

TERMS & CONDITIONS OF BALLUFF, INC. FOR THE FREE LICENSING OF STANDARD SOFTWARE (DATED: 11/2020)

BALLUFF

1. General information – Scope

- 1.1 These software terms and conditions apply to the free licensing of standard software by Balluff, Inc., a Kentucky corporation, (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, including where Balluff provides free updates or upgrades to standard software provided to customer for a fee.
- 1.2 The subject matter of these software terms and conditions for the free licensing of standard software (hereinafter referred to as "**software conditions**") only relates to the limited use of such software and does not include the following:
 - a. licensing of standard software for a fee and updates or upgrades to such software;
 - b. installation of software at the customer's premises;
 - c. individual setting of variable software parameters according to the 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;
 - g. installation of software updates or upgrades; and
 - h. any other matters not expressly set forth herein.This list of exclusions is not exhaustive.
- 1.3 These software conditions apply exclusively to the subject matter hereof and there are no other agreements relating thereto. Balluff does not recognize conflicting conditions or conditions deviating from these software conditions, or conditions of the customer which are not set forth 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 licensing of the standard software are recorded in these software conditions and in any other respective contract between Balluff and the customer, if any.

2. Subject matter of the contract – Open Source software

- 2.1 The subject matter of these software conditions is the granting of rights of use to the standard software of Balluff outlined in the licensing documentation (hereinafter referred to as "**contract software**") for free. The full description of the contract software can be found in the licensing documentation, which is made available to the customer upon the request of the customer.
- 2.2 The "**licensing documentation**" consists of part number code or material number, the product datasheet, as well as an installation guide/operating instructions.
- 2.3 The contract software consists of the executable program code. The source code is not a subject matter of the contract, is not included in the contract software and will not be made available to the customer pursuant to these software conditions.
- 2.4 The contract 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 shall be made available to the customer upon request before delivery of the contract software.
- 2.5 If software products from third-party providers which are not OS software are also provided with the contract software, these may be used solely in conjunction with the contract software. Special terms of use may apply here, which will be provided to the customer upon request.
- 2.6 Balluff is entitled to protect the contract software against unauthorized amendments, copying and use, and uses protective measures in the contract software to do so. The customer may not remove or bypass such protective measures of the contract software.

3. Delivery of the contract software – Version

- 3.1 Unless otherwise agreed in writing, Balluff supplies the customer with the contract software in the current version at the time of delivery.
- 3.2 Except when otherwise stipulated in writing, the contract software is delivered at the discretion of Balluff either on electronic media or by providing the contract software as a download and sending 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 or (b) perpetual license (subject to termination as provided herein) to use the contract software and the licensing documentation only for their intended purposes as from time to time determined by Balluff. The limitations on the use of the contract software can be found in the licensing documentation. If there are no corresponding limitations in the licensing documentation, the licensing is effected for an unlimited time, but can be terminated as set forth in Section 9.
- 4.2 The license takes effect with the delivery of the contract software to the customer.
- 4.3 At the commencement of the license, the customer obtains the non-exclusive right to use the contract software and the licensing documentation in accordance with the licensing documentation, as well as the provisions of these software conditions. This right of use cannot be sublicensed or otherwise transferred to a third party. 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 business purposes.
- 4.4 The use of the contract software and the licensing documentation is only permitted in the United States or other countries of destination approved in writing by Balluff.
- 4.5 The customer is only allowed to make copies of the contract software and the licensing documentation to the extent that is necessary for the authorized use of the contract software as set forth herein.
- 4.6 "**Backup copies**" within the meaning of these software conditions are copies of the contract software which are made for use solely in the event that the original copy of the software is damaged, lost or deleted accidentally. The customer may make backup copies of the contract software solely to the extent necessary to provide reasonable redundancy to the customer and in accordance with the customer's disaster recovery, backup and other similar policies duly adopted by the customer. Backup copies must be labeled as such and have the same copyright and other notices contained on the original copy of the contract software. The use of the backup copy is only permitted in the event of damage to, or the deletion or loss of, the copy of the contract software originally provided by Balluff. The customer shall observe these software conditions with regard to the use of the backup copies.
- 4.7 Without the prior written consent of Balluff, the customer is prohibited from selling the contract software and the licensing documentation or otherwise transferring them to third parties or making them available to third parties. Without limiting the generality of the preceding sentence, the customer shall not, without the prior written consent of Balluff, sell, rent, lease, loan or sublicense the contract software or the licensing documentation to third parties.
- 4.8 The customer shall not (a) reverse engineer, decompile, or disassemble the contract software or parts thereof, (b) edit, change, revise or repair the contract software, whether using the methods described in clause (a) of this sentence or in another way, or (c) create derivative works of the contract software.
- 4.9 Additional versions of software or files that close security loopholes, or correct errors are considered to be "**patches**" within the meaning of these software conditions. New versions of the contract software which contain minor program improvements or new and/or modified basic functions are said to be "**updates**" according to these software conditions. "**Upgrades**" as defined in these software conditions are configurations to a higher version of the contract software with a significant extension, or significant addition, of the

function. Balluff shall, in its sole discretion, determine whether an additional version of the contract software is a patch, update or upgrade.

