

Field Services Agreement

RA 08072/07.2015

Replaces 06.2013

This FIELD SERVICES AGREEMENT (“Agreement”) made by and between Bosch Rexroth Corporation, a Pennsylvania corporation (“Seller” or “Rexroth”) with an office at 2315 City Line Road, Bethlehem, Pennsylvania 18017-2131 and Buyer, the party procuring services from Rexroth.

ARTICLE ONE – DEFINITIONS

- 1.1 Agreement. “Agreement” means this Field Services Agreement, together with all Exhibits and Schedules incorporated in this Agreement by reference, all Purchase Orders and Change Orders issued pursuant to the Agreement, all Plans and Specifications applicable to this Agreement, and all Amendments to this Agreement.
- 1.2 Amendment. “Amendment” means a Change Order, written document, or letter signed by or on behalf of both Buyer and Seller which is intended to modify this Agreement.
- 1.3 Buyer. “Buyer” means the legal entity, firm, or person identified as Buyer above.
- 1.4 Change Order. “Change Order” means a document which is intended to make changes in the character or quantity of the items to be furnished hereunder, including changes in Plans and Specifications, instructions for work, methods of shipment or packaging, or schedules of or places for delivery of the items.
- 1.5 Confidential Information. “Confidential Information” means any and all written or documentary information of either the Seller or Buyer transmitted to the other party hereunder and which is marked “Confidential” or Proprietary” at the time of its transmission to the receiving party, and includes information generated by the receiving party that reflects or reveals confidential and proprietary information of the transmitting party.
- 1.6 Equipment. “Equipment” means the machinery upon which (and/or Premises where) the Services are performed.
- 1.7 Items. “Items” means all Parts, Materials and Services provided by Seller.
- 1.8 Plans and Specifications. “Plans and Specifications” means all drawings and other written and pictorial descriptions of the Equipment, whether prepared by or at the direction or on behalf of Buyer, Seller, or any other person, intended to fix and describe the size, quality and character of the Equipment, its systems, materials and other appropriate elements.
- 1.9 Premises. “Premises” means the location designated by Buyer at which Services are to be performed.
- 1.10 Purchase Order. “Purchase Order” means a purchase order issued by Buyer on Buyer’s standard purchase order form.
- 1.11 Seller’s Quotation. Seller’s Quotation means the written quotation or proposal issued by Seller to Buyer in response to Buyer’s request for a bid, quotation, proposal or similar communication.
- 1.12 Services. “Services” means all acts, work, labor and other personal services (including, without limitation, professional services, training and supervision, and travel) done by or at the direction or on behalf of Seller for the benefit of Buyer.

ARTICLE TWO – CONTRACT FORMATION AND ADMINISTRATION

- 2.1 Contract Formation. **This Agreement is binding upon Buyer and Seller and is enforceable in accordance with its terms. The terms and conditions contained in this Agreement apply to any Purchase Order placed by Buyer with Seller with respect to Items.**

2.2 **Other Terms.** Any terms contained in Buyer's offer to buy, request for quotation, Purchase Order or any other form or communication received from Buyer which are in addition to or different from the terms and conditions contained in this Agreement are expressly objected to and shall be deemed rejected by Seller, unless expressly accepted in writing by Seller. In the event that the printed terms of Seller's order acknowledgment are in conflict with the terms of this Agreement, the terms of this Agreement shall control. In the event that the terms of Seller's Quotation add to or conflict with the terms of this Agreement, the terms of Seller's Quotation shall control.

2.3 **Amendment.** This Agreement may be amended by the parties only as expressly agreed to in writing and signed by both parties.

2.4 **Change Orders.** Change Orders may be submitted by either Buyer or Seller. All Change Orders must be in writing and signed by a duly authorized representative of Buyer and Seller. If any Change Order results in an increase (or decrease) in Seller's cost or in the time for performance, Seller shall be entitled to an equitable adjustment in the price or time for performance of the work covered by this Agreement based upon the actual difference in expense or time necessary for performance of the work, together with a reasonable allocation of overhead and profit. Seller shall provide an estimate of any anticipated price increase or delay in performance within thirty (30) days of the date of receipt of Buyer's Change Order.

2.5 **Entire Agreement.** The terms and conditions contained or incorporated by reference in this Agreement constitute the complete and exclusive statement of the terms and conditions of the agreement between Buyer and Seller for the purchase of Services to be provided. Except as set forth in Section 2.2 of this Agreement, no other statements, representations, writings, understandings, or agreements, either written or oral, by either party or any representative of either party, either in negotiations leading to this Agreement or during the term hereof, shall be binding or of any force or effect.

