TERMS & CONDITIONS OF BALLUFF GMBH FOR THE PROVISION OF SAAS SERVICES IN RETURN FOR PAYMENT

DATED 03/2021

1. General information – Scope

1.1 These software conditions apply to the provision of Software as a Service (SaaS services) by BALLUFF GmbH (hereinafter referred to as "**BALLUFF**") to the customer (hereinafter referred to as "**customer**") in return for payment. Separate terms and conditions apply to other types of software licenses and legal transactions.

1.2 The following items are not a subject matter of these software conditions for the provision of SaaS services in return for payment (hereinafter "**software conditions**"). The list includes, but is not limited to, **(a)** provision of standard software in return for payment; **(b)** provision of standard software free of charge; **(c)** installation of software at the customer's premises; **(d)** individual setting of variable software parameters according to customer requirements (customizing); **(e)** individual program extensions for the customer; **(f)** adaptations of interfaces of software according to customer's needs; **(g)** training of users of the customer; and **(h)** updating of software.

1.3 These software conditions apply exclusively. BALLUFF does not recognize conflicting conditions or conditions deviating from these software conditions, as well as conditions of the customer which are not regulated in these software conditions, unless BALLUFF has expressly agreed to their validity in writing.

1.4 All agreements made between BALLUFF and the customer in connection with the provision of SaaS services in return for payment are recorded in these software conditions and in the respective individual contract.

1.5 These software conditions apply only to contractors within the meaning of Section 14 of the German Civil Code (BGB).

2. Subject matter of the contract - Open Source software

2.1 The subject matter of these SaaS software conditions is **(a)** the granting of online use of software in return for payment, which is defined in more detail in an individual contract and/or in the respective product description (hereinafter referred to as "**SaaS software**"), and **(b)** the provision of storage space on servers for saving customer data in connection with the use of the SaaS software in return for payment. The use of the SaaS software and the storage space on servers is hereinafter referred to as "**SaaS services**".

2.2 BALLUFF is permitted to include subcontractors for the provision of storage space.

2.3 The SaaS software may include Open Source software and software of third parties that is licensed royalty-free (hereinafter referred to as "**OS software**"). A list of the OS software and the applicable OS software licensing conditions are made available to the customer on request.

3. Provision of the SaaS software

3.1 BALLUFF makes available the current version of the SaaS software via the Internet to the customer for the period agreed in the individual contract in return for payment. For this purpose, BALLUFF installs the SaaS software on a server, which is accessible on the Internet for the customer.

3.2 The current range of functions of the SaaS software and the SaaS services are set out in the respective individual contract.

3.3 Where necessary, BALLUFF shall send the customer the necessary login details that are required for using the SaaS services.

3.4 The following are not a subject matter of the SaaS services of BALLUFF: **(a)** customer's connection to the Internet, **(b)** maintenance of the customer's network connection to the Internet, as well as any other network connections of the customer, and **(c)** procurement and provision of the hardware and software required on customer's sites.

4. Rights of use - Licensing conditions

4.1 The SaaS software is protected by copyright. BALLUFF grants the customer a simple, non-transferable right to use the SaaS software appropriately for their own business purposes for the agreed period. The customer's right of use generally does not include a sublicensing right, unless a deviating provision is included in the individual contract.

4.2 Unless otherwise agreed, the granting of the right of use is subject to the condition precedent that the customer has paid BALLUFF the agreed and due remunerations.

4.3 The customer may only reproduce the SaaS software if this is required for the intended use of the SaaS services. Necessary reproduction includes downloading the SaaS software to the RAM, not however, the temporary installation or storage of the SaaS software on local data carriers (e.g. hard disks, etc.) of hardware used by the customer. The customer is allowed to use the SaaS services via apps made available by BALLUFF, e.g., for mobile devices (mobile phone, tablet, etc.).

4.4 The customer is not authorized to use, reproduce, or download the SaaS software or data other than their own or make the SaaS software available or accessible to third parties to use for payment or free of charge. In particular, the customer is not authorized to change the program code of the SaaS software or parts thereof, to perform reverse engineering, to decompile, to disassemble, or to determine the source code in any other way, or to prepare derivative works from the SaaS software. The stringent, non-negotiable regulations of Sections 69d, 69e UrhG (German Copyright Act) shall remain unaffected thereby.

5. Data storage - Granting of storage space

5.1 The storage of the customer's data is a prerequisite for the use of the SaaS services. In cases where personal data is processed, the provisions under clause 16 also apply.

5.2 If the customer has to enter certain data or send certain data to BALLUFF to use the SaaS services, then the customer is responsible for ensuring that the data **(a)** is correct and **(b)** suitable for the intended purpose.

5.3 BALLUFF provides the customer with the storage space on a server agreed in the respective individual contract for storing their data. If the storage space is no longer sufficient for storing the data, BALLUFF shall inform the customer thereof. The customer can order more storage space accordingly, subject to availability at BALLUFF. If no amount of storage space is agreed in the individual contract, then the storage space is generally limited to a normal level. This normal level is restricted by the limits that are feasible and reasonable for BALLUFF.

