

## TERMS & CONDITIONS OF BALLUFF AUTOMATION INDIA PRIVATE LIMITED FOR THE LICENSING OF STANDARD SOFTWARE FOR A FEE

As at 12/2021

### 1. General information - Scope

- 1.1 These are the general software licensing terms and conditions which apply to standard software which Balluff Automation India Private Limited (hereinafter referred to as "**Balluff**") licenses to the customer in consideration of a fee (hereinafter referred to as "**customer**"). Separate terms and conditions shall apply to other types of software licenses and legal transactions.
- 1.2 The subject matter of these terms and conditions are for the licensing of **standard software for a fee** (hereinafter referred to as "**Terms and Conditions**") are not applicable to 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 the customer's requirements (customizing); (d) individual program extensions for the customer; (e) adaptations of software interfaces according to the customer's needs; (f) training in the use of the standard software for the customer; and (g) software updates. The aforementioned list is not exhaustive.
- 1.3 These Terms and Conditions apply to standard software licensed to the customer exclusively. Balluff does not recognize terms and conditions which are conflicting conditions or deviating from these Terms and Conditions, as well as conditions of the customer which are not regulated and/or contrary to these Terms and 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 Terms and Conditions and in the respective individual contract between the customer and Balluff.

### 2. Subject matter of the Contract - Open Source software

- 2.1 The subject matter of these Terms and Conditions is the granting of rights of use to the standard software of Balluff to the customer on a non-exclusive, non-transferable, without right to sub-license basis to use the standard software outlined in the licensing documentation (hereinafter referred to as "**contract software**") upon payment of the applicable fees and subject to continuous compliance with the terms and conditions contained herein. The contract software shall always be considered as licensed and not sold, as per the terms and condition provided herein. The full description of the contract software can be found in the licensing documentation, which is made available to the customer on request or voluntarily by Balluff 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. Provided to the extent contract software is bundled with third party software programs, these third-party software programs are governed by their own license terms, which may include open source or free software licenses. Nothing in these Terms and Conditions limits the customer's rights under, or grants the customer rights that supersede, the terms of any such third-party 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. In such case any special terms of use which may be applicable, the same shall be communicated to the customer in a suitable form.
- 2.6 Balluff is entitled to protect the contract software against any unauthorized use. The customer agrees to use reasonable efforts to prevent and protect the contents of the contract software and other software products as provided with the contract software as mentioned in clause 2.5 above from unauthorized use or disclosure, with at least the same degree of care that the customer would use to protect their own confidential and proprietary information, but in no event less than a reasonable degree of care under the normal circumstances. In the event of any such unauthorized access or use, the customer shall promptly notify Balluff to 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 as per the scheduled time of delivery.
- 3.2 Except when otherwise stipulated, the contract software is delivered at the discretion of Balluff to the customer either on a data carrier or by providing the contract software through a downloadable link along with sending the information/instruction as required for the downloading purpose.

### 4. Rights of use - Backup copy

- 4.1 Balluff grants the customer either (a) a non-exclusive, time-limited right of use to the contract software and licensing documentation in the form of software subscription for ongoing payment, or (b) a non-exclusive, perpetual right of use to the contract software and licensing documentation in the case of a purchase on one-time payment basis. The difference can be found in the licensing documentation. If the relevant information is not included in the licensing documentation, the licensing is granted for a limited time.

- 4.2 The license takes effect with 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 Terms and Conditions. This right of use cannot be further 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 Terms and 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 Terms and 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 the rights to the contract software uniformly 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 fulfills all obligations from the licensing documentation and these Terms and Conditions. A corresponding agreement 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 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 free licensing.
- 4.9 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. The stringent, non-negotiable regulations of Indian Copyright Act, 1957 shall remain unaffected thereby.
- 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 Terms and 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 Terms and Conditions. "**Upgrades**" as defined in these Terms and 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 Terms and Conditions, unless otherwise agreed.  
Balluff is not obligated 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 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**
- 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 ("**License Fee**").
- 5.2 For updates and upgrades of the contract software, an additional fee defined in the respective quotation shall be 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 realized free of charge.
- 5.3 Payment towards ongoing fees are due at the start of the respective invoicing period. For the partial invoicing period the fee is calculated and 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 value added tax is invoiced separately.
- 5.5 Balluff may as per its discretion change the current license and usage fees and the invoicing periods. The customer shall be notified thereof in writing four (4) 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 at end of the month after receipt of the written notification.
- 5.6 In the event of software 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 the ongoing fee or a part of such ongoing fee within due date twice consecutively 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 twice consecutively. 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 Except as agreed otherwise, the agreed prices are prices net of Goods and Service tax, sales tax, value-added tax or other similar taxes custom and other withholding taxes, customs, or other surcharges and costs, as well as other fees and duties, which are collected by competent authorities in India. All these 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 India.

