General Terms and Conditions
- PAS software products

PILZ

§ 1
Subject matter of the agreement

(1) Pilz Korea Ltd (hereinafter referred to as Pilz) makes the full version of the PAS standard software available as a download from its website. Pilz initially permits the customer to use the full version of the PAS software free of charge for a test phase (cf. Item 4 of these General Terms and Conditions), during which the customer may test and check individual or several software functions to establish whether they meet his requirements in respect of a project being pursued for a specific purpose. In this phase, from the full version of the PAS software the customer selects one or more software functions in object code that are needed to achieve the project purpose, constituting the project software, and trials these (test phase).

Project is a software or automation project during which the project software is created with the aid of the PAS software. To do this, the customer first creates a project within the PAS software. The project software produced in this project is in each case used for a specific purpose (project pur- pose), such as:

- in order to automate a specific production pro- cess at the customer or at his clients,

- in order to manage a product or series products of the customer which manufactures these and distributes them to clients together with the pro- ject software (cf. Item 9.5 of these General Terms and Conditions on series production),

- in order to automate other technical processes. The test phase is followed by a productive phase,
i.e. the phase in which the customer uses the pro- ject software in live operation to achieve the pro- ject purpose (cf. Item 5 of these General Terms and Conditions). In this productive phase, use of the project software is chargeable. The licence fee for the productive phase is to be paid in PAS units pursuant to Items 6 and 7 of these General Terms and Conditions.

(2) Within the framework of the software licence agreement concluded with the customer, Pilz shall permit the customer to use the project software on a permanent basis – but exclusively for the project purpose pursued by the customer in the specific project – and grant the customer the rights of use to the project software described in Items 4.3 and 9 to 10 of these General Terms and Conditions.

(3) The General Terms and Conditions for the sale of software products apply to other software prod- ucts of Pilz and can be called up at http://www.pilz.com/en-INT/termsandconditions. If one (or more) software function(s) of Pilz are sold together with software of other manufacturers (third-party software) and thus become the sub- ject matter of the project software, the General Terms and Conditions (licence terms) of the other manufacturer shall apply to the granting of rights of use to the third-party software, in addition to these General Terms and Conditions. Pilz shall re- fer to these licence terms of the other manufac- turer, if necessary expressly, in the respective product description.

§ 2
General/Scope

(1) The General Terms and Conditions shall apply to all current and, by way of a blanket agreement, also to all future business relationships between Pilz and the customer, without Pilz needing to re- fer the customer back to the General Terms and Conditions in each specific case.

(2) The quotations and declarations of ac- ceptance, as well as all services and goods, are provided exclusively on the basis of the General Terms and Conditions stated below, in each case in their latest version. These General Terms and Conditions are freely accessible at any time on the Internet at http://www.pilz.com/en-INT/termsand- conditions, and may be saved and printed out by the customer in a reproducible form.

(3) Terms of purchasing of the customer are hereby expressly rejected. Where the customer has his own different, conflicting or supplementary General Terms and Conditions, these shall not form part of the contract, even if such conditions are known, unless expressly agreed in writing by Pilz at the time the contract is concluded. This confirmation requirement shall still apply if Pilz ful- fils the contract with the customer without reser- vation, in full knowledge of the customer's General Terms and Conditions, which conflict with or differ from the present terms. The written consent given at the time the contract is concluded shall in each case apply only to the individual instance regu- lated therein.

(4) The General Terms and Conditions of Pilz shall only apply if the customer is an entrepreneur (Section 14 of the German Civil Code [BGB]), a corporate body under public law or a public fund.

§ 3
Scope of performance and obligations of the customer

(1) The hardware and software environment within which the project software selected by the customer is to be used is defined by the Pilz prod- uct description.

(2) A warranty shall only be granted if it has been expressly designated as such and has been de- clared in writing by the Pilz management. The properties of the individual software functions and of any third-party software to be delivered shall be as indicated in the Pilz product description at the time of conclusion of the respective contract. Other information such as technical data, descrip- tions, illustrations and drawings, specified meas- urements and weights are subject to constant change, even where these refer to standards. Pilz shall only be bound by such information where it has been confirmed in advance by Pilz as binding.

