

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

# BALLUFF

## 1. General information – Scope

- 1.1 These terms and conditions apply to the licensing of standard software for a fee (hereinafter 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 free of charge;
  - 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 4.13).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 and/or respective quotation;
  - b. the Licensing Documentation; and
  - c. the Software Conditions.

## 2. Subject matter of the contract – Open Source software

- 2.1 The subject matter of these Software Conditions is to allow the Customer to use Balluff's standard software outlined in the Licensing Documentation (the **“Contract Software”**) in accordance with the rights of use set forth in clause 4. The full description of the Contract Software can be found in the Licensing Documentation, which is made available to the Customer on request.
- 2.2 The **“Licensing Documentation”** consists of part number code or material number, the product datasheet and an installation guide/operating instruction.
- 2.3 The Contract Software consists of the executable program code. The source code is not included in the licence grant.
- 2.4 The Contract Software may include open source software (**“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 on the webpage of Balluff. 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 (e. g. USB stick) 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 Contract Software and Licensing Documentation in return for a license fee in the form of recurring payment (**“Subscription License”**); or (b) a perpetual license to use the Contract Software and Licensing Documentation in return for a license fee in the form of a one-time payment (**“Perpetual License”**). The license granted to the Customer will be specified in the Individual Contract. If the Individual Contract is silent, the license granted is a Subscription 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 the 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 the 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 purposes 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

- 5.1 The license fees are set out in the respective quotation of Balluff and are payable as a (a) one-time fee in respect of a Perpetual License and/or (b) in the form of: (i) recurring fees or (ii) royalties according to the time intervals, specified in the respective quotation prepared by Balluff, in respect of a Subscription License.
- 5.2 For Updates and/or Upgrades to the Contract Software, an additional fee may be incurred. This additional fee will be set out in the respective quotation and is charged as a one-time fee and/or in the form of ongoing fees, as specified in the quotation. If no additional fee is stated in the respective quotation, the Updates and/or Upgrades to the Contract Software are provided free of charge.
- 5.3 Recurring fees in respect of a Subscription License are due at the start of the respective invoicing period as set out in the Individual Contract and/or respective quotation. For partial periods the fee is invoiced proportionally based on a thirty (30)-day month.
- 5.4 The terms of payment for all fees are set out in the respective quotation from Balluff. All fees under the Contract are stated net of value added tax. If applicable, the value added tax is invoiced separately.
- 5.5 Balluff can change the current license and usage fees and the invoicing periods at its discretion for the Subscription License on one (1) months' written notice. If the Customer does not agree with this change, the Customer may terminate the Contract on three (3) months' written notice at any time prior to the change in fees taking effect. The fees will not be changed during the notice period.
- 5.6 In respect of a Subscription License, Balluff shall be entitled to suspend the Customer's use of the Contract Software if the Customer: (a) has not paid the recurring fee or royalties by the due date; or (b) has not paid a material portion of the recurring fee or royalties for two consecutive months by the relevant due date. In such a case, Balluff will allow the Customer to use the Contract Software again if the Customer has paid the due recurring fees including default interest, reminder costs and fees to Balluff. The rights of Balluff pursuant to clause 10.2 of these Software Conditions shall remain unaffected.
- 5.7 For international transactions the agreed prices are net prices, i.e. this is the net price to be paid by the Customer after deduction of any foreign taxes. In particular, the term **“foreign taxes”** covers corporation tax, trade tax, value added tax, goods and service tax, other withholding taxes, customs, or other surcharges and costs, as well as other fees and duties, which are collected by a foreign state or a foreign municipality. All foreign taxes shall be assumed and paid in full by the Customer. The Customer undertakes to provide Balluff with all necessary tax certificates, tax assessments and all other documents, which are required by Balluff in order to fulfill the tax obligations of Balluff abroad and in UK.

## 6. Customer's obligations

- 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 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.
- 7.2 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 shall be familiarized with the

