



THE SPIRIT OF SAFETY

PILZ AUSTRALIA INDUSTRIAL AUTOMATION LIMITED PARTNERSHIP (ABN 34 113 676 290) being a limited partnership between PILZ AUSTRALIA INDUSTRIAL AUTOMATION PTY LTD (ACN 084 841 887) and PILZ AUSLANDSBETEILIGUNGEN GMBH (reg. HRB 213281)

PILZ NEW ZEALAND LIMITED (Co. no. 1259007) AS TRUSTEE FOR THE PILZ NEW ZEALAND UNIT TRUST (NZBN 9429049845587)

Standard Terms & Conditions of Supply

1. Formation of the contract

- a. These Terms & Conditions apply to and form part of the Agreement between Pilz and the Client. They supersede any terms and conditions of sale previously issued by Pilz and any terms and conditions of purchase issued by the Client.
- b. Any Quotation issued by Pilz is not an offer but an invitation to treat. The Client may respond to a Quotation by issuing an Order. Contractual relations between Pilz and the Client shall be formed when Pilz indicates its acceptance of an Order. Any acceptance by Pilz shall be on these Terms & Conditions only, save that unless otherwise specified by Pilz, the quantity of any Product or Service or type of Product or Service from any Order shall apply.
- c. An Order issued by the Client or any express or implied indication of intention to adopt a Quotation shall constitute an offer which Pilz may accept in its sole and absolute discretion.

2. Scope of work

- a. In respect of any Service, the Client must confirm that the scope of work proposed in a Services Proposal is correct in all material respects within a reasonable time and in any case, within the time indicated in clause 2.b.
- b. If the Client does not provide any response in respect of the scope of work proposed in a Services Proposal after 14 days of receipt, the Client shall be deemed to have represented that the scope of work set out in the Services Proposal is correct and suitable for the Client's requirements. Pilz shall be entitled to rely on the Client's explicit, implicit or deemed confirmation of the scope of work and, by proceeding with the Service, the Client accepts and agrees that if its confirmation of the scope of work is incorrect, that Pilz shall suffer damage which the Client is liable to pay.

3. Cancellation by the Client

- a. Any request for cancellation of any Order by the Client must be made in writing within 14 days from the date of the relevant Order.
- b. Where any Product or Service has been tailored or changed for the specific needs of the Client and preparation for that Product or Service has commenced, Pilz reserves the right to reject any request for cancellation by the Client and to claim for full payment for such Product or Service.

c. Cancellation of Services

Upon receiving a request from the Client to cancel an Order for any Service, Pilz will send an Acceptance of Cancellation to the Client and promptly cease providing such Service. The Client accepts and agrees that it will be liable for all time charged for work done and expenses incurred up to the issue of Acceptance of Cancellation.

d. Cancellation of Order pertaining to training

The following cancellation fees shall apply for cancellation of any training Order:

No. of days before the scheduled date of training course when a request for a cancellation is made by the Client	Percentage of course fee charged by Pilz as cancellation fee
At least 14 days	Zero percent (0%)
Between 13 to eight (8) days	Twenty-five percent (25%)
Between seven (7) to four (4) days	Fifty percent (50%)
Three (3) days or less	One hundred percent (100%)

- e. As the majority of Orders for Products are dispatched shortly after receipt of such Order, Pilz does not accept cancellation of Orders pertaining to Products. To avoid doubt, if a Product has been dispatched for delivery by Pilz, no cancellation by the Client is allowed.

4. Cancellation by Pilz

- a. Where the delivery of a Product or Service is postponed, Pilz will make reasonable endeavours to reschedule the delivery as soon as practicable.
- b. Where Pilz cancels an Order, Pilz will make reasonable endeavours to refund the Price paid by the Client.

