



Pilz Services Terms and Conditions



the spirit of safety

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The following terms and conditions shall apply to the delivery of services and related goods including supply of personnel, erection and installation or mechanical and electrical structures, cabling etc. maintenance, consultation, and programming, amongst others.

1. GENERAL PROVISIONS

1.1 Definitions and General Provisions

1.1.1 Pilz shall mean Pilz GMBH & Co. KG with its registered address at Felix-Wankel-Straße 2,73760 Ostfildern Germany or the Pilz company as indicated on the Proposal to which these terms and conditions are incorporated.

1.1.2 The client shall mean any company or partnership entering an agreement to purchase services from Pilz

1.1.3 Purchase Order shall mean Purchase Order issued to Pilz by client or any electronic communication from the client to Pilz referencing client's Purchase Order Number. An order shall only be binding if it is placed in writing, by email, by fax or other means of telecommunication. Orders placed by phone shall only be binding if Pilz subsequently confirms them in writing or through electronic means. An order confirmation will not be issued by Pilz, unless requested specifically by the client.

1.1.4 These terms and conditions shall form the basis for each order. If general terms and conditions of the client are in conflict with the Pilz terms and conditions of supply, these terms and conditions of procurement shall apply unless the client objects to this in writing by fax or email within 3 days following the placement of the order. The submission of other general terms and conditions by the client shall not suffice.

1.1.5 The agreement shall mean the agreement between the parties hereto comprising the purchase order, the Pilz services proposal and these conditions.

1.1.6 Unless incorporated in the contract by express reference in the Purchase Order any document or documents emanating from the client which contains printed or standard conditions have been and will be sent by the client and received by Pilz on the understanding that such conditions appear on the client's documents because they are printed thereon but have no legal effect whatever, and the client waives any rights which the supplier otherwise might have to rely on such conditions.

1.1.7 Service shall mean any goods or services including the provision of personnel for carrying out agreed works as defined in the Purchase Order and Pilz Service Proposal

1.2 Law and Language

1.2.1 The law of the Federal Republic of Germany or of the country in which the Pilz subsidiary delivering the service is registered shall apply exclusively.

1.2.2 Communications and Language. Whenever provision is made for the giving or issue of any notice, instruction or other communication by any person, unless otherwise specified such communication shall be written in the language of the country in which the Pilz subsidiary delivering the service is registered.

1.2.3 Unless agreed otherwise, the place of fulfilment shall be Felix-Wankel-Str. 2, 73760 Ostfildern or the location of the Pilz company / subsidiary delivering the service.

1.2.4 If Pilz's client is a businessman, a public body or a separate estate under public law, Pilz's place of business shall be the exclusive court of jurisdiction for all disputes arising from this contract. This shall also apply if the client 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.

1.2.5 If individual provisions of this contract, including these general terms and conditions of business, should be unenforceable with the contracting partner in whole or in part, the remaining provisions shall continue in full force and effect.

1.2.6 The provision that cannot be enforced in whole or in part shall be replaced by a provision, whose commercial purpose approaches that of the unworkable provision as closely as possible.

1.3 Assignments and Sub-Contracts

1.3.1 Pilz shall not assign the benefits, other than money, from the Agreement without the written consent of the client.

1.3.2 Neither the Client nor Pilz shall assign obligations under the Agreement without the written consent of the other Party.

1.3.3 Pilz shall not initiate or terminate any sub-contract for performance of all or part of the services without the written consent of the Client.

1.4 Copyright

1.4.1 Pilz retains the design rights and other intellectual property rights and copyright of all documents prepared by him. The client shall be entitled to use them or copy them only for the project and the purpose for which they are intended, and need not obtain Pilz's permission to copy for such use.

1.5 Publication

1.5.1 Unless otherwise specified in the Particular Conditions, Pilz, either alone or jointly with others, can publish material relating to the Services. Publication shall be subject to approval of the Client if it is within two years of completion or termination of the Services.

1.5.2 The client is obliged not to publish the outcome of any type of work resulting from the activities of Pilz unless Pilz has given its assent in writing.

1.6 Confidentiality

1.6.1 The contracting parties shall not disclose any information gained in relation to the activities of Pilz regarding the internal conditions and processes of either the contracting partner or Pilz, nor any technical or economic information about the contracting partners.

1.6.2 Furthermore, all parties shall confirm that employees and other representatives charged with the execution of the contract shall be subject to appropriate confidentiality agreements.

1.6.3 Confidentiality obligations in accordance with this agreement shall not apply if and to the extent to which contracting parties can prove that the information in question

- a) is in the public domain or
- b) enters the public domain through no fault of the contracting parties or
- c) is/was legitimately gained from a third party or
- d) was already known to the contracting parties.

