

Measurement Devices

§ 1

Scope of the General Terms and Conditions of Hire

(1) These General Terms and Conditions of Hire apply to the rental of all measurement systems together with accessories and documents such as operating manuals, data sheets, measurement software, etc. that belong to the measurement system (hereinafter also "Hire Item") of Pilz GmbH & Co. KG (hereinafter "Pilz") and all associated services.

(2) The hirer shall be entitled to use the Hire Item in the United States of America. If the hirer wishes to use the Hire Item in a different country, this shall require the prior written consent of Pilz.

(3) All services relating to the provision of the Hire Item during the hire period shall be performed solely on the basis of the General Terms and Conditions of Hire set out below, as may be amended in writing and signed by the parties at the time the contract is formed.

(4) Unless otherwise agreed, the General Terms and Conditions of Hire shall apply in the version applicable at the time of the hirer's order or as last communicated to the hirer in writing and shall be binding in all similar and future transactions for the rental of identical hire items with the same hirer without Pilz having to refer to them again in every single case.

(5) Purchase terms or other terms and conditions of the hirer are hereby expressly rejected. Where the hirer has their own deviating, conflicting or additional general terms and conditions, the hirer's terms and conditions shall not form part of the contract regardless of Pilz's knowledge of such conditions, unless expressly agreed in writing by Pilz at the time the contract is signed. This requirement for written confirmation shall apply even if Pilz performs rental and delivery of the Hire Item to the hirer without reservation while aware of deviating or conflicting general terms and conditions of the hirer. The consent given in writing on formation of the contract shall apply only for the individual case regulated therein.

§ 2

Formation of contract

(1) Quotations from Pilz for the rental of measurement systems constitute a non-binding offer to the hirer to rent measurement systems from Pilz.

(2) Pilz may accept this order within four weeks unless otherwise indicated in the hirer's order.

(3) Pilz may declare acceptance either in writing through the confirmation of order (including via fax and e-mail) or through delivery of the Hire Item to the hirer. Even in the latter case the hirer shall receive a written confirmation of order. In the absence of any other written agreements, the services contractually owed by Pilz shall be set out conclusively in the written confirmation of order.

(4) There are no supplementary verbal agreements at the time the contract is formed. Individual written agreements (including ancillary agreements, amendments and additions to these General Terms and Conditions of Hire) expressly

reached between the hirer and Pilz in the individual case shall always take precedence over these General Terms and Conditions of Hire to the extent that they came about after formation of the contract. Subject to evidence to the contrary from the hirer, a written individual contract or – in its absence – written confirmation from Pilz to the hirer shall control with regard to the content of such individual agreements.

§ 3

Hire Item: use only after training, quality, delivery and replacement

(1) The Hire Item relates to functionally tested measurement systems including the accessories set out in the hire agreement, e.g. transport cases and springs, as well as the documents, e.g. operating manual, data sheet, etc., that belong to the measurement system and measurement software. The hire agreement also includes the training of the person who will use the Hire Item as the hirer or for the hirer. The training of one person using the item is included in the hire price for the first year of hire. This person using the item will receive a certificate from Pilz upon successful completion of the training. Use of the Hire Item is only permitted if the hirer's operator has a valid certificate from Pilz.

(2) The quality of the Hire Item is set out in the article description. The mere description of the Hire Item does not constitute a warranty of characteristics of the Hire Item. The Hire Item shall be selected by the hirer. The hirer shall be responsible for ensuring that the Hire Item is suitable and used only for its intended use.

(3) Pilz undertakes to provide the Hire Item to the hirer for the customary use for the agreed hire period within the terms of the hire agreement against payment of the agreed hire charge. Consumables for the use of the Hire Item are only sold and are not included in the hire agreement.

(4) If an "expected delivery date" was indicated in the confirmation of order, this shall be non-binding unless expressly agreed otherwise in the written hire agreement. Pilz will either hold the Hire Item in a functional condition ready for collection or ship it to the hirer. The hirer shall bear the costs and risks of shipping the Hire Item in the case of delivery and return.