ARTICLE THREE – FORCE MAJEURE

3.1 **Force Majeure.** Neither Buyer nor Seller shall be liable to the other for default or delay in the performance of their respective obligations under this Agreement when and to the extent that default or

delay is caused by the existence, happening or continuance of any contingency preventing or substantially interrupting or curtailing their respective business including, but not limited to, fire, flood, theft, explosion, accident, riot, war, acts or threatened acts of terrorism, epidemic, order, act, authority, regulation or request of or threat thereof by any federal, state, local or municipal unit of government or department or agency thereof, judicial action, lock-out, strike, labor dispute, industrial disturbance, shortage or failure of labor, fuel, power, components, facilities or raw materials, delay of suppliers, act of or omission to act by the other party hereto or the respective employees, agents, contractors, and suppliers of the other party hereto, restriction or lack of transportation facilities, failure or delay in transportation, act of God, adverse weather conditions not reasonably anticipated, unavoidable casualties, breakage or accident to machinery or equipment, involuntary shutdown of facilities, or any other cause beyond the reasonable control of Buyer or Seller, provided, however, that Buyer and Seller shall use their respective best efforts to overcome and minimize the effect of such events.

ARTICLE FOUR – PRICES, PAYMENT AND ACCEPTANCE

4.1 **Prices.** Unless otherwise agreed to in writing, the price for the Services will be at the rates published by Seller and in effect at the time the Services are performed, as per Standard Field Services Price List, attached as Exhibit A. Seller reserves the right to change the prices from time to time without notice to Buyer; but such changes shall not apply retroactively. Buyer shall pay Seller for every day, or portion thereof, determined on a portal to portal basis from Seller's facilities, together with traveling and living expenses of Seller's Field Representatives.

4.2 **Parts and Materials.** In addition to those charges specified above and in Exhibit A, Buyer shall pay the retail cost of all parts and materials used by Seller's Field Representative in performing the Services under this Agreement.

4.3 **Taxes and Fees.** Unless otherwise stated in Seller's Quotation, prices do not include all applicable present or future domestic or foreign federal, state, local and municipal, occupation, sales, use, excise or other similar taxes, or inspection, building, permit, license, testing fees or prevailing wage rates, which shall be

the responsibility of Buyer.

- 4.4 Invoices and Extension of Credit. Seller reserves the right to grant, deny or stop advancing credit at any time in its sole discretion. Seller's credit policies are subject to change at any time without notice. Buyer hereby consents to Seller giving or obtaining credit information to or from third parties regarding Buyer.
- 4.5 Inspection Before Acceptance. Buyer shall have the right to inspect and test the Equipment after Seller's performance of Services, and any tests performed shall be mutually agreed upon and witnessed by Seller's Field Representative.
- 4.6 Acceptance of Services. Any Services performed by Seller relating in any way to Goods produced by Seller will be subject to this Agreement. Buyer accepts any Services performed upon the earlier of (a) when Services are performed unless exception is taken at that time in writing, or (b) upon sign-off of Seller's personnel's daily time sheets by Buyer's representative.
- 4.7 Seller's Remedies for Non-Payment. Without limiting Seller's other remedies as provided herein or by law, Buyer shall pay a late charge of \$25 plus interest in the amount of 1½ % interest per month, or the maximum allowed by law, whichever is greater, with respect to any payment not received by Seller when due, and reimburse Seller its reasonable attorney's fees and/or collection agency fees incurred in connection with Seller's efforts to collect overdue amounts. In the event Buyer fails to pay any amount due hereunder when due or is otherwise in default of this Agreement or any other agreement to which Seller and Buyer are parties at the time, Seller shall without prejudice to other available remedies be permitted to (a) stop all work under this Agreement and all other agreements between the parties until all payments due are received by Seller or other such breach or default is cured by Buyer, and (b) impose upon Buyer reasonable charges for storage for any Items completed by Seller and not shipped to Buyer due to Buyer's failure to make timely payments; including Seller's reasonable costs of demobilization, delay, and remobilization. All funds received by or owed to Buyer from a third party, to the extent that such funds relate to Items furnished by Seller pursuant to this Agreement shall be held in trust for the benefit of Seller ("Trust Funds"). Until such time as Seller has been paid in full for the Items supplied

hereunder, Buyer shall account to and within seven (7) days from Buyer's receipt of such Trust Funds from a third party, pay over to Seller all such Trust Funds received by Buyer. Buyer further agrees to direct any third party holding any such Trust Funds to pay over such funds to Seller upon Seller's request. Buyer shall retain no greater percentage or amount from the Seller than that retained from Buyer by any third party to the extent that such funds relate to Items furnished by Seller pursuant to this Agreement.

