

## **General Terms and Conditions of Business for the Delivery and Licensing of Software Products by Broetje-Automation GmbH (Rev. 06/2013)**

### **1. Scope of Application**

- 1.1. A license agreement covering the provision of computer software is hereby concluded between the buyer as the licensee and Broetje-Automation GmbH, subject to the following terms and conditions. The license agreement grants to the licensee the right to utilize the licensed software stipulated in the order confirmation from Broetje-Automation GmbH in accordance with the following terms and conditions. The software can be downloaded from the data carrier provided in accordance with the form of the order (CD, DVD, USB flash drive, FTP, web server etc.). The licensee is responsible for provision of the hardware interface specified by Broetje-Automation GmbH. By installing or utilizing the provided software — irrespective of whichever occur earlier — the licensee accepts the terms and conditions of this license agreement.
- 1.2. Software within the meaning of this license agreement shall be understood as the content of the file(s), data carriers and documentation provided under this license agreement.
- 1.3. The conclusion of the license agreement shall simultaneously be deemed the licensee's acceptance of these terms and conditions concerning the provision of licensed software by Broetje-Automation GmbH. The delivery of the software is governed solely and exclusively by our ToB for the Delivery and Licensing of Software Products by Broetje-Automation GmbH; no other terms and conditions shall become elements of the contract, even if we have not expressly objected to their inclusion.
- 1.4. The nature and scope of the agreed services are specified in the offer from Broetje-Automation GmbH and are subject to the application of the General Terms and Conditions for Deliveries and Services of Broetje-Automation GmbH (Rev. 07/2012) as well as these terms and conditions of business for the delivery and licensing of software, which apply as supplement to the above-mentioned documents.
- 1.5. These General Terms and Conditions of Business for the Delivery of Licensed Software apply as well to any and all later updates and upgrades of the software which may be provided to the licensee by Broetje-Automation GmbH throughout the valid term of the license unless deviating terms are concluded upon the provision of the later update or upgrade.
- 1.6. The software is legally protected. The copyright, patent rights, trademark rights and any and all other intellectual property rights to the software and to any and all other objects which Broetje-Automation GmbH provides or makes accessible to the licensee during the course of the preparation and performance of the agreement remain the exclusive property of Broetje-Automation GmbH within the relationship of the parties to each other.
- 1.7. All Subjects of the agreement, documents, proposals and/or test programs of Broetje-Automation GmbH which are made accessible to the buyer before or after conclusion of the agreement shall be deemed intellectual property and business and operating secrets of Broetje-Automation GmbH. They may not be used in any manner without the written consent of Broetje-Automation GmbH and shall be deemed confidential pursuant to Section 11 of these terms and conditions.

## **2. Types of Licenses**

- 2.1. A distinction is made in the following provisions between a single license and a floating license. The type of license shall be specified by the parties at the time the license agreement is concluded. The types of licenses differ from one another as described below:
- a) **Single License / Named License:**  
This license is granted to a specific data processing unit. The data processing unit is determined by the initial use of the license unless the data processing unit has been expressly stipulated in the license agreement. The licensed software may be installed and utilized solely on the data processing unit which has been stipulated for this purpose. A subsequent change in the stipulated data processing unit is possible solely in accordance with Subsection 3.5.
  - b) **Floating License / Concurrent User License**  
The license is made accessible on a server and may be installed on any desired number of data processing units within the local network. If and when an authorized user wishes to use the software, the data processing unit queries the central server regarding the availability of a license. If a license is available, the server permits the utilization of the software. When the software is closed, the license again becomes available for utilization by other authorized users within the local network.
- 2.2. The license applies solely to utilization for the riveting machine designated in the license agreement. Expansion of the scope of utilization of current licenses to include additional riveting machines is subject to a corresponding addendum to the license.

## **3. Subject of the License, Installation**

- 3.1. The subject of the license is the software developed and produced by Broetje-Automation GmbH and the relevant documentation, including the granting of the rights required for utilization of the software in accordance with the agreement, provided to the licensee for the term of the agreement. The license agreement contains the precise specifications of the provided software.
- 3.2. The separate provision of third-party software from other producers is governed by the terms and conditions of licensing of the particular producer, subject to deviating provisions in the agreement.
- 3.3. Unless otherwise regulated in the license agreement, the software will be provided to the licensee in object code format on a machine-readable data carrier for installation by the licensee on its systems.
- 3.4. Any and all data processing equipment (any and all types of storage media and central units) on which the software is placed, in whole or in part, temporarily or permanently, is located on the licensee's premises and is in his direct possession. Any and all further utilization regulations (such as the restriction to a specific number of workplaces or persons) shall be installed technically and observed in practice.
- 3.5. The installation of single licenses on data processing equipment other than that specified in the license agreement or determined by initial utilization must be announced to Broetje-Automation GmbH and is subject to the prior written consent of Broetje-Automation GmbH.

