

## TERMS & CONDITIONS OF BALLUFF PTY LTD FOR THE FREE LICENSING OF STANDARD SOFTWARE

As at 12/2021

### 1. General information - Scope

- 1.1 These software conditions apply to the free licensing of standard software by Balluff Pty Ltd (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 The subject matter of these software conditions for the free licensing of standard software (hereinafter referred to as "**software conditions**") does not include the following: (a) licensing of standard software for a fee; (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. This list is not exhaustive.
- 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 free licensing of the standard software are formed by in these software conditions and in the respective individual contract, including all licensing documentation as described in Clause 2.2. and any other relevant documentation, including any quotation pertaining to the Balluff software licensed to the customer.

### 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 on request or unsolicited before or in connection with the conclusion of the contract.
- 2.2 The "**licensing documentation**" consists of part number code or material number, the product datasheet, as well as an installation guide/operating instructions and any other relevant documentation, including any quotation pertaining to the contract software.
- 2.3 The contract software consists of the executable program code. The source code is not a subject matter of the contract.
- 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 on request before conclusion of the contract or at the latest upon 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 are made available out to the customer in a suitable form.
- 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.

### 3. Delivery of the contract software - Version

- 3.1 Unless otherwise agreed, Balluff supplies the customer with the contract software in the current version at the time of delivery.
- 3.2 Except when otherwise stipulated, the contract software is delivered at the discretion of Balluff either on a data carrier 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 license or (b) perpetual license to use the contract software and the licensing documentation. The difference can be found in the licensing documentation. If there are no corresponding details in the licensing documentation, the licensing is effected for an unlimited time, but can be terminated (in accordance with clause 9.1 and clause 9.2).
- 4.2 The license commences from the delivery of the contract software.
- 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. 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 agreed countries of destination. Unless otherwise agreed, this is the country in which the customer has its registered office.
- 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 contractual use of the contract software.

- 4.6 **"Backup copies"** within the meaning of these software conditions are copies of the contract software which are made in the event that the original software is damaged or deleted accidentally.  
The customer may make backup copies of the contract software to the extent necessary according to the general rules of engineering. Backup copies must be labeled as such and have the copyright notice of the original software.  
The use of the backup copy is only permitted in the event of a deterioration 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 copy.
- 4.7 Without the prior written consent of Balluff, the customer is generally prohibited from selling the contract software and the licensing documentation or otherwise transferring them to third parties or making them available to third parties (incl. renting, leasing, loaning, or sublicensing).
- 4.8 Except as permitted by law, 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.
- 4.9 Updated versions of software or files that close security loopholes, correct errors, or add functions, 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 of the function.  
If Balluff voluntarily provides the customer with patches or bug fixes, updates or upgrades, these are also subject to these software conditions, unless otherwise agreed.  
Balluff is not obligated to provide the customer with patches or bug fixes, updates or upgrades.
- 4.10 All other rights to the contract software and the licensing documentation not expressly granted, particularly all rights to the trademark, business secrets, know-how, or other intellectual property rights to the contract software, shall remain with Balluff.  
Markings of the contract software and licensing documentation, particularly copyright notices, brands, serial numbers, or similar may not be removed, modified, or disguised.
5. **License fee**  
Balluff provides the customer with the contract software free of charge.
6. **Australian Consumer Law and Consumer Guarantees**
- 6.1 In this clause 6 the contract software and services provided by Balluff to the customer pursuant to the relevant contract formed using these software conditions shall be referred to as 'goods' or 'services' as the context requires and Balluff shall be referenced to as 'we', 'our' or 'us' and the customer shall be referenced as 'you' or 'your' as the context requires.
- 6.2 Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonable foreseeable loss or damage from a failure in the goods or service.
- 6.3 For the purposes of these software conditions, a Consumer Guarantee means a right or guarantee that you may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such terms as 'implied into a contract') that cannot be lawfully excluded.
- 6.4 Subject to clause 6.5, our liability in respect of any breach of or a failure to comply with any Consumer Guarantee is limited to the following:
- a) In the case of goods, to:
- (a) the replacement of the goods or the supply of equivalent goods;
  - (b) the repair of the goods;
  - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (d) the payment of the cost of having the goods repaired.
- b) In the case of services, to:
- (a) the supplying of the services again; or
  - (b) the payment of the cost of having the services supplied again.
- 6.5 Our liability in respect of a breach of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 6.4, if:
- a) the goods or services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the Australian Consumer Law;
  - b) it is not 'fair or reasonable' for us to rely on such limitation in accordance with section 64A(3) of the Australia Consumer Law; or
  - c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.
- 6.6 For any claim under the Consumer Guarantees please notify us in writing at the following address and contact details.  
We will pay your reasonable, direct expenses of claiming under this clause 6.6. You shall submit details and proof of its expense claim to us for consideration.

