

GENERAL TERMS AND CONDITIONS – December 17, 2024
B&R Industrial Automation Ltd

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*.

“Applicable Integrity Laws”:

See definition in Clause 15.1

“Application Software” means *Software* created using the *System Software* and primarily designed to control *B&R* hardware devices.

B&R:

B&R Automação Industrial Ltda., a limited liability company, headquartered at Av. Alexander Graham Bell, 200 Module D2, Techno Park, Campinas-SP, Brazil, enrolled with the CNPJ/MF under No. 02.911.307/0001-70.

Contract Products:

Standard Product, customized product, and/or *Software* from *B&R*'s standard product 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*.

Restricted Person:

See definition in Clause 15.3.

Sanctions Agency:

See definition in Clause 15.2.

“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. 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 Clause 22, in which case Clause 22 governs for *Software*.

Standard Product:

Any *Contract Product* from *B&R*'s respectively valid product catalog (www.br-automation.com).

“*System Software*” means *Software* created by *B&R* that is a development studio used to create applications.

2. **Scope, Applicability, Price and Taxes**

- 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. The price includes only the taxes, contributions, and other expenses explicitly mentioned in the *B&R*'s proposal. Any additional taxes that may apply to this *Agreement* will be included in the price at a later stage. 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, the Parties agree to review this *Agreement* and negotiate necessary adjustments to ensure ongoing compliance. If *Purchaser* desires a modification as a result of any such change or revision, it shall be treated as a change per Clause 23.
- 2.7. *B&R* will be responsible for obtaining only the permits, licenses or approvals from any agency required in connection with the supply, erection, or operation of the *Contract Products* that must be issued according to Brazilian Law by the competent authorities and in the name of *B&R*. Any permits, licenses or approvals required for the supply, erection, or operation of the *Contract Products* that need to be issued in the name of the *Purchaser* will be the exclusive responsibility of the *Purchaser*, including, but not limited to, environmental licenses and authorizations.
- 2.8. 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.
- 2.9. Unless expressly stated otherwise by *B&R*'s proposal, for the supply of *Contract Products* in which *B&R* is considered the tax substitute under state legislation, *B&R* will not be responsible for paying the ICMS (Value-Added Tax) rate difference. This payment will always be the responsibility of the *Purchaser*.
- 2.10. When applicable, if there are changes in legislation and/or agreements affecting ICMS ST (Substitution Tax) taxation, the Parties will update the commercial terms governing the *Agreement* to reflect the new price and compliance with additional obligations related to the inclusion or exclusion of this tax. In the latter case, the responsible party retains the right to issue a supplementary invoice. ICMS ST, being a tax due at the end of the consumption chain, is included in the price of the marketed product, affecting the total transaction value.