#### **4. Rights of Utilization**

- 4.1. The licensee is granted a simple right of utilization to the software and its documentation for the licensee's own purposes; the licensee is non-exclusive, limited to the term of the agreement and non-transferrable, and may not be granted to sub-licensees. Software within the sense of these regulations covers the content of the file(s), data carriers and documentation supplied by Broetje-Automation GmbH within the scope of the order. The customer is responsible for provision of the hardware interface specified by Broetje-Automation GmbH. By installing or utilizing the provided software, the customer accepts these terms and conditions. Unless otherwise regulated, these regulations also apply to updates, new releases, and modifications and extensions (upgrades) of the software.
- 4.2. If a floating license has been granted, it is prohibited to utilize the software on more than one single data processing unit at any given time.
- 4.3. If and when the right of utilization is terminated or expires for other reasons, the licensee shall surrender the software, any backup copies it may have created and the documentation to Broetje-Automation GmbH. If and when a physical surrender of the software and reproductions is not possible for technical reasons, the licensee will delete the software and reproductions and certify the deletion in writing to Broetje-Automation GmbH.

#### **5. Restrictions of Utilization**

With the exception of the scope described below, the licensee is not entitled to copy or develop further the software: The licensee is

- a) entitled to create a backup copy of the software. The licensee shall visibly label the created backup copy "Backup Copy" and apply a copyright notice from the producer;
- b) not entitled to transfer the software for utilization or the right of utilization to third parties unless Broetje-Automation GmbH has given its express written permission for the transfer;
- c) not entitled to lend, to lease, to sell, to license or by any other means to sub-license the software to third parties without the express written consent of Broetje-Automation GmbH or otherwise to make the software accessible for utilization by and on behalf of third parties by dissemination in tangible or intangible form;
- d) not entitled to modify, to disassemble or to translate the software or to separate any parts from the software unless, and solely to the extent that, such actions are unconditionally permissible in accordance with the German Copyright Act [*Urheberrechtsgesetz*].

#### **6. Term of the License**

- 6.1. Unless otherwise stipulated in the agreement, the license is granted for an indefinite time. In all other respects, the term is regulated by the specific order confirmation issued by Broetje-Automation GmbH.
- 6.2. If and when the licensee is in breach of the terms and conditions of the license agreement, the General Terms and Conditions of Business of Broetje-Automation GmbH

or of the regulations set forth in these Terms and Conditions for the Delivery of Licensed Software by Broetje-Automation GmbH, Broetje-Automation is entitled to an extraordinary right of termination without observing a notice period. The extraordinary notice of termination shall be given in writing. The provisions of Subsection 4.3 shall apply in this case.

## **7. Fees**

- 7.1. The amount of the license fee is set forth in the provisions of the specific license agreement; otherwise, it is based on the usual market conditions.
- 7.2. Unless otherwise regulated in the license agreement, the fee shall be paid upon the surrender of the software and is due immediately.
- 7.3. Any maintenance of the software by Broetje-Automation GmbH shall be conducted pursuant to a separate order. Separate fees will be charged for the maintenance of the software.

## **8. Damage or Loss**

In the event of damage to, or loss of, the software, the data carrier, the documentation or the license medium, replacement can be obtained from Broetje-Automation GmbH, provided that the licensee verifies the damage or loss or submits a statutory declaration relating to this effect. The licensee bears the costs of the replacement procurement.

## **9. Open Source**

- 9.1. The software may contain freeware, shareware or open source software. Broetje-Automation GmbH does not charge any license fees for the utilization of said freeware, shareware or open source software.
- 9.2. The licensee accepts that Broetje-Automation GmbH is not liable for defects in the freeware, shareware or open source software, nor does the latter otherwise assume any liability of any nature with respect to the freeware, shareware or open source software. The licensee accepts the terms and conditions specific to these parts of the software and which are part of the software documentation (open source terms and conditions). Upon the licensee's request, Broetje-Automation GmbH will submit to the licensee a copy of the source code for the open source software. If and when, and to the extent that, the provisions in these terms and conditions of licensing and the terms and conditions of the open source software are contradictory to one another, the terms and conditions of the open source software take priority over these terms and conditions of licensing with respect to the open source software.

## **10. Defects in the Software**

- 10.1. Broetje-Automation GmbH performs any and all deliveries and services in accordance with state-of-the-art technology. However, state-of-the-art technology does not make it possible to develop complex software products which are completely free of errors. The agreed characteristics of the software provided by Broetje-Automation GmbH consequently do not warrant that no program errors of any kind will occur, but solely that the software does not contain any program errors which would cause any major impairments in the proper usability of the software.

