

B&R LICENSE AGREEMENT / EULA (End User License Agreement) for GPOS software

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"**B&R**" is B&R Industrial Automation GmbH, FN 111651 v, Austria, along with all of its affiliated (subsidiary) companies.

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

1. General information

- a) This agreement and the following conditions/provisions (abbreviated as "**EULA**", "**(this) contract**") is hereby concluded between *B&R* and the respective (corporate) end user, in particular a machine or plant manufacturer and/or system integrator, (abbreviated as "**(the) user**"), and regulates the conditions for use of the software indicated here.
- b) This EULA applies, as stipulated in item 2, to the following *B&R* software (collectively the "**(B&R) software**"):
 - (i) "**(B&R) GPOS**"(general-purpose operating system);
 - (ii) Drivers and tools for *(B&R) GPOS* (together for short: "**(B&R) drivers and tools**");
 - (iii) with development and diagnostic tools related to *(B&R) GPOS* (short: "**development tool/s**").
- c) This EULA applies to any *B&R software* for which the *user* is offered these terms for acceptance and agrees to them prior to installation.
- d) If the *user* does not accept and/or comply with this EULA, the user may not use the *B&R software* and/or its respective *software functions*. In this case, the *user* is not permitted to install the software.
- e) These terms and conditions are only intended for business *users* of *B&R software*. The use of *B&R software* by private persons is prohibited, with the exception of use in the context of education and training at educational institutions in accordance with the provisions of this EULA.
- f) The references contained in this *contract* refer to the relevant items of the *contract*.

2. Subject of the contract

- a) The subject of this *contract* is the *B&R software*, which includes
 - (i) *B&R GPOS* used on a *B&R* industrial PC or "HMI" device (e.g. Power Panel)
 - (ii) *Drivers and tools* used directly in the *GPOS* and/or with mechanisms from the *GPOS* or on a *B&R* automation system, and
 - (iii) Any *development tool*

Together with any associated program documentation and other related written material.

- b) Unless otherwise expressly regulated in the following or otherwise emphasized, the provisions of this *contract* apply in every case to each of the above software programs (or their parts) that are included in the *B&R software*.
- c) The source code of the *B&R software* is not considered the subject of the contract.
- d) Other services of *B&R* or of third parties attributable to *B&R*, such as, in particular, installation of *B&R software*, training sessions, instruction, support, education, etc., are not the subject of the contract and must be commissioned/agreed separately.
- e) *B&R* hereby expressly notes that it is not possible, given the nature of technology currently available, to create software that can function flawlessly in all application conditions, in all applications and/or in all combinations. In particular, no assurance can be given for software that it will function without interruption or completely flawlessly. The *B&R software* does not offer zero error tolerance. The functionality of the *B&R software* can also be adversely affected by factors over which *B&R* has no influence.

The only subject or content of the *contract* (and thereby the performance provided by *B&R*) is therefore the *B&R software* which is essentially usable within the meaning of the program description and directions for use. Faults which do not impair or exclude this essential usability are not regarded from the outset as defects or defective performance. Accordingly, the *user* cannot rely upon complete ("one hundred percent") functionality of the *B&R software*, and must take appropriate precautions (such as backup systems, controls, etc.) at its own cost and under its own responsibility in order to avoid losses, especially to third parties.

In particular, the *user* must demonstrably make third parties who may come into contact with the *B&R software* or who use it or who could use it completely aware of these limitations on functionality in terms of the *B&R* performance and product descriptions, directions for use, comments on the *B&R* website, etc. *B&R* shall accept no liability for disadvantages of any kind that the *user* suffers through failure to take such precautions.

3. Intangible rights / Industrial property rights

- a) The *B&R software* governed by this contract is copyright protected and/or protected by other industrial property rights either in favor of *B&R* or in favor of third-party companies. The *user* irrevocably acknowledges the limitations associated with these rights impacting the use of the *B&R software* and undertakes not to violate these property rights in any manner or to any extent. Each *user* is liable for violations by their workers in this regard. Each *user* shall promptly report to *B&R* any violation of property rights to the *B&R software* and immediately cease any property rights violations. In addition, the *user shall promptly inform B&R* regarding any violation of property rights to the *B&R software* by third parties of which they become aware.
- b) The *user* must not remove, alter or cover up information about copyrights, trademark rights or other commercial property rights or otherwise make them unrecognizable. The *user* is not permitted to translate accompanying documentation material for commercial purposes unless they have the explicit prior consent of *B&R*.

