

## **PILZ SOUTH EAST ASIA**

### **GENERAL TERMS AND CONDITIONS FOR SERVICES**

#### **§ 1 SUBJECT MATTER**

These general terms and conditions for services ("**GTC Services**") apply to any and all services of Pilz South East Asia Pte. Ltd. ("**Pilz**") that Pilz renders to any corporate or individual customer ("**Client**"). Separate terms and conditions shall apply for contracts of work under which Pilz manufactures, assembles or otherwise creates a certain work product and for other Pilz products.

#### **§ 2 SCOPE OF APPLICABILITY**

(1) These GTC Services shall apply to all current and, by way of a blanket agreement, also to all future business relationships between Pilz and the Client, without Pilz needing to refer the Client to the GTC Services in each specific case, unless other general terms and conditions of Pilz have been incorporated into the respective contract(s).

(2) The quotations and declarations of acceptance, as well as all services, are provided exclusively on the basis of the GTC Services, in each case in their latest version. These GTC Services are freely accessible at any time on the Internet at **[insert link]**, and will be sent to the Client by e-mail or telefax upon request. These GTC Services may be saved and printed out by the Client in a reproducible form.

(3) Terms and conditions of the Client are hereby expressly rejected. Where the Client provides or maintains different, conflicting or additional terms and conditions, these shall not form part of the contract with Pilz, regardless of Pilz' knowledge of such terms and conditions, unless expressly agreed in writing by Pilz at the time the contract is concluded. This confirmation requirement shall still apply if Pilz supplies services to the Client without reservation, in full knowledge of the Client's terms and conditions.

#### **§ 3 FORMATION OF CONTRACT**

(1) All quotations of Pilz are non-binding.

(2) If the Client submits an order, Pilz may accept this order within 4 weeks unless otherwise indicated in the Client's order.

(3) Acceptance shall be declared by Pilz in writing (including by telefax or e-mail) in the form of an order confirmation. In the absence of any other written agreements, the written order confirmation of Pilz shall set out the services due.

(4) There are no verbal ancillary agreements at the time of conclusion of the contract or at any time thereafter. Only individual agreements (including ancillary agreements, supplements and

amendments to these GTC Services) explicitly agreed in writing between Pilz and the Client shall take precedence over these GTC Services.

(5) If there is any substantial increase in the price of raw materials, wages, taxes, public dues or difficulties resulting from laws or provisions by the time the order is executed, which would demonstrably and substantially affect the calculation on which the quotation was based, Pilz shall be entitled to increase the price by an appropriate amount.

(6) If the services depend on the supply of certain goods by a supplier of Pilz, it shall be subject to the proper and timely supply on the part of Pilz' suppliers; Pilz shall therefore be released from its obligations to the extent that Pilz does not receive supplies from its supplier. Pilz shall notify the Client without undue delay of the fact that the supplier has failed to supply to Pilz, and that Pilz therefore withdraws from the contract and that the consideration – where already paid by the Client – will be refunded without delay.

(7) Pilz reserves any and all intellectual property rights and copyrights on illustrations, drawings, drafts, models, samples, calculations, estimates and any other documents; they shall not be made available to third parties. Such information shall not be disclosed to third parties without express written agreement from Pilz. §§ 18 to 21 of these GTC Services shall apply for software accordingly.

(8) Any quotation of Pilz shall be based on the condition of the machine or system as indicated to Pilz by the Client. Pilz may assume that no defects or damages are present over and above usual wear and tear. Pilz shall notify the Client of any extensive damages or defects identified during dismantling or while providing the service.

#### **§ 4 SUPPLEMENTARY QUOTATION**

Where Pilz considers it necessary, Pilz shall provide the Client with a supplementary quotation. The scope and prices of the additional performance shall be agreed separately by Pilz and the Client in the supplementary quotation. The costs of materials stated in the quotation shall only apply in the event that Pilz is commissioned with the services stated there for the quoted scope.

#### **§ 5 SCOPE OF SERVICES**

The Client shall remain responsible for any final or interim work results. Pilz is not obliged to manufacture, assemble or otherwise create a certain work product or result. Exclusively the services stated in the quotation or order confirmation shall be due from Pilz. The Client acknowledges and agrees that when Pilz performs the services desired by the Client on the system or machine of the Client, there may be unforeseeable effects on the entire system or machine for Pilz, for example as a result of changing the parameters or software. The Client shall take the necessary measures to commission the system or machine at its own risk and Pilz shall have no responsibility or liability in this respect.

