

TERMS & CONDITIONS OF BALLUFF LIMITED FOR THE FREE LICENSING OF STANDARD SOFTWARE (DATED 04/2020)

BALLUFF

1. General information – Scope

- 1.1 These terms and conditions apply to the free licensing of standard software (hereafter, the “**Software Conditions**”) by Balluff Limited (hereinafter referred to as “**Balluff**”) to the customer (hereinafter referred to as “**Customer**”). Separate terms and conditions apply to other types of software licenses and legal transactions.
- 1.2 These Software Conditions exclude the following:
 - a. licensing of standard software for a fee;
 - b. installation of software at the Customer’s premises;
 - c. individual setting of variable software parameters according to Customer requirements (“**Customizing**”);
 - d. individual program extensions for the Customer;
 - e. adaptations of software interfaces according to the Customer’s needs;
 - f. training of users of the Customer; and
 - g. software updates (subject to clause 4.9).This list is not exhaustive.
- 1.3 These Software Conditions, the relevant individual contract (the “**Individual Contract**”) and, the Licensing Documentation (defined at clause 2.2 below), constitute the entire agreement between Balluff and the Customer (hereafter, the “**Contract**”) and supersede all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.
- 1.4 Each party acknowledges that it has not entered into this Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Contract, except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 1.5 If there is a conflict between these Software Conditions and/ the Individual Contract and the Licensing Documentation, the following descending order of priority applies:
 - a. the Individual Contract;
 - b. the Licensing Documentation; and
 - c. the Software Conditions.

2. Subject matter of the contract – Open Source software

- 2.1 The subject matter of the Software Conditions is to allow the Customer to make use to the standard software of Balluff outlined in the Licensing Documentation (hereinafter referred to as “**Contract Software**”) for free. The full description of the Contract Software can be found in the Licensing Documentation, which is made available to the Customer on request or unsolicited before or in connection with the conclusion of the Contract.
- 2.2 The “**Licensing Documentation**” consists of part number code or material number, the product datasheet, as well as an installation guide/operating instruction.
- 2.3 The Contract Software consists of the executable program code. The source code is not included in the license grant.
- 2.4 The Contract Software may include open source software (hereinafter referred to as “**OS Software**”). A list of the OS Software and the applicable OS Software licensing conditions shall be made available to the Customer on request before conclusion of the Contract or at the latest upon delivery of the Contract Software. The Customer shall comply with the licensing conditions applicable to the OS Software.
- 2.5 If third party software is provided with or as part of the Contract Software, this third-party software may be used solely in conjunction with the Contract Software. A list of the third-party software and the applicable third-party software licensing conditions shall be made available to the Customer on request before conclusion of the Contract or at the latest upon delivery of the Contract Software. The Customer shall comply with the licensing conditions applicable to the third-party software.
- 2.6 Balluff is entitled to protect the Contract Software against unauthorized use. The Customer may not remove or bypass such protective measures of the Contract Software. The Customer shall use reasonable endeavors to prevent any unauthorized access to, or use of, Contract Software and/or the Licensing Documentation.

3. Delivery of the contract software – Version

- 3.1 Unless otherwise agreed, Balluff shall supply the Customer with the current version of the Contract Software at the time of delivery.
- 3.2 Unless otherwise agreed in writing, the Contract Software will be delivered at Balluff’s discretion either on a data carrier or by providing the Contract Software as a download and sending the Customer the information required for the download.

