

# TERMS & CONDITIONS OF BALLUFF GMBH FOR THE ADAPTATION OF STANDARD SOFTWARE (CUSTOMIZING) IN RETURN FOR A FEE (AS AT 02/2020)

# BALLUFF

## 1. General information - Scope

- 1.1 These terms and conditions apply to the individual adaptation of standard software of BALLUFF GmbH in return for a fee (hereinafter referred to as „**software**“), which the customer (hereinafter referred to as „**customer**“) purchased from BALLUFF GmbH (hereinafter referred to as „**BALLUFF**“) with a separate contract. Separate terms and conditions apply to other types of legal transactions concerning software.
- 1.2 The following list covers items which are not a subject matter of these software conditions for the individual adaptation of standard software in return for a fee (hereinafter referred to as „**software customizing conditions**“). The list is not conclusive. (a) licensing of standard software for a fee; (b) free licensing of standard software; (c) installation of software on the customer's premises; (d) training customer's users; and (e) maintenance of the software.
- 1.3 These software customizing conditions apply exclusively. BALLUFF does not recognize conflicting conditions or conditions deviating from these software customizing conditions, as well as conditions of the customer which are not regulated in these software customizing conditions, unless BALLUFF has expressly agreed to their validity in writing beforehand.
- 1.4 All agreements made between BALLUFF and the customer in connection with the adaptation of the standard software (customizing) are recorded in these software customizing conditions and in the relevant individual contract (hereinafter referred to as „**individual contract**“). The service employees of BALLUFF are not authorized to make collateral agreements with the customer.
- 1.5 These software customizing conditions apply only to contractors within the meaning of Section 14 BGB (German Civil Code).

## 2. Subject matter of the contract

- 2.1 The subject matter of these software customizing conditions includes the following services provided by BALLUFF to the customer (hereinafter referred to as „**customizing services**“):
  - (a) Defining the operational aims of the software
  - (b) Identifying the need for adaptation of the software and/or operational processes for achieving the operational aims and creating a requirements specification
  - (c) Adaptation of the software
  - (d) Implementation of software in the customer's IT environment and configuration
  - (e) Software parameter setting
  - (f) Software testing and
  - (g) Instructions for using the software and training for selected users.Services that are not specifically listed in clause 2.1 do not form an integral part of these software customizing conditions.
- 2.2 The parties shall agree which customizing services BALLUFF shall provide in the respective individual contract.
- 2.3 Within the scope of the customizing services to be provided, BALLUFF shall advise the customer how the customer requirement can be achieved taking into account the agreed budget. The adaptation of the software to the existing and, if necessary, modified operations, takes priority. If the operational aim of the software is also attainable through a modification of the operations instead of the software adaptation, then there is an obligation on the part of the customer to adapt the operations in their company within reasonable limits. If this adaptation is not effected, non-performance of the customizing services does not represent a breach of duty by BALLUFF in this respect.
- 2.4 The software including an instruction manual (user documentation or online help) shall be transferred. Unless otherwise agreed, the instruction manual is compiled in the language of the software's user interface.  
The supply or creation of further documentation requires a separate written agreement, particularly with regard to content and scope.

## 3. Acceptances

- 3.1 The customizing services are provided and accepted in sections. BALLUFF shall notify the customer of the completion of the individual customizing services. The customer shall then check whether the service has been provided according to contract.
- 3.2 If the customizing services have largely been provided according to contract, the customer shall accept the part performances.
- 3.3 If the customer considers the customizing services are not provided according to contract, then they shall give BALLUFF detailed notice of their complaints in writing without due delay.
- 3.4 If the customer makes a timely complaint about the customizing services, BALLUFF shall react accordingly and without due delay. The parties shall then attempt to reach an agreement on the further course of action.
- 3.5 The final acceptance shall take place after the performance of the last individual service, which may not be refused due to defects that were already identifiable during the partial acceptance.

