

Licensing Terms ABB-Welcome

License Agreement for Software for Use on Devices in the **ABB-Welcome** Series

0. Definitions, Delivery of the Software

This license agreement shall be concluded between Busch-Jaeger Elektro GmbH of Lüdenscheid, Germany (hereinafter referred to as "Licensor") and the licensee, for example, by means of a download of the device firmware (which may contain parts of OSS components) ("Software") of the the Licensor from a webpage of the Licensor ("Webpage") or upon any other acknowledgment of the Licensing Terms.

The licensee is not authorized to use the Software prior to the conclusion of the license agreement.

The terms and conditions for the use of the Software are set forth below:

1. Subject of the Agreement

The Software is not functional on its own. The Software can only be properly used when installed on the licensee's ABB-WelcomeTouch ("Devices").

The licensee is aware that, according to the current state of technology, it is not possible to create software that is fully free of errors. Therefore, this license agreement only comprises software which is for the most part consistent with the product documentation.

2. Scope of the License

The Licensor shall grant the licensee the general, non-exclusive and personal right (hereinafter also referred to as "License") to use the Software on one or several devices of the Licensor (as described in Item 1) as stipulated in Item 3 for the duration of this agreement. Any other or further use shall not be permitted. The licensee shall have the right to create a backup copy of the Software solely for backup purposes, which copy shall be subject to the same limitations and conditions as the delivered Software.

3. Special Limitations, Resellers

The licensee shall not be allowed:

- a) to deliver the Software to a third party or to make the Software accessible to a third party in any other way without the prior written consent of the Licensor, wherein leasing and rental are also expressly prohibited, except where they occur in the following manner: by delivery of a device on which the Software is installed to an end customer;
- b) to translate the Software or to create works derived therefrom;
- c) to modify (in particular, to edit) the Software, except for in such a manner as is expressly provided for the user (installer or end customer) in the product documentation;
- d) to decompile or to disassemble the Software without the prior written consent of the Licensor;
- e) to reproduce the Software, except as provided in Item 2; or



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f) to transfer the License (except in accordance with Subitem a) to third parties or to grant a sublicense.

However, a licensee who is a reseller (installer) shall not be allowed to create a (backup) copy of the Software; instead, said licensee shall ensure that the provisions set forth in this license agreement are complied with in respect of the licensee of the licensee ("Purchaser") (for example, that the Purchaser is subject to the same limitations regarding the creation of copies and may only create a backup copy). Therefore, the licensee shall place its licensee under corresponding obligations and limitations to the effect that the Licensor shall be entitled to assert any claims arising from a breach of this license agreement directly against the Purchaser.

4. Copyright

The Software is protected by copyright. The licensee shall only acquire a limited right of use; in no event, however, shall the licensee acquire rights to the Software itself. In particular, the Licensor reserves all publication rights, reproduction rights, editing rights and exploitation rights in the Software.

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5. Third-Party Software and "Open Source Software"

Where the licensee is provided with Software for which the Licensor possesses only a derived right of use (third-party software) or where the licensee is provided with open source software (jointly referred to as "Third-Party Software"), the terms and conditions of use governing the Third-Party Software shall apply. A list of the included Third-Party Software and the corresponding terms and conditions of use are provided at the end of this document.

Copyright and license notices in the Software or product documentation may not be deleted, removed or modified. The purchaser shall indemnify the supplier against all claims and costs/expenses which are asserted against or incurred by the supplier as a result of the use of the Third-Party Software.

For programs which are under a GNU General Public License, the Licensor will provide a machine-readable copy of the source code. The offer to provide the source code shall be valid for three years from the delivery of the Software.

Note: Any liability or warranty by the licensing author of the open source software is hereby excluded.

6 Validity and Term of the Agreement

Should the validity of the license agreement be dependent upon a public registration or approval, the date of the registration or approval shall be deemed the effective date. The licensee will, without delay, take the necessary steps for such a registration and approval and promptly notify the Licensor of the issue or refusal thereof. In the event that the registration or approval has not occurred within 3 months after the date indicated in the first sentence, the Licensor shall be entitled to withdraw from the agreement (by sending a written notice to the licensee).