1.7 Corruption and Fraud

1.7.1 In the performance of obligations under this contract, Pilz and his agents and employees shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction

2. CLIENT OBLIGATIONS

2.1 Information, Decisions and Clarifications

2.1.1 In order not to delay Pilz in the performance of the Services, the Client shall within a reasonable time give to Pilz free of cost all information which may pertain to the Services which the Client is able to obtain.

2.1.2 On all matters properly referred to him in writing by Pilz, the Client shall give his decision in writing within a reasonable time so as not to delay the Services.

2.1.3 Where matters require clarification or doubts have arisen, it is the responsibility of the client, his/her staff or authorised persons to resolve these concerns through specific enquiries or by requesting more detailed information.

2.2 Client's Financial Arrangements

2.2.1 The Client shall submit, within 28 days after receiving any request from Pilz, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Client to pay Pilz's fees in accordance with the terms outlined in the Services Proposal. If the Client intends to make any material change to his financial arrangements, the Client shall give notice to Pilz with detailed particulars.

2.3 Equipment and Facilities

2.3.1 The Client shall make available, free of cost, to Pilz for the purpose of the Services the equipment and facilities described in the Services Proposal, [Personnel, Equipment and Facilities to be provided by the Client].

2.4 Supply of Client's Personnel

2.4.1 In consultation with Pilz, the Client shall at his own cost arrange for the selection and provision of personnel in his employment to Pilz in accordance with the Services Proposal, [Personnel, Equipment and Facilities to be Provided by the Client]. In connection with the provision of the Services such personnel shall take instructions only from Pilz.

2.4.2 The personnel to be supplied by the Client, and any future replacements that may be necessary, shall be subject to the acceptance of Pilz; such acceptance shall not be unreasonably withheld.

2.4.3 If the Client cannot supply Client's personnel for which he is responsible and it is agreed to be necessary for the satisfactory performance of the Services, Pilz shall arrange for such supply as an Additional Service

2.5 Client's Representative

2.5.1 The Client shall designate an official or individual to be his representative for the administration of the Agreement.

2.6 Payment for services

2.6.1 The Client shall pay Pilz for the Services in accordance with the Services Proposal, [Project Fees and Payment Conditions]

3. PILZ OBLIGATIONS

3.1 Scope of Services

3.1.1 Pilz shall perform the Services as stated in the Services Proposal, [Scope of Services and Deliverables].

3.2 Exceptional Services

3.2.1 Exceptional Services are those which are not Normal or Additional Services but which are necessarily performed by Pilz in accordance with Clause 4.8.

3.3 Duty of Care and Exercise of Authority

3.3.1 Notwithstanding anything else in this Agreement or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of Pilz), Pilz shall have no other responsibility than to exercise reasonable skill, care and diligence in the performance of his obligations under the Agreement.

3.3.2 Where the Services include the exercise of powers or performance of duties authorised or required by the terms of a contract between the Client and any third party, Pilz may:

- a) Have due regard to the third party contract provided that the details of such powers and duties are acceptable to him and agreed in writing where they are not described in the Services Proposal;
- b) If authorised to certify, determine or exercise discretion to do so fairly between the Client and third party not as an arbitrator but as an independent professional exercising his judgement with reasonable skill, care and diligence; and
- c) If so authorised vary the obligations of any third party, subject to obtaining the prior approval of the Client to any variation which can have an important effect on costs or quality or time (except in any emergency when Pilz shall inform the Client as soon as practicable).

3.4 Client's Property

3.4.1 Anything supplied by or paid for by the Client for the use of Pilz shall be the property of the Client.

3.5 Supply of Personnel

3.5.1 Pilz personnel providing the services, will be selected having due regard for the tasks he is required to perform and taking account of size and complexity of the undertaking.

3.5.2 If it is necessary to replace any of the personnel provided by Pilz, Pilz shall arrange for replacement by a person of comparable competence as soon as reasonably possible.

3.5.3 The cost of such replacement shall be borne by Pilz except where the replacement is requested by the Client, and in such case:

- a) The request shall be in writing stating the reasons for it; and
- b) The Client shall bear the cost of replacement unless it is agreed that misconduct or inability to perform satisfactorily is accepted as the reason for the replacement by Pilz.

3.6 Representatives

3.6.1 For the administration of the Agreement, Pilz shall designate an official or individual to be his representative.

3.6.2 If required by the Client, Pilz shall designate an individual to liaise with the Client's representative in the Country.