4. License (rights), scope and use of the B&R software

- a) The *user* purchases (or receives when free of charge) usage rights for the *B&R software* exclusively in the form of permission that is free of charge, non-exclusive and transferable only in accordance with the provisions of this EULA (with the exception of *development tools* that are free-of-charge)

according to the terms and conditions of this *contract* (hereinafter referred to as a "**license**"). The *license* may be defined or designed differently depending on the software.

- b) For the *B&R software*, the following type of *license* is available:

"Common Use License": This *license* permits commercial use in accordance with item 4.d). The period of use of the license is not limited. The license includes the right to install and use the current software versions and to receive telephone support for the functions of the *B&R software* covered by this EULA.

- c) A description of the functionality ("**software functions**") of the *B&R software* can be found in the respective documentation.

- d) Commercial use of the *B&R software* exists

(1) if the automation system operated with the *B&R software* is sold, made available, reviewed or modified in whole or in part to third parties with or without the intention of making a profit; or

(2) the *B&R software* is used to create applications if this is made possible by the type of the software product (software libraries, programming aids, etc.).

- e) All tangible and intangible rights of whatsoever type, especially intellectual property rights, the comprehensive copyright with all authorizations to all the programs, documents and information in connection with initiation and implementation of the contract, including warranties, support and service of the *B&R software*, are retained exclusively by *B&R* or the copyright holder. In particular, *B&R* and/or the copyright holder therefore reserve all publishing, retransmission, editing, utilization and any other rights that fall under the purview of copyright law for the *B&R software*.

All of this also applies where these objects or rights have arisen by means of specifications and/or the collaboration of the *user* and irrespective of whether an contract is established between *B&R* and the *user*. The *user* therefore has the sole and non-exclusive authorization to use these objects or rights as specified in these conditions.

- f) As the licensee, the *user* may make copies of the *B&R software* subject to common engineering practice only for the purpose of data backup protection for internal purposes. A backup copy held on a mobile data storage device should be marked as such with the copyright notice of the original data storage device.

- g) Within the framework of the *license(s)* granted, the *user* is allowed to create applications derived from the *B&R software*, if the type of the *B&R software* generally allows for this (software libraries, programming aids, etc.). The application created in this manner may be provided to third parties, as long as this does not violate the conditions of item 4.b) and c), and insofar as there are no restrictions in accordance with item 8.

- h) By acquiring the *license*, if applicable, the *user* only gains ownership of the physical data storage device(s) on which the *B&R software* is stored and ownership of the associated written material. The *user* only receives a right of use (*license*) to the *B&R software* itself in the scope or in accordance with the type of this contract.

- i) The *user* is fully liable for all losses of whatsoever type which *B&R* and/or the copyright holder incur through violation of this *contract* by the user, especially violation of *B&R*'s copyrights or those of a third party. This also applies for all such losses which *B&R* and/or the copyright holder suffer through persons accountable to the *user*, especially its assistants.

- j) The *user* or a third party accountable to it may not decompile the *B&R software* unless otherwise granted a right to do so by law, and/or must not use the source code for their own purposes, may not alter the source code, and may not develop identical or similar software based on or using the source code, either wholly or in part.

5. Amendments / updates / terminations

- a) *B&R* and the copyright holder of the *B&R software* are entitled at any time and at their discretion without prior warning or other notification to make amendments and updates to the *B&R software* and provide these in the form of a new version. Particular incompatibilities may result from this. The *user* accepts and agrees to this condition. *B&R* reserves the right to make changes to licensing requirements or functions requiring licenses with new versions of the *B&R software*.
- b) *B&R* and the copyright holder of the *B&R software* are not obliged to inform the *user* of any changes or updates to the *B&R software*.
- c) The *user* must not modify or edit the *B&R software* in any way whatsoever. In particular, the *user* is not authorized to copy *B&R software*, to adapt it for use on incompatible hardware or to edit it in any other way.
- d) *B&R* reserves the right to discontinue further development and support of the *B&R software* in its respective versions at any time ("**Discontinuation**"). Information about this option is provided in the documentation for the *B&R software* or at <https://www.br-automation.com>. The discontinuation may result in lack of compatibility or functional restrictions between individual versions of the *B&R software*. The *user* acknowledges and agrees to this and will keep themselves informed of any discontinuations on their own.