The term of the agreement shall be unlimited. The right of the licensee to use the Software shall automatically expire without notice if the licensee violates any provision of this agreement. If the violation does not concern a fundamental breach of contract, the consequence shall only apply (i) after repeated (that is, at least a twofold) breach of the same or a similar duty or (ii) after the licensee has, to no avail, been warned with a request to resolve the condition created by the breach of duty. In the event of a termination of the right of use, the licensee shall, at its own expense, delete or have deleted all reproduced pieces of the Software (including the Software originally downloaded) – also where said pieces have been edited in any way or where they have been delivered to third parties. The licensee shall confirm the performance of the aforementioned obligations in writing at the request of the Licensor.

7. Damages in the Event of a Breach of Contract

The licensee shall be liable for all damages suffered by the Licensor which result from a breach of this license agreement or, in connection therewith, are caused by the licensee or by parties the licensee employs in performing a contractual obligation for whom the licensee is vicariously liable or by vicarious agents of the licensee (e.g. at the Purchaser end).

8. Modifications and Updates

The Licensor shall, at its own discretion, be entitled (but not obligated) to create modifications, upgrades or updates of the Software and/or to make them available to the licensee for a fee or free of charge.

9. Defects of Quality

1. The agreed upon quality of the Software at the time of delivery shall be determined in accordance with the information contained in the program description for the Software or in a corresponding release note (jointly referred to as "Product Description"). Explanations and descriptions shall not constitute warranties (in particular, warranties of quality). In addition, a defect of quality shall only be deemed present if the normal operating conditions and the requirements specified in the Product Description have been observed.

The Licensor does not accept any responsibility for ensuring that the Software is adequate for the purposes of the licensee which are not stated in the Product Description. The responsibility for the correct selection and the consequences of use of the Software shall solely lie with the licensee.

The Licensor will remedy within a reasonable period all reproducible errors of the Software reported by the licensee for which the Licensor shall be liable under this agreement. The licensee shall immediately notify the Licensor in writing of any defects of quality. The licensee will describe any defects of quality in the greatest possible detail and assist the Licensor (where reasonable: at the expense of the licensee) in identifying the cause of the defect and in remedying the defect.

The Licensor shall, at its choice, render subsequent improvement by correcting the error, providing a new Software version, or by demonstrating possible ways in which to avoid the effects of the error. A new Software version shall be accepted by the licensee, unless doing so results in unreasonable update and conversion problems for the licensee.

2. The Licensor shall initially be granted an opportunity to render subsequent performance within a reasonable period. If subsequent performance does not occur, the licensee may withdraw from the agreement. The subsequent improvement shall only be assumed to have failed if, despite a grace period stipulated in writing, the Licensor is not successfully able, even in a second attempt at subsequent improvement, to subsequently improve the defect of the Software such that a use essentially conforming to the terms of this agreement is possible by the licensee.

3. Claims of the licensee on account of expenses necessary for the subsequent performance, in particular transport, travel, labor and material costs, are hereby excluded.

4. Otherwise, Item 11 (Liability) shall apply to any claims for damages. Any further claims, or claims governed in a manner other than as stipulated in the present Item 9, or rights of the licensee against the Licensor, and against the persons the Licensor employs in performing a contractual obligation for whom the Licensor is vicariously liable, arising from a defect of quality are hereby excluded.

10. Intellectual Property Rights and Copyrights; Defects of Title

1. The Licensor shall only be liable for ensuring that the Software is free of third-party intellectual property rights and copyrights (hereinafter referred to as "Intellectual Property Rights") in an EU country. If a third party should file justified claims against the licensee on account of the violation of Intellectual Property Rights by a Software used as provided in this agreement in a country pursuant to Sentence 1, the Licensor shall be liable to the licensee as follows:

a) The Licensor will, at its choice and at its own expense, either obtain a right of use for the deliveries concerned, modify the deliveries such that the Intellectual Property Right is not violated, or replace the deliveries. Should this not be possible for the Licensor on reasonable terms, the licensee shall be entitled by law to withdraw from the agreement. The licensee may not demand compensation for expenses made to no avail.

b) The obligation of the Licensor to pay damages shall be governed by Item 11 (Liability).

