



End User License Agreement (EULA) for Automation Studio

Published: 2018-11-15
Effective date: 2018-12-01
Revision: 28

BY CLICKING THE "ACCEPT" BUTTON OR INSTALLING THIS SOFTWARE, YOU AGREE TO THE FOLLOWING AGREEMENTS. IF YOU DO NOT AGREE WITH THESE TERMS CLICK THE "NOT ACCEPT" BUTTON OR DO NOT INSTALL THE SOFTWARE.

This agreement is concluded between B&R Industrial Automation GmbH (hereinafter "B&R") and the respective end user (hereinafter the "user") and governs the terms of use of the software referred to herein.

1. Object of the agreement

a) The object of the agreement is the development tool "Automation Studio" as well as related tools, the program documentation as well as other related written material, hereinafter referred to as "software". The source code of "Automation Studio" and applications derived from "Automation Studio", including all its components, in particular but not exclusively the "Automation Runtime" and "mapp Technology", are not contractual objects; These are regulated in other EULAs. Further services, such as, in particular, the installation of the software, training courses, etc., are likewise not subject of the contract and must be assigned separately.

b) B&R draws attention to the fact that, according to the current state of the art, it is not possible to create software in such a way that it works flawlessly in all applications and combinations. The object of the agreement is therefore software which is basically usable in the sense of the program description and the user manual.

2. Copyrights, industrial property rights

The software in question is either protected by B&R or by third parties under copyright and / or by industrial property rights. The user acknowledges the limitations associated with the use of the software and is obliged not to violate these proprietary rights.

3. License rights, scope and use

a) The user acquired the non-exclusive right to use the software in accordance with the conditions of this agreement and in accordance with the type of license purchased by the user.

b) A commercial use takes place if the automation system configured with the software with or without intention to profit is sold, made available, checked or modified to third parties, as long as there are no restrictions according to point 8. A commercial use is also possible when applications derived from the software are created, as long as the type of the software product permits this (e.g. software libraries, programming tools, etc.). In particular, commercial use does not take place if Automation Studio is not used to design an automation system, but is used exclusively to configure B & R hardware for third-party control systems for fieldbus connection.

c) As licensee, the user is permitted to copy this software for data backup purposes only.

d) A transfer of licenses under this EULA is not permitted. In particular, the user is prohibited from providing licenses, software or the associated material, either for consideration or free of charge, to third parties or otherwise make them accessible. An exception to this is the Resell License [see point 3.g)(4)].

e) By purchasing the product, the user only receives ownership of the physical data carrier (s) on which the software is recorded, as well as the associated written material. On the software itself, the user is only granted a right of use within the scope of this contract. The ownership and copyright of the software as



well as all other related rights remain with B&R or the author. B&R or the copyright holder reserve all rights to publication, reproduction, processing, exploitation and other rights relating to the software.

f) The user is fully liable for any damages whatsoever which may arise to B&R or to the author by a breach of this contract, in particular against the copyright of B&R or a third person.

g) The following types of licenses are available:

(1) Single License:

A Single License allows the software to be used by exactly one user at a given time. The Single License is provided on a Technology Guard (TG). This allows several users to share the right to use the software at different workstations within a company in which the TG is installed with the Single License on the respective workstation computer. This Single License allows the commercial use of the software as per point 3.b). The duration of the single user license is 365 days. The Single License must be terminated no later than 30 days before the end of the service period. If no termination is given in time, the Single License is automatically extended by 365 days (see point 7). The Single License includes the right to receive upgrades as well as telephone support for the functions of the software.

(2) Site License:

The Site License permits the licensing of any number of users within a company location. Users must be employed at the respective company location, but can use the software locally (for example international service technicians). Licensing is effected by an Internet connection. The Site License allows the commercial use of the software according to point 3.b). The use of the Site License is 365 days. The Site License must be terminated no later than 30 days before the end of the service period. If no termination is given in time, the Site License is automatically extended by 365 days (see point 7). The Site License includes the right to receive upgrades as well as telephone support for the functions of the software.

(3) Corporate License:

The Corporate License is valid across all corporate sites and permits licensing from all users of the company, including all affiliates. With the Corporate License, it is possible to license the software on a B&R Automation PC, which is delivered with the machine, if it is ensured that only the service personnel of the machine and system builder have access to the software. Licensing is effected by an Internet connection. The Corporate License permits the commercial use of the software according to point 3.b). The license is valid for 365 days. The Corporate License must be terminated no later than 30 days before the end of the service period. If no termination is given in time, the Corporate License is automatically extended by 365 days (see item 7). The Corporate License includes the right to receive upgrades as well as telephone support for the functions of the software..

(4) Resell License:

With the Resell License, the mechanical engineer, system engineer or system integrator is able to resell a single-user license to its customers. This package is intended for resale only. The Resell License does not expire. Licensing is carried out exclusively via the Technology Guard (TG). The Resell License generally permits the commercial use of the software according to point 3.b), but limits the use as follows:

- No authorization to create a new project: The "New Project" menu entry is deactivated.
- No rights to download upgrades from the Internet.