(3) Subject to different arrangements agreed in the contract by the parties, the following work shall not come under the subject matter of the agree- ment:

- Installation and configuration work

- Training

- Support provided by Pilz for the analysis and rectification of faults that have arisen as a result of improper operation or other circumstances not attributable to the respective software func- tion.
All this work shall be invoiced separately by Pilz on the basis of the current list prices for such work.

(4) The customer shall be responsible for select- ing one or more software functions for the project software and for their applications at the customer and the tests to establish the suitability of these software functions for the project purpose, as well as for data backup. Only specialist, trained per- sonnel should use the software functions and se- lect and apply the data. Pilz PAS software func- tions serve as an aid and do not make decisions on behalf of the customer as the user during cre- ation of the project software. If in doubt, expert ad- vice from Pilz should additionally be sought.

(5) The customer shall make appropriate provi- sions for a scenario in which the project software does not work correctly, whether in full or in part.

§ 4
Test phase

(1) The individual software functions from the PAS product range are made available by Pilz at no charge for a test phase, as a downloadable full version. The telecommunications costs incurred for the download shall be borne by the customer, including for any repeat downloads of software functions already downloaded.

(2) For the download, the customer initially registers on the Pilz homepage at www.pilz.com/eshop/pilz/register.do. After regis- tration, the customer may download the full ver- sion of the PAS software. For the use of the full version during the test phase, Pilz shall grant the customer the test phase licence envisaged in Item 4.3 of these General Terms and Conditions.

(3) After downloading of the full version of the PAS software, Pilz shall initially enable its temporally unlimited use within the scope set forth below in Items 9 to 10 of these General Terms and Condi- tions, but for testing purposes only in the test phase, and not for use in a productive phase (test phase licence).

(4) The duration of the test phase licence is indef- inite. The test phase licence ends at the moment when the customer begins the productive phase.

(5) During the test phase, the customer may al- ready calculate the number of PAS units that he needs to acquire the licence to use the project software in the productive phase. To do this, the customer must select the menu item "Licensing" and then the sub-item "Licence Calculation".

(6) If the customer or a third party has not yet ac- quired a licence to use the project software in the productive phase and uses the project software only in a test phase, all warranty claims – with the exception of compensation claims – are excluded. The following shall apply to compensation claims, including outside the guarantee period: During the test phase, in which the software functions from PAS are made available to the customer free of charge for test purposes only, Pilz shall then be liable merely for losses that have been caused by Pilz through gross negligence or wilfully. The same shall apply to the extent that Pilz has used senior employees or subcontractors or vicarious agents. The exclusion of liability shall not apply for injury to life, limb or health caused culpably by Pilz.

Pilz duly informs that during the test phase, the software functions used by the customer will con- tain "warnings", which will explain to the customer that he is using a software function in a test phase and that it is not yet licensed for use in the produc- tive phase. Upon acquisition of the licence to use the project software in the productive phase (cf. Item 5 of these General Terms and Conditions) the warnings cease.

§ 5
Formation of contract before the productive phase begins

(1) If the customer decides to use the project soft- ware in the productive phase, he shall log in via the Pilz homepage and acquire chargeable PAS units online, for the subsequent licensing of the project software. The customer shall pay for the project software using the PAS units pursuant to Items 6 and 7 of these General Terms and Con- ditions. The productive phase shall begin when the customer uses the project software in live op- eration to manage production processes, manage products of the customer or manage other tech- nical processes. In the event that Pilz's customer has agreed with his own client to carry out ac- ceptance of the product supplied by the customer to the client, acceptance shall be deemed to have taken place at the latest when the client of Pilz's customer commences live operation. Live opera- tion is also considered to have commenced if the product made by the customer containing the pro- ject software is accepted by a technical inspection authority, and also along with the project software being copied onto the series product.

(2) A contract between Pilz and the customer shall only be formed upon payment of the licence fee in PAS units for the use of the project software in the productive phase. Thereafter the customer shall be entitled to use the project software in the pro- ductive phase pursuant to Items 9 to 10 of these General Terms and Conditions. The customer shall receive licence certificates from Pilz after payment. The customer shall print out the licence certificates by way of proof of the entitlement and, as appropriate, present them to Pilz by way of proof of the entitlement to use the project software in the productive phase.

(3) Any use of the project software in the produc- tive phase without prior payment for the project software in PAS units shall be equivalent to a breach of copyright, with the consequence that Pilz may demand – at least to the extent that the project software is used in the productive phase – that the customer cease its use, delete the project software as well as any copies of it made, and pay compensation.

