

Bosch Rexroth Limited NZBN 9429032060966  
of 42 Lady Ruby Drive, East Tamaki, Auckland 2013, NEW ZEALAND

(referred to as "**Bosch Rexroth**")

- 1. Application Of Terms, Quotations and Orders**
- 1.1 These Terms, in their present form or as varied in accordance with clause 1.7, together with:
  - (a) any accepted Application for Opening of a Credit Account form;
  - (b) all offers, estimates or quotations (**Quotations**) accepted in accordance with clause 1.3;
  - (c) the Electronic Data Interchange (**EDI**) Trading Terms (if applicable);
  - (d) all product warranties provided by Bosch Rexroth;
  - (e) all accepted orders placed by a buyer with Bosch Rexroth for Bosch Rexroth's products or services (**you, your**); and
  - (f) any variation to a document listed in (a) to (e) above, agreed to in writing by you and Bosch Rexroth,
 constitute the contract (**Contract**) between Bosch Rexroth and you pursuant to which Bosch Rexroth makes all supplies of Bosch Rexroth products and services to you. The application of these Terms to any order or other arrangement by Bosch Rexroth to supply products or services to you may only be varied by agreement in writing between you and Bosch Rexroth.
- 1.2 Quotations given by Bosch Rexroth are, except to the extent otherwise stated in such document, subject to these Terms.
- 1.3 Any Quotation from Bosch Rexroth:
  - (a) will not bind Bosch Rexroth or form part of the Contract unless given, or subsequently confirmed, in writing by Bosch Rexroth and accepted by you through placement of an order;
  - (b) shall remain open for acceptance for a maximum period of 30 days, unless otherwise specified in the Quotation; and
  - (c) may be subject to alteration at any time prior to Bosch Rexroth accepting an order from you.
- 1.4 An order placed by you will only form part of the Contract when it has been received and accepted by Bosch Rexroth in writing or by way of delivery of the ordered products or services.
- 1.5 Any terms and conditions contained in any order or other document issued by you will not form part of the Contract unless they are expressly signed and accepted by Bosch Rexroth's authorised representative.
- 1.6 Accepted orders cannot be cancelled or varied without Bosch Rexroth's written consent. Bosch Rexroth reserves the right to correct any significant errors or omissions in its Quotations, order confirmations or invoices.
- 1.7 Except as otherwise agreed in writing, Bosch Rexroth may amend these Terms at any time with notice in relation to future orders placed by you or with notice prior to acceptance of orders which have already been placed to Bosch Rexroth, in which latter case you may decide to withdraw your order if you consider such variation would cause detriment to you.
- 1.8 Supply of products or services by Bosch Rexroth does not create any obligation on Bosch Rexroth to supply the products or services to you on a continuing basis or at any time in the future. Further, except as otherwise agreed in writing, Bosch Rexroth reserves the right at any time and without notice to impose a limit on the amount of products you may purchase.
- 1.9 If our products contain software (either contained therein or delivered together with the products), our license conditions shall take precedence; if our products contain open source software (**OSS**), the respective OSS license conditions shall take precedence over all conflicting license and other conditions relating to the products. We provide these license conditions together with the products and, upon your request, make them available to you in advance.
- 1.10 If you require a test to determine the performance of products contained in Bosch Rexroth's Quotation, the test procedure to be used must be agreed by Bosch Rexroth, and you agree to reimburse Bosch Rexroth for the cost of any such tests required by you.
- 2. Prices**
- 2.1 Except where an order is placed for products or services under a valid and binding Quotation or to the extent otherwise agreed, Bosch Rexroth reserves the right at any time prior to accepting an order to vary by notice to you, the price of the products or services in which case you may decide to revise or withdraw your order with notice to Bosch Rexroth.
- 2.2 Except to the extent otherwise stated in the Quotation, Bosch Rexroth reserves the right prior to acceptance of such order and with notice to you, to add to the quoted price any additional cost incurred by Bosch Rexroth as a result of:
  - (a) any agreed change to order quantities;
  - (b) any relevant increase in exchange rates, costs of labour, parts, materials and other inputs, including, without limitation, energy and other overheads; and
  - (c) in the case where you have provided any goods, tooling or materials for the purpose of Bosch Rexroth providing the products or services (**Your Materials**) or any specific instructions or specifications for the products or services, any agreed variation to these.
- 2.3 Bosch Rexroth may, in its absolute discretion, modify its prices at any time to reflect fluctuation in global fuel prices, delivery costs and other operating costs as deemed appropriate by Bosch Rexroth.
