

**GENERAL TERMS AND CONDITIONS – February 20, 2024**  
**B&R Industrial Automation Inc.**  
**(Canada)**

**1. Definitions**

*ABB:*

Means all companies of the ABB Group.

*Agreement:*

The general terms and conditions of *B&R* contained herein, together with any additional or different terms contained in *B&R*'s offer, quotation and/or invoice, if any, submitted to *Purchaser*, constitute the entire agreement between the *Parties* with respect to the *Order* and supersede all prior communications and agreements regarding the *Order*.

*B&R:*

B&R Industrial Automation Inc, 5895 Kennedy Road, Mississauga ON L4Z 2G3

*Contract Products:*

*Standard Product*, customized product, and/or *Software* from *B&R*'s portfolio to be provided under an *Order*.

*Order(s):*

*Purchaser*'s written request for *Contract Products* based on *B&R*'s offer.

*Order Confirmation:*

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

*Parties:*

*B&R* and *Purchaser*.

*Purchaser:*

The party purchasing *Contract Products* from *B&R* under an *Order*.

*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.** The *Agreement* governs the legal, commercial, and technical modalities for the supply of *Contract Products* to *Purchaser* on the basis of an *Order*. In case a provision of the *Agreement* is primarily aimed at hardware, such provision is nevertheless applicable to software or services accordingly.
- 2.2.** The *Agreement* applies to all *B&R* offers made by and all *Orders* submitted to *B&R* and will become content of each *Order*.
- 2.3.** *B&R* rejects the applicability of any terms and conditions of *Purchaser*.
- 2.4.** Any deviations from and/or amendments to the *Agreement* and/or an *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) the *Agreement*; (ii) any written supplements to or deviations from the *Agreement* or from or to any *Order* agreed to by *B&R*; (iii) *Order Confirmation*.
- 2.6.** *B&R* does not assume any responsibility for compliance with federal, state or local laws

and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the *Contract Products* is the sole responsibility of the *Purchaser*. All laws and regulations referenced herein shall be those in effect as of *B&R's* offer date. In the event of any subsequent revisions or changes thereto, *B&R* assumes no responsibility for compliance therewith. If *Purchaser* desires a modification as a result of any such change or revision, it shall be treated as a change per Clause 25. Nothing contained herein shall be construed as imposing responsibility or liability upon *B&R* for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection, or operation of the *Contract Products*.

- 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. The *Agreement* shall apply accordingly with respect to any such third party.

### 3. Safety

- 3.1. *B&R* warrants that the *Contract Products*, excluding *Application Software*, will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of *B&R's* offer. Upon prompt written notice from the *Purchaser* of a breach of this warranty, *B&R* will replace the affected part or modify it so that it conforms to such standard or regulation. *B&R's* obligation shall be limited to such replacement or modification. In no event shall *B&R* be responsible for liability arising out of the violation of any OSHA standards relating to or caused by *Purchaser's* design, location, operation, or maintenance of the *Contract Products*, its use in association with other equipment of *Purchaser*, or the alteration of the *Contract Products* by any party other than *B&R*.
- 3.2. Even when not explicitly requested by *B&R*, *Purchaser* is responsible for assessing, evaluating and communicating 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 the *Agreement*. *Purchaser* shall be responsible vis-à-vis *B&R* for any and all liabilities resulting or arising therefrom.

### 4. Termination for default

- 4.1. If (i) *Purchaser* fails to meet any of its 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 its 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) *Purchaser's* assets are entirely or partially seized, or (viii) *Purchaser* is in breach of *ABB's* Code of Conduct of (Clause 17), *B&R* may in its own discretion and at all times preserving any right to payment of costs, damages and interests suspend execution of any existing contractual relationship/duty in any particular *Order* or legally terminate and/or dissolve it in whole or in part without prior notice of default by means of a written notice.
- 4.2. No termination by *Purchaser* for material default shall be effective unless, within fifteen (15) working days after receipt by *B&R* of *Purchaser's* written notice specifying such default, *B&R* shall have failed to initiate and pursue with due diligence correction of such specified default.
- 4.3. If in the event of termination for a material default,
- 4.3.1. If *B&R* is the defaulting *Party*, *B&R* shall reimburse *Purchaser* the difference between that portion of the *Order* price allocable to the terminated scope and the

actual amounts reasonably incurred by *Purchaser* to complete that scope, and

**4.3.2.** *if Purchaser is the default Party, Purchaser shall pay B&R the portion of the Order price allocable to Contract Products completed.*

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

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

**5.2.** *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 of *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, and patents in its sphere.

Safety is the full responsibility of *Purchaser*. This includes, but is not limited to, (i) risk assessment, (ii) safety protocols, (iii) understanding requirements as stated in the user manual, (iv) validation and inspection of any safety function, and (v) prohibition and prevention of misuse of the *Contract Products*.

Safety is not included in *B&R's* scope of services. *B&R* may provide technical assistance which is understood as non-binding recommendations.

In no event will *B&R*, its officers, directors, representatives, assigns, suppliers or subcontractors assume any responsibility or liability for the safety or services performed by *B&R's* application engineers at the request of the *Purchaser*. *Purchaser* agrees that *B&R* shall 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 safety or any services *B&R* provided to *Purchaser*.

**5.3.** In case of *Application 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 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.