## **§ 6 EXECUTION OF ORDERS**

- (1) Pilz shall have sole authority to issue instructions to its employees.
- (2) Pilz shall be entitled to use third-party services for the execution of orders.

## **§ 7 OBLIGATIONS OF THE CLIENT TO COOPERATE**

- (1) The Client shall make all information, materials, equipment, documents, processes, etc. required for executing the order available to Pilz free of charge and in good time before execution of the order and shall deliver these to Pilz at the Client's own expense.
- (2) Where Pilz is engaged at the Client's premises, the Client shall grant the employees of Pilz or third parties appointed by Pilz the necessary access that Pilz requires to all premises, installations (hardware, software, networks, etc.) and other equipment in order to perform the services properly during customary working hours and subject to the internal rules on access. If necessary the Client shall also provide functioning work stations for the employees of Pilz or for third parties appointed by Pilz, free of charge.
- (3) The Client shall moreover participate in the execution of the order in the manner required and as instructed by Pilz.
- (4) If the Client does not meet its obligations pursuant to § 7 (1), (2) or (3) of these GTC Services, or fails to do so in a timely manner, and this leads to delays or additional work, Pilz shall be entitled to demand compensation for the resulting additional outlay.

## **§ 8 REMUNERATION AND TERMS OF PAYMENT**

- (1) The services rendered by Pilz shall be charged on the basis of the fixed price stated in the quotation or order confirmation, or based on time and materials, plus statutory Goods and Services Tax (GST) at the applicable rate, unless a different form of billing and payment has been agreed. For services rendered on a time or material basis, the hours worked and travel time shall be charged at the applicable hourly rates and the materials used invoiced at the prices applicable at the time the contract is concluded. Other expenses, in particular preparatory, travel, subsistence and accommodation costs, shall be charged additionally. Where a quotation or order confirmation contains price estimates for services based on time or materials, these estimates shall be non-binding.
- (2) The prices shall moreover apply subject to the condition that at the start of any overhauling and inspection work to be carried out on a machine or system by Pilz, the same shall be made available by the Client in a thoroughly cleaned state and the Client shall at its own expense and using its own personnel, provide assistance in accordance with the assembly procedures, in particular:
  - provide suitable assistance and manpower to the extent required; and

- provide access to the machine or system at the agreed time; any waiting time for the assembly personnel due to delayed access caused by the Client shall be billed by Pilz at the agreed hourly rates; and
- provide the necessary tools and auxiliary materials; and
- provide the necessary operating power (electricity, compressed air, water, etc.); and
- transport the parts for assembly to the designated point of assembly.

(3) Unless stated otherwise in the order confirmation or quotation, any remuneration shall be due for payment within 30 days of the date of invoice.

(4) Pilz shall be entitled, at its sole discretion, to request either payment in advance or a payment bond at a time to be specified by Pilz at its sole discretion. Pilz shall be entitled to withdraw from the contract if the Client fails to comply with such request.

## **§ 9 DEFAULT**

(1) The Client is in default of its obligation to pay if issued with a reminder by Pilz. No reminder is required if the due date of a payment is fixed or payment is to be made following the occurrence of an event within a certain period. However even in the absence of a reminder the Client is in default with the payment 30 days after receipt of the invoice or, if the date of receipt of the invoice cannot be determined by Pilz, 30 days after receipt of the service.

(2) If the Client is in default of its obligation to pay, from the date of default Pilz shall automatically be entitled to charge a default interest at a rate of 2 % per month on the outstanding amount without any notice of default being necessary. Interest for a full or a partial calendar month will be calculated on the basis of a 30 day-month and the actual number of days elapsed. Interest may be charged at a higher rate if Pilz can demonstrate that it has been charged a higher interest rate. This shall not affect the rights of Pilz to assert further damages or losses due to the Client's default.

## **§ 10 OFFSETTING AND RIGHTS OF RETENTION**

(1) The Client shall pay all amounts due in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

(2) Pilz may, at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Pilz to the Client.

(3) The Client shall not have any rights of retention.

## **§ 11 FORCE MAJEURE**

(1) **"Force Majeure Event"** means an event beyond the reasonable control of Pilz including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Pilz or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance problems with any law or governmental order, rule, regulation or direction including without limitation foreign trade regulations of the Federal Republic of Germany, export or embargo regulations of the European Union or other states or United States or European Union anti-terror regulations, accident, breakdown of plant or machinery, fire, flood, storm or default of Pilz' suppliers or subcontractors.

(2) Pilz shall not be liable to the Client as a result of any delay or failure to perform its obligations as a result of a Force Majeure Event.