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c) The aforementioned obligations of the Licensor shall apply solely to the extent that the licensee immediately notifies the Licensor in writing of the claims asserted by third parties, that the licensee does not acknowledge a violation, and that all defensive measures and all settlement negotiations remain reserved by the Licensor. If the licensee discontinues the use of the delivery in order to mitigate loss or for any other good cause, it shall indicate to third parties that the discontinued use is not in relation to an acknowledgement of a violation of an Intellectual Property Right.

2. Licensee claims where the licensee is responsible for the violation of the Intellectual Property Right are hereby excluded. Furthermore, licensee claims are excluded where the Intellectual Property Right violation is caused by special specifications of the licensee, by an application which cannot be foreseen by the Licensor, or in that the delivery is modified by the licensee or used by the licensee in combination with products which were not supplied by the Licensor.

3. In the event of any other defects in title, the provisions of Item 9 (Defects of Quality) shall apply accordingly.

4. Any further claims, or claims governed in a manner other than as stipulated in the present Item 10, of the licensee against the Licensor, and against the persons the Licensor employs in performing a contractual obligation for whom the Licensor is vicariously liable, on account of a defect of title are hereby excluded.

11. General Provisions Contingent upon the Registered Office of the Licensee

Paragraph A:

The provisions of the present Paragraph A shall (only) apply to licensees whose registered office or ordinary place of residence is located in Germany:

a.1 Period of limitation for claims for subsequent performance

Claims for subsequent performance shall be time-barred after 12 months. The period shall begin on the date of the delivery of the Software for the licensee. The period shall not apply: where the law prescribes lengthier periods pursuant to Sections 438 (1) no. 2 (building work and items for building work), 479 (1) (claims under a right of recourse) and 634a (1) no. 2 (building defects) German Civil Code (BGB), in the event of wrongful intent, malicious concealment of the defect, and in the event of the failure to satisfy a guaranty of quality. The legal provisions concerning the suspension of the expiration of the periods, the interruption of the periods and the recommencement of the periods shall be unaffected hereby.

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) pursuant to product liability laws,
- b) in the event of wrongful intent,
- c) in the event of gross negligence by owners, legal representatives or senior management,
- d) in the event of malice,
- e) in the event of a failure to satisfy a guaranty,
- f) on account of the intentional or negligent injury to life, limb or health, or
- g) on account of the intentional or negligent fundamental breach of contract.

However, any claim for damages for a fundamental breach of contract shall be limited to the foreseeable damage provided in standard contractual provisions, unless any one of the aforementioned circumstances is present.

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, including the construction thereof, shall be subject to German law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the principles on conflicts of law.

a.4 Dispute resolution

The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the location of the Licensor's registered office. However, the Licensor shall also be entitled to take legal action at the licensee's principle place of business.

Paragraph B:

The provisions of the present Paragraph B shall (only) apply to licensees whose registered office or ordinary place of residence is not located Germany:

b.1 Period of limitations for defects

Claims on account of defects shall be time-barred 12 months from the delivery of the Software.

b.2 Liability

Except where otherwise provided in this license agreement, any liability of the Licensor (including the liability of its employees, agents or subcontractors) – for any cause in law whatsoever (for example, in connection with defects, default, Intellectual Property Rights, indemnity) – shall be limited as follows:

- a) Under no circumstances shall the Licensor be liable for loss of profits, lost income, loss of use, loss of production, costs of capital or costs associated with an interruption of operations, the loss of anticipated savings, or indirect or consequential damage or losses, regardless of the nature thereof;
- b) The joint and several liability of the Licensor in respect of all claims which may arise in relation to performance or non-performance under this agreement will not under any circumstances exceed 100% of the respective license fee.

The foregoing provisions on the exclusion of liability shall not apply to unlawful intent or gross negligence on the part of the Licensor, but they shall also apply to unlawful intent or gross negligence on the part of proxies.

b.3 Applicable law

This agreement, including the construction thereof, shall be subject to Swiss law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the principles on conflicts of law.

b.4 Dispute resolution

If the licensee is a merchant, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the location of the Licensor's registered office. However, the Licensor shall also be entitled to take legal action at the licensee's principle place of business.

