

TERMS & CONDITIONS OF BALLUFF 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 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. 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 licensing of the standard software are formed by these software conditions, 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 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 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.
- 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 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 either a non-exclusive (a) time-limited right of use to the contract software and licensing documentation in return for a license fee in the form of recurring payment ("Subscription License"), or (b) an unlimited right of use in terms of time to the contract software and licensing documentation in return for a license fee in the form of a one-time payment ("Perpetual License"). Whether the customer is granted a Subscription License or a Perpetual License is specified in the licensing documentation. If the relevant information is not included in the licensing documentation, a Subscription License is granted.
- 4.2 The license granted to the customer pursuant to clause 4.1 commences on the date of 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 (Refer to clause 2.2 for the specific scope of application). 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 The customer is prohibited from selling the contract software and the licensing documentation or otherwise transferring them to third parties or making them available to third parties (incl. renting, leasing, loaning, or sublicensing).
- 4.8 If the customer is granted a Perpetual License, the customer is entitled to transfer the rights to the contract software uniformly to a third party with the prior written 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 software 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 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.
- 4.10 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.
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. For avoidance of doubt, the quotation forms part of the licensing documentation as described in Clause 2.2.
- 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 made free of charge. The respective quotation shall be regarded as part of the licensing documentation.
- 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. All fees are quoted exclusive of Goods and Services Tax (GST).
- 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 by giving three (3) months' prior written notice to Balluff before the end of the month after receipt of the written notification of the change from Balluff.
- 5.6 In the event of a Subscription License, 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 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 11.2 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 New Zealand.
- 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 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 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 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 writing 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. New Zealand Consumer Law and Consumer Guarantees

- 7.1 In this clause 7 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 and the customer shall together be referenced to as 'the Parties'.
- 7.2 It is acknowledged and agreed by the Parties that:
 - a) the Parties are in trade and the customer is acquiring and Balluff is supplying the goods and services in trade for the purposes of the section 43(2) of the Consumer Guarantees Act 1993 (CGA) and section 5D(3) of the Fair Trading Act 1986 (FTA);
 - b) to the extent the goods and services are of a kind ordinarily acquired for personal, domestic or household use or consumption, all warranties, guarantees, conditions and other terms implied by the CGA are excluded to the fullest extent permitted by law;
 - c) the Parties are contracting out of sections 9, 12A, 13 and 14(1) of the FTA to the fullest extent permitted by law; and
 - d) it is fair and reasonable that the Parties are bound by this clause.

8. Defects

- 8.1 The parties agree that software can generally not be created without any errors; this also applies to the contract software.
- 8.2 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 or warranties.
- 8.3 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.
- 8.4 Balluff may, in its sole discretion attempt to eliminate defects in the contract software notified to Balluff by the customer in accordance with clause 8.6 within 12 months of the date of delivery of the software.
- 8.5 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.
- 8.6 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.
- 8.7 In respect to a defect notified to Balluff in accordance with 8.4 and 8.6 above, 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

9. Intellectual property rights and indemnification

- 9.1 All intellectual property rights in the contract software, Balluff trademarks or third party trademarks and associated licensing documentation shall remain vested in Balluff and all relevant third party licensors.
- 9.2 Subject to Clause 8.4. Balluff indemnifies the customer against any claim that the contract software or licensing documentation infringes any patent, copyright, trade secret or other proprietary right of a third party.
- 9.3 In the event of a claim under Clause 9.2, the customer must give Balluff prompt notice of any such claim; give Balluff full control of any defense or settlement of such claim and fully cooperate with Balluff in any defense or settlement.
- 9.4 Balluff's obligation to indemnify the customer pursuant the Clause 9.2. shall be reduced to the extent that any act or omission of the customer, its officers, employees or agents, contributed to the claim.

10. Liability

- 10.1 Balluff will not be liable to the customer for any loss, expense, damage or liability (whether arising in contract, tort, including negligence, or otherwise), arising directly or indirectly in connection with these software conditions, the contract software, the delivery and use of the contract software or otherwise including (but without limitation) any indirect, special, incidental or consequential loss or damage or for loss of profits, loss of data, business interruption or loss of third party contracts.
- 10.2 For the avoidance of doubt, and without limiting clause 10.1, Balluff shall not be liable for minor or insignificant deviations from the agreed or assumed quality of the contract software, minor interference with usability or 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.

10.3 Notwithstanding the above clauses 10.1 and 10.2, if Balluff is found liable for any loss, expense, damage or liability that would otherwise have been excluded under such clauses, or in any other circumstances, the liability of Balluff to the customer arising out of or relating to the contract formed under these software conditions shall not, to the extent permissible by law, exceed the amount paid by the customer to Balluff under these software conditions.

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

- 11.1 In the case of a Subscription License, unless otherwise specifically agreed, the contract shall commence upon the commencement of the license and continue for a period of twelve (12) months. In this case, the contract shall be automatically renewed for a further year unless terminated by either party giving three (3) months' notice prior to the expiry of the twelve month period.
- 11.2 Without limiting any other right, Balluff is entitled to revoke or terminate the rights of use granted pursuant to clause 4.1 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; or in the case of a Subscription License, 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.
- 11.3 Terminations and the revocation must be made in writing.
- 11.4 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 (b), these software conditions apply to the replacement delivery, updates and upgrades.
- 11.5 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.

12. Confidentiality

- 12.1 The contract software in all its formats (with the exception of any Open Source software components), the licensing documentation and 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.
- 12.2 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.
- 12.3 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.
- 12.4 The confidentiality obligations pursuant to this clause 12 shall not apply to information
- a) which was already in the public domain or known to the general public at the time of their notification to the customer.
 - b) which was already known to the customer without restrictions as to disclosure at the time of disclosure.
 - c) which has subsequently entered into the public domain or known to the general public, without the customer being at fault.
 - d) which is disclosed or made accessible to the customer by a third party with the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality.
 - 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.

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 the Federal Republic of Germany, the European Union, the United States of America, New Zealand 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.
- 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. Applicable law

- 14.1 These software conditions and the contract formed under these software conditions are governed and construed in accordance of the laws of New Zealand.

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