6. Warranty

- a) Provided that the *B&R software* is used under the specified use and framework conditions, particularly in accordance with the program description and directions for use, *B&R* provides a warranty, subject to the regulations of this *EULA*, in respect of its freedom from defects with regard to the *B&R software* functionality indicated in the program documentation. No warranty of any kind whatsoever shall be given for *B&R software* provided free of charge or for its *software functions*.
- b) In accordance with item 2.e), it is not considered a defect if there are malfunctions or faults which do not impair or exclude the essential usability of the *B&R software* within the meaning of the program description or directions for use. In addition, no warranty shall be given for minor and/or insignificant defects or curtailments of function, especially for those which do not impair the functionality or the agreed or customarily presumed usability of the *B&R software*. Equally, no defect is present if the technical equipment of the user, such as supply lines, wiring, networks and similar, are not in a perfect and operational state or are not compatible with the supplied objects. *B&R* is also not accountable for a defect if it is due to a task specified by the *user* or due to the *user's* insufficient cooperation or failure to cooperate, or if the functions do not satisfy the requirements of the *user*. Other matters not covered by the warranty include, in particular, any defects or damage attributable to the following: Operational deterioration and normal wear and tear, improper use, operating error and negligent conduct by the *user*, operation with the wrong type of current and/or voltage and connection to unsuitable power sources, fire, lightning strike, explosion or grid-related voltage surges, humidity of any type, liquids of any type, wrong or faulty program, software and/or processing data and any type of wear parts, unless the *user* can show that these circumstances are not the cause of the notified defect. The warranty will also not apply if the serial number, type description or other identifiers are removed or rendered unreadable. In particular, *B&R* shall furthermore not provide any warranty that the *B&R software* or its program functions shall fulfill the requirements and purposes of the *user* or shall work together with other programs selected by or other choices made by the *user*. The *user* is solely responsible for the proper selection, the

consequences of using the *B&R software* as well as the user's intended or desired results. Finally, no warranty claim shall exist if the defect results from unauthorized software modification or update to the *B&R software* by the *user* or in connection with derived applications (item 4.g)) or if the *B&R software* is misused in any way or not used according to the purposes listed in the program documentation.