4. Rights of use – Backup copy

- 4.1 Balluff grants the Customer a non-exclusive, either (a) time limited license to use the Contract Software and Licensing Documentation; or (b) a perpetual license to use Contract Software and the Licensing Documentation. The license granted to the Customer will be specified in the Individual Contract. If the Individual Contract is silent, the license granted is a time limited license.
- 4.2 The license takes effect from the delivery of the Contract Software (the “**Commencement Date**”).
- 4.3 On the Commencement Date the Customer is granted a non-exclusive, non-transferable right to use the Contract Software and Licensing Documentation in accordance with the terms of the Contract. This right of use cannot be sublicensed.
- 4.4 The permitted use of the Contract Software and the Licensing Documentation includes the installation, loading into the working memory, the display and running of the Contract Software, as well as the intended use of the Contract Software by the Customer for its internal business purposes only.
- 4.5 The use of the Contract Software and the Licensing Documentation is only permitted in the agreed countries of destination. Unless otherwise agreed in writing, this is the country in which the Customer has its registered office.
- 4.6 The Customer is only allowed to make Back Up Copies of the Contract Software and Licensing Documentation to the extent that is necessary for the Customer’s use of the Contract Software in accordance with the terms of this Contract. Back Up Copies must be labelled as such and have the copyright notice of the original Contract Software.
- 4.7 The use of Back Up Copies is only permitted in the event of a deterioration or loss of the copy of the Contract Software originally provided by Balluff.
- 4.8 “**Back Up Copies**” means copies of the Contract Software for use in the event that the original software is damaged or deleted accidentally.
- 4.9 Without the prior written consent of Balluff, the Customer is prohibited from assigning the Contract Software and/or Licensing Documentation or otherwise transferring them to third parties or making them available to third parties, including renting, leasing, loaning, sublicensing, distributing, displaying, disclosing, or otherwise commercially exploiting the Contract Software.
- 4.10 Balluff’s consent to an assignment of the Contract Software and/or Licensing Documentation to a third-party pursuant to clause 4.9 is conditional on the following:
 - a. the third party must agree to comply with all relevant obligations and provisions under the Contract and enter into a corresponding written agreement with Balluff directly; and
 - b. the Customer must surrender and cease use of the Contract Software and/or Licensing Documentation immediately and delete and destroy any versions of the Contract Software and/or Licensing Documentation in its possession, including all Back Up Copies.

- 4.11 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, the Customer shall not edit, change, reverse engineer, decompile, or disassemble the Contract Software or parts thereof, or fix the Contract Software in another way, as well as create derivative works of the Contract Software, except to the extent expressly permitted under the Contract.
- 4.12 Updated versions of software or files that close security loopholes, correct errors, or add functions, are considered to be “**Patches**” or “**Bug Fixes**” for the purpose of the Contract. New versions of the Contract Software which contain minor program improvements or new and/or modified basic functions are “**Updates**” for the purposes of the Contract. “**Upgrades**” as defined in the Contract as configurations to a higher version of the Contract Software with a significant extension of the function. If Balluff voluntarily provides the Customer with Patches or Bug Fixes, Updates or Upgrades, these are also subject to the terms of this Contract, unless otherwise agreed in writing. Balluff is not obliged to provide the Customer with Patches or Bug Fixes, Updates or Upgrades.
- 4.13 All other rights to the Contract Software and the Licensing Documentation not expressly granted herein, particularly all intellectual property rights to the Contract Software and Licensing Documentation are owned by Balluff and/or its licensors. For the purposes of the Contract “**Intellectual Property Rights**” means patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
- 4.14 Markings of the Contract Software and the Licensing Documentation, particularly copyright notices, brands, serial numbers, or similar may not be removed, modified, or disguised.

5. License fee

5. The parties agree to comply with the terms of the Contract in consideration of the payment by each party to the other of the sum of one pound (£1), the receipt and sufficiency of which is acknowledged by each party.

6. Customer’s duties to cooperate

- 6.1 The Customer shall register before using the Contract Software in accordance with the written instructions of Balluff.
- 6.2 The Customer is solely responsible for ensuring that the Contract Software is suitable for its purposes; in case of doubt, the Customer shall seek advice from a third-party specialist before conclusion of the Contract.
- 6.3 The Customer is solely responsible for ensuring that the hardware and software environments meet the system requirements of the Contract Software; in case of doubt, the Customer shall seek advice from a third-party specialist before conclusion of the Contract.
- 6.4 The Customer is responsible for the installation of the Contract Software. At Customer’s request, Balluff may, if necessary, undertake the installation for a separately agreed fee.
- 6.5 When using the Contract Software, the Customer is obliged to exercise the required due care and diligence.
- 6.6 The Customer shall comply with the instructions given by Balluff for the operation of the Contract Software and use the Contract Software in accordance with the Licensing Documentation.
- 6.7 The Customer is obliged to protect the Contract Software against access by unauthorized third parties by adopting appropriate measures, particularly to keep safe all copies of the Contract Software in a protected place.
- 6.8 The Customer is obliged to take appropriate and reasonable precautions in the event that the Contract Software does not work completely or partially (e.g. with daily data backup).
- 6.9 The Customer shall immediately notify Balluff in writing of any defects and errors with the Contract Software.
- 6.10 If Balluff voluntarily provides the Customer with Patches or Bug Fixes, Updates or Upgrades for the Contract Software, then the Customer shall install and use them.
- 6.11 The Customer shall comply with all applicable laws and regulations with respect to its activities under the Contract and carry out all other customer responsibilities set out in the Contract in a timely and efficient manner.