## **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 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 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 obligated to exercise the required due care and diligence.  
6.6 The customer observes the instructions given by Balluff for the operation of the contract software.  
6.7 The customer is obligated to 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 is obligated to 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.  
6.11 The customer is solely responsible for using the contract software/and or any software provided with it and licensing documentation, solely in a manner that complies with all applicable laws in the jurisdictions in which the customer uses the contract software and any software and licensing documentation, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

## **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 Balluff provides no assurance or warranty that the contract software is error free or that customer will be able to operate the contract software without problems or interruptions.  
7.2 The characteristics of the contract software are set out exclusively and definitively in the licensing documentation.  
7.3 The information in the licensing documentation should be viewed solely as performance specifications and not as guarantees.  
7.4 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.  
7.5 In case defect occurs in the contract software, Balluff will at its own cost use reasonable endeavours to remedy the defect within a reasonable time of receiving written notice thereof in accordance with the Balluff's procedures by repairing or replacing the contract software.  
7.6 All rights of the customer owing to defects with the contract software become time-barred within 12 months. This period begins on the day the license key is provided.  
7.7 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.  
7.8 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.  
7.9 Balluff is not responsible for defects which are based on improper use or handling of the contract software or unauthorized amendment to the contract software or unsuitable operating conditions for the contract software at the customer's premises.  
7.10 Balluff can, at its discretion, improve or supply an error-free replacement. Balluff is entitled to eliminate defects by installing a newer version or by means of a workaround.  
7.11 If the elimination of a defect has failed three times, the customer is entitled to rescind from the respective contract or to reduce the payment.  
7.12 Where the defect is so substantial as to deprive the customer of the benefit of the contract software or a substantial part of it, the customer is also entitled within the framework of the statutory provisions and these Terms and Conditions to compensation for its loss, costs and damages which is attributable contract software in respect of which the contract is terminated. Claims exerted by the customer for compensation are subject to the limitations mentioned in clause 9.  
7.13 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.  
7.14 Within the framework of eliminating defects, Balluff can, at its own discretion, implement measures by means of remote maintenance by telephone, e-mail, or remote access. The customer shall grant 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 industrial property rights through the use of the contract software, the customer shall immediately inform Balluff thereof in writing. At its own discretion, Balluff shall fulfill the 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 give Balluff the necessary authority on a case-by-case basis and support Balluff in a reasonable manner with the defense.
- 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 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 contract software or changes or replaces it to a reasonable extent.
- 8.3 Balluff shall only be liable for infringements of property rights if the contract software was used according to contract. 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. Limitation of Liability

- 9.1 To the maximum extent permitted by applicable law i.e. Indian Contract Act, 1872, the total liability of Balluff for damages arising under or in connection with these Terms and Conditions, including for any material breach of contractual obligations and/or any misrepresentation, act or omission (including without limitation, negligence and liability for infringement of any third party intellectual property rights) shall be limited to damages in an amount equal to the amount paid to Balluff by the customer under the contract.
- 9.2 Balluff shall not be liable for any indirect, incidental, consequential, special, punitive, or exemplary damages, including without limitation lost profits, lost business opportunities, loss of use of the service offering, loss of goodwill, business interruption, loss of data, lost savings, or other economic damage, arising out of this agreement or the use or inability to use the contract software or licensing documentation.
- 9.3 All limitations of liability shall apply to the same extent to vicarious agents.
- 9.4 Any changes in the burden of proof to the detriment of the customer are not associated with the above provisions.
- 9.5 Material breach of contract within the meaning of clauses 9.1 are those obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the customer may rely.
- 9.6 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 shall be concluded for the duration of one(1) contractual year. The 12 months from the beginning of the license are considered one (1) contract year. In this case, the contract shall be automatically renewed for a further contract year unless terminated by either party three (3) months prior to expiry.
- 10.3 Balluff is entitled to revoke or terminate the rights of use for good cause at any time and without observing a period of notice. One such compelling reason is if the customer uses the contract software outside the extent permitted according to these Terms and Conditions. In the case of software subscription against ongoing fees, such compelling reason shall also exist for Balluff in particular if the customer (a) is in arrears with the payment of the ongoing fee or a part of the ongoing fee for two consecutive dates or (b) 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 days. Balluff reserves the right to assert claims for damages. Statutory rights and claims shall remain unaffected.
- 10.4 Terminations and the revocation must 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, (a) when a contract term ends or (b) in the case of a replacement delivery, updates and upgrades. In the case of (b), these Terms and Conditions 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 Terms and 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 Terms and 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
- 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.
  - 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 in the above sense rests with the customer.

## 12. Rights Reserved

THE CONTRACT SOFTWARE IS ONLY LICENSED, AND NOT SOLD. Use herein of the word "purchase" in conjunction with licenses, license keys, or the contract software shall not imply a transfer of ownership. Unless as conveyed herein, these Terms and Conditions do not grant any rights, title, or interest in or to contract software, licensing documentation, trademarks, service marks, or trade secrets, or corresponding intellectual property (including without limitation any images, photographs, animations, video, audio, music, and text incorporated into the contract software, the accompanying printed materials, and any copies of contract software of Balluff, and all rights, title, and interest in and to the contract software, licensing documentation, and corresponding intellectual property shall remain the property of Balluff. All rights not expressly granted under this Agreement are reserved by Balluff, its suppliers, or third parties. All title, rights, and interest in and to content, which may be accessed through the contract software, is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives to the customers no rights to such content, including use of the same

## 13. Export restrictions

- 13.1 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 India, 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.
- 13.2 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.

## 14. Place of performance - Place of jurisdiction - Applicable law

- 14.1 The registered office of Balluff is deemed to be the place of performance for both parties for all rights and duties from these Terms and Conditions.
- 14.2 For legal disputes that fall under the substantive jurisdiction of the local courts the courts at Pune only shall have the jurisdiction.
- 14.3 This contractual relationship shall be governed by the laws of India, excluding its conflict of law provisions. The applicability of the UN Convention for Contracts for the International Sale of Goods (CISG) is excluded.

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