(3) If the Force Majeure Event prevents Pilz from providing any of the services for more than 4 weeks, Pilz shall, without limiting its other rights or remedies, have the right to terminate the affected contract(s) immediately by giving written notice to the Client.

## **§ 12 LIABILITY**

(1) Subject to § 12 (2) below, Pilz shall not be responsible or liable to the Client in any way for any direct or indirect damage or loss, loss of profit, loss of use, loss of production, loss of contracts or for any other financial or economic loss whether suffered as a direct consequence and in the ordinary course of events, or indirectly otherwise or for any other indirect or consequential damage whatsoever.

(2) Pilz does not, and does not attempt to, exclude or restrict any liability:

- for death or personal injury resulting from negligence;
- for fraud or fraudulent misrepresentation;
- for any matter which it would be illegal or unlawful for the Seller to exclude or restrict or attempt to exclude or restrict its liability or which is otherwise not permitted to be excluded or restricted under the applicable law.

(3) In any event, Pilz' total liability to the Client, if any, shall in no circumstances exceed the amount actually paid by the Client to Pilz in respect of Pilz' supply of services under the then-current individual order.

(4) Pilz and the Client acknowledge and agree that the limitation of liability provisions set out in this § 12 are fair and reasonable given the nature and price payable for the services.

(5) The liability of Pilz is generally excluded where components other than those manufactured or specified by Pilz have been used by the Client or at the Client's request.

(6) Pilz shall further not be liable for any installation work carried out by the Client. The burden of proof that an installation is free from defects shall lie with the Client.

(7) This § 12 shall survive termination or expiration of any contract.

## **§ 13 CONFIDENTIALITY**

(1) The Client shall protect confidential information, i.e. all data and information of which the Client receives knowledge in connection with the contractual relationship with Pilz, such as illustrations, drawings, drafts, models, samples, calculations, cost estimates and other documents or articles ("**Confidential Information**"). The Client undertakes to use Confidential Information only for the purposes of the contract concluded with Pilz and not to circulate it among or otherwise disclose it to third parties without the prior express written consent of Pilz.

(2) The Client is obliged to protect Confidential Information against access by third parties. The Client shall exercise the same care in this respect that the Client would take in handling its own confidential information. The Client is obliged to secure from its employees the same obligations to protect Confidential Information. The Client shall notify Pilz without delay in writing if the Client acquires any knowledge of an impending or existing breach of the confidentiality agreement or has suspicions to that effect.

(3) The obligation to protect Confidential Information shall cease to apply if the Client can prove that:

- the Client has legitimately received this Confidential Information from third parties without imposition of a confidentiality obligation and without having any evidence that the third parties are in breach of confidentiality obligations imposed on these third parties; or
- the Confidential Information is generally known or has become generally known without breaching this confidentiality obligation; or
- this Confidential Information was or is developed by the Client independently of its disclosure by Pilz.

(4) Pilz reserves all rights to the Confidential Information (including copyrights, the right to register industrial property rights and patents, utility models, topography rights, designs, brands) and rights of ownership to the items made available and containing the Confidential Information (papers, disks etc.). In no case shall rights of ownership, licence, reproduction, use or other rights be granted to the Client for Confidential Information of Pilz, regardless of whether such information is covered by protective rights or not. In the case of items or documents on which Pilz has protective rights or which are protected as commercial or company secrets, the Client shall only be permitted to use the item in accordance with Pilz' express conditions, unless specific usage methods are permitted to a third party.

(5) At the request of Pilz, the Client shall without delay return any and all Confidential Information received from Pilz. The Client shall have no right of retention to any Confidential Information. Where Confidential Information is stored in electronic form the Client shall permanently delete all of the Confidential Information and any copies thereof and provide a certificate of destruction or deletion as appropriate upon Pilz' request.

(6) The Client shall be liable for any loss or damage resulting from the Client's failure to comply with this § 13.

(7) The above confidentiality obligations shall continue to apply for a period of 3 years after the end of the respective contract.

## **§ 14 DATA PROTECTION**

The parties shall only process or use personal data of the other party for contractually agreed purposes and in compliance with the applicable data protection laws and regulations.

## **§ 15 INTELLECTUAL PROPERTY/WORK RESULTS**

(1) Any and all intellectual property rights, including without limitation the rights to inventions, arising out of or in connection with the services of Pilz shall be owned by Pilz.

(2) The Client acknowledges that, in respect of any third party intellectual property rights, the Client's use of any such intellectual property rights is conditional on Pilz obtaining a written licence from the relevant licensor on such terms as will entitle Pilz to license such rights to the Client.