7. Liability for defects

- 7.1 The characteristics of the Contract Software are set out exclusively and definitively in the Licensing Documentation. The information in the Licensing Documentation should be viewed solely as performance specifications and not as guarantees.
- 7.2 Balluff confirms that the Contract Software will materially comply with the Licensing Documentation at the time the parties enter into the Contract.
- 7.3 Before concluding the Contract with Balluff concerning the licensing of the Contract Software, the Customer shall check that the Licensing Documentation and the Contract Software meet its wishes and requirements. The Customer itself shall be familiarized with the essential functional characteristics and conditions of the Contract Software.
- 7.4 Balluff does not warrant that the Customer’s use of the Contract Software will be uninterrupted or error-free; or that the Contract Software, the Licensing Documentation and/or the information obtained by the Customer through its use of the Contract Software will meet the Customer’s requirements.
- 7.5 In the event of the Customer receives a third-party claim that the Customer’s use or possession of the Contract Software and/or the Licensing Documentation as authorized under the Contract infringes the Intellectual Property Rights of a third party (“**IPR Claim**”), Customer shall
 - a. promptly notify Balluff in writing on becoming aware of any reasonably likely or actual IPR Claim (such notice to include full details as to the nature and basis of the IPR Claim);
 - b. make no admission of liability, communication or payment to the third party making the IPR Claim or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of Balluff; and
 - c. grant Balluff the sole control and conduct of the defense of the IPR Claim and of any related settlement or negotiations.
- 7.6 If any IPR Claim is made or is reasonably likely to be made against the Customer, Balluff may at its sole option and expense, and Customer’s sole remedy shall be for Balluff to:
 - a. procure for the Customer the right to continue using and possessing the Contract Software and/or Licensing Documentation (or any part thereof);
 - b. modify or replace the infringing part of the Contract Software and/or Licensing Documentation (or any part thereof) to avoid the infringement or alleged infringement; or
 - c. on immediate written notice terminate the Contract or the Customer’s license and access to the Contract Software and/or Licensing Documentation (or the infringing part therein).

8. Liability

- 8.1 Neither party’s liability is excluded or limited by any provision of the Contract in respect of: (a) death or personal injury caused by a party’s negligence or the negligence of a party’s