- c) Assured characteristics within the meaning of § 922 of the General Civil Code are only those expressly marked or assured by *B&R*. The technical data and descriptions in the product information do not in themselves constitute assurance of any particular properties. Therefore, *B&R* is also not liable for public statements or publicity of any type concerning the goods that are the subject of the contract within the meaning of § 922 of the General Civil Code and is not liable for the properties of product samples or prototypes of such products in current use. If the *user* continues to use, without any compelling reason, the defective *B&R software*, although the user knew or ought to have known of the defect or grants use of it to a third party in the context of a commercial use, although the user knew or ought to have known of the defect, the *user* thereby declares to *B&R* that they waive any claims with regard to this defect.
- d) *B&R* shall warranty that the data storage device(s) on which the *B&R software* is recorded is (are) free of material defects at the time of handover under normal operating conditions and with normal maintenance.
- e) Warranty claims can only be asserted within a 12 month warranty period from receipt of the software by the *user* (especially when downloaded).
- f) Notification must be submitted for defects promptly, along with information about the type and scope of the defect, and at the latest within five days after the user becomes aware of them, during the warranty term and in writing, with verification, including exact information on the type and scope of the defect and a more exact description of the problem (notification of defect, defect complaints). If a defect complaint is not asserted, or not asserted promptly, then the service shall be considered as conforming to the contract; in this case, the *user* shall lose all claims, in particular resulting from the warranty title and claims for damages.
- g) The warranty covers defect diagnosis and elimination. The *user* must submit notification of potential malfunctions promptly and in detail. *B&R* will support the *user* in searching for the defect and its cause. If the *user* cannot prove that the defect is attributable to *B&R*, *B&R* will be entitled to charge the *user* for its services rendered in this respect. If *B&R* rejects the defect complaint in writing, the asserted defects must be litigated in court within six months, under penalty of forfeiture of all warranty and damage claims.
- h) Elimination of the defects is effected primarily by improvement or exchange. There can be no claim for price reduction or reimbursement (depending on the type and severity of the defect) unless *B&R* is in agreement with this or unless an improvement or exchange is not possible or not feasible in *B&R's* opinion. Improvement is effected at the discretion of *B&R* by eliminating the defect, by an appropriate modification of the *B&R software*, by delivering a new program version, by supplying new *B&R software* or by *B&R* indicating a reasonable way to avoid the effects of the defect. The *user* must support *B&R* as necessary. In particular, in order to eliminate any defect, the user must furnish *B&R* with all necessary documentation and information and the *user* should grant *B&R* unrestricted access (particularly to hardware and software) during the *user's* normal business hours. The *user* should in any case adopt a new program version, unless this demonstrably causes disproportionate and unacceptable adaptation and conversion problems for the *user*.
- i) If an improvement or an exchange is to be carried out, the *user must allow B&R* the necessary time and opportunity to an appropriate extent. If the user refuses to do this or if this is curtailed in a disproportionate manner, then *B&R* is released from upholding the warranty. The *user* must allow *B&R* at least two attempts to make improvements.

- j) If improvement is effected, *B&R* will pay for the costs of the work. The *user* shall bear all the other costs of improvement and the incidental costs associated with supplying replacements, especially any transportation costs, unless these other costs are disproportionate to the contract value. *B&R* can at its own discretion refer the *user* to the manufacturer and/or supplier to assert claims, after at the same time assigning its own claims against its own suppliers and/or manufacturers. Such a reference or such an assignment shall replace fulfillment of all the claims to which the *user* is entitled against *B&R* in any case. As far as they are allowed under the contract, the *user's* claims are limited in type and scope to the claims to which *B&R* is entitled against their manufacturer or supplier.
- k) If a notification of defects is submitted, and the review indicates that it does not fall under the warranty, then *B&R* is entitled to request reimbursement of any expenses incurred to determine that there is no defect, or to correct the defect. Review and repair costs shall be charged at *B&R's* respective valid service prices. Cost estimates are always subject to a charge.
- l) The warranty shall be granted solely at the registered office of *B&R* at 5142 Eggelsberg, Austria.
- m) No compensation of any kind shall be granted for an (attempted or successful) correction of defects by the *user* or by third parties (substitute performance).
- n) §§ 924, 933b of the General Civil Code will not apply. The *user* bears the burden of proof that there is in fact a defect.
- o) If the warranty has been correctly invoked, the *user* is only entitled to retain the expenses necessary for effecting the improvement but not the whole invoice value.
- p) *B&R* shall exclusively guarantee that no industrial property rights or copyrights (hereinafter referred to as "property rights") of third parties are violated in the countries of the European Union, Australia, Brazil, China, India, Iceland, Japan, Canada, Mexico, Norway, the Russian Federation, Switzerland, Singapore, South Korea, Turkey, Great Britain (UK) and the United States (USA). If *B&R* is liable to that extent and if use of the *B&R* software is impaired or prohibited because of that, then *B&R* will either modify or replace the *B&R* software at their own discretion and expense such that it does not violate the protected right while essentially still retaining the agreed specifications or will release the user from the license fees for the use of the *B&R* software as regards the third party. If *B&R* cannot do this under adequate conditions, *B&R* will accept the returned *B&R* software and refund the paid purchase price. *B&R* may demand reasonable compensation from the *user* for the use of the returned products that are the subject of the contract. Furthermore, *B&R* 's liability shall be subject to the condition that the *user* immediately notifies *B&R* in writing of any claims by third parties based on an violation of protected rights, does not concede the alleged violation and conducts any dispute, including any out-of-court settlements, only with *B&R* 's consent. If a violation of property rights is based on the *user* or their third party contractual partner modifying or having modified the software, then the *user must release B&R from liability* in this respect and completely indemnify and hold *B&R* harmless. Violations of property rights because of the application-specific use is also exclusively the responsibility of the *user* who must release *B&R* to this extent or completely indemnify and hold *B&R* harmless. *B&R* and the *user* each undertake to notify the other without undue delay of any infringement risks and alleged infringement cases that become known and to give each other the opportunity to mutually counteract any such claims. To the extent that *B&R* is not liable for violations of property rights, the *user* shall release *B&R* from all associated claims of third parties or completely indemnify and hold *B&R* harmless. Claims for losses and expenses of the *user* because of or in connection with violations of protected rights, irrespective of the legal basis, are limited by application mutatis mutandis of contractual item 8.b). Further claims of the *user* because of a violation of the property rights of third parties shall be excluded.
- q) No warranty shall be given for any pledges in excess of those specifically effected in this *contract*.

