ETHERCAT SLAVE STACK CODE LICENSE

Given by

Beckhoff Automation GmbH & Co. KG
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("**Licensor**")

Whereas, you are interested in obtaining a License for using the EtherCAT Slave Stack Code (SSC).

Whereas, Beckhoff Automation GmbH is the owner of all intellectual property rights pertaining to the EtherCAT Technology, including but not limited to (a) the following patent applications and patents: EP1590927, EP1789857, DE102004044764, EP2137893 with corresponding applications or registrations in various other countries, and (b) the trademarks "EtherCAT" and "Safety over EtherCAT", with applications or registrations in the European Community (CTM003122736, CTM006350029, CTM005460563) and corresponding registrations or applications in various other countries.

Whereas, Beckhoff Automation GmbH granted Licensor the right to license the Intellectual Property Rights pertaining to the EtherCAT Technology to third parties.

Whereas, Licensor is willing to permit you to create and/or sell or otherwise distribute a product incorporating the EtherCAT Technology.

Whereas, you acknowledge Licensor's commercially reasonable efforts to keep the number of those EtherCAT Technology products in the market sold under the trade name "EtherCAT" and not being fully compatible with the then current version of the EtherCAT Technology at a minimum.

Whereas capitalised terms shall have the meanings given to them in Annex 1

NOW THEREFORE, the License is granted as follows:

1.   License

1.1   Subject to your compliance with the terms and conditions of this License, Licensor hereby grants to you under the Intellectual Property Rights and for the sole purpose of direct usage within or integration into your EtherCAT products a non-transferable, world-wide, non-exclusive, royalty-free license

- **to use the EtherCAT Slave Stack Code for developing, testing, selling or otherwise distributing own Products incorporating EtherCAT Technology**

- **to modify and/or embed the Slave Stack Code in your Product without limitations set forth in Section 5 a) and 5 b) of the License,**

1.2   Your Products shall, at the time those are supplied to each individual of your customer or otherwise distributed by you, be compatible with the latest version of the pertinent EtherCAT Technology at that time pursuant to the provisions of Section 3 below.

1.3   Licensor and its Licensors shall exclusively own all intellectual property or proprietary rights in and pertaining to the EtherCAT Technology including, but not limited to, inventions, patents, patent applications and disclosures, copyrights, mask work rights, trade secrets, moral rights, confidential or otherwise proprietary information and know-how which have been, or will be, acquired or otherwise secured by a party, recognized in any country or jurisdiction in the world. Other than the limited license granted to you pursuant to this License, you shall not acquire any rights in or pertaining to the EtherCAT Technology.

2.   Royalties

The EtherCAT Slave Stack Code License is royalty free.

3.   Conformance Test Procedure

3.1   All Products shall undergo tests according to the then current Conformance Test Policy issued from time to time by the EtherCAT Technology Group to ensure that those Products are compatible with the latest version of the EtherCAT Technology. These tests shall be completed with a positive result ("compatible") before any of the Products may be sold, delivered or otherwise distributed to your customers.

3.2   In case a modification of the EtherCAT Technology results in a Product which was compatible with the pre-existing version of the EtherCAT Technology to be incompatible after the modification, you shall within twelve (12) months from the date the Product became incompatible modify such Product and adapt it to the latest version of the EtherCAT Technology. After such modified Product has passed the Conformance Test pursuant to Section 3.1 with a positive result, you shall have the right to sell, deliver or otherwise distribute this Product to your customers and any sale and delivery of the incompatible Product during the twelve (12) months period shall be deemed permitted.

3.3   Notwithstanding to the limitations set forth in Sections 3.1 and 3.2, you shall have the right to continue to supply Existing Customers with Products containing the version of the EtherCAT Technology they initially received.

4.   Trademark License

4.1   You acknowledge that Beckhoff Automation GmbH is the sole proprietary owner of the Trademarks and Licensor is licensee of such rights and entitled to sublicense the Trademarks. Subject to your compliance with the terms and conditions of this License, Licensor hereby grants to you under the Intellectual Property Rights a non-transferable, worldwide, non-exclusive, royalty-free license to use the Trademarks for marketing and

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4.2 You shall not use the Trademarks licensed under this or any other License or Agreement from Licensor to apply for your own intellectual property rights, trade marks or domain names containing such Trademarks. You shall not use or register the Trademarks as a component of your company name, trade name or a similar designation of your business or enterprise or as a component of a domain name or a product name.