4.8 Waivers. All mechanic's lien, payment bond or similar waivers or restrictive endorsements on checks shall be effective only to the total amount of payments actually received without any bankruptcy filing for ninety (90) days thereafter. Buyer agrees that Seller retains its mechanic's lien, payment bond or other legal rights for unpaid Services or Goods regardless of what other documents may imply.

ARTICLE FIVE – WARRANTIES AND REMEDIES

- 5.1 Warranty Regarding Services. Whether or not Seller is a merchant with regards to the Items provided by it, Seller expressly warrants that all Services performed by Seller hereunder will be performed in a good and workmanlike manner and in accordance with generally accepted professional standards. Seller assumes no responsibility with respect to the suitability of the Buyer's, or its customer's, Equipment, or with respect to any latent defects in Equipment, nor with regards to Seller's Items purchased from anyone other than Seller. Buyer will, at its cost, provide Seller with unobstructed access to the Equipment, as well as adequate free working space in the immediate vicinity of the Equipment and such facilities and systems, including, without limitation, forklifts, cranes, and other equipment, as well as utility connects and disconnects, as may be necessary in order for Seller to perform its Services including Seller's warranty obligations.
- 5.2 Warranty Period. Seller's Warranty Period for Services is ninety (90) days from the date Services are performed. Any reperformance of Services during the Warranty Period shall not result in any extension of the Warranty Period.
- 5.3 Repair or Replacement of Non-Conforming Services. During the warranty period, Buyer's sole and exclusive remedy under the warranty shall be limited to the reperformance of Services without expense to Buyer. Seller shall not be responsible for any charges

for labor and/or parts incidental to the removal and re-installation/remounting of Equipment repaired or replaced under this warranty.

- 5.4 Warranty Regarding Parts and Materials. Parts and Materials supplied pursuant to Seller's performance of Services shall be free from all defects in materials and workmanship and warranted for ninety (90) days from (a) date installed by Seller, or (b) date of shipment if not installed by Seller, provided that the Parts and Materials are properly installed and maintained, and used for the purpose for which they have been intended.
- 5.5 Repair or Replacement of Non-conforming Parts and Materials. During the warranty period, Buyer's sole and exclusive remedy under the warranty shall be the repair or replacement of the non-conforming parts and materials, at Seller's facility or jobsite, as determined by Seller.
- 5.6 **THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF DESIGN, MERCHANTABILITY OR FITNESS FOR INTENDED USE.**
- 5.7 Incidental and Consequential Damages. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, OR FOR CONTINGENT LIABILITIES INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, INCOME OR PROFITS, DOWNTIME COSTS, OR OTHER COMMERCIAL LOSS RESULTING FROM NON-CONFORMING ITEMS. SELLER'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS AGREEMENT, OR FROM PERFORMANCE OR BREACH THEREOF, SHALL, IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE ITEMS, OR ANY UNIT THEREOF, WHICH GIVES RISE TO THE CLAIM. SELLER SHALL NOT IN ANY CASE BE LIABLE FOR PENALTIES OF ANY KIND OR DESCRIPTION.**
- 5.8 If the Buyer or Agent grants to an "end-user" any warranty which is greater in scope, time period or labor allowance than the warranty stated herein, Seller shall not be liable beyond this stated warranty.
- 5.9 Notice and Opportunity to Cure. Buyer's failure to give written notice specifying any claim during the Warranty Period shall constitute an unqualified acceptance of the Items. Seller will not be liable for any damage, warranty or remedy and back charges

will not be accepted without prior timely notification, and reasonable opportunity to view and repair, replace or otherwise cure, and approval by Seller.

- 5.10 The foregoing warranty does not cover conditions over which Seller has no control, including, without limitation, contamination, incorrect power supply, pressures in excess of recommended maximum, Items damaged or subjected to voltage, humidity, or temperature outside of specified range, accident, abuse or misuse of Equipment after Services performed, Items altered, disassembled or repaired by anyone other than Seller's personnel, Seller authorized factory service center personnel or persons so designated in writing by Seller's Service Department prior to commencement of said work.