- 10.2. The software has the agreed characteristics and is suitable for the purposes presumed in the agreement or, in the lack of an agreement, for the usual purposes. It satisfies the criterion of practical usability and is of the quality usual for software of this type; but it is not error-free. Any functional impairment of the program resulting from hardware defects, ambient conditions, improper operation or similar events is not a defect. Any negligible lessening of the quality shall not be given consideration.
- 10.3. If and when the software displays a defect, Broetje-Automation GmbH will, at the licensee's option, perform subsequent improvement or subsequent delivery ("subsequent performance") within the scope of the warranty. Broetje-Automation GmbH may refuse the chosen type of subsequent performance or the subsequent performance in its entirety if and when the incurred costs would be unreasonably high. The above provision is without prejudice to the licensee's right, at its option, to reduce the purchase price or rescind the contract in the event that two attempts at subsequent improvement or replacement delivery have failed. Negligible defects do not give rise to the right to rescission. If and when Broetje-Automation GmbH provides software which is free of defects for the purpose of subsequent improvement, the defective software shall be completely deleted from any and all of the licensee's data carriers. With the exception of data compensation claims, any and all warranty claims based on material defects shall be subject to a limitation period of two years or, if and when the transaction does not involve any consumers, to a limitation period of one year. In all other respects, Sections 433 et seqq. of the German Civil Code [*Bürgerliches Gesetzbuch*] apply supplementarily.
- 10.4. The licensee is obligated to support Broetje-Automation GmbH during the analysis of the errors and remedy of the defects, in particular by describing concretely the problems which have occurred, by providing comprehensive information to Broetje-Automation GmbH and by allowing the time and opportunity required for the remedy of the defects. Broetje-Automation GmbH may, at its option, perform the remedy of defects on the site or on its own business premises. Broetje-Automation GmbH may also perform services in the form of remote maintenance. The licensee shall at its own expense assure the required technological conditions and grant Broetje-Automation GmbH electronic access to the software subject to reasonable prior announcement.
- 10.5. The licensee is accountable for the proper installation and utilization of the software in accordance with the instructions included with the delivery of the software.

## **11. Confidentiality**

- 11.1. Any and all information and documents from the other party which have been designated as confidential or which must be regarded as confidential in view of related circumstances, including, but not limited to, information about operating procedures, business relationships and know-how, shall be deemed "confidential information".
- 11.2. The parties agree to maintain confidentiality with respect to confidential information.
- 11.3. Confidential information of this nature is excluded from this obligation if and when the confidential information
  - a) was verifiably known to the recipient at the time of conclusion of this agreement or was disclosed to the recipient by a third party who was not in breach of a non-disclosure agreement, statutory provisions or official orders;
  - b) was in the public domain at the time of conclusion of this agreement, provided that its

entry into the public domain was not a consequence of the breach of this agreement;

- c) must be disclosed pursuant to legal obligations or upon the order of a court or government authority. If permissible and possible, the recipient obligated to disclose information will notify the other party in advance, giving the other party the opportunity to take measures to hinder the disclosure.
- 11.4. The parties will give access to confidential information solely to consultants who are obligated to confidentiality by professional ethics or who have previously accepted obligations corresponding to the confidentiality obligations under this agreement. Moreover, the parties will disclose confidential information solely to those employees who must be familiar with the information for the performance of this agreement; furthermore, the parties will obligate said employees to confidentiality obligations surviving their departure from the parties' service in the scope permitted under labour law.
- 11.5. Each and every culpable breach of these regulations will result in a contractual penalty in the amount of €100,000.00. The contractual penalty is without prejudice to more extensive claims by the injured party.

## **12. Security Measures, Audit Right**

- 12.1. The licensee will implement appropriate measures to protect the software under this agreement and, as appropriate, the logon data for online access from access by unauthorized third parties. In particular, any and all copies of the software under this agreement and the logon data shall be stored in a secured place.
- 12.2. The licensee will make it possible for Broetje-Automation GmbH, upon the latter's request, to audit the proper utilization of the software under this agreement, in particular, but not limited to, whether the licensee is utilizing the program, qualitatively and quantitatively, within the limits of the procured licenses. For this purpose, the licensee will provide information to Broetje-Automation GmbH, permit inspection of relevant documents and written materials and enable an inspection of the hardware and software environment in use. Broetje-Automation GmbH will conduct the audit on the licensee's premises during the latter's regular hours of business or will engage a third party obligated to confidentiality to conduct the audit. Broetje-Automation GmbH will take steps to ensure that the licensee's business operations are disrupted as little as possible by its activities on the site.