

## Sale of software products, except for PAS

### § 1

#### Subject matter of the agreement

Pilz GmbH & Co. KG (hereinafter referred to as Pilz) permanently permits the use of a standard software product or several different standard software products in object code by the customer, under the software licence agreement concluded with the customer, with the exception of PAS products, (hereinafter: the software) and grants the customer the rights of use to the software that are described in Item 4.11 and Items 6 to 9 of these General Terms and Conditions. PAS products are covered by the General Terms and Conditions for PAS products, which can be accessed at [www.pilz.com/en-INT/termsandconditions](http://www.pilz.com/en-INT/termsandconditions), Pilz AGB PAS EN.pdf. If software of Pilz is sold together with software of other manufacturers (third-party 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 refer expressly to these licence terms of the other manufacturer 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 as the software manufacturer and the customer, which permanently acquires the software from Pilz, without Pilz needing to refer the customer back to the General Terms and Conditions in each specific case.

(2) The quotations and declarations of acceptance, 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/termsandconditions>, Pilz AGB EN.pdf, 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 supplies goods to the customer without reservation, 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 regulated 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 software is to be used, as well as the nature of the licences available from Pilz for the respective software – e.g. basic licence, user licence, project licence, basic upgrade licence, user upgrade licence or project upgrade licence – are indicated in the Pilz product description.

(2) Pilz shall permit the customer the use of one instance of the software on CD-ROM as well as one printed version of the accompanying user documentation, or allow the customer one download of the software plus user documentation in printable form.

(3) A warranty shall only be granted if it has been expressly designated as such and has been declared in writing by the Pilz management. The properties of the software 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, descriptions, illustrations and drawings, specified measurements 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.

(4) Subject to different arrangements agreed in the contract by the parties, the following work shall not come under the subject matter of the agreement:

- 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 software.

All this work shall be invoiced separately by Pilz on the basis of the current list prices for such work.

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

(6) The customer shall make appropriate provisions for a scenario in which the software does not work correctly, whether in full or in part.

### § 4

#### Formation of contract

(1) Quotations by Pilz are not binding. The quotations made by Pilz in the E-Shop constitute a non-binding invitation to the customer to order goods from Pilz. With regard to orders placed online, please refer below to Item 4.6 onward of these General Terms and Conditions.

(2) If the customer's order qualifies as a quotation pursuant to Section 145 of the German Civil

Code, Pilz may accept this within 4 weeks unless otherwise indicated in the customer's order.

(3) Acceptance may be declared either in writing through confirmation of the order (including by telefax and e-mail) or by shipping of the software to the customer. In this case, too, the customer shall receive a written order confirmation. In the absence of any other written agreements, the written order confirmation of Pilz shall set out the contractually due performance.

(4) 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 Terms and Conditions) expressly reached between 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. 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.

(5) We reserve the right to make changes to the software within the scope of what is reasonable for the customer.

(6) If use of the software is permitted by download, the customer initially registers on the Pilz homepage at [www.pilz.com/eshop/pilz/register.do](http://www.pilz.com/eshop/pilz/register.do). After registration, the customer may initially download a demo version of the desired software. For the use of the demo version, Pilz shall grant the customer the demo licence envisaged in Item 4.11 of these General Terms and Conditions.

(7) The telecommunications costs incurred for the download shall be borne by the customer, including for repeat downloads of the software.

(8) If the customer decides to use the full version of the software, he shall log in via the Pilz homepage and order a chargeable licence for the full version of the software in question. By placing an order in the Pilz E-Shop, the customer submits a binding offer to conclude a purchase contract.

(9) Pilz shall confirm receipt of this order without delay. However this shall not yet constitute the formation of a contract.

(10) Pilz may accept the binding offer by the customer, unless otherwise agreed with the customer, up to 7 days after its receipt by Pilz by means of transmitting an order confirmation. The contract with the customer shall only be formed upon receipt of the order confirmation by the customer. The text of the contract is not saved by Pilz. The customer is then invoiced for the purchase price of the full version of the software. Pilz encloses the activation code (licence key) with this invoice. This code is to be entered by the customer during the installation process in order to turn the demo version into the full version of the software. The licence key is likewise to be kept safe for later use. By confirmation of the licences acquired by the customer, after payment of the purchase price the customer shall receive the software or the corresponding software product certificate(s).

