

Software Usage Agreement for Beckhoff Software Products

between

Licensor:

BECKHOFF Automation GmbH

Eiserstraße 5
33415 Verl
Germany

and

Licensee:

§ 1 Subject Matter of this Agreement

- (1) Licensor grants Licensee a non-transferable, non-exclusive right to use the data processing applications specified in Appendix 1 hereto (hereinafter called "Software") under the conditions specified hereinafter.
- (2) The Software shall be delivered to Licensee on machine-readable recording media as specified in Appendix 1, on which it is recorded as an object program in an executable status. One copy of the user documentation shall be part of the application and it shall be delivered to Licensee on a machine-readable recording medium or online. The Software and the documentation are hereinafter called "License Materials".
- (3) Data (files, data base materials) recorded on the machine readable recording media which is part of the software mentioned in Appendix 1, or which is mentioned there instead of such software, shall fall under the License Materials.
- (4) The License Materials shall also include new editions or supplements to the License Materials, which Licensor shall let Licensee have during the life of the agreement, and that is ordinarily not free of charge.

§ 2 Authorization of Usage

- (1) Licensee acknowledges that Licensor is the sole owner of all rights in the Software described in Appendix 1 and in all of the know-how pertaining to this Software. It shall forbear to attack those rights. It will adequately inform third parties of Licensor's ownership of those rights.
- (2) Licensee shall only be granted a limited right of usage to the extent to which it is absolutely necessary for the purposes of this Agreement. The provisions following hereunder are characterizations of this principle and shall be narrowly construed in cases of doubt. Licensor's copyright of the Software shall not be exhausted by this Agreement.

§ 3 Scope of Usage

- (1) Licensee may use the delivered software on the central data processing unit identified in Appendix 1. Licensee is responsible for providing the system environment in accordance with system requirements for the use of the Software.
- (2) "Usage" includes storing (copying) of the software and the data in whole or in part in the identified data processing unit, executing the applications, processing of the data and making additional copies of these materials in machine-readable form to the extent necessary for their use under this Agreement. The right of use in units connected to the central data processing unit identified in Appendix 1 (e.g. in-

put devices or output devices) shall be limited to transferring, storing and displaying the software, the data or parts of these materials.

- (3) If, under Appendix 1, the user documentation is also delivered on a machine-readable medium, paragraph (2) shall also be applicable for such documentation.
- (4) If the central data processing unit identified in Appendix 1 is temporarily out of order Licensee may use the software and the data on another central data processing unit. In any other case any use of the software and the data in a central data processing unit other than the one identified shall be subject to Licensor's written consent.
- (5) The usage under this Agreement shall include the making of backup copies of the delivered software, and also observing, examining and testing of the software while it is being run, stored and transferred, or displayed on the monitor screen.
- (6) Licensee may connect the delivered software to other software (facilitating interoperability). The user documentation shall contain a description of the interfaces provided for this purpose. Otherwise, Licensee shall not modify, translate, or otherwise edit and transform the software. Neither shall Licensee retranslate the software into the form of source programs or other modes of presentation. Any retranslation of program parts for making an independently developed DP program interoperable with other software shall be subject to the applicable legal provisions.
- (7) Licensee shall not transfer the privileges mentioned herein to third parties or grant any rights of usage to third parties.

§ 4 Protection of License Materials

- (1) Notwithstanding the rights of usage granted under §§ 1, 2 and 3, Licensor shall keep all rights of the License Materials, and that includes any copies or partial copies made by Licensee. The foregoing shall not affect Licensee's property of the machine-readable recording media, memory devices, and data processing devices.
- (2) Licensee shall leave any notices of industrial property rights, such as copyright notices and other reservations of rights unchanged, and it shall adopt such notices without change into any copies made by Licensee of machine readable License Materials in whole or in part.
- (3) Licensee shall neither make the License Materials available to third parties in original, nor as complete or partial copies, without Licensor's express written consent. The same shall apply in the case of complete or partial sale or dissolution of Licensee's business enterprise. Licensee's employees or other persons shall not be considered to be third parties while they stay with Licensee in order to make use of the License Materials as provided under this Agreement.
- (4) Licensee shall completely delete any License Materials stored in machine-readable recording media, or memory devices, or data processing devices before such media or devices are destroyed, sold, or otherwise passed on elsewhere.
- (5) Licensee may either use a new version of the License Materials delivered to it, or it may waive making such use.

