

PERI (Hong Kong) Limited  
Terms of Business

## A. PERI HK TERMS OF BUSINESS

(valid from 01 JULY 2017)

### 1 Scope of Application

- 1.1 The PERI terms and conditions apply for all services performed within the framework of ongoing business relationships and also to any services that are performed in the future, even if these conditions have not been expressly agreed on again. In addition, PERI's price list at the date of the relevant quotation shall apply.
- 1.2 The PERI general terms and conditions apply for all kinds of contractual relationship. In addition:
  - 1.2.1 the PERI Business Terms and Conditions for Hiring (section B) apply for the rental of formwork, formwork components, accessories and other parts,
  - 1.2.2 the PERI Business Terms and Conditions for Assembly and Other Services (section C) apply for all technical processing, engineering services, assembly and other work or services,
  - 1.2.3 the PERI Business Terms and Conditions for Sales (section D) apply for the sale of formwork, components, accessories and other parts.

### 2 Defence clause

- 2.1 Unless otherwise agreed in writing, only PERI Terms and Conditions shall apply. Other regulations, in particular the client's own terms and conditions will not form a part of the contract, even if PERI has not expressly stated its objection to this.

### 3 Conclusion of the contract

- 3.1 Offers made by PERI are subject to confirmation. A contract shall only exist when PERI has issued a written order confirmation. The scope of services performed by PERI will be determined by the written order confirmation and annexes. Ancillary agreements and alterations require written confirmation from PERI.
- 3.2 The customer is bound for orders he has placed with PERI for a Period of 4 weeks. (Partial) delivery by PERI and acceptance of the materials on site does not substitute PERI's order confirmation but will indicate PERI's commitment to confirm the order.
- 3.3 Verbal orders always are presumed being based on PERI's written offer content.

### 4 Prices

- 4.1 PERI has the right to adjust its prices if its material purchase costs have been increased more than 10% since the order has been confirmed and/or a new price-list has been issued:
- 4.2 in cases where no delivery date is specified in the order confirmation: if the materials and/or services as the case may be are to be delivered more than 8 weeks after the date of order confirmation,
- 4.3 in cases where delivery date(s) is/are specified in the order confirmation: if any of the specified delivery dates are subsequently changed by the customer, provided always that the change is not more than  $\pm 4$  weeks from the original date specified in the order confirmation,
- 4.4 if the delivery dates specified in the order confirmation stretch over a period of more than 6 months.

### 5 General

- 5.1 The customer must make the following available for PERI's use, free of charge: the necessary storage and working space on the construction site, access routes and connecting lines, cranes and hoisting devices, tools and water and energy connections. The customer shall bear the cost of use and for the gauge or meter.
- 5.2 PERI shall not be obliged to provide guarantees or performance guarantees, in particular monetary performance guarantees.
- 5.3 PERI will not participate, even partially, in a contractor's all risks insurance policy or comparable insurance policy.
- 5.4 PERI shall not be obliged to provide the following evidence: Document of compliance from the health insurance company stating that employees are insured, documents of compliance from the responsible tax office, proof of third party lia-

bility insurance or other proof that is generally only required from subcontractors, unless required by law from suppliers.

### 6 Miscellaneous

- 6.1 If individual conditions of the PERI terms and conditions of business become ineffective, this will not affect the remaining conditions.
- 6.2 Verbal collateral agreements are not valid.
- 6.3 The laws of Hong Kong shall apply.

## B. PERI BUSINESS TERMS AND CONDITIONS FOR RENTAL

### 1 Quality and Suitability of the Rental Formwork

- 1.1 Formwork, scaffolding and shoring materials for rental - in the following called "the rental formwork" generally are used equipment. No claim to new materials exist.
- 1.2 With regard to the expected quality of the rental formwork, PERI assures all items to correspond with the currently valid version of PERI's guidelines on quality criteria of rental formwork, a copy of which can be obtained from PERI upon request.
- 1.3 If the rental formwork has to have special properties beyond the quality specified in clause 1.1 and 1.2 this must be agreed in writing when the contract is concluded.
- 1.4 PERI assumes that the rental formwork is suitable for the application based on approved and valid construction drawings and the construction schedule submitted by the customer prior to the first delivery. Any changes are the exclusive responsibility of the customer, and costs arising there from are to be borne by the customer.

### 2 Deposit

- 2.1 PERI is entitled to deliver the formwork only after receipt of a rental material deposit.
- 2.2 Once the customer declares that the rental period has ended and the return of the rental formwork to PERI's stockyard has been completed, PERI will refund the rental material deposit after deduction of the costs for loss, damage and repair within 30 days.
- 2.3 PERI may use the deposit to also offset outstanding payments that are incurred by the customer during the rental period.

