

# ESltronic Terms and Conditions

Bosch Automotive Service Solutions Pty Ltd ABN 60 001 091 498  
of 1555 Centre Road, Clayton, Victoria 3168

(referred to as the "Company")



# BOSCH

## 1. Application of Conditions

1.1 These Conditions apply for the use by the end customer ("Licensee") of the following software products ("Software"), as indicated on the purchase order.

### 1.1.1. Update license versions

- Update standard license version: ESI[tronic] software and updates are provided

### 1.1.2. Standard license version without update

- Standard license version without updates: ESI[tronic] software is provided; no updates are offered in each case, together with use of the corresponding user manual and installation instructions ("Documentation").

## 2. Use of the Software

2.1. By sending the activation code, the Licensor grants the Licensee

- in the case of the standard licence version without update: a non-exclusive right of use;
- in the case of the update licence version: a non-exclusive and non-transferable right of use: of the Software, together with the Documentation.

2.2. This licence authorises the Licensee to use the Software for its normal business purpose as a repair workshop at the workshop address indicated on the purchase order, only. Unless otherwise agreed in writing, the Licensee's right of use is limited to three licensed devices (computer or Bosch diagnostics device) each with a central processing unit; use is bound to the licensed device and not to the user. Use means: loading, displaying, running, transferring, and saving of the Software for purposes of its execution and the processing of data repositories on the Licensee's device on which the Software is installed.

2.3. In the event of the Licensee's unauthorised use of the Software (including without limitation, use by anyone other than an employee of the Licensee or use at an address other than the repair

workshop specified on the purchase order), the Licensee shall pay the Licensor an amount equal to the Software fees which the Licensor would have levied had the Licensor licensed such unauthorised use.

2.4. The Licensor reserves all rights to the Software, particularly the rights of publication, duplication, processing, and administration.

2.5. The Licensee may make a one-time-only transfer of the Software standard licence version without update, in its entirety, together with this Licence in accordance with these Conditions to a subsequent purchaser, subject always to: i) the Licensee paying in advance the Licensor's costs and expenditures for the transfer and subsequent activation of the Software; ii) the original Licensee ceasing to use the Software and permanently deleting or rendering unusable any copies of the Software and Documentation; iii) a director (or equivalent) of the original Licensee confirming the foregoing provisions in writing.

2.6. The Licensee may make one backup copy of the Software, which must be made identifiable with a copy of the original designation (including the copyright notice). Use of the backup copy is subject to these Conditions and is only permitted in the case of deterioration or loss of the original copy of the Software. Save as set out, the Licensee shall not duplicate the Software or the Documentation, or parts thereof.

2.7. The Licensee shall not use the Software other than for its own business purposes as a repair workshop, and shall not otherwise enable third parties to use the Software, or to provide the Software temporarily or permanently to third parties. Unless expressly agreed otherwise, third parties in this context, shall also include branches of the Licensee or companies affiliated with the Licensee.

2.8. Without the written consent of the Licensor, the Licensee shall not edit, change, or otherwise rework the Software in any manner, connect the Software with other programs in any manner other than through the intended interfaces, to de-compile the Software into a different presentation form, to remove, bypass or change any security codes or the characteristics of the Software that identify the Software, or to remove information in the Software and Documentation concerning the Licensor's capacity as manufacturer, its copyrights and any other proprietary rights of the Licensor.

2.9. The Licensee shall permit the Licensor to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Licensee is complying with the terms of this licence; provided that the Licensor provides reasonable advance notice to the Licensee of such inspections, which shall take place at reasonable times.

### **3. Delivery / installation**

3.1. The Licensor issues the Licensee the License Software and the program Documentation (user manual and installation instructions) in electronic form.

3.2. The Licensee is responsible for the installation of the Software. The minimum system requirements are specified in the Licensor's current sales brochure.

3.3. The Software will be activated by sending an activation code to the Licensee.

### **4. Updates / delivery address**

4.1. In the case of a license with updates, the updates are provided once they become available.

4.2. In the case of the update online license variant, after they are released the updates shall be made available online.

4.3. In the case of the standard license version without updates, no updates will be delivered.

4.4. Changes of the delivery address or invoice address must be reported to the Licensor or his representative (e.g. the ESI[tronic] Service Line) without delay in writing.

### **5. License fees / payment terms**

5.1. The licence fee shall be set out on the purchase order form. Time for payment shall be of the essence.

5.2. All prices shall be exclusive of the statutory value added tax and GST.

5.3. The invoice shall be issued immediately after the purchase order is received or in advance of each subscription renewal. The invoice amount shall then be debited within 14 days, or must be paid within 14 days after receipt of invoice.

5.4. If the Licensee is in arrears with the payment, in whole or in part, the Licensor shall be entitled to cease delivery and cease provision of updates until payment in full is received.

### **6. Warranty**

6.1. The Licensor assumes no warranty for the correctness and completeness of the vehicle data contained in the License Software. All vehicle data has been prepared based on the Licensor's documents, vehicle tests or manufacturer information and importer information. However, given the extent of the data material, changes, country-specific variants, errors or mistakes cannot be excluded. Consequently, in every case the Licensee must ensure that the vehicle identification as well as the equipment of the vehicle to be repaired, agree with the vehicle data.

6.2 The Licensor warrants that:

(a) the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation; and

(b) the Documentation correctly describes the operation of the Software in all material respects for a period of 12 months from the date of delivery of the Licence Software (Warranty Period).

6.3 If, within the Warranty Period, the Licensee notifies the Licensor in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the

Documentation, Licensor will, at its sole option, either repair or replace the Software, provided the Licensee complies with its obligations under clause 6.4. Save that the parties acknowledge that in the case of the standard license version without updates, if a defect or fault is present, the possibility of correction through repair and/or delivery of updates shall be excluded for technical reasons.