(5) Performance by Pilz shall be subject to correct and punctual delivery by the suppliers, with the consequence that Pilz shall be released from the obligation to deliver the Hire Item if, through no fault of its own, Pilz does not receive supplies from its own suppliers even though Pilz has previously concluded a corresponding supply agreement with the supplier. Pilz shall notify the hirer without delay that the supplier has failed to supply Pilz, that Pilz therefore is withdrawing from the contract and that the consideration – where already paid by the hirer – shall be refunded without delay.

(6) During the hire period, Pilz shall be entitled to replace the Hire Item with another Hire Item at any time provided that this replacement satisfies the agreed purpose of the hire, in particular the contractual use of the Hire Item, and does not conflict with legitimate interests of the hirer.

§ 4

Hire period

(1) The parties shall agree to the hire period when forming the hire agreement. Unless otherwise agreed by the parties in writing, the hire agreement shall be of indefinite duration. However, the Hire Item actually provided must be returned to Pilz for maintenance (cf. section 7 Maintenance) after one year (12 months = hire year).

(2) The hire period shall be at least six (6) months.

(3) Subject to written alternative agreements, if the Hire Item is shipped the hire period commences upon its contractual handover to the respective transport company. In the case of self-collection, the hire period commences upon handover of the Hire Item to the hirer or the hirer's agent.

(4) In the case of both shipping and self-collection, the hire period shall end on the day on which the Hire Item is returned to Pilz. The Hire Item may only be collected and returned by arrangement between the parties and during the regular business hours of Pilz.

§ 5

End of the hire - termination

If a specific hire period was agreed, the hire agreement shall end when this period expires. If the hire agreement is of indefinite duration, the hire agreement may be duly terminated by either party at the end of a contractual six months with a notice period of three (3) months, but not before the end of the minimum hire period according to section 4.2.

(1) The Hire period shall be without prejudice to the right of each party to cancel without notice for good cause.

(2) Notice of termination must be given in writing in order to have effect.

(3) An extension of any specified hire period must be arranged and agreed in writing with Pilz no less than 60-days before the end of the specified hire period. The hirer shall only be entitled to an extension of the respective hire period if appropriate provision was expressly made for this in the hire agreement, e.g. by an extension option described herein. Unapproved, verbal or implicit extensions of a specified hire period shall be excluded. Use of the Hire Item after the agreement has been extended continues to require that Hirer's operator has a valid training certificate from Pilz.

(4) If an extension of the specified hire period has not otherwise been requested and approved in advance, and the Hire Item is not returned at the end of a specified hire period, the hirer will owe Pilz and "excess hire charge" equalling twice the usual monthly hire charge for each month (or portion thereof) of the excess period after the end of the specified hire period. The hirer must also recompense Pilz for the compensation admissibly claimed from Pilz by the subsequent hirer of the respective equipment. The right to assert further claims for compensation is reserved.

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§ 6

Return of the Hire Item; Liquidated Damages

(1) The hirer must return the Hire Item in its original packaging, in a clean, complete and marketable state at the end of the contract.

(2) Should the Hire Item not be returned complete, the hire period shall not end until the last missing part of the Hire Item has been returned.

(3) Should the hirer return the Hire Item in a faulty, i.e. unusable or unmarketable, state, and if the hirer has caused this through at least simple negligence, the hire period shall not end (despite the Hire Item being in Pilz possession) until the repair work has been completed, or until the measurement system supplied to hirer as a substitute has been returned to Pilz as required herein. In this case Pilz shall send the hirer a copy of the appropriate evidence documenting the period required in order to restore the Hire Item.

