

General Terms and Conditions

- Use for Firmware Updates

Please read the following General Conditions of Use carefully before downloading this updated firmware version. Before downloading the firmware you must agree to the validity of these General Conditions of Use. You will not be allowed to download the firmware unless you agree to the validity of these General Conditions of Use.

§ 1 Subject matter of the agreement

Pilz Korea Ltd. (hereinafter referred to as Pilz) permanently permits the customer to use a Pilz product containing one or more integrated firmware products in object code ("original firmware") under the contract concluded with the customer.

Should Pilz, at its own discretion and without obligation, provide an updated firmware version for a Pilz product in object code ("firmware"), then these General Conditions of Use shall apply for the free transfer of that firmware, which replaces the original firmware supplied with the Pilz product. The replacement shall take place through installation on the Pilz product owned by the customer. To this end Pilz shall grant the customer usage rights to the firmware as described in Sections 5 to 8 of these General Conditions of Use.

Should Pilz firmware be transferred in conjunction with firmware from third-party manufacturers ("third-party firmware"), the respective General Conditions of Use (Licence Conditions) of the other manufacturer shall apply for the granting of usage rights to the third-party firmware in addition to these General Conditions of Use. Pilz shall refer explicitly to the licence conditions of the other manufacturer in the respective product description.

§ 2 General/Scope

(1) These General Conditions of Use are freely accessible at any time on the Internet at www.pilz.com/de-INT/termsandconditions, [Pilz AGB Firmware-Updates.pdf](#) and may be saved and printed out by the customer in a reproducible form.

(2) Terms of purchasing of the customer are hereby expressly rejected.

(3) The General Conditions of Use 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 body.

§ 3 Formation of contract

(1) In order to have the firmware transferred via download, the customer must first register on the Pilz homepage at www.pilz.com/eshop/Pilz/register.do. After registration the customer agrees to these General Conditions of Use and can then download the required firmware.

(2) There are no verbal ancillary agreements at the time of conclusion of the contract. Individual agreements (including ancillary agreements, supplements and amendments to these General Conditions of Use) expressly reached between the customer and Pilz on an ad hoc basis shall always take precedence over these General Conditions of Use – to the extent that they have been reached after the conclusion of the contract. A written contract or – in its absence – written confirmation from Pilz to the customer shall be decisive with regard to the content of such individual agreements.

(3) The telecommunication costs incurred for the download shall be borne by the customer, including for repeat downloads of the firmware.

§ 4 Scope of performance and obligation of the customer

(1) The firmware shall be transferred to the customer by Pilz in its current condition ("AS IS"). Under no circumstances shall Pilz be obliged to further develop the firmware, keep it available as a download or in any other format, provide support, maintain it and/or provide it free of charge or at a cost, whether for the customer or a third-party. In so far as Pilz offers user documentation, online help or other support services, this shall be provided purely on a voluntary basis; the customer shall have no entitlement to such provision.

(2) The firmware shall only be used in conjunction with the Pilz product purchased by the customer – as stated in the respective product description. The property and functionality of the firmware and any third-party firmware that may be supplied shall be as indicated in the respective Pilz product description at the time the Pilz product was transferred. The information contained in the Pilz product description shall be regarded as performance specifications and not as warranties. A warranty shall only be granted if it has been expressly designated as such and has been declared in writing by the Pilz management.

(3) Should the customer use the firmware on a Pilz product that is not listed in the user documentation or with a configuration that is not stated in the user documentation, then this shall be at his own risk; any liability on the part of Pilz in accordance with Section 10 of these General Conditions of Use shall be excluded in this case in all respects. [BKL Note: While it is stated that Section 11 applies, we believe it might be more appropriate to refer to Section 10 which refer to the liability issues.]

(4) The customer shall be responsible for selecting the firmware for the respective Pilz product, for the tests to establish the suitability of the software for particular purposes and for data backup. Only specialist, trained personnel should use the firmware and select and apply the data. Pilz firmware serves as an aid and does not relieve the user of the responsibility to make decisions. If in doubt, expert advice from Pilz should additionally be sought.

(5) The customer shall make appropriate provisions, which shall reflect the state of the art, for a scenario in which the firmware does not work correctly, whether in full or in part. The customer shall also take appropriate security measures to protect against external events, in particular against computer viruses and other phenomena that could place individual data or the whole database at risk.

§ 5 Licence and protective rights

(1) In accordance with Sections 5 to 9 of these General Conditions of Use, Pilz shall grant the customer simple non-exclusive, unlimited, free, non-sublicensable usage rights to the object code of the firmware, for exclusive use with the Pilz product stated in the product description, for his own purposes only.

(2) The customer shall not be entitled to disclose the Pilz-generated source code of the firmware.

(3) To the extent that rights are not expressly granted to the customer in these General Conditions of Use, all rights to the firmware and documentation, including all copies made by the customer – in particular copyright, the rights to inventions, data, samples, models, drafts and expertise as well as other technical protective rights – shall remain exclusively with Pilz or a manufacturer of third-party firmware. The same applies to any editing of the firmware by the customer. The customer's ownership of the Pilz products he has purchased, on which he can copy the firmware in accordance with the provisions of these General Conditions of Use, remain unaffected.