4.3 You shall not use the Trademarks for Products incorporating pre-existing versions or derivatives of the EtherCAT Technology which are not fully compatible with the latest version of the EtherCAT Technology at the time they are supplied by you to your customers.

4.4 After the expiration of the twelve (12) months period pursuant to Section 3.2, you shall no longer use the Trademarks for those Products incorporating pre-existing versions of the EtherCAT Technology which are not fully compatible with the latest version of the EtherCAT Technology at the time they are de facto supplied to Existing Customers.

5. License Restrictions

Except as expressly permitted by this License or mandatory provisions of applicable law, you may not

a) **modify the EtherCAT Slave Stack Code or use content of the EtherCAT Slave Stack Code to create, manufacture, distribute or sell products containing EtherCAT Technology;**

b) **reproduce the EtherCAT Slave Stack Code or its components;**

c) **create derivative works of the EtherCAT Slave Stack Code or use content of the EtherCAT Slave Stack Code to create, manufacture, distribute or sell products containing derivatives of the EtherCAT Technology**

d) **sublicense, rent, lease, loan, timeshare, sell, distribute, disclose, publish, assign or transfer any rights, grant a security interest in, transfer possession of the Slave Stack Code or its components;**

e) **alter or remove any of Licensor's copyright or proprietary rights notices or legends appearing on or in the Slave Stack Code.**

6. Distribution of Products containing EtherCAT Technology Family outside this License

You shall not create and sell or otherwise distribute a Product, except as expressly permitted under this License or under any other EtherCAT License Agreement entered into by you. Any attempt otherwise to create, to sell or otherwise to distribute such products or a product containing a modification of the Intellectual Property Rights provided hereunder automatically terminates the license granted herein.

7. No Right to Sublicense

7.1   You shall not be permitted to grant sublicenses to any third party, unless otherwise explicitly agreed upon hereunder. Except for the limited license granted under this License, Beckhoff Automation GmbH and Licensor shall retain all right, title and interest in and to the Intellectual Property Rights. You shall not alter, modify, obscure or remove any copyright, logo, trademark, trade name or other proprietary markings or confidentiality legends or any serial numbers pertaining to Safety-over-EtherCAT Technology.

7.2   You may grant sublicenses to any third party only upon prior written agreement with Licensor.

7.3   To the extent Licensee is permitted to grant sublicenses under this Agreement, Licensee shall impose on the Sub-Licensee the same obligations as imposed on Licensee under this Agreement and shall ensure that the Sub-Licensee meets all obligations set forth herein. Licensee shall assume full responsibility for the performance of all obligations so imposed on its Sub-Licensees.

8.   Marking

You shall prominently display the trademark "EtherCAT" combined with the registration symbol ® and patent references for the EtherCAT Technology and other markings on any Product and shall reproduce such marking in the respective product manual in accordance with the EtherCAT Marking Rules as published from time to time by the EtherCAT Technology Group. You are permitted to make and take all reasonable steps necessary to protect Beckhoff Automation GmbH or Licensor's related proprietary rights, provided, however, you obtain the prior written consent of Licensor for any of such steps.

9.   Limited Obligation of Licensor

You confirm that this License does not create any obligation of Licensor to supply you with any additional information, code or protocol. Additionally any of the above as well as support, maintenance, installation and training do not form part of Licensor's obligation hereunder but may be separately purchased at Licensor's then current rates to the extent offered by Licensor, save and except that during a period of twelve (12) months from the date of this License Licensor shall provide you with its telephone support to the extent available and free of charge.

10.   Term and Termination

10.1   This License shall continue for an indefinite period. It may only be revoked or returned by either party with thirty (30) days written notice in the event that the other party is in fundamental breach of any provision of this License. Upon termination, the rights licensed to you shall automatically revert to Licensor and you shall: (i) not distribute or use the Intellectual Property Rights or the EtherCAT Technology for any purpose whatsoever; and (ii) immediately return to Licensor all material provided by Licensor or its Licensors under this License.