4. COMMENCEMENT, COMPLETION, VARIATION AND TERMINATION

4.1 Agreement Effective

4.1.1 The Agreement is effective from the date of receipt by Pilz of the Client's purchase order, or formal letter of acceptance of Pilz's proposal or the date of the latest signature necessary to complete the formal agreement, if any, whichever is the later.

4.2 Commencement and Completion

4.2.1 The Services shall be commenced on the Commencement Date as defined in the Services Proposal, [Pilz Project Organisation and Time Schedule], and shall proceed in accordance with the Time Schedule therein defined.

4.3 Variations

4.3.1 The Agreement can be varied on application by either Party by written agreement of the Parties.

4.3.2 If requested by the Client in writing, Pilz shall submit proposals for varying the Services. Pilz shall not be required to commence the varied Services until such time as the Client has given his written approval of the fees associated with the varied Services.

4.4 Delays

4.4.1 If the Services are impeded or delayed by the Client or his contractors so as to increase the scope, cost or duration of the Services:

- a) Pilz shall inform the Client of the circumstances and probable effects;
- b) The increase in scope and/or costs shall be regarded as Additional Services; and
- c) The time for completion of the Services shall be increased accordingly

4.5 Changed Circumstances

4.5.1 If circumstances arise for which neither the Client nor Pilz is responsible and which make it irresponsible or impossible for Pilz to perform in whole or in part the Services in accordance with the Agreement he shall promptly dispatch a notice to the Client.

In these circumstances:

- a) If certain Services have to be suspended, the time for their completion shall be extended until the circumstances no longer apply plus a reasonable period not exceeding 42 days for resumption of them; and if
- b) The speed of performing certain Services has to be reduced, the time for their completion shall be extended as may be made necessary by the circumstances.

4.6 Abandonment, Suspension or Termination

4.6.1 The Client may suspend all or part of the Services or terminate the Agreement by giving at least 84 days' notice to Pilz, and Pilz shall immediately make arrangements to stop the Services and minimise expenditure.

4.6.2 If Pilz is, without good reason, not discharging his obligations the Client may inform Pilz by notice stating the grounds for the notice. If a satisfactory response is not received within 21 days the Client may by a further notice terminate the Agreement provided that such further notice is given within 35 days of the Client's former notice.

4.6.3 After giving at least 14 days' notice to the Client, Pilz may, by a further notice of at least 70 days, terminate the Agreement, or at his discretion, without prejudice to the right to terminate, may suspend or continue suspension of performance of the whole or part of the Services:

- a) when 28 days after the due date for payment of an invoice Pilz has not received payment of that part of it which has not by that time been contested in writing; or
- b) when Services have been suspended under either Clause 4.5 or Clause 4.6.1 and the period of suspension has exceeded 182 days.

4.6.4 If the services are suspended with or without notice for a period of more than 84 days, Pilz may invoice the client for the service, additional services and exceptional services delivered up to the time of suspension.

4.7 Corruption and Fraud

4.7.1 If it is shown that Pilz is in breach of Clause 1.7 and notwithstanding any penalties or other sanctions to which Pilz may be subject under the law of the Country, or in other jurisdictions, the Client will be entitled to terminate the Agreement in accordance with Clause 4.6.2 and Pilz shall be deemed to have breached Clause 3.3.1.

4.8 Exceptional Services

4.8.1 Upon the occurrence of circumstances described in Clause 4.5 or abandonment or suspension or resumption of Services or upon termination of the Agreement otherwise than under the provisions of Clause 4.6.2 any necessary work or expense by Pilz extra to the Normal and Additional Services shall be regarded as Exceptional Services.

4.8.2 The performance of Exceptional Services shall entitle Pilz to extra time and resources necessary for their performance and to payment for performing them.

4.9 Rights and Liabilities of Parties

4.9.1 Termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

4.9.2 After termination of the Agreement, the provisions of Clause 6.3 shall remain in force.

5. PAYMENT

5.1 Payment to Pilz

5.1.1 The Client shall pay Pilz for Normal Services in accordance with the Conditions and with the details stated in the Services Proposal, [Project Fees], and shall pay for Additional Services at rates and prices which are given in or based on those therein defined so far as they are applicable but otherwise as are agreed in accordance with Clause 4.3.

- 5.1.2 Unless otherwise agreed in writing the Client shall pay Pilz in respect of Exceptional Services:
- a) as for Additional Services for extra time spent by Pilz's personnel in the performance of the Services; and
 - b) the net cost of all other extra expense incurred by Pilz

5.1.3 Where the Client has required Pilz to appoint selected consultants as Pilz's sub-consultants, fees owed to those sub-consultants shall be due to Pilz in addition to Pilz's own fees.

