

TERMS & CONDITIONS OF BALLUFF ASIA PTE. 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 Asia Pte. 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 to the free licensing of standard software by Balluff to the customer. Balluff does not recognize conflicting terms and conditions or terms and conditions deviating from these software conditions, as well as terms and conditions of the customer which are not regulated in these software conditions, unless Balluff has expressly agreed to their validity in writing.
- 1.4 These software conditions and in the respective individual contract between Balluff and the customer shall form the entire agreement between Balluff and the customer in connection with the free licensing of the standard software and supersedes all prior oral and written communications.
- 1.5 These software conditions apply only in the case of business-to-business transaction between Balluff and 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 provided to the customer 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.
- 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 shall be provided to the customer in a suitable form.
- 2.6 Balluff is entitled to take the necessary measures 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 between Balluff and the customer, 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 simple, either (a) a limited, revocable, non-transferable, non-exclusive right of use to the contract software and the licensing documentation or (b) a revocable, non-transferable, non-exclusive, time-unlimited right of use to 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 license granted to the customer to use the contract software and the licensing documentation shall be for an unlimited time, but such license granted can be terminated in accordance with clauses 9.1 and 9.2.
- 4.2 The grant of license in these software conditions takes effect with the delivery of the contract software.
- 4.3 At the commencement of this 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 granted by Balluff to the customer in these software conditions cannot be sublicensed to any other 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 agreed country/ 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 shall contain 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 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 These software conditions only gives the customer some rights to use the contract software. Balluff reserves all other rights. Except as provided herein, the customer shall not: (a) 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 (b) sell, resell license, sub-license, distribute, lease the contract software or parts thereof or otherwise encumber the contract software with any lien or grant a security interest in the contract software to any third party (c) publish the contract software for third parties to use (d) use the contract software for commercial purposes other than for the use of the customer's business .
- 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.
Notwithstanding the above provisions in clause 4.9, 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 in and to the trademark, business secrets, know-how, or other intellectual property rights to the contract software, shall remain with Balluff.
Customer hereby agrees not to remove, modify or disguise markings of the contract software and licensing documentation, particularly copyright notices, brands, serial numbers, or similar brandings and logos.
- 5. License fee**
Balluff provides the customer with the contract software free of charge.
- 6. Customer's duties to cooperate**
- 6.1 The customer shall register before using the contract software according to the respective specifications of Balluff.
- 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 conclusion of the contract.
- 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 conclusion of the contract.
- 6.4 The customer is fully responsible for the installation of the contract software. At the customer's request, Balluff may, if necessary, undertake the installation for a separately agreed fee.
- 6.5 When using the contract software, the customer is obliged to exercise the required due care and diligence.
- 6.6 The customer shall observe all instructions given by Balluff for the operation and maintenance of the contract software.
- 6.7 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.
- 6.8 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).
- 6.9 The customer shall immediately notify Balluff in text form of any defects and errors with the contract software.
- 6.10 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.
- 7. Liability for defects**
- 7.1 Since the contract software is made available to the customer for free, Balluff's liability for material defects and defects of title shall be fully excluded, unless Balluff has intentionally or grossly negligently breached its obligations or Balluff has acted fraudulently.
- 7.2 The characteristics of the contract software are set out exclusively and definitively in the licensing documentation. The information in the licensing documentation should be viewed solely as performance specifications and not as guarantees.

8. Liability

- 8.1 EXCEPT AS EXPRESSLY PROVIDED IN THESE SOFTWARE CONDITIONS, TO THE MAXIMUM EXTENT APPLICABLE BY LAW, BALLUFF DOES NOT MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, BY STATUTE, USAGE, TRADE CUSTOM OR OTHERWISE WITH RESPECT OF THE PERFORMANCE OF THE CONTRACT SOFTWARE AND BALLUFF DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS OR CONDITIONS RELATING THERETO, INCLUDING WARRANTIES OF NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. BALLUFF DOES NOT GUARANTEE THAT THE PERFORMANCE OF THE CONTRACT SOFTWARE WILL BE FREE OF DEFECTS, RUN ERROR-FREE OR UNINTERRUPTED OR MEET CUSTOMER'S REQUIREMENTS.
- 8.2 Since the contract software is made available to the customer free of charge, Balluff shall only be liable for damages due to defects of the contract software or due to the breach of other contractual or non-contractual breaches in the case of intent or gross negligence. The foregoing limitation of liability shall not apply in the event of personal injury or death resulting from negligence.
- 8.3 Any further liability of Balluff is excluded, unless a deviating regulation is expressly contained in these software conditions.
- 8.4 Any contributory negligence on the part of the customer shall be taken into account.
- 8.5 The above limitations of liability also apply to the personal liability of employees, representatives, and/or organs of Balluff as well as to all vicarious agents of Balluff.

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

- 9.1 Unless otherwise stated in the licensing documentation, the granted use of the contract software applies for an unlimited time.
- 9.2 Unless otherwise stated in the licensing documentation, the contract term may be terminated by either party by giving the other party one (1) months' notice to the end of the month.
- 9.3 Balluff is entitled to revoke the customer's rights of use herein and to terminate these software conditions without giving notice to the customer in the following circumstances:
a) if the customer uses the contract software outside the extent permitted according to these software conditions; or
b) if the customer is in material breach of any of the terms of these software conditions and the customer fails to remedy the breach 30 days following written notice from Balluff specifying the breach.
Balluff reserves the right to assert claims for damages. Statutory rights and claims shall remain unaffected.
- 9.4 Any termination of these software conditions and any revocation of use shall be made in writing.
- 9.5 The customer's right of use in relation to the licensed contract software and the licensing documentation ends - without the need for revocation or termination when a contract term ends. In the case of a replacement delivery of contract software, updates and/or upgrades, these software conditions shall 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 Source Code (with the exception of any Open Source software components), the licensing documentation and other materials, which Balluff has marked as "confidential" or are to be otherwise viewed 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) is subsequently in 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.
The burden of proof for the existence of an exception to 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 Singapore, 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 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. Place of performance - Place of jurisdiction - Applicable law – Dispute Resolution

- 12.1 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.
- 12.2 These software conditions shall be governed by the laws of the Republic of Singapore, excluding its conflict of law provisions. The applicability of the UN Convention for Contracts for the International Sale of Goods (CISG) is excluded.
- 12.3 Any and all disputes arising out of or in connection with these software conditions shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the SIAC for the time being in force, which rules are deemed to be incorporated by reference to this clause. The seat of arbitration shall be Singapore. The Tribunal shall consist of one (1) arbitrator appointed in accordance with the said Rules. The language of arbitration shall be English.

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