(5) Education License:

The Education License corresponds to a Site License and permits the licensing of any number of users for the training company at the location of the training facility. The Education License will automatically expire after 400 calendar days and is not renewable. The Education License may not be used commercially in accordance with point 3.b). The Education License includes the right to receive upgrades as well as telephone support for the functions of the software.

(6) Student License:

The Student License corresponds to a single-user license and allows the use of Automation Studio by



exactly one user exclusively within the framework of personal training. A commercial use of the software is not permitted (see point 3.b)). The license is valid for an activation period of 400 days and has to be applied again after expiration if necessary. The license is only available to students registered with B&R.

(7) Evaluation License:

The software can be downloaded at no charge from the B&R website <http://www.br-automation.com/>. The software is then fully functional for evaluation for 90 calendar days. Commercial use of the software (according to item 3.b)) is not permitted with an Evaluation License.

The Evaluation License expires automatically after 90 calendar days and is not extendable. An Evaluation License can be requested arbitrarily often.

4. Modifications and updates

- a) B&R and the author of the software are authorized to modify and update the software at their sole discretion.
- b) B&R and the author of the software are not obligated to share with the user any software modifications or updates.
- c) This provision applies to any modification or update to the software.
- d) The user is not permitted to modify the software in any way.

5. Warranty

- a) Warranty claims are only valid within the legal warranty claims period and only if the user notifies B&R immediately by way of a written notice of defect immediately after the defect occurs and in accordance with the following provisions.
- b) B&R warrants that the data storage media containing the software is free of material errors for normal operation and service upon delivery.
- c) B&R guarantees that the software functions as described in the program documentation.
- d) No warranty is made for agreements expressly made outside of this agreement. In particular, B&R does not guarantee that the software will sufficiently meet the demands of the user and purposes or work with other programs the user has chosen to use. The user is solely responsible for proper selection, the consequences for using the software as well as the desired results.
- e) No warranty claim exists if the defect results from unauthorized software modification or update by the user or in connection with derived applications (see item 1.a) or if the software is misused in any way or not used according to the purposes listed in the program documentation.

6. Compensation for damages

- a) All compensation for damages and the right of recourse of any type are not excluded in this agreement as long as:
 - (1) they result from personal injury;
 - (2) the circumstances that cause these damages or recourse action arise as a result of deliberate intention or gross negligence on the part of B&R;
 - (3) they result from ordinary negligence or the violation of a principal obligation by B&R or
 - (4) a particular liability exclusion is not permitted in accordance with applicable laws.
- b) **WITHIN THE SCOPE OF PRODUCT LIABILITY LAW, CLAIMS FOR DAMAGE COMPENSATION FOR DAMAGES INCURRED BY A COMPANY TO OBJECTS ARE EXCLUDED IN COMPLIANCE WITH THE ABOVE PROVISIONS. THIS EXCLUSION FROM LIABILITY IS TO BE TRANSFERRED IF THE PRODUCT IS PASSED ON UNDER A RESELL LICENSE. IF THIS TRANSFER IS NEGLECTED, THE USER IS LIABLE TO B&R FOR ANY DAMAGES.**



c) IN ACCORDANCE WITH THE PROVISIONS ABOVE, B&R IS NOT LIABLE FOR DAMAGES FROM UNREALIZED PROFITS OR LOSSES TO COMPANY OR TRANSACTION VALUE.

d) IN ACCORDANCE WITH THE PROVISIONS ABOVE, B&R IS NOT LIABLE FOR INDIRECT DAMAGES OR CONSEQUENTIAL DAMAGE, IN PARTICULAR FOR INTERRUPTED WORK, DATA LOSS OR THE FAILURE OR MALFUNCTION OF COMPUTERS.

7. Payment and usage period

a) The fee for the purchase of a license and the associated use of the software is regulated in the B&R price list.

b) With the acquisition of the license, the user is entitled to use the software according to the regulations for the agreed period of use. Licenses with automatic renewal (see point 3.g) extend automatically - provided that automatic extensions are permitted in the country of the user - by the respective period of use of the license. For the respective extension period, a further charge shall be made in the amount applicable in accordance with point 7.a), which B&R charges the user. The user has to cancel the respective license before the renewal date (date of receipt at B&R) in order to avoid an extension being billed.

c) Cancellation

The user is entitled to terminate the license with or without reason before expiry of the agreed useful life (according to point 7.b). The termination must be in writing. The term of notice stated in section 3.g) applies. B&R shall be entitled to terminate the contract with immediate effect if the user breaches even one obligation assumed in this contract, in particular a protection obligation in favor of B&R or the author of the software.

d) If the license has expired, the software will return to evaluation mode after 90 days from the end of the validity period. From this point onwards, the user is no longer allowed to use the software commercially (see point 3.b).

8. Export restriction

The user acknowledges that the software and the associated technical data and services (referred to as "technology subject to export controls") are subject to import, export and re-export laws. The user is responsible for the observance and application of these provisions. In addition to the domestic laws of the user's country, the regulations of the European Union and legal provisions of the United States of America are also applicable. 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 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 hereby agrees to observe all relevant laws and not export, in violation of EU regulations and US law, any technology subject to export controls to any countries, organizations or persons for which an export license or other regulatory approval is required.