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12. Final Provisions

The terms and conditions set forth herein shall apply exclusively. Licensee terms and conditions which deviate from or supplement said terms and conditions shall not be binding on the Licensor, even where the Licensor does not state any objection. This shall also apply in the event that the licensee states its intent to conclude the agreement solely on its own terms.

Any amendments and additions to these licensing terms must be made in writing.

Should individual clauses of this agreement become invalid, the validity of the remaining clauses of the agreement shall not be affected thereby. The invalid clauses should be replaced by a provision which most closely approximates the economic intent of the invalid clauses.

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Third Party Software (components, notices and licenses)

This product uses software from third-party sources.

The software packages used in this product are described in the following.

OSS component: Linux OS
Version: 2.6.18
Source: http://kernel.org
License: GNU GPL, Version 2
Copyright notice: Copyright © 1992-2010 by Linus Torvalds et al.

OSS component: MiniGUI
Version: 3.0.10
Source: http://www.minigui.org
License: GNU GPL, Version 2
Copyright notice: Copyright © 2002 ~ 2012, Beijing FMSOFT Technologies Co., Ltd

OSS component: BusyBox
Version: 1.1.2
Source: http://www.busybox.net/
License: GNU GPL, Version 2
Copyright notice: Copyright © 1999-2008 Erik Andersen

OSS component: uboot
Version: 1.1.5
Source: http://www.denx.de/
License: GNU GPL, Version 2
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Thus, it is not the intent of this section to claim rights or contest your rights to work written entirely by you; rather, the intent is to exercise the right to control the distribution of derivative or collective works based on the Program.

In addition, mere aggregation of another work not based on the Program with the Program (or with a work based on the Program) on a volume of a storage or distribution medium does not bring the other work under the scope of this License.

3. You may copy and distribute the Program (or a work based on it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following:

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- b) Accompany it with a written offer, valid for at least three years, to give any third party, for a charge no more than your cost of physically performing source distribution, a complete machine-readable copy of the corresponding source code, to be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or,
- c) Accompany it with the information you received as to the offer to distribute corresponding source code. (This alternative is allowed only for noncommercial distribution and only if you received the program in object code or executable form with such an offer, in accord with Subsection b above.)

The source code for a work means the preferred form of the work for making modifications to it. For an executable work, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the executable. However, as a special exception, the source code distributed need not include anything that is normally distributed (in either source or binary form) with the major components (compiler, kernel, and so on) of the operating system on which the executable runs, unless that component itself accompanies the executable.

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END OF TERMS AND CONDITIONS

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To do so, attach the following notices to the program. It is safest to attach them to the start of each source file to most effectively convey the exclusion of warranty; and each file should have at least the "copyright" line and a pointer to where the full notice is found.

```
one line to give the program's name and an idea of what it does.  
Copyright (C) yyyy name of author
```

```
This program is free software; you can redistribute it and/or  
modify it under the terms of the GNU General Public License  
as published by the Free Software Foundation; either version 2  
of the License, or (at your option) any later version.
```

```
This program is distributed in the hope that it will be useful,  
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MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. See the  
GNU General Public License for more details.
```

```
You should have received a copy of the GNU General Public License  
along with this program; if not, write to the Free Software  
Foundation, Inc., 51 Franklin Street, Fifth Floor, Boston, MA 02110-1301, USA.
```

Also add information on how to contact you by electronic and paper mail.

If the program is interactive, make it output a short notice like this when it starts in an interactive mode:

```
Gnomovision version 69, Copyright (C) year name of author  
Gnomovision comes with ABSOLUTELY NO WARRANTY; for details  
type `show w'. This is free software, and you are welcome  
to redistribute it under certain conditions; type `show c'  
for details.
```

The hypothetical commands `show w' and `show c' should show the appropriate parts of the General Public License. Of course, the commands you use may be called something other than `show w' and `show c'; they could even be mouse-clicks or menu items--whatever suits your program.

You should also get your employer (if you work as a programmer) or your school, if any, to sign a "copyright disclaimer" for the program, if necessary. Here is a sample; alter the names:

```
Yoyodyne, Inc., hereby disclaims all copyright  
interest in the program `Gnomovision'  
(which makes passes at compilers) written  
by James Hacker.
```

```
signature of Ty Coon, 1 April 1989  
Ty Coon, President of Vice
```