

## TERMS & CONDITIONS OF BALLUFF MALAYSIA SDN BHD FOR THE LICENSING OF STANDARD SOFTWARE FOR NO ADDITIONAL FEE

As at 12/2021

### 1. General information - Scope

- 1.1 These Software Conditions (as defined in clause 1.2) apply to the licensing of standard software (hereinafter referred to as "**Contract Software**") for no additional fee by Balluff Automation Malaysia Sdn Bhd (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 no additional fee (hereinafter referred to as "**Software Conditions**") does not include the following: (a) licensing of standard software for a fee; (b) installation of software at the Customer's premises; (c) individual setting of variable software parameters according to Customer requirements (customizing); (d) individual program extensions for the Customer; (e) adaptations of software interfaces according to the Customer's needs; (f) training of users of the Customer; and (g) software updates. This list is not exhaustive.
- 1.3 These Software Conditions apply exclusively. Balluff does not recognize conflicting conditions or conditions deviating from these software conditions, as well as conditions of the Customer which are not regulated in these software conditions, unless Balluff has expressly agreed to their validity in writing.
- 1.4 The entire agreement made between Balluff and the Customer in connection with the licensing of the standard software is recorded in these Software Conditions and in the respective individual contract.
- 1.5 These Software Conditions do not apply to agreements with consumers as defined by Consumer Protection Act 1999, as amended by the Consumer Protection (Amendment) act 2010.

### 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 Contract Software of Balluff outlined in the Licensing Documentation (as defined in clause 2.2) for no additional fee. The full description of the Contract Software can be found in the Licensing Documentation (as defined in clause 2.2), which is made available to the Customer on request or unsolicited before 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 (hereinafter referred to as "**Licensing Documentation**").
- 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 pointed out to the Customer in a suitable form.
- 2.6 Balluff is entitled to protect the Contract Software against unauthorized use. The Customer may not remove or bypass such protective measures of the Contract Software.

### 3. Delivery of the Contract Software - Version

- 3.1 Unless otherwise agreed in writing, Balluff supplies the Customer with the Contract Software in the current version at the time of delivery.
- 3.2 Except when otherwise agreed in writing, 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 the provisions of this clause 4, Balluff grants the Customer a simple, either limited or unlimited right of use to the Contract Software and Licensing Documentation. The choice applicable 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 and can be revoked or terminated.
- 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 and only for the purpose of this agreement, as well as the provisions of these software conditions. This right of use cannot be sublicensed. The permitted use of the Contract Software and the Licensing Documentation includes the installation, loading into the working memory, the display and running of the Contract Software, as well as the intended use of the Contract Software by the Customer for its business purposes.
- 4.4 The use of the Contract Software and the Licensing Documentation is only permitted in the agreed countries of destination. Unless otherwise agreed, this is the country in which the Customer has its registered office.

- 4.5 The Customer is only allowed to make copies of the Contract Software and the Licensing Documentation to the extent that is necessary for the contractual use of the Contract Software.
- 4.6 **"Backup Copies"** within the meaning of these Software Conditions are copies of the Contract Software which are made in the event that the original software is damaged or deleted accidentally.  
The Customer may make Backup Copies of the Contract Software to the extent necessary according to the general rules of engineering. Backup copies must be labeled as such and have the copyright notice of the original software. The use of the backup copy is only permitted in the event of a deterioration or loss of the copy of the Contract Software originally provided by Balluff.  
The Customer shall observe these Software Conditions with regard to the use of the backup copy.
- 4.7 Without the prior written consent of Balluff, the Customer is generally prohibited from selling the Contract Software and the Licensing Documentation or otherwise transferring them to third parties or making them available to third parties (incl. renting, leasing, loaning, or sublicensing).
- 4.8 If the Customer is granted a simple, unlimited 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 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 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 Balluff provides the Customer with the Contract Software for no additional fee in consideration of the Customer entering or considering to enter into new agreements to purchase hardware and/or software and/or related services from Balluff or entering or considering to enter into extensions or renewals of such contracts.
- 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 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.
- 7. Liability for defects**
- 7.1 After the contract software is made available to the customer for no additional fee, Balluff's liability for defects and defects of title shall be excluded, unless Balluff has intentionally 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 warranties.
- 7.3 In case a liability for defects arises under this agreement, the sole remedies available to the Customer shall be at Balluff's discretion either replacement or repair. All other statutory remedies shall be excluded as far as legally.