5. Delivery

- a. Unless expressly accepted in writing by Pilz to be an essential term, any date for delivery of any Product or Service advised by Pilz is approximate only and may be varied at any time by Pilz depending upon the availability of the Products, materials, labour and other contingencies. All back Orders will be delivered to the Client as soon as practicable upon the Product becoming available.
- b. Unless Pilz has provided its written acceptance of an alternative delivery arrangement, all delivery of Products are on an 'Ex Works' (EXW) (as defined in INCOTERMS 2020 published by the International Chamber of Commerce as revised from time to time) basis at Pilz's premises at the Client's cost and expense.
- c. The Client agrees that in the event that any freight or delivery charges are paid by Pilz, the Client must reimburse Pilz the full amount of such charges on demand.

- d. The Client shall be deemed to have accepted the delivery of the Products upon collection of the Products by the Client or the nominated agent or carrier by the Client.
- e. Pilz will use reasonable endeavours to achieve delivery of the Products or Services by the date nominated in the Order. However, Pilz accepts no liability to the Client for any delay in delivery of the Products or Services. The Client accepts and agrees that it will have no claim against Pilz in respect of any Loss it suffers or incurs in relation to any delay in delivery of the Products or Services.
- f. Risk in the Products shall pass to the Client on delivery of the Products. Notwithstanding that risk in the Products has passed, the title to the Products remains vested in Pilz until full payment of the Products has been received by Pilz.

6. Security

- a. By entering into the Agreement and accepting these Terms & Conditions, the Client accepts and agrees that these Terms & Conditions constitute a Security Agreement and create a Security Interest in favour of Pilz against the Client:
 - i. in all Products - being a monetary obligation of the Client to Pilz for Products that have previously been supplied and that will be supplied in the future by Pilz to the Client; and
 - ii. in all of the Client's right, title and interest in all of the Client's present and after acquired property as continuing security for the Client's obligations under the Agreement (including these Terms & Conditions) in respect of all Products supplied under the Agreement.
- b. Without limiting the generality of clause 6.a, the Client grants a PMSI in favour of Pilz over any Products supplied by Pilz to the Client from time to time.
- c. The Client agrees at its own costs to sign any necessary documents and provide all reasonable assistance and information to ensure that Pilz has a perfected PMSI in the Products and, if applicable, a perfected Security Interest in the Client's Personal Property, and to maintain the PMSI and Security Interest held by Pilz.
- d. Pilz and the Client agree that no information as referred to in section 275(1) of the PPSA will be provided to an interested person or person requested by an interested person. This clause 6.d may be waived by providing prior written notice to Pilz authorising the disclosure of the above information to a specified party.
- e. In the event that the Agreement is subject to Chapter 4 of the PPSA, Pilz and the Client agree that:
 - i. pursuant to section 115(1) of the PPSA, the Client waives sections 95, 96, 118, 121(4), 125, 130, 132(3)(d), 134, 135, 142 and 143 of the PPSA; and
 - ii. pursuant to section 115(7) of the PPSA, sections 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137 of the PPSA do not apply to the Agreement.

7. Returns

- a. The Client must, within five (5) Business Days of delivery of the Products, inspect all Products received and notify Pilz of any error, omission, shortage in quantity or damage to the Products delivered.
- b. When the Client wishes to make a return of any Products, it must complete and submit a "Customer Return for Credit" form.
- c. Subject to clauses 7.a and 7.b, Pilz will endeavour to rectify any error, omission, shortage in quantity or damage to any Products delivered as soon as reasonably practicable. However, Pilz will under no circumstances be liable for any delay in addressing and handling any rectification request or return claim.
- d. If Pilz accepts the return of a standard Product by the Client, the following re-stocking fee will apply to cover all costs incurred by Pilz:

Return period	Restocking fee
Within 1 month of the date of delivery.	10% of Price.
Within 1-3 months of the date of delivery.	20% of Price.
Within 4-6 months of the date of delivery.	30% of Price.
After 6 months from delivery date.	No return will be accepted.