(4) Hirer acknowledges that the Hire Item is a unique, lease-only product owned by Pilz and is not marketed by Pilz for retail sale or intended to be in any customer or third-party's possession except as provided for in a lease agreement directly with Pilz. Title and ownership of the Hire-Item is not intended to pass from Pilz to any party, and the Hire Item must be returned to Pilz at the end of any lease period, or otherwise upon demand by Pilz. Hirer acknowledges and stipulates that Pilz will be irreparably damaged by Hirer's failure to return the Hire Item to Pilz when required (for any reason, including theft from the Hirer or any other circumstances beyond Hirer's control), or by Hirer's passing of possession of the Hire Item to a third-party without Pilz prior express written authorization. Hirer acknowledges and stipulates that damages incurred by Pilz in the event the Hire Item is not returned to Pilz are significantly in excess of any direct individual manufacturing costs or potential individual retail sale value or ongoing lease value of the particular Hire Item not returned. Therefore, Hirer acknowledges such unique damages and stipulates to be responsible for and promptly pay liquidated damages in an amount to be identified in the associated quotation. Hirer further agrees and stipulates to entry of a consent judgment in the amount of the liquidated damages identified in such quotation in any court of competent jurisdiction, and Hirer hereby waives any and all affirmative or other defences it may have in law, equity, or otherwise as to the scope of such damages or entry and execution of such judgment. Hirer stipulates that such court shall accept Hirer's execution of this agreement as Hirer's execution of a consent judgment in the amount of liquidated damages identified by the associated quotation, upon the bringing of a complaint by Pilz supported by an affidavit that the Hire Item has not been returned despite demand.

§ 7

Maintenance

(1) The Hire Item together with accessories and documentation must be sent to Pilz for maintenance – e.g. calibration – annually from the date of hire. To that end Pilz shall transfer a replacement device to the hirer for use for the coming year of hire. The hirer shall then return the used device without delay, in the packaging in

which the replacement device was sent to the hirer. The costs for all packaging and shipping processes are borne by the hirer. The Hire Item must be returned for maintenance in a clean, complete and marketable state.

(2) Pilz shall maintain the software in the form of updates or new releases that will be provided by being made available to download.

§ 8

Duties of the hirer

- (1) The hirer undertakes
 - (a) to pay the agreed hire charge;
 - (b) to only allow the Hire Item to be used by persons who are trained and certified by Pilz;
 - (c) to only use the Hire Item for the purpose for which it was supplied to Hirer as set forth in the hire contract, to treat it properly and as trained by Pilz, and to comply diligently with statutory regulations, where applicable;
 - (d) to have the Hire Item replaced for maintenance purposes as described in section 7, to give timely notice of any other inspection and repair work on the Hire Item that may be required, and to have such work carried out by Pilz without delay;
 - (e) to take precautions and measures to protect against the influences of weather and access by untrained or unauthorised persons or third parties, in particular (but not limited to) damage, loss, or theft ;
 - (f) to use only consumables and accessories supplied or approved by Pilz;
 - (g) to comply with the safeguarding measures prescribed by Pilz, and in particular to ensure that all users of the Hire Item have been trained by Pilz and have the necessary expertise to use the Hire Item;
 - (h) neither to pass on, transfer possession of, nor to sub-hire the Hire Item to third parties without the prior written permission of Pilz;
 - (i) to notify Pilz without delay if the Hire Item exhibits a defect during the hire period, if a precaution to protect the Hire Item against risk becomes necessary, or if a third party asserts a right to, possession or, or a secured interest in the Hire Item;
 - (j) to record and preserve, through adequate data backup, of the measurement results obtained with the Hire Item.

(2) The hirer shall grant Pilz the opportunity during the normal business hours of the hirer to inspect and examine the Hire Item or to have it inspected and examined by an agent.

(3) Pilz shall be entitled to restore the Hire Item at the expense of the hirer if the hirer

- has not returned the Hire Item in the condition set out in sections 6.1 and 7 and the hirer through at least simple negligence has caused contamination, the absence of parts, irregular wear, or damage to the Hire Item, or
- is responsible for other changes to or deterioration of the Hire Item.

However, the hirer shall not be responsible for changes to or deterioration of the Hire Item caused by using it in accordance with the contract.

(4) In the event of any failure to notify or any late notification by hirer to Pilz pursuant to this agreement or any other applicable written agreement, hirer shall be obliged to recompense Pilz for the loss suffered thereby and shall lose the right to reduce the hire charge – even for the absence of warranted characteristics under certain circumstances – to demand compensation or to give notice of termination.

§ 9

Property of Pilz and place of installation of the Hire Item

(1) Pilz remains the owner of the Hire Item. The hirer shall not obtain title, ownership interest, or unauthorized possession of the Hire Item, and may not dispose of this Hire Item. In particular hirer may neither retain unauthorized possession, nor gift, pledge, sell nor otherwise transfer the Hire Item (or any part thereof, including software) as security. The Hire Item must also be kept free of the rights, interests, and claims of third parties. Pilz must be notified without delay both of claims of third parties against the Hire Item and of damage to or the loss or theft of the Hire Item.