- 2.4 Unless otherwise stated in the Quotation, prices quoted for export are FCA (Incoterms 2020) dispatch location nominated by Bosch Rexroth and do not include freight costs, insurance, import duties or government taxes in the destination country, or costs of delivery within the destination country, which are your sole responsibility. In addition, unless otherwise agreed, you assume the responsibility and costs of export formalities.
- 2.5 Each amount quoted by Bosch Rexroth is the goods and services tax (**GST**) exclusive amount, unless specifically described as 'GST inclusive'.
- 3. Goods and Services Tax Act 1985 (NZ) (GST Act NZ)**
- 3.1 If goods and services tax under the GST Act NZ (**GST**) is chargeable on a supply of products or services made pursuant to the Terms then: (a) you shall pay such GST in addition to the GST exclusive consideration that is payable for the supply; and (b) Bosch Rexroth will issue you with a "tax invoice" (as defined in the GST Act NZ).
- 3.2 You and Bosch Rexroth agree that, if applicable, section 8(4) of the GST Act NZ does not apply to supplies made by Bosch Rexroth to you (if registered for GST), and accordingly such supplies will be made in New Zealand (for the purposes of the GST Act NZ) and chargeable with GST.
- 4. Consumer Guarantees Act 1993 (NZ) (CGA) and Fair Trading Act 1986 (NZ) (FTA)**
- 4.1 Subject to clause 4.2, nothing is intended to have the effect of contracting out of the provisions of the CGA or FTA (**NZ Consumer Law**) except to the extent permitted by the NZ Consumer Law and all provisions of the Terms shall be read as modified to the extent necessary to give effect to that intention.
- 4.2 The parties agree that where the supply of products or services by Bosch Rexroth to you will be for the purposes of a business, to the maximum extent permitted by law, you agree that:
  - (a) the provisions of the CGA do not apply in respect of the supply of those products or services to you; and
  - (b) sections 9, 12A, 13 and 14(1) of the FTA do not apply to the obligations of the parties under these Terms.
- 4.3 Where you supply the products to a person acquiring them for business purposes, you must ensure that your contract with that person contains an equivalent provision to clause 4.2.
- 4.4 You shall not, in relation to the supply by you of the products, give or make an undertaking, assertion or representation in relation to the products without the prior approval in writing of Bosch, and you shall indemnify Bosch against any liability or cost incurred by Bosch as a result of any breach by you of this provision.
- 5. Terms of Payment**
- 5.1 Unless otherwise agreed in writing (by you submitting an Application for Opening of a Credit Account form which is accepted by Bosch Rexroth) or otherwise stated in any Quotation issued by Bosch Rexroth, payment must be made by you in NZD without set off or deduction by electronic funds transfer to a bank account nominated by Bosch Rexroth no later than 30 days after invoice date (**Due Date**). In all instances, Bosch Rexroth reserves the right to make delivery of the products conditional upon contemporaneous payment, payment of progress claims or, subject to NZ Consumer Law, on pre-payment of the price.
- 5.2 If you fail to make a payment by the Due Date, Bosch Rexroth may:
  - (a) charge interest on the overdue account at the rate of 10% per annum;
  - (b) refuse to make any further deliveries under the Contract until the amount due has been paid; and/or
  - (c) if the amount due remains unpaid after Bosch Rexroth, providing 7 days' notice to you of such breach, treat your failure to make payments as a repudiation of the Contract by you. Such repudiation shall entitle Bosch Rexroth to elect, without prejudice to any of its other rights, to terminate the Contract in whole or in part (including any order or part of an order) and, in either case, to recover damages for the breach of the Contract.
- 5.3 Bosch Rexroth may allocate all amounts received by you in any manner it determines including any manner required to preserve any personal property security interest in the products.
- 6. Delivery**
- 6.1 In the case of supply of products, delivery shall be:
  - (a) FCA (Incoterms 2020) at the premises nominated by Bosch Rexroth, or
  - (b) in the case of export by Bosch Rexroth, FCA (Incoterms 2020) to the dispatch location nominated by Bosch Rexroth, and
  - (c) unless the parties agree in writing to alternative delivery arrangements, if you fail or refuse, or indicate to Bosch Rexroth that you will fail or refuse, to take or accept delivery, then the products shall be deemed to have been delivered on the date when Bosch Rexroth sought to deliver the products.

- 6.2 In the case of supply of services, delivery shall be deemed to have occurred on completion by Bosch Rexroth of the agreed services.