### 3 Use of the rental formwork

- 3.1 As a matter of principle the customer must obey applicable laws and regulations of Hong Kong and its authorities concerning safety.
- 3.2 In particular, the customer is responsible for appropriate and professional storage, erection, dismantling and shifting of the formwork in accordance to the instructions given by PERI's supervisors and must observe the documentation (e.g. drawings) provided by PERI.
- 3.3 The customer is obliged to treat the rental formwork with care and take all steps to ensure that its value and efficiency are not reduced.
- 3.4 All load-bearing parts, in particular formwork girders and extendable parts such as spindles, may only be loaded or used in accordance with the load tables and static values, which are available on request. The customer is required to request tables and static values from PERI and to apply these data on his own responsibility. Supervision on site by a PERI supervisor does not exempt the customer from this obligation.
- 3.5 Any damage and lost items must be replaced by the customer prior to its next use unless PERI explicitly confirms in writing that the damage will not inflict any danger for continuous safe use.

### 4 Technical Service

- 4.1 Up to the extent committed in our order confirmation, PERI will render technical service free of charge.
- 4.2 The customer may order additional services from PERI which are, among others, static calculations, PE endorsements, revised planning due to design changes after submission of the application drawings, inspections, and logistic

and transport services upon return of the materials. Additional services will be charged by PERI and must be paid by the customer unless explicitly confirmed by PERI in writing to be free of charge.

## 5 Payments and payment delay

- 5.1 Monthly rental is on a 30days basis but the rental is charged on a daily basis item by item. It is up to PERI to issue invoices at intervals chosen by PERI. The rental invoice amount is payable within 30 calendar days after receipt of the invoice, unless agreed otherwise in writing.
- 5.2 All invoices issued by PERI shall be conclusive and binding as between PERI and the customer pending final judgement after a trial. For the avoidance of doubt:
- 5.2.1 PERI shall be entitled to enter summary judgement against the customer for amounts due under the said invoices without taking into account any account any set-offs, and/or counterclaims alleged by the customer,
- 5.2.2 The customer shall not be entitled to a stay of execution on the said summary judgement.
- 5.3 PERI is obliged only to take into account:
- 5.3.1 credit notes issued by PERI.,
- 5.3.2 set-offs and/or counterclaims allowed by the court at final judgement after trial.
- 5.4 For payment by cheque: the payment obligation of the customer is considered fulfilled only when the cheque has been cleared by the bank.
- 5.5 In case of delayed payment PERI is entitled to charge interest of 1% per month from the date of the invoice to the date of full payment.
- 5.6 In case of payment default for more than 60days from date of invoice, PERI is entitled:
- 5.6.1 to take any action prohibiting the (safe) use of the rental formwork.  
In such a case, PERI will inform the relevant authorities and the developers of the project about the actions taken. Such step does not prevent PERI to take legal action, also to stop further delivery,
- 5.6.2 to stop further delivery,
- 5.6.3 to repossess the rental formwork.
- 5.7 The customer may only assign receivables, no matter what kind, against PERI to third parties if PERI agrees to this in writing.

## 6 Transfer of risk

- 6.1 The risk of the damage to or loss of the rental formwork is transferred to the customer at the time when transferred to the freight carrier, even if the freight costs should be borne by PERI, or when PERI notifies the customer that the rental formwork are available for collection at PERI's stockyard, or in the case of items to be delivered otherwise than at PERI's stockyard, at the time of delivery or, if the customer fails to take delivery of the rental formwork, the time when PERI has tendered delivery of the items, until the materials are returned to PERI's stockyard.
- 6.2 The mode of transport and the kind of packing may be determined by PERI. In case of delivery in grate pallets the pallets must be returned.
- 6.3 Shipping costs, freight costs, packing costs and unloading costs are borne by the customer. Waiting time for loading/unloading exceeding 2 hours will be charged if the customer is accountable.
- 6.4 The customer bears the risk of using the rental formwork.

## 7 Delivery of formwork

- 7.1 The rental formwork will be delivered at the expense and risk of the customer. The delivery must be accepted by the customer even if there are minor defects, as long as PERI declares that the materials are safe to use.
- 7.2 Partial deliveries are allowed.
- 7.3 Upon receipt of the materials the customer shall inspect them immediately to ensure that they are complete and undamaged.
- 7.4 Missing or faulty parts should be stated on PERI's Delivery Order (D/O) and PERI shall be informed immediately but within 2 working days at the latest. Otherwise it is assumed that the rental materials have been received complete and without fault.

7.5 As long as the signed copy of a D/O is not returned, PERI is entitled to withhold further deliveries and technical assistance.

7.6 In deviation of clause 7.4: defects that could not be recognised when the rental items had been delivered must be reported in writing latest when using these items for the first time. Verbal notification is insufficient.

## 8 Cleaning and Damage

- 8.1 Wear and tear as a result of appropriate use is included in the rental price. Damage to the formwork that is caused by incorrect handling, e.g. by not observing the requirements laid out in Clause 3, mechanical damage, effects of violence or transport, and heavy soiling is considered beyond wear and tear. Damages in this context shall in particular include all piercing, drilling or indentation, also if nails and screws have not been extracted. The resulting repair and cleaning costs are borne by the customer.
- 8.2 Due to the appropriate and professional expertise required, repairs shall only be carried out by PERI.