- e. In respect of any request to cancel or return an Order of a non-standard Product:
 - i. Pilz may refuse such request at its absolute discretion;
 - ii. where the non-standard Product is not stocked in Australia or New Zealand (as the case may be), the Client's request to cancel or return the Product will not be accepted if the Product is indented, damaged or impaired or in such condition that it loses its commercial value or no longer of merchantable condition.

8. Applicable Standards

- a. Where an Authorised Standard applies to the Product or Service, Pilz will make all reasonable endeavours to ensure that the Product or Service meets such standard.
- b. Where no Authorised Standard is applicable to the relevant Product or Service, Pilz shall deliver the Product or Service to a reasonable standard without taking into account the particular purpose for which the Product or Service is to be used by the Client.

9. Payment terms

- a. The Client must pay the Price on the Quotation to Pilz.
- b. Payment of the Price must be made by the Client within the time period stated on the relevant Services Proposal, Quotation, tax invoice or statement of account for the supply of Products or Services issued by Pilz. If there is no time period for

payment stated, the Client must pay for the Products or Service within 30 days of the date of the tax invoice or statement of account for the supply of the Products or Services.

- c. At Pilz's sole discretion, a deposit or pre-payment of the Price may be required.
- d. Time for payment for the Price and all other amounts owing by the Client under these Terms & Conditions is of the essence. In the event the payment of the Price or any other amount owing by the Client is overdue, Pilz may suspend the provision of the Products or the Services until all outstanding payments have been made.
- e. If the Price or any outstanding amount under an Order is not fully paid by the due date for payment, Pilz will charge interest on the outstanding amount owed by the Client at the rate of ten and a half percent (10.5%) per annum accruing daily from the due date until the date the outstanding amount is paid in full.
- f. The Client indemnifies Pilz from and against all Loss incurred by Pilz in pursuing any sums owed by the Client to Pilz under these Terms & Conditions.

10. Warranty

- a. Subject to clause 10.c, Pilz makes the Warranty in favour of the Client.
- b. In the event of breach of a Warranty during the Warranty Period, Pilz will remedy the defects at no costs to the Client other than further delivery expenses which shall be borne by the Client (if applicable).
- c. The Warranty does not apply to the following:
 - i. certification services;
 - ii. where claim of Warranty is not made against Pilz within the Warranty Period;
 - iii. where the defect is caused by the Client;
 - iv. where maintenance is not carried out in accordance with the manufacturer's instructions;
 - v. where the Client or other party did not comply with all operating and maintenance instructions in relation to the Products;
 - vi. where failure or damage in respect of the Products or Services is due to misapplication, abuse, misuse, improper installation or abnormal environments or conditions of temperature, dirt or corrosive matter;
 - vii. where any Product or equipment has been repaired or otherwise tampered with or altered by any person other than a person authorised by Pilz to make repairs;
 - viii. where the alleged defect of the Product is within acceptable industry variances for products of that kind;
 - ix. where Products are damaged in shipment or otherwise without fault of Pilz;
or
 - x. in cases of normal wear and tear.

- d. Notwithstanding clause 10.c, if there is any Mandatory Warranty which cannot be excluded or contract out of law, such Mandatory Warranty is deemed to be included in these Terms & Conditions. To the extent permitted by law, the liability of Pilz for any breach of such Mandatory Warranty is limited, at the absolute discretion of Pilz, to one or more of the following:
 - i. if the breach relates to a Product (subject to the Products being returned at the Client's costs):
 - A. the replacement of the Product or the supply of equivalent products;
 - B. the repair of such Product;
 - C. the payment of the cost of replacing the Product or of acquiring equivalent products; or
 - D. the payment of the cost of having the Product repaired.
 - ii. if the breach relates to the Services:
 - A. the supplying of the Services again; or
 - B. the payment of the cost of having the Services supplied again.
- e. The Client agrees that any certification Service provided by Pilz does not guarantee that the Client's product or service will meet the Authorised Standard relevant to the certification. The Client accepts that certification is only current at the point in time that the certification service is provided and does not guarantee that the Client's product or service will meet the relevant Authorised Standard any time thereafter.