## 4. Cooperation

- 4.1 The parties shall cooperate in good faith. If a party realizes that information and requirements, regardless of whether they are their own or that of the other party, are incorrect, incomplete, unclear, or not feasible, they shall immediately notify the other party thereof and the possible consequences. The parties shall find a solution in keeping with their interests and aim to achieve this, if necessary according to the provisions on changes in services (cf. clause 7).
- 4.2 The customer shall assist BALLUFF in the performance of the customizing services. The customer shall transfer their complete and detailed technical and functional requirements of the software to BALLUFF. This includes, in particular, the timely provision of documentation, information, data, as well as the description of practical and appropriate test cases and data and the provision of skilled employees, communication equipment and ports, as well as hardware and software and the availability of premises, to the extent necessary. The customer shall instruct BALLUFF in detail with regard to facts about their premises and technical equipment, as long as BALLUFF provides customizing services on the customer's premises. There is no entitlement on the part of the customer to have the services provided on their premises.  
The customer shall inform BALLUFF before commissioning if customizing services are to be provided on the customer's premises.  
The customer shall bear the costs of all cooperative measures.
- 4.3 In the interest of business continuity, the customer shall take appropriate precautions for the situation that the customizing services to be provided by BALLUFF are not available at short notice.
- 4.4 If required, the parties shall agree further duties of cooperation of the customer in the respective individual contract.
- 4.5 If the customer does not fulfill their duties of cooperation described above in an individual contract, or fails to fulfill them to the necessary extent, or does not fulfill them in a timely manner, all resulting additional costs or delays shall be borne by the customer.

## 5. Implementation of the project

- 5.1 The parties shall appoint a contact partner (hereinafter referred to as „**contact partner**“) and a deputy, who shall be responsible for the fulfillment of the duties for the party appointing them and expertly managing the project.
- 5.2 The contact partner of BALLUFF shall be responsible for all issues arising during the project, as well as for requesting and receiving all information owed by the customer and other cooperative measures. The contact partner of BALLUFF shall give the customer all information concerning the project and make the necessary decisions. The contact partner of BALLUFF shall regularly check adherence to the time frame and content of the customizing services.

- 5.3 The parties shall notify each other of any changes to the appointed individuals. Up until the receipt of such notification the previously appointed contact partner and/or deputy are deemed to be authorized to submit and accept declarations within the scope of their previous power of representation.
- 5.4 The contact partners shall communicate with each other at regular intervals about progress and obstacles in the contract performance in order to be able to directly intervene if necessary in the implementation of the individual contract.
- 5.5 Agreed changes to the customizing services shall be documented by the contact partner of BALLUFF and confirmed by the customer. The documentation must be effected in writing.

## 6. Deadlines

- 6.1 Deadlines for the customizing services may only be confirmed on behalf of BALLUFF by the contact partner of BALLUFF or management.
- 6.2 BALLUFF shall notify the customer of any delays in performance.  
Any binding deadlines shall be extended for a reasonable term if their non-adherence can be traced back to force majeure, i.e. to an unforeseeable event over which BALLUFF has no influence and for which BALLUFF is not responsible (particularly but not limited to official measures and orders (regardless of whether these are applicable or not), fire, flooding, storms, explosions, or other natural catastrophes). This shall also apply if such an event occurs during a delay.
- 6.3 If it is not possible for BALLUFF to provide a customizing service within a reasonable time owing to force majeure (clause 6.2), both parties shall have the right to withdraw from the respective individual contract, wholly or partly. Claims for damages on account of such a withdrawal are barred.  
If a party intends to withdraw from the individual contract for the reasons above, then they must immediately inform the other party thereof in writing.

