

BUSCH-JAEGER ELEKTRO GMBH
Member of the ABB Group

Licence Agreement for IoT Dashboard ETS App by Busch-Jaeger Elektro GmbH licensed via KNX Online Shop

- for commercial transactions between businesses only -

IMPORTANT – READ CAREFULLY: This license agreement is a legal agreement between commercial end-user (either an individual or a single entity, but no consumer), as licensee, and Busch-Jaeger Elektro GmbH, Lüdenscheid, Germany for IoT Dashboard ETS App of Busch-Jaeger.

LICENSEE AGREES TO BE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT, including any amendment or addendum. IF LICENSEE DO NOT AGREE, DO NOT INSTALL OR USE THE SOFTWARE.

O. Definitions, Download of Software

This License Agreement (“Agreement”) shall be entered into by the Licensee by downloading software being so-called IoT Dashboard ETS App (“Software”) of Busch-Jaeger Elektro GmbH, Lüdenscheid, Germany (herein: the Licensor) via the online shop of KNX Association cvba („KNX Online Shop“). The licensee, which is to the exclusion of consumers, (“Licensee”) shall not be entitled to use the Software prior to entering into the Agreement. The terms for the using of the Software shall be hereinafter laid down:

1. Subject of the Agreement

The Software is not a stand-alone software but requires the software ETS (Engineering Tool Software) available through the KNX Association cvba to be used in view of Licensor’s suitable KNX products (IoT Dashboard).

The Licensor points out that it is not possible with today’s technology to produce computer software that operates without any errors in all applications and combinations. The subject of the licence hereunder therefore is only software which can be used substantially in accordance with the product description.

2. Scope of use

Licensor grants to the Licensee for the duration of this Agreement the non-exclusive right (hereafter called “Licence”) to use the Software for Licensor’s IoT Dashboard Tool subject to the requirements of Clause 3 below. Any other or further use is not permitted. The Licensee is entitled to make a single backup copy of the Software solely for security purposes. This copy shall be and is subject to the same restrictions as the software downloaded from KNX Online Shop.

3. Special Restrictions

The Licensee shall refrain from

- a) handing over, or otherwise making the Software accessible, to a third party without prior written permission from Licensor; save that it is expressly forbidden to rent or lease the Software,
- b) any processing, in particular any translating or modifying, of the Software or creating any derivative products,
- c) decompiling or disassembling or to „reverse engineer“ the Software without prior written permission from Licensor,
- d) subject to Clause 2 above, duplicating the Software,
- e) transferring the Licence to a third party or granting a sub-licence, and/or
- f) use the Software for any purpose that is unlawful or prohibited.

4. Use of Data

For using the KNX Online Shop the Licensee needs to create an own user account on the web page of KNX Association cvba, which requires the filling in of (personal) data. This data will be treated confidential by KNX Association cvba. The Licensee acknowledges that, for the purpose of execution of this License Agreement (a) the Licensor may have access to the data relating to Licensee and entered by Licensee into the web page of KNX Online Shop, e.g. when creating an own user account, (“Data”), and (b) the Data may be used for the purpose of support towards the Licensee by or on behalf of Licensor.

5. Copyright

The Licensee shall only be granted a limited license hereunder, but in no case acquire, or be granted, any rights to or in the Software itself. The Licensor in particular reserves all rights concerning the publication, duplication, processing, editing and use of the Software.

The Software is protected by copyright. The Licensee is obliged to attach the copyright notice of Licensor onto the backup copy and to incorporate it into the copy, respectively. Licensee shall refrain from removing an existing copyright notice or registration number from the Software.

6. Support

1. KNX Association may offer some technical support for ETS-Apps via the KNX Online Shop, subject to conditions, limits and restrictions as provided by KNX Association.
2. To the extent persons deployed by Licensor are involved in any such support, such support shall be subject to Clause 12 (liability provisions) hereof, unless and to the extent that Licensee, when entering a (new) KNX support request, is requested to accept, and accepts, terms for KNX support protecting (also) Licensor substantially in the same level.