- essential functional characteristics and conditions of the Contract Software.
- 7.3 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 (a) one year after the date of the event giving rise to such claim (if the Customer has purchased a Subscription License) or (b) one year after the delivery of the Contract Software (if the Customer has purchased a Perpetual License).
- 7.4 If and to the extent to which the Customer and Balluff have agreed the provision of maintenance and support services by Balluff, the details of such shall be agreed by the parties and governed by a separate agreement outside of the Contract.
- 7.5 In accordance with clause 7.4, the Customer shall provide the written notice of any defects with the Contract Software and enclose a comprehensible and detailed description of the defect, and, if possible, recordings which demonstrate the defect. The error notification must enable Balluff to reproduce the defect.
- 7.6 Balluff may, at its own discretion, provide remote maintenance by telephone, e-mail, or remote access. The Customer grants Balluff access to its systems and the Contract Software installed thereon to the extent required. The Customer shall create the necessary technical conditions for remote access at the request of Balluff.
- 8. Liability for defects of title**
- 8.1 Balluff shall defend the Customer against any 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"), and indemnify and hold the Customer harmless from and against any damages finally awarded by a court of competent jurisdiction or required to be paid under the terms of a settlement as a direct result of the IPR Claim, provided that:
- the Customer promptly notifies 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);
  - the Customer makes 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;
  - Balluff is granted the sole control and conduct of the defense of the IPR Claim and of any related settlement or negotiations; and
  - the Customer, at Balluff's request and expense, provides Balluff with all reasonable assistance, information and authority, and acts in accordance with the reasonable instructions of Balluff, in the circumstances described in this clause 8.1.
- 8.2 The Customer will afford Balluff (at Balluff's cost and expense) an opportunity to participate in the defense of, and will not without the prior written consent of Balluff settle or otherwise dispose of, any:
- IPR Claim where Balluff does not elect or is unable (for whatever reason) to assume control of the defense of the claim; or
  - claim brought by a third party in connection with the Contract for breach of its Intellectual Property Rights, which is not covered by the indemnity in clause 8.1.
- 8.3 Balluff shall not have any liability or obligation under this clause 8 in respect of any IPR Claim to the extent that it results from or arises in connection with:
- the Customer's breach of the Contract;
  - the possession or use of the Contract Software and/or Licensing Documentation (or any part of them) by anyone other than the Customer;
  - the possession or use of the Contract Software and/or Licensing Documentation (or any part of them) other than in accordance with the terms of the Contract;
  - a specific design, feature or modification provided by Balluff at the Customer's request;
  - any failure by the Customer to implement changes, replacements or new releases where the infringement would have been avoided or mitigated by such changes, replacements or new releases (including without limitation any Patches, Bug Fixes, Updates or Upgrades);
  - the combination or use in combination of the Contract Software and/or Licensing Documentation with any other products, services or items not supplied by Balluff;
  - the modification of the Contract Software and/or Licensing Documentation by anyone other than Balluff or a third party authorized by Balluff;
  - any third-party components or elements of the [Deliverables OR Works] licensed on an open source basis;
  - any failure by the Customer to obtain any required or relevant license or pay any required or relevant participation fees; or
  - the Customer's willful misconduct or negligence.
- 8.4 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 the Customer shall permit Balluff to:
- procure for the Customer the right to continue using and possessing the Contract Software and/or Licensing Documentation (or any part thereof);
  - 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
  - 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).
- 8.5 In the event of termination pursuant to clause 8.4.(c), at Balluff's request the Customer shall destroy and delete and certify in writing that it has destroyed or deleted all copies of the affected Contract Software and/or Licensing Documentation.
- 8.6 The remedies in this clause 8 are the Customer's sole and exclusive remedies and Balluff's sole liabilities in respect of any actual, alleged or reasonably likely IPR Claim.
- 8.7 Nothing in the Contract shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of any event that may give rise to a claim under this clause 8.
- 8.8 If a claim is brought against Balluff by a third party in connection with the Contract for breach of its Intellectual Property Rights, Customer shall indemnify Balluff therefrom upon the first request.
- 8.9 The Customer indemnity in respect of IPR Claims at clause 8.1 is subject to the limitations mentioned in clause 9.
- 9. Liability**
- 9.1 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.
- 9.2 Subject to clause 9.1, 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 herein includes a partial loss or reduction in value as well as a complete or total loss.
- 9.3 Subject to clauses 9.1 and 9.2 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 (a) one-time fee paid, if the Customer has purchased a Perpetual License; or (b) in respect of all events occurring in any Year, to the value of the recurring license fees paid or payable under the Contract during such Year, if the Customer has purchased a Subscription License. "Year" means each successive twelve (12) month period beginning on the commencement date or any anniversary thereof.
- 9.4 Balluff has no liability for any actions taken by Balluff at the Customer's direction.
- 9.5 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.
- 9.6 Balluff shall only be liable for the recovery of data if the Customer has taken all necessary and appropriate data backup precautions and ensured that the data from data material which is held in machine-readable format can be reconstructed with reasonable efforts.
- 10. Term – Revocation – Termination – Expiration of right of use – Return**
- 10.1 In the case of a Subscription License, unless otherwise provided in the Individual Contract, the Contract shall commence on the Commencement Date and continue for twelve (12) months ("Initial License Term"). In this case, the Contract shall be automatically renewed on the anniversary of the Commencement Date unless terminated by either party three (3) months immediately prior to the expiry of the Initial Term or in accordance with any other terms of the Contract.
- 10.2 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.
- 10.3 In the case of a Subscription License, the Customer's license to use the Contract Software and the Licensing Documentation ends immediately (a) upon termination of the Contract for any reason or (b) in the case of a replacement delivery, Updates or Upgrades. In the case of (b) the Contract terms apply to the replacement delivery, Updates or Upgrades. In the case of a Perpetual License, the Customer's right to use the Contract Software (as-is) shall survive the termination.
- 10.4 On termination of the Contract in accordance with clause 10.4(a), the Customer shall delete or destroy all data carriers, copies of the Contract Software including Back Up Copies and Licensing Documentation. The Customer shall confirm such in writing to Balluff without being asked.
- 10.5 Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.
- 11. Confidentiality**
- 11.1 The Contract, 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.
- 11.2 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.
- 11.3 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.
- 11.4 The confidentiality obligations pursuant to this clause 11 shall not apply to information:
- 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;
  - which was already known to the Customer at the time of disclosure;
  - which is subsequently entered into the public domain or known to the general public or state of the art, without the Customer being at fault;
  - which is disclosed or made accessible to the Customer by an authorized third party;
  - in respect of which Balluff has given its prior written consent to the Customer passing on, disclosing or making accessible to third parties;
  - 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.
- 12. Export restrictions**
- 12.1 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.
- 12.2 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.
- 13. 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, reenact, 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).
- 14. 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.

**15. Variation**

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

**16. 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.

**17. 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.

**18. Severance**

18.1 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.

18.2 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.

**19. 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.

**20. 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).

**21. 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.

**22. Notices**

22.1 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.

22.2 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.

**23. Governing Law and Jurisdiction**

23.1 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.

23.2 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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