§ 5 Delivery

- (1) Licensee shall receive a delivery copy of the Software on a machine-readable recording medium as shown in Appendix 1 and one copy of the user documentation. Should Appendix 1 show that the latter shall also be delivered on a machine-readable recording device, such machine-readable recording device may be the same the delivery copy is recorded on.
- (2) If the recording medium containing the Software is damaged or deleted by mistake during shipment or after its receipt by Licensee, Licensor shall deliver a replacement on charging the delivery costs and the costs of the recording device to Licensee.

§ 6 Royalties

- (1) The royalties shall be defined as a non-recurrent royalty. For particular new versions and supplements of the license program an additional royalty shall be charged as shown in [Appendix 1](#) if applicable.
- (2) Such royalties shall be payable subsequent to the delivery of the software to Licensee. Any royalties shall be due for payment no later than 30 days without any discount unless explicitly agree otherwise in writing. The VAT and sales tax, if any, shall be charged separately.

§ 7 Warranty

- (1) The parties agree that it is not possible to develop software thus that it meets all the requirements of the application without error. Licensor shall make available an user documentation explaining the intended use and the using conditions of the Software, which shall always be kept up to date.
- (2) Licensor warrants Licensee the fitness of the delivered version of the Software for its use as provided under this Agreement and as per the user documentation effective upon dispatch of the Software. This shall particularly apply to any guarantees which can only be contained in the user documentation and which must be marked and highlighted as such; in case of doubt there shall be no guaranty unless separately agreed in writing. In respect of updates, upgrades, and the delivery of new versions, the warranty shall be limited to the new features of the update, upgrade or new version compared to the previous version release.
- (3) In case of a significant deviation from the user documentation, Licensor shall have the right and, unless this requires unreasonable expenditure, the duty to remedy such deviation by repair. If Licensor does not succeed in eliminating such significant deviations from the user documentation within a period of time of reasonable length or to avoid such deviations in a manner allowing Licensee a usage of the program as provided under this Agreement, Licensee may demand a reduction of the royalties or, if the software is useless for Licensee, it may cancel the license for the software without notice against redemption of the royalties.
- (4) Licensee shall make verifiable documents concerning the kind and the occurrence of such deviations in the performance of the software available to Licensor, and it shall cooperate in the localization of defects.
- (5) This warranty shall not extend to defects caused by deviating from the conditions intended for the use of the Software and explained in the user documentation.
- (6) The warranty period shall lapse no later than one (1) year after the delivery of the Software to Licensee. This warranty is exclusive of any warranty claims other than the ones mentioned under this § 7 and § 8.

§ 8 Limitation of Liability

- (1) Licensor shall at all times be liable to Licensee for damages that are caused intentionally or through gross negligence by licensor itself or its agents, or for any lack of conformity with any guaranty or product description.
- (2) Licensor shall not be liable beyond the bounds set forth under subparagraph (1), except for insufficient quality of the software through Licensor's own fault or through the fault of its agents, but only if essential functions of the supplied software are affected by such insufficient quality of the software, and for any other breach or nonperformance of duties essential for the performance of this agreement through Licensor's own fault or through the fault of its agents.
- (3) If, by way of simple negligence, Licensor or its agents breach the duties set forth under subparagraph (2), Licensor shall only be liable to compensate those damages that were foreseeable for Licensor when the particular transactions were made. Licensee shall point out to Licensor in writing any special risks, any atypical possibilities of sustaining damages and any extraordinary amounts of damages that may be sustained. Licensor shall, however, be exempt from any liability for consequential damages, for lack of economic success, for indirect damages, and for damages resulting from claims of third parties, in particular such damages resulting from the use of the software for the development of other software.

- (4) Licensor shall only be liable for the recovery of data if Licensee has secured the possibility of reproducing such data at reasonable expenditure and in accordance with the principles of proper data processing from data provided in machine-readable form.
- (5) The same limitations of licensor's liability as set forth under the foregoing subparagraph (3) shall apply to any culpable breach of duties under this agreement committed by ordinary agents.
- (6) Licensor's liability under the Product Liability Act and for death, personal injury or damage to health cause by intent or negligence shall remain unaffected by the foregoing provisions.