(2) The hirer may not make any modifications to the Hire Item or any part thereof (including software). The ownership notices applied by Pilz to the Hire Item – or copyright notices in respect of the software, documentation, and other copyright interests protected by applicable law – may be neither removed nor covered over.

§ 10

Prices, security deposit, payment and default

(1) Pilz shall invoice the hire charge at the individual prices agreed in the hire agreement. All quoted prices are always exclusive of applicable federal, state, and local taxes, import taxes or fees, and shipping charges, which Pilz will add to the invoice. Unless otherwise expressly agreed, the hire charge for the Hire Item shall be calculated according to the hire period. The hirer shall pay any costs arising for packaging and shipping. That applies also to the shipping costs arising in the course of the maintenance pursuant to section 7.1.

(2) The monthly hire charge must be paid at least one month in advance by not later than the fifth working day of each month during the hire period.

(3) Pilz shall be entitled to increase the hire charge at the end of a month, and for the first time twelve months after the contract was formed, by written notification with a notice period of three months if and to the extent that the material and labour costs incurred by Pilz for the maintenance of the Hire Item have increased. The hirer shall be entitled to terminate the hire within a period of six weeks from receipt of the notification of an increase in the hire charge. In the event that the corresponding material and labour costs of Pilz fall, the hirer may demand a corresponding decrease in the hire charge at the end of the period set out in sentence 1.

(4) Pilz may demand a security deposit from the hirer in the amount specified in the hire agreement or quote. This security deposit shall be due upon the collection or shipping of the Hire Item and

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must be refunded by Pilz when it has been established that the Hire Item has been returned in accordance with the contract. Pilz is authorized by the hirer to retain up to 100% of such security deposit if the Hire Item was damaged, lost, or stolen while hirer was responsible for the Hired item (including during shipping periods), or if the Hired Item is otherwise not returned to Pilz when required.

(5) Unless otherwise stated in the hire agreement, the net hire charge (without deduction) shall be paid within 30 days of the date of invoice. If the hirer defaults in payment, Pilz shall be entitled to charge interest on the money owed at a rate of 9 percentage points above the U.S. Prime Rate. Pilz reserves the right to provide evidence of and claim for greater losses resulting from default. The hirer shall in turn have the right to prove a lower level of loss.

§ 11

Right of retention and offsetting

The hirer shall only have the right of offsetting if the hirer's counterclaims are fully adjudicated in hirer's favour by a court or arbitral body of competent jurisdiction, or are undisputed or have been recognised by Pilz.

§ 12

Notice of defect and warranty

(1) Pilz has a duty to maintain the Hire Item in a condition that is suitable for its contractual use for the duration of the hire period, to perform the necessary maintenance and repair work, and to ensure that the contractual use of the Hire Item does not conflict with rights of third parties. The corresponding measures shall be performed at regular maintenance intervals according to section 7 and in the event that defects, faults or damage occur. Pilz shall have, and hirer will provide, the necessary access to the Hire Item for this purpose.

(2) The hirer shall inspect the Hire Item on receipt for visible defects. If the hirer finds any such defects, Pilz must be promptly notified. The hirer shall continue to notify Pilz of any defects that occur during the hire period without delay following their discovery.

(3) A minor reduction in the fitness of the Hire Item for its contractual use shall not constitute a defect.

(4) Pilz shall rectify at its own expense defects that were notified upon delivery or without delay following discovery. The hirer shall give Pilz sufficient opportunity to carry out this rectification. The hirer shall accept a replacement device if the hirer does not suffer any disadvantage thereby.

(5) Termination by the hirer for unsuitability of the Hire Item for use according to the contract shall not be actionable in a court of law or before an arbitral panel until Pilz has been given commercially reasonable opportunity to rectify the defect and this has failed. Failure of rectification shall not be assumed until it is impossible, is refused, or is otherwise unduly delayed by Pilz, or there are commercially reasonable doubts as to the prospects of success.