## 9 Return of rental formwork

- 9.1 The rental formwork is to be returned at the expense and the risk of the customer.
- 9.2 The customer is obliged to return the rental equipment complete, in its original technical condition, without any damage beyond normal wear and tear, dismantled in a clean and usable way, bundled according to dimensions, on pallets and/or in a form that can be unloaded by a forklift truck.
- 9.3 Rental items that cannot be repaired or cannot be repaired at reasonable cost will be considered as beyond repair.
- 9.4 The customer must return the rental equipment himself unless expressly arranged otherwise in writing at the time of the conclusion of the contract.
- 9.5 Mechanical parts that are lubricated with grease, e.g. spindles and screws must be returned lubricated with grease.
- 9.6 The customer must prove that he has returned the rental items complete by means of a Goods Return Note (GRN) issued by PERI. Accessories must be returned together with the main item they had been attached to. Otherwise they will be considered as missing. Returns of accessories at a later date will not be accepted.
- 9.7 If the formwork had been supplied for various structures under different order numbers, the customer must inform PERI before unloading which set of formwork he is returning. Otherwise it is at PERI's discretion to decide.
- 9.8 After the end of the rental period, the customer is obliged to return the rental formwork to the address specified in the contract.
- 9.9 Acceptance of the rental material shall take place at PERI's yard, even if condition and quantities have been checked on the construction site.

## 10 Disposal costs

- 10.1 The cost for the disposal of scrap parts, e.g. cut girders, are borne by the customer.

## 11 Delivery

- 11.1 Delivery periods or other deadlines are only approximate.
- 11.2 PERI is not obliged to effect delivery until it is reasonably satisfied that all technical details have been completely clarified and that the customer has fulfilled all his contractual and cooperation obligations.
- 11.3 The delivery obligations are subject to correct and on-time supply to PERI by its suppliers, unless the incorrect or delayed supply is caused by PERI.
- 11.4 If the customer cancels the original delivery date and requests a new date which is more than 4 weeks before or after the original delivery date, PERI shall not be obliged to effect delivery unless otherwise agreed in writing. In the event such agreement is reached, clause 4 of Section A shall apply.
- 11.5 Any delay in delivery by 3 weeks or less caused by PERI shall not entitle the customer to terminate the contract. Whether a delay of more than 3 weeks justifies termination shall be determined by the circumstances of the case.
- 11.6 PERI shall be excused from performance of its obligations to the extent that and for any period during which such perfor-

