

# Licensing Terms Busch-SmartTouch®

## Licence Agreement for software in Busch-SmartTouch® Devices for the KNX System between Busch-Jaeger Elektro GmbH and end-user

**IMPORTANT – READ CAREFULLY:** This license agreement is a legal agreement between end-user (either an individual or a single entity) and Busch-Jaeger Elektro GmbH, Lüdenscheid, Germany for software in Busch-SmartTouch® Devices for the KNX System of Busch-Jaeger.

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### 1. Definitions, Download of Software

This License Agreement (the "Agreement") shall be entered into by the end-user ("Licensee") by accepting the terms hereof in view of the Software in Busch-SmartTouch® Devices for the KNX System (the "Software"), which Busch-Jaeger Elektro GmbH, Lüdenscheid, Germany (the "Licensor") is licensing. The Licensee shall not be entitled to use the Software prior to entering into the Agreement by accepting the application of the terms hereof.

The terms for the using of the Software shall be hereinafter laid down:

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Conditional upon acceptance of the terms of this Agreement by Licensee, Licensor grants to Licensee for the duration of this Agreement the non-exclusive, revocable, non-transferable, not sub-licensable, worldwide right (hereafter called "Licence") to use the Software on one or several Devices (as defined in Section 3.3) of the Licensor subject to the requirements set out herein. Any other or further use is not permitted. 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.

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### 3. Special Restrictions

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- a) hand over, or otherwise make the Software accessible or transfer the Software, to a third party without prior written permission from Licensor and only if that the third party agrees to all terms of this Agreement; save that it is expressly forbidden to rent or lease the Software,
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- e) reverse engineer, decompile, emulate, or disassemble the Software. Nothing in this Agreement permits Licensee to derive the source code or assembly code of files provided to Licensee in executable or object format, and/or
- f) use the Software for any purpose that is unlawful or prohibited.

3.2 Licensee must not use the Software for planning, construction, maintenance, or operation, directly or indirectly, of nuclear facilities, flight navigation, aircraft control, air traffic control and ground support equipment, missile technology, and facilities for weapons of mass destruction.

3.3 The Software can only be properly used when installed on the Licensee's Indoor video station with 12.6 cm (5") touch display ("Devices").



# Licensing Terms

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### 4. Copyright

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In case of questions pertaining to the Software, please contact Licensor by email [info.bje@de.abb.com](mailto:info.bje@de.abb.com).

### 6. 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.

Licensee must not sell, publish, disclose, display or otherwise make available the Software or copies thereof to others. Licensee shall secure and protect the Software in a manner consistent with the maintenance of Licensor's rights therein. These obligations shall continue after termination of this Agreement.

### 7. Third Party Software and Open Source Software

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### 8. Coming into Force and Duration of the Agreement

8.1 The Agreement shall come into force upon acceptance of these terms by Licensee on the Platform. The Agreement shall have an unlimited term.

8.2 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 (i.e. at least twice) or (ii) after Licensee has been unsuccessfully requested by Licensor to rectify the non-compliance. When the right of use is terminated, the Licensee shall be to refrain from any use of the Software and shall be 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. Any termination shall not entitle Licensee for any repayment of the fee and shall not relieve Licensee of his obligations regarding secrecy.

### 9. Compensation for breach of Contract

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. Export Control

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.

The Licensee must represent and warrant that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.

## 11. Force Majeure

Neither party shall be liable for any failure or delay on account of causes which are beyond the reasonable control of such party.

## 12. General Provisions depending on domicile, place of residence or habitual residence of Licensee

### Section A:

- The provisions of this Section A shall apply to Licensees who are **consumers** and who have the place of residence or habitual residence at the time of entering into this Agreement in **Germany**:

#### A.1 Defects

Licensee shall notify in writing to Licensor obvious defects within 8 days upon downloading the Software, provided that for the purpose of complying with such time period it is sufficient to have dispatched the notification within said period. Defects becoming visible later on shall be notified in writing within 2 (two) months after becoming visible. The defects shall be described as detailed as possible by Licensee.

#### A.2 Liability

Claims for damages of Licensee against Licensor, irrespective of the legal grounds (e.g. based on infringement of duties arising in connection with the contract or tort), shall be excluded.

This shall not apply to the extent liability is based on:

- (a) Product Liability Act;
- (b) intent or gross negligence on the part of the Licensor or his legal representatives, executives or other persons deployed by Licensor for fulfilment of his duties;
- (c) fraud;
- (d) failure to comply with a guarantee granted;
- (e) negligent injury to life, limb or health; or
- (f) negligent breach of a fundamental condition of contract (“wesentliche Vertragspflichten”).