- 5.4.** *Contract Products* sold hereunder are not intended for use in connection with any nuclear facility or activity, and *Purchaser* warrants that it shall not use or permit others to use *Contract Products* for such purposes, without the advance written consent of *B&R*. If, in breach of this, any such use occurs, *B&R* (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, including without limitation any physical damage to a nuclear facility itself, resulting from a nuclear incident and, in addition to any other rights of *B&R*, *Purchaser* shall indemnify and hold *B&R* (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability including, but not limited to, any physical damage to the nuclear facility or surrounding properties, if any. Consent of *B&R* to any such use, if any, will be conditioned upon additional terms and conditions that *B&R* determines to be acceptable for protection against nuclear liability including but not limited to the requirement that the *Purchaser* and/or its end user customer shall have complete insurance protection against liability and property damage including without limitation physical damage to a nuclear facility itself or any surrounding properties, if any, resulting from a nuclear incident and shall indemnify *B&R*, its subcontractors, suppliers and vendors against all claims resulting from a nuclear incident including, but not limited to, any physical damage to the nuclear facility.

## **6. 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*. Any deviation in an *Order* from the *Agreement* shall be null and void, unless agreed to by *B&R* in writing.
- 6.3.** *Purchaser* must submit its *Order(s)* 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 *Order* becomes effective when the *Order* is accepted by *B&R*. *B&R* may accept the *Order* through *Order Confirmation* or delivery.
- 6.5.** *Purchaser* must examine each *Order Confirmation* without undue delay. When an *Order Confirmation* deviates from the *Order*, *Purchaser* must object within five (5) working days of receipt, otherwise the *Order Confirmation* shall be deemed accepted.

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

Only upon *B&R*'s acceptance of *Purchaser*'s request will *B&R* carry out the installation and start-up of the *Contract Products*. *Purchaser* shall refund all *B&R*'s adequate (i) travel expenses, (ii) subsistence expenses and (iii) all adequate expenses for working times (including traveling and waiting times) as per *B&R*'s offer. Any and all permits required by applicable law 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 *B&R*'s offer. If not otherwise specified in *B&R*'s offer, the training/instruction shall be carried out in the company facilities of *B&R*.

## **9. Delivery • Packing**

- 9.1.** Basic delivery periods, which may be reasonably extended by *B&R*, result from the indicative values separately provided by *B&R* in *B&R*'s offer and/or the *Order Confirmation*. *B&R* shall in any event have the right to make partial deliveries.
- 9.2.** Unless otherwise mutually agreed in writing, deliveries are made according to FOB Roswell, Georgia.
- 9.3.** If the scheduled delivery of *Contract Products* is delayed by *Purchaser* or by force majeure (as specified in Clause 10), *B&R* may move the *Contract Products* to storage for the account of and at the risk of *Purchaser* whereupon it shall be deemed to be delivered.
- 9.4.** Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage with respect to the sale of *Contract Products* shall pass from *B&R* to *Purchaser* at delivery as defined in Clause 9.2.
- 9.5.** *Contract Products* will be packed reasonably and properly.

## **10. Force Majeure • Shortage of Goods**

- 10.1.** *B&R* shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by force majeure conditions beyond its reasonable control; including, but not limited to, acts of God such as fire, earthquake, landslide etc. but also war (declared or undeclared) or warlike circumstances, revolution, delays attributable to outbreaks, epidemics and pandemics, unrest, business disruptions, official measures, labor dispute, compliance with government regulations, delays in delivery by upstream suppliers, shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources, blackout, and similar comparable circumstances. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the price will be adjusted to compensate *B&R* for such delay.
- 10.2.** Any contract, order acceptance or order confirmation by *B&R* is entered into and made subject and conditioned to the above terms, which the *Parties* recognize as fundamental conditions of any such agreement between the *Parties*.

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

- 11.1.** Prices and terms of payment are determined by *B&R*'s offer. 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. Prices quoted do not include federal, state, provincial, local or any other taxes, charges, levies and duties, and if same are applicable these shall be promptly paid by *Purchaser*.
- 11.2.** In case and insofar that no terms of payment are specified in *B&R*'s offer, 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.

- 11.3. 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.
- 11.4. 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.
- 11.5. 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.
- 11.6. Unless otherwise agreed or prohibited by law, any payment or charge not received when due will bear interest at the rate of one and a half percent (1.5 %) per month and eighteen percent (18 %) per year from the date due.
- 11.7. The full purchase price set forth for the *Contract Products* shall not be subject to any offset, 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*.
- 11.8. Physical title to the *Contract Products* shall transfer to *Purchaser* upon delivery according to the applicable freight term specified in Clause 9.2. No ownership rights to *Intellectual Property*, *Software*, *Background IP*, or *Foreground IP* shall pass to *Purchaser* merely by way of physical title being transferred. Other sections in this *Agreement* determine ownership of these items.
- 11.9. 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

- 12.1. *B&R* warrants that at the time when the risk passes the *Contract Products* (excluding *Software*, which is warranted as specified in Clause 12.7 below) (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 in material and workmanship.
- 12.2. The warranty period for the *Contract Products* (excluding *Software*) is twelve (12) months from the date of shipment. After any improvement or replacement of the *Contract Products* (excluding *Software*), the original warranty period does not begin anew.
- 12.3. The exclusive place of performance for the elimination of defects under the above referenced warranty shall be *B&R*'s headquarter in A-5142 Eggelsberg, Austria 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* (excluding *Software*) at its own expense. Returns shall travel on the risk of *Purchaser*. *B&R* shall not be responsible for providing temporary power, removal, installation, reimbursement for labor costs or working access to the nonconforming *Contract Products*, including disassembly and re-assembly of non-*B&R* supplied equipment, or for any other expenses incurred in connection with the repair or replacement, all of which shall be at *Purchaser's* risk and expense.

