and/or in all combinations. In particular, no assurance can be given for software that it will function without interruption or completely flawlessly. The *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 object or content of the *contract* (and so subject of the agreement of *B&R*) is therefore only *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. The *User* may therefore not rely on the complete ("one hundred percent") functionality of the *B&R Software* and shall take appropriate precautions (such as backup systems, controls, etc.) under their own responsibility and own expense in order to avoid any damage, in particular to third parties.

In particular, the *User* must demonstrably make third parties who may come into contact with the *B&R Software* or use it or could use it completely aware of the limitations on functionality in terms of our *B&R* performance and product descriptions, directions for use, comments on the *B&R* website, etc. *B&R* accepts no liability for detriments of whatsoever kind which the *User* incurs 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 third-party property rights either in favor of *B&R* or in favor of third-party companies. The *User* irrevocably acknowledge the limitations associated with this in the use of the *B&R Software* and undertakes not to violate these property rights in whatever manner and to whatever extent. Each *User* is liable for violations by his assistants in this regard. Each *User* shall immediately notify *B&R* of any infringement of proprietary rights in the *B&R Software* and shall immediately cease such infringement. In addition, the *User* shall notify *B&R* without undue delay of any infringement of proprietary rights of the *B&R Software* by third parties of which the *User* becomes aware.
- b) The *User* must not remove, alter or cover up information concerning 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* (abbreviated as "**license (rights)**"). The *license* may be defined or designed differently depending on the software.

The licenses are differentiated by the license types "NEW", "UPG" and "OEM". The license type "NEW" is required when purchasing *B&R Software* for the first time, the license type "UPG" is

required to extend the duration of the right to updates and upgrades as well as telephone support. The "OEM" license type may only be used for OEM customers.

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

- (1) "**Single License**": A *Single License* allows *APROL* to be used by exactly one user at a given time.

The *Single License* is provided on a Technology Guard/Dongle ("**TG**") or in a Software Container ("**SC**"), depending on the version. In the *TG* version, several users can share the right to use *APROL* on different workstations within a company by plugging the *TG* with the *Single License* into the respective workstation computer. In the *SC* version, the right to use *APROL* is tied to the installed workstation computer and cannot be transferred. The *Single License* permits the commercial use of *APROL* in accordance with point 4.d).

The license term of use of the *Single License* is not limited for the license types "NEW", "OEM" and "UPG". The *Single License* includes the right to install and use the current software versions as well as telephone support, for a period of 1460 days after delivery of license type "NEW" and "OEM", or for a period of 730 days after delivery of license type "UPG". After expiration (1460/730 days after delivery), the functionality of *APROL* remains unchanged but the right to updates and upgrades as well as telephone support expires.

- (2) "**Site License**": The *Site License* is valid across all of the *User's* company locations and allows *APROL* to be used by one User at a given time.

The *Site License* is provided on a Technology Guard/Dongle ("**TG**") or in a Software Container ("**SC**"), depending on the version. In the *TG* version, several users can share the right to use *APROL* at different workstations within a company by plugging the *TG* with the *Site License* into the respective workstation computer. In the *SC* version, the right to use *APROL* is tied to the installed workstation computer and cannot be transferred. The *Site License* permits the commercial use of *APROL* in accordance with point 4.d).

The license term of the Site License is not limited. The Site License includes the right to install and use the current software versions as well as telephone support, for a period of 1460 days after delivery (according to license type "OEM"). After expiration (1460 days after delivery), the functionality of *APROL* remains unchanged but the right to updates and upgrades as well as telephone support expires.

- (3) "**System Partner License**" ("**Partner License**"): The **Partner License** is valid across all of the *User's* company locations and allows *APROL* to be used by exactly one User at a given time.

The *Partner License* is provided on a Technology Guard/Dongle ("**TG**") or in a Software Container ("**SC**"), depending on the version. In the *TG* version, several users can share the right to use *APROL* at different workstations within a company by installing the *TG* with the *Partner License* on the respective workstation computer. In the *SC* version, the right to use *APROL* is tied to the installed workstation computer and cannot be transferred. The *Partner License* permits the commercial use of *APROL* in accordance with point 4.d).

The license term of the Partner License is not limited. The Partner License includes the right to install and use the current software versions as well as telephone support, for a period of 1460 days after delivery (according to license type "NEW"). After expiration (1460 days after delivery), the functionality of *APROL* remains unchanged but the right to updates and upgrades as well as telephone support expires.