## 7. Changes to the customizing services

- 7.1 If the customer wishes to make changes to the scope of the customizing services, then they shall inform BALLUFF of this change request in writing. The subsequent procedure is as follows:  
For change requests that can be examined quickly and expected to be implemented within 8 working hours, BALLUFF can ignore the procedure according to the following clauses 7.2 to 7.5 and implement the changes directly.  
In such a case the customer shall be entitled to withdraw their change request at any time; the initiated amendment procedure ends in this case.
- 7.2 BALLUFF shall check what effects the desired change will have, particularly with regard to remuneration, additional expenses, and deadlines. If BALLUFF recognizes that customizing services cannot be performed in light of the examination or can only be performed with a delay, then BALLUFF shall notify the customer thereof. If the customer agrees to the postponement, BALLUFF shall examine the change request.
- 7.3 After examining the change request BALLUFF shall advise the customer about the effects of the change request on the existing agreements. The statement includes either a detailed proposal for the implementation of the change request or details about why the change request is not feasible.
- 7.4 The parties shall come to an agreement about the content of the proposal for the implementation of the change request without due delay and record the result of a successful negotiation in writing as a supplementary agreement.
- 7.5 Should an agreement not be reached or the amendment procedure ends for another reason, then the original scope of service remains in place. The same shall apply in a situation where the customer does not agree with the postponement of the customizing services to further perform the examination according to clause 7.2.
- 7.6 The deadlines affected by the amendment procedure shall be postponed taking into consideration the duration of the examination, the duration of the agreement on the change proposal, and if necessary the duration of the change requests to be executed plus a reasonable lead time where required. BALLUFF shall inform the customer of the new deadlines.
- 7.7 The customer shall bear the expenses arising from the change request. This includes, in particular, the examination of the change request, the creation of a change proposal, and any downtimes. The remuneration shall be billed at cost at the remuneration rates specified by BALLUFF.
- 7.8 BALLUFF is entitled to modify the customizing services or deviate therefrom if the change or deviation is acceptable to the customer taking into account the interests of BALLUFF.

## 8. Rights of use

- 8.1 BALLUFF shall grant the customer the rights of use to the software adapted according to these software customizing conditions, which BALLUFF also granted the customer according to the software licensing agreement for standard software.
- 8.2 The above granting of rights does not give rise to an entitlement to the transfer of the source code underlying the licensed software. The disclosure of the source code shall be regulated in a separate agreement.
- 8.3 The transfer of the rights of use to the customizing services to the customer shall only be made when the customer has paid the remuneration according to these software customizing conditions and the respective individual contract.  
Up until the complete payment of the remuneration BALLUFF shall give the customer the revocable right to use the adapted software and the customizing services. BALLUFF can withdraw the use of the customizing services if the customer is in default of payment of the remuneration for the period of the default.

## 9. Remuneration

- 9.1 Unless otherwise agreed in the individual contract, the customizing services shall be billed at cost at the remuneration rates specified by BALLUFF.
- 9.2 Quotes or budget plans compiled by BALLUFF are non-binding, provided that the parties have not made a deviating agreement in the individual contract.
- 9.3 Upon provision of receipts, the customer shall bear all expenses such as travel and accommodation expenses, fees and any claims for payment by third parties within the scope of the contract performance. Travel times must be remunerated.
- 9.4 The payment terms are regulated in the respective individual contract. The value added tax is invoiced separately.
- 9.5 According to their own discretion, BALLUFF may make changes to the remuneration list according to clause 9.1. The customer shall be notified thereof in writing four months in advance. If the customer does not agree with this change, the customer can terminate the respective individual contract by serving a period of notice of fourteen (14) days after receipt of the written notification.
- 9.6 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. The term „foreign taxes“ covers in particular 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 Germany.

## 10. Liability for defects

- 10.1 The parties agree that software services can generally not be created error-free; this also applies to the customizing services according to these software customizing conditions.
- 10.2 The quality of the customizing services is derived exclusively from the respective requirements specification, or, in the absence of such, from the proposal and/or service description.  
The information in the requirements specification should be viewed solely as performance specifications and not as guarantees.
- 10.3 Claims for defects become time-barred after twelve months, unless the defect has been fraudulently concealed. The statute of limitations starts with the final acceptance or its final refusal.
- 10.4 BALLUFF may refuse supplementary performance as long as the customer has not paid the full remuneration owed for the customizing services and the customer has no legitimate interest in withholding the outstanding remuneration.
- 10.5 BALLUFF shall not be liable in situations where the customer has made changes to the customizing services provided by BALLUFF, unless these changes were demonstrated to have no influence on the occurrence of the defect.
- 10.6 The customer shall assist BALLUFF in the detection and remedy of defects and immediately grant access to the documents showing the detailed circumstances surrounding the occurrence of the defect.
- 10.7 If an alleged claim is not subject to a liability for defects by BALLUFF after a corresponding examination, BALLUFF can bill the customer the expenses arising from the verification and troubleshooting according to the remuneration rates of BALLUFF.
- 10.8 The customer shall notify BALLUFF in writing of any defects with the customizing services 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.
- 10.9 Claims exerted by the customer for compensation are subject to the limitations mentioned in clause 12.