**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) improperly repaired or altered *Contract Products*; (iv) improper handling, use, operation, storage, shipment or lack of maintenance contrary to *B&R* instructions, (v) errors, including, but not limited to, software errors that are common without impairment of use (vi) functionality and/or performance of the *Contract Products* with respect to *Purchaser's* applications; (vii) *Contract Products* subjected to misuse, negligence or accident; and (viii) *Contract Products* comprised of materials provided by or a design specified by *Purchaser*.

**12.5.** *Contract Products* delivered shall be deemed accepted upon delivery.

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* five (5) 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 five (5) working days period.

**12.6.** The warranty covers free improvement (repair) or replacement of the defective *Contract Products* (excluding *Software*) 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 costs identified in Clause 12.3 above); expenses incurred by *Purchaser* in connection with the warranty will not be refunded.

**12.7.** **There is no warranty 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.) or similar services, *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 *Application 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.

**12.10.** The *Purchaser's* exclusive remedy for any breach of the warranty referenced in Clause 12.9 above shall be for *B&R*, upon receipt of written notice given within five (5) 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.

**12.11.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE *PURCHASER'S* EXCLUSIVE REMEDIES AND *B&R'S* ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY (INCLUDING ANY LATENT DEFECTS), WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THOSE STATED HEREIN.

### 13. Limitation of Liability

- 13.1. *B&R's* aggregate liability for all claims whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from the *Order* or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under the *Order*, or from any services rendered in connection therewith, shall in no case (except for *B&R's* intellectual property indemnification obligations as provided in Clause 14.4) exceed the *Order* price.
- 13.2. In no event shall *B&R*, its suppliers or subcontractors be liable for indirect damage, consequential damage, special damage, incidental damage, operational interruption, loss of profit, loss of information and data, whether in contract, warranty, tort, negligence, strict liability or otherwise. 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* will not be liable for financial losses of *Purchaser* in connection with work carried out and expenses incurred by *Purchaser* in the context of warranty.
- 13.3. Claims for damages and reimbursement for expenses against *B&R* arising out of the *Order* have a limitation period of twelve (12) months after delivery of the *Contract Products*.

### 14. Intellectual Property

- 14.1. Definitions. "*Technology*" means all inventions, discoveries, ideas, data, information, specifications, designs, concepts, know-how, processes, methods, techniques, formulae, code, *Software* (as defined in Clause 24.1), executables, manufacturing processes, unique compositions, substances, works of authorship, and materials pertaining to any of the preceding; whether or not patentable, copyrightable or subject to other forms of intellectual property or other protection; whether or not reduced to tangible form. "*Intellectual Property Rights (IP Rights)*" means all current and future rights in copyrights, trade secrets, trademarks, trade dress, patents, design rights, and any other intellectual property rights that may exist anywhere in the world, including, in each case whether unregistered, registered or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing. "*Background Intellectual Property (IP)*" means *IP Rights* and *Technology* that are/were conceived, developed, created or acquired prior to this *Agreement* and to any of its future *IP Rights* and *Technology* that are conceived, developed, created or acquired independently or outside the scope of this *Agreement*. "*Foreground Intellectual Property (IP)*" means all *IP Rights* and *Technology* newly conceived, developed or created by either *Party* independently or both *Parties* jointly in furtherance of any project governed by the terms of this *Agreement*. *Foreground IP* explicitly excludes *Background IP* of either *Party*.
- 14.2. Intellectual Property Ownership. Each *Party* hereby owns and will retain all right, title and interest in its *Background IP*. For clarity, *B&R* hereby owns and will retain all right,



title and interest in any and all *Background IP* incorporated in any *Contract Products* or anything else provided to *Purchaser*, its officers, agents, or employees as part of this *Agreement*. Regarding any *Foreground IP* created by either *Party* or both resulting from direct improvements to the *Contract Products*, or any hardware or *Software* provided by *B&R*, *B&R* hereby owns and shall own all right, title and interest in such *Foreground IP*. Regarding any other *Foreground IP*, the *Party* that creates it hereby owns and shall own all right, title and interest in such *Foreground IP*. For clarity, *Purchaser* may own *Foreground IP* it creates covering broader end-product systems, as long as such *Foreground IP* does not cover direct improvements of or prevent *B&R*'s future free and full use of, the *Contract Products* or any hardware or *Software* provided by *B&R*. Additionally, *Purchaser* may own some aspects of *Application Software* as detailed in Clause 24.