10.2   The EtherCAT Technology comprises i.a. the use of patents owned by other members of the EtherCAT Technology Group and licensed to Beckhoff Automation GmbH and sublicensed to Licensor with the Licensor's with the right to sublicense to the members of the EtherCAT Technology Group, only. The term of the license relating to these patents shall therefore end if you cease to be a member of EtherCAT Technology Group.

11.   Limited Warranty ("Gewährleistung")

11.1   Nothing herein shall constitute a guarantee ("Garantie") from Licensor. Licensor warrants ("gewährleistet") that at the time this License becomes effective the EtherCAT Slave Stack Code is substantially in accordance with the product specifications as published by Licensor and that Licensor is not aware of rights of third parties which prevent Licensor from the due performance of its obligations pursuant to this License. Other than this limited warranty Licensor hereby excludes and you waive any and all other warranties or representations. In particular Licensor does not warrant that the EtherCAT Technology fits for any general or particular purpose.

11.2   In case of updates, upgrades and the delivery of a new version of the EtherCAT Slave Stack Code, the limited warranty set forth in Section 11.1 shall be restricted to the new features of the update, upgrade or new version compared with the previous version release.

11.3   Any of your warranty claims are time barred twelve (12) months after accepting of this License or commencement of the additional statutory limitation period pursuant 11.2.

12.   Limited Remedies

12.1   Except for Licensor's liability according to the German Product Liability Act and except Licensor's liability for personal injuries due to its fault, you are entitled to damages only in accordance with the provisions of this section without abandonment of the respective applicable legal requirements.

12.2   Licensor is liable only for the faulty breach of fundamental contractual obligations or for the breach of any other contractual obligation, if Licensor acts deliberately or grossly negligent. In case of a slightly negligent breach of fundamental contractual obligations the amount of damages is limited to the foreseeable damage which is intrinsic to the contract on the date this License becomes effective.

12.3   Licensor is not liable for loss of profit or damage to reputation. The amount of damages arising from other breaches of obligations is limited to an amount of 2.000,00 Euro.

12.4   The remedies available to you in case of a significant deviation from the product specifications published by Licensor shall be limited to the supply of a proper version of the EtherCAT Slave Stack Code. In case Licensor supplies a defective EtherCAT Slave Stack Code Component twice or such supply does not cure the pertinent breach of this License, you are entitled to terminate this License immediately.

13.   Indemnification of Licensor

13.1   You shall, at your own expense, defend any suit instituted against Licensor which results or arises from (i) an implementation of the EtherCAT Technology or a component thereof made by you, or (ii) any other information or documentation provided under this License as implemented by you, provided such implementation, information or documentation forms the basis for such suit including but not limited to any product liability claim by any third party and any allegation that any of the products fail to conform with requirements of any applicable law.

13.2   You shall indemnify Licensor against any award of damage and costs made against Licensor by a final judgment of a court of last resort based upon such allegation, provided that Licensor gives you immediate notice in writing of any notice or claims with such allegations and permits you through your counsel to defend the same and gives you all available information, assistance and authority to enable you to assume such defence.

13.3   You shall have control of the defence of any such suit, including appeals from any judgment therein and any negotiations for the settlement or compromise thereof with full authority to enter into a binding settlement agreement or compromise.

13.4   For purposes of clarification it is stated that you shall have no obligations under this Section 13 to Licensor in the event the sole basis for a suit instituted against Licensor is the allegation that the EtherCAT Slave Stack Code in the form provided by Licensor to you under this License infringes upon the rights of the claimant.

14.   Use of Names of the Parties by the other Party

14.1   You may disclose that you are a licensed user of the EtherCAT Technology in your advertising, press, promotion and similar public disclosures relating to the Product; provided, however, that such advertising, promotion or similar public disclosures shall not indicate that Licensor in any way endorses the Products, unless Licensor authorised you to do so in writing prior to such disclosure.