(4) There are no verbal ancillary agreements at the time of conclusion of the contract. Individual agreements (including ancillary agreements, sup- plements and amendments to these General Terms and Conditions) expressly reached be- tween the customer and Pilz on an ad hoc basis shall always take precedence over these General Terms and Conditions, to the extent that they have been reached after the conclusion of the contract. Subject to evidence to the contrary from the customer, a written contract or – in its ab- sence – written confirmation from Pilz to the customer shall be decisive with regard to the content of such individual agreements.

(5) We reserve the right to make changes to the software functions within the scope of what is rea- sonable for the customer.

§ 6
Acquisition of pasunits

(1) The customer may acquire the PAS units needed to purchase a licence for the use of the pro- ject software in the productive phase online from Pilz at https://www.pilz.com/eshop/pilz/publi- cinit.do?categorie=00013000317037.

(2) The PAS units are available in various package sizes. The quotations made by Pilz in the E-Shop constitute a non-binding invitation to the customer to order PAS units from Pilz.

(3) By placing an order in the Pilz E-Shop, i.e. clicking on the "Order" button, the customer sub- mits a binding offer to conclude a purchase con- tract for PAS units. Pilz shall confirm receipt of this order without delay. However this shall not yet constitute the formation of a contract. Pilz may ac- cept this binding offer by the customer, unless oth- erwise agreed with the customer, up to 7 days af- ter its receipt by Pilz by means of transmitting an order confirmation. The customer shall in addition receive an invoice and a software product certifi- cate with a ticket ID from Pilz. The text of the con- tract is not saved by Pilz.

(4) As soon as Pilz has definitively received the invoiced amount (receipt of payment), the cus- tomer may use the PAS units to license the project software for the productive phase. After receipt of payment, Pilz shall to that end send a software product certificate with ticket ID to the fax or e-mail address given by the customer. The customer may use this ticket ID to collect the PAS units ac- quired and paid for from the depot. The customer may choose between saving the PAS units under a USB key or on his hard drive.

§ 7
Licence fee for the productive phase

(1) The licence fee for the productive phase shall be paid in PAS units and shall refer only to the project software created for the specific project purpose. The PAS units may be acquired from Pilz online at https://www.pilz.com/eshop/pilz/publicinit.do?cate- gorie=00013000317037 (cf. Item 6 of these General Terms and Conditions).

(2) During the test phase, the customer may al- ready calculate the number of PAS units that he will need to spend in order to use the project soft- ware in the productive phase. To do this, the cus- tomer must select the menu item "Licensing" and then the sub-item "Licence Calculation".

(3) If additional costs such as duties, taxes, levies or fees charged by third parties should be incurred through acquisition of the project software, these shall be met by the customer.

(4) The customer shall not be entitled to use the project software he has created productively until the customer has paid the licence fee in PAS units for the use of the project software in order to achieve the project purpose in the productive phase. To do this, the customer selects the menu item "Licensing" in the PAS software and then the sub-item "Licence Calculation". There, the PAS units previously acquired by the customer pursuant to Item 6 of these General Terms and Conditions can be booked into the project created by the customer in the PAS software, under the menu item "Increase Project Credit". The booking process is then initiated by clicking the "Licensing" button and a licence certificate is issued for the customer to view, save and print out.

(5) An exception to the payment obligation – du- plication of software functions – is laid down in Item 9.5 of these General Terms and Conditions. If the customer wishes to use the project software outside the scope of this exception for a purpose other than the original project purpose, a new pro- ject is to be created in the PAS software and a licence acquired to this other purpose in the pro- ductive phase, from the start of use of the project software.

(6) It shall not be possible to return PAS units that have not been used in full. The customer may not reallocate PAS units that have been booked to a project and not yet used to another project.

(7) The customer shall be entitled to transfer PASunit credits to third parties. This is subject to the third party acquiring a product which is man- aged by project software from the PAS product range. Project points are also preserved in the machine code; if this is transferred to a PC with PAS software, changes may be made to the pro- ject software and existing PASunits still used e.g. in order to acquire additional software functions pursuant to Item 7.8 of these General Terms and Conditions.