THE USE OR PROVISION OF B&R PRODUCTS IN CONNECTION WITH ACTIVITIES INCLUDING BUT NOT LIMITED TO THE CONSTRUCTION, DEVELOPMENT, MANUFACTURE, TRAINING OR TESTING OF CHEMICAL, BIOLOGICAL OR NUCLEAR WEAPONS OR MISSILES, DRONES OR LAUNCH VEHICLES THAT CAN BE USED TO CARRY WEAPONS OF MASS DESTRUCTION IS PROHIBITED IN ACCORDANCE WITH APPLICABLE LAWS.

9. Addendum for beta version software

a) Definition:

"Beta version software" refers to a provisional version of software from B&R whose development is not yet completed. The beta version of 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.

b) Disclaimer and restricted warranty:



(1) The only purpose of this beta version software is to receive feedback to its performance and to identify defects. The user expressly acknowledges that the beta version of the software is a test product that may include 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 caution and in no way to trust the performance or functionality of the beta version of the software. No warranty is made for the beta version of the software.

(2) THE BETA VERSION OF THE SOFTWARE AND ASSOCIATED DOCUMENTATION ARE PROVIDED TO THE USER AS-IS. TO THE EXTENT PERMITTED BY LAW, B&R DOES NOT PROVIDE IMPLICIT OR EXPRESS ASSURANCE OR WARRANTY WITH REGARD TO THE BETA VERSION OF THE SOFTWARE OR ITS DOCUMENTATION. THIS APPLIES IN PARTICULAR BUT IS NOT LIMITED TO THE TACIT WARRANTY OF THE MARKETABILITY AND SUITABILITY FOR A CERTAIN USE. IN ADDITION, B&R EXPRESSLY EXCLUDES ANY WARRANTY IN CONNECTION TO THE NON-VIOLATION OF THE RIGHTS OF THIRD PARTIES, THE MARKETABILITY, THE SATISFACTORY QUALITY OR THE ABILITY TO INTEGRATE THE SOFTWARE WITH OTHER PRODUCTS.

10. Non-disclosure

This software is considered confidential information. The user will keep the software or information about the software confidential from third parties and not make it available to third parties without prior written approval from B&R. The user is obligated to handle the software with the same care and confidentiality as his own company and business secrets and not less than the care expected in moderate measure by an ordinary company. The user is not liable for disclosure of confidential information, however, if the information (a) was already publicly known and available at the moment of disclosure or has been made known publicly or is available without fault on the part of the user afterwards; or (b) is/was obtained and passed on by a third party legally without violating the non-disclosure obligation; or (c) can be proven to have already been legally known to the user on a non-confidential basis before it was made available; or (d) the user is obligated by mandatory legal provisions to reveal the confidential information in judicial, regulatory or other proceedings.

11. Protection of privacy

This chapter describes how B&R Industrial Automation GmbH, B&R Strasse 1, 5142 Eggelsberg, as the person responsible for the data protection basic regulation (DSGVO) processes personal data when using Automation Studio.

In order to observe legal export regulations, information about the computer is collected during licensing and passed to B&R where it is saved. This information contains (1) the user information in the dialog box form: name, company, address, email address, type of use (private, commercial); (2) system information: operating system, language, version; (3) user information of the computer, IP address, PC username, PC company name, hardware IDs: MAC address, etc. and (4) information about Automation Studio: version, type of license. The data provided by the user is only used internally for sales and marketing purposes. The data will not be shared with third parties. Surveys or transfers of personal data to state institutions and authorities are only carried out under mandatory legal provisions. For additional information about protection of privacy, see the privacy policy statement <http://www.br-automation.com/en/company/imprint/>.

a) The user ID and password of the user are entered and partially saved in the following situations: In the upgrade dialog; for the version control systems (SVN or TFS); for authenticated communication with the controller; for access to the B&R website under the Technology Guards.

b) The user's Windows login name is processed in the following places: to enter the login name in the automatically generated header of a source file; to store user-specific settings on the PC; to store user-specific settings in the AS project.

c) Each time the Technology Guard requests the B&R server, the following data is transferred: PC name; MAC address; Company Name (taken from the registry of the PC). The login name and the IP address are not transferred.



d) B&R offers users the opportunity to request a free evaluation license for Automation Studio on its website. B&R processes personal data that users enter in the respective fields of the application form. Further details can be found in the privacy policy of B&R (see <https://www.br-automation.com/en-us/about-us/privacy-policy/>).

12. Final provisions

a) This agreement is subject to Austrian law to the exclusion of conflict of laws rules the United Nations 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 agreement is the court having jurisdiction for B&R in A-5142 Eggelsberg, Austria.

b) This agreement concludes with all understandings of the parties. Verbal side agreements are not possible. All modifications of and amendments to this agreement shall be made in writing in order to be valid. This requirement of written form may only be waived by a written agreement.

c) If one or more provisions in this contract are or become legally invalid or if a loophole is found, the validity of the other provisions is not affected. In this case, instead of the ineffective provision or to close the loophole, a provision shall become effective and be deemed valid that comes closest to meeting the provision.