- 2.11.** *Purchaser* confirms that provided all relevant tax regimes for which it has or is in the process of obtaining benefits, aiming to reflect this in the price offered by *B&R*. If such benefits were not communicated during the negotiation and approval phase, and it is found at the time of invoicing that the *Purchaser* qualifies for these benefits, *B&R* may revise the prices to account for tax and/or financial impacts on the *Agreement*.
- 2.12.** If, at the time of invoicing and/or delivery of the *Contract Products*, the *Purchaser* has not provided proof of exemptions and any other tax benefits considered in the prices, these prices will be adjusted to reflect the lack of such exemptions and benefits.
- 2.13.** The Parties agree that for services provided by *B&R*, the value of these services will be included in the ICMS calculation, affecting PIS/COFINS and IPI.
- 2.14.** When applicable, the Parties agree to use Law n° 116/2003 and the Municipal Law of Sorocaba regarding ISS (Service Tax) as a framework for resolving disputes or conflicts concerning ISS taxation between municipalities.
- 2.14.1.** ISS collection, when legally required to be paid by the service-providing establishment, will be made to the Municipality of Sorocaba where *B&R*'s economic and functional unit is located, which will issue the relevant invoices.
- 2.15.** When applicable, *Purchaser* commits to providing the Income Tax Withheld at Source Statement in a timely manner for deductions to be used by the *Purchaser* in the Annual Adjustment Declaration, according to Federal Revenue Service regulations.
- 2.16.** For invoicing with the REIDI (Special Regime for the Incentive of Industrial Development) benefit, the Parties agree that the Concession Act must be published and valid at the time of invoicing. If the Concession Act is not available on the invoicing date, PIS and COFINS, along with other applicable taxes, will be included in the invoice. The REIDI concession process will not justify an extension of invoicing events.
- 2.17.** The Parties agree that if reductions in IPI rates for *Contract Products* produced by industries in the Manaus Free Trade Zone with Basic Production Processes are implemented by decrees and current regulations, and such reductions are later revoked, the prices will be increased to reflect the revocation of the IPI rate reductions and their effects. *Purchaser* must be refunded with retroactive effects.
- 3. Safety**
- 3.1.** The *Parties* shall comply with applicable safety and environmental regulations, including regulations, instructions and directions relating to order, safety, environment and control that apply locally in each respective case.
- 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*, provided that such regulations or guidelines are made known to *B&R* and do not contradict the *Agreement*, in which case the *Agreement* shall prevail.
- 4. Termination**
- 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 or undergoes judicial or extrajudicial recovery, (iii) *Purchaser* requests suspension, provisional suspension, postponement of payment, and/or if the financial situation of the *Purchaser* has significantly deteriorated or there is a risk that it may do so, and as a result, the obligation to pay for the provision of *Agreement* is jeopardized, (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 breach 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, *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 *Purchaser* shall pay *B&R* the portion of the *Order* price allocable to *Contract Products* completed.
- 4.4. An *Order* for services for *Application Software* may be cancelled for convenience upon mutual written agreement by the parties and payment of termination charges, including but not limited to, the purchase price of the work performed prior to the effective date of the notice of cancellation.
- 4.5. *Purchaser* shall only be entitled to cancel an *Order* for product for convenience by mutual agreement with *B&R*. In the event, the *Parties* agree to a cancellation of an *Order*, the *Purchaser* shall pay fifty (50%) of the purchase price of the cancelled *Standard Product* and the full purchase price of any customized products.

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). 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 and should not imply any liability on the part of *B&R*.

- 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, *Purchaser* shall bear full responsibility and liability for any damages, injury or contamination, including without limitation any physical damage to a nuclear facility itself, or surrounding properties, in accordance with applicable Brazilian law. Consent of *B&R* to any such use, if any, will be conditioned upon additional terms and conditions 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, in compliance with Brazilian nuclear regulations, resulting from a nuclear incident. *Purchaser* shall further indemnify and hold harmless *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 or surrounding properties, to the fullest extent permitted by Brazilian law.

6. Orders and Quantities

- 6.1.** *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.
- 6.2.** The *Order* becomes effective and binding when the *Order* is accepted by *B&R*. *B&R* may accept the *Order* through *Order Confirmation* or delivery.
- 6.3.** *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 have the right to make partial deliveries and/or early delivery.

9.2. Unless otherwise indicated by *B&R* in its proposal, deliveries are made in accordance with Incoterms 2020, FCA rules.

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

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.

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. In the event of a late payment, without prejudice to the right of *B&R* to immediately suspend the execution of the *Agreement*, *Purchaser* shall be subject to a late payment penalty of ten percent (10%), monetary adjustment based on the IGP-M index published by FGV, pro rata die, all calculated on the overdue amount. These charges shall be applicable from the first day of delay until full payment is made, regardless of any judicial or extrajudicial notice.
- 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 (pursuant 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 headquarters 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) or customize *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.

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 of any kind, particularly for production losses, loss of revenue, loss of contracts, lost profits, or for any special, punitive, moral, or consequential damages. 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.

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*, 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*.

- 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. These licensing terms apply to *Technology* broadly, which includes *Software*; however, more specific licensing terms for *Software* are provided in Clause 22. To the extent this subsection conflicts with Clause 23 (Software), the Software section governs.

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*; (iv) any products manufactured by the *Contract Products* or process; (v) any use of the *Contract Products* or process contrary to *B&R* instructions; (vi) any patent issued after the date hereof; (vii) user-specific use of the *Contract Products* in the overall end product or (viii) 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. 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.

14.7. THE FOREGOING PARAGRAPHS STATE THE EXCLUSIVE LIABILITY OF *B&R* AND EQUIPMENT MANUFACTURER FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT.