- 6.3 The completion or delivery dates specified in any Quotation are estimates only. Bosch Rexroth is not bound by any completion or delivery dates specified in a Quotation.
- 6.4 Bosch Rexroth will endeavour to effect delivery in any time stated in writing and otherwise within a reasonable period. Bosch Rexroth will endeavour to deliver all products the subject of an order at the same time. However, where this is not possible, in order to minimise any detriment that may be caused to you, Bosch Rexroth will deliver products to you by instalments within a reasonable period of time.
- 6.5 If, at your request, delivery of any products is delayed after notification by Bosch Rexroth to you that the products are ready for delivery, you agree to pay any reasonable storage costs incurred by Bosch Rexroth.
- 6.6 If Bosch Rexroth fails to deliver in accordance with clause 6.4 by reason of:
- inability to obtain supplies of the products (where it is not the manufacturer) or materials or parts from approved sources;
  - import or export restrictions;
  - any strike or combination of worker, shortage of labour or lockout;
  - any fault of yours; or
  - any other event or circumstance beyond the reasonable control of Bosch Rexroth,
- Bosch Rexroth may at its option cancel any order, the Contract or any unfulfilled part of an order or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery. Bosch Rexroth shall not be liable for delay in delivery of the products or services as a result of any of the causes set out in this clause 6.6.
- 6.7 In the case of delivery of products with respect to which it has been agreed to use returnable packaging, packing materials or pallets, you must return to Bosch Rexroth such items within a reasonable period of time, failing which you may be charged for their replacement cost.
- 6.8 If it is your responsibility to have the products installed and/or all auxiliary services operative prior to requesting commissioning. Should Bosch Rexroth's commissioning representative arrive on site and the products are not ready for commissioning, additional costs may be charged to your account.
- 7. Notification of Faults and Returns**
- 7.1 You must examine the products supplied by Bosch Rexroth on delivery or collection.
- 7.2 You shall notify Bosch Rexroth of any shortfall in the number of products to be supplied under an order within 48 hours of receipt of the products (unless the products are delivered by instalment in accordance with clause 6.4, in which case you shall notify Bosch Rexroth of any shortfall within 48 hours of receipt of the final instalment of products). Failure to notify Bosch Rexroth shall result in the loss of any rights you may have against Bosch Rexroth for the shortage.
- 7.3 You shall within 7 days of each delivery of products, give full particulars in writing to Bosch Rexroth of any matter or thing in relation to any delivery which is not in accordance with the terms of any order (other than any shortfall to which clause 7.2 applies). Failing such, you shall be bound to pay for the products and, except where you are a Consumer (as that term is defined in the NZ Consumer Law), then the products shall be deemed in all respects to have complied with such order.
- 7.4 Any products that are not defective, not otherwise in breach of NZ Consumer Law or not supplied in error and which otherwise comply with the order may not be returned to Bosch Rexroth by you for credit, except where agreed by Bosch Rexroth in writing at its discretion. If Bosch Rexroth agrees to accept the return of any such products, you agree that the products must be new, undamaged, in a saleable condition and not shopsoiled and that Bosch Rexroth may deduct any reasonable costs it has incurred in processing the return. Bosch Rexroth will not be responsible for any freight charges for returned goods and is not responsible for loss or damage in transit.
- 8. Risk**
- 8.1 Products shall be at your risk upon you or your agent or carrier taking physical possession of the products.
- 8.2 Bosch Rexroth shall not be liable for any such loss, deterioration or damage caused to the products after risk passing.
- 9. Property**
- 9.1 Except where otherwise agreed, any tooling acquired, created or commissioned by Bosch Rexroth for the purpose of supplying any products to you and any other signage, sample product, equipment or other goods loaned to you by Bosch Rexroth from time to time will remain the property of Bosch Rexroth.
- 9.2 Bosch Rexroth accepts no responsibility for loss or damage of your tooling and/or other goods left in Bosch Rexroth's possession or in transit to or from its premises, such tooling and/or other goods being your absolute property.
- 9.3 Title in products supplied by Bosch Rexroth will only pass to you upon you paying, in cleared funds, to Bosch Rexroth the full purchase price of all products supplied to you by Bosch Rexroth under the order and any other sums outstanding from you to Bosch Rexroth under the Contract.