(8) Licences for the use of additional software functions not yet licensed may be acquired for a project of the customer at any time. The PASunits for the individual software functions added shall be paid to that end. The customer shall then re- ceive a new licence certificate for the new project software by way of proof.

(9) The scope of use of a software function that is already licensed for the productive phase of a pro- ject may be increased at any time. The licence fee for the increased scope of use in the productive phase shall be paid by the customer in PASunits. The customer shall then receive a new licence certificate for the new, extended project software by way of proof. If changes are made to the pro- ject, the customer must issue a new licence certif- icate, which he may then save and print out.

§ 8
Licence and protective rights

(1) With regard to the features of the licensing of the rights to the software function during the test phase, we refer initially to Item 4.3 of these Gen- eral Terms and Conditions. In the productive phase, following payment for the project software in PASunits the customer shall be permitted to use the project software in the specific project as de- termined in Items 9 to 10 of these General Terms and Conditions.

To the extent that rights are not expressly granted to the customer in these General Terms and Conditions, all rights to the software functions of the full version of the PAS software and of all copies made by the customer – in particular copy- right, the rights to inventions, data, samples, models, drafts and expertise as well as other tech- nical protective rights – shall remain exclusively with Pilz or a manufacturer of third-party software The same applies to any editing of the software functions by the customer.

§ 9
Reproduction rights

(1) The customer may reproduce the project soft- ware to the extent that its reproduction in a spe- cific instance is necessary in order to use the soft- ware functions of the project software. Necessary reproduction includes installation of the project software through download on the mass storage device of the hardware used, and loading of the project software in the working memory. If the pro- ject software is used to manage series products manufactured by the customer, it may be repro- duced without modification in order to install the management software on the series products.

(2) Over and above this the customer may make a reproduction for backup purposes. However only one backup copy may fundamentally be made and saved. This backup copy shall be iden- tified as the licensed project software proper.

(3) If the routine backing-up of the entire dataset, including of the project software used, is indispen- sable for reasons of data security or for assuring swift reactivation of the computer system following total failure or for internal or external auditing, the customer may make the number of backup copies that is absolutely necessary. The appropriate data carriers shall be identified appropriately. The backup copies may only be used purely for ar- chive purposes.

(4) The customer may only make other reproduc- tions of the project software, including output of the program code on a printer and photocopying of the documentation, if Pilz has given the cus- tomer prior written authorisation to do so.

(5) A customer who has created project software for the project purpose of incorporating this into a series product shall be entitled to reproduce (du- plicate) the project software unaltered for products that are identical to the product that is the subject matter of the project software.

§ 10
Decompilation and modification of the software by the customer

(1) The customer shall fundamentally not be enti- tled to decompile the software functions of the

PAS product range or the project software into the source code or transfer it into other forms or into other programming languages, edit or rework the software functions of the PAS product range or the project software as well as reproduce them above and beyond the scope stated in Item 9 of these General Terms and Conditions.

(2) If Pilz does not meet its warranty obligations in the productive phase within an appropriate exten- sion period, the customer shall exceptionally be entitled to rectify defects on a one-off basis.

(3) A further exception is that the customer may analyse the software functions of the PAS product range or the project software and modify them only to the extent that is absolutely essential for establishing interoperability with an independently created computer program, satisfying all the fol- lowing conditions:
- All analytical or processing actions shall be car- ried out only by the customer, his employees or a third party expressly authorised by the cus- tomer.
- The information required for establishing in- teroperability is not accessible without decompi- lation to the customer or to a third party ap- pointed by him, nor has it been made available to the customer even though the customer has requested Pilz to supply it, and he has set Pilz an appropriate extension for its supply.
- The analytical and processing actions of the customer shall be limited to those parts of the software functions of the PAS product range or or of the project software that are necessary for es- tablishing interoperability.

(4) The customer may not use the information ob- tained through the actions pursuant to Item 10.3 of these General Terms and Conditions for pur- poses other than for establishing the interopera- bility of the independently created program, and above all not for the development, creation or mar- keting of a program with essentially similar fea- tures, nor for other actions that breach copyright. He may in particular not disclose such information to third parties except to the extent that the disclo- sure of the information is necessary for establish- ing the interoperability of the independently cre- ated program.

(5) To the extent that the customer is unable to or does not wish to perform the aforementioned ex- ceptional activities himself or have them per- formed by his own employees, before commis- sioning third parties he shall give Pilz the oppor- tunity to carry out the desired work to establish in- teroperability within an appropriate period of time and for an appropriate fee.