§ 9 Intellectual Property Rights of Third Parties

- (1) Licensor warrants that it has no present knowledge of an intellectual property right or copyright of a third party which prevent the use of the Software or the License Material in accordance with this Agreement.
- (2) It is in Licensor's sole discretion to decide if it defends Licensee against claims made for an infringement of an intellectual property right or copyright caused by the Software while used as per this Agreement. Licensee shall notify Licensor without delay of the making of any such claims. If Licensor does not defend Licensee, Licensee shall be free to defend itself. Licensor shall assist Licensee in doing so just as well as Licensee is under an obligation to assist Licensor.
- (3) If claims under subparagraph (2) have been asserted against Licensee, or if such assertions of claims must be expected, Licensor may modify or replace the Software at its own expense as far as this is reasonable for Licensee. Each party to this Agreement may cancel the license without notice if such modification or replacement cannot be accomplished at a reasonable expenditure, or if a right of use cannot be obtained at a reasonable expenditure. This notwithstanding, the provisions made under § 8 for the limitation of Licensor's liability shall be applicable correspondingly.

§ 10 Conditions of Usage

- (1) The License Materials delivered to Licensee have been developed for being used in specific data processing units and for the interaction with specific other software. These conditions of usage are set forth in the performance description.
- (2) If the License Materials are used in a manner not complying with the conditions of usage under subparagraph (1) Licensor shall be discharged from his warranty obligation under § 7, 8 and 9.

§ 11 Termination, Return and Deletion of License Materials

- (1) Licensee may cancel each license for a particular software, or this Agreement as a whole, by giving one month's notice hereof to Licensor.
- (2) Licensor shall not cancel this Agreement any sooner than after twelve (12) months for the purpose of a general revision of the conditions of this Agreement, and it shall give Licensee three months' notice hereof. If it is not reasonable for Licensee, under the revised conditions after Licensor's notice of cancellation, to continue using a software for the usage of which it has paid a non-recurrent royalty as shown in Appendix 1, it shall be reimbursed pro rata for the time it could not use the software, the basis for such pro rata reimbursement being the ordinary useful life of such software under tax law. This Agreement is subject to cancellation without notice by either party for good cause ("wichtiger Grund"); in particular, but not limited thereto, in case of a breach of § 2, 3 and 4.
- (3) As soon as a notice takes effect, regardless of its time and reason, Licensee shall return to Licensor the original and all copies and partial copies of the License Materials. As far as software which is recorded on machine-readable recording media is concerned, such software shall be completely deleted in lieu of being returned.
- (4) If Licensee replaces cancelled software by a successor application offered by Licensor it may keep the canceled software for up to three months as a standby reserve. Any retention of an archival storage copy shall be subject to a written agreement.

§ 12 Statute of Limitations, Miscellaneous

- (1) Any claims made for a breach of § 2, 3 and 4 shall expire no later than six (6) years after their accrual, any other claims from this Agreement shall expire no later than three (3) years after their accrual, unless shorter terms are applicable under the statute of limitations.
- (2) Any modification of or supplement of this Agreement shall only be valid if made in writing.
- (3) The parties agree that any disputes arising from this Agreement shall come under the exclusive jurisdiction of the courts of competent jurisdiction over Verl, Germany. Licensor reserves its right, however, to file suit against Licensee with the court of competent jurisdiction over Licensee's commercial domicile.
- (4) This Agreement is governed by the Law of the Federal Republic of Germany except for the United Nations Convention on Contracts for the International Sales of Goods (CSIG).

Verl,

Beckhoff Automation GmbH

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Software Usage Agreement for Beckhoff Software Products

Appendix 1



Product:

License number:

Licensee:

Customer number:

Recording Medium:
CD ROM

Documentation Medium:
Electronic format, unless otherwise noted

Central Data Processing Unit:
One (1) PC-compatible Computer with operating system Windows NT 4.0 / NT Embedded / Windows 2000 Windows XP / Windows XP Embedded / Windows CE 3.0; Windows CE. NET

Miscellaneous:
Licensor is licensing the Software Product to Licensee for incorporation in Licensee's products (the "Approved Use"). Notwithstanding anything else contained in this Agreement, Licensee will not resell the Work Product other than for the Approved Use, which is not a software product. The Licensee may deliver the Software Product - as far as necessary for execution and maintenance of his application - only together with Licensee's application to third party - also in other countries in exception to § 3 (7) and § 4 (3).