- 9.4 If you:
- default in paying any sums due to Bosch Rexroth under any order; or
  - are an individual and become insolvent, bankrupt, commit any act of bankruptcy, compound with or enter into any compromise or arrangement with your creditors or if a mortgagee takes possession of any of your assets; or
  - are a company and have a provisional liquidator, liquidator, receiver, receiver and manager, trustee for creditors or in
- bankruptcy, administrator or analogous person appointed to you or your property, or if a mortgagee takes possession of any of your assets; or
- (d) are otherwise unable to pay your debts as and when they fall due, any amount to become due under the Contract shall become immediately due and payable and you shall not sell or otherwise deal with any products in your possession and, upon Bosch Rexroth's request, you will return the products to Bosch Rexroth immediately.
- 9.5 Subject to clause 9.4, you are authorised to sell the products in the ordinary course of business and shall hold the proceeds of any sales separately from your own moneys and Bosch Rexroth has a security interest in those proceeds, provided that such authority may be revoked by notice from Bosch Rexroth at any time if Bosch Rexroth considers your creditworthiness to be unsatisfactory or if you are in default in the performance of your obligations under the Contract or any other agreement between Bosch Rexroth or any of its related companies as that term is defined in the Companies Act 1993 (read as if the expression "company" in that subsection included any body corporate of any jurisdiction) (**Related Company**) and you. Such authority shall be deemed automatically revoked if you satisfy clause 9.4.
- 9.6 You shall, if required by Bosch Rexroth, store separately those products in respect of which title is retained by Bosch Rexroth and shall clearly identify such products as the property of Bosch Rexroth. Bosch Rexroth shall, upon revoking its authority contained in clause 9.5 or such authority being automatically revoked under clause 9.4, have the irrevocable right to enter upon the premises where the products are situated, or where Bosch Rexroth suspects the products are situated, without committing a trespass and take possession of and remove the products (or in accordance with clause 9.7, any products owned by you into which they become incorporated) even though they may have been attached to other goods or land which is not your property, and to use your name and to act on your behalf to recover possession of Bosch Rexroth's products. You will remain liable to Bosch Rexroth for the price of any damaged, used, incomplete, broken or obsolete products that Bosch Rexroth determines have no commercial value or are unable to be resold and for the difference in the original purchase price agreed by you from actual resale value. Bosch Rexroth may also require you to pay its reasonable costs in exercising any of its rights under this clause 9.6 together with any related costs such as transportation, repackaging or any other relevant loss suffered or incurred by it as a result of exercising its rights under this clause.
- 9.7 If the products in which title is held by Bosch Rexroth are to become a fixture or fittings of any real property owned by you or any other person, you acknowledge, or where you do not own the real property to which the products are to be affixed, shall procure the owner to acknowledge, and in either case shall procure any mortgagee of such real property to acknowledge that, notwithstanding such incorporation, such products remain the property of Bosch Rexroth until title in the products passes to you, and that all rights of Bosch Rexroth set out in these Terms remain.
- 10. Personal Property Securities Act 1999 (PPSA NZ)**
- 10.1 You acknowledge and agree that:
- the Contract constitutes a security agreement;
  - in accordance with clause 9 of these Terms, you grant to Bosch Rexroth a security interest in all products supplied by Bosch Rexroth as security for payment of the purchase price of the products and all other moneys payable to Bosch Rexroth by you (whether pursuant to an order under these Terms or under the terms of any specific contract relating to the supply of products by Bosch Rexroth to you) and for the performance by you of all of your other obligations to Bosch Rexroth.
  - You agree to do anything that Bosch Rexroth requires and promptly give Bosch Rexroth all assistance and information (including signing any documents) as Bosch Rexroth requests to ensure that Bosch Rexroth has a perfected first ranking security interest in all products (and the proceeds thereof) supplied by Bosch Rexroth.
  - Bosch Rexroth may register a financing statement on the New Zealand Personal Property Securities Register (as defined in the PPSA NZ) at your cost at any time before or after delivery of the products by Bosch Rexroth.
  - Bosch Rexroth may allocate all amounts received by you in any manner it determines including any manner required to preserve any purchase money security interest in the products.
  - You waive the right to receive a copy of any verification statement confirming registration of a financing statement relating to the security interest created by these Terms.
  - You agree not to change your name without notifying Bosch Rexroth in writing of your intention to change your name at least 10 business days prior to doing so.
  - You agree that you have no rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 148 of the PPSA NZ.
  - You agree to indemnify Bosch Rexroth for any costs incurred by Bosch Rexroth under this clause and/or exercising any rights Bosch Rexroth has under the PPSA NZ.