Balluff Pty Ltd  
18 Malvern Rd  
Bayswater, 3153  
Victoria  
Phone +61 1300 225833  
Fax +61 3 9780 9244  
sales@balluff.com.au  
[www.balluff.com/en-au](http://www.balluff.com/en-au)

## **7. Customer's duties to cooperate**

- 7.1 The customer shall register before using the contract software according to the respective specifications of Balluff.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 When using the software, the customer is obligated to exercise the required due care and diligence.
- 7.6 The customer observes the instructions given by Balluff for the operation of the contract software.
- 7.7 The customer shall 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.
- 7.8 The customer shall take appropriate precautions in the event that the contract software does not work completely or partially (e.g. with daily data backup).
- 7.9 The customer shall immediately notify Balluff in text form of any defects and errors with the contract software.
- 7.10 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.

## **8. Liability**

- 8.1 The contract software is supplied to the customer "as-is", free of any charge.
- 8.2 Subject to Clause 6 and any other condition, warranty or right implied by any statutory consumer guarantee contained in any law which cannot be excluded by agreement, Balluff gives no warranties and the customer shall have no other rights than those set out in these software conditions and where permitted by law all implied conditions, warranties and rights are excluded.
- 8.3 Where any condition, warranty or right is implied by law or any statutory consumer guarantee applies and cannot be excluded, Balluff limits its liability for breach of, or other act contrary to, that implied condition, warranty or right to the fullest extent permitted by law.
- 8.4 Subject to Clauses 8.1, 8.2 and 8.3, Balluff expressly disclaims all liability to the customer for any loss, damage or expenses whatsoever, whether direct, indirect or consequential arising out of or referable to the delivery of or use of the contract software, howsoever caused whether in contract, tort, including negligence, statute or otherwise.

## **9. Term - Revocation - Termination - Expiration of right of use - Return**

- 9.1 Unless otherwise stated in the licensing documentation, the granted license to use the contract software applies in perpetuity.
- 9.2 Unless otherwise stated in the licensing documentation, the contract may be terminated by either party by giving one (1) months' notice to the end of the month.
- 9.3 Without limiting any other right, Balluff is entitled to revoke or terminate the rights of use for good cause at any time and without observing a period of notice if the customer uses the contract software outside the extent permitted according to these software conditions.
- 9.4 Terminations and the revocation must be made in writing.
- 9.5 The customer's right of use in relation to the licensed contract software and the licensing documentation ends (a) upon termination of the contract for any reason or (b) in the case of a replacement delivery, updates and upgrades. In the case of lit. b these software conditions apply to the replacement delivery, updates and upgrades.
- 9.6 When the customer's right of use ends, the customer shall delete or destroy all data carriers, copies of the contract software including backup copies and the licensing documentation. The customer shall confirm such in writing to Balluff without being asked.

## **10. Confidentiality**

- 10.1 The contract software including in all its formats (with the exception of any Open Source software components), the licensing documentation and other materials, which Balluff has marked as "confidential" or which the customer, acting reasonably, shall regard or ought to regard 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 or was state of the art at the time of their notification to the customer.
  - b) which was already known to the customer at the time of disclosure.
  - c) which has subsequently entered into the public domain or known to the general public or state of the art, 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.
- 10.5 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, the United States of America and Australia 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 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.
- 12. Applicable law**
- 12.1 The software conditions and the contract formed under the software conditions are governed and construed in accordance of the Laws of the State of Victoria.
- 12.2 The United Nations Convention on contracts for the international sale of goods are not applied to the contract formed under the software conditions.

Balluff Pty Ltd  
18 Malvern Rd  
Bayswater  
3153 Victoria  
Phone +61 3 9780 225833  
Fax +61 3 9780 9244  
sales@balluff.com.au  
[www.balluff.com/en-au](http://www.balluff.com/en-au)