5.4 The customer is not authorized to transfer this storage space to a third party for use, wholly or partly, for payment or free of charge, unless there is a deviating provision in the individual contract.

5.5 The customer undertakes not to store any content on the memory whose provision, publication or use would break the law or violate agreements with third parties. This also applies if the customer has received the data from third parties.

5.6 BALLUFF shall adopt appropriate measures to protect against data loss and to prevent unauthorized access by third parties to the customer's data. For this purpose, regular backups are performed and firewalls are installed according to the latest technology.

5.7 BALLUFF is authorized to collect data whose exclusive purpose is to improve the SaaS services; for this, BALLUFF shall use analysis tools if necessary.

6. Support

6.1 BALLUFF shall make available a hotline for providing appropriate support on technical issues during normal office hours. This hotline can be accessed via e-mail, fax, or telephone. The hotline is used solely for supporting the customer with the use of the SaaS services. Customer inquiries to the hotline are processed in the order in which they have been received.

6.2 The conclusion of a separate Service Level Agreement (SLA) may be a requirement for support services relating to the SaaS services. In this SLA - depending on availability - other optional services may also be agreed. The support availabilities, error classes, as well as response times, are set out in the respective SLA.

7. Availability of the SaaS services - Restricted access

7.1 The average availability of the SaaS services is derived from the respective individual contract or if necessary the instruction manual.

7.2 The availability can be temporarily restricted in the event of technical faults or maintenance work. If the SaaS services are not available to the customer due to maintenance work, BALLUFF shall notify the customer thereof - to the extent possible and within reasonable limits - if BALLUFF is aware of the maintenance work.

8. Obligations of the customer

8.1 The customer shall store the login details provided for using the SaaS services safely against access by unauthorized third parties so that misuse of the data by third parties for access is not possible. As soon as the customer suspects that the login details have been unlawfully obtained by a third party or could be misused, the customer is obligated to immediately inform BALLUFF thereof.

8.2 The contractual use of the SaaS services by the customer requires that the hardware and software used by the customer, including workstation computers, routers, data communication systems, etc., comply with the technical requirements for use of the SaaS software version currently offered and the users authorized by the customer to use the SaaS services are familiar with the use of the SaaS services.

8.3 At their own expense the customer shall establish the data connection via the Internet between the workstations planned for use by them and the data transfer point defined by BALLUFF. BALLUFF is authorized to redefine the data transfer point at any time, if this is necessary to enable trouble-free use of the SaaS services by the customer. In this case, the customer shall establish a connection to the new transfer point. BALLUFF assumes no responsibility for interference with the transmission or access to data outside the control of BALLUFF.

8.4 The customer shall in no way misuse the SaaS services and the SaaS software or cause them to be used improperly. The customer shall also refrain from any attempt to retrieve information or data themselves or through unauthorized third parties or access programs operated by BALLUFF or penetrate into data networks of BALLUFF.

8.5 The customer shall observe the laws regarding the use of the SaaS services and the SaaS software, particularly all applicable laws and legal standards. The customer is not allowed to add data or content to the memory that breaks the law or violates any industrial property rights or copyrights or other rights of third parties.

8.6 If possible, the customer shall make backups of the data and content transferred to BALLUFF regularly and in accordance with the risk involved and create its own backups in order to guarantee their reconstruction in the event of loss of data and information; in particular, the customer shall use any options made available by BALLUFF for backing up their data within their original area of responsibility. The customer shall check this data and information for viruses before sending and use anti-virus programs according to the latest standard of technology.

9. Remuneration - Terms of payment

9.1 The amount of the remuneration for the use of the SaaS services is set out in the respective individual contract. The remuneration can take the form of one-off payments, recurring payments, or individual additional payments. All remuneration can be fixed amounts and/or amounts based on quantities or scope.

9.2 The remunerations are quoted before the statutory value added tax.

9.3 BALLUFF invoices the customer recurring payments in advance for the contractually agreed service period (e.g. per month, per year). In the case of remuneration based on quantities or scope, BALLUFF issues the invoice at a later stage.

9.4 BALLUFF reserves all rights to the SaaS services and the SaaS software until all outstanding claims of BALLUFF against the customer have been settled.

10. Claims for defects

10.1 BALLUFF is responsible for the functional and operational capability of the SaaS services in the scope agreed in the individual contract.

10.2 BALLUFF shall remedy duly notified defects concerning the SaaS services within a reasonable time at the choice of BALLUFF or provide such services again.

10.3 The customer shall report any errors/problems/defects with the SaaS services immediately to BALLUFF in writing (Section 126b of the German Civil Code (BGB)) and indicate how and in what circumstances the error/problem/defect occurs.