- 14.3.** Licenses. *B&R* grants to *Purchaser* a nonexclusive, sublicensable (only to affiliates), perpetual, paid-up, royalty-free, worldwide license to exercise all *Background IP* and *Foreground IP* owned by *B&R* solely for the purpose of *Purchaser* using and maintaining the specific *Contract Products*, as intended, provided by *B&R* under this *Agreement*, or otherwise carrying out the responsibilities of *Purchaser* specified in this *Agreement*. *Purchaser* is expressly not licensed to the foregoing to remake, rebuild, copy, or have others remake, rebuild or copy any of the *Contract Products* or other equipment or parts provided by *B&R*. *Purchaser* grants to *B&R* a nonexclusive, sublicensable (only to affiliates), perpetual, paid-up, royalty-free, worldwide license to exercise all *Background IP* owned by *Purchaser* solely for the purpose of *B&R* carrying out its responsibilities specified in this *Agreement*. Additionally, *Purchaser* grants to *B&R* a nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all *Foreground IP* created or owned by *Purchaser* for any purposes. In case of an *Order*, *Purchaser* must comply with any additional license terms that are applicable to the *Contract Products*, such terms available to *Purchaser* upon request or available at [www.br-automation.com/eula](http://www.br-automation.com/eula). These licensing terms apply to *Technology* broadly, which includes *Software*; however, more specific licensing terms for *Software* are provided in Clause 24.

Training Materials. *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 *Contract 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.

- 14.4.** *B&R* shall indemnify and defend *Purchaser* from all claims, suits, actions, awards, liabilities, damages, costs and attorneys' fees arising directly out of actual or alleged infringement, misappropriation or wrongful use of a third party's intellectual property. *Purchaser* shall timely notify *B&R* of any such claim, suit or action. *B&R* shall, at its own expense, defend such claim, suit or action on behalf of *Purchaser* provided that *Purchaser* has given *B&R* prompt written notice of such action, provides assistance in the defense thereof and the right to control aspects of the defense thereof including the right to settle or otherwise terminate such action on behalf of *Purchaser*. Notwithstanding the foregoing, *Purchaser* may participate at its own expense in the defense and any settlement discussions and will have the right to approve or reject any settlement agreement that involves an admission of fault by the *Purchaser* or imposes non-monetary obligations on the *Purchaser*. If, in any such action, the *Contract Products* are held to constitute an infringement, or the practice of any process using the *Contract Products* as intended is finally enjoined, *B&R* shall, at *Purchaser*'s option and *B&R*'s expense, procure for

*Purchaser* the right to continue using said *Contract Products*; or modify or replace the *Contract Products* with non-infringing equipment or, with *Purchaser's* assistance, modify the *Contract Products* or process to use it so that it becomes non infringing; or remove it and refund the portion of the price allocable to the infringing *Contract Products*.

- 14.5.** The obligations in Clause 14.4 above shall not apply to and *B&R* accepts no liability for: (i) changes or modifications to the *Contract Products* made by *Purchaser* or its customer; (ii) any other equipment or processes, including *Contract Products*, which have been modified or combined with other equipment or process not supplied by *B&R*; (iii) any *Contract Products* or processes supplied according to a design, other than a *B&R* design, required by *Purchaser*; (iii) any products manufactured by the *Contract Products* or process; (iv) any use of the *Contract Products* or process contrary to *B&R* instructions; (v) any patent issued after the date hereof; or (vi) any action settled or otherwise terminated without the prior written consent of *B&R*. Nor will *B&R* accept liability for infringement of third-party intellectual property where the *Contract Products* are based, even partially, on *Purchaser* specifications or user-specific use of the *Contract Products*.
- 14.6.** Any claims of *Purchaser* other than those set forth in this Clause 14 are excluded.
- 14.7.** To the extent that said *Contract Products* or any part thereof is modified by *Purchaser*, or combined by *Purchaser* with equipment or processes not furnished hereunder (except to the extent that *B&R* is a contributory infringer) or said *Contract Products* or any part thereof is used by *Purchaser* to perform a process not furnished hereunder by *B&R* or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against *B&R*, *Purchaser* shall defend, indemnify and hold *B&R* harmless in this respect, in the same manner and to the same extent that *B&R* would be obligated to indemnify *Purchaser* under Clause 14.4.
- 14.8.** THE FOREGOING PARAGRAPHS STATE THE EXCLUSIVE LIABILITY OF *B&R* AND EQUIPMENT MANUFACTURER FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT.

## **15. Adjustment of Contractual Conditions**

- (a) The *Parties* are aware of the challenges related to outbreaks, epidemics, war (declared or undeclared), government regulations and acts of governmental authorities (including sanctions), civil unrest, and general shortages of electronic components and elements, market volatility, availability and cost of raw materials, commodities, as well as the shortage and market fluctuation of logistic/transportation availability, costs and capacities that may impact the normal business activity and cost of performance, the delivery schedules and/or the execution of the scope or performance of work, the impacts of which are currently unknown.
- (b) Notwithstanding anything in the *Agreement* to the contrary, if as a result of any of the above aforementioned events, the costs of *B&R* 's performance increase or *B&R* 's performance obligations are materially adversely affected or delayed, the *Parties* in the spirit of cooperation, will work together in good faith and within a reasonable time after the invocation of this Clause, to negotiate alternative contractual terms in terms of equitable adjustments to delivery schedules, pricing and/or possible reductions of the contractually owed quantity of the *Contract Products* and services to be delivered to the *Purchaser*.
- (c) The aforementioned shall be performed with a view to employing reasonable efforts to ensure that the *Agreement* can be at least fulfilled in part.
- (d) In the event the *Parties* are unable to reach a mutually acceptable equitable adjustment within a reasonable time for any of the foregoing, then the delivery and execution of the scope and/or performance of work impacted by the foregoing shall be excused from the *Agreement*. All other rights, covenants and obligations not impacted by such events shall remain in force

and applicable mutatis mutandis.