7. Compensation for damages and other liability

- a) Claims for damages and rights of recourse, of whatsoever type, are excluded if
 - (i) they are not due to personal injury; or
 - (ii) if the circumstances giving rise to the claim for damages or rights of recourse are not caused by willful intent or gross negligence by *B&R*; or
 - (iii) if some other disclaimer of liability is permissible under applicable laws.
- b) In any type of gross culpability, the liability of *B&R* is limited per calendar year to 10% of the turnover between *B&R* and the *user* during the previous 12 calendar months before the month in which the loss event occurred, however – subject to the expenditure actually incurred – at least 20,000.00 euro and no more than 50,000.00 euro per calendar year.
- c) Within the scope of the Product Liability Act, the *user* explicitly waives recourse in accordance with § 12 Product Liability Act with regard to *B&R*. The *user* undertakes to rule out the liability to pay damages under the Product Liability Act with regard to any third party, to the extent that this is permissible under current laws. If this exclusion obligation is not observed, the *user* undertakes to indemnify and hold *B&R* harmless with regard to all claims of third parties of any type resulting from product liability. The *user* as reseller must take out sufficient insurance to cover product liability claims and indemnify and hold *B&R* harmless with regard to claims for compensation. Claims for damages for material damages to objects other than the *B&R software* which are suffered by a company shall be excluded in accordance with the above provisions. This limitation of liability must be transferred when the *B&R software* is transferred via a *resale license*; if this transfer is not carried out, the *user shall be liable to B&R* for any resulting disadvantages.
- d) *B&R* shall accept no liability for direct or indirect losses, consequential losses (especially consequential losses resulting from defects), interruptions to operations or work, loss of profit, computer breakdowns or malfunctions, loss of good will or company value and loss of information and data. Loss of profit is also to be understood in this instance as a missed commercial opportunity which at the time of the detrimental missed opportunity already constituted for the user a present, independent asset, e.g. by virtue of an already existing contract between the user and a third party.
- e) Claims for losses and expenses against *B&R* shall lapse 12 months from receipt of the software by the *user* (especially in the case of download), in the case of tortious liability from the time of awareness or grossly negligent unawareness of the circumstances justifying the claim or the person with liability to pay compensation.
- f) The same limited or excluded liability applicable to *B&R* also applies to their representatives, employees and other auxiliary persons.

8. Export restriction

- a) The *user* hereby acknowledges that the *B&R* technology, in particular the *B&R 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 observing and complying with these provisions. In addition to the domestic laws of the country where the *user* is headquartered, 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, VO 2015/2420, VO 2016/1969 as well as the respective amendments and any other regulation that supplements or supersedes these) and the Export Administration Regulations (EAR, US provisions for managing exports). The *user* hereby agrees to observe all relevant laws and not export any *technology subject*

to export controls to any countries, organizations or persons for which an export license or other regulatory approval is required in violation of EU regulations and US law.

- b) The use or provision of *B&R products* in connection with activities, including but not limited to, such as the design, development, manufacture, training or testing of chemical, biological or nuclear weapons or missiles, drones or space launch vehicles capable of delivering weapons of mass destruction is prohibited by reference to applicable legislation.