Types of failures which are not attributable to defects in materials and/or workmanship and which are not considered by Seller as part of its warranty include, but are not limited to the following caused by anyone other than Seller:

- ▶ Damages due to deterioration during periods of storage by the Buyer prior to installation and operation.
- ▶ Damage of any kind from erosive or corrosive action of any gases or liquids handled by the machinery.
- ▶ Lack of or incorrect type of fluid, lubricants, air line additives.
- ▶ Contamination of the fluid, lubricants, air line additives, or oil systems.
- ▶ Damage attributable to accident, abuse, neglect.
- ▶ Stripped splines or keyways on drive shaft.
- ▶ Incorrect mounting of external gears, pulleys, etc.
- ▶ Operating beyond the recommended maximum speeds, pressure, temperatures, voltage or humidity or below the recommended voltage.
- ▶ Improper filtration.
- ▶ Repairs by unauthorized service personnel.
- ▶ Use of the product in a manner or purpose for which it was not designed or intended by Seller.
- ▶ Misalignment, mis-wiring, high vibration.
- ▶ Ordinary wear and tear.

Whenever possible, each provision of the foregoing warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this warranty shall be prohibited by or invalid under applicable law, such provision shall be

ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this warranty.

ARTICLE SIX – ACTIVITIES ON THE PREMISES

6.1 Insurance. Unless otherwise mutually agreed to, Seller and Buyer shall each carry and maintain during performance of work or services contracted under any purchase order, the following insurance with minimum limits as specified for each type of insurance:

- (a) Worker's compensation insurance in accordance with statutory requirements and employer's liability insurance in accordance with statutory requirements.
- (b) Comprehensive general liability insurance covering bodily injury and property damage with a minimum of \$2,000,000 combined single limit.
- (c) Automobile liability insurance covering bodily injury and property damage including coverage for owned, hired, and non-owned automobiles with a minimum of \$2,000,000 combined single limit.

Each party shall furnish the other party certificates showing that such insurance is in full force and effect prior to commencing the performance of work or services contracted under any Purchase Order to Buyer. All such insurance shall be endorsed to provide contractual liability insurance specifically covering indemnity.

6.2 Seller shall provide reasonable protection for its jobsite material and work, but shall be liable for losses only to the extent caused by Seller's negligence. It is understood and agreed to that Buyer's all-risk insurance (or that of the property owner where the Equipment is located) includes coverage for the full value of loss or damage to Seller's work in place, for its stored material, and for its material in transit.

6.3 Release and Indemnification. Buyer acknowledges that it will use the Items in applications for which BRUS has performed no testing or analysis. As such, Buyer agrees to release BRUS from and to hold harmless and, upon request, defend BRUS for, from and against, any and all claims, suits, actions or legal proceedings brought against BRUS, their affiliates and their officers, directors, employees and representatives, seeking injunctive relief or damages to recover any loss, damage or injury to person or prop-

erty, including reputation and goodwill, whether brought by a federal, state or local governmental agency, or any other person, caused by or arising out of Buyer's purchase or use of the Items. This release, hold harmless and indemnification shall apply, regardless of whether such claims, lawsuits, judgments, demands, actions or causes of action allege or are based on negligence, breach of implied warranty, strict liability, reckless or intentional conduct, or any other nature or manner of legal theory or cause of action. The provisions of this section shall not be applicable in the event such claims, suits, actions, or legal proceedings arise out of or result from (i) failure of the Items to meet the warranty set forth in Article 5 above, or (ii) is caused in whole by any intentional or grossly negligent act or omission of the Seller, or its employees, agents or contractors.

6.4 Insurance Restriction. Seller is not required to add Buyer or any other party as an additional insured to Seller's general liability insurance policy, nor shall Seller be required to waive subrogation for claims covered by workers' compensation or commercial general liability insurance. Seller shall maintain insurance with coverage and limits only as provided by Seller's existing insurance program as shown by its certificate of insurance available upon request.

6.5 Hold Harmless Restriction. Any indemnification or hold harmless obligation of Seller extends only to claims relating to bodily injury and property damage (other than to the Seller's work), and then only to that part or proportion of any claim caused by the negligence or intentional act of Seller or its employees, agents, or contractors. Seller shall not have a duty to defend. This paragraph does not, however, restrict obligations, if any, of Seller, to indemnify Buyer against intellectual property infringement claims or against claims of payment or work for which Seller has been paid.

ARTICLE SEVEN – COMPLIANCE WITH LAWS

7.1 Governmental Authorizations, Approvals, Permits and Licenses. Unless otherwise agreed, Buyer shall apply for, pay for and obtain on a timely basis all federal, state, local and municipal authorizations, approvals, permits and licenses which may be required in connection with the installation and operation of the Equipment. Buyer and Seller will assist each other in every manner reasonably possible in securing such authorizations, approvals, permits and licenses.