- employees or agents; (b) fraud or fraudulent misrepresentation; or (c) any other liability which cannot be excluded or limited by law.
- 8.2 Subject to clause 8.1, neither party shall be liable to the other under or in relation to the Contract or the Contract Software (whether such liability arises in contract, tort (including negligence), or otherwise) for any loss of or damage to profits, sales, turnover, contracts, customers, business, reputation, software, data, (in each case whether direct or indirect), or for any indirect, special or consequential loss or damage, in each case regardless of whether the relevant party was aware of the possibility of such matter. The term **"loss"** as used here-in includes a partial loss or reduction in value as well as a complete or total loss.
- 8.3 The Customer waives the right to bring a claim against Balluff arising out of or in any way relating to the Contract Software more than one month after the date of the event giving rise to such claim.
- 8.4 Subject to clauses 8.1, 8.2 and 8.5, Balluff shall be liable to the Customer only for loss incurred by the Customer as a result of any breach of clause 7.1 to the extent such loss was foreseeable by the parties at the date of this Contract as likely to be incurred by the Customer in the ordinary course as a result of such breach. In the event that Balluff is in breach of clause 7.2, Customer shall notify Balluff in writing and Balluff may, in its sole discretion, attempt to remedy the issue giving rise to the claim or provide a new version of the Contract Software.
- 8.5 Subject to clauses 8.1, 8.2 and 8.4, each party's total liability arising from or in connection with the Contract (and whether the liability arises in contract, tort (including negligence), or otherwise) shall be limited to the five hundred pounds (GBP£500).
- 8.6 Balluff has no liability for any actions taken by Balluff at the Customer's direction.
- 8.7 Except as expressly and specifically provided in this Contract: (a) the Customer assumes sole responsibility for results obtained from the use of Contract Software and any conclusions drawn from such use; (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and (c) the Contract Software and the Licensing Documentation are provided to the Customer on an "as is" basis.
- 9. Term – Revocation – Termination – Expiration of right of use – Return**
- 9.1 Unless otherwise stated in the Licensing Documentation, the license to use the Contract Software applies in perpetuity.
- 9.2 Unless otherwise stated in the Licensing documentation, the Contract may be terminated by either party by giving one (1) months' written notice to the end of the month.
- 9.3 Without affecting any other right or remedy available to it, Balluff may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer: (a) fails to pay any amount due under the contract on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; (b) commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or (c) becomes insolvent.
- 9.4 Where a perpetual license is granted, the Customer is entitled to use the Contract Software as-is after the termination. In any other cases, the Customer's license to use the Contract Software and the Licensing Documentation ends(a) upon termination of the Contract howsoever caused; or (b) in the case of a replacement delivery, Updates or Upgrades. In the case of lit. b Contract terms to the replacement delivery, Updates or Upgrades.
- 9.5 When the customer's right of use ends, the customer shall delete or destroy all data carriers, copies of the contract software including backup copies and the licensing documentation. The customer shall confirm such in writing to Balluff without being asked.
- 10. Confidentiality**
- 10.1 The Contract Software including source code (with the exception of any OS Software components), the Licensing Documentation and other materials, which Balluff has marked as "confidential" or are to be otherwise viewed as confidential, are considered "Confidential Information" in accordance with the Contract.
- 10.2 The Customer undertakes to treat the Confidential Information in the strictest confidence and to not make it accessible to third parties, unless this is necessary for exercising the rights granted to the Customer in accordance with the Contract or required by law.
- 10.3 To protect the Confidential Information, the Customer shall apply the same degree of care and diligence (but not less than a reasonable degree) as for its own confidential information.
- 10.4 The confidentiality obligations pursuant to this clause 10 shall not apply to information: a. which was already in the public domain or known to the general public or was state of the art at the time of their notification to the Customer; b. which was already known to the Customer at the time of disclosure; c. is subsequently in the public domain or known to the general public or state of the art, without the Customer being at fault; d. which is disclosed or made accessible to the Customer by an authorized third party; e. in respect of which Balluff has given its prior written consent to the Customer passing on, disclosing or making accessible to third parties; f. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- The burden of proof for the existence of an exception in the above sense rests with the Customer.
- 10.5 This clause 10 shall survive termination of the Contract, however arising.
- 11. Export restrictions**
- 11.1 The parties are aware that the Contract Software may be subject to export and import restrictions. In particular, there may be licensing requirements, or the use of the Contract Software or associated technologies abroad may be subject to restrictions. The Customer shall observe the applicable export and import control regulations of England and Wales, the European Union, and the United States of America, as well as all other relevant regulations. The performance of a Contract by Balluff is subject to the proviso that no obstacles stand in the way of its fulfillment due to national and international regulations of export and import law, as well as any other statutory regulations.
- 11.2 The Customer undertakes not to transfer the Contract Software to a government authority for inspection of any granting of rights of use or for a further official permit without the prior written consent of Balluff and not to export the Contract Software to countries or natural or legal entities for whom export bans apply according to the corresponding export laws. In addition, the Customer is responsible for compliance with all applicable statutory regulations of the country in which the Customer's registered office is located, and other countries in relation to the use of the Contract Software by the Customer and its associated companies.

12. Customer Personal Data

The Customer and Balluff shall comply with their respective obligations under the relevant Data Protection Legislation. "Data Protection Legislation" means any applicable law relating to the processing, privacy and/or use of personal data, as applicable, including: (a) the General Data Protection Regulation, Regulation (EU) 2016/679; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (e) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant supervisory authority relating to such data protection legislation (in each case whether or not legally binding).

13. Force Majeure

Balluff shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, provided that the customer is notified of such an event and its expected duration.

14. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

15. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. Rights and Remedies

Except as expressly provided in the contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Severance

- 17.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. Assignment

Neither party shall, without the prior written consent of the other party (not to be unreasonably withheld or delayed), assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under the Contract.

19. No Partnership or Agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorize either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. Third Party Rights

The Contract does not confer any rights on any person or party (other than the parties to the contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

21. Notices

- 21.1 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Individual Contract, or such other address as may have been notified by that party for such purposes.
- 21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time the email enters the information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender. **"Business Day"** means a day other than a Saturday, Sunday or public holiday in England.

22. Governing Law and Jurisdiction

- 22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 22.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). The applicability of the UN Convention for Contracts for the International Sale of Goods (CISG) is excluded.

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