- (4) "**License for educational institutions**" ("**Education License**"): This *license* is equivalent to a *Site License* and permits licensing of any number of Users for educational operations at the location of the *User's* educational institution.

The *Education License* expires automatically after 400 calendar days and cannot be extended. The *Educational License* is not permitted to be used commercially in accordance with point 4.d). The *Education License* includes the right to install and use the current software versions as well as telephone support.

- (5) "**Student License**": The *Student License* corresponds to a *Single License* and allows exactly one user to use *APROL* exclusively for personal training purposes.

Commercial use of *APROL* is not permitted in accordance with point 4.d). The *Student License* is valid for 400 days from the time of activation and can 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 install and use the current software versions as well as telephone support.

- (6) "**Evaluation License**": *APROL* can be downloaded free of charge from the *B&R homepage* www.br-automation.com homepage. *APROL* is then fully functional for evaluation for 90 calendar days.

Commercial use of the software in accordance with point 4.d) is not permitted with an *Evaluation License*. The *Evaluation License* expires automatically after 90 calendar days and cannot be extended. One *Evaluation License* can be requested as often as desired. The *Evaluation License* does not include the right to install and use the current versions of the software and to receive telephone support for the functions described in accordance with point 2.a).

- c) The functionalities ("**Software Functions**") of the *B&R APROL system software* are available and can be viewed in the manual "Y1 - *APROL complete documentation*" of the B&R *APROL documentation* ("**B&R APROL documentation**"). The *B&R APROL documentation* shows which *Software Functions* of the *B&R Runtime Software* require which *licenses* for which validity areas (abbreviated: "**B&R license rules**").

The *User* shall be solely responsible and liable for the *Software Functions* of the *B&R APROL system Software* Functions that are required or otherwise used by the *User* on the basis of the *B&R license rules* for the respective area of validity. Based on this, the *User* shall purchase the required *license* for each commercially used *software function* of the *B&R APROL system software* for each of its areas of validity at the corresponding price (for the price, see point 9 below). The *license* must be purchased in this manner for each combination of hardware and *B&R APROL system software* (abbreviated: "**B&R APROL system**") provided to the *User* by B&R and for each component of a *B&R APROL system* in accordance with the *B&R license rules* documented in the used version of the *B&R APROL system software* subject to licensing.

The material number ("**license number**") required to use the *B&R APROL system software* will be generally provided to the *User* in the form of a paper license sheet. Some *licenses* and license sheets shall, at B&R's discretion, be transmitted to the *User* in electronic form without any claim on the part of the *User*; in this case, the *User* shall independently transfer the license data to a *TG* that is to be purchased separately; in this case, such a transfer shall also be a technical prerequisite for the use of the *Software Functions* of the *B&R APROL system software*. Depending on the use of the functional scope of the *B&R APROL system software*, several *license numbers* may be necessary.

The paper license sheets serve as proof of the lawful acquisition of the *licenses* by the *User*. The *User* shall present the license sheets upon request. It is the sole responsibility and liability of the *User* to pass on the license sheets as proof of lawful acquisition when passing on the *B&R APROL system software*.

The *B&R APROL system* performs a license check with regard to the required *licenses* concerning the intended operation by the *User* only in exceptional certain cases. In such cases, a license

violation by the *User* will be indicated by the *B&R APROL system*. In addition, the use of the *Software Functions* of the *B&R APROL system software* or its scope of functions will be technically restricted until the required *licenses* have been lawfully acquired.

Without purchasing a *license*, *B&R APROL system software* is only permitted to be used for (i) evaluation and (ii) educational purposes; any other use shall be deemed commercial use in accordance with point 4.d).

- (i) Evaluation purposes
The use of the *B&R APROL system software* for evaluation purposes is understood to be the use of the *B&R APROL system software* with a B&R APROL system operated for evaluation purposes *B&R APROL system* (with optional use of the controller simulation "*ARsim*" in unlicensed and thus time-limited evaluation operation of *ARsim*).
 - (ii) Educational purposes
The use of *B&R APROL system software* for educational purposes is understood to mean the use of *B&R APROL system 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 *B&R Software* (with the exception of free *Development Tools*, cf. point 4.d. and point 9.) is permitted only after purchase of the license required for such use.
- f) A commercial use of *APROL* exists,
- (i) if the automation system configured with *APROL* is sold, made available, inspected or modified, in whole or in part, to third parties with or without the intention of making a profit; or
 - (ii) if applications derived from *APROL* are created, provided that the nature of the software product generally permits this (software libraries, programming aids, etc.).