## Sale of software products, except for PAS

(11) After downloading of the demo version of the software, Pilz shall initially enable its temporarily unlimited use within the scope set forth below in Items 6 to 9 of these General Terms and Conditions. After receipt of the licence key, the customer shall be entitled to use the full version of the software as set forth below in Items 6 to 9 of these General Terms and Conditions. However, this licence for the full version of the software is issued subject to conditions precedent. The licence for the full version shall end if the customer does not pay the purchase price within 30 days of receipt of the invoice by the customer, unless the customer is entitled to withhold the payment. Any further use of the full version of the software thereafter shall be equivalent to a breach of copyright, with the consequence that Pilz may demand that the customer cease its use, delete the full version of the software as well as any copies of it made, and pay compensation.

### § 5

#### Licence and protective rights

(1) With regard to the features of the licensing of the rights to the software during the acquisition process, we refer initially to Item 4.11 of these General Terms and Conditions.

(2) To the extent that rights are not expressly granted to the customer in these General Terms and Conditions, all rights to the software and to 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 software. The same applies to any editing of the software by the customer. The customer's ownership of the individual data carriers supplied to him shall – after the ending of retention of title pursuant to Item 22 of these General Terms and Conditions – remain unaffected.

### § 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. Necessary reproduction includes installation of the software from the original data carrier or through download on the mass storage device of the hardware used, and loading of the software in the working memory.

(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 of the software provided shall be identified as such and the Pilz sticker supplied with the documentation shall be affixed to it.

(3) If the routine backing-up of the entire data set, including of the software used, is indispensable 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 archive purposes.

(4) The customer may only make other reproductions of the software, 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. Any additional copies of the documentation required for employees shall be obtained from Pilz. The customer may reproduce the software on the original data carrier or obtained through download provided he has acquired the licences to do so from Pilz. In this respect, Item 7 of these General Terms and Conditions applies in addition.

### § 7

#### Multiple uses and network use

(1) The customer may use the software on the hardware available to him. However if the customer changes the hardware, he must delete the software from the hardware previously used.

(2) Simultaneous programming, storage or use on more than one set of hardware is fundamentally impermissible. If the customer would like to use the software simultaneously on more than one hardware configuration, for example by several employees, he must acquire a corresponding number of licences for the software. Where Pilz has granted reproduction rights, the customer shall receive written confirmation of the number of reproductions – software product certificate – that the customer is entitled to make of the data carrier supplied with the licence, enabling the software to be used simultaneously on several workstations, up to the number of licences issued. The copyright notice and all other proprietary notices shall be applied to each copy or partial copy. Existing copyright notices/other proprietary notices shall not be removed.

(3) The use of the software provided within a network or other multi-station computer system shall not be permissible to the extent that this creates the possibility of multiple use of the software simultaneously. If the customer would like to use the software within a network or other multi-station computer system, he must prevent simultaneous multiple use through access protection mechanisms or pay a special network fee (multiple licence) to Pilz, the level of which shall depend on the number of users connected to the computer system. Pilz shall notify the customer without delay of the multiple licence fees to be paid in each individual case, as soon as the latter has informed Pilz in writing of the planned network use including the number of affiliated users. Use on a network shall only be permissible after payment in full of the multiple licence fees.

(4) The customer undertakes to observe the notes on reproduction supplied to him together with the software product certificates, and already made available to him in the product description. The customer shall furthermore keep proper, full records of the whereabouts of all reproductions in such a way that the number of reproductions made and the area of use can be traced. He shall make these records available to Pilz at any time upon request. At 14 days' notice, Pilz shall be entitled to have the records checked by an independent, certified auditor of its own choice. The auditor shall be granted access to the business premises of the customer during normal business hours. If discrepancies from the contractual agreements to the disadvantage of

Pilz are established, the customer shall be obliged to reimburse Pilz the costs incurred for the audit.