15. Sanctions and Export Controls

15.1. *Applicable Integrity Laws* means:

Anti-bribery and anti-corruption laws: including 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 anti-tax evasion in relevant jurisdictions (collectively “*Anti-Bribery & Corruption Laws*”); and

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

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*”).

15.2. *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 (i) the United Nations, (ii) 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), (iii)

the European Union or (iv) Switzerland.

- 15.3. *Restricted Person* means any entity or person included on a list (including 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 Person*).
- 15.4. The *Parties* will comply with all *Applicable Integrity Laws* in connection with the *Order*. The *Parties* shall also ensure that their respective employees, officers, directors, and any affiliates or third parties engaged in any manner in relation to the *Order* shall undertake to comply with all *Applicable Integrity Laws* and the requirements set out in this Clause in connection with the *Order*. 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 the *Order*.
- 15.5. Each *Party* represents and warrants that, to the best of its knowledge, at the date of the *Order* neither it, nor any of their respective directors or officers are a *Restricted Person*. Each *Party* agrees that it shall promptly notify the other *Party* if it becomes a *Restricted Person*.
- 15.6. If, as a result of *Trade Control Laws* issued or amended after the date of the *Order*, (i) the *Purchaser* or the end-user is/becomes a *Restricted Person*, or (ii) 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 *Order* becomes illegal or impracticable, *B&R* shall, as soon as reasonably practicable, give written notice to the *Purchaser* of its inability to perform or fulfill such obligations. *B&R* shall be entitled to either immediately suspend the performance of the affected obligation under the *Order* until such time as *B&R* may lawfully discharge such obligation or unilaterally terminate the *Order* 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 *Order*.
- 15.7. In the event of suspension or termination, *B&R* shall be entitled to payment of the *Order* 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 goods or services in connection with the *Order*.
- 15.8. The *Contract Products* may be subject to foreign trade restrictions, including dual-use trade controls. The *Parties* undertake to obtain all the necessary licenses and/or permits from the competent authorities for the import or export of *Contract Products*. *Contract Products* that originate in the United States are subject to the U.S. Export Administration Regulations ("EAR") and must not be exported, re-exported, or transferred (in-country) without obtaining the necessary 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.
- 15.9. The *Purchaser* represents and warrants that the *Contract Products* are for civil use only and that it will not directly or indirectly sell, export, re-export, release, transmit or otherwise transfer any *Contract Products* received from *B&R* to any *Restricted Parties*, or parties that operate, or whose end use will be, in a jurisdiction/region prohibited by *B&R* including Belarus, Cuba, Iran, North Korea, Russia, Syria, and Crimea, as well as Luhansk, Donetsk, Kherson, and Zaporizhzhia regions of Ukraine (such list may be amended by *B&R* at any time).
- 15.10. *Purchaser* shall immediately notify *B&R* in writing of any potential or actual breach of

obligations set forth under *Applicable Integrity Laws*, the ABB Code of Conduct, or this Clause 15 by either the *Purchaser*, its affiliated parties or any third parties engaged by *Purchaser* in relation to the *Order*. In the event of such notification or if *B&R* otherwise has reason to believe that a potential or actual breach has occurred, *Purchaser* agrees to cooperate in good faith with any audit, inquiries, or investigation which *B&R* deems necessary. During such audit, inquiries or investigation, *B&R* may suspend performance of its obligations 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 terminate performance of its obligations under this provision.

- 15.11.** 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 Clause 15, *B&R* shall, subject to mandatory provisions of applicable law, have the right to unilaterally terminate the *Order* with immediate effect. 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 performance of its obligations 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 *Order*. *B&R* may report such violations to relevant authorities as required by *Applicable Integrity Laws*.
- 15.12.** 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*.

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 Brazil, 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 São Paulo.

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* or *Orders* 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. Any assignment of the *Order* or of any rights or obligations under the *Order* without prior written consent of *B&R* shall be void.

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”) as well as applicable national 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/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 the full purchase price.

22. Software

- 22.1. Software Ownership. *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 *Software*, *B&R* hereby owns and shall own all right, title and interest in such *Foreground IP*.
- 22.2. Software Licenses. To the extent any *Contract Products* provided under this *Agreement* contain *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.

23. Changes

- 23.1.** 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.
- 23.2.** *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.

24. 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.