Commercial use of *APROL* exists as soon as the *B&R APROL system software*, with the exception of evaluation and educational purposes, is used in whole or in part in any manner whatsoever.

- 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, hence the B&R Software, in connection with contract initiation and implementation, including warranties, support and care, remain exclusively with B&R or the author. In particular, B&R and/or the author reserve(s) all publishing, retransmission, editing, utilization, and any other rights that fall under the purview of copyright law for this B&R Software.

All of this also applies where these goods and 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 solely the non-exclusive authorizations to use these goods and rights as specified in these conditions.

- h) As the licensee, the *User* is permitted to make copies of the B&R Software subject to the recognized codes of practice only for the purpose of data backup protection for internal purposes. A backup copy held on a mobile data storage device should be marked as such with the copyright notice of the original data storage device.
- i) Within the scope of the *license(s)* granted, the *User* shall be permitted to create applications derived from the *B&R Software*, provided that the nature of the *B&R Software* generally permits this

(software libraries, programming aids, etc.). The resulting application may be passed on to third parties, provided that this does not contradict the conditions in accordance with points 4.b) and c) and provided that there are no restrictions in accordance with point 10.

- j) In the absence of an explicit alternative written agreement, passing on of B&R system software licenses under these EULA is only permissible to the extent that this is part of the business activities of the User in the form of passing on to third parties (whether against payment or not) of the automation system configured with APROL.

In any case, the following is inadmissible:

- (i) The passing on (e.g. resale) of the *B&R system software* or of the corresponding license as a mere transfer (whether against payment or not).
 - (ii) The passing on against payment of free *Development Tools* or the corresponding *license*, unless the *Development Tools* are a necessary part of an automation system transferred against payment to a third party.
- k) Any passing on of *APROL Licenses* is not permitted according to this *EULA*, with the exception of the *Single Licenses* (point 4. b) (1)). In particular, the *User* is prohibited from passing on *licenses*, *APROL* or the associated material to third parties, whether for a fee or free of charge, or otherwise making them accessible.
 - l) By acquiring the *license*, if applicable, the *User* gains only title to the physical data storage device(s) on which the B&R Software is stored and title to the associated written material. The *User* shall only be granted a right of use (*license*) of the *B&R Software* itself to the extent or according to the type of this agreement.
 - m) For all losses of whatsoever type which *B&R* and/or the author incur(s) through violation on your part of this *contract*, especially violation of the copyright of *B&R* or of a third party, the *User* is fully liable. This also applies for all such losses which *B&R* and/or the author suffer through persons accountable to the *User*, especially his assistants.
 - n) The *User* or a third party integrated by them must not decompile the *B&R Software* subject to any mandatory rights that may be granted by statute and/or must not use the *source code* for their own purposes, not alter this and not develop identical or similar software based on or using, either wholly or in part, the source code.

5. License verification / Audit

- a) The *User* grants *B&R* the irrevocable right to check *B&R APROL systems* which are at the disposal of the *User* and/or have been passed on to third parties, at any time without prior notice with regard to the lawful acquisition of the required *licenses*. (= "**Audit**"). The *User* shall ensure that such audits are also possible without restriction at third parties in accordance with these regulations.
- b) Any audit can be performed in any technically possible manner, at *B&R* 's discretion. For the purpose of the audit, *B&R* shall also be entitled to conduct an on-site audit at the *User* 's location where the *B&R Software* is used during normal operating hours with an appropriate number of employees. In addition, an audit may be performed when other *B&R* services are used in relation to the *B&R Software*, in particular for support requests, for example.
- c) *B&R* may, at its sole discretion, make technical support conditional, in whole or in part, depending on the aforementioned proof of acquisition of the required license rights. The *User* shall support *B&R* in all of the foregoing to an appropriate and reasonable extent at its own expense and grant *B&R* the corresponding opportunities for auditing. In particular, the *User* shall provide relevant information in a suitable form, grant access and make information and evidence available. *B&R* may use third parties for the audit at its own discretion.