§ 11
Export and import procedures

The customer is responsible for conducting all processes in respect of export and import of the software functions and shall bear all costs in- curred for these processes. Pilz shall assist the customer with these processes. The software functions may be subject to (re-)export re- strictions, e.g. of the United States of America or the European Union. The customer shall observe such stipulations if the items are resold or other- wise exported.

§ 12
Notice of defect

(1) The customer shall inspect the project soft- ware, including the documentation, within 10 working days of acquisition

of the licence, in par- ticular in respect of the functionality of fundamen- tal software functions. Notice of defects of title or material defects, the absence of a property possi- bly guaranteed by Pilz in the software functions or documentation as well as delivery of excess amounts, short amounts or wrong deliveries (de- fects) shall – to the extent that they are obvious – be given by the customer without delay in writing, but no later than a further 5 working days of the end of the inspection period stated in sentence 1.

(2) Notice of defects not identifiable in the test phase or in a customary receiving inspection pur- suant to Item 12.1 of these General Terms and Conditions shall equally be given without delay by the customer, but no later than 14 days after de- tection.

(3) Notice of defect by the customer must contain a detailed description of the specific defect with the specifics of the individual case. As far as pos- sible, working results generated through use of the project software shall be documented to ena- ble Pilz to achieve an understanding of the defect.

(4) If notice of defects is not given within the peri- ods set forth above in Items 12.1 and 12.2 of these General Terms and Conditions, all warranty claims against Pilz shall be excluded.

§ 13
Guarantee against material defects

(1) Pilz shall support the customer with infor- mation on known program errors, troubleshooting measures, restrictions and fault prevention measures. Customers will find this support at http://software.pilz.com.

(2) The presence of a defect shall be precluded if
- the project software is not used on suitable hard- ware of the customer or third parties that meets the hardware requirements stated by Pilz, or
- the error stems not from the Pilz project software as such, but is caused solely by third-party soft- ware not supplied by Pilz and Pilz is not respon- sible for the compatibility of the software func- tions with such third-party software, or
- it is attributable to other activities by the cus- tomer or to other reasons that fall within the sphere of risk of the customer.

(3) In the event of a defect – except for defects of title, which are covered by Item 14 – Defects of Title – of these General Terms and Conditions – the guarantee provided by Pilz for defects notified within the proper periods pursuant to Item 12 of these General Terms and Conditions shall be lim- ited initially to remedial action through elimination of the defect (rectification) or replacement, at the discretion of Pilz, provided the customer proves that the defect was already present upon the pas- sage of risk.

(4) The customer shall, in consultation with Pilz, grant it the necessary time and opportunity to rec- tify or replace the project software. Bearing in mind the complexity of the project software, Pilz shall be granted up to three attempts at rectifica- tion.

(5) Pilz may also rectify defects in the project soft- ware through a suitable form of delivery of a data carrier or enabling a download with the latest product version – update or upgrade – of the pro- ject software, at its own choosing.

A new product version – update or upgrade – of the software functions shall also be transferred by the customer to the project software if the adapta- tion work he will need to perform is within reason.

If a more recent update or upgrade of a software function from the project software is not available when the improvement is needed, Pilz shall be entitled to supply the customer with an interim solu- tion to bypass the defect until a new product ver- sion can be delivered, if this solution is necessary to ensure that the customer can process urgent tasks despite the defect. Remedial action may also entail Pilz indicating reasonable measures for avoiding the consequences of the defect.

(6) Fault diagnostics and the remedy of defects under guarantee shall take place at the cus- tomer's premises or at Pilz, at the discretion of Pilz. If a service (repair) agreement is in place be- tween the customer and Pilz, after consultation with the customer, fault diagnostics and remedy of defects may also take place at the site of the unit on which the project software is used in accord- ance with these General Terms and Conditions. Pilz shall be supplied with the documents and in- formation in the possession of the customer and required in order to rectify the defect. Where Pilz is to rectify the error on the customer's premises, the customer shall provide without charge the nec- essary hardware and software functions, as well as any other operating conditions which may be required, together with appropriate operating per- sonnel.