(6) The rights of the hirer related to defects shall be excluded if the hirer makes modifications or causes modifications to be made to the Hire Item without the prior written consent of Pilz.

(7) Unless otherwise agreed in these provisions, all compensation claims of the hirer for losses of any kind, including for reimbursement of expenses, any multiple, exemplary, punitive, or extraordinary damages, and indirect losses such as loss of profit, shall be excluded. Without limiting the generality or breadth of such exclusions, this applies in particular to claims for all breaches of obligations resulting from the contractual relationship or from tort.

(8) In derogation of section 13.1, Pilz shall be liable, whatever the legal basis, only if

- (a) there is gross negligence or intent on the part of Pilz,
- (b) Pilz has fraudulently concealed a defect;
- (c) Pilz has culpably caused injury to life, limb or health;
- (d) the Hire Item does not have or loses a characteristic warranted by Pilz; and if
- (e) Pilz is in breach of any statutory duties.

(9) In the case of section 13.2 (e) the liability of Pilz shall however be limited in amount to reimbursement of the foreseeable, typically incurred loss.

(10) The hirer shall be solely responsible for creating and preserving the data and the measurement results obtained with the Hire Item.

(11) The hirer bears all burdens of proof with respect to claims for causation, damages and the scope of compensation for any claim it may bring in law, equity, or otherwise.

§ 13

Use of the measurement software as a constituent part of the Hire Item

(1) The hirer or the hirer's employees shall only be permitted to use the measurement software belonging to the Hire Item after prior training and certification by Pilz. The training must have been completed by the user in the first year of using the Hire Item. The right of use is subject to the condition that the hirer can provide evidence of training completed in the first year of hire. The right to use the measurement software shall commence **only** for the hirer named in the proof of training or the hirer's named employee upon issuance of the proof of training by Pilz and shall end upon expiry of the hire period or of the training certificate.

(2) To the extent that the hirer is not expressly granted rights in these General Terms and Conditions of Hire, all rights to use the software and all copies made thereof by the hirer shall be retained exclusively by Pilz or a manufacturer of third-party software of Pilz choosing.

(3) The hirer shall not be entitled to allow third parties to use the software supplied by Pilz to the hirer or any backup copy created in accordance with these General Terms and Conditions of Hire. Without limiting the generality or breadth of the foregoing prohibition, in particular, the hirer shall

not share, disclose, sell, lend, lease or otherwise sublicense the software or pass on or communicate the software to the public by any means or make it available to third parties free of charge or for a consideration.

(4) The hirer may not modify the supplied software in any way. The hirer may duplicate the supplied software if such duplication is essential for the use of the software and only to the extent such duplication is essential to hirer. Necessary duplication shall in particular include the installation of the software on the mass storage of the hardware used and the loading of the software into the working memory. The hirer may also make a duplicate copy for backup purposes. This backup copy of the provided software shall be labelled as such and visibly marked with Pilz a copyright notice. The hirer shall not be entitled to duplicate the software above and beyond these cases.

§ 14

Final clauses

(1) Assignment of the rights of the hirer under the contract shall require the express written consent of Pilz. Pilz may transfer its rights under this contract to one or more third parties.

(2) The hirer is hereby informed that Pilz will collect, store and process the hirer's data to the extent that is necessary to complete the contract and on the basis of applicable data protection regulations, and that if necessary this data will be passed to third parties.

(3) Pilz shall be entitled to amend the contents of these General Terms and Conditions of Hire with the hirer's consent provided that the changes, while taking the interests of Pilz into account, are acceptable to the hirer. A change in the hire charge shall be governed by section 10.3. Agreement to a contractual amendment shall be deemed given if the hirer has not objected to the amendment within four weeks of receipt of the notification of amendment.

(4) The laws of the United States of America and the State of Michigan shall apply.

(5) The place of performance for the obligations under this contractual relationship shall be the registered office of Pilz Automation Safety, LP in Canton, Michigan, USA.

(6) The exclusive place of subject matter and personal jurisdiction for all disputes arising from this contract shall be the state of federal court or arbitral body located in Wayne County, Michigan, USA. Hirer stipulates to personal and subject matter jurisdiction as described herein. Pilz shall also be entitled to file a claim in the jurisdiction and venue of hirer's registered office.

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