### § 8

#### Decompilation and modification of the software by the customer

(1) The customer shall fundamentally 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 Item 6 of these General Terms and Conditions. The customer shall not remove any alphanumeric identifiers on the data carrier; if the customer is entitled to make copies, the alphanumeric identifiers shall be copied unamended.

(2) If Pilz does not meet its warranty obligations within an appropriate extension 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 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 software that are necessary for establishing interoperability.

(4) The customer may not use the information obtained through the actions pursuant to Item 8.3 of these General Terms and Conditions 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.

(5) 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.

## Sale of software products, except for PAS

### § 9

#### Resale and sublicensing

(1) The customer may permanently sell or give the software, including the user guide and other accompanying materials, to third parties, provided the acquiring third party also declares his agreement to the continuing validity of these contractual terms towards the customer. In the event of transferring the software, the customer must hand over all copies of the software, including any existing backup copies, to the acquiring third party or destroy the copies not handed over. In the event of such a transfer, the customer's right of use shall expire. He shall be obliged to inform Pilz of the sale.

(2) The customer may permit third parties to use the software, including the user guide and other accompanying materials, on a temporary basis provided this does not involve letting for commercial purposes or leasing, and the third party also declares his agreement to the continuing validity of these contractual terms to the customer and the customer permitting use of the software hands over all copies of it, including any existing backup copies, to the third party or destroys the copies not handed over. For the period for which the third party is permitted to use the software, the customer permitting its use shall have no right to use the software itself. The customer shall inform Pilz that use has been granted. Letting for commercial purposes is not permissible.

(3) To the extent that the customer has acquired several licences for the software under one software product certificate to enable simultaneous use in accordance with Items 7.2 and 7.3 of these General Terms and Conditions, these bulk licences may only be resold, given away or temporarily loaned as an entity.

(4) The customer may not permit use of the software by third parties if there are sufficient grounds for suspicion that the third party will breach these contractual terms, and in particular carry out unauthorised reproduction. The same applies in respect of the customer's employees.

(5) To the extent that the customer also acquires an upgrade for the software, after installing the upgrade he may no longer use the previous version or pass it on to third parties.

### § 10

#### Delivery

(1) Part shipments shall be permissible to the extent that is reasonable for the customer.

(2) Unless otherwise indicated in the contract between Pilz and the customer, delivery "ex works" in accordance with Incoterms 2010 shall be agreed.

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

(4) Delivery dates and delivery deadlines shall always only be approximate and shall not be binding for Pilz, unless a delivery date was expressly agreed in writing as binding upon conclusion of the contract. The delivery deadline or delivery date has been met if the software has left the Pilz plant before these have passed.

(5) If the customer demands amendments or supplements to the contract after its conclusion, e.g. customer-specific amendments to the software that render it impossible to meet the delivery deadline or delivery period, the delivery date shall be delayed or the delivery deadline extended in accordance with the amendments and supplements demanded.

(6) The customer shall be obliged to accept a delivery item that exhibits only negligible differences compared to the agreed properties or negligible impairment of use.

(7) The costs of shipping shall be met by the customer, with the choice of shipment route and method at the discretion of Pilz. Transport insurance shall only be concluded at the express wish and on the account of the customer.

### § 11

#### Force majeure

The delivery date shall be postponed and the delivery period extended appropriately in the event of measures in connection with industrial disputes, in particular strikes and lockouts, as well as in the event of other unforeseeable occurrences for which Pilz is not responsible, to the extent that such impediments affect the completion or shipment of the software. The aforementioned circumstances shall not be the responsibility of Pilz even if they arise during an existing delay. Pilz shall notify the customer of the start and end of such impediments within three working days.

### § 12

#### Passage of risk

(1) The risk of accidental loss or accidental deterioration of the software shall pass to the customer as soon as the software has left the premises of Pilz or Pilz has given notice of readiness to ship.

(2) If the customer defaults on accepting the software, transfer shall still be deemed to have taken place.

(3) If shipment of the subject matter of the contract is delayed as a result of circumstances that are the responsibility of the customer, the risk passes to the customer from the day that notification of readiness to ship is issued.

(4) Insofar as Pilz has contractually agreed to assume the shipping costs, delivery or installation of hardware and/or software relating to the subject of the contract, this shall not affect the above clauses regarding transfer of risk.