- mance is hindered or prevented (directly or indirectly) by reason of any strike, lock out, labor disturbance, government action, riot, armed conflict, terrorism, accident, extremes of weather or event of nature, unavailability of raw materials or of normal means of transport, act of God or any other matter whatsoever beyond the reasonable control of PERI, its suppliers and/or sub-suppliers.
- 11.7 Any claims against PERI as a result of, in relation to and/or based on any delayed service alleged against PERI are excluded insofar as the delay was not caused intentionally and/or grossly negligent by PERI.
- 11.8 PERI will not accept any claim for damages caused by delay unless explicitly agreed by PERI in writing.
- 11.9 Any claims for damages caused by delay are limited to a weekly rate of 0.5% of the portion of the contract price for the particular supply delayed, but all claims for damages caused by delay regardless of the number of claims and the number of delays shall be subject to an overriding limit of 5% of the contract price in the aggregate.
- 11.10 Contract price is the rental price for 3 months. The general limitations on liability (Clause 15) also apply.
- 12 Rental period**
- 12.1 The minimum rental period is one month unless explicitly agreed otherwise.
- 12.2 The rental period begins on the day of the rental formwork leaving PERI's stockyard and ends when it is returned to PERI's stockyard, unless a fixed beginning date of rental has been agreed. In case of material loss, the date of reporting the loss will apply.
- 12.3 In the case of formwork to be pre-assembled at PERI's stockyard, the rental period begins on the day of the first assembly.
- 12.4 In case of interruptions on site which are out of PERI's control the rental period will continue. Only if PERI is held accountable for the interruption the rental obligations will be interrupted for that period. PERI shall not be liable for any loss and/or damage resulting therefrom, and any claims for the same against PERI are expressly excluded.
- 13 Premature Termination of the Contract**
- 13.1 Without prejudice to PERI's rights at common law and equity, PERI has the immediate right to terminate the contract and any other contracts with the customer in one or more of the following events:
- 13.1.1 if the customer owes PERI at least 30 days rental fees for more than 30 days from the date of the invoice,
- 13.1.2 and/or if any of the customer's cheques are dishonored,
- 13.1.3 and/or if the customer goes into liquidation (whether voluntary or compulsory), or a receiver is appointed over the customer's undertaking, property or assets, or the customer is placed under judicial management, or if the customer makes any arrangement or composition with creditors, or if any execution or attachment is levied upon or issued against any of the customer's properties or assets,
- 13.1.4 and/or if the rental equipment is not used or maintained appropriately or in accordance with PERI's stipulations in spite of reminders issued provided always that no reminder is necessary in the event of extreme lack of care for the equipment.
- 13.2 Upon the contract being terminated by reason of clause 13.1 or otherwise, the customer shall forthwith return the rental equipment to PERI and shall not be entitled to use it. All costs and expenses as a result of the said termination shall be borne by the customer.
- 13.3 PERI is entitled to compensation for damages instead of the remaining rental fee after termination.
- 14 Guarantee**
- 14.1 In the case of defects of rental items, PERI issues the following guarantee, with the following conditions and with the following scope only:
- 14.1.1 all parts that are discovered to be materially defective as a result of circumstances existing before the transfer of risk will be either repaired or replaced free of charge,
- 14.1.2 goods or services are materially defective if they deviate significantly from the expected quality in accordance with the contract.
- 14.2 If repair or replacement delivery fails, the customer does not have to pay the rental fee if the defect means that the item cannot be used for the contractually agreed purpose.
- 14.3 Claims are excluded if PERI is hindered in its attempts to inspect alleged defects or if the proof requested by PERI is not made available immediately.
- 14.4 Claims for damages or self-repair and compensation of the cost are excluded, unless PERI is responsible for malice, forethought or gross negligence.
- 15 Liability of PERI**
- 15.1 PERI is liable for the breach of contractual and non-contractual obligations only in the case of intentional or negligent default, but limited to the typical damages that were foreseeable at the time at which the contract was concluded. These limitations do not apply in cases of culpable breach of significant contractual obligations if the purpose of the contract is jeopardized, in cases of compulsory liability in accordance with existing product liability acts or bodily injury. The rules with regard to proof are not affected by this.
- 15.2 Assembly and erection of the rental formwork may only be performed in a manner that takes into consideration and observes the requirements set out in clause 3 and follows the appropriate assembly and usage instructions. The use of PERI products in conjunction with the customer's own parts or parts from another manufacturer is performed entirely at the rental customer's own risk. PERI is excluded from all liability in relation to this.
- 15.3 PERI accepts no liability for the formwork parts included in PERI's offer being complete for the observance of all relevant safety regulations with regard to the planned use of the formwork. PERI also accepts no liability for any instructions issued by the customer, particularly with regard to assembly instructions, risk analyses and other information relevant for safety or for the lack of such instructions.
- 15.4 Irrespective of the basis of the claim, PERI is liable for damage to property or financial losses only within the limitations of the existing commercial third party liability insurance. The sum covered is a flat rate of an equivalent of 5 million Euro for personal injury and property damage.
- 15.5 As far as PERI's liability is excluded or limited, this also applies for the personal liability of PERI's employees, employee representatives and agents.
- 16 Supervision Obligations**
- 16.1 The customer must monitor the condition of the rental formwork during the whole rental period and eliminate damaged parts from being used.
- 16.2 The customer must name in writing a person being in charge for the safe use of the rental formwork in accordance with the data supplied by PERI.
- 17 Liability of the Customer**
- 17.1 The customer is liable for damage caused by fire, flood, water or weather, as well as for theft.
- 17.2 The customer is obliged to insure and keep insured the rental items to the full price against all risks to the reasonable satisfaction of PERI that can be insured against, in particular theft, damage, fire, water, etc. by taking out appropriate insurance policies.
- 17.3 The customer is obliged to assign the claims against its insurance to PERI in case of damage.
- 18 Subletting**
- 18.1 Rental formwork and other rental equipment may not be hired or loaned to third parties; other methods of making equipment available to benefit third parties or to PERI's disadvantage are also not permitted, unless PERI has given written approval.
- 18.2 Receivables that are due or will be due from others to the customer in relation to making available the rental equipment are hereby assigned to PERI. The customer shall furnish such information and documents as well as do all such things reasonably required by PERI for the purposes of the assignment.