9. Special provisions for unreleased versions of *B&R software*

- a) "**Test, advance, beta versions (of the B&R software)**" mean any preliminary version of *B&R software* that has not yet been generally approved and for which development is not yet completed. This version of the *B&R software* includes (i) all associated updates and upgrades made available to the *user* by *B&R*, (ii) all associated documentation and (iii) all accompanying services made available by *B&R* via the website or other communication channels. *Test, advance and beta version B&R software* can be uniquely identified using the version ID and is explicitly released for use upon request by the *user* and only with the consent of *B&R*, in accordance with this EULA.

The sole purpose of *test, advance and beta version B&R software* consists in eliciting feedback on their performance and in identifying defects (referred to below as "**testing**"). The user expressly acknowledges that the *test, advance or beta version of the B&R software* is a test product that may include omissions, bugs, errors and other problems that can result in system 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 rely on the performance or function capabilities of *test, advance or beta version of the B&R software*. The *test, advance or beta version of the B&R software* and relevant documentation shall be provided to the *user* in its current version; *B&R* is not responsible for ensuring this is free from defects.

- b) In light of these special features, *B&R* shall provide no guarantee and no liability of any kind (with the exception of gross negligence) for any *test, advance or beta version of the B&R software* and its documentation. This applies in particular, but not exclusively, to tacit guarantees of marketability, suitability for a certain usage, satisfactory quality or the ability to combine the *B&R software* with other products or integrate it into these products. Nevertheless, where some legally mandatory liability may occur, items 6 and 7 apply in particular.

10. Non-disclosure

- a) The *B&R software* and all associated documents, data and information are considered confidential information and as trade or operating secrets of *B&R*. The *user* will treat the *B&R software* and/or all associated documents, data and information as confidential with regard to third parties and shall not give access to them to third parties without the prior written approval of *B&R*; this does not exclude transferring rights of use in accordance with relevant regulations or authorizations under this *contract*.
- b) The *user* is obligated to handle the *B&R software* with the same care and confidentiality as his own company and business secrets but not less than the appropriate care expected by a prudent businessman. However, the *user* shall not be liable for the disclosure of confidential information if
 - (i) the information was already publicly known and accessible at the time it was disclosed or became publicly known and accessible afterward without culpability by the *user*; or
 - (ii) the information was obtained and transmitted legally by a third party without violation of a non-disclosure agreement; or

- (iii) the information was demonstrably already known by the *user* before it was disclosed in a legal and non-confidential manner; or
- (iv) the *user* is obligated under mandatory law to disclose confidential information in court, official or other proceedings.

11. Data protection

More detailed provisions on data protection can be found in the privacy notices (see <https://www.br-automation.com/en/about-us/privacy-notices/>).

12. Miscellaneous and final provisions

- a) This *contract* is governed solely by Austrian substantive law excluding its principles on conflicts of law, to the extent that these refer to the application of foreign law and excluding the UN Convention on Contracts for the International Sale of Goods. The sole place of jurisdiction agreed for all legal disputes arising from or in association with this *contract* is the court responsible for B&R in A-5142 Eggelsberg, Austria.
- b) This *contract* constitutes all understandings between the parties. There are no verbal ancillary agreements. All amendments and supplements to this *contract* must be made in writing in order to be valid. This requirement of written form may only be waived by a written agreement. B&R hereby already repudiates any conditions of the *user* of any kind that are contrary to or deviating from these conditions, especially the General Terms and Conditions of Business of the user; B&R hereby expressly does not recognize such conditions, unless B&R had expressly accepted their application in writing. Non-acceptance also applies if B&R does not specifically repeat its repudiation of the deviating conditions of the *user*. The performance of a delivery or a service by B&R does not in any case constitute agreement to deviating conditions of the *user*, specifically not even if B&R is aware of the contrary or deviating conditions of the *user* and does not express any reservations.
- c) If one or more provisions in this *contract* are or become legally invalid, either wholly or in part, or if a loophole is found, the validity of the other provisions of the *contract* shall not be affected. In this case, the parties shall agree on a valid provision coming as close as possible from an economic standpoint to the intended purpose of the invalid regulation in place of the invalid provision or to fill in the loophole.