

# LICENSE TERMS

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## 1. SCOPE AND APPLICABILITY

Bucher Hydraulics AG, Industriestrasse 15, 6345 Neuheim, Switzerland (the "**Supplier**") is a leading manufacturer of advanced hydraulic solutions used in machines worldwide. The Supplier provides certain software to the users of its Products (each a "**Customer**") relating to its Products. Customer's usage of any such software shall be subject to these license terms (the "**Terms**").

## 2. DEFINITIONS

### 2.1 Definitions

In these Terms the capitalized terms defined in this Clause 2.1 shall have the meanings set out next to them.

"**Affiliate**" means any person which, directly or indirectly, Controls, is Controlled by or is under common Control with another Person, and for the purposes of this definition, "**Control**" (including, with correlative meanings, the terms "controlled by" or "under common control") means the power to direct or cause the direction (through the election or appointment of the Persons who direct) of the management and policies of any Person, whether through the ownership of securities, by contract or otherwise.

"**Customer**" has the meaning assigned to such term in Clause 0.

"**Documentation**" means the documentation provided by the Supplier with respect to the Software.

"**Intellectual Property Rights**" means any and all rights in and to Intellectual Property.

"**Intellectual Property**" means (i) any patent applications, patent registrations, issued patents, continuations in part, divisional applications or analogous rights or license rights therefore; (ii) any trademarks, trade names, business names, brand names, domain names, service marks, copyrights, including any performing, author or moral rights, designs, inventions, patents, franchises, formulas, processes, know-how, technology and related goodwill; (iii) trade secrets; and (iv) all other intellectual or industrial property.

"**License Fee**" means the fee to be paid for the granting of the License.

"**License**" shall have the meaning assigned to such term in Clause 3.1.

"**Party**" means a party to these Terms.

"**Product**" means a hardware product delivered by the Supplier.

"**Software**" means any software provided to the Customer by the Supplier under these Terms.

"**System**" means the Customer's machinery or other system of components into which the Product is integrated.

"**Supplier**" has the meaning assigned to such term in Clause 1.

"**Terms**" has the meaning assigned to such term in Clause 1.

"**VAT**" means any consumption and use, goods and services, harmonized sales, value-added, sales and other similar taxes that ultimately are determined to be exigible on License Fees.

## 2.2 Interpretation

- (a) Any term denoting the singular shall be interpreted to also denote the plural and vice versa.
- (b) Any reference to a "**Clause**" shall be deemed to be a reference to a clause of the document in which the reference is made unless the circumstances provide otherwise.
- (c) Any reference to a "**Schedule**" shall be deemed to be a reference to a schedule of these Terms unless the circumstances provide otherwise.
- (d) "**Including**" shall be deemed to mean "including (without limitation)".

## 3. LICENSE

### 3.1 License Grant

- (a) The Supplier hereby grants the Customer a non-exclusive, non-sublicensable, non-transferable, perpetual right to use the Software (the "**License**") for the Software's dedicated purpose, i.e. in conjunction with the Products of the Supplier, subject to restrictions set out in Clause 3.2.
- (b) The Software may be used by and on behalf of the Customer and all its Affiliates.
- (c) For clarity: A License is only granted hereby to Customers having received the Software directly from the Supplier or from an OEM manufacturer together with Supplier's Products. No License is granted hereby if the Software is received in any other way.

### 3.2 Restrictions

- (a) Other than as expressly permitted by these Terms or applicable law, the Software may not be:
  - (i) disassembled, reverse engineered, or translated into any other software language, in particular any non-low-level or non-intermediate-level programming language;
  - (ii) edited, adapted, modified or amended;
  - (iii) copied;
  - (iv) sold, leased, transferred, sublicensed, assigned or otherwise made available to any third party (except for Affiliates of the Customer).
- (b) Other than the dedicated purpose of the Software, the Software may further not be used for any purpose, including:
  - (i) the creation of competing software, products or services;
  - (ii) benchmarking.
- (c) Use of the software may be subject to the connection of a dongle. The Customer shall be responsible for the safekeeping of such dongle. In case of loss, the replacement of the dongle may be subject to additional fees.

### 3.3 Revocation

The Supplier at its sole discretion may revoke or suspend the License if the Customer (i) materially breaches these Terms and the Supplier terminates the agreement based on these Terms in accordance with Clause 13.2; (ii) the Customer remains in uncured payment default after having received a default notice granting a reasonable curing period; and/or (iii) Supplier faces or suspects a security incident or there is, in the reasonable opinion of the Supplier, any type of security risk. If the Customer has received a

dongle for the use of the software, then, upon revocation of the license, it shall immediately return such dongle to the Supplier.

## 4. USE OF THE SOFTWARE

- (a) The Software may only be used by persons who have the necessary knowledge with respect to how the relevant Product is to be correctly configured.
- (b) The Customer uses the Software at its own risk. It is the Customer's responsibility to ensure that the configurations that are set using the Software are compatible with the Product for which the Software is used.
- (c) The Customer is aware that the Software may allow configurations that may damage the Product or lead to further damages, including to the System within which the Product is used. Supplier shall not be liable for damages due to misconfigurations made by the Customer. Further, the Customer is aware that the Supplier's Products do not contain any safety function or any safety system. The Product must not perform any safety functions without a safety system. The Customer is solely responsible for ensuring that the Product is used safely inside the Customer's System and shall implement the necessary safety system(s).