### § 13

#### Default and impossibility

(1) If Pilz should default on its obligation to deliver through simple negligence, the customer may for each week or part of week of default demand compensation amounting to 0.5 % of the price of the portion of the deliveries that cannot be commissioned due to default, but to no more than 5 % in total. The customer shall have the option of demonstrating higher losses due to default; Pilz may demonstrate lower losses.

(2) Notwithstanding a right of withdrawal of the customer in the event of defects (see Item 16 Guarantee and Item 17 Defects of Title in these General Terms and Conditions), the customer may only withdraw from the contract due to the impossibility of performance by Pilz or due to default if Pilz is responsible for dereliction of duty.

(3) In the event of default, withdrawal or compensation in place of performance shall moreover require the customer to have first given Pilz in writing a suitable deadline of at least 2 weeks to fulfil the contractually due performance, stating expressly that he withdraws from the contract and/or claims compensation if that deadline is not met (setting of deadline with warning of rejection of performance). After this deadline has passed, the customer is obliged to declare, at the request of Pilz, whether he still insists on performance or claims compensation pursuant to Section 281 (4) of the German Civil Code or withdraws from the contract. If the customer does not make any such declaration within a suitable period set by Pilz, the customer shall no longer be entitled to decline performance or withdraw, nor may he claim compensation in lieu of performance; he may merely accept performance.

(4) Setting of a deadline with warning of rejection of performance may only be dispensed with if Pilz seriously and definitively refuses the contractually due performance or in the event of special circumstances that justify immediate withdrawal, after weighing up the interests of both parties.

(5) The customer may not withdraw before the due date of performance, nor in the event of merely immaterial dereliction of duty by Pilz. Finally, withdrawal is excluded if the customer is solely or overwhelmingly responsible for the circumstances that would entitle him to withdraw, or if circumstances for which Pilz is not responsible arise during the customer's default of acceptance.

(6) The entitlement to compensation or reimbursement of expenses from default or impossibility shall be subject to Item 19 of these General Terms and Conditions.

### § 14

#### Test phase

All warranty claims are excluded in the event that the customer or a third party has not yet purchased the software but is using it in a test phase. During the test phase, in which the software is 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

## Sale of software products, except for PAS

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.

### § 15 Notice of defect

(1) The customer shall inspect the software supplied, including the documentation, within 10 working days of delivery, in particular in respect of the completeness of the data carriers and manuals as well as the functionality of fundamental program functions. Notice of defects of title or material defects, the absence of a property possibly guaranteed by Pilz in the software or documentation as well as delivery of excess amounts, short amounts or wrong deliveries (defects) 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 from the end of the inspection period stated in sentence 1.

(2) Notice of defects not identifiable in a customary receiving inspection pursuant to Item 15.1 of these General Terms and Conditions shall equally be given without delay by the customer, but no later than 14 days after detection.

(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 possible, working results generated through use of the software shall be documented to enable Pilz to achieve an understanding of the defect.

(4) If notice of defects is not given within the periods set forth above in Items 15.1 and 15.2 of these General Terms and Conditions, all warranty claims against Pilz shall be excluded.

### § 16 Guarantee against material defects

(1) Pilz shall support the customer with information 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 software is not used on suitable hardware of the customer or third party, which meets the hardware requirements stated by Pilz, or
- the error stems not from the Pilz software as such, but is caused solely by third-party software not supplied by Pilz and Pilz is not responsible for the compatibility of the software with such third-party software, or
- it is attributable to other activities by the customer 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 17 – Defects of Title – of these General Terms and Conditions – the guarantee provided by Pilz for defects notified within the proper periods pursuant to Item 15 of these General Terms and Conditions shall be limited 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 passage of risk.

(4) The customer shall, in consultation with Pilz, grant the latter the necessary time and opportunity to rectify or replace the delivery items. Bearing in mind the complexity of the software, Pilz shall be granted up to three attempts at rectification.

(5) Pilz may also rectify defects in the software through a suitable form of delivery of a data carrier or enabling a download with the latest product version – update or upgrade – of the software, at its own choosing. The same applies even if the software constitutes a software package bringing together several different standard software products.