- If Balluff voluntarily provides the customer with patches, updates or upgrades, they are also subject to these software conditions, unless otherwise agreed in writing. Balluff is not obligated to provide the customer with patches, updates or upgrades.
- 4.10 All other rights to the contract software and the licensing documentation not expressly granted to the customer herein (including all rights to the trademark, trade secrets, know-how, or other intellectual property rights to the contract software) shall remain with Balluff. Markings on the contract software and licensing documentation, particularly copyright notices, brand names or other trademarks, serial numbers, or other similar items, may not be removed, modified, or disguised by or on behalf of the customer.

5. License fee

- 5.1 Balluff provides the customer with the contract software free of charge. However, all taxes payable with respect to these software conditions or the contract software shall be assumed and paid in full solely by the customer. Any amount payable by the customer to Balluff pursuant to these software conditions shall be paid in full without regard to any withholding or other deduction from such amount required under any applicable law, whether for tax purposes or otherwise. In this Section, "taxes" shall include all income taxes, duties, tariffs, value-added taxes, property taxes, sales and use taxes, and other fees imposed or collected by a governmental or quasi-governmental entity. The customer shall provide Balluff with all tax certificates, tax assessments and other documents that Balluff may reasonably request in order to fulfill its tax or other obligations pursuant to any applicable law.

6. Customer's duties

- 6.1 The customer shall register its use of the contract software before using it according to the specifications set from time to time by Balluff, in its sole discretion.
- 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 accepting these software conditions and using the contract software.
- 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 accepting these software conditions and using the contract software.
- 6.4 The customer is responsible for the installation of the contract software and for all data to be used by the customer. At the customer's request, Balluff may, if necessary, undertake the installation of the contract software or such data for a separately agreed upon fee.
- 6.5 When using the contract software, the customer is obligated to exercise due care and diligence.
- 6.6 The customer shall observe the instructions from time to time given by Balluff, in its sole discretion, for the operation of the contract software.
- 6.7 The customer is obligated to protect the contract software against loss or theft or unauthorized access, acquisition, copying, revisions or use by adopting appropriate measures (including ensuring the safety of all copies of the contract software).
- 6.8 The customer is obligated to take appropriate precautions to ensure its ability to continue processing 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 electronically or in writing of any defects and errors with the contract software.
- 6.10 If Balluff voluntarily provides the customer with patches, updates or upgrades for the contract software, then the customer shall immediately install and use them.

7. Liability for defects

- 7.1 After the contract software is made available to the customer for free, Balluff shall not have any liability for defects in performance or defects in title, unless Balluff has engaged in intentional misconduct, gross negligence or fraud, subject at all times to Section 8.
- 7.2 The characteristics of the contract software are set out exclusively and definitively in the licensing documentation; provided, however, that Balluff shall not have any liability for errors therein, unless Balluff has engaged in intentional misconduct, gross negligence or fraud, subject at all times to Section 8. The specifications in the licensing documentation are only the expected performance specifications that a user may achieve in an appropriate computer system environment, and are not guarantees or warranties, all of which are disclaimed pursuant to Section 13.

8. Limitation on Liability

- 8.1 To the maximum extent permitted by applicable law, Balluff shall not have any liability to the customer for direct damages under these software conditions or otherwise relating to the contract software for any breach of contract, tort or other cause of action, unless Balluff has engaged in intentional misconduct, gross negligence or fraud. The foregoing limitation of liability shall not apply in the event of any personal injury resulting from the negligent actions of balluff.
- 8.2 To the maximum extent permitted by applicable law, in no circumstances will balluff have any liability to the customer for any consequential or other indirect damages, or any punitive or other similar damages, under these software conditions or otherwise relating to the contract software for any breach of contract, tort or other cause of action.
- 8.3 The above limitations of liability also apply to any claims made against employees or other agents of Balluff.