(e) Each *Party* waives any claim against the other *Party* either for direct damages and/or loss of profits and/or indirect and/or intermediate and/or consequential and/or punitive damages, penalties and/or liquidated damages arising from or anyhow connected with any of the challenges listed above.

(f) If any dispute or difference arises between the *Parties*, the *Parties* hereto shall endeavor to settle such dispute amicably.

(g) Any contract, order acceptance or order confirmation by *ABB* is entered into and made subject and conditioned to the above terms, which the *Parties* recognize as fundamental conditions of any such agreement within the *Parties*.

## 16. Confidentiality

**16.1.** *B&R* and *Purchaser* (as to information disclosed, the “Disclosing Party”) may each provide the other *Party* (as to information received, the “Receiving Party”) with Confidential Information in connection with the *Order*. “Confidential Information” means (a) information that is designated in writing as “confidential” or “proprietary” by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as “confidential” or “proprietary” by Disclosing Party at the time of oral or visual disclosure and is confirmed to be “confidential” or “proprietary” in writing within fifteen (15) days after the oral or visual disclosure or (c) information by its nature or the circumstances surrounding disclosure is or reasonably should be understood to be confidential or proprietary to the Disclosing Party or its affiliates. In addition, prices for *Contract Products* and services shall be considered *B&R*’s Confidential Information. The *Parties* shall also maintain the confidentiality of both the existence and content of their contractual relationships.

**16.2.** The Receiving Party agrees: (i) to use the Confidential Information only in connection with the *Order*, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party; however, *B&R* may disclose *Purchaser*’s name and project information to third parties for reference purposes. Notwithstanding these restrictions, each party shall permit access to the other’s Confidential Information only to its employees who: (i) reasonably require access to Confidential Information for purposes approved by the *Agreement*, and (ii) have undertaken a binding obligation of confidentiality with respect to the confidential information of others entrusted to him or her, and (iii) have been apprised of the confidentiality obligations hereunder. *B&R* may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the *Order*. A Receiving Party may only disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the *Order* entitles Receiving Party to retain an item of Confidential Information. *B&R* may also retain one archive copy of *Purchaser*’s Confidential Information.

**16.3.** The obligations under this Clause 16 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party’s knowledge,

subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information. As to any individual item of Confidential Information, the restrictions under this Clause 16 shall expire five (5) years after the date of disclosure. This Clause 16 does not supersede any separate confidentiality or nondisclosure agreement signed by the *Parties*.

## **17. 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>

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

**18.1.** Each contractual relationship between the *Parties*, in particular each *Order*, shall be governed exclusively by the substantive laws of the Canadian Province of Ontario, 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 the city of Toronto, Province of Ontario and the *Parties* waive the defense of inconvenient forum in respect to any such litigation.

## **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 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 this *Agreement* and/or any *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.** *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*.

**19.3.** If any individual provision of the *Agreement* 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 the *Agreement* and/or an *Order* contains a loophole that needs to be closed.

**19.4.** The headings to the clauses of the *Agreement* 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.
- 19.6. Any assignment of the *Order* or of any rights or obligations under the *Order* without prior written consent of *B&R* shall be void.
- 19.7. The *Parties* acknowledge having specifically requested that this *Agreement* and all related documents and correspondence be drafted in English. Les Parties reconnaissent avoir exigé que la présente entente et tous les documents s’y rapportant soient rédigés en anglais.

## 20. Data Protection

Each *Party* shall process personal data under the *Agreement* only in compliance with the provisions of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Directive –“GDPR”) and Canada’s Personal Information Protection and Electronic Documents Act (S.C. 2000, c. 5) (“PIPEDA”) as well as all applicable national, state or provincial data protection law. The Parties undertake to conclude an agreement in accordance with the relevant standards, depending on the processing activity of personal data. The Privacy Notice of *B&R* can be found here: <https://www.br-automation.com/en-gb/about-us/privacy-notices/>.

## 21. Returned Goods

*Purchaser* may only return *Contract Products* to *B&R* in accordance with *B&R*’s return policy. Such policy includes the following requirements: returns must receive written authorization from *B&R* on *B&R*’s Material Return Authorization form. *B&R* has no obligation to accept returned *Contract Products*, and under no circumstances will *B&R* accept returned *Contract Products* after sixty (60) days from the date of *B&R*’s shipment. *B&R* may charge a restocking fee on any returned *Contract Products* accepted by *B&R*. No used, damaged, obsolete, or customized *Contract Products* are returnable. Only the original purchaser may be eligible to return *Contract Products*. *Contract Products* must be returned in their original packaging. Shipping is paid by the *Purchaser*. In the event *Purchaser* returns *Contract Products* not in accordance with *B&R*’s return policy, *B&R* shall be entitled to demand the full purchase price.

## 22. Integrity

For the purposes of this Article 22, the following terms shall have the meaning set forth herein: *Applicable Integrity Laws* means:

(i) *Anti-bribery and anti-corruption laws*: including the Corruption of Foreign Public Officials Act (Canada), 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 antitax evasion in relevant jurisdictions (collectively “Antibribery & Corruption Laws”);

(ii) *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, (1) import, export, re-export, transfer, or trans-shipment of goods, services, technology, or software; (2) 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 (3) any other laws, regulations, administrative or regulatory decisions, or guidelines adopted, maintained, or enforced by any *Sanctions Agency* on or after the date of this *Agreement* (collectively, “*Trade Control Laws*”);

(iii) *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*”).