A new product version – update or upgrade – of the software – whether individual software or software package – shall also be accepted by the customer if the adaptation work he will need to perform is within reason.

If a more recent update or upgrade to the software is not available when the improvement is needed, Pilz shall be entitled to supply the customer with an interim solution to bypass the defect until a new product version 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 customer's premises or at Pilz, at the discretion of Pilz. If a service (repair) agreement is in place between 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 software is used in accordance with these General Terms and Conditions. Pilz shall be supplied with the documents and information 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 necessary hardware and software, as well as any other operating conditions which may be required, together with appropriate operating personnel.

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 transport, travel and accommodation costs that result from travelling to the actual place of use of the software, plus any other costs arising from remedial action, unless transfer to another place reflects the intended use of the software.

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

(8) Pilz shall moreover not be obliged to rectify or replace delivery items if this is only possible at undue cost. Such costs are undue if they exceed 25 % of the purchase price of the software.

(9) Any parts replaced under guarantee shall become the property of Pilz.

(10) 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 rectification twice or made one replacement delivery and the notified defect is nevertheless not remedied, if Pilz unjustifiably refuses or unduly delays necessary remedial action or replacement delivery 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 refuses remedial action as undue – the customer may invoke the statutory legal redress of withdrawal 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 19 of these General Terms and Conditions.

(11) Where the breach of contract is slight, particularly in the case of minor defects, the customer shall have no right of withdrawal.

(12) In the event of merely a minor defect, the compensation pursuant to Section 281 of the German Civil Code – compensation in lieu of performance – shall be calculated based on the difference between the purchase price and the value of the defective software.

(13) For third-party software, the guarantee provided 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 guarantee within the framework of these terms and conditions. Any warranties furnished by manufacturers of third-party software shall not be affected.

(14) 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 customer as having caused the supposed defect.

### § 17 Guarantee against defects of title

(1) Pilz guarantees that the contractually agreed use of the 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 software delivered by Pilz and used in the contractually agreed manner, if notice of defect is given pursuant to Section 15 of these General Terms and Conditions Pilz provides a guarantee that Pilz shall, at its own discretion, obtain a lawful way to use the software for the customer or modify or exchange the software in such a way that the protective right is not breached. Pilz may exchange the relevant software for an equivalent software package that meets the contractual provisions, provided this is reasonable for the customer. If Pilz is unable to do so on appropriate terms, the customer shall have the statutory rights of withdrawal or reduction, as well as entitlements to compensation or reimbursement of expenses. The obligation of Pilz to pay compensation or reimburse expenses shall be in accordance with Item 19 – Compensation – of these General Terms and Conditions.

## Sale of software products, except for PAS

(2) The customer shall notify Pilz without delay in writing if third parties assert protective rights (e.g. copyrights or patent rights) over the software. The customer 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 consultation 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-compliant use of the software). If the customer should cease to use the 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.

(3) Claims of the customer are excluded if and insofar as he is responsible for the breach of protective 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 example, by the software being modified by the customer or used in conjunction with products not supplied by Pilz.

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

### § 18

#### Time-barring of claims due to material defects and defects of title

The limitation period for all claims for defects shall be 12 months from handover of the software. For claims for injury to life, limb or health caused by a defect for which Pilz is responsible, as well as if the defect arises from intentional or grossly negligent dereliction of duty by Pilz, for fraudulent concealment of a defect or defects of title within the meaning of Section 438 (1) No. 1 a) of the German Civil Code as well as for warranties (Section 444 of the German Civil Code), the statutory limitation periods shall apply. The same shall apply to claims under product liability law.

### § 19

#### Compensation

(1) Unless otherwise agreed in these provisions, all compensation claims of the customer for losses of any kind, including for reimbursement of expenses 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 or from tort. The exclusion of liability shall also apply if Pilz has used subcontractors or vicarious agents.

(2) In a departure from Item 19.1 of these General Terms and Conditions, Pilz shall be liable, whatever the legal basis, only – 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 software,

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

(d) Pilz is in breach of material contractual obligations, 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 relies or is entitled to rely (material contractual obligations).