11. Limitation of liability

- a. In no circumstances whatsoever is Pilz liable to any person, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with the Agreement for any Consequential Loss whether such liability arises directly or indirectly as a result of:
 - i. any negligence, act or omission or wilful misconduct of Pilz or its employees or agents; or
 - ii. any breach of Pilz's obligations under these Terms & Conditions or the Agreement.
- b. The Client acknowledges that it has not relied on any representation made by Pilz which has not been expressly stated in these Terms & Conditions or the Agreement.
- c. Pilz's liability for any Loss by the Client in relation to, arising out of or in connection with the Agreement or matters associated with these Terms & Conditions shall, in all circumstances, be limited to the portion of the Price allocable to the Product or Service which gives rise to that claim.

12. Indemnity

- a. The Client shall assume all risks and liabilities for and in respect of the provision of the Products or performance of the Services. The Client unconditionally and irrevocably indemnifies Pilz, to the maximum extent permitted by law, from and against all Loss caused by, arising out of or in connection with:
 - i. claims in respect of or incidental to personal injury (including illness) or death of any person or loss of, or damage to, any real or personal property;
 - ii. the loss of or damage to any Products, whether by fire, theft, accident, seizure, confiscation or otherwise whilst in the Client's custody, possession or control, for which payment of the Price has not yet been made in full; and
 - iii. all other Loss howsoever arising incurred by Pilz as a result of or in connection with the provision of the Products or performance of the Services.
- b. Clause 12 shall survive termination of the Agreement.
- c. Pilz indemnifies the Client for all direct loss incurred by the Client as a result of a material breach by Pilz under these Terms & Conditions. Pilz's liability of indemnity in this clause shall be limited to the extent that Pilz directly causes the loss incurred by the Client. To the extent permitted by law, the maximum cap on the liability of Pilz under any circumstances shall be limited to the Price payable under the applicable Order.

13. Use of Product or Service

- a. The Client agrees to use any Product or Service purchased from Pilz in accordance with the operating manual or user instructions provided by Pilz and for the sole purpose for which that Product or Service was reasonably intended to serve.
- b. Pilz shall not be liable under any circumstances for any misuse of any Product or Service purchased by the Client.

14. Intellectual Property

- a. The Client agrees that Pilz is the legal and beneficial owner of the Intellectual Property in respect of all Products and Services supplied and the ownership thereof shall vest and remain vested in Pilz at all times.

15. Termination

- a. Pilz may cancel an Order, or suspend or terminate the Agreement immediately upon giving written notice to the Client in the event that the Client is in default of a material term of the Agreement and the Client fails to remedy such default within fourteen (14) days of notice from Pilz requiring the Client to do so.
- b. The Client may terminate the Agreement if Pilz breaches a material term of the Agreement and such breach is not remedied within fourteen (14) days of notice from the Client requiring Pilz to do so.
- c. Termination of the Agreement pursuant to this clause 14 shall be without prejudice to the rights of either Party accruing prior to termination.

16. Confidentiality

- a. Subject to clause 16.b, each Party agrees not to disclose the terms of the Agreement to any third party.
- b. The confidentiality obligation set out in clause 14.a does not apply where:
 - i. prior written consent is obtained from the disclosing Party; or
 - ii. disclosure is required by law; or
 - iii. it is necessary to enable a Party to perform its obligations under the Agreement; or
 - iv. a Party makes disclosure to its professional advisors to obtain legal, financial or taxation advice, subject to the professional advisor agreeing to be bound by the confidentiality obligations set out in this clause.
- c. This clause 16 shall survive the termination of the Agreement.