6.4 Following any notice under clause 6.3, the Licensee must make available all the information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information necessary for error analysis to enable the Licensor to recreate the defect or fault; and shall grant unrestricted access to the Software and the Licensee's devices to the Licensor or to persons commissioned by the Licensor. Any notice under clause 6.3 must contain information concerning the type of error, the application in which the error occurred, as well as the fault rectification tasks that have been executed. If the Licensor conducts an error analysis on the Licensee's request and no fault is found, the Licensor shall be entitled to bill the Licensee for the costs incurred, at the Licensor's valid hourly rates.

6.5. The warranty does not apply if the defect or fault:

- is caused by incorrect use on the part of the Licensee and that could have been avoided through immediate consultation of the program documentation; this also applies in the case of non-existing or inadequate back-up measures;

- results from the Licence Software being used in an operating environment other than the operating environment approved by the Licensor, or that are based on hardware errors, operating system errors, or software errors of other manufacturers;

- results from you having amended the Licence Software.

6.6 Licensee acknowledge that the Software may not be free of errors or bugs and you agree that the existence of any minor errors shall not constitute a breach of this Licence

## 7. Liability

7.1. Licensee acknowledges that the Licence Software has not been developed to meet its individual requirements and that it is therefore Licensee's responsibility to ensure that the facilities and functions of the Licence Software as described in the Documentation meet its requirements.

7.2 Licensor shall not under any circumstances whatsoever be liable to Licensee, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the licence for:

- (a) loss of profits, sales, business, or revenue;
- (b) business interruption;
- (c) loss of anticipated savings;
- (d) loss or corruption of data or information;
- (e) loss of business opportunity, goodwill or reputation; or
- (f) any indirect or consequential loss or damage.

7.3. Other than the losses set out in condition 7.2, Licensor's maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the Licence fee. This maximum cap does not apply to condition 7.4.

7.4 Nothing in this Licence shall limit or exclude our liability for:

- (a) death or personal injury resulting from our negligence;
- (b) fraud or fraudulent misrepresentatio
- (c) any other liability that cannot be excluded or limited by English law.

7.5 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Licence Software. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor. Any condition, warranty, representation or other term concerning the supply of the Licence Software which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## 8. License period for update licences

8.1. The licence shall begin when the activation code is provided, and shall continue for the subscription period stated in the purchase order form. Unless the Licensee serves written notice in accordance with this clause, the updated licence versions of the Software shall automatically renew for the same subscription period; and the same distributor at their prevailing Software fees shall invoice the Licensee. In the event the Licensee does not wish to renew the Software 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 updated license versions of the Software.

8. 2. The Licensor may terminate this licence immediately by written notice if the Licensee commits a material or persistent breach of this licence and fails to remedy (if remediable) within 14 days after the service of written notice requiring remedy.

8.3. Upon termination for any reason:

- (a) All rights granted to the Licensee under this licence shall cease;
- (b) Licensee must cease all activities authorised by this licence;
- (c) Licensee must immediately delete or remove the Software from all computer equipment in its possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software then in the Licensee's possession, custody or control and; and in all cases, certify to the Licensor that you have done so.

## 9. Data protection

9.1. The licensee agrees to the licensor's collection, processing and use of the licensee's registration and license data, system information, usage data pertaining to the licensed software as well as the vehicle master data and vehicle usage data collected by the licensed software for the following purposes and / or to the passing of this data on to third parties for their use:

- Concluding the contract,
- Marketing and customer relationship management (CRM),
- Improving and expanding the scope of the product and the product functions,
- Provision of customer- and user-specific information,
- Statistical purposes and reporting,
- Optimization,
- Detection of misuse of the licensed software.

Explanation of the above data categories:

- Registration and license data: data generated during Registration and licensing of the license software.

Examples: Customer number, company name, address

- System information: Software and hardware information on the runtime environment of the licensed Software

Examples: Hardware information about the diagnostic devices, IP address of the responding PC, SSID and name of the WLAN router in plain text

- Usage data: data on Usage of the licensed Software

Examples: Navigation in the licensed software during a diagnosis session, repair instructions opened, systems diagnosed, duration of a vehicle diagnosis session

- Vehicle master data: Vehicle information that is usually provided on completion of the Vehicle at the factory.

Examples: Make, model, year of manufacture, engine identifier, equipment features, vehicle identification data

- Vehicle Usage data: Repair, maintenance and wear-related data generated during use / Repair of the vehicle.

Examples: DTC, actual values, DTC storage environment data, odometer reading

The licensor will not collect, process or use any other personal information.

9.2. All personal information will be treated by the licensor as confidential in accordance with data protection regulations and the Licensor's Privacy Policy.

The licensor's obligation to continuously store (archive), make inaccessible, delete or pass on data or information as required by law, ordered by judge or state authority or as per these terms of service remains unaffected.

## **10. Place of jurisdiction / applicable law**

This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by the laws of Victoria, Australia. The parties irrevocably agree to the exclusive jurisdiction of the courts of Victoria, Australia.

## **11. Final provisions**

11.1. The ESI[tronic] software includes Open Source Software (OSS), information in this regard is in the ESI[tronic] software.

## **12. Additional provisions**

The present "Known Fixes Online" are case descriptions of malfunctions on vehicles.

The case descriptions were created by means of malfunctions that occurred in vehicles. They shall only have a supportive function for the diagnostics and remedy of malfunctions in vehicles, and not as a binding procedure.

Check prior to a repair whether the present case description corresponds to your case.

Bosch does not assume liability for the validity of case descriptions in relation to your present case.