Licence conditions for the transfer of ESI[tronic] software

to Robert Bosch Limited c/o Bosch Rexroth, Viewfield Industrial Estate, Glenrothes KY6 2RD – hereinafter referred to as the "Licensor" –

1. Scope of Application
1.1. These Licence Terms apply to the transfer of the following software products (hereinafter referred to as "Licensed Software") to an end customer (hereinafter referred to as "Licensee"):
1.1.1. Update Licence Versions
• Update Standard Licence Version: ESI[tronic] software and updates are provided
1.1.2. Standard Licence Version without update
• Standard licence version without updates: ESI[tronic] software is provided, no updates are provided
1.2. The exact name of the software provided results from the order.
1.3 The Licensor addresses these Licence Terms to business customers.

2. Provision of Software Products
2.1. The Licensor grants the Licensee the following by making the Software available to the Licensee by sending the activation code:
• in the case of the Standard Licence version without update, a permanent, non-exclusive right of use transferable only in accordance with the provision in clause 2.4,
• in the case of the update licence version, a time-limited, non-exclusive and non-transferable right of use to the Licensed Software specified in the order and subsequently activated.
2.2. The Licence entitles the Licensee to use the Licensed Software for its own operational purposes as described in the accompanying program documentation. The right of use is limited to the number of licensed devices (computer or Bosch diagnostic device) listed in the order, each with a central processing unit (CPU), whereby the right of use is tied to the licensed device and not to the user. However, it should be noted that some manufacturers of motor vehicles require individual user authentication for the use of certain functions of the software. Use means loading, displaying, running, transmitting and storing the Software for the purposes of its execution and processing of the data on the Licensee's device on which the Software is installed.
2.3. The acquisition of further rights to the Licensed Software itself is not covered by the right of use granted above. In particular, the Licensor reserves all publishing, reproduction, editing and administration rights to the Licensed Software.
2.4. The Licensee is entitled to permanently transfer the ESI[tronic] Software Standard Licence Version without update as a whole together with the licence in accordance with these Licence Terms to a subsequent acquirer, provided that the Licensee does not retain any copies of the Software and the associated program documentation - not even in parts - and refrains from any further use of the Software. The Licensee shall assure the Licensor in writing that it has deleted or rendered unusable in any other way all copies of the Software and the associated program documentation that may still be available to the Licensor. The costs and expenses incurred by the Licensor for the licence transfer and reactivation shall be borne by the Licensee in relation to the Licensor.
2.5. The Licensee is entitled to make a backup copy of the Software, which must be identified with a copy of the original marking (including the copyright notice). The use of the backup copy is only permitted in the event of deterioration or destruction of the copy of the Software originally provided by the Licensor. The Licensee is also subject to these Licence Terms with regard to the use of the backup copy. In all other respects, the Licensee is not entitled to reproduce the Licensed Software or the Program Documentation or parts thereof.
2.6. The Licensee is not entitled to use the Software outside of its business operations or for purposes other than its own business, or to enable third parties who do not belong to its business to use the Software or to temporarily or permanently transfer the Software to third parties. Unless otherwise expressly agreed, third parties in this sense are also branches of the Licensee or companies affiliated with it.
2.7. The Licensee shall not be entitled to edit, modify or otherwise modify the Software, to connect it to other programs in any manner other than via the intended interfaces, to reverse translate it into another form of presentation (decompilation), to remove, circumvent or change any security codes or features used to identify the Software, or to provide information in the Software and the program documentation about the To remove the copyright or other property rights of the Licensor

3. Delivery / Installation
3.1. The Licensor shall provide the Licensee with the Licensed Software and the program documentation (user manual and installation instructions) in electronic form.
Program download, installation and set-up guidelines can be found at: https://help.boschdiagnostics.com/ESItronic/#/home/ QuickStart/en/default
User manual and instructions can be found via the link below, with additional information and links to tutorials within the ESI[tronic] program. https://help.boschdiagnostics.com/ESItronic/#/home/37369/en/default
3.2. The Licensee shall be responsible for installation of the Licensed Software. The minimum system requirements for the hardware result from the current sales information of the Licensor.
3.3. After receipt of the order and the hardware identifier by the Licensee, the Licensed Software is activated by sending an activation code to the Licensee.

4. Updates / Delivery address
4.1. In the case of the update licence variants, the updates will be made available after their release.
4.2. In the case of the Standard Licence version without updates, no updates will be delivered.
4.3. Changes to the delivery or billing address must be notified to the Licensor or its representative (e.g. the ESI[tronic] service line) in writing without delay.