7. Secrecy

The Licensee undertakes to maintain secrecy concerning all information and documents of the Licensor of which he and/or his employees become aware (in particular the Software and/or Documentation) towards third parties and not to make these accessible to third parties in any way. The Licensee shall impose corresponding obligations on his employees.

8. Coming into Force and Duration of the Agreement

The Agreement shall come into force upon acceptance of these terms by Licensee on the KNX Online Shop webpage . If the validity of the Agreement is conditional upon official registration or approval,

the date of the official registration or approval shall be the effective date. The Licensee shall immediately take the necessary measures for such registration or approval and shall inform Licensor of any grant or rejection whatsoever. If the registration or approval has not taken place within 3 months from the date referred to in the first sentence, the Licensor shall have the right to withdraw from the Agreement by sending a written notice to Licensee.

The Agreement shall have an unlimited term. The right of the Licensee to use the Software shall expire automatically without notice if he violates any terms of this Agreement. If there is an insignificant breach of duty, automatic expiry shall only apply (i) after repeated violations of the same or a comparable duty or (ii) after the Licensee has been unsuccessfully requested by Licensor to rectify the situation caused by the breach of duty. When the right of use is terminated, the Licensee is obliged to erase, or have erased, all the copies of the Software, including any modified copies. On Licensor's request Licensee shall confirm in writing that he has fulfilled the obligations set out above.

9. Secure Systems; Compensation after breach of Contract

It is Licensee's sole responsibility to provide and continuously ensure a secure connection between the Software and Licensee's network or any other network (as the case may be). Licensee shall establish and maintain any appropriate measures (such as but not limited to the installation of firewalls, application of authentication measures, encryption of data, installation of anti-virus programs, etc) to protect the Software, the network, its system and the interface against any kind of security breaches, unauthorized access, interference, intrusion, leakage and/or theft of data or information. Licensor and its affiliates are not liable for damages and/or losses related to such security breaches, any unauthorized access, interference, intrusion, leakage and/or theft of data or information.

The Licensee shall be liable for all damages incurred by Licensor due to a breach of this Agreement by Licensee or by any person engaged or employed by Licensee in connection with the performance of this Agreement.

10. Modifications and updates

Licensor in its sole discretion shall be entitled, but not obliged, to create updates of the Software and, if Licensor decides to do so, to make them available to the Licensee against separate remuneration.

11. Industrial Property Rights and Copyright; Defects in Title

Licensor shall only be liable for the infringement of intellectual property rights or copyrights by the Software in the country where the Licensee (as per his entry into the KNX Online Shop) is domiciled (herein together: Intellectual Property Rights). In case a third party will assert legitimate claims against Licensor based on infringement of Intellectual Property Rights by the Software used in accordance with this Agreement in the country as set out in sentence 1, Licensor shall be liable towards Licensee as follows:

- a) The Licensor shall at his own choice and expense either obtain a right to use the Software, change the Software so as not to infringe the Intellectual Property Right or replace the

Software. If this is not possible on acceptable terms to Licensor, the Licensee shall be entitled to cancel the Agreement subject to the statutory provisions, provided that the Licensee shall not be entitled to the reimbursement for any futile expenditure;

- b) Licensor's liability for compensation shall be subject to Clause 12 para A.2 or para B.1, as applicable.
- c) Licensor's aforesaid obligations shall be subject to the condition that the Licensee immediately notifies Licensor in writing of the claims asserted by the third party, that Licensee shall not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to Licensor. If the Licensee stops using the Software to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the discontinuation of use does not mean any acknowledgement of infringement of a Intellectual Property Right.

Claims of the Licensee shall be excluded if he is responsible for an infringement of Intellectual Property Rights. Claims of the Licensee shall also be excluded if the infringement of the Intellectual Property Right was caused by specific demands by the Licensee, by a use of the Software not foreseeable by Licensor or by the Software being modified by the Licensee (or any other person in Licensee's sphere) or being used together with software not provided by Licensor.