## 8. Limitation of Liability

- 8.1 The extent of the parties' liability under or in connection with this agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 8.
- 8.2 Subject to clause 8.6, Balluff's total liability shall not exceed the sum of [5% of the value of a single shipment].
- 8.3 Subject to clause 8.6, Balluff shall not be liable for consequential, indirect or special losses.
- 8.4 Subject to clause 8.6, Balluff shall not be liable for any of the following (whether direct or indirect): (i) loss of profit, (ii) loss of use; (iii) loss of production; (iv) loss of contract; (v) loss of opportunity; (vi) loss of savings, discount or rebate (whether actual or anticipated); (vii) harm to reputation or loss of goodwill.
- 8.5 Any contributory negligence on the part of the customer shall be taken into account. 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.
- 8.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) any other losses which cannot be excluded or limited by applicable law; and (iv) any losses caused by willful misconduct.

## 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 may be terminated by either party by giving one (1) months' notice to the end of the month.
- 9.3 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 Software Conditions. Balluff reserves the right to assert claims for damages. Statutory rights and claims shall remain unaffected.
- 9.4 Terminations and the revocation must be made in writing.
- 9.5 The Customer's right of use in relation to the licensed Contract Software and the Licensing Documentation ends - 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 lit. b, these Software Conditions apply to the replacement delivery, updates and upgrades.
- 9.6 When the Customer's right of use ends, the Customer shall delete or destroy all data carriers, copies of the Contract Software including Backup Copies and the Licensing Documentation. The Customer shall confirm such in writing to Balluff without being asked.

## 10. Confidentiality

- 10.1 The Contract Software including 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
- 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.
  - is subsequently in the public domain or known to the general public or state of the art, without the Customer being at fault.
  - which is disclosed or made accessible to the Customer by an authorized third party.
  - 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.

## 11. Export restrictions and Anti-bribery

- 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 Malaysia, 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. 12.3. For the purposes of this clause 11 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Malaysian Anti-Corruption Commission Act 2009 and legislation or guidance published under it. Each party shall comply with applicable bribery laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that (i) all of that party's personnel; (ii) all others associated with that party; and (iii) all of that party's subcontractors involved in performing the Contract so comply. Neither party shall make or receive any bribe (as defined in the Malaysian Anti-Corruption Commission Act 2009) or other improper payment, or allow any such to be made or received on its behalf, either Malaysia or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf. Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause.

## **12. Place of performance - Place of jurisdiction - Applicable law**

- 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 The parties irrevocably agree that the courts of Malaysia shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this agreement, its subject matter or formation (including non-contractual disputes or claims).
- 12.3 This agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Malaysia. The applicability of the UN Convention for Contracts for the International Sale of Goods (CISG) is excluded.

## **13. Miscellaneous**

- 13.1 Each party acknowledges that it has not entered into this agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Software Conditions or any document referred to in these Software Conditions. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this agreement.
- 13.2 No variation of this agreement shall be valid or effective unless it is in writing and is duly signed or executed by, or on behalf of Balluff.
- 13.3 If any provision of this agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this agreement shall not be affected. If any provision of this agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 13.4 No failure, delay or omission in exercising any right, power or remedy provided by law or under this agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under this agreement by the Balluff shall prevent any future exercise of it or the exercise of any other right, power or remedy by Balluff. A waiver of any term, provision, condition or breach of this agreement by the Balluff shall only be effective if given in writing and signed by Balluff, and then only in the instance and for the purpose for which it is given. 14.5 Any notice or other communication given by a party under these Software Conditions shall be (i) in writing and in English; (ii) be signed by, or on behalf of, the party giving it (except for notices sent by email); and be sent to the relevant party at the address set out in this agreement. Notices may be given, and are deemed received: (i) by hand: at the time of delivery; (ii) by Pos Malaysia registered mail: at 9.00 am on the second business day after posting; (iii) by email on receipt of a delivery receipt email from the correct address. Any change to the contact details of a party as set out in this Agreement shall be notified to the other party in accordance with agreement.

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