## 11. Liability for defects of title

- 11.1 If a third party asserts a claim against the customer owing to an actual or alleged infringement of industrial property rights through the use of the customizing services, the customer shall immediately inform BALLUFF thereof in writing. At their own discretion, BALLUFF shall fulfill the claims at their own expense, refuse such claims, or end the dispute through a settlement. The customer grants BALLUFF the sole authority to decide on the legal defense and settlement negotiations. The customer shall give BALLUFF the necessary authority on a case-by-case basis and support BALLUFF in a reasonable manner with the defense.
- 11.2 In the event of interference with the contractual use of the customizing services owing to a defect of title, BALLUFF shall rectify the cause for the infringement of industrial property rights within an appropriate period. This shall happen at the discretion of BALLUFF, whereby BALLUFF obtains the right to continue to use the customizing services or changes or re-replaces it to a reasonable extent.
- 11.3 BALLUFF shall only be liable for infringements of property rights if the customizing services have been used according to contract. BALLUFF'S liability is waived if the customizing services are changed by the customer or third parties or associated with programs or data not provided by BALLUFF or approved in advance by BALLUFF in writing, put into operation or used and third-party claims result.  
If any claims are asserted against BALLUFF, the customer shall indemnify BALLUFF therefrom upon the first request.
- 11.4 Claims exerted by the customer for compensation are subject to the limitations mentioned in clause 12.

## 12. Liability

- 12.1 BALLUFF is liable for damages and compensation of wasted expenses (hereinafter referred to as „damages“) within the meaning of Section 284 of the German Civil Code (BGB) for defects with the customizing services or due to the infringement of other contractual or non-contractual obligations, including but not limited to illicit acts, only in the case of intent or gross negligence. The above liability limitation does not apply to injury to life, limb or health, assumption of a guarantee or procurement risk, material breach of contract, or liability under the German Product Liability Act.
- 12.2 Damages for material breach of contract are limited to compensation for typical contractual losses that BALLUFF had to have foreseen as a possible consequence upon entering into the agreement due to circumstances known to BALLUFF, except in cases of intent or gross negligence or injury to life, limb or health, assumption of a guarantee or procurement risk, or liability under the German Product Liability Act.
- 12.3 Typical, foreseeable losses within the meaning of clause 12.2 are:
  - (a) per loss event: losses totaling no more than the net remuneration of the individual contract in question.
  - (b) per calendar year: losses totaling no more than the net sales amount at which the customer acquired customizing services from BALLUFF in the previous calendar year. In the first contract year, losses totaling no more than the net sales amount at which the customer acquired customizing services from BALLUFF prior to the loss event.
- 12.4 In each case typical contractual and foreseeable losses under clause 12.2 do not include indirect losses (such as lost earnings or losses resulting from production interruptions).
- 12.5 Irrespective of the foregoing provisions, when setting an amount which BALLUFF must pay the customer as damages, the economic circumstances of BALLUFF, type, scope, and duration of the business relationship, any possible contributions to the cause and/or blame of the customer must be considered in favor of BALLUFF in accordance with Section 254 German Civil Code (BGB). Any compensatory damages, costs, or expenses to be borne by BALLUFF must be proportional to the value of the customizing services.
- 12.6 All liability limitations apply equally to subcontractors or vicarious agents.
- 12.7 Any changes in the burden of proof to the detriment of the customer are not associated with the above provisions.
- 12.8 Material breach of contract within the meaning of clauses 12.1 and 12.2 is a breach of an obligation that must be fulfilled in order for the terms of the agreement to be met and the fulfillment of which the customer may rely on.
- 12.9 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.