- 18.3 Even if PERI has given written approval to the customer for its rental formwork to be passed on to third parties by the customer, the customer remains responsible to PERI in regard of all contractual obligations and the PERI Business Terms for Rental, unless PERI and the third party conclude a new rental contract.
- 18.4 Transfer of the rental material by the customer to a construction site other than the one given in the rental contract requires written approval from PERI. In the case of infringement of this rule, a contractual penalty of RM50,000.00 will be payable. In addition, PERI reserves the right to file an appropriate claim if the total damages are higher than this amount. The customer, however, is free to prove that damages were lower.
- 19 Seizure**
- 19.1 The customer must inform PERI immediately of any intended or actual seizure of, disposal of and/or execution proceedings against the rental formwork over which PERI retains title by third parties (including liquidators, receivers, judicial managers and any administrators). At the customer's own cost, the customer shall use their best endeavors to object to any such seizure, disposal or enforcement proceedings. The customer shall provide to PERI the relevant documents relating to the seizure, disposal or execution proceedings as the case may be and the objection thereto.
- 20 Retention of Title, Fiduciary basis as Bailee and Negative Pledge**
- 20.1 Risk of the Delivered Items
- 20.1.1 Risk of damage to or loss of the Delivered Items shall pass to the customer:
- In the case of items to be delivered at PERI's premises, at the time when PERI notifies the customer that the Items are available for collection; or
  - In the case of items to be delivered otherwise than at PERI's premises, at the time of delivery or, if the customer fails to take delivery of the Delivered Items, the time when PERI has tendered delivery of the Items.
- 20.1.2 The customer shall insure and keep insured the Delivered Items to the full Price against 'all-risks' to the reasonable satisfaction of PERI until the date that property in the Delivered Items passes from PERI, and shall whenever requested by PERI produce a copy of the policy of insurance. Without prejudice to the other rights of PERI, if the customer fails to do so all sums whatsoever owing by the customer to PERI shall immediately become due and payable.
- 20.2 Retention of Title - Notwithstanding delivery of and the passing of risk in the Delivered Items to the customer, the property in the Delivered Items shall not pass to the customer until PERI has received in cash or cleared funds for payment in full of the price of the Delivered Items sold by PERI to the customer. For the avoidance of doubt, the allocation of individual receivables to an ongoing invoice or adding to an account and the recognition of these does not remove the retention of title.
- 20.3 Fiduciary basis as Bailee - Until such time as the property in the Delivered Items passes to the customer, the customer shall hold the Delivered Items and each of them in a fiduciary basis as Bailee for PERI.
- 20.4 Sub-sale - Notwithstanding that the Delivered items (or any of them) remain the property of PERI, if the customer sells or uses the Delivered Items in the ordinary course of the customer's business at full market value it shall be for the account of PERI. Any such sale or dealing shall be a sale or use of PERI's property by the customer on the customer's own behalf and the customer shall deal as principal when making such sales or dealings. Until property in the Delivered Items passes from PERI to the customer the entire proceeds of sale of otherwise of the Delivered Items shall be account and shall be at all material times identified as PERI's money.
- 20.5 Incorporation of Delivered Items into new commodities - If any of the Delivered Items is incorporated in, use or processed to form a new commodity by the customer, including mixing with other goods that do not belong to the customer:
- 20.5.1 The processing takes place on behalf of PERI, without any obligations arising from this on PERI's part. All of PERI's rights in the Delivered Items shall extend to these new commodities in accordance with the ratio of the value of the Delivered Items to which PERI retains and the other goods at the time of processing.
- 20.5.2 If the customer has mixed the goods to which PERI retains title and / or has mixed rental goods with other goods, PERI has the right to separate out firstly its rental goods and then the goods to which it retains title in agreement with the customer and with reference to the invoicing documents.
- 20.6 Storage of Delivered Items
- 20.6.1 The customer shall store the Delivered Items to which PERI retains title separately, at its own cost, from the goods of the customer's and third parties' and /or other rental goods.
- 20.6.2 The Delivered Items shall be marked in such a way that they are clearly identified as PERI's property and shall be properly stored, protected and insured and identified as PERI's property. If contrary to this obligation, the Delivered Items to which PERI retains title are mingled or mixed with other goods/or are mingled or mixed with rental goods and the Delivered Items which PERI retains title cannot be separated, PERI will become part owner.
- 20.7 PERI's right to re-possession of Delivered Items - Until such time as the property in the Delivered Items passes to the customer (and provided the Delivered Items are still in existence and have not been resold), PERI shall be entitled at any time to request the customer to deliver up the Delivered Items to PERI and, if they customer fails to do so forthwith, to enter upon any premises owned, occupied or controlled by the customer or any third party where the Delivered Items are stored and repossess the Delivered Items.
- 20.8 Negative Pledge of the Delivered Items - The customer shall not entitle to pledge or in any way charge by way of security for any indebtedness any of the Delivered Items which remain the Property of PERI. Without prejudice to the other rights or remedies available to PERI, if the customer does so all moneys owing by the customer to PERI shall immediately become due and payable.
- 20.9 Actions by third parties - The customer must inform PERI Immediately of any intended or actual seizure of, disposal of and/or execution proceedings against the Delivered Items over which PERI retains title by third parties (including liquidators, receivers, judicial managers and any administrators). At the customer's own cost, the customer shall use best endeavors to object to any such seizure, disposal or enforcement proceedings. The customer shall provide to PERI the relevant documents relating to the seizure, disposal or execution proceedings as the case may be and the objection thereto.
- 21 Calculation of lost and beyond repair materials**
- 21.1 If the customer has to pay compensation resulting from legal or contractual liability as a result of the non-return of the rental material, in particular in the case of damage beyond repair, loss of the rental material or purchase from hire, the damages are calculated in accordance with the replacement value of the goods according to the current version of the PERI price list at the time at which the contract was concluded.
- 21.2 The rental fees that were due up until the occurrence of the loss remain unaffected. Any claims by PERI for loss of earnings are also unaffected.
- 22 Advertising**
- 22.1 Unless prohibited by law, PERI has the right to take photos of its formwork and the project for the purpose of advertising, stating the names of project and contractor.
- 22.2 The placing of advertisements on the rental equipment for the customer or for third parties, in particular the contractor, requires advance written approval from PERI.