5. Licence Fees / Terms of Payment
5.1. The remuneration for the provision and use of the update Licences results from the order. Unless otherwise agreed in the order, the remuneration consists of an annual licence fee at the beginning of the licence and then at the beginning of each new contract year, which includes software maintenance. The timely payment of the annual licence fee is a prerequisite for the renewal of the licence and the provision of care services in the relevant contract year. The licence fee is charged per contract year.
5.2. The remuneration for the provision and use of the Standard Licence Version without updates results from the order. Unless otherwise agreed, the remuneration consists of a one-time licence fee to be paid at the beginning of the licence.
5.3. All prices shall be exclusive of the statutory value added tax.
5.4. Unless otherwise agreed in the order, invoicing shall take place immediately after the order or in advance at the beginning of each contract year. The invoice amount is due upon receipt. The timely payment of the annual licence fee is a prerequisite for the renewal of the licence and the provision of care services in the relevant contract year.
5.5. The Licensor shall be entitled, at its reasonable discretion, to increase the Licence Fee payable with a notice period of two months to the end of a Contract Year, and for the first time at the end of the first Renewal Period, to compensate for increased costs for licensing and obtaining diagnostic data, repair and maintenance information, for the further development of the Licensed Software as well as for the procurement of energy and IT infrastructure required for the operation of the servers required for the Licensed Software and other cost increases. If the increase is more than 10% compared to the last annual licence fee paid, the Licensee is entitled to terminate the licence in writing with a notice period of one month to the end of the contract year. If the Licensee does not terminate, the price adjustment will take effect at the beginning of the new contract year. The Licensor will inform the Licensee of this consequence when announcing the adjustment.
5.6. If the Licensee is partially or completely in default of payment, the Licensor shall be entitled to withhold the delivery and provision of updates until full payment has been made. The Licensee shall not be entitled to reduce or reduce the Licence Fee due to this late delivery caused by its late payment.

6. Claims for defects
6.1. The Licensor does not assume any liability for the accuracy and completeness of the vehicle data contained in the Licensed Software given the extent of the data material, changes and country-specific variants, errors or faults cannot be excluded. Therefore, the Licensee must always ensure that both the vehicle identification and the equipment of the vehicle to be repaired correspond to the vehicle data.
6.2. The Licensor does not warrant that the Licensed Software will meet the requirements and purposes of the Licensee – in particular that it will cover every vehicle variant – or that it will work with other programs selected by the Licensee on the same computer system.
6.3. The subject matter of the contract is licensed software that, in principle, corresponds to the information provided in the program description.
6.4. A defect shall be deemed to exist if the Licensed Software does not perform the functions specified in the program description, delivers incorrect results, interrupts its run uncontrollably or otherwise does not behave in a functionally correct manner, such that use of the Licensed Software is impaired in a significant manner.
6.5. Some vehicle manufacturers require the Licensee to provide certain identity information before performing a vehicle diagnostic for authentication. If a vehicle diagnosis is not possible due to omitted, incorrect and/or incomplete authentication, this is not to be seen as a defect in the Licensed Software. The same applies in the event that the vehicle manufacturer refuses the Licensee diagnostic access to the vehicle.
6.6. Vehicle diagnostics using the Licensed Software sometimes require a connection to Bosch servers as well as to servers of vehicle manufacturers. The operation of vehicle manufacturers' servers is outside the Licensor's sphere of influence, and manufacturer-side downtime is neither a poor performance by the Licensor nor a defect in the Licensed Software. The proper operation of Bosch servers requires regular maintenance work, and technical failures cannot be completely ruled out. The Licensor aims for general server availability from Monday to Saturday from 6:00 a.m. to 10:00 p.m (Central European Time).
6.7. The Licensor does not warrant any errors in the Software,
• caused by application errors on the part of the Licensee and which could have been avoided by careful reference to the program documentation; this also applies to non-existent or inadequate backup measures;
• due to virus attack or other external influences for which the Licensor is not responsible, such as fire, accidents, power failure, etc.;
• that the Software has been used in an operating environment other than that approved by the Licensor or is due to errors in the hardware, operating system or software of other manufacturers;
• which are based on the Software being changed by the Licensee or third parties on their own authority;
• caused by a lack of internet availability at the Licensee.
6.8. The Licensor warrants that the Licensed Software is free of third-party rights that preclude the Licensee's use in accordance with the contract. In the event that defects of title exist, the Licensor shall be entitled, at its discretion, to:
• take appropriate measures to eliminate the rights of third parties that impair the contractual use of the Licensed Software or to assert them, or
• to modify or replace the Licensed Software in such a way that it no longer infringes third-party rights, if and to the extent that this does not impair the guaranteed functionality of the Software.
6.9. Subject to clause 10.1, claims of the Licensee due to defects shall expire twelve months from date of delivery. The Licensor shall be liable for services within the scope of subsequent performance until the expiry of the limitation period applicable to the original delivery item.