- 11. Insurance**
- 11.1 Until property in the products passes to you, you shall keep the products insured, with Bosch Rexroth noted as an additional insured and will produce upon demand evidence of the existence of such insurance as Bosch Rexroth may require. If you default in the performance of your obligations under this clause 11, Bosch Rexroth may insure the products and the cost of effecting such insurance shall be payable by you on demand.

- 11.2 If any products are damaged or destroyed prior to property in them passing to you, Bosch Rexroth shall be entitled, without prejudice to any of its rights or remedies under these Terms, to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such products has become payable under these Terms) and the production of these Terms by Bosch Rexroth shall be sufficient evidence of its right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Bosch Rexroth. Any such insurance proceeds shall be applied by Bosch Rexroth as follows:
- first, in payment of the purchase price of the products which are damaged or destroyed, if unpaid;
  - secondly, in payment of the outstanding purchase price of any other products supplied to you by Bosch Rexroth, whether under these Terms or otherwise; and
  - thirdly, in payment of any other sums payable to Bosch Rexroth by you whether under these Terms or otherwise.
- 12. Intellectual Property**
- 12.1 All intellectual property rights in or relating to products or services supplied by Bosch Rexroth, including in relation to the development, manufacture, use, operation, repair or maintenance of the products, and in or in relation to any Bosch Rexroth-licensed, commissioned or created tooling, materials, drawings, samples, reports, work results and other documents, remains at all times the sole and exclusive property of Bosch Rexroth or its licensor.
- 12.2 Upon your payment in full for relevant products or services supplied to you by Bosch Rexroth, Bosch Rexroth grants you a non-exclusive, non-transferable, limited, non-sub-licensable license to use, develop and otherwise deal with the deliverables created by Bosch Rexroth and supplied to you.
- 12.3 Except where you are a Consumer and the claim arises as a result of Bosch Rexroth's breach of the NZ Consumer Law to you, Bosch Rexroth is not liable for any claims arising from an actual or alleged infringement of a third party's intellectual property rights where:
- such claim arises due to Bosch Rexroth agreeing to supply the product or services in accordance with your specifications or using Your Materials;
  - the actual or alleged infringement of the intellectual property rights is due to use of Bosch Rexroth's product in conjunction with another product not supplied by Bosch Rexroth;
  - the products or work results produced by Bosch Rexroth in providing the services are used in a way which could not have been foreseen by Bosch Rexroth, or
  - (in the case of patents) unless at least one intellectual property right from the property right family has been published under the European Patent Office or in one of the following countries: Australia, Germany, France, Great Britain, Austria or the USA.
- 12.4 If Bosch Rexroth supplies any products or services in accordance with your specifications or using Your Materials, you shall indemnify Bosch Rexroth from and against all actions, claims, demands, costs, expenses and liabilities arising in connection with any alleged or actual infringement of the intellectual property rights of a third party.
- 12.5 You shall not, and shall ensure that your officers, employees or agents do not:
- use any trademark owned or licensed by Bosch Rexroth, or any substantially identical or misleadingly similar words, in a company name, business name, domain name or email address;
  - apply to register a company name, business name or domain name which incorporates any trademark owned or licensed by Bosch Rexroth, or any substantially identical or misleadingly similar words;
  - use any logo, mark or any other promotional material owned by or licensed to Bosch Rexroth in any promotional materials without its prior written consent, and only then subject to Bosch Rexroth's directions in relation to any use of the trademarks which may be published at [www.bosch.co.nz/terms](http://www.bosch.co.nz/terms) as amended from time to time; or
  - do anything which a reasonable person should identify is likely to unreasonably damage the reputation of Bosch Rexroth or any of its trademarks or products or services.
- 13. Express Warranties**
- 13.1 To the maximum extent permitted by law, this clause 13 will not apply to a Consumer. Any warranty against defects which is offered by Bosch Rexroth to a Consumer will be provided in the product warranty (if any) separately supplied with the product, which is in addition to (and not in limitation of) any rights a Consumer may have under the NZ Consumer Law.
- 13.2 This clause does not apply in respect of any consumable or accessory products sold by Bosch Rexroth. This clause does not apply to supplies of the kind referred to in clause 16, except to the extent specifically stated in that clause.
- 13.3 Bosch Rexroth warrants to you that products or services sold by it to you for use or resale in New Zealand (or other country as may be agreed by Bosch Rexroth in writing for the purpose of this warranty) conform to the agreed specifications (subject to clause 13.4) and are free from material faults and defects (subject to clause 13.5).