(3) The transfer of ownership of and rights of use to all other work results achieved within the scope of performance of the services provided by Pilz such as documentation, reports, planning documents, evaluations, drawings, program material and similar, shall require a separate written agreement. Pilz shall at all times have a free-of-charge and non-exclusive right of use to these results of work, for research and teaching purposes.

(4) Pilz shall have no liability whatsoever if technical documents provided by the Client or on its behalf are in breach of existing copyrights, industrial property rights or other third-party rights. The Client shall be liable if rights of third parties are breached by the execution of the Client's order. The Client shall immediately defend, indemnify and hold harmless Pilz and its group companies, affiliates, officers, directors, employees, agents and distributors from and against from all third-party claims, demands and liabilities arising from or related to any such breach of rights.

(5) This § 15 shall survive termination or expiration of any contract.

## **§ 16 TERMINATION/SUSPENSION OF SERVICES**

(1) Without limiting its other rights or remedies, Pilz may terminate the contract with the Client with immediate effect by giving written notice to the Client if:

- the Client commits a material breach of any term of the contract and, if such a breach is remediable, fails to remedy that breach within 7 days of the Client being notified in writing to do so; or

- the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts or Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors or if the Client goes into creditors' liquidation, bankruptcy or any other form of administration by an appointed receiver or the like.

(2) Without limiting its other rights or remedies, Pilz may terminate the contract with the Client with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so.

(3) Without limiting its other rights or remedies, Pilz may suspend provision of the services if the Client becomes subject to any of the events stated in § 16 (1) above or if Pilz reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due on the due date for payment.

(4) On termination of the contract for any reason:

- the Client shall immediately pay to Pilz all of Pilz' outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has been submitted, Pilz shall submit an invoice, which shall be payable by the Client immediately upon receipt; and
- the Client shall return all of Pilz' materials and deliverables which have not been fully paid for. If the Client fails to do so, Pilz may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the contract; and
- the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall remain unaffected, including the right to claim damages in respect of any breach of the contract which existed at or before the date of termination or expiry; and
- clauses which expressly or by implication survive termination shall continue in full force and effect.

## **§ 17 HANDOVER OF DOCUMENTS AND ARTICLES, RIGHT OF RETENTION**

(1) Once an order is complete, the Client may demand handover of documents and articles entrusted to Pilz. Pilz may refuse handover until its entitlements under the contract have been satisfied.

(2) Pilz may make and retain transcripts or copies of documents that Pilz hands back to the Client where this is necessary for Pilz to fulfil statutory obligations to keep archives.

## **§ 18 OBJECT CODE, RIGHTS TO THE SOFTWARE**

(1) If Pilz produces software for the Client under a contract, the following provisions shall apply to its use. Source code shall not be the subject of any transfer of rights and Pilz reserves all ownership rights thereto. At the request of the Client, an additional agreement such as an escrow agreement on the source code may be concluded.

(2) The Client shall be entitled to use the software produced solely for it for its own purposes as contractually agreed with Pilz, following payment in full of the agreed sum. To that end, the Client shall be granted an ordinary, non-exclusive, perpetual, non-sublicensable right to use the software, as explained in detail below in §§ 19 to 21 of these GTC Services. The software



may not be used to control production machines or to control multiple systems at customers of the Client without an express prior contractual agreement with Pilz (cf. § 20 of these GTC Services). Use free of charge for test purposes prior to purchase shall be permitted.

(3) To the extent that rights are not expressly granted to the Client in these GTC Services, all rights to the software created by Pilz under a contract for work and to all copies made by the Client – 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 software. The same applies to any editing of the software by the Client. This shall not affect the Client's ownership of the respective data carriers supplied to it. For parameterization or adaptation of Pilz standard software, the general terms and conditions for the sale of software products, except for PAS, shall apply.

## **§ 19 REPRODUCTION RIGHTS**

(1) The Client is allowed to make only one reproduction of the software for backup purposes. If the routine backing-up of the entire data set, including the software, is required for reasons of data security or for assuring swift reactivation of the computer system following total failure or for internal or external auditing, the Client may make the minimum number of backup copies that is absolutely necessary. The appropriate data carriers shall be identified appropriately. The backup copies from routine data backup procedures may only be used for archive purposes.

(2) Any other reproduction of the software, including output of the program code on a printer and photocopying of the documentation requires Pilz' written authorization. Any additional documentation for multiple use of the software must be obtained from Pilz.