*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 (1) the United Nations, (2) Canada, (3) 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), (4) the European Union or (5) Switzerland.

*Restricted Party* means: Any entity or person included on a list (including Canada, 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 Party*).

(a) For agreements with respect to sales of *Contract Products* and services to direct customers:

- (i) Both Parties will comply with all Applicable Integrity Laws in connection with this *Agreement*. 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 *Agreement* shall undertake to comply with all Applicable Integrity Laws and the requirements set out in this Article in connection with this *Agreement*. 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 this *Agreement*.
- (ii) Each party represents and warrants that, to the best of its knowledge, at the date of this *Agreement* neither it, nor any of their respective directors or officers are a *Restricted Party*. Each party agrees that it shall promptly notify the other party if it becomes a *Restricted Party*.
- (iii) If, as a result of (1) Trade Control Laws issued or amended after the date of this *Agreement*, (2) the *Purchaser* becoming a *Restricted Party*, or (3) 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 to the *Agreement* 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. Once such notice has been received by the *Purchaser*, B&R shall be entitled to either immediately suspend the performance of the affected obligation under the *Agreement* until such time as B&R may lawfully discharge such obligation or unilaterally terminate the *Agreement* 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 *Agreement*.
- (iv) In the event of suspension or termination as set out in paragraph (iii) above, B&R shall be entitled to payment as set out in Clause 4.3.2 of this (Clause 22) 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 *Contract Products* or services in connection with this *Agreement*.

- (v) The *Purchaser* represents that it or the end-user is the ultimate end recipient of any items provided under this *Agreement*, that the items are for civil use only and that it will not directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any items received from *B&R* to any third party or country in violation of *Trade Control Laws*.
- (vi) For the avoidance of doubt, no provision in this *Agreement* 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*.

(b) For agreements with respect to sales of *Contract Products* or services where *Purchaser* is a channel partner of *B&R*:

(i) Both parties hereby represent, warrant, and agree that they are knowledgeable as to, and will comply with, all *Applicable Integrity Laws* in connection with this Clause 22. 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 Clause 22 shall undertake to comply with all *Applicable Integrity Laws* and the requirements set out in this Integrity Appendix in connection with this Clause 22. 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 this *Agreement*. It is the intent of the parties that no payments or transfers of value shall be made that have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. Further, for the avoidance of doubt, no provision of this Integrity Clause or this *Agreement* 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*.

(ii) *Purchaser* hereby represents, warrants, and agrees that:

(1) Notwithstanding anything in this *Agreement* to the contrary, no amounts otherwise payable to *Purchaser* under this *Agreement* shall be due and payable if and to the extent such are prohibited, restricted, or limited by *Applicable Integrity Laws*.

(2) *Purchaser* has reviewed and understands ABB's Code of Conduct (Clause 17) and other relevant Integrity-related ABB procedures that may be made available by *B&R* to *Purchaser* from time to time.

(3) *Purchaser* acknowledges that it will be subject to *B&R*'s ongoing due diligence and compliance monitoring processes. *Purchaser* shall inform *B&R* in a timely manner of any material changes to information previously provided in connection with *B&R*'s due diligence processes and shall provide *B&R* with any additional information on or certifications of compliance required upon request.

(4) *Purchaser* shall, upon *B&R*'s reasonable request, make available its employees, officers, directors, affiliates or third parties for *B&R* approved integrity-related training.

(5) If, as a result of *Trade Control Laws*, the performance by *B&R* of any of its obligations hereunder 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. Once such notice has been received by the *Purchaser*, *B&R* shall, subject to mandatory provisions of *Applicable Law*, be entitled to either immediately suspend the performance of the affected obligation under the *Agreement* until such time as *B&R* may lawfully discharge such obligation or shall have the right to immediately terminate this *Agreement* by notice in writing from the date specified in the said written notice. *B&R* will not be liable to the *Purchaser* for any costs, expenses or damages associated with such suspension or termination of the *Agreement*.

(6) To the extent applicable, *Purchaser* shall, at its own cost, be responsible for compliance with all applicable export laws and obtaining any necessary customs import clearance. Whenever *Purchaser* is the exporter (including with respect to exports of goods, services, technology, and deemed exports of technology), unless otherwise agreed, *Purchaser* shall, at its own cost, obtain all export licenses and any other clearances or authorizations required under applicable *Trade Control Laws* and provide *B&R* with written notice of such license(s), clearance(s) or authorization(s) and all applicable conditions. In particular, *Contract Products* that are subject to the U.S. Export Administration Regulations ("EAR") must not be exported without obtaining the 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.

(7) *Purchaser* shall not solicit business from, nor seek to directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any *Contract Products*, goods, materials, parts, equipment, services, technology, technical data or software provided under this *Agreement* to, or for the benefit of, any *Restricted Party* or jurisdiction/region subject to comprehensive sanctions (including Cuba, Iran, North Korea, Syria, Crimea, Luhansk, Donetsk, Kherson, and Zaporizhzhia regions of Ukraine), or Russia or Belarus, as may be amended by a relevant *Sanctions Agency* from time to time). *Purchaser* shall immediately notify *B&R* if it or any of its employees, officers, directors, affiliates, third parties engaged in connection with the *Agreement* and/or any of its customers or end-users becomes a *Restricted Party*.

