

TERMS & CONDITIONS OF BALLUFF ASIA PTE. LTD. FOR THE LICENSING OF STANDARD SOFTWARE FOR A FEE

As at 12/2021

1. General information - Scope

- 1.1 These software conditions apply to the licensing of standard software for a fee 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 licensing of standard software for a fee (hereinafter referred to as "**software conditions**") does not include the following: (a) licensing of standard software free of charge; (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 licensing of standard software for a fee 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 the respective individual contract between Balluff and the customer shall form the entire agreement between Balluff and the customer in connection with the licensing of the standard software and supersedes all prior oral and written communications.
- 1.5 These software conditions apply only in the case of a 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 a fee. 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 Subject to payment of fees by customer to Balluff, Balluff grants the customer either (a) a simple, revocable, non-transferable, non-exclusive, limited right of use of the contract software and licensing documentation in the form of subscription against regular ongoing payment or regular royalty payment, or (b) a simple, revocable, non-transferable, non-exclusive, time-unlimited right of use of the contract software and licensing documentation in the case of a one-time payment. The difference in the payment and usage models can be found in the licensing documentation. If the relevant information is not included in the licensing documentation, the licence granted to the customer to use the contract software and licensing documentation shall be for a limited time.
- 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 sub-licensed 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 countries of destination. Unless otherwise agreed, the agreed country/ countries of destination 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 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 If the customer is granted a non-exclusive, perpetual right of use, the customer is entitled to transfer such rights to the contract software correspondingly to a third party with the prior consent of Balluff. Such a transfer of the rights to a third party is only permitted if the third party agrees to comply with all the terms and conditions under the licensing documentation and these software conditions.
A corresponding agreement between Balluff and such third party shall be concluded in writing.
In such a case the customer shall surrender and cease use of the contract software and licensing documentation uniformly, completely, and definitively, and delete and destroy all such backup copies.
Without the prior written consent of Balluff, the customer is prohibited from temporarily or partly licensing the use of the contract software to third parties for a fee, irrespective of whether the contract software is relinquished in a physical or non-physical form. The same applies to cases of free licensing of contract software, including OS software and software from other third-party providers.
- 4.9 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.
- 4.10 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 4.10, Balluff is not obliged to provide the customer with patches or bug fixes, updates or upgrades.
- 4.11 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 in and 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**
- 5.1 The license fees are set out in the respective quotation of Balluff and are payable as a (a) one-time fee and/or (b) in the form of ongoing fees and/or (c) in the form of royalties according to the time intervals specified in the respective quotation by Balluff.
- 5.2 For updates and upgrades of the contract software, an additional fee defined in the respective quotation is charged as a one-time fee and/or in the form of ongoing fees. If no additional fee is regulated in the respective quotation of Balluff, the updates and upgrades of the contract software are provided free of charge.
- 5.3 Ongoing fees are due at the start of the respective invoicing period. For partial periods the fee is invoiced proportionally based on a 30-day month.
- 5.4 The terms of payment for all fees are regulated in the respective quotation from Balluff. The goods and services tax is invoiced separately.
- 5.5 Balluff can change the current license and usage fees and the invoicing periods at its discretion. The customer shall be notified thereof in writing four months in advance. If the customer does not agree with this change, the customer may terminate the respective license agreement with three (3) months' notice to end of the month after receipt of the written notification.

- 5.6 In the event of a grant of license to use the contract software and licensing documentation based on subscription against ongoing fees, Balluff shall be entitled to provisionally prohibit the customer from using the contract software if the customer (a) is in default of payment of an ongoing fee or a not inconsiderable part of the ongoing fee for two consecutive dates or (b) is in default of payment of the ongoing fees in an amount equal to two periodic ongoing fees in a period extending over more than two dates. In such a case, Balluff will allow the customer to use the contract software again if the customer has paid the due ongoing fees including default interest, reminder costs and fees to Balluff. The rights of Balluff pursuant to Clause 10.3 of these Software Terms and Conditions shall remain unaffected.
- 5.7 For international transactions the agreed prices are net prices, i.e. this is the net price to be paid by the customer after deduction of any foreign taxes. In particular, the term "foreign taxes" covers corporation tax, trade tax, value added tax, goods and service tax, other withholding taxes, customs, or other surcharges and costs, as well as other fees and duties, which are collected by a foreign state or a foreign municipality. All foreign taxes shall be assumed and paid in full by the customer. The customer undertakes to provide Balluff with all necessary tax certificates, tax assessments and all other documents, which are required by Balluff in order to fulfill the tax obligations of Balluff abroad and in Singapore.