17. Dispute resolution

- a. In the event a dispute arises, if such dispute concerns technical matters, the dispute shall be resolved by way of expert determination by a person who is an independent industry expert appointed by the Chairman for the time being of Resolution Institute of Victoria, Australia. The cost of the expert shall be borne equally by Pilz and the Client.
- b. If the dispute is not resolved in accordance with clause 17.a, the dispute shall be resolved in accordance with clause 21 of these Terms & Conditions.

18. Entire agreement

The Agreement shall comprise the entire agreement between the Parties notwithstanding any other terms and conditions which may be supplied by the Client.

19. Assignment

A Party may not assign, transfer or novate its rights or obligations or rights and obligations (where applicable) under the Agreement to a third party without the other Party's prior written consent (such consent shall not be unreasonably withheld).

20. Variation

- a. Where the Client wishes to vary these Terms & Conditions, it must make a written request to Pilz within seven (7) days from receiving these Terms & Conditions.
- b. Pilz will consider any request to amend these Terms & Conditions by the Client but is not obliged to vary these Terms & Conditions.

21. Governing law

- a. Where the delivery of Products or the supply of Services are supplied in Australia, the Agreement shall be governed by and construed in accordance with the laws in

force in Victoria, Australia and the Parties submit to the exclusive jurisdiction of the courts of Victoria, Australia;

- b. Where the delivery of Products or the supply of Services takes place in New Zealand, the Agreement shall be governed by and constructed in accordance with the laws in force in New Zealand and the Parties submit to the exclusive jurisdiction of the courts of New Zealand; and
- c. In the case of any electronic or online sale, such sale shall be deemed to take place in the location of the Pilz entity fulfilling the relevant Order. The Parties submit to the exclusive jurisdiction of the courts of the jurisdiction where the sale was deemed to take place.

22. Definition and interpretation

- a. **Acceptance of Cancellation** means a written acknowledgement and acceptance by Pilz to agree to a request to cancel the supply of a Product or Service or both made by the Client.
- b. **Agreement** means the agreement between Pilz and the Client for the provision of the Products or Services or both and comprising:
 - i. the Order, subject to clauses 1.a, 1.b and 18;
 - ii. these Terms & Conditions; and
 - iii. any Quotation.
- c. **Authorised Standard** means a standard that has been authorised by a governmental or regulatory body of a country, state or territory.
- d. **Business Day** means:
 - i. in respect of the delivery of Products or the supply of Services that takes place in Australia, a day on which banks are open for business excluding Saturdays, Sundays or public holidays in Melbourne, Victoria; and
 - ii. in respect of the delivery of Products or the supply of Services that takes place in New Zealand, a day on which banks are open for business excluding Saturdays, Sundays or public holidays in New Zealand.
- e. **Client** means the client (or any person acting on behalf of and with the authority of the client) as described in any Order or Quotation, including their successors or permitted assigns.
- f. **Confidential Information** means all information learnt, obtained or accessed by a Party, or that is disclosed (whether orally, in writing or in any other form) by one Party (**Disclosing Party**) to the other Party (**Receiving Party**), in connection with the Agreement, including all copies, notes and records and all related information based on or arising out of any such disclosure which is not:
 - i. in the public domain (otherwise than as a result of a breach of the Agreement);
 - ii. independently developed or known by the Receiving Party; or