In case of other defects in title, the provisions of Clause 12 para A.1 and para B.1, as applicable, shall apply accordingly.

Any other claims of the Licensee against the Licensor or its agents or any such claims exceeding the claims provided for in this Clause 11, based on a defect in title, shall be excluded

12. General Provisions depending on Domicile of Licensee

To the extent Licensor is responsible as per applicable law, such warranty or liability shall be subject to the following provisions which shall not be construed as to increase Licensor's liability or obligations:

Section A:

The provisions of this Section A shall apply to Licensee (only) if Licensee is domiciled in Germany:

A1. Warranty

1. The agreed quality of the Software at the time of delivery shall be determined in accordance with the description of the functions of the Software contained therein (hereinafter referred to as the: "Software Description"). Otherwise, a defect shall be given only if (a) at the time of delivery there is a defect in material or in workmanship in the data carrier (if any) on which the Software is stored and/or (b) the customary operating conditions and the requirements of the Software description have been met. Explanations and descriptions shall not represent warranties (in particular no warranties of quality).

Licensor does not warrant that the Software will meet any requirements and/or purposes of the Licensee that are not specified in the Software description. The Licensee shall be solely responsible for the proper selection as well as the consequences of use of the Software.

The Licensor shall eliminate within a reasonable period reproducible software errors that have been reported by the Licensee and for which the Licensor is responsible. The Licensee shall notify the Licensor in writing and without undue delay with regard to any defects. The Licensee shall describe any defects as detailed as possible.

Any remedy shall take place at the Licensor's own discretion either through making good the defect, provision of a new version of the Software or indication of measures designed to prevent the effects produced by the defect. Licensee shall implement a new version of the Software unless such would result in unreasonable problems involving adaptation or conversion.

2. The Licensor shall first be given the opportunity for supplement performance within a reasonable period of time. If supplementary performance is unsuccessful, then the Licensee shall be entitled to cancel the Agreement. Supplementary performance shall be considered as unsuccessful only if and when the Licensor is unable to eliminate the defect in the Software within a second period of grace specified by Licensee in writing in such a way that use of the Software by the Licensee is essentially possible in accordance with the terms and conditions of the Agreement.

3. Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply where:

- insofar as the law prescribes longer periods are prescribed according to Sec. 438 para. 1 No. 2 (buildings and things used for buildings) and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("Bürgerliches Gesetzbuch"),
- in case of intent,
- in case of fraudulent concealment of the defect, or
- in the event of non-compliance with a guarantee of quality ("Beschaffenheitsgarantie").

Claims for reimbursement of expenses by Licensee pursuant to Sec. 445a of the German Civil Code (seller's recourse / "Rückgriff des Verkäufers") with regard to supplies being considered as part of a sale contract (e.g. licensing of standard software without time limit) – hereinafter: "Subject Matter of Supplies" - shall also become time-barred 12 months calculated from the start of the statutory statute of limitations, provided that this shall not apply in case Licensee resells the Subject Matter of Supplies and the last customer in the supply chain (in respect of the supplies) is a consumer.

The legal provisions regarding suspension of expiration ("Ablaufhemmung"), suspension ("Hemmung") and recommencement of limitation periods remain unaffected.

A.2 Liability

1. Unless otherwise stipulated in this license agreement, licensee claims for damages, for any cause in law whatsoever, in particular for a breach of duties under the obligatory relationship and for tortious acts, are hereby excluded.

2. This shall not apply where liability is provided as follows: a) German Product Liability Act ("Produkthaftungsgesetz"), b) in cases of intent, c) in the event of gross negligence, d) in the event of injury of life, body or health, e) in the event of non-compliance with a guarantee, f) if Licensor fraudulently conceals a defect as to quality ("Arglistiges Verschweigen eines Mangels") or g) in case of breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichtverletzung"). However, claims for damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of Licensee.