ARTICLE EIGHT – MISCELLANEOUS

- 8.1 Assignment. The rights of Seller under this Agreement may not be assigned or otherwise transferred by Seller to any successor, assignee, or any surviving, resulting or transferee corporation, partnership or other business entity without the prior written permission of Buyer; provided, however, that all obligations of Seller hereunder shall be enforceable by Buyer against any such successor, assignee or surviving, resulting or transferee corporation, partnership or other business entity without regard to the granting or withholding of Buyer's permission to such assignment or other transfer. Seller may assign monies due and to become due under this Agreement. Buyer shall not be entitled to assert against the assignee thereof any rights, claims, and defenses of every type (including, without limitation, rights of setoff, recoupment and counterclaim) which Buyer could assert against Seller, whether arising prior or subsequent to such assignment. The rights of Buyer under this Agreement may not be assigned or otherwise transferred by Buyer to any successor, assignee, or any surviving, resulting or transferee corporation, partnership or other business entity without the prior written permission of Seller.
- 8.2 Waiver. No waiver shall be implied by a party's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege granted to such party hereby. No express waiver by either party shall be construed as waiving any breach hereunder or the performance of any of the terms or conditions hereof not specified in the express waiver, and then only for the time and to the extent stated therein. One or more waivers of any covenant, term or condition hereof shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.
- 8.3 Severability. If any covenant, term or condition hereof or the application thereof to any circumstance or person shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, the remaining valid and enforceable covenants, terms and conditions hereof and the application of such invalid or unenforceable covenant, term or condition to circumstances or persons other than those as to which it has been held invalid or unenforceable shall not be affected thereby and each remaining valid and enforceable covenant, term and condition shall be valid and enforceable to the fullest extent permitted by law.
- 8.4 Governing Law/Jurisdiction. This Agreement shall be governed and construed according to the internal laws of The Commonwealth of Pennsylvania. The parties agree that all actions and proceedings in connection herewith shall be brought only in the state, federal or local courts within Lehigh County, Pennsylvania, or such other locale as Seller may select; and the parties hereby agree to submit to the jurisdiction of such courts for purposes of such actions. **DUE TO THE SPECIALIZED NATURE OF SELLER'S SERVICES AND/OR GOODS SUPPLIED, EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.**
- 8.5 Goods and Services. The terms and conditions contained herein shall be applicable to sales of goods only, to mixed sales of goods and services (regardless of which factor predominates), and to sales of services only and, in either of the latter two cases, the term "Items" as used herein shall be construed as including all Services rendered hereunder, unless and only to the extent that the context clearly indicates otherwise.
- 8.6 Rules of Construction. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and words in the plural shall be held to include the singular, unless and only to the extent that the context clearly indicates otherwise.
- 8.7 Counterparts. This Agreement may be executed in any number of Counterparts, each of which shall be an original and all of which taken together shall constitute but one and the same instrument and any of the parties hereto may execute this Agreement by signing any counterpart.
- 8.8 Captions. All captions contained in this Agreement are for the convenience of the parties and shall not be deemed or construed as in any way limiting or extending the language of the provisions to which they refer.
- 8.9 Non-Solicitation. During the term of this Agreement, no organizational unit of either party to this Agreement shall solicit, directly or indirectly, employees of the other party's organizational unit without the other party's prior written authorization.

8.10 Recoupment. In the event that from time to time Seller may owe credits, refunds, reserves, monies on open account, or other monies to the Buyer, such indebtedness shall be deemed to be created from this Agreement and Seller shall have the right of recoupment with respect to such credits, refunds, reserves or other monies.

8.11 Settlement of Disputes. Any dispute that arises under or is related to this Agreement that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction in accordance to Paragraph 8.4 above. Each Party will pay the costs of its own attorneys. In the event of a dispute between Buyer and a third party to the extent that the dispute pertains to Items furnished by Seller, Seller agrees to assist Buyer at Buyer's expense.

IN WITNESS WHEREOF, the parties have caused this Field Services Agreement to be duly executed and delivered as of the date specified.

SELLER: BOSCH REXROTH CORPORATION

BUYER: _____

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Address: _____

Bosch Rexroth Corporation
Hydraulics
2315 City Line Road
Bethlehem, PA 18017
U.S.A.
Telephone (610) 694-8300
Facsimile (610) 694-8467
www.boschrexroth-us.com

© 2015 All rights reserved Bosch Rexroth Corp. This document, as well as the data, specifications and other information set forth in it, are the exclusive property of Bosch Rexroth Corp. It may not be reproduced or given to third parties with its consent.
The data specified above only serve to describe the product. No statements concerning a certain condition or suitability for a certain application can be derived from our information. The information given does not release the user from the obligation of own judgment and verification. It must be remembered that our products are subject to a natural process of wear and aging.