However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.

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The above provisions shall not imply a change in the burden of proof to the detriment of Licensee.

### A.2 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).

*Note: As per Article 6 of the Rome I Regulation the mandatory provisions of the country of the place of residence or habitual residence of the consumer, which is a member country of the European Economic Area (EEA), shall be unaffected, if Licensor (a) pursues its commercial or professional activities in the country where the consumer has his habitual residence, or (b) by any means, directs such activities to that country or to several countries including that country.*

### A.3 Specific Provision on the Venue

In case place of residence or of habitual residence (as the case may be) of Licensee will change after coming into force of the Agreement to a place outside of Germany, venue for actions against Licensee will be at Licensor's domicile; provided that this will also apply if the place of residence or of habitual residence of Licensee will be unknown at the time of instituting legal proceedings.

## Section B:

The provisions of this Section B shall apply to Licensees who are (a) **consumers** and who have the place of residence or habitual residence at the time of entering into this Agreement in **Switzerland** or (b) **not** being **consumers** domiciled **outside of Germany**:

### B.1 Guarantee

Licensee hereby is granted a guarantee by Licensor that the Software will work substantially in line with the product description for 90 (ninety) days as from downloading the Software. Any statutory warranty shall be excluded.

### B.2 Liability

Claims for damages of Licensee against Licensor, irrespective of the legal grounds (e.g. based on infringement of duties arising in connection with the contract or tort), shall be excluded.

This shall not apply to the extent liability is based on:

- (a) Product Liability Act;
- (b) intent;
- (c) gross negligence; or
- (d) negligent injury to life, limb or health.

### B.2 Applicable Law

This Agreement and its interpretation shall be governed by Swiss law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG) and of the conflict of law rules of the international private law.

## Section C:

The provisions of this Section C shall apply to Licensees who are **consumers** and who have the place of residence or habitual residence at the time of entering into this Agreement in a member state of the European Union (EU) **except** for Germany **or** in **Iceland, Liechtenstein** or **Norway**:

### C.1 Defects

Licensee shall notify in writing to Licensor obvious defects within 8 days upon downloading the Software, provided that for the purpose of complying with such time period it is sufficient to have dispatched the notification within said period. Defects becoming visible later on shall be notified in writing within 2 (two) months after becoming visible. The defects shall be described as detailed as possible by Licensee.

## C.2 Liability

Claims for damages of Licensee against Licensor, irrespective of the legal grounds (e.g. based on infringement of duties arising in connection with the contract or tort), shall be excluded.

This shall not apply to the extent liability is based on:

- (a) Product Liability Act;
- (b) intent or gross negligence on the part of the Licensor or his legal representatives, Executives or other persons deployed by Licensor for fulfilment of his duties;
- (c) fraud;
- (d) failure to comply with a guarantee granted;
- (e) negligent injury to life, limb or health; or
- (f) negligent breach of a fundamental condition of contract (“wesentliche Vertragspflichten”).

However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.

The above provisions shall not imply a change in the burden of proof to the detriment of Licensee.

## C.3 Applicable Law

This Agreement and its interpretation shall be governed by German law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG) and of the conflict of law rules of the international private law.

*Note: As per Article 6 of the Rome I Regulation the mandatory provisions (that cannot be derogated from by agreement by virtue of the law of such country which, in the absence of choice, would have been applicable as per Article 6 para 1 of the Rome I Regulation) of the country of the place of residence or habitual residence of the consumer, which is a member country of the European Economic Area (EEA), shall be unaffected, if Licensor (a) pursues its commercial or professional activities in the country where the consumer has his habitual residence, or (b) by any means, directs such activities to that country or to several countries including that country.*

## Section D:

The provisions of this Section D shall apply to Licensees who are **consumers** and who have the place of residence or habitual residence at the time of entering into this Agreement **neither** in a member state of the **European Union (EU)** nor in **Iceland, Liechtenstein, Norway or Switzerland**:

### D. 1 Defects

Licensee shall notify in writing to Licensor obvious defects within 8 days upon downloading the Software, provided that for the purpose of complying with such time period it is sufficient to have dispatched the notification within said period. Defects becoming visible later on shall be notified in writing within 2 (two) months after becoming visible. The defects shall be described as detailed as possible by Licensee.

### D.2 Liability

claims for damages of Licensee against Licensor, irrespective of the legal grounds (e.g. based on infringement of duties arising in connection with the contract or tort), shall be excluded.