14.2   You agree that Licensor may use your name and may disclose that you are a licensee of Licensor's products in Licensor's advertising, press, promotions and similar public disclosures with respect to the EtherCAT Technology; provided, however, such advertising, promotion or similar public disclosures shall not indicate that you in any way endorses any Licensor products, without prior written permission from you.

15.   Independent Contractors

You and Licensor hereto are independent parties and no one shall have the right or authority – expressed or implied – to bind the other in any way whatsoever. Nothing contained herein shall be construed as creating any agency, employment relationship, partnership or other form of joint enterprise between the parties.

16.   Export Restrictions

Each party shall adhere to all applicable export laws and regulations, including those administered by the U.S. Department of Commerce (U.S. Export Administration Regulations 15 CFR 730 et seq.), and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any technical data or products received from the other, or the direct product of such technical data or products, to any proscribed person, entity, or country, or foreign national thereof, unless properly authorized by the U.S. government.

17.   Governing Law

This License shall be governed by and interpreted in accordance with the laws of the Federal Republic of Germany, without reference to conflict of laws´ rules. In case the English legal meaning differs from the German legal meaning of this License and its terms, the German meaning shall prevail. The United Nations Convention on Contracts for the International Sales of Goods (CSIG) shall not be applicable.

18.   Arbitration

Any dispute, controversy or claim arising out of or relating to this License or the breach, expiration, termination or validity of this License shall finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The place of arbitration shall be Düsseldorf, Germany. The language of the proceedings shall be German or English. However, it shall not be necessary to translate English language documents.

19.   General

If any provision or provisions of this License are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this License shall remain unaffected or impaired thereby. This License may not be assigned or otherwise transferred by you without prior written consent by Licensor. Any notices required by this License shall be provided to the addresses set forth above by registered mail, return receipt requested. This License constitutes the entire, complete, final and exclusive statement of the agreement between Licensor and you, which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this License. No waiver, alteration or modification of the provisions of this License will be valid unless made in writing and signed by a corporate officer of Licensor. This applies also for a change of this section 19.

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Annex 1
Definitions

1.1. "**EtherCAT Slave Stack Code**" means EtherCAT Slave software providing the higher level slave functionality and interface between the EtherCAT Slave Controller and the Product hardware and software and all modifications, updates, enhancements and upgrades thereto, to the extent any of the foregoing are provided by Licensor under this License, in its sole discretion, and full or partial copies thereof.

1.2. "**EtherCAT Patents**" means the patent rights owned and licensed by Licensor including but not limited to the following German patent applications and patents: EP1590927, EP1789857, DE102004044764, DE102007017835 with corresponding applications or registrations in various other countries.

1.3. "**EtherCAT Slave**" means a network node making use of the slave part of the EtherCAT Technology and being operational on the EtherCAT.

1.4. "**EtherCAT Slave Controller**" (ESC) means any semiconductor chip or chip assembly such as, but not limited to, ASIC, structured ASIC or FPGA which contains the EtherCAT Slave data link layer.

1.5. "**EtherCAT Technology**" means Ethernet control & automation technology, which is a *serial communication link* developed and owned by Beckhoff Automation GmbH and licensed to Licensor, specified in IEC 61158 and IEC 61784 (and its successors) and compatible with the functional model as published from time to time on the official website of the EtherCAT Technology Group (www.ethercat.org). The technology consists of a master ("EtherCAT Master"), a slave ("EtherCAT Slave") and a safety part ("Safety-over-EtherCAT").

1.6. "**Existing Customer**" means a customer who received a Product which was compatible to a version of the EtherCAT Technology at the time the Product was first supplied to such customer.

1.7. "**Intellectual Property Rights**" means the EtherCAT Patents, Trademarks, together with all copyrights and all other proprietary rights owned or acquired by Beckhoff Automation GmbH in and to the EtherCAT Technology, to the extent they are necessary to execute this License.

1.8. "**Product**" means any product made by you which contains EtherCAT Technology or technology created by at least partially making use of the EtherCAT Technology.

1.9. "**Trademarks**" means the trademarks "EtherCAT" and "Safety over EtherCAT", with applications or registrations in the European Community (CTM003122736, CTM006350029, CTM005460563) and corresponding registrations or applications in various other countries.