7. Supplemental Terms for Update Licences
7.1. In the event of the occurrence of material defects in accordance with clause 6.5, the Licensee is obliged to provide the Licensor with all information necessary for error analysis and subsequent performance and to grant the Licensor or persons commissioned by the Licensor unrestricted access to the Software and the Licensee's device on which it is installed. An error message must include information about the type of error, the application that encountered the error, and the work that was done to eliminate the error. The error must be described in such a way that it is reproducible. If the Licensor carries out an error analysis at the request of the Licensee and it turns out that there is no defect that the Licensor is obliged to remedy, the Licensor may invoice the Licensee for the expenses incurred on the basis of the applicable hourly rates of the Licensor.
7.2. In the event of duly reported defects, the Licensor will at its option and no cost to the Licensee, provide remedial services necessary to enable the Licensed Software to conform to the warranty (rectification of defects or new delivery/reproduction) or refund amounts paid in respect of the defective Licensed Software. The Licensee shall also provide reasonable assistance, when requested by the Licensor.
7.3. Subject to clause 10, the remedies set out in this clause 7 are the Licensee's sole remedies and Licensor's sole obligations for defects.

8. Supplementary Terms for Standard Licence Version without Updates
8.1. The Licensee accepts that in the case of the Standard Licence version without updates, the existence of a defect excludes the elimination of errors by rectification works and/or the delivery of updates for technical reasons.
8.2. In the event of material defects, the Licensee may only demand a reduction of the agreed remuneration for the Licensed Software or – provided that the breach of duty by the Licensor was significant – terminate the contract.
8.3. Further claims, in particular claims for compensation for damage that did not occur to the Licensed Software itself, such as loss or incorrect processing of data, are excluded.

9. Export control and customs
9.1. Should it transpire prior to delivery that fulfilment of the contract on the part of the Licensor is prevented by national or international (re-) export control regulations, in particular embargoes or other sanctions, Licensor is entitled to withdraw from the contract. Delays due to export controls or approval procedures are considered as an obstruction to compliance with the delivery deadline, unless the Licensor is responsible for these delays. In case of continuing obligations, the Licensor is entitled to terminate the contract without notice. In the event of termination under this clause 9.1, the Licensee is not entitled to claim damages or other claims related to the termination.
9.2. The Licensee undertakes to provide all information and documents required for the export or shipment of the Software to be delivered under the contract, which originate from the sphere of Licensor.
9.3. To the extent that the Licensee passes on, transfers or otherwise assigns the Software to be delivered by the Licensor under this contract to third parties in the UK or abroad, the Licensee must comply with the applicable customs and (re-) export control regulations, in particular embargoes or other sanctions, and obtain the necessary approvals and Licences. Subject to the provisions of Regulation (EU) 833/2014, the Licensee is prohibited from (re-) exporting, transferring, providing or otherwise passing on the Software directly or indirectly to persons in Russia and Belarus or for use in Russia and Belarus.
9.4. The Software may not be used directly or indirectly for the dissemination of nuclear, chemical or biological weapons, the development of missile technology or other military purposes in EU, UN or U.S. arms embargoed countries The Licensor must be notified without delay of any (end) use of the Licensed Software for military purposes.
9.5. Unless otherwise agreed in writing in the delivery or offer documents, the cross-border transfer or provision of software, technology or other data (e.g. map material) is exclusively in electronic form (e.g. by e-mail or download). This clause 9.5 does not apply to "embedded software" (software that is located on hardware).

10. Liability
10.1. Nothing in these licence conditions excludes the liability of either party for:
a) death or personal injury caused by its negligence, the negligence of its employees, agents or subcontractors;
b) fraud or fraudulent misrepresentation; or
c) any other matter in respect of which it would be unlawful to exclude or restrict liability.
10.2. Subject to clause 8.1, the Licensor shall not be liable to the Licensee for any:
a) loss of profit (whether direct or indirect) whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with these Licence Terms; or
b) indirect or consequential loss whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with these Licence Terms; or
c) losses for damage not caused to the Licensed Software itself, such as loss or incorrect processing of data; or
d) ex gratia or other compensatory payments made to a third party by the Licensee or on the Licensee's behalf, arising under or in connection with these Licence Terms.
10.3. Subject to clause 8.1 and 8.2, the Licensor's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Licence Terms shall be limited to the annual fee.
10.4. All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Licence Terms.