10.4 The customer shall assist BALLUFF in troubleshooting by handing over appropriate documentation and in particular by making available all other necessary documents, data, etc., which BALLUFF needs for analyzing and eliminating the error/problem/defect.

10.5 If after examination of the notice of defects by BALLUFF it turns out that the error/problem/defect is not attributable to BALLUFF, BALLUFF can invoice the customer the costs of the inspection and if necessary the elimination of the error/problem/defect at the applicable prices.

10.6 In the event that subsequent performance fails for reasons attributable to BALLUFF, also within a reasonable time set by the customer, the customer can reduce the agreed remuneration proportionally for the period in which the SaaS services were not available to the customer in the agreed scope. The right to reduce payment is limited to the amount of the remuneration due for the proportion of the SaaS services found to be defective.

10.7 As an alternative to a reduction, BALLUFF can at its discretion credit the customer for the period in which the SaaS services were not available to the customer in the agreed scope and extend the agreed term of the contract free of charge.

10.8 Strict liability due to initial defects in accordance with Section 536a Paragraph 1 of the German Civil Code (BGB) is ruled out.

11. Liability for defects of title

11.1 If a third party asserts a claim against the customer owing to an infringement of industrial property rights through the use of the SaaS 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 SaaS 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 SaaS services or changes or replaces it to a reasonable extent.

11.3 BALLUFF is only liable for breaches of property rights provided that the SaaS services have been used according to contract. BALLUFF'S liability is waived if the SaaS software is 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 asserted 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 contract software 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 contractual, foreseeable losses within the meaning of clause 12.3 are:
   a) per loss event: losses totaling no more than the net sales amount of the individual contract in question. in the case of recurring revenue: losses totaling no more than the net sales amount which the customer paid in the last quarter for the use of the SaaS services.
   b) per calendar year: losses totaling no more than the net sales amount at which the customer purchased SaaS 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 purchased SaaS 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 of the German Civil Code (BGB). Any compensatory damages, costs, or expenses to be borne by BALLUFF must be proportional to the value of the SaaS 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. Unauthorized use of SaaS services - Block

13.1 In the event that SaaS services are used by unauthorized third parties using the customer's login details, the customer shall be liable for any arising fees or charges within the framework of civil liability up to the time the customer's request is received to change the login details or report the loss or theft, to the extent that the customer is responsible for the access by the unauthorized third party.

13.2 BALLUFF is entitled to block the memory immediately if there is reasonable suspicion that the stored data is illegal and/or violates rights of third parties. There is reasonable suspicion for illegality and/or violation of rights if courts, authorities, and/or other third parties inform Balluff thereof. Balluff shall immediately notify the customer of the block and reason. The block shall be lifted as soon as the suspicion is ruled out.

14. Term - Termination

14.1 The individual contract between the parties is valid for the agreed term. If no term is agreed, the individual contract runs indefinitely. Any minimum duration and the termination options are set out in the individual contract.

14.2 BALLUFF may terminate the contract without observing a period of notice in the case of recurring payment, if the customer

    a) is in arrears because of failure to pay the remuneration or a considerable amount thereof on two consecutive deadlines or

    b) is in arrears because of failure to pay the remuneration for an amount equal to double the recurring payment in a period which goes beyond two deadlines.

In these cases, the customer is not entitled to a refund of the remuneration paid for the use.

14.3 Otherwise, the right to terminate the contract for good cause shall remain unaffected.

14.4 Every termination shall be made in writing or in electronic form (Section 126a of the German Civil Code (BGB)).

14.5 In the event of a termination of the individual contract, BALLUFF shall be entitled to permanently delete all data arising within the framework of the individual contract after expiry of 30 calendar days after the effective date of termination and upon expiry of any retention periods. Notwithstanding the above, BALLUFF may be obligated according to the provisions of the data protection law to also delete personal data beforehand.

15. Force majeure

15.1 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), war, revolutions, embargoes, pandemics, epidemics, fire, earthquakes, flooding, storms, explosions, or other natural catastrophes. This shall also apply if such an event occurs during a delay.

15.2 If it is not possible for BALLUFF to provide Saas services within a reasonable time owing to force majeure (clause 15.1), 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.

16. Data protection

16.1 BALLUFF and the customer shall observe the applicable data protection law.

16.2 If BALLUFF processes personal data for the customer as a processor, the parties conclude a data processing agreement according to Art. 28 of the GDPR. The customer shall inform BALLUFF of this requirement in writing without delay.

17. Export restrictions

17.1 The parties are aware that the SaaS software may be subject to export and import restrictions. In particular, there may be licensing requirements or the use of the SaaS software 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

17.2 The customer undertakes not to transfer the SaaS 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 SaaS 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 SaaS software by the customer and its affiliated companies.

18. Place of performance - Place of jurisdiction - Applicable law

18.1 The registered office of BALLUFF is deemed to be the place of performance for both parties for all rights and duties from these software conditions.

18.2 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.

18.3 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.