This does not apply to the extent liability is based on:

- (a) Product Liability Act;
- (b) intent or gross negligence on the part of the Licensor or his legal representatives, Executives or other persons deployed by Licensor for fulfilment of his duties;
- (c) fraud;
- (d) failure to comply with a guarantee granted;
- (e) negligent injury to life, limb or health; or
- (f) negligent breach of a fundamental condition of contract (“wesentliche Vertragspflichten”).

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However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.

The above provisions shall not imply a change in the burden of proof to the detriment of Licensee.

### D.3 Applicable Law

This Agreement and its interpretation shall be governed by German law, to the exclusion of (i) the United Nations Convention on contracts for the International Sale of Goods (CISG), (ii) the conflict of law rules of the international private law and (iii) the provisions of the German laws on consumer protection.

## Section E:

The provisions of this Section E shall apply to all Licensees **not** being **consumers** and domiciled in **Germany**:

### E.1 Defects

The limitation period for claims for defects shall be 12 months. The period shall commence upon the downloading of the Software. Except in cases of intent, gross negligence or fraud the liability for defects shall be limited to making good the defects by (at Licensor's option) remedying the defect or supply of Software being free of defect.

### E.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.

### E.3 Applicable Law

This Agreement and its interpretation shall be governed by substantive German law to the exclusion of (i) the United Nations Convention on contracts for the International Sale of Goods (CISG) and (ii) the conflict of law rules of the international private law.

### E.4 Arbitration

All disputes arising out of or in connection with this Agreement or its validity shall be finally settled according to the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. Place of the arbitration proceeding shall be Frankfurt/Main (Germany). The language of the arbitration shall be English.

## 13. Miscellaneous

- a) These conditions shall apply exclusively. Any conditions of the Licensee deviating 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.

- b) The terms of this Agreement will also govern any upgrades provided by Licensor that replace and/or supplement the original Software, unless such upgrade is accompanied by a separate license terms in which case the terms of that license will govern.
- c) Amendments to this Agreement shall require a written agreement between the Parties hereof.
- d) 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.

Busch-Jaeger Elektro GmbH

Freisenbergstrasse 2

58513 Lüdenscheid

Tel no: ++49 2351 956 1600

Questions, complaints or claims by Licensee should be addressed to:

Info.bje@de.abb.com

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### Third Party Software (components, notices and licenses)

#### Valid for SmartTouch firmware version 2.X.

The Software contains Third Party Software and/or Open Source Software for which license terms apply, both of which are set out below.

#### Open Source Software

Busch-Jaeger does not assume any liability or provide a warranty for this software.

The source code for the open source software can be obtained by you and any third party from Busch-Jaeger Elektro GmbH, Freisenbergstr. 2, 58513 Lüdenscheid/Germany or via the e-mail address info@BJE.de. This offer is valid for three years after making available of the Software by Busch-Jaeger.

#### The Software contains open source software as follows:

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

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Version: 3.10.31  
Source: <http://kernel.org>  
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OSS component: BusyBox  
Version: 1.21.1  
Source: <https://busybox.net/>  
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OSS component: QT  
Version: 5.4.2  
Source: <http://download.qt.io/archive/qt/5.4/5.4.2/single/>



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Linus Torvalds

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You may charge a fee for the physical act of transferring a copy, and

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2. You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications or work under the terms of Section 1 above, provided that you also meet all of these conditions:

a) You must cause the modified files to carry prominent notices stating that you changed the files and the date of any change.

b) You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.

c) If the modified program normally reads commands interactively when run, you must cause it, when started running for such interactive use in the most ordinary way, to print or display an announcement including an appropriate copyright notice and a notice that there is no warranty (or else, saying that you provide a warranty) and that users may redistribute the program under these conditions, and telling the user how to view a copy of this License. (Exception: if the Program itself is interactive but does not normally print such an announcement, your work based on the Program is not required to print an announcement.)

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These requirements apply to the modified work as a whole. If identifiable sections of that work are not derived from the Program, and can be reasonably considered independent and separate works in themselves, then this License, and its terms, do not apply to those sections when you distribute them as separate works. But when you distribute the same sections as part of a whole which is a work based on the Program, the distribution of the whole must be on the terms of this License, whose permissions for other licensees extend to the entire whole, and thus to each and every part regardless of who wrote it.

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:

- a) Accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or,
- 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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If any portion of this section is held invalid or unenforceable under any particular circumstance, the balance of the section is intended to apply and the section as a whole is intended to apply in other circumstances.

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This section is intended to make thoroughly clear what is believed to be a consequence of the rest of this License.

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```
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