- d) The audit shall generally be performed at *B&R's* discretion; however, *B&R* shall endeavor to coordinate the audit with the *User* in advance.
- e) The *User* undertakes to acquire any necessary *licenses* immediately if required. Unless the *User* proves that missing *licenses* are due to excusable misconduct on the part of the *User*, *B&R* shall be entitled to a strict minimum penalty in the amount of three times the *license* fee for each missing license of a usage that is subject to license by the *User*. *B&R* reserves the right to assert any claims beyond the foregoing.
- 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. Changes / Updates / Discontinuation

- a) *B&R* and the author of the *B&R Software* shall be entitled, at their sole discretion, to make changes and updates to the *B&R Software* at any time without notice or other communication and to make such changes and updates available in the form of a new version. Particular incompatibilities may result from this. The *User* acknowledges this with consent. *B&R* reserves the right to make changes to the license requirement and to functionalities requiring a license with new versions of the *B&R Software*.
- b) *B&R* and the author of the software are not obliged to inform the *User* of any *B&R Software* modifications or updates. Any obligation to update *B&R Software* is excluded.
- c) The *User* is not permitted to modify or edit the 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 discontinue further development and support of the *B&R Software* in its respective versions at any time (abbreviated: "**Discontinuation**"). Information about this was provided in the "**B&R APROL documentation**" of the *B&R Software* or under www.br-automation.com. Discontinuation may result in lack of compatibility or functional limitations between individual versions of *B&R Software*. The *User* acknowledges and agrees to this and will keep themselves informed of any Discontinuations on their own.

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* provides a warranty, subject to the stipulations of this *EULA*, in respect of its freedom from defects with regard to the *B&R Software* functionality 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) Under point 2.e), no defect is present in any case 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. Also, no warranty is given for minor and/or insignificant defects or curtailments, especially for those which do not impair the functionality or the agreed or customarily presumed usability of the *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 perfect and operational state or are not compatible with the supplied objects. *B&R* is also not accountable for a defect if it is due to a task definition specified by the *User* or to the inadequate or flawed duty to cooperate of the *User* or the functions do not satisfy the requirements of the *User*. Other matters not covered by the warranty include, in particular, any defects or damage attributable to the following: Operational deterioration and normal wear and tear, improper use, operating error and negligent conduct by the *User*, operation with the wrong type of current and/or voltage and connection to unsuitable power

sources, fire, lightning strike, explosion or grid-related voltage surges, humidity of any type, liquids of any type, wrong or faulty program, software and/or processing data and any type of wearing parts, unless the User can show that these circumstances are not the cause of the notified defect. The warranty will also not apply if the serial number, type description or other identifiers are removed or rendered unreadable. In particular, *B&R* further does not warrant that the *B&R Software* or its program functions will meet the *User*'s requirements and purposes or will work together with other programs selected by the *User* or otherwise in the selection 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 intended or desired results. No warranty claim exists if the defect results from unauthorized modification or extension of the *B&R Software* by the *User* or in connection with a derived application (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 those which B&R explicitly marks as such or explicitly assures*. The technical data and descriptions in the product information do not in themselves constitute assurance of any particular properties. Therefore, *B&R* is also not liable for public statements or publicity of any type concerning the contractual goods within the meaning of § 922 of the General Civil Code and is not liable for the properties of product samples or prototypes of such products in current use. If the *User* continues to use, without any compelling reason, the defective *B&R Software*, although the *User* knew or ought to have known of the defect or grants use of it to a third party in the context of a commercial use, although the *User* knew or ought to have known of the defect, the *User* declares to *B&R* at the same time that the *User* waives any claims with regard to this defect.
- d) *B&R* gives a 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) Defects must be reported and proven in writing without delay, at the latest within five days of becoming known, within the warranty period, stating the exact nature and extent of the defect and giving a precise description of the problem (complaint, notice of defect). If a complaint is not raised or not raised in time, the service shall be deemed to be in conformity with the contract; in this case, the *User* shall lose all claims, in particular under the title of warranty and damages.
- g) The warranty covers defect diagnosis and elimination. The *User* must notify potential malfunctions promptly and in detail. *B&R* will support the *User* in the search for the defect and its cause. If the *User* cannot prove that the defect is attributable to *B&R*, *B&R* will be entitled to charge the *User* for the services rendered in this respect. If *B&R* rejects in writing the defect complaint, the *User* should at all events assert the defects complained of in a court of law within six months or otherwise lose all warranty and compensation claims.
- h) Elimination of the defects is effected primarily by improvement or exchange. There can be no claim for price reduction or reimbursement (depending on the type and severity of the defect) unless *B&R* is in agreement with that or unless improvement or exchange is, in the opinion of *B&R*, not possible or not feasible. Improvement is effected at the discretion of *B&R* by defect elimination, by appropriate modification of the *B&R Software*, by delivery of a new program version, by supply of new *B&R Software* or by *B&R* indicating reasonable means of avoiding the effects of the defect. The *User* must support *B&R* as appropriate. A particular requirement for every defect elimination is that the *User* should furnish *B&R* with all necessary documentation and information and that the *User* should give *B&R* unrestricted access during the *User*'s normal working hours (particularly to hardware and software). The *User* should in any case adopt a new program version, unless this demonstrably causes disproportionate and unacceptable adaptation and conversion problems for the *User*.