## 5. THIRD-PARTY SOFTWARE

The Software may require third-party software to be installed on the equipment on which the Software is used. Any such third-party software will be subject to the license terms of the third-party licensor, and the Customer will have to install such third-party software, and accept such third-party license terms, for the Software to operate correctly.

## 6. UPDATES

- (a) The Supplier may provide updates to the Software to the Customer from time to time. The provision of such updates shall be at the Supplier's absolute discretion, and the Supplier shall have no obligations in this regard.
- (b) Any updates to the Software provided by the Supplier shall be subject to the License.

## 7. FEES

### 7.1 License Fee

The Customer shall pay to the Supplier the one-time License Fee agreed upon the acquisition of the License, if any.

### 7.2 Invoices

- (a) Unless otherwise set out in the invoice, any invoice shall be paid by electronic funds transfer or wire transfer by Customer within ten (10) days from the receipt thereof.
- (b) All payments to Supplier in the context of these Terms shall be made in the currency set out in the invoice.

### 7.3 Taxes

All Fees and rates are quoted excluding VAT, if any.

## 8. INTELLECTUAL PROPERTY RIGHTS

Any and all intellectual property rights, including any and all copyrights, to and in the Software, the Documentation and any other documents and materials relating to the Software (the "Intellectual Property Rights") shall remain the sole property of the Supplier and/ or its third-party licensors.

## 9. WARRANTY

The Software is provided "as-is" and without any warranties or warranty rights of any kind.

## 10. LIMITATION OF LIABILITY

The Supplier's liability shall be excluded to the maximum extent permitted by law.

## 11. CONFIDENTIALITY

- (a) The Customer shall keep the Software and any non-public information remitted to the Customer together with the Software (collectively, the "**Confidential Information**") confidential, and will not, except as set forth in the following paragraph, disclose any Confidential Information in any manner whatsoever. The Customer has no rights to the Confidential Information, except as explicitly set out in these Terms.
- (b) The Customer shall keep these Terms confidential and will not disclose such terms except to its employees or agents that need to know.
- (c) Upon termination of any license agreement based on these Terms, the Customer will promptly destroy or delete, as applicable, all Confidential Information. The Customer continues to be bound by its obligations of confidentiality and non-use hereunder notwithstanding the deletion or destruction of Confidential Information. Notwithstanding the foregoing, the Customer may retain Confidential Information to the extent that it is required for compliance with applicable laws or its obligations pursuant to these Terms.
- (d) The obligations set out in this Clause 10 shall survive the termination or expiry of these Terms.

## 12. TRADE COMPLIANCE

The Customer acknowledges that the Software may be subject to laws and regulation concerning trade control (herein referred to as the "**Trade Control Laws**") that require authorization from the competent export control authority. Customer agrees to comply with any Trade Control Laws imposed by Switzerland, the European Union, the United States of America or any other jurisdiction that may be applicable to the Software. Customer shall not supply, export or re-export the Software or the Documentation to any country subject to such requirements or restrictions without the required license or authorization. Supplier does not guarantee the issuance of such licenses or approvals, or their continuation in effect once issued.

## 13. TERM AND TERMINATION

### 13.1 Term

These Terms shall apply as long as Customer uses the Software. The respective agreement shall automatically cease when the Customer definitively ceases to use the Software.

## 13.2 Termination for Cause

If the Supplier reasonably believes that the other Party is in default of any of its material obligations under these Terms, the Supplier may notify the Customer in writing of the alleged defaults. The Customer shall, within thirty (30) days of the date of receipt of written notice, remedy such defaults to the satisfaction of the Supplier. If the defaults are not cured in this thirty (30) day period, the Supplier may terminate the agreement that is based on these Terms, and revoke the License, without adhering to a notice period by delivery of a written termination notice to the Customer.

## 14. VARIOUS PROVISIONS

### 14.1 Severability

Each provision of these Terms shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of these Terms shall in no way affect the validity or enforceability of any other provision hereof. If any provision of these Terms is determined to be invalid, illegal or unenforceable, the remaining provisions of these Terms remain in full force and effect.

### 14.2 Non-Waiver

The waiver of a breach of these Terms or the failure of a Party to exercise any right under these Terms shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under these Terms. The failure of either Party to enforce at any time any of the provisions of these Terms, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a Party to enforce each and every such provision thereafter.

## 15. GOVERNING LAW AND JURISDICTION

- (a) These Terms including all Schedules shall be subject to the ordinary laws of Switzerland excluding their or any other jurisdiction's conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention).
- (b) The ordinary courts in Zurich, Switzerland, shall have sole jurisdiction with respect to any and all disputes out of or in connection with these Terms and its Schedules.

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