9. Term – Termination

- 9.1 Unless otherwise stated in the licensing documentation, the license granted herein to use the contract software applies in perpetuity subject to termination as provided herein.
- 9.2 Unless otherwise stated in the licensing documentation, these software conditions (including the right to use the contract software) may be terminated by either party by giving one (1) months' written notice.
- 9.3 Balluff is also entitled to immediately terminate these software conditions (including the right to use the contract software) for any good cause at any time solely by giving written notice of such termination to the customer. Without limiting the generality of the preceding sentence, Balluff may immediately so terminate these software conditions if the customer fails to perform any obligation under these software conditions. In the event of such a termination, Balluff reserves the right to assert claims for damages and other remedies under applicable law.
- 9.4 The customer's right of use of the then-current version contract software and the licensing documentation ends, without the need for further action on the part of Balluff, (a) when the term of these software conditions ends or (b) immediately upon the then-current version of the contract software being replaced with an update or upgrade. In the case of clause (b) of the preceding sentence, these software conditions shall apply to the update or upgrade, as applicable, that replaces such version.
- 9.5 When the customer's right to use the contract software ends, the customer shall immediately delete or destroy all electronic media containing or relating to contract software, copies of the contract software, including backup copies, and the licensing documentation. The customer shall immediately confirm such deletion or destruction in a writing to Balluff without being asked.
- 9.6 Any provision of this Section to the contrary notwithstanding, all of these software conditions that, by their nature, are intended to survive termination of these software conditions (including the provisions of Section 10) shall survive such termination and thereafter remain in effect.

10. Confidentiality

- 10.1 The contract software, including source code, (with the exception of any OS software components), the licensing documentation and other materials supplied by Balluff, whether or not Balluff has marked it as "confidential" or are otherwise identified as confidential, are considered "**confidential information**" in accordance with these software conditions.
- 10.2 The customer undertakes to treat the confidential information in the strictest confidence and to not make it accessible to third parties, unless this is necessary for exercising the rights granted to the customer in accordance with these software conditions.
- 10.3 To protect the confidential information, the customer shall apply the same degree of care and diligence (but not less than a reasonable degree) as for its own confidential information.
- 10.4 The confidentiality obligations pursuant to this clause 10 shall not apply to information
- a. which was already in the public domain or known to the general public at the time of their disclosure to the customer.
 - b. which was already known to the customer at the time of disclosure.
 - c. is subsequently in the public domain or known to the general public, without the customer being at fault.
 - d. which is disclosed or made accessible to the customer by an authorized third party.
 - e. in respect of which Balluff has given its prior written consent to the customer passing on, disclosing or making accessible to third parties.

The burden of proof for the existence of an exception in the above sense rests with the customer.

11. Export restrictions

- 11.1 The parties are aware that the contract software may be subject to export and import restrictions. In particular, there may be licensing requirements or the use of the contract software or associated technologies abroad may be subject to restrictions. The customer shall observe the applicable export and import control regulations of 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.
- 11.2 The customer undertakes not to transfer the contract software to a government authority for inspection of any granting of rights of use or for a further official permit without the prior written consent of Balluff and not to export the contract software to countries or natural or legal entities for whom export bans or restrictions apply according to the corresponding export laws. In addition, the customer is responsible for compliance with all applicable law 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 affiliated companies.

12. Applicable law

- 12.1 All disputes relating to the contract software or these software conditions may only be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Kentucky in each case located in the City of Florence and County of Boone. The parties waive any right to object to venue for any such dispute being in such a court for inconvenience or otherwise.
- 12.2 This contractual relationship shall be governed by the law of the Commonwealth of Kentucky and the United States of America, excluding its conflict of law provisions. The applicability of the UN Convention for Contracts for the International Sale of Goods (CISG) is excluded.

13. Disclaimer

- 13.1 Balluff makes no representations or warranties, whether express or implied, with respect to the contract software, these software conditions or otherwise. Without limiting the generality of the immediately preceding sentence, balluff disclaims the implied warranties of merchantability and fitness for a particular purpose. The customer accepts the contract software "as is".

14. General

- 14.1 As used herein: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," and "hereunder" refer to these software conditions as a whole; and (d) words denoting the singular have a comparable meaning when used in the plural, and viceversa.
- 14.2 These software conditions can only be amended in a writing signed by Balluff and the customer. No right or remedy under these software conditions can be waived unless such waiver is set forth in a writing signed by the party granting such waiver. There are no third-party beneficiaries to these software conditions, and only Balluff and the customer can exercise any right or remedy hereunder.