11. Duration of the Licence for Update Licences
11.1. The Software Licence begins with the transfer of the activation code.
11.1.1 If a 3 year contract term has been agreed, the Software Licence ends at the end of this contract period.
11.1.2 If the Software Licence has been acquired with a 12 month contract term, the Software Licence shall automatically renew, in the case of an existing Software Licence with a duration of 12 months, for a further 12 month period unless the Licensee serves written notice in accordance with clause 11.2. The Licensee shall be invoiced for the renewal by the same distributor that the original licence was purchased from, at their prevailing Software Licence fee.
11.2. If, pursuant to clause 11.1.2, the Licensee does not wish to renew a 12 month Licence or, does not wish to renew it via the same distributor then, the Licensee must serve written notice on the Licensor at least 60 days prior to the expiration of the respective subscription period. Failure to serve notice in this manner will result in the automatic renewal of the 12 month updated Licence version of the Software.
11.3. In the event of termination pursuant to clause 11.2, the right of use expires at the end of the contract term and the Licensed Software automatically shuts down. In the event of termination of individual parts of the Licensed Software, the right of use for the terminated part of the Licensed Software shall expire at the end of the respective term.
11.4. Without prejudice to any other rights or remedies it may have, the Licensor may immediately terminate these Licence Terms if:
a) the Licensee commits a material breach of the Licence Terms and, in the case of a breach which is capable of remedy, fails to remedy the breach within 10 working days of receiving notice from the Licensor giving details of the breach and requiring it to be remedied; or
b) there is a change of control of the Licensee (within the meaning of section 1124 of the Corporation Tax Act 2010); or
c) Licensor becomes aware or is of the reasonable opinion that the Licensee is in breach of the Bribery Act 2010; or
d) the Licensee commits any act or omission that in the sole opinion of the Licensor adversely affects the Licensor's goodwill, damages the reputation of the Licensor or otherwise brings the Licensor into disrepute.
In such cases, the Licensee is not entitled to claim monies for any unused part of the annual Licence fee or damages.
11.5. Termination of the Licence Terms shall not affect the accrued rights, remedies, obligations or liabilities of the Licensor or the Licensee existing at termination.
11.6. Upon termination of the Licence, the Licensee's right of use to the provided Licensed Software expires. All copies installed on systems as well as all copies of the software on separate data carriers must be deleted the program documentation provided destroyed. The complete deletion or destruction must be confirmed to the Licensor in writing.

12. Place of Jurisdiction / Applicable Law
12.1. This Licence, its subject matter and formation (and any non-contractual disputes or claims) are governed by English law. The parties irrevocably agree to the exclusive jurisdiction of the Courts of England.

13. Final Provisions
13.1. The ESI[tronic] software contains open source software (OSS), information on this can be found in ESI[tronic] under the "legal" tab.
13.2. Changes or additions to these Licence Terms - including this clause 13.2 - as well as ancillary agreements of any kind are only legally effective if they are agreed in writing.
13.3. Should any provision of these Licence Terms be or become invalid, this shall not affect the validity of the remaining provisions. Rather, the provision is to be replaced by a provision that is legally permissible and comes closest to the original provision in terms of its economic content.
13.4. Any notice or other communication given to a party under or in connection with these Software Licence conditions shall be in writing, and shall be delivered personally, sent by pre-paid first-class post, or recorded delivery addressed to:
(a) for Licensor: the details as set out at the start of these Licence Terms; and
(b) for the Licensee: at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the Licensee has specified to Licensor.
13.5. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.4; or if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second working day after posting.
13.6. The provisions of this section shall not apply to the service of any proceedings or other documents in any legal action.
13.7. Neither party shall be liable for non-performance or delay in performance of any obligation stipulated in these Licence Terms if such non-performance or delay is caused by an event of force majeure that materially impairs the ability of a party to perform its obligations. On the occurrence of an event of force majeure, the affected party shall immediately inform the other party of the event and shall continue to perform all other obligations. If within a period of sixty (60) days, the event continues and parties are unable to identify a workable alternative, either party may terminate these Licence Terms.
13.8. A waiver of any right or remedy under these Licence Terms is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under these Licence Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
13.9. These Licence Terms conditions do not create any right or benefit enforceable by any person not a party to it (whether under the Contracts (Rights of Third Parties Act 1999) or otherwise).
13.10 The headings to the sections of these Licence Terms are for ease of reference only and shall not affect the interpretation or construction of this Software Licence.

14. Supplementary provision
The present "Known Faults Online" are case descriptions of malfunctions in motor vehicles. The case descriptions were created on the basis of malfunctions that occurred in motor vehicles. The case descriptions are intended only as an aid for the diagnosis and elimination of malfunctions in motor vehicles, not as a binding procedure. Before repairing, please check whether the present case descriptions correspond to your case. Bosch does not assume any liability for the validity of the case description in relation to the case at hand.