## **§ 20 MULTIPLE USE AND NETWORK USE**

(1) The Client may use the software on the contractually agreed system or machine for the contractually agreed purpose. However, if the Client changes the system or machine, it must delete the software from the system or machine previously used.

(2) The Client is not allowed any simultaneous programming, storage or use of the Software on more than one system or machine. If the Client would like to use the software simultaneously on more than one system or machine, for example in several production machines or to control several systems, the Client must acquire a corresponding number of licences for the software. Where Pilz has granted reproduction rights, the Client shall receive written confirmation of the number of reproductions – software product certificate – that the Client is entitled to make of the data carrier supplied with the licence, enabling the software to be used simultaneously on several systems or machines, up to the number of licences issued. The copyright notice and all other proprietary notices shall be applied to every copy or partial copy, or the installation of the copy noted in the documentation for the system or machine. Existing copyright notices or other proprietary notices shall not be removed.

(3) The Client undertakes to observe the notes on reproduction supplied to it together with the software product certificates, and already made available to it in the product description. The Client shall furthermore keep proper, full records of all reproductions in such a way that the number of reproductions made and the area of use can be traced. The Client shall make these records available to Pilz at any time upon request. Upon 14 days' prior notice, Pilz shall be entitled to conduct an audit to ensure that the Client is in compliance with the purchased licences and the contract by an auditor appointed by Pilz. The auditor shall be granted access to the business premises of the Client during normal business hours. The Client must provide the auditor with full access to all relevant records and facilities necessary to conduct the audit. If an audit reveals underpaid licence fees or other amounts due to Pilz but unpaid, Pilz will invoice the Client accordingly and the Client shall promptly pay Pilz any underpaid licence fees or other amounts due to Pilz based on Pilz' pricing in effect at the time the audit is completed. In the case of any underpaid licence fees or other amounts due to Pilz revealed, the Client shall also bear the costs of conducting the audit.

## **§ 21 DECOMPIlation AND MODIFICATION OF THE SOFTWARE BY THE CLIENT**

(1) The Client shall not be entitled to decompile the software into the source code or transfer it into other forms or into other programming languages, edit or rework the software as well as reproduce it above and beyond the scope stated in § 19 of these GTC Services. The Client shall not remove any alphanumeric identifiers on the data carrier; if the Client is entitled to make copies, the alphanumeric identifiers shall be copied verbatim.

(2) The Client may analyse the software 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 Client, its employees or a third party expressly authorised by the Client; and
- the information required for establishing interoperability is not accessible without decompilation to the Client or to a third party appointed by it, nor has it been made available to the Client even though the Client has requested Pilz to supply it, and it has set Pilz an appropriate extension for its supply; and
- the analytical and processing actions of the Client shall be limited to those parts of the software that are necessary for establishing interoperability.

(3) The Client may not use the information obtained through the actions pursuant to § 21 (2) of these GTC Services 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. It 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.

(4) To the extent that the Client is unable to or does not wish to perform the aforementioned exceptional activities itself or have them performed by its own employees, before

commissioning third parties it 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.

## **§ 22 FINAL PROVISIONS**

(1) No variation of the contract between Pilz and the Client, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Pilz. A waiver of any right of any party under the contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

(2) Nothing in the contract between Pilz and the Client is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

(3) The contract and all matters arising out of or relating to the contract between Pilz and the Client shall be governed by the laws of the Republic of Singapore, without regard to the conflicts of law's provisions thereof.

(4) The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Republic of Singapore for the purpose of hearing and determining any dispute arising out of or in connection with the contract or its formation or validity and for the purpose of enforcement of any judgment against their respective assets.

(5) A person (including companies and any other legal entities) who is not a party to the contract between Pilz and the Client shall have no rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) to enforce any of the terms of the contract.

(6) If any term or provision of the contract between Pilz and the Client is or becomes invalid, illegal or unenforceable in any jurisdiction, the invalidity, illegality or unenforceability does not affect any other term or provision of the contract or invalidate or render unenforceable the term or provision in any other jurisdiction and if any provision of the contract is determined to be unlawful, all such provisions shall be deemed severed from the contract, but the rest of the contract shall remain in full force and effect, and in substitution for any provision held unlawful, there shall be substituted a provision of similar import reflecting the parties' original intent to the extent permissible under law.

valid from 1 April 2016

### **Pilz South East Asia Pte. Ltd.**

25 International Business Park, #04-56 German Centre  
Singapore 609916

Telephone: +65 6839 2920

E-Mail: [sales@pilz.sg](mailto:sales@pilz.sg)

Web: <http://www.pilz.com>