(8) *Purchaser* is hereby informed, and will inform its employees, officers, directors, and any affiliates or third parties engaged in relation to the *Agreement*, that *B&R* has established the following reporting channels where any suspected or observed violations of *Applicable Integrity Laws*, ABB Code of Conduct, or similar rules may be anonymously reported: Web portal: [www.abb.com/integrity](http://www.abb.com/integrity) Telephone: number specified on the above Web portal Mail: address specified on the above Web portal

(9) *Purchaser* shall immediately notify *B&R* in writing of any potential breach of obligations set forth under *Applicable Integrity Laws*, the ABB Code of Conduct, or this *Integrity Appendix* by either the *Purchaser*, its affiliated parties or any third parties engaged by *Purchaser* in relation to the *Agreement*. In the event of such notification or in the event that *B&R* otherwise has reason to believe that a potential or possible breach has occurred, *Purchaser* shall make available its records, employees, officers, directors, and any affiliates or third parties engaged in relation to the *Agreement* for any audit, inquiries, or investigation which *B&R* deems necessary. During such audit, inquiries or investigation, *B&R* may withhold payments 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 withhold payments under this provision.

(10) Notwithstanding the foregoing or any other provision in the *Agreement*, 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 *Integrity Appendix*, *B&R* shall, subject to mandatory provisions of *Applicable Law*, have the right to unilaterally terminate the *Agreement* with immediate effect. Any claims for payment by the *Purchaser*, including claims for services previously rendered, shall be automatically terminated, and cancelled and all payments previously made shall be forthwith refunded to *B&R* to the extent permitted under *Applicable Integrity Laws*. 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 payments 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 *Agreement*.



## 23. US Government Contracts

- 23.1.** This Clause 23 applies only if the *Order* is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.
- 23.2.** *Purchaser* agrees that all *Contract Products* and services provided by *B&R* meet the definition of “commercial-off-the-shelf” (“COTS”) or “commercial item” as those terms are defined in Federal Acquisition Regulation (“FAR”) 2.101. *Purchaser* agrees, consistent with FAR 12.212, that commercial computer software and commercial computer software documentation are licensed under *B&R’s Software* license. To the extent the Buy America(n) Act, Trade Agreements Act, or other domestic preference requirements are applicable to this *Agreement*, the country of origin of *Contract Products* is unknown unless otherwise specifically stated by *B&R* in this *Agreement*. *Purchaser* agrees any services offered by *B&R* are exempt from the Service Contract Act of 1965 (FAR 52.222-41). The version of any applicable FAR clause listed in this Clause 23 shall be the one in effect on the effective date of the *Order*.
- 23.3.** If *Purchaser* is an agency of the U.S. Government, then as permitted by FAR 12.302, *Purchaser* agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with the *Agreement*. *Purchaser* further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the *Order* price.
- 23.4.** If *Purchaser* is procuring the *Contract Products* or services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then *Purchaser* agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the *Order* price.

## 24. Software

- 24.1.** Definitions and General Terms. “*Software*” means any computer programs, software applications, apps or the like, including both machine-readable object code (or executable code) and source code, and any subsequent updates to said software supplied by its owner, and further including any and all related user manuals and product documentation provided or made available by its owner. “*System Software*” means *Software* created by *B&R* that is a development studio used to create applications. “*Application Software*” means *Software* created using the *System Software* and primarily designed to control *B&R* hardware devices. All *Software* is a subset of *Technology* as defined herein, therefore terms related to *Background Intellectual Property* and *Foreground Intellectual Property* apply to *Software* as well, unless any conflicting terms are provided in this section, in which case this section governs for *Software*.
- 24.2.** Software Ownership. To the extent any *Contract Products* provided under this *Agreement* contain *System Software* or any other *Software* that is not *Application Software*, *B&R* owns all rights, title and interest in such *Software*, including any and all intellectual property rights or other proprietary rights in and to the *Software*. No ownership rights to such *Software*, including any intellectual property or proprietary rights, shall pass to *Purchaser* merely by way of such *Software* being provided to *Purchaser* under this *Agreement*; nor is such *Software* deemed “a work made for hire” under the Copyright Act. Regarding any *Foreground IP* created by either *Party* or both resulting from direct improvements to the *System Software*, *B&R* hereby owns and shall own all right, title and interest in such *Foreground IP*. Regarding any *Foreground IP* created by either *Party* or both resulting from creation of *Application Software*: a) *Purchaser* may own such *Foreground IP* to the extent such software routines are specific to controlling *Purchaser’s* machines according to its specifications; and b) *B&R* hereby owns and shall own any

general routines applicable to multiple use-cases and machines, general-purpose libraries and similar.

