

## TERMS AND CONDITIONS OF SALE

AS AT 05/2021

### I. General

In the event of any inconsistency between these conditions and any other terms and conditions including (but not limited to) those in your purchase order, these terms shall prevail.

The placing of an order (including telephone or electronic orders) with Balluff Limited shall constitute implicit acceptance of these terms and conditions of sale which can also be found at [www.balluff.co.uk](http://www.balluff.co.uk).

### II. Prices

1. All prices quoted by Balluff Limited are based upon manufacturers' list prices (excluding value added tax) and are subject to change without notice. Unless otherwise stated prices are for a single consignment to a single address. Where the purchaser requests items to be supplied with certificates of conformity, Balluff Limited reserves the right to make an extra charge for providing such certificates. Where agreed call offs or scheduled orders are not adhered to by the purchaser, Balluff Limited reserves the right to amend the price structures in accordance with the terms of the quotation without reference to the purchaser. Whilst every effort has been made to ensure price list accuracy, no responsibility is accepted for any errors or omissions. The price charged shall be that current at the date of despatch.
2. Balluff Limited may, by giving notice to the purchaser at any time before delivery, increase the price of the goods to reflect any increase in the cost of the goods that is due to:
  - a) any factor beyond the Balluff Limited's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - b) any request by the purchaser to change the delivery date(s), quantities or types of goods ordered, or any specification of the goods; or
  - c) any delay caused by any instructions of the purchaser or failure of the purchaser to give Balluff Limited adequate or accurate information or instructions
3. The price of the goods:
  - a) excludes amounts in respect of value added tax (VAT), which the purchaser shall additionally be liable to pay to Balluff Limited at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - b) subject to clause [VII. 1.], excludes the costs and charges of packaging, insurance and transport of the goods, which shall be invoiced to the purchaser.

### III. Payment

Time for payment shall be of the essence. All accounts are payable on demand but in any case must be paid not later than 30 days from date of invoice. Balluff Limited reserves the right to suspend deliveries where payment is not received in accordance with above or in accordance with any alternative arrangement which shall be agreed in writing between the parties. Balluff Limited also reserves the right to withdraw credit terms shown above in this clause and substitute cash with order terms. Balluff Limited retain the right to charge interest on overdue accounts at the rate of 8% above Bank of England base rate or the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the greater), which shall accrue daily from the date due for payment until the full amount has been paid or judgment is obtained.

The purchaser shall not be entitled to set-off any sums owed to it against invoices from Balluff Limited unless Balluff Limited has given its prior consent in writing.

### IV. New Accounts

Customers wishing to open ledger accounts are requested to furnish a Banker's and two trade references.

### V. Telephone Orders

Orders can be accepted by telephone only if an official order number is quoted by the purchaser. If a telephone order is confirmed in writing the purchaser must mark such written order with any confirmation reference given by Balluff Limited when the order was accepted on the telephone. Balluff Limited shall not accept liability for any duplication of delivery that may occur due to orders made in this manner.

### VI. Title

1. All goods supplied by Balluff Limited to a purchaser are the risk of the purchaser from the time of delivery.
2. Ownership of goods shall not pass to a purchaser until Balluff Limited has received in full (in cash or cleared funds) all sums due to it in respect of the goods supplied by it to the purchaser and all other sums which are or which become due to Balluff Limited from a purchaser on any account.
3. Until ownership of any goods has passed to a purchaser, the purchaser must:-
  - a) hold such goods on a fiduciary basis as Balluff Limited's bailee;
  - b) store the goods (at no cost to Balluff Limited) separately from all other goods of the purchaser or any third party in such a way that they remain readily identifiable as the property of Balluff Limited;
  - c) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods supplied by Balluff Limited;
  - d) maintain the goods in satisfactory condition and keep them insured on Balluff Limited's behalf for their full price;
  - e) hold the proceeds of insurance referred to in paragraph (d) above on trust for Balluff Limited.
4. A purchaser may re-sell any good supplied by Balluff Limited before ownership has passed to it solely on the following conditions:-
  - a) any sale shall be effected in the ordinary course of the purchaser's business at full market value; and
  - b) any such sale shall be a sale of Balluff Limited's property on the purchaser's own behalf and the purchaser shall deal as principal when making such a sale.
5. Balluff Limited shall be entitled to recover payment for any goods supplied notwithstanding that ownership of any goods has not passed from Balluff Limited.

6. The purchaser grants to Balluff Limited, its agents and employees an irrevocable licence at any time to enter any premises where goods are or may be stored in order to inspect them or to recover them. A purchaser's right to possession of any goods supplied to it by Balluff Limited shall terminate immediately if the purchaser has a bankruptcy order made against it or makes any arrangement or composition with its creditors or has a Receiver and/or Manager, Administrator or Administrative Receiver appointed over its undertaking or any part thereof or a resolution is passed or petition presented for its winding-up or any proceedings are commenced relating to the insolvency or possible insolvency of the purchaser.

## VII. Delivery

1. The goods are sold FCA (INCOTERMS 2020) Balluff Limited's warehouse.
2. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Balluff Limited shall not be liable for any delay in delivery of the goods that is caused by a Force Majeure Event or the purchaser's failure to provide Balluff Limited with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.
3. If Balluff Limited fails to deliver the goods, its liability shall be limited to the costs and expenses incurred by the purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the goods. Balluff Limited shall have no liability for any failure to deliver the goods to the extent that such failure is caused by a Force Majeure Event or the purchaser's failure to Balluff Limited with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.
4. Balluff Limited may deliver the goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the purchaser to cancel any other instalment.
5. In the event that delivery is delayed at the request of the purchaser Balluff Limited shall be entitled to invoice the purchaser for its reasonable storage charges

## VIII. Cancellation

Cancellations of orders will not be accepted unless notified in writing to Balluff Limited at least 25 working days prior to the date of despatch. All cancellations will be subject to a cancellation charge which will be calculated as 50% of the price of the each item.