- i) If there is to be improvement or an exchange, the User should allow B&R the necessary time and opportunity to an appropriate extent. If the User refuses to do this or if this is curtailed in a disproportionate manner, then B&R is released from upholding the warranty. The User must allow B&R at least two attempts to make improvements.
- j) If improvement is effected, B&R will pay the costs of the work. The User will bear all the other costs of improvement and the incidental costs associated with the supply of replacements, especially any transport costs, unless these other costs are disproportionate to the contract value. B&R can at their own discretion refer the User, after assignment at the same time of their own claims against their own supplier and/or manufacturer, to the manufacturer and/or supplier for the assertion of claims. Such a reference or such an assignment replace fulfillment of all the claims due to the User against B&R in any case. As far as is contractually acknowledged, claims of the User are limited as to type and extent to the claims due to B&R against their manufacturer or supplier.
- k) If the examination of a notice of defect shows that no warranty case exists, *B&R* shall be entitled to demand reimbursement of all expenses incurred in determining the freedom of defects or defect resolution. Costs of inspection and repair will be charged at *B&R* 's current service prices. Cost estimates are always subject to a charge.
- l) Liability is due solely at the registered office of B&R at 5142 Eggelsberg, Austria.
- m) No compensation of whatsoever kind for an (attempted or successful) defect elimination by the User or by third parties (*substitute performance*) will be entertained.
- n) §§ 924, 933b of the General Civil Code (ABGB) will not apply. The User has 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 expense necessary for effecting the improvement but not the whole invoice value.
- p) *B&R* exclusively warrants that no industrial property rights or copyrights (referred to hereafter as "**Proprietary Rights**") of third parties in the countries of the European Union as well as Australia, Brazil, Canada, China, Iceland, India, Japan, Mexico, Norway, Russian Federation, Singapore, South Korea, Switzerland, Turkey, United Kingdom (UK), and United States (USA) are violated. If B&R is liable to that extent and if use of the B&R Software is impaired or prohibited because of that, then B&R will either modify or replace the B&R Software at their own discretion and expense such that it does not violate the protected right while essentially still retaining the agreed specifications or will release the User from the license fees for the use of the B&R Software as regards the third party. If B&R cannot do this under adequate conditions, B&R will accept returned B&R Software and refund the paid prices. *B&R* may demand reasonable compensation from the *User* for the use of the returned contractual products. Furthermore, *B&R* 's liability shall be subject to the condition that the *User* immediately notifies *B&R* in writing of any claims by third parties based on an violation of protected rights, does not concede the alleged violation and conducts any dispute, including any out-of-court settlements, only with *B&R* 's consent. If a violation of protected rights is based on the User or their third-party contracting partner modifying or having modified the software, then the User must release B&R from liability in this respect and completely indemnify and hold B&R harmless. Violations of protected rights because of a specific application use is also exclusively the responsibility of the User who must release B&R to this extent or completely indemnify and hold B&R harmless. *B&R* and the *User* each undertake to notify the other without undue delay of any infringement risks and alleged infringement cases that become known and to give each other the opportunity to mutually counteract any such claims. To the extent that B&R is not liable for violations of protected rights, the User releases B&R from all associated claims of third parties or completely indemnifies and holds B&R harmless. Claims for losses and expenses of the User because of or in connection with violations of protected rights, irrespective of the legal basis, are limited by application mutatis mutandis of contractual point 8.b). No further claims of the User because of a violation of the protected rights of third parties can be entertained.