- 13.4 With respect to products developed or manufactured by Bosch Rexroth for your particular requirements and which are not the subject of published product specifications issued by Bosch Rexroth, Bosch Rexroth does not warrant measurements, dimensions, weights, and drawings provided for products but only that the products will conform to agreed tolerance standards.
- 13.5 The warranty that products are free from material faults and defects will not apply to the extent any defect cannot be discovered due to the state of scientific or technical knowledge or has been disclosed as a feature or limitation of the products in any product specifications published by Bosch Rexroth.
- 13.6 With the exception of any products that may have been sold by Bosch Rexroth to you by description or sample, Bosch Rexroth does not warrant that the products shall conform to that description or sample and products shall be accepted by you even though alterations in design or construction have been introduced by Bosch Rexroth between the date of the description or provision of the sample and delivery of the product to you.
- 13.7 Bosch Rexroth assumes a warranty of fitness for a particular purpose with respect to a product supplied by it only if such particular purpose has been expressly stated in writing by you, and Bosch Rexroth has expressly accepted a warranty of fitness for such purpose.
- 13.8 The duration (and any other details) of the express warranties referred to in this clause shall be agreed upon a product-specific basis. Unless otherwise agreed by Bosch Rexroth in writing, the express warranties in this clause shall apply:
- in the case of products: as specified in the Quotation for the supply of such product to you, or if no warranty period is so specified, for a period of 12 months, from the date of delivery of the products to you; or
  - in the case of services: for a period of 6 months after delivery of the services.
- 13.9 Claims under the express warranties provided under this clause 13 must be made in writing to Bosch Rexroth within 7 days of such claim arising. Repair or replacement shall not extend nor renew the warranty period.
- 13.10 The express warranties in relation to products under this clause 13 shall not apply to a defect which it arises:
- due to storage, handling or installation of the products other than in accordance with instructions provided by Bosch Rexroth or without reasonable care;
  - due to operation, use or maintenance of the products other than in accordance with instructions provided by Bosch Rexroth or without reasonable care;
  - due to repairs, alterations or modifications to the products which have been performed by a third party, or due to the use of any spare parts not manufactured, sold or approved by Bosch Rexroth in connection with repairs, alterations or modifications of the products, which occurred without Bosch Rexroth's authorisation;
  - due to accidental damage or to use of the products for a purpose or in environmental conditions for which the products were not designed or sold or use of the product outside the specified or normal operating ranges for such products;
  - as a result of changes which occur in the condition or operational qualities of the products due to climate or other environmental influence, foreign material contamination or water entry;
  - from normal wear and tear or when replacement or repair of parts would be part of normal maintenance or service of the products or where the damage is only to surface coating; or
  - from, or is attributable to, Your Materials or your specifications or instructions for the products or services,
- nor will the express warranties in relation to products under this clause 13 apply in cases where the products suffer damage caused by continued use of the products after it is known they are defective.
- 13.11 If requested by Bosch Rexroth, you shall return to Bosch Rexroth any products claimed to be defective under clause 13 or 14 of these Terms. No such return may be made without the written authority of Bosch Rexroth. If the products are found to be defective, Bosch Rexroth will bear your reasonable expenses in making the warranty claim, including the reasonable cost of transport for returning the defective products to Bosch Rexroth (if applicable).
- 14. Product Recall**
- 14.1 You agree to inform Bosch Rexroth as soon as possible if you believe that any product supplied by Bosch Rexroth may be unsafe or hazardous or does not conform, in whole or in part, with the technical specifications (if any) provided for in an order or other mandatory specifications imposed by law (**Non-Conforming Product**). You will also notify Bosch Rexroth as soon as possible after you have been informed of incidents, accidents, or property damage allegedly caused by Non-Conforming Products.
- 14.2 The parties acknowledge and agree that Non-Conforming Products may need to be recalled. Subject to any applicable law, the parties shall consult with each other in respect to:
- a product recall prior to instituting any recall campaign, in particular any campaign in relation to which you may seek reimbursement from Bosch Rexroth under this clause 14; and
  - any response to inquiries from any Government agency relating to the Non-Conforming Products.
- 14.3 Each of the parties will cooperate with, and provide reasonable assistance to, the other party in investigating any allegation(s) that a product is a Non-Conforming Product. If requested, you shall provide to Bosch Rexroth all relevant information available to you regarding an alleged Non-Conforming Product including reports, tests witness statements and, where possible, the Non-Conforming Product in question for the purpose of inspection and testing. No party is required to disclose material or documents which attract legal professional privilege.