The place of performance for remedial action is the place of delivery. If Pilz is to take remedial action at a site other than the place of delivery and no repair/service agreement is in place, the customer shall reimburse Pilz the increased transport, travel and accommodation costs that result from perfor- mance of the remedial action at the actual place of use of the project software, plus any other increased costs arising from remedial action, unless transfer to another place reflects the intended use of the project software. [BKL NOTE: It is not clear what "the place of performance for remedial aciton is the place of delivery" means. On the other hand, this Section was also updated so that the apportionment of the increased cost related to the remedial action taken at a place other than the place of delivery was changed.]

(7) Should the customer receive insufficient docu- mentation, Pilz's only obligation shall be to supply sufficient documentation, and this only if the inad- equacy of the documentation can lead to improper use of the project software.

Pilz shall moreover not be obliged to rectify or replace delivery items if this is only possible at un- due cost. Pilz may refuse any form of remedial ac- tion if both the anticipated costs of the rectification and the costs of replacement delivery exceed the purchase price of the PASunits for the project soft- ware by 100%. [BKL NOTE: Prior to the change in this Section, you could refuse the remedial action or replacement when the estimate related costs exceeded 25% of purchase price, this change heightened the standard by requiring that the estimated related costs for remedial action to exceed 100% of purchase price. Please note that, however, while having the heightened standard may be favorable for the customer, the provision that allows one to reject the remedial action due to high cost may still be problematic in view of the Act on Regulation on Terms and Conditions.]

(8) Any parts replaced under guarantee shall be- come the property of Pilz.

(9) In the event that remedial action fails – i.e. if Pilz allows an appropriate deadline issued to Pilz for remedial action to pass, has attempted rectifi- cation twice or made one replacement delivery and the notified defect is nevertheless not reme- died, if Pilz unjustifiably refuses or unduly delays necessary remedial action or replacement deliv- ery or if rectification is deemed unreasonable for the customer for other reasons, and also if the conditions of Sections 281 (2) or 323 (2) of the German Civil Code are met or Pilz justifiably re- fuses remedial action as undue – the customer may invoke the statutory legal redress of with- drawal and price reduction in lieu of rectification or replacement delivery, as well as compensation or the entitlement to reimbursement of expenses, the latter within the framework of Item 16 of these General Terms and Conditions.

(10) Where the breach of contract is slight, partic- ularly in the case of minor defects, the customer shall have no right of withdrawal.

(11) In the event of merely a minor defect, the compensation pursuant to Section 281 of the Ger- man Civil Code – compensation in lieu of perfor- mance – shall be calculated based on the differ- ence between the purchase price and the value of the defective software function.

(12) For third-party software, the guarantee pro- vided by Pilz shall be limited to the assignment of the entitlements which Pilz has in respect of the manufacturer of the third-party software. In the event that the customer is unable to assert his guarantee rights against the manufacturer of the third-party software, Pilz shall furnish the guaran- tee within the framework of these terms and con- ditions. Any warranties furnished by manufactur- ers of third-party software shall not be affected.

(13) If notice of defect was issued unjustifiably, Pilz shall be entitled to demand reimbursement of expenses incurred by Pilz from the customer if the customer has culpably misjudged circumstances lying within the scope of responsibility of the cus- tomer as having caused the supposed defect.

§ 14
Guarantee against defects of title

(1) Pilz guarantees that the contractually agreed use of the project software by the customer in the country of the place of delivery does not conflict with third-party rights. In the event of defects of title, i.e. if third parties make justified claims against the customer on the grounds of a breach of protective rights by project software delivered by Pilz and used in the contractually agreed man- ner, if notice of defect is given pursuant to Item 12 of these General Terms and Conditions Pilz pro- vides a guarantee that Pilz shall, at its own discre- tion, obtain a lawful way to use the project soft- ware for the customer or modify or exchange the project software in such a way that the protective right is not breached. Pilz may exchange the rele- vant software function within the project software for an equivalent software function that meets the contractual provisions, provided this is reasonable for the customer. If Pilz is unable to do so on ap- propriate terms, the customer shall have the stat- utory rights of withdrawal or reduction, as well as entitlements to compensation or reimbursement of expenses. The obligation of Pilz to pay compen- sation or reimburse expenses shall be in accord- ance with Item 16 – Compensation – of these General Terms and Conditions.