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

8. 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 (PHG), the User explicitly waives recourse to § 12 Product Liability Act with regard to B&R. The User undertakes to rule out with regard to any third party the liability to pay damages under the PHG to the extent that this is permissible under current laws. If this exclusion obligation is not observed, the User undertakes to indemnify and hold B&R harmless with regard to all claims of third parties of whatsoever type resulting from product liability. The User as reseller must take out sufficient insurance to cover product liability claims and indemnify and hold B&R harmless with regard to claims for compensation. Damage claims for damage to property of items other than *B&R Software* suffered by a company shall be excluded in accordance with the above stipulations. This exclusion of liability must be imposed when the *B&R Software* is passed on; if this imposition is not made, the *User* shall be liable to *B&R* for any resulting disadvantages.
- a) *B&R* can accept no liability for direct or indirect losses, consequential losses (especially consequential losses resulting from defects), interruptions to operations or work, loss of profit, computer breakdowns or malfunctions, loss of good will or company value and loss of information and data. Loss of profit is also to be understood in this instance as a missed commercial opportunity which at the time of the detrimental missed opportunity already constituted for the User a present, independent asset, e.g. by virtue of an already extant contract between the User and a third party.
- d) Claims for losses and expenses against *B&R* lapse 12 months from receipt of the software by the *User* (especially in the case of download), in the case of delictual liability from the time of awareness or grossly negligent unawareness of the circumstances justifying the claim or the person with liability to pay compensation.
- 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 by the *User* for acquisition of a license ("**price**") and the associated use of the *B&R Software* can be seen in the *B&R price list* in force at the time. For certain *Development Tool* licenses, there is an exception and no payment is to be made. The remuneration for *B&R Software* is a result of assigning an order number.
- b) The *User* must submit a request to *B&R* stating interest in acquiring specified *licenses* on the basis of the *B&R APROL documentation* or the *B&R license rules* in the case of *B&R APROL system software* and against payment in the case of *B&R Software*. Based thereon, the *User* shall receive an offer from *B&R*, which shall contain, in

particular, the corresponding net prices; *B&R* shall be bound by such an offer for 60 calendar days from receipt by the *User*. The *User* may accept the offer within this commitment period upon receipt by *B&R* by means of a written order (e-mail or fax shall be sufficient), full payment of the tendered *price* offered, or otherwise by actual compliance or implied compliance. Upon acceptance by the *User*, the contract/order for the respective licenses shall come into effect. Any additions or conditions of the *User*, in particular in the order, which deviate from the offer shall be deemed not to have been set; they shall not bind *B&R*. *B&R* shall send the *User* an *order confirmation*. The right of use to which the *User* is entitled requires prior payment of the fee (= "**acquisition (of the license(s))**"). Payment shall be made without any deductions.

- c) As of the acquisition of the *license*, the *User* shall be entitled to use the *B&R Software* as agreed in accordance with this *EULA*.
In the case of *B&R Software* provided free of charge, the *User* is entitled to use the *B&R Software* in accordance with this *EULA* from the time of its installation.
- d) At *B&R*'s sole discretion, *B&R* may also offer the *User* the use of an unlimited number of *licenses* within a specified period of time for purchase, and the *User* may, in accordance with such an offer and payment of the fee, use the offered *B&R Software* in an unlimited number during the specified period of time.
- e) The goods (including software and data storage devices) remain the property solely of *B&R* (goods subject to retention of title) until satisfaction of all claims due to *B&R* against the *User* under the specific contract/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 period. *B&R* is authorized to annul this contract if the *User* should violate any of the provisions contained herein, in particular those that are specifically designed to protect *B&R* or the author of the *B&R software*. The return or termination of *license(s)* by the *User* is excluded (cf. point 4.b).
- g) Licenses relating to *B&R Software* installed on automation systems (AR on controller hardware) have an unlimited period of time.
- h) For licenses without a limited license term, only the right to install and use the current software versions, as well as telephone support, terminates. The functionality of *B&R*'s *APROL* system software remains retained and unchanged. *B&R APROL* system software can still be used commercially.

10. Export restriction

- a) The *User* acknowledges that *B&R* technology, in particular *B&R Software* and related technical data and services, are subject to import, export and re-export laws (collectively, "**Technology subject to control laws**"). The responsibility and compliance with the applicable stipulations lie with the *User*. In addition to the national laws of the country in which the *User* has their registered office, the regulations of the European Union and the legal provisions of the United States of America apply. 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* agree to observe all relevant laws and not export, in violation of EU regulations and US law, any *Technology subject to control laws* to any countries, organizations or persons for which an export license or other regulatory approval is required.
- b) The use or provision of *B&R products* in connection with activities, including but not limited to, such as the design, development, manufacture, training, or testing of chemical, biological, or nuclear weapons or missiles, drones, or space launch vehicles capable of delivering weapons of mass destruction is prohibited by reference to applicable legislation.