**24.3.** Software Licenses. To the extent any *Contract Products* provided under this *Agreement* contain *System Software* or any other *Software* that is not *Application Software*, *B&R* grants to *Purchaser* a limited license to use such *Software* (object code or executable code only, no access to source code), subject to the following: (i) the *Software* may be used only in conjunction with *Contract Products* or other equipment provided by *B&R*, as specified by *B&R*; (ii) the *Software* shall be kept strictly confidential; (iii) the *Software* shall not be copied, reverse engineered, or modified; (iv) the *Purchaser's* license and right to use the *Software* shall terminate immediately when the related *Contract Products* or equipment is no longer used by the *Purchaser* or when the relationship between the *Parties* is otherwise terminated, e.g. for breach of contract, hereunder; and (v) the rights to use the *Software* are non-exclusive and non-transferable, except with *B&R's* prior written consent. In the event of termination of the license, *Purchaser* shall immediately cease using such *Software* and, without retaining any copies, notes or excerpts thereof, return to *B&R* the *Software* and all copies thereof and shall remove all machine-readable or executable *Software* from all of *Purchaser's* devices and storage media. Regarding any *Application Software* or parts thereof created under this *Agreement*: a) *Purchaser* grants to *B&R* a nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all underlying *Foreground IP* created or owned by *Purchaser* for any purposes, and b) *B&R* grants to *Purchaser* a nonexclusive, non-sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all underlying *Background IP* or *Foreground IP* created or owned by *B&R* solely for the purposes of using, in the manner as intended, the *Application Software* (in their form as created under this *Agreement* and natural improvements and bug fixes implemented by *Purchaser* after this *Agreement*).

## **25. Changes**

**25.1.** Any changes requested by *Purchaser* affecting the ordered scope of work must first be reviewed by *B&R* and any resulting adjustments to affected provisions, including price, schedule, and guarantees must be mutually agreed to in writing prior to implementation of the change.

**25.2.** *B&R* may, at its expense, make such changes in the *Contract Products* as it deems necessary, in its sole discretion, to conform the *Contract Products* to the applicable specifications. If *Purchaser* objects to any such changes, *B&R* shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

## **26. Remedies**

The remedies of the *Purchaser* as set forth in the *Agreement* are exclusive and are its sole remedies for any failure of *B&R* to comply with its obligations hereunder.

## **27. Health, Safety and Environment**

(a) *Purchaser* shall be obligated to maintain safe working conditions at its facility or location (the "*Site*"), including the implementing of appropriate procedures regarding hazardous material, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock- out/tag-out ("*LOTO*") procedures including physical *LOTO* or a mutually agreed upon alternative method.

(b) *Purchaser* shall immediately advise *B&R* in writing of all applicable *Site*-specific health, safety, security and environmental requirements and procedures. Without limiting *Purchaser's*

responsibilities hereunder, *B&R* has the right but not the obligation to, from time to time, review, audit and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the *Site*.

(c) If, in *B&R*'s reasonable opinion, the health, safety, or security of personnel or the *Site* is, or is likely to be, imperiled by security risks, the presence of or threat of exposure to hazardous material, or unsafe working conditions, *B&R* may, in addition to other rights or remedies available to it, remove some or all of its personnel from *Site*, suspend performance of all or any part of the purchase order, and/or remotely perform or supervise work. Any such occurrence shall be considered a force majeure event. *Purchaser* shall reasonably assist in ensuring the safe departure of personnel from the *Site*.

(d) *Purchaser* shall not require or permit *B&R*'s personnel to operate *Purchaser*'s equipment at *Site*.

(e) *Purchaser* will make its *Site* medical facilities and resources reasonably available to *B&R* personnel who need medical attention.

(f) *B&R* has no responsibility or liability for the pre-existing condition of *Purchaser*'s equipment or the *Site*, which is the sole responsibility of *Purchaser*. Prior to *B&R* starting any work at *Site*, *Purchaser* will provide documentation that identifies the presence and condition of any hazardous material existing in or about *Purchaser*'s equipment or the *Site* that *B&R* may encounter while performing under this *Agreement*. The provision of such documentation shall in no way release *Purchaser* from its responsibility for said conditions. *Purchaser* shall disclose to *B&R* industrial hygiene and environmental monitoring data regarding conditions that may affect *B&R*'s work or personnel at the *Site*. *Purchaser* shall keep *B&R* informed of changes in any such conditions

(i) *B&R* shall promptly notify *Purchaser* if *B&R* becomes aware of: (i) conditions at the *Site* differing materially from those disclosed by *Purchaser*, or (ii) previously unknown physical conditions at *Site* differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the *Agreement*. If any such conditions cause an increase in *B&R*'s cost of, or the time required for, performance of any part of the work under the *Agreement*, an equitable adjustment in price and schedule shall be made.

(g) If *B&R* encounters hazardous material in *Purchaser*'s equipment or at the *Site* that require special handling or disposal, *B&R* is not obligated to continue work affected by the hazardous conditions. In such an event, *Purchaser* shall at its sole cost and expense eliminate the hazardous conditions in accordance with applicable laws and regulations so that *B&R*'s work under the *Agreement* may safely proceed, and *B&R* shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in *B&R*'s cost of, or time required for, performance of any part of the work. *Purchaser* shall properly store, transport and dispose of all hazardous material introduced, produced or generated in the course of *B&R*'s work at the *Site*.

(h) *Purchaser* shall indemnify *B&R* for any and all claims, damages, losses, and expenses arising out of or relating to any hazardous material which are or were (i) present in or about *Purchaser*'s equipment or the *Site* prior to the commencement of *B&R*'s work, improperly handled or disposed of by *Purchaser* or *Purchaser*'s employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on *Site* by parties other than *B&R*.