**C. PERI BUSINESS TERMS AND CONDITIONS FOR TECHNICAL ASSISTANCE, ENGINEERING AND OTHER SERVICES**

When confirming a rental or a sales contract, PERI simultaneously confirms technical assistance and engineering as follows:

**1 Formwork Engineering, Drawings**

- 1.1 PERI will provide manufacturing drawings for the assembly of its materials free of charge.
- 1.2 Unless explicitly confirmed otherwise, PERI will provide the shop drawings for the typical layout free of charge, but only as far as PERI materials are concerned.
- 1.3 PERI may charge for requested engineering and planning services exceeding the typical layout on the basis of HKD\$650 / hour, unless explicitly agreed otherwise.
- 1.4 The customer is responsible that the structural drawings submitted to PERI are confirmed and valid. Major revisions of shop drawings due to structural changes and revisions may be charged by PERI (major revisions include: changes of beam location and sizes, slab thickness, floor height, formwork height etc. which lead to changes of material requirements).
- 1.5 In case of submitting revised structural drawings, PERI will study the revised drawings only if the client has highlighted the changes and revisions, and PERI will revise its formwork shop drawings only in regard of highlighted areas and changes.

**2 Static Calculations**

- 2.1 Insofar as reasonable, PERI will submit type test certificates and load tables concerning its products free of charge. Static calculations exceeding above-mentioned data are chargeable.

**3 Technical Assistance on Site**

- 3.1 Upon delivery, PERI will provide assistance in counting and identifying the supplied materials.
- 3.2 For assembly, safe use and dismantling of the PERI formwork, PERI will provide technical assistance on site free of charge, unless explicitly agreed as follows:
  - 3.2.1 instructions for the assembly of formwork units such as columns, wall panels, climbing units, tables, etc., based on PERI's assembly drawings, including supervision of the assembly of at least one sample each,
  - 3.2.2 instructions for the handling of the formwork, as far as PERI's materials are concerned, for the erection, stripping and lifting, including temporary supervision at most for the first full cycle,
  - 3.2.3 instructions for the dismantling of the formwork in regard of minimizing damages during dismantling.

**4 Areas of Responsibility**

- 4.1 The customer must appoint one person as the responsible person for the PERI's materials on site and all PERI related works.
- 4.2 PERI's instruction obligations refer only to this person. PERI is not responsible to supervise workers and their work and is not obliged to render instructions in absence of the client's responsible person. PERI is not liable with regards to culpable behavior on the part of persons provided by the client. Such persons are agents of the customer.
- 4.3 The customer is responsible for the determination of grid-lines and other measurement points, correct dimensions and the observance of all safety regulations.
- 4.4 The customer must provide all conditions necessary for PERI to perform its services, including but not solely, tools and equipment safe to use, sufficient workforce, light, and authorizations, if required.

**5 PE Endorsements**

- 5.1 All costs related to PE endorsements are to be borne by customer. PERI only has the obligation to provide all relevant data required for endorsement.

**6 Liability for Technical Service on Site**

- 6.1 If errors in assembly occur and PERI is responsible for these, the customer has the right to make a claim to free repairs of the formwork.

**7 Liability for Engineering and Static Calculation Services**

- 7.1 For the engineering and static calculation services, PERI accepts liability only in the case of direct damage to the building structures and only within the limitations of its existing commercial third party liability insurance (flat rate of the equivalent of 5 Million Euro for personal injury and property damage). This limitation of liability to the level of the commercial liability insurance is also agreed in cases where no insurance protection is granted/exists, no matter what the legal grounds for this are.
- 7.2 PERI accepts responsibility for the compliance of its goods and services with the recognized rules of engineering / architecture that are valid at the time at which the service is performed.
- 7.3 These limitations on liability do not apply in cases of intentional or negligent default on the part of PERI.

**D. PERI BUSINESS TERMS AND CONDITIONS FOR SALES**

**1 Delivery**

- 1.1 All delivery periods or other deadlines given are only approximate.
- 1.2 PERI is not obliged to effect delivery until:
  - 1.2.1 It is reasonably satisfied that technical details have been completely clarified,
  - 1.2.2 it is reasonably satisfied that the customer has fulfilled all his contractual and cooperation obligations,
  - 1.2.3 the customer has provided the necessary official certifications and approval,
  - 1.2.4 the customer has paid the required deposit.
- 1.3 The delivery obligations are subject to correct and on-time supply to PERI itself, unless the incorrect or delayed supply is caused by PERI.
- 1.4 PERI shall be excused from performance of its obligations to the extent that and for any period during which such performance is hindered or prevented (directly or indirectly) by reason of any strike, lock out, labor disturbance, government action, riot, armed conflict, terrorism, accident, extremes of weather or event of nature, unavailability of raw materials or of normal means of transport, act of God or any other matter whatsoever beyond the reasonable control of PERI, and/or its' suppliers.
- 1.5 PERI will not accept any claim for damage caused by delay unless explicitly agreed by PERI in writing.
- 1.6 Any claims for damages caused by delay are limited to a weekly rate of 0.5% of the portion of the contract price for the particular supply delayed, but all claims for damages caused by delay regardless of the number of claims and the number of delays shall be subject to an overriding limit of 5% of the contract price in the aggregate.

**2 Transfer of risk**

- 2.1 The risk is transferred to the customer at the time when the equipment is transferred to the shipper or freight carrier or the purchaser himself, even if delivery is not carried out by PERI.
- 2.2 Types of shipping and packaging may be determined by PERI.
- 2.3 Shipping costs (including tolls) and packaging costs are borne by the customer.