- iii. obtained by the Receiving Party from a third-party source that is entitled to have the information.
- g. **Consequential Loss** means loss or damage which does not flow directly and naturally from the relevant breach or circumstances and includes:
 - i. any loss of profits or revenue, loss of sales, loss of business or agreements, loss of use of the equipment or any associated equipment, facilities or services downtime costs, loss of goodwill, loss of or wasted management of staff time or loss of anticipated savings; and
 - ii. any special, consequential or indirect loss or damages (even if a Party advises the other Party of any special circumstances)
- (a) **Intellectual Property** means all intellectual property rights of the Company (both present and future) in Australia, New Zealand and throughout the world, including:
 - i. any current, future, registered, registrable or unregistered rights in respect of patents, inventions, discoveries, designs, trade marks, trade secrets, ideas, concepts, materials, know-how and techniques, confidential information, Copyright, rights in circuit layouts, trade, business or company names, indication of source or appellation of origin;
 - ii. any application or right to apply for registration of, or assert or waive, any of the rights referred to in the sub-clause above; and
 - iii. all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.
- h. **Loss** means any loss (including but not limited to direct loss, indirect loss, consequential loss, loss of anticipated profits or loss of business opportunity or both loss of anticipated profits and loss of business), liability, damage (including but not limited to any damages or compensation or any damage to reputation and damage to property), cost or expense (including legal costs on a full indemnity basis) of whatever kind and however it arises.
- i. **Mandatory Warranty** means those conditions, warranties or guarantees implied into these Terms & Conditions which cannot be excluded or modified according to the *Competition and Consumer Act 2010* (Cth) or the *Consumer Guarantees Act 1993* (NZ) or similar applicable legislation.
- j. **Order** means any purchase order, work order, work authorisation or any other form of communication (whether oral or written) by the Client requesting the supply of any Product or Services or both by Pilz.
- k. **Party** means either Pilz or the Client, as the case may be.
- l. **Parties** means both Pilz and the Client.
- m. **Pilz** means:
 - i. for delivery of Products or the supply of Services that takes place in Australia, Pilz Australia Industrial Automation Limited Partnership (ABN 34 113 676 290) being a limited partnership between Pilz Australia Industrial

Automation Pty Ltd (ACN 084 841 887) and Pilz Auslandsbeteiligungen GmbH (registration HRB 213281); or

- ii. for delivery of Products or the supply of Services that takes place in New Zealand, Pilz New Zealand Limited (company number 1259007) as trustee for the Pilz New Zealand Unit Trust (NZBN 9429049845587).
 - n. **PMSI** means a purchase money security interest as defined in the PPSA.
 - o. **PPSA** means:
 - i. the *Personal Property Securities Act 2009* (Cth); or
 - ii. the *Personal Property Securities Act 1999* (NZ)
- as may be amended or replaced from time to time. Reference to any part or section of PPSA in this document is a reference to the relevant part or section in the *Personal Property Securities Act 2009* (Cth). Further, any reference to any particular part or section of the *Personal Property Securities Act 2009* (Cth) shall be taken to refer to the equivalent part or section of the *Personal Property Securities Act 1999* (NZ).
- p. **Price** means the price payable by the Client for the Products or Services in accordance with clause 9.a.
 - q. **Product** means any product supplied by Pilz to the Client and described in an Order or Quotation, as the case may be.
 - r. **Quotation** means any indication of price and Product or Service that may be provided by Pilz. To avoid doubt, a Quotation may include a price list or catalogue issued by Pilz generally rather than specifically to a Client.
 - s. **Security Agreement** has the meaning set out under section 10 of the PPSA.
 - t. **Security Interest** the meaning set out under section 10 of the PPSA.
 - u. **Service** means any service provided by Pilz to the Client, including the provision of personnel for carrying out agreed works.
 - v. **Services Proposal** means a proposal issued by Pilz which sets out the scope of Services to be provided to the Client.
 - w. **Terms & Conditions** means these Standard Terms and Conditions of Supply as amended from time to time.
 - x. **Warranty** means:
 - i. in respect of Services, that they will be performed with reasonable care and skill in accordance with any agreed specifications; and
 - ii. in respect of Products, that they will be free from material defects and will be of the kind and quality stipulated in the Agreement.



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y. **Warranty Period** means:

- i. for Services, a defects liability period beginning on the date the Services are substantially completed (as confirmed by Pilz to the Client in writing) and ending on the date twelve (12) months after that date; and
- ii. for Products, the period beginning on the date of delivery of the Products and ending on the day of the expiry of the period stated in the Product or packaging of the Product, as applicable.