(3) In the event of Item 19.2 (d) of these General Terms and Conditions – Breach of Material Contractual Obligations – in the case of merely simple negligence the liability of Pilz shall however be limited in its amount to reimbursement of the foreseeable, 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.

### § 20

#### Price and terms of payment

(1) In the absence of any specific agreement, prices are exclusive of the statutory rate of VAT.

(2) Discount shall only be offered by specific written agreement.

(3) Unless stated otherwise in the order confirmation/quotation, the net sales price (before deductions) shall be payable within 30 days of the invoice date. If the customer defaults on payment, Pilz shall be entitled to charge interest on the money owed at a rate of 8 % p.a. above the base interest rate of the European Central Bank. Pilz reserves the right to provide evidence of and claim for greater losses resulting from default. For his part the customer shall have the right to prove a lower level of loss.

### § 21

#### 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.

### § 22

#### Retention of title

(1) All deliveries of software shall remain the property of Pilz until the payment in full of all receivables of Pilz existing at the time of conclusion of the contract, whatever the legal basis. If Pilz has accepted cheques or bills of exchange

on account of performance in the interests of the customer, all deliveries shall remain the property of Pilz until such liabilities are fully discharged. The same shall apply if payments have been made for specially designated receivables. The addition of individual receivables to an open account as well as the striking and acceptance of such a balance shall not affect retention of title.

(2) If the customer does not behave in accordance with the contract, and if he falls in arrears particularly with his payment obligations, Pilz shall be entitled to take back the software after issuing a reminder and setting a period of grace. In this case the customer shall be obliged to surrender it. Neither the assertion of retention of title nor the pledging of the software by Pilz as such constitutes withdrawal from the contract. If retention of title is asserted, the right of the customer to continue using the software shall cease. All copies of the software made by the customer must be deleted. The customer declares his consent as of now to allow the persons appointed by Pilz to check deletion of the software and of copies made of the software to enter and drive onto the premises on which the software is situated for that purpose, and to tolerate the necessary work on his data processing system to make deletions if deletion has not taken place.

(3) The customer shall notify Pilz without delay of enforcement measures by third parties for software subject to retention of title, handing over the necessary documents for contending such action.

(4) All software subject to retention of title shall be insured by the customer at his own expense, in particular against fire and theft. All claims by the customer against the respective insurers shall be assigned to Pilz as of now with regard to the software that is subject to retention of title. Pilz hereby accepts this assignment.

(5) Pilz is obliged and prepared to return or release to the customer the security granted to Pilz to the extent that it exceeds the agreed cover limit if the value of the overall security granted to Pilz exceeds the receivables of Pilz by more than 20 %.

### § 23

#### Confidentiality

(1) The customer shall protect confidential information, i.e. all data and information of which he receives knowledge in connection with the contractual relationship with Pilz (hereinafter: "Confidential Information"). The customer 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 customer is obliged to protect Confidential Information against access by third parties. Both any original data carriers supplied and backup copies of the software shall be kept in a secure location away from unauthorised access by third parties. The same shall apply to the passwords and licence keys required to download the software. The customer shall exercise the same care in this respect that he would take in handling his own confidential information, but

## Sale of software products, except for PAS

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 acquires 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 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 Information from third parties without imposition of a confidentiality obligation and without him having 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 breaching this confidentiality obligation;
- this Confidential Information was or is developed by the customer 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 customer for Confidential Information of Pilz, regardless of whether such information is covered by protective rights or not.

(5) At the request of Pilz, the customer shall without delay return all Confidential Information received from Pilz. An exception merely applies for copies that must be archived in fulfilment of binding statutory requirements. All Confidential Information present on computers shall be deleted upon request.

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

(4) The law of the Federal Republic of Germany 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 Ostfildern.

(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 jurisdiction in Germany, 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 October 1, 2014

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### § 24

#### Concluding provisions

(1) The customer is hereby informed that Pilz will collect, store and process his 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 required for that purpose.

(2) Pilz shall be entitled to amend the contents of these GTCs with the customer's consent, provided the changes, while taking Pilz's interests into account, are reasonable for the customer. Agreement to the contractual change shall be deemed to be given if the customer 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.