## 13. Confidentiality

- 13.1 „Confidential information“ within the meaning of these software customizing conditions is considered the customizing services, the relevant documentation, and other materials, which BALLUFF marks as „confidential“ or are to be otherwise viewed as confidential.
- 13.2 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 these software customizing conditions.

- 13.3 To protect the confidential information, the customer shall apply the same degree of care and diligence (but no less than an appropriate degree) as for its own confidential information.
- 13.4 The confidentiality obligations according to clause 13 do not apply to information
  - a. which was already in the public domain or known to the general public or was standard at the time of communication to the customer.
  - b. which was already rightfully known to the customer at the time of disclosure.
  - c. is subsequently in the public domain or known to the general public or is standard, without the customer being to blame.
  - d. which is disclosed or made accessible to the customer by an authorized third party.
  - e. in respect of which BALLUFF agreed beforehand to its dissemination or disclosure to third parties by the customer in writing.  
The burden of proof for the existence of an exception in the above sense rests with the customer.
- 13.5 If the customer or their managing directors, employees, consultants, or authorized representatives are requested or obliged to disclose confidential information by public authorities, the customer shall immediately inform BALLUFF so that BALLUFF can try to obtain a protection order or another corresponding legal remedy. If this protection order is not obtained within a reasonable period, the customer shall only disclose part of the confidential information for whose disclosure they are legally required.

## 14. Export restrictions

- 14.1 The parties are aware that the software adapted according to the customizing services may be subject to export and import restrictions. In particular, there may be licensing requirements or the use of the software adapted according to the customizing services or associated technologies abroad may be subject to restrictions. The customer shall observe the applicable export and import control regulations of the Federal Republic of Germany, 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.
- 14.2 The customer undertakes not to transfer the software adapted according to the customizing services 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 software adapted according to the customizing services 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 software adapted according to the customizing services by the customer and their associated companies.

## 15. Force Majeure

Should BALLUFF be held liable for an event of force majeure, i.e. an unforeseen event over which BALLUFF has no influence and for which BALLUFF is not responsible (e.g. official measures and orders (whether valid or invalid), wars, revolutions, embargos, epidemics, pandemics, fire, earthquakes, floods, storms, explosions or other natural disasters), it is not possible to provide the delivery and service within a reasonable period of time, both parties shall have the right to withdraw from the contract in whole or in part. This shall also apply if such an event occurs during a delay in delivery or at an upstream supplier of BALLUFF. The same shall also apply in the event of subsequent impossibility of performance of the contract for which BALLUFF is not responsible. Claims for damages due to such a withdrawal shall not exist. If one party intends to withdraw from the contract for the aforementioned reasons, it must immediately notify the other party in writing.

## 16. Offset right and right of retention

- 16.1 The customer shall only be entitled to offset if their counterclaims have been legally established, are uncontested, recognized by BALLUFF, or are closely related to the claim by BALLUFF.
- 16.2 The same shall apply to a retention right or right to withhold performance; to exercise a retention right the customer shall also only be authorized to the extent that their counterclaim is based on the same contractual relationship.

## 17. Place of performance – Place of jurisdiction – Applicable law

- 17.1 The registered office of BALLUFF is deemed to be the place of performance for both parties for all rights and duties from these software customizing conditions and the respective individual contract.
- 17.2 For legal disputes which fall within the remit of the local courts, the Local Court of Stuttgart is agreed as the place of jurisdiction, and for legal disputes which fall within the remit of district courts, the District Court of Stuttgart is agreed as the place of jurisdiction.
- 17.3 This contractual relationship is subject to the law of the Federal Republic of Germany, excluding its conflict of law provisions. The applicability of the UN Convention for Contracts for the International Sale of Goods (CISG) is ruled out.

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