- 14.4 In the event of a recall campaign, Bosch Rexroth shall negotiate a fair and mutually acceptable reimbursement for all direct recall related expenses in respect of the Non-Conforming Products. This is subject to clause 15 and on the understanding that the portion of the expenses to be borne by Bosch Rexroth shall be proportional to the degree to which the nonconformity of the products sold by Bosch Rexroth caused the recall.
- 15. Exclusion of Liability**
- 15.1 Except for those rights and remedies that you have in respect of the products and services under the NZ Consumer Law which cannot lawfully

- be excluded, restricted or modified, all warranties, conditions and guarantees, whether statutory or otherwise, are excluded in relation to the products and services.
- 15.2 Subject to clause 15.3, Bosch Rexroth's liability to you in respect of all claims, actions, demands, proceedings, liabilities, damages, amounts, costs and expenses arising, paid, suffered or incurred by you (directly or indirectly) as a result of or in connection with a negligent act or omission of Bosch Rexroth, any breach or non-performance of any express or implied obligation of Bosch Rexroth under these Terms or a Contract or in any way related to the products or services or information or advice supplied in respect of the products and services shall be limited, at Bosch Rexroth's option:
- in the case of the products (or parts thereof) to the repair or replacement of the products (or the parts) or the supply of equivalent products (or parts) or the payment of the cost of having the products (or parts) repaired or replaced or having equivalent products (or parts) supplied and,
  - in the case of services, to supplying the services again or paying the cost of having the services supplied again.
- 15.3 For the avoidance of doubt, subject to clause 15.4, Bosch Rexroth excludes any liability for legal costs and disbursements on a solicitor and own client basis and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by you under or in connection with these Terms.
- 15.4 Nothing in these Terms excludes, modifies or restricts any rights or remedies a Consumer may have under the NZ Consumer Law.
- 15.5 Without limitation to any other right Bosch Rexroth may have under these Terms, you agree that in respect of Bosch Rexroth, its officers, employees and agents you will be liable for any claims, suits, actions, demands, loss, costs, liabilities, expenses (including reasonable legal expenses), judgments or awards made against or incurred by any such persons arising from a breach of these Terms or the Contract on the part of you, your agents, employees, principals and/or contractors.
- 16. Third Party Products On-Sold by Bosch Rexroth**
- 16.1 Subject to any rights a Consumer may have under the NZ Consumer Law, where the products sold to you by Bosch Rexroth under these Terms are not manufactured by Bosch Rexroth nor are sold under a name, brand or mark under which Bosch Rexroth carries on business:
- the products are as described on the order;
  - all specifications, drawings, and particulars of weights and dimensions submitted to you, whether contained in catalogues, price lists or other advertising matter, are approximate only and do not form part of the Contract or form part of the description applied to the products;
  - Bosch Rexroth shall not be liable for any alteration or variation in the products from such published specifications which are made available with respect to the products;
  - with the exception of clauses 13.6 and 13.7, clause 13 of these Terms does not apply; and
  - Bosch Rexroth agrees to assign to you, on your request, the benefit of any warranty that the manufacturer has granted to Bosch Rexroth under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 17. Export Control and Restricted Products**
- 17.1 The sale, resale or other disposition of products and any related technology or documentation are subject to the export control laws, regulations and orders of New Zealand and may be subject to the export and/or import control laws and regulations of other countries. You agree to comply with all such laws, regulations and orders and acknowledge that you shall not directly or indirectly export any products to any country to which such export or transmission is restricted or prohibited. You acknowledge your responsibility to obtain any license to export, re-export or import as may be required.
- 17.2 Bosch Rexroth shall not be liable for any loss or damage arising from controls referred to in clause 17.1 or any other restrictions imposed on the resale or use of the products by other legislation.
- 17.3 If the manufacture or use or sale of the products shall be forbidden or restricted by any competent government authority, any costs or expenses incurred by Bosch Rexroth in connection with any contract for manufacture, use or sale shall be paid by you.
- 18. Termination**
- 17.1 Bosch Rexroth may terminate or suspend the Contract (or any part thereof, including any order or part of any order) if you are in breach of:
- the Contract, and you remain in breach after receiving 7 days' notice from Bosch Rexroth of such breach;
  - any other agreement with Bosch Rexroth or a Related Company, and you remain in breach after receiving 7 days' notice from Bosch Rexroth of such breach; or
  - in the event a default is triggered under clause 9.4(b) to (d).