6. Customer's obligations

- 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 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 The parties agree that software can generally not be created without any errors; this also applies to the contract software.
- 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.
- 7.3 Before concluding the contract with Balluff concerning the licensing of the contract software, the customer shall check that the licensing documentation and the contract software meet its wishes and requirements. The customer shall familiarize themselves with the essential functional characteristics and conditions of the contract software.
- 7.4 In the case of permanent provision of contract software Balluff shall eliminate defects with the contract software in accordance with the statutory regulations.
- 7.5 All rights of the customer in relation to defects with the contract software shall become time-barred within 12 months of the day the license key to the contract software is provided to the customer.
- 7.6 If and to the extent to which the customer and Balluff have agreed the provision of maintenance and support services by Balluff in an individual agreement, the details agreed in this respect shall apply to the scope and time limits of the elimination of defects and errors.
- 7.7 The rights of the customer owing to defects with the contract software are excluded, provided this involves minor or insignificant deviations from the agreed or assumed quality, and in the case of only minor interference of the usability of the contract software.
- 7.8 Balluff is not responsible for defects which are based on improper use or handling of the contract software or unsuitable operating conditions for the contract software at the customer's premises.
- 7.9 If the customer notifies Balluff of defects in the contract software in accordance with clause 7.13 below, Balluff shall, at its discretion, improve or supply an error-free replacement of the relevant contract software [at Balluff's expense]. Balluff is entitled to eliminate defects by installing a newer version of the relevant contract software or by means of a workaround.
- 7.10 If the elimination of a defect has failed three times, the customer is entitled to terminate the respective contract upon notice in writing to Balluff or to request for a reduction of the payment for the relevant contract software.
- 7.11 The customer shall notify Balluff in writing of any defects with the contract software and enclose a comprehensible and detailed description of the defect, and, if possible, recordings which demonstrate the defect. The error notification must enable Balluff to reproduce the defect.
- 7.12 For the purposes of eliminating defects in the relevant contract software, Balluff can, at its own discretion, implement measures by means of remote maintenance by telephone, e-mail, or remote access. The customer grants Balluff access to its systems and the contract software installed thereon to the extent required. The customer shall create the necessary technical conditions for remote access at the request of Balluff.

8. Liability for defects of title

- 8.1 If a third party asserts a claim against the customer owing to an infringement of intellectual property rights through the use of the contract software, the customer shall immediately inform Balluff thereof in writing. At its own discretion, Balluff shall defend such claims at its 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 grant Balluff the necessary authority on a case-by-case basis and support Balluff in a reasonable manner with the defense of such claims.
- 8.2 In the event of interference to the contractual use of the contract software owing to a defect of title, Balluff shall rectify the cause for the defect in title within an appropriate period. This shall happen at the discretion of Balluff, whereby Balluff obtains the right to continue to use the contract software or changes or replaces it to a reasonable extent.
- 8.3 Balluff shall only be liable for infringements of intellectual property rights or claims of defect of title provided the customer had used the contract software according to these software conditions. Balluff's liability is waived if the contract software is changed by the customer or third parties or is combined, commissioned or used with programs or data not provided by Balluff or not approved in advance by Balluff in writing and claims of third parties arise therefrom. If any claims are asserted against Balluff, the customer shall indemnify Balluff therefrom upon the first request.
- 8.4 Claims exerted by the customer for compensation are subject to the limitations mentioned in clause 9.

9. Liability

- 9.1 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.
- 9.2 Balluff shall be liable for damages for defects with the contract software due to the infringement of other contractual or non-contractual obligations, in particular due to tort, only 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.
- 9.3 Damages for material breach of contract are limited to compensation for typical contractual losses arising naturally according to the usual course of things from a breach of contract, except in cases of intent or gross negligence or personal injury or death resulting from negligence.
- 9.4 Balluff shall only be liable for the following foreseeable losses within the meaning of Section 9.3:
- per case of damage: Balluff's maximum liability shall be the amount of the net purchase price of the relevant individual contract.
 - per calendar year: Balluff's maximum liability shall be no more than the net sales amount at which the customer acquired software from Balluff in the previous calendar year. In the first contract year, Balluff's maximum liability shall be no more than the net sales amount at which the customer acquired software from Balluff prior to the event causing the loss to the customer.
- 9.5 Balluff shall not be liable to the customer for any consequential or indirect damages, any loss of revenues or profits or loss of data, whether the foregoing losses are direct or indirect losses, arising out of or in connection with these software conditions.
- 9.6 All limitations of liability shall apply to the same extent to vicarious agents.
- 9.7 Subject to Section 9.5, 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.

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

- 10.1 Unless otherwise stated in the licensing documentation, the granted use of the contract software applies for a limited time.
- 10.2 Unless otherwise stated in the licensing documentation for temporary usage, the contract term of these software conditions shall be for the duration of one contract year. The 12 months from the time that the license key is provided to the customer shall be considered as one contract year. Further, these software conditions shall be automatically renewed for a further one contract year unless terminated by either party three (3) months prior to expiry of a contract year.
- 10.3 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:
- If the customer uses the contract software outside the extent permitted according to these software conditions; or
 - In the case of a grant of a license to use the contract software against ongoing fees to be paid by the customer, if the customer (i) is in arrears with the payment of the ongoing fee or a not inconsiderable part of the ongoing fee for two consecutive dates or (ii) is in arrears with the payment of the ongoing fees in an amount which reaches two periodic ongoing fees in a period which extends over more than two dates; or
 - 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.
- 10.4 Any termination of these software conditions and any revocation of use shall be made in writing.
- 10.5 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.

10.6 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.

11. Confidentiality

11.1 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.

11.2 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.

11.3 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.

11.4 The confidentiality obligations pursuant to this clause 11 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.

12. Export restrictions

12.1 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.

12.2 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.

13. Place of performance - Place of jurisdiction - Applicable law – Dispute Resolution

13.1 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.

13.2 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.

13.3 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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