## IX. Inspection

The purchaser shall inspect any goods received from Balluff Limited within 3 days of receipt. Unless Balluff Limited receives notice of any loss or damage in transit within 3 days of delivery, its liability to refund the goods pursuant to clause 10 below shall cease.

## X. Loss and Damage in Transit

Balluff Limited will refund the cost of or at its discretion replace or repair free of charge, any of the goods proved to the satisfaction of Balluff Limited to have been lost or damaged in transit up to the moment of delivery, provided that within three business days after the receipt of the goods in the case of damage, or within ten business days of receipt of invoice in the case of loss, the purchaser notifies both Balluff Limited and the carrier in writing of the occurrence of the damage or loss and its nature and extent.

## XI. Defects after Delivery

Balluff Limited will make good by repair at our option by the supply of a replacement, defects which, under proper use, appear in the goods within a period of twelve calendar months after the goods have been delivered and arise solely from faulty design (other than a design made, furnished or specified by you or Balluff Limited has disclaimed responsibility in writing), materials or workmanship. Provided always that defective parts have been returned to Balluff Limited if it shall have so required. Balluff Limited shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered by Balluff Limited free of charge.

## XII. Limitation of Liability

1. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of goods Act 1979) are, to the fullest extent permitted by law, excluded from any contract between a purchaser and Balluff Limited.
2. Nothing in these conditions excludes or limited the liability of Balluff Limited for death or personal injury caused by Balluff Limited's negligence or fraudulent misrepresentation.
3. Subject to paragraphs 1.4 and 12.2:-
  - a) Balluff Limited's total liability in contract, tort, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of any contract between it and a purchaser shall be limited to the contract price payable by the purchaser; and
  - b) Balluff Limited shall not be liable to any purchaser for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise) costs, expenses or other claims for consequential compensation whatsoever (however caused) which arise out of or in connection with any contract between Balluff Limited and the purchaser.

## XIII. Termination –

without prejudice to any other rights or remedies which the parties may have, Balluff Limited may terminate the contract created pursuant to these terms without liability to the purchaser immediately on giving notice to the purchaser if:

- a) the purchaser fails to pay any amount due for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- b) the purchaser commits a material breach of any of the terms of these terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- c) the purchaser repeatedly breaches any of these terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the terms; or
- d) the purchaser goes into liquidation, has a winding up petition presented against it, makes an arrangement with its creditors, is declared bankrupt (or other equivalent situations).

Upon termination of such contract for any reason the purchaser shall immediately pay to Balluff Limited all outstanding invoices and interest in respect of services or goods supplied by Balluff Limited.

#### **XIV. Technical Data and Input Material**

Whilst every effort has been made to ensure the accuracy of technical data, Balluff limited accepts no liability in respect of any loss or damage arising from errors or omissions or by virtue of any data or information provided to it which turns out to be incorrect.

#### **XV. Intellectual Property–**

as between the purchaser and Balluff Limited all intellectual property rights in any goods or services provided by Balluff Limited shall remain the sole property of Balluff Limited.

#### **XVI. Force Majeure**

1. **Force Majeure Event** means any circumstance not within Balluff Limited's reasonable control including, without limitation:
  - a) acts of God, flood, drought, earthquake or other natural disaster;
  - b) epidemic or pandemic;
  - c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - d) nuclear, chemical or biological contamination or sonic boom;
  - e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
  - f) collapse of buildings, fire, explosion or accident;
  - g) any labour or trade dispute, strikes, industrial action or lockouts (other than by Balluff Limited, or companies in the same group as Balluff Limited);
  - h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - i) Interruption or failure of utility service
2. If Balluff Limited is prevented, hindered or delayed in or from performing any of its obligations under the contract by a Force Majeure Event, Balluff Limited shall not be in breach of the contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
3. The corresponding obligations of the purchaser will be suspended, and its time for performance of such obligations extended, to the same extent as those of Balluff Limited.
4. Balluff Limited shall:
  - a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the contract; and
  - b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
5. If the Force Majeure Event prevents, hinders or delays Balluff Limited's performance of its obligations for a continuous period of more than 12 weeks, the purchaser may terminate the contract by giving 4 weeks' written notice.

#### **XVII. Law**

The quotation and any contract that shall result there from shall be governed in all respects by the laws of England and Wales and the purchaser hereby agrees to submit to the non-exclusive jurisdiction of the Courts of England and Wales.

#### **XVIII. Return of Electronic Devices**

##### **Return of Packaging**

1. You are obliged to dispose of delivered products after the end of their use at your own expense in accordance with the statutory provisions, in particular those of the WEEE Directive 2012/19/EU and the respective national implementations of this Directive or corresponding regulations in non-EU member states. You release us from our take-back obligations as a manufacturer in accordance with Article 3) of the WEEE Directive and from any related third-party claims. You shall contractually oblige commercial third parties to whom you pass on the delivered products to ensure that these third parties properly dispose of the products at the end of their use and at their own expense in accordance with the statutory provisions, in particular those of the WEEE Directive 2012/19/EU and the respective national implementations of this Directive or corresponding regulations in non-EU member states, and to impose a corresponding further obligation in the event that the products are passed on again. If you violate your obligation to pass on the obligations to your customers, you are obliged to take back the delivered products at your own expense after the end of their use and to dispose of them in accordance with the legal regulations resulting from the WEEE Directive 2012/19/EU and the respective national implementations of this Directive or corresponding regulations in non-EU member states.
2. If we are obliged in accordance with statutory law we will return on your demand the transport packaging. You have to bear the cost for the return transport of the transport packaging.

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