(4) Under no circumstances shall the customer remove, modify or otherwise conceal any alphanumeric identifiers, copyright notices, trademarks, other markings, serial numbers or any other features used to identify the firmware and, in so far as the customer is entitled to make reproductions, shall do so without modifying the reproductions in any way.

§ 6 Reproduction rights

(1) The customer may reproduce the software to the extent that its reproduction in a specific instance is necessary in order to use the software. Over and above this the customer may make a reproduction for backup purposes.

(2) The customer may only make other reproductions of the firmware, including output of the program code on a printer and photocopying of the documentation, if Pilz has given the customer prior written authorisation to do so.

§ 7 Decompilation and modification of the firmware by the customer

(1) The customer shall fundamentally not be entitled to decompile the firmware into the source code or transfer it into another form or other programming languages, use other means to reverse engineer the firmware, edit or rework the firmware or to reproduce it above and beyond the scope stated in Section 6 of these General Conditions of Use.

One exception is that the customer may analyse the firmware supplied and modify it only to the extent that is absolutely essential for establishing interoperability with an independently created computer program, satisfying the following conditions:

- All analytical or processing actions shall be carried out only by the customer, his employees or a third party expressly authorised by the customer.
- The information required for establishing interoperability is not accessible without decompilation to the customer or to a third party appointed 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 firmware that are necessary for establishing interoperability.

(2) The customer may not use the information obtained through the actions pursuant to Section 7.2 of these General Conditions of Use for purposes other than for establishing the interoperability of the independently created program, and above all not for the development, creation or marketing of a program with essentially similar features, nor for other actions that breach copyright. He may in particular not disclose such information to third parties, except to the extent that the disclosure of the information is necessary for establishing the interoperability of the independently created program.

(3) To the extent that the customer is unable to or does not wish to perform the aforementioned exceptional activities himself or have them performed by his own employees, before commissioning third parties he shall give Pilz the opportunity to carry out the desired work to establish interoperability within an appropriate period of time and for an appropriate fee.

§ 8 Installation and export

(1) The installation should be carried out by the customer in accordance with a procedure described in the user documentation – if Pilz has provided the customer with such documentation – or a procedure described on the homepage.

(2) The customer shall be responsible for implementing all procedures with regard to exporting and importing the firmware and shall bear all the respective costs. Pilz shall support the customer in this regard. The firmware may be subject to (re-)export restrictions, e.g. the United States of America or European Union. The customer shall consider these provisions in the event of a resale or other export.

§ 9 No guarantee

(1) In so far as Pilz supports the customer with information on known program errors, troubleshooting measures, restrictions and fault prevention measures, this shall be provided on a voluntary basis, without obligation from Pilz. Customers will find this voluntary support at <http://software.pilz.com>. Pilz shall not guarantee that the firmware functions satisfy the customer's specific requirements or will work with components in the specific Pilz product configuration at the customer's premises.

(2) The customer shall have no warranty claims in the case of defects of quality or title on the firmware.

(3) Should the customer discover errors in the firmware, Pilz would ask him to inform Pilz so that Pilz can rectify this where necessary. However, the customer shall have no entitlement to have the error rectified.

§ 10 Liability

(1) Unless otherwise agreed in these provisions, all compensation claims by the customer for losses of any kind, including for reimbursement of expenses and indirect damages such as loss of profit shall be excluded. This shall apply in particular to claims for all breaches of obligations resulting from the law of obligations and tort. The exclusion of liability shall also apply if Pilz has used subcontractors or vicarious agents.

[BKL Note: Since this GTC is about the software distributed free of charge, the need for the comprehensive liability clause may be accepted. However, in strict sense, as this GTC can be viewed as terms and conditions, Act on Regulation on Terms and Conditions applies, and the Section may be found to be null and void for being a Section that "without a substantial reason, excludes or limits the warranty liability of a business person, or tightens requirements of customers to exercise the rights under the warranty (Art 7). Despite so, this GTC is about the free software, and since your company had similar provision for a long time, in light of purpose of keeping the GTC in unity in global perspective, you may maintain this Section, and respond to the issues once raised.]

(2) In a departure from Section 11.1 of these General Conditions of Use, Pilz shall only be liable, whatever the legal basis – including if Pilz has used senior employees or subcontractors and vicarious 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 firmware
- (c) injury to life, limb or health has been culpably caused by Pilz.

(3) In the case of Pilz being liable, potential contributory negligence should be considered appropriately if the customer is at fault for not taking the measures described in Section 4.5 of these General Conditions of Use.

(4) The limitation of liability from Section 4.3 of these General Conditions of Use shall also apply.

(5) 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.

§ 11 Right of retention/offsetting

(1) The right to retain payments on the grounds of any claims of the customer against Pilz is excluded, unless the right of retention rests on undisputed or final and absolute claims of the customer.

(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.

[BKL Note: As mentioned above, while the need for this Section may be accepted in light of its nature of free software, there are potential issues should Act on Regulation on Terms and Conditions is strictly applied. Considering the circumstances above, you may maintain this Section and address the issues once raised.]

§ 12 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 if necessary this data will be passed to third parties.

(2) 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 11.4.1980 (CISG).

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

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(4) If the customer is a businessman, a public body or a separate estate under public law, 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 jurisdiction 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 defendant.

valid from December 1, 2015