5.2 Time for Payment

5.2.1 Amounts due to Pilz shall be paid within 28 days of Pilz's invoice unless otherwise stated in the Services Proposal, [Project Fees]

5.2.2 If Pilz does not receive payment within the time stated in Clause 5.2.1 Pilz reserves the right to claim additional compensation at a rate of 2% per month compounded from the date of invoice.

5.2.3 The Client shall not withhold payment of any fee properly due to Pilz without giving Pilz a notice of his intention to withhold payment, with reasons, no later than four days prior to the date on which the fee payment becomes due. If no such notice of an intention to withhold payment is given then Pilz shall have an enforceable contractual right to such payment.

5.3 Disputed Invoices

5.3.1 If any item or part of an item in an invoice submitted by Pilz is contested by the Client, the Client shall give a notice of his intention to withhold payment with reasons and shall not delay payment on the remainder of the invoice. Clause 5.2.2 shall apply to all contested amounts which are finally determined to have been payable to Pilz.

5.4 Payment and Title for Product

5.4.1 Unless otherwise agreed in writing by Pilz, delivery of the products shall be made F.O.B. point of shipment, with transportation expenses paid by the client.

5.4.2 Risk of loss or damage and other incidents of ownership shall immediately pass to client, but Pilz as security for clients' performance will retain title to such products until payment in full is received.

5.4.3 The client agrees to do all acts necessary to perfect and maintain such security right and title in the Seller. It shall be clients' responsibility to file any claims for loss with the common carrier.

5.5 Currencies of Payment

5.5.1 The currencies applicable to the Agreement are those stated in the Services Proposal, [Project Fees]

6. LIABILITIES

6.1 Liability and Compensation between the parties

6.1.1 Pilz shall only be liable to pay compensation to the Client arising out of or in connection with the Agreement if a breach of Clause 3.3.1 is established against him.

6.1.2 The Client shall be liable to Pilz if a breach of his duty to comply with his obligations outlined in section 2 is established against the Client.

6.1.3 If it is considered that either Party is liable to the other, compensation shall be payable only on the following terms:

- a) Such compensation shall be limited to the amount of reasonably foreseeable damage suffered as a result of such breach but not otherwise. Liability for loss of profit and loss of production is excluded.
- b) In the case of breach of Clause 3.3.1, Pilz's liability is limited to the average level of immediate damage that might be anticipated for the type of service and which is typical of the type of contract - provided the customer has fully complied with the obligations stated in section 2. In such condition, Pilz's liability to pay compensation in the case of material damage or personal injury shall be limited to the amount of cover under its product liability and professional indemnity insurance.
- c) If either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by that Party shall be limited to that proportion of liability which is attributable to his breach.

6.1.4 Each Party agrees to waive all claims against the other in so far as the aggregate of compensation which might otherwise be payable exceeds the maximum amount payable.

6.1.5 If either Party makes a claim for compensation against the other Party and this is not established the claimant shall fully reimburse the other for his costs incurred as a result of the claim.

6.1.6 Liability is excluded where there is a slightly negligent infringement of inconsequential contractual obligations.

6.1.7 Unless stated otherwise below, further claims from the client are excluded, on whatever legal grounds.

6.2 Duration of Liability

6.2.1 Notwithstanding anything else in this Agreement or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of Pilz), neither the Client nor Pilz shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on him before such date as is prescribed by the applicable law but not more than 7 years from the completion or termination of services.

6.3 Indemnity

6.3.1 So far as the law governing this Agreement permits, the Client shall indemnify Pilz against the adverse effects of all claims including claims by third parties which arise out of or in connection with the Agreement including any made after the expiry of the period of liability referred to in Clause 6.2. except insofar as they are covered by its product liability and professional indemnity insurance.

7. INSURANCE

7.1 Insurance of Liability and Indemnity

7.1.1 At the written request of the Client Pilz shall grant access to the relevant insurance policies.

8. WARRANTY

- a) Pilz shall perform the services in accordance with these terms and conditions on the basis of the recognised guidelines, the level of technology available to Pilz at the time the services are performed and in keeping with the usual level of care for the relevant industry.
- b) The warranty period shall be 12 months and shall start with the transfer of risk.
- c) Product and service descriptions issued by Pilz shall apply only as statements of composition. Similarly, public statements, promotions or advertisements do not represent statements of composition under the terms of the contract.
- d) Additionally, product descriptions issued by a manufacturer used by Pilz shall only apply as statements of composition. Similarly, public statements, promotions or advertisements from the manufacturer do not represent statements of composition under the terms of the contract.
- e) Pilz grants no guarantees in the legal sense. This shall not affect guarantees from third parties.