**3 Receipt**

- 3.1 The delivery should be accepted by the customer, even if there are minor defects. Upon receipt of the purchase equipment the customer should immediately inspect the goods and inform PERI in writing of any defects (if possible on a Delivery Order). For large quantities of goods of identical quality, delivery of an entire batch of goods may only be rejected as defective if those defects have been determined using an accepted representative random sampling procedure.
- 3.2 Partial deliveries are permissible.
- 3.3 If PERI is unable to perform any obligation by reason of delay and/or any other matter caused by the customer, PERI would in any event be deemed to have performed the obligation up-

on PERI giving notice that it is ready to perform the said obligation.

#### 4 Acceptance

- 4.1 In the case of an agreement with regard to acceptance of the purchased materials, the customer must accept the items at PERI's storage facility or plant as a matter of principle.
- 4.2 On request, a record should be kept of the acceptance.
- 4.3 If the customer does not attend the acceptance meeting, despite having been invited in good time and informed of the consequences of failure to attend, the service item is viewed as having been approved in accordance with the contract.

#### 5 Prices

- 5.1 The number of items determined upon delivery shall be included in the invoice.
- 5.2 In the case of an increase in material and raw material prices, salaries and wages or manufacturing costs between the conclusion of the contract and delivery, PERI is entitled to raise the prices in accordance with this increase unless explicitly excluded in the contract / order confirmation.
- 5.3 Taxes must be added to all prices, if applicable.

#### 6 Payment Conditions

- 6.1 All invoices are payable 30 calendar days after receipt of the invoice.
- 6.2 All invoices issued by PERI shall be conclusive and binding as between PERI and the customer pending final judgement after a trial. For the avoidance of doubt:
  - 6.2.1 PERI shall be entitled to enter summary judgement against the customer for amounts due under the said invoices without taking into account and set-offs, and/or counterclaims alleged by the customer,
  - 6.2.2 the customer shall not be entitled to a stay of execution on the said summary judgement.
- 6.3 PERI is obliged only to take into account:
  - 6.3.1 credit notes issued by PERI,
  - 6.3.2 set-offs and/or counterclaims allowed by the court at final judgement after trial.
- 6.4 For payment by cheque: the payment obligation of the customer is considered fulfilled only when the cheque has been cleared by the bank.
- 6.5 In case of delayed payment PERI is entitled to charge interest of 1% per month from the date of the invoice to the date of full payment.
- 6.6 The customer may only assign receivables, no matter what kind, against PERI to third parties if PERI agrees to this in writing.

#### 7 Complete Payment Request

- 7.1 If the customer falls into arrears of his payment obligations, PERI is entitled to set due all receivables.

#### 8 Retention of Title, Fiduciary basis as Bailee and Negative Pledge

- 8.1 Risk of the Delivered Items
  - 8.1.1 Risk of damage to or loss of the Delivered Items shall pass to the customer:
    - a. In the case of items to be delivered at PERI's premises, at the time when PERI notifies the customer that the Items are available for collection; or
    - b. In the case of items to be delivered otherwise than at PERI's premises, at the time of delivery or, if the customer fails to take delivery of the Delivered Items, the time when PERI has tendered delivery of the Items.
  - 8.1.2 The customer shall insure and keep insured the Delivered Items to the full Price against 'all-risks' to the reasonable satisfaction of PERI until the date that property in the Delivered Items passes from PERI, and shall whenever requested by PERI produce a copy of the policy of insurance. Without prejudice to the other rights of PERI, if the customer fails to do so all sums whatsoever owing by the customer to PERI shall immediately become due and payable.
- 8.2 Retention of Title - Notwithstanding delivery of and the passing of risk in the Delivered Items to the customer, the property in the Delivered Items shall not pass to the customer until

PERI has received in cash or cleared funds for payment in full of the price of the Delivered Items sold by PERI to the customer. For the avoidance of doubt, the allocation of individual receivables to an ongoing invoice or adding to an account and the recognition of these does not remove the retention of title.