- 17.2 You must, and warrant that you will:
- comply with all applicable laws in relation to the conduct of your business including laws relating to anti-money laundering, modern slavery, bribery and corruption;
  - ensure that your actions or omissions do not cause Bosch Rexroth to be in breach of any applicable laws; and
  - immediately notify Bosch Rexroth of any breach of this clause 18.2.
- 17.3 Bosch Rexroth may, without liability to you and in addition to its rights pursuant to clause 18.1, immediately terminate or suspend the Contract and any outstanding orders if you or any of your employees or representatives:
- are charged with any criminal offence in relation to money laundering, bribery or corruption; or
  - act in a manner which, in Bosch Rexroth's reasonable opinion, could bring Bosch Rexroth into disrepute; or
  - act dishonestly, fraudulently or illegally.
- 17.4 Upon termination of this Contract for any reason whatsoever, you must:
- immediately pay all amounts owing to Bosch Rexroth; and
  - immediately cease displaying or using any of Bosch Rexroth's intellectual property including, where applicable, any brand materials of Bosch Rexroth (**IP Materials**) and must immediately return such IP Materials to Bosch Rexroth. Should you fail to comply, you hereby irrevocably consent to Bosch Rexroth exercising all rights associated with retrieving the IP Materials pursuant to clause 9.6 (as if the IP Materials were products).
- 19. Confidentiality of Bosch Rexroth's Information**
- 19.1 You agree to keep confidential Bosch Rexroth's financial, technological (including designs, drawings, specifications and technical handbooks), strategic, financial and business information, disclosed in the course of, or arising from, the Contract (**Confidential Information**).
- 19.2 All Confidential Information remains the property of Bosch Rexroth and may only be used by you in fulfilling your rights and obligations under the Contract. Otherwise, no Confidential Information may be disclosed to any third party without Bosch Rexroth's prior written consent.
- 19.3 You agree to effect and maintain adequate security measures to safeguard the Confidential Information from access or use by any unauthorised person and not to disclose any terms of the Contract or Confidential Information except where disclosure is necessary to comply with the Contract or any other agreement between the parties, or if the disclosure is required by law.
- 19.4 You must, on becoming aware of any breach of confidentiality, immediately inform Bosch Rexroth, investigate the breach and report to Bosch Rexroth as to the outcome of the investigation.
- 19.5 Upon termination of this Contract for any reason whatsoever, you must immediately return or destroy (at Bosch Rexroth's direction) all Confidential Information.
- 20. Set Off**
- 20.1 The parties agree that the account between the parties is a running account.
- 20.2 Where any amount is payable by Bosch Rexroth to you under the Contract, including an amount owing by way of rebate, Bosch Rexroth may set such amount off against any amount owed to Bosch Rexroth or to a Related Company by you, and continue to do so until such time as the amount outstanding from you has been paid in full.
- 21. General**
- 21.1 All the original rights, powers, exemptions and remedies of Bosch Rexroth shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. Bosch Rexroth shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of Bosch Rexroth or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.
- 21.2 Any provision of these Terms will be read down to the extent necessary to prevent that provision or these Terms being invalid, voidable or unenforceable in the circumstances.
- 21.3 You must not assign or subcontract all or any of your rights or obligations under the Contract without the prior written consent of Bosch Rexroth.
- 21.4 To the extent Bosch Rexroth supplies any products or services through one or more of its Related Companies, those Related Companies will have the benefit of these Terms and any Contract and be included as a beneficiary in the definition of "Bosch Rexroth" as appropriate.
- 21.5 A notice to be given by a party to the other party under the Contract must be in writing, directed to the party's address as specified in the Contract (or to such other address notified in writing by the receiving party) and left at or sent by prepaid registered post or hand delivery to that address. A notice will be deemed to be given: (i) on the day of delivery; (ii) 3 days after the date of posting by prepaid registered post if you are located in New Zealand; (iii) 14 days after the date of posting by prepaid registered post if you are located outside New Zealand, as the case may be; or (iv) in case of email, when the time shown on a "delivery receipt" received by the sender.
- 22. Governing Law**
- 22.1 All orders placed by you with Bosch Rexroth, and any agreement by Bosch Rexroth with you, for the supply of goods or services to you in New Zealand, shall be construed, enforced and performed in accordance with the laws of New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand in respect of all such agreements.
- 22.2 The United Nations Convention on Contracts for the International Sale of Goods and other conventions relating to the laws applicable to the sale of goods do not apply to the Contract.