The customer shall notify Pilz without delay in writing if third parties assert protective rights (e.g. copyrights or patent rights) over a software func- tion that is part of the project software. The cus- tomer shall authorise Pilz to conduct the dispute with the third party on its own. Pilz shall contest or satisfy the claims at its discretion and in consulta- tion with the customer. Provided Pilz exercises this authorisation, the customer may not of his own accord recognise the claims of the third party without the consent of Pilz; Pilz shall contest the claims of the third party at its own expense and release the customer from all costs associated with contesting these claims, provided these do not arise as a result of behaviour of the customer in breach of his duty (e.g. contractually non-com- pliant use of the software function). If the customer should cease to use the software function of the project software in order to mitigate the damage or for other good reasons, he is obliged to inform the third party that no acknowledgement of a breach of protective rights is associated with the cessation of use.

(2) Claims of the customer are excluded if and in- sofar as he is responsible for the breach of protec- tive rights. They are furthermore excluded insofar as the breach of protective rights is caused by special stipulations of the customer, by use in a manner not foreseeable by Pilz or caused, for ex- ample, by the software functions being modified by the customer or used in conjunction with prod- ucts not supplied by Pilz.

(3) All further claims based on a defect of title are excluded.

§ 15
Compensation

(1) Unless otherwise agreed in these provisions, all compensation claims of the customer for losses of any kind, including for reimbursement of ex- penses and indirect losses, such as loss of profit, are excluded. This applies in particular to claims for all breaches of obligations resulting from the contractual relationship and from tort. The exclu- sion of liability shall also apply if Pilz has used subcontractors or vicarious agents.

(2) In a departure from Item 16.1 of these General Terms and Conditions, Pilz shall be liable, what- ever the legal basis, only – including if Pilz has used senior employees or subcontractors and vi- carious agents – if:

(a) there is gross negligence or intent on the part of Pilz,

(b) Pilz has fraudulently concealed a defect or has assumed a warranty for the property of the project software,

(c) injury to life, limb or health has been culpably caused by Pilz, and

(d) Pilz is in breach of material contractual obliga- tions, i.e.
(aa) in the event of material dereliction of duty that jeopardises the achievement of the purpose of the contract, or
(bb) in the event of breaches of obligations, the fulfilment of which makes the proper fulfilment of the contract possible in the first place, and on the compliance with which the customer regularly re- lies or is entitled to rely (material contractual obli- gations).

(3) In the event of Item 16.2 (d) of these General Terms and Conditions – Breach of Material Con- tractual Obligations – in the case of merely simple negligence the liability of Pilz shall however be limited in its amount to reimbursement of the fore- seeable, typically incurred loss.

(4) The exclusion of liability shall not be applicable in respect of claims under product liability law. The aforementioned provisions do not entail a change in the burden of proof to the disadvantage of the customer.

(5) The liability of Pilz in the test phase is subject to Item 4.6 of these General Terms and Condi- tions.

§ 16
Statutory limitation of claims due to material defects and defects of title

The limitation period for all claims of defects shall be twelve months from acquisition of the licences for the use of the project software in the production phase. However, should longer statutory limitation is required under relevant laws, such statutory limitation period shall apply.

(2) Claims under product liability law and statutory provisions on suspension of expiration, suspension and recommencement of the time limits shall not be affected. However, warranty is excluded in the case that used goods are delivered.

[BKL Note: According to the update, it seems to be revised to provide more details to the briefly stipulated statutory limitaiton provision in the Section 15. Despite the above, because the statutory limitation is an obligatory provision under Korean laws, the limitation period of the statutory limitation will be individually determined based on the nature of the claims. Also, this general terms and conditions ("GTC") can be viewed as terms and conditions which may apply to many potential counterparts, and therefore governed by the Act on Regulation on Terms and Conditions, which stipuates the clause to be null and void when without a substantial reason, the clause excludes or limits a customer's rights of defense, offset of damages, etc. (Art 11), or is unreasonably unfavorable to customers (Art 6). Because this Section 16 limits the customers' statute of limitation period for making their claims, it will likely be found to be null and void and the limitation of period for the statutory limitation under the Korean laws will be applicable.

Since the purpose of the above section is to limit the limitation period of the statutory limitation to short term, unless it is required by applicable law to be longer, in which case the statutory limitation set by the law shall apply, it would be advisable to revise as above to avoid the potential invalidity issue and use the provision as suitable to the Korean practice and situations.]