3. No change in the burden of proof to the detriment of the licensee is associated with the preceding provisions.

A.3 Applicable Law

This Agreement and its interpretation shall be governed by substantive German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and excluding the application of conflict of law principles.

A.4 Dispute Resolution

Exclusive place of jurisdiction shall be the location at which the Licensor has his registered seat. The Licensor is however entitled to bring the case before the court of jurisdiction for the registered seat of the Licensee.

Section B:

The provisions of this Section B shall apply to Licensee if Licensee is domiciled outside of Germany:

B.1. Warranty and Liability

1. In view of the fact that the License is granted free of charge Licensor in view of the Software or any part thereof hereby disclaims any warranty or defect liability whatsoever as well as any warranty and liability in view of defect in title or intellectual property rights.

No oral or written information or advice given by Licensor or Affiliates of Licensor shall create any warranty of either of them. "AFFILIATE" shall mean any one or more business entities, which in relation to a party is (are) directly or indirectly: (i) owned or controlled by the party, (ii) owning or controlling the party, or (iii) owned or controlled by the

business entity owning or controlling the party, at the relevant time. For the purposes of this definition, a business entity shall be deemed to own and/or to control another entity if more than 50% (fifty per cent) of the voting stock of the latter business entity, ordinarily entitled to vote in the election of directors (or, if there is no such stock, more than 50% (fifty per cent) of the ownership of or control in the latter business entity) is held by the owning and/or controlling business entity.

2. Licensor's liability, if any – irrespective of the legal grounds (e.g. in connection with defects, delay, third party intellectual property rights, indemnity) - shall be limited as follows:

a) Licensor shall not be liable for loss of profit, loss of revenues, loss of use, loss of production, loss of data, costs of capital or costs connected with interruption of operation, loss of anticipated savings or for any special indirect or consequential damage or loss of any nature whatsoever;

b) Licensor's total liability in respect of any and all claims for damages or losses which may arise in connection with its performance or non-performance under the Agreement shall in no event exceed in total 1.000 Euros.

The preceding limitations shall not apply to Licensor's intention or gross negligence, but shall apply to intention or gross negligence of persons employed by the Licensor for the performance of Licensor's obligations.

B.2 Applicable Law

The Agreement shall be governed by substantive Swiss law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and excluding the application of conflict of law principles.

B.3 Dispute Resolution

Exclusive venue shall be Zürich/Switzerland.

13. Miscellaneous; Export Control

These conditions shall apply exclusively. Any conditions of the Licensee that deviate from, or supplement, the Agreement shall not be binding on Licensor even if Licensor does not object thereto. This also applies if the Licensee declares that he is only willing to enter into the license agreement based on his own terms.

Amendments to this Contract shall require a written agreement between the Parties hereof.

If individual conditions of this Agreement are or become void or unenforceable, the effectiveness and enforceability of all the remaining clauses shall not be affected. The invalid or unenforceable provision shall be replaced with a valid and enforceable provision which comes as close as possible to the economic purpose of the invalid or unenforceable one, respectively.

In order to comply with national and international foreign trade regulations/laws, the Parties will support each other and provide all necessary documentation and information, such as relating to the registration of items to be exported in export control lists or to the final destination and end use of the items. Neither party is obliged to perform its obligation under the contract in violation of any statutory or internal export control regulations. Licensor shall have the right at any time to withdraw from the contract, without incurring any liability for either party, if

- the Licensee, despite request, does not provide either any or sufficient enough information about the final destination and the end use of the items;
- Licensor obtains knowledge of an unintended end use after tendering or knowledge of any previously unknown person involved in the business and cannot perform the contract due to any export control or intra-group regulations;
- the items or services are intended for military end use, civil nuclear use or for use in connection with weapons of mass destruction or for missiles capable of delivering such weapons; substantive evidence shall be sufficient to prove this intent; or
- a possibly illegal or unlicensed export or an infringement of embargo rules cannot be fully ruled out.