11. Special provisions for non-released versions of *B&R Software*

- a) "**Test/Preliminary/Beta version ((of) B&R Software)**" means any preliminary version of *B&R Software* that has not been generally released and whose development has not yet been completed. This version of *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. A *Test/Preliminary/Beta version of B&R Software* is uniquely identifiable by its version identifier and will be explicitly released for use at the *User's* request based on this EULA only with *B&R*'s consent.
- b) The sole purpose of *Test/Preliminary/Beta version of B&R Software* consists in eliciting feedback on their performance and in identifying defects (referred to below as "testing"). The *User* expressly acknowledge that the *Test/Preliminary/Beta version of the B&R Software* is a test product that may include omissions, bugs, errors and other problems that can result in malfunctions or other disturbances, including but not limited to system crashes, interruptions and data loss. The *User* is advised to exercise extreme caution and in no way to rely on the performance or function capabilities of *Test/Preliminary/Beta version of B&R Software*. The *Test/Preliminary/Beta version of B&R Software* and the corresponding documentation shall be made available to the *User* in its as-is condition; the absence of defects shall not be part of *B&R's* performance.
- c) In view of these special features, *B&R* shall not assume any warranty or any other liability whatsoever (with the exception of gross negligence) for the one *Test/Preliminary/Beta version of B&R Software* and its documentation. This applies in particular, but not limited to, the implied warranties of merchantability, suitability for a particular purpose, satisfactory quality, or the ability to combine or integrate the *B&R Software* with other 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 related documents, data and information constitute confidential information as business and trade secrets of *B&R*. The *User* shall keep the *B&R Software* and/or all documents, data and information related thereto secret from third parties and shall not make them accessible to third parties without *B&R*'s prior written consent; this shall not preclude the passing on of the rights of use in accordance with the relevant provisions or authorizations of 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 care expected in moderate measure by an ordinary company. However, the *User* shall not be liable for the disclosure of confidential information if it
 - (i) was already publicly known and accessible at the time it was made available, or subsequently became publicly known and accessible through no fault of the *User*; or
 - (ii) was or is lawfully obtained and disclosed by a third party without breach of a confidentiality obligation; or
 - (iii) was demonstrably already lawfully known to the *User* on a non-confidential basis before it was made available; or
 - (iv) the *User* is obliged by mandatory legal regulations to disclose confidential information in judicial, official or other proceedings.

13. Data protection

Detailed stipulations concerning data protection is to be taken from the data privacy statement (see <https://www.br-automation.com/en/about-us/privacy-notices/>).

14. Miscellaneous and final provisions

- a) This *contract* is governed solely by Austrian substantive law excluding its principles on conflicts of law, to the extent that these refer to the application of foreign law and the UN Convention on Contracts for the International Sale of Goods. The sole place of jurisdiction agreed for all legal disputes arising from or in association with this *contract* is the court responsible for *B&R* in A-5142 Eggelsberg, Austria.
- b) This *contract* constitutes all understandings of the parties. Verbal side agreements are not possible. All modifications of and amendments to this *contract* shall be made in writing in order to be valid. This requirement of written form may only be waived by a written agreement. As of now, *B&R* repudiates any conditions of the *User* of whatsoever kind contrary to or deviating from these conditions, especially the General Terms and Conditions of Business of the *User*; *B&R* hereby expressly does not recognize such conditions, unless *B&R* had expressly accepted their application in writing. Non-acceptance also applies where *B&R* does not in a specific case repeat its repudiation of the deviating conditions of the *User*. The performance of a delivery or a service by *B&R* does not in any case constitute submission to deviating conditions of the *User*, particularly not even when *B&R* is aware of the contrary or deviating conditions of the *User* and does not express reservations about them.
- c) If one or more stipulations in this *contract* are or become legally invalid, either wholly or in part, or if a loophole is found, the validity of the other stipulations of this *contract* is not affected. In this case, instead of the ineffective stipulation or to close the loophole, a provision shall become effective and be deemed valid that comes closest to meeting the stipulation.