- 8.3 Fiduciary basis as Bailee - Until such time as the property in the Delivered Items passes to the customer, the customer shall hold the Delivered Items and each of them in a fiduciary basis as Bailee for PERI.
- 8.4 Sub-sale - Notwithstanding that the Delivered items (or any of them) remain the property of PERI, if the customer sells or uses the Delivered Items in the ordinary course of the customer's business at full market value it shall be for the account of PERI. Any such sale or dealing shall be a sale or use of PERI's property by the customer on the customer's own behalf and the customer shall deal as principal when making such sales or dealings. Until property in the Delivered Items passes from PERI to the customer the entire proceeds of sale of otherwise of the Delivered Items shall be account and shall be at all material times identified as PERI's money.
- 8.5 Incorporation of Delivered Items into new commodities - If any of the Delivered Items is incorporated in, use or processed to form a new commodity by the customer, including mixing with other goods that do not belong to the customer:
  - 8.5.1 The processing takes place on behalf of PERI, without any obligations arising from this on PERI's part. All of PERI's rights in the Delivered Items shall extend to these new commodities in accordance with the ratio of the value of the Delivered Items to which PERI retains and the other goods at the time of processing.
  - 8.5.2 If the customer has mixed the goods to which PERI retains title and / or has mixed rental goods with other goods, PERI has the right to separate out firstly its rental goods and then the goods to which it retains title in agreement with the customer and with reference to the invoicing documents.
- 8.6 Storage of Delivered Items
  - 8.6.1 The customer shall store the Delivered Items to which PERI retains title separately, at its own cost, from the goods of the customer's and third parties' and /or other rental goods.
  - 8.6.2 The Delivered Items shall be marked in such a way that they are clearly identified as PERI's property and shall be properly stored, protected and insured and identified as PERI's property. If contrary to this obligation, the Delivered Items to which PERI retains title are mingled or mixed with other goods/or are mingled or mixed with rental goods and the Delivered Items which PERI retains title cannot be separated, PERI will become part owner.
- 8.7 PERI's right to re-possession of Delivered Items - Until such time as the property in the Delivered Items passes to the customer (and provided the Delivered Items are still in existence and have not been resold), PERI shall be entitled at any time to request the customer to deliver up the Delivered Items to PERI and, if they customer fails to do so forthwith, to enter upon any premises owned, occupied or controlled by the customer or any third party where the Delivered Items are stored and repossess the Delivered Items.
- 8.8 Negative Pledge of the Delivered Items - The customer shall not entitle to pledge or in any way charge by way of security for any indebtedness any of the Delivered Items which remain the Property of PERI. Without prejudice to the other rights or remedies available to PERI, if the customer does so all moneys owing by the customer to PERI shall immediately become due and payable.
- 8.9 Actions by third parties - The customer must inform PERI immediately of any intended or actual seizure of, disposal of and/or execution proceedings against the Delivered Items over which PERI retains title by third parties (including liquidators, receivers, judicial managers and any administrators). At the customer's own cost, the customer shall use best endeavors to object to any such seizure, disposal or enforcement proceedings. The customer shall provide to PERI the relevant documents relating to the seizure, disposal or execution proceedings as the case may be and the objection thereto.

#### 9 Non-Payment of a Payment Obligation

- 9.1 If PERI withdraws from the contract as a result of the non-fulfillment of a payment obligation or as a duty violation by the customer, or if delivered products are returned for other reasons resulting from the retention of title, the customer must pay the value of the surrender for the time when it was in possession in the form of an appropriate compensation for use.
- 9.2 The payment may not exceed the purchase price. In addition, damages must also be paid for the expenses incurred as a result of the contract.

## 10 Guarantee

- Expected quality
- 10.1 For goods that are intended for the manufacture of concrete areas that will remain visible, the expected quality of the sale item is determined by the current version of the "quality criteria for concrete formwork" data sheets issued by the Gueteschutzverband Betonschalungen e.V (Concrete Formwork Quality Protection Association) in Germany.
- 10.2 For the sale of new products
  - 10.2.1 PERI delivers new or repairs delivered new products, if they are proven to be defective as a result of circumstances that occurred before the transfer of risk.
  - 10.2.2 The retention of (item 8) also applies for parts replaced as part of the exchange procedure.
  - 10.2.3 The customer must give PERI appropriate time and opportunity to perform the replacement, otherwise PERI is released from its liability and the guarantee of the resulting consequences.
  - 10.2.4 If the complaint is justified, PERI will bear the direct costs for the repair or, in the case of the delivery of a replacement for the replacement part, as well as the transportation costs. The total costs to be borne are limited up to the order amount (sales only).
  - 10.2.5 If the customer is jointly responsible for causing the defect, in particular if he has not met his obligation to avoid damage and deterioration, after repair PERI is entitled to claim compensation corresponding to the level of the purchaser's joint involvement in causing the defect.
  - 10.2.6 The customer may choose to withdraw from the contract if PERI was given an appropriate deadline for the repairs - taking into account the legally exceptional cases - and this deadline has passed without any progress being made. If there are no significant defects, the customer has a right to a reduction in the purchase price only
- 10.3 For sale of used products
  - 10.3.1 The sale of used goods as a sale of components only rather than sale of a system takes place with no guarantee of any kind. It is the customer's choice to inspect the goods prior to delivery at PERI's stockyard and, in case of rejection, to retreat from the purchase. Any further claims are excluded.
  - 10.3.2 The sale of used goods within PERI system is covered by PERI's guarantee that the items are fit for the purpose and safe to use. No further guarantees of any kind are given.

## 11 Liability

- 11.1 PERI is only liable, even in cases of damages as a result of the breach of obligations during the contractual negotiations, irrespective of the legal grounds for this, and in particular even for damages that have not occurred to the delivered item itself, in the case of intentional negligence, culpable breach of significant contractual obligations, gross negligence on the part of its divisions or managerial employees, culpable damage to life, body, health and fraudulent concealment of defects.
- 11.2 Any other liability, irrespective of the legal grounds, in particular for compensation for damages that do not occur to the delivered item is excluded.
- 11.3 PERI does not accept liability for the consequences of defects for which it provides no guarantee.

## 12 Time Limitation

- 12.1 Unless otherwise agreed, the time limit for claims by the customer that arise against PERI on the occasion of and in connection with the delivery of the goods is one year after the delivery, irrespective of the legal grounds.

**PERI (Hong Kong) Limited**  
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