§ 17
Right of retention/offsetting

(1) The right to retain payments on the grounds of any claims of the customer against Pilz is ex- cluded, unless the right of retention rests on un- disputed or final and absolute claims of the cus- tomer.

(2) Offsetting of the customer's own receivables against receivables of Pilz shall not be permitted, unless the receivables are undisputed or final and absolute.

§ 18
Confidentiality

(1) The customer shall protect confidential infor- mation, i.e. all data and information of which he receives knowledge in connection with the con- tractual relationship with Pilz (hereinafter: "Confi- dential Information"). The customer undertakes to use Confidential Information only for the purposes of the contract concluded with Pilz and not to cir- culate it among or otherwise disclose it to third parties without the prior express written consent of Pilz. The customer shall refrain from any re- verse engineering outside the scope of reverse engineering to acquire required information for interoperability, i.e. reverse analysis through monitor- ing, examination, decompilation or testing of the delivery items for the purposes of acquiring the operating and business secrets embodied in these items. [BKL Note: Based on the updated part, reverse engineering of the receiving party is prohibited unless otherwise allowed pursuant to Copyright Act. With the similar provision in Korean Copyright Act, you may maintain such addition as such would not be problematic.] The customer is

obliged to protect Confidential Information against access by third parties. Backup copies of the project software shall be kept in a secure location away from unauthorised access by third parties. The customer shall exer- cise the same care in this respect that he would take in handling his own confidential information, but at least due care. The customer is obliged to secure from his employees the same obligations to protect Confidential Information. The customer shall notify Pilz without delay in writing if he ac- quires knowledge of an impending or existing breach of the confidentiality agreement or has suspicions to that effect.

(2) The obligation to protect Confidential Infor- mation shall cease to apply if the customer can prove that

- this Confidential Information was already known to him prior to the disclosure of this information by Pilz;

- he has legitimately received this Confidential In- formation from third parties without imposition of a confidentiality obligation and without him hav- ing any evidence that the third parties are in breach of confidentiality obligations imposed on these third parties;

- the Confidential Information is generally known or has become generally known without breach- ing this confidentiality obligation;

- this Confidential Information was or is devel- oped by the customer independently of its dis- closure by Pilz.

(3) Pilz reserves all rights to the Confidential Infor- mation (including copyrights, the right to register industrial property rights and patents, utility mod- els, topography rights, designs, brands) and rights of ownership to the items made available and con- taining the Confidential Information (papers, disks etc.). Notwithstanding the rights transferred in this software licence agreement, in no case shall rights of ownership, licence, reproduction, use or other rights be granted to the customer for Confi- dential Information of Pilz, regardless of whether such information is covered by protective rights or not.

(4) At the request of Pilz, the customer shall with- out delay return all Confidential Information re- ceived from Pilz. An exception merely applies for copies that must be archived in fulfilment of bind- ing statutory requirements. All Confidential Infor- mation present on computers shall be deleted upon request.

(5) The confidentiality agreement shall apply for three years after the end of the contract.

§ 19
Concluding provisions

(1) The customer is hereby informed that Pilz will collect, store and process its data to the extent that is necessary to complete the contract and on the basis of data protection regulations, and that this data will be passed to third parties where re- quired for that purpose.

(2) Pilz shall be entitled to amend the contents of these General Terms and Conditions with the cus- tomer's consent, provided the changes, while tak- ing Pilz's interests into account, are reasonable for the customer. Agreement to the contractual change shall be deemed to be given if the cus- tomer has not objected to the change within four weeks of receipt of the change notice. Pilz shall be obliged to inform the customer via the change notice of the consequences of a failure to object.

(3) Pilz may transfer its rights from this contract to one or more third parties.

(4) The law of Republic of Korea shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG).

(5) The place of performance for the obligations under this contractual relationship is the domicile of Pilz in [Seongnam, Gyeonggi-do].

(6) If the customer is a businessman, a public body or a public fund, Pilz's place of business shall be the exclusive court of jurisdiction for all disputes arising from this contract. This shall also apply if the customer has no general court of juris- diction in Korea, or if a permanent/habitual place of residence is unknown at the time the claim is raised. The plaintiff shall furthermore be entitled to lodge a claim at the domicile of the de- fendant.

(6) 1 April 201