



## PERI Terms and Conditions of Purchase

### 1. Scope

1.1. These Terms and Conditions of Purchase of PERI (Hong Kong) Limited, with registered office at 19D, Tower B, Billion Centre, 1 Wang Kwong Road, Kowloon Bay, Hong Kong (hereinafter referred to as "PERI"), shall apply exclusively in business transactions with undertakings within the meaning of Sections 14 and 16 of the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong) (the "Ordinance") with individuals, sole proprietors, corporations, agents, partnership with legal personality, public bodies or public legal entities (collectively hereinafter referred to as the "Supplier").

1.2. The PERI Terms and Conditions of Purchase (hereinafter also referred to as the "Terms and Conditions") shall apply with regard to all services, including future services rendered within the framework of on-going business relations, even if these general Terms and Conditions of Purchase are not expressly agreed upon.

### 2. Protective clause

Unless a differing contractual agreement has been expressly made, these Terms and Conditions shall exclusively apply. Other provisions, in particular the Supplier's General Terms and Conditions of Business, shall not become part of the contract, even if PERI does not expressly contradict the same.

### 3. Intended use of the products to be supplied by the Supplier

As far as PERI requires and uses the products previously acquired and to be acquired in future from the Supplier (hereinafter also referred to as the "Deliverables") for the purpose of further processing to create products to be manufactured by PERI itself and described in further detail in the specification/service description/order (hereinafter referred to as the "PERI End Products") and for resale to customers of PERI (hereinafter referred to as the "PERI End Customers"), section 2A of the Ordinance applies.

### 4. Conclusion of contract

4.1. A contract shall come into being through an order by PERI in response to a written offer from the Supplier (hereinafter referred to as the "Contract").

4.2. If an order from PERI has not been received by the Supplier within the period in which the Supplier's offer to PERI remains binding (i.e. the order is late), the Supplier must notify PERI of the late receipt of the order from PERI immediately following receipt of the order declaration from PERI. Only if the Supplier has previously notified PERI of the receipt of the order from PERI, the Supplier shall not be under a duty to submit the immediate declaration of receipt pursuant to the above sentence. If the Supplier delays timely notification within the meaning of this clause, then the order from PERI shall be deemed not to be late.

### 5. Prices and payment

5.1. The prices shown in the order from PERI shall be binding on the Supplier. No change in the prices or no extra charges shall be effective without the prior written consent of PERI.

5.2. Unless stated otherwise in PERI's order, prices shall include

packaging, shipping, insurance and other costs of delivery and any duties, imposts, levies or value added tax (if any).

5.3. Cost quotations submitted by the Supplier to PERI shall be binding upon the Supplier and free of charge.

5.4. Unless otherwise agreed in writing, PERI shall pay the purchase price subject to the supply quality and quantity and in accordance with the payment terms upon receipt of valid invoice.

5.5. The time limit for payment pursuant to clause 5.4 shall commence upon receipt of the Supplier's invoice provided such invoice fulfils the requirements of clause 16, but not before delivery in full of the Deliverables owed by the Supplier.

5.6. If a formal acceptance procedure is required to take place, the payment period shall not commence, in derogation from clause 5.5, before formal acceptance of the Deliverables by PERI.

5.7. Payments made by PERI to the Supplier shall not qualify as acknowledgment that the Supplier's delivery or service is in accordance with the contractual terms.

5.8. PERI may set off any amount that is payable by it to the Supplier against any amount that is payable by the Supplier to PERI whether or not arising from the same transaction.

### 6. Delivery deadlines, remedies

6.1. The delivery times and deadlines set out in PERI's order shall be binding upon the Supplier and PERI, and all Deliverables shall be delivered in accordance therewith, provided that PERI may notify the Supplier of any change in delivery times and deadlines as and wherever PERI deems it appropriate or necessary.

6.2. In the event of failure by the Supplier to comply with the delivery times and deadlines set out in clause 6.1 above or delay in delivery attributable to the Supplier, PERI shall be entitled, without limiting or affecting other rights or remedies available to it under this Terms and Conditions or the Contract or PERI's order or applicable laws:

- (a) to liquidated damages for delayed delivery in the amount of 0.5% of the delivery value per complete week of delay, but not more than a total of 5% of the delivery value. PERI reserves the right to assert further claims (whether contractual, tortious or statutory). The Supplier shall be entitled to provide documentary evidence to PERI to the effect that, as a result of the default, either no loss or a significantly smaller loss has arisen. The liquidated damages under this clause 6.2(a) shall be reduced accordingly in the event that the Supplier evidences a lesser default loss;
- (b) at its absolute discretion, to terminate the Contract or cancel the whole or any part of PERI's order with immediate effect by giving written notice to the Supplier;
- (c) to refuse to accept any subsequent performance of the services and/or delivery of the Deliverables which the Supplier may attempt to make;
- (d) to procure any ordered Deliverables then outstanding from any other source and to recover from the Supplier any costs incurred by PERI in obtaining substitute goods and/or services from a third party;
- (e) to require a refund from the Supplier of sums paid in advance for Deliverables and/or services that the Supplier has not provided and/or Deliverables that the Supplier has not delivered; and
- (f) to claim damages for any additional costs, loss or expenses incurred by PERI which are in any way



attributable to the Supplier's failure to comply with the delivery times and deadlines set out in PERI's order. This clause 6.2 shall apply to any repaired or replacement of Deliverables provided by the Supplier.

- 6.3. Circumstances jeopardizing compliance with agreed delivery deadlines must be immediately notified by the Supplier in writing to PERI. PERI's right to withdraw from the contract or to claim damages for non-fulfilment according to contractual or statutory provisions or common law remains unaffected.
- 6.4. Where the Supplier neglects or refuses to deliver the Deliverables to PERI in accordance with PERI's order or the Contract, PERI may maintain an action against the Supplier for damages for non-delivery. PERI also reserves the right to seek specific performance of PERI's order and/or the Contract, without giving the Supplier the option of retaining the Deliverables on payment of damages.

**7. Delivery, transfer of risk, receipt, acceptance, return, rejection**

- 7.1. Partial delivery and partial performance by the Supplier shall not be permitted.
- 7.2. Unless otherwise agreed, shipping and packaging costs, customs duties, fees and other levies shall be borne by the Supplier. The Incoterms DDP which are valid at the time of conclusion of the Contract shall apply.
- 7.3. The Supplier must include with each consignment, delivery notes indicating the content, the order number and/or other order identifier. If shipping papers are not included with a delivery, then the Deliverables supplied shall be stored at the cost and risk of the Supplier until the arrival of the shipping papers, unless the Supplier is not responsible for the absence of the shipping papers.
- 7.4. In the case of the delivery of Deliverables for which the Supplier is not under a contractual obligation to set them up or assemble them at the place of performance, the risk of accidental loss shall pass to PERI upon receipt of the Deliverables at the shipping address indicated by PERI. In the event that a formal acceptance procedure must be conducted by PERI, the relevant time of transfer of risk shall be the time of completed formal acceptance by PERI. Notwithstanding any other term of this Terms and Conditions or any inference therefrom, the risk of damage to or loss of Deliverables shall be upon and that of the Supplier until the Deliverables are received and accepted by PERI.
- 7.5. The costs for the disposal of packaging material shall be borne by the Supplier.
- 7.6. The Supplier shall owe an obligation in kind, however, not limited to a stock.
- 7.7. Notwithstanding any term to the contrary herein, PERI may modify or cancel any requirements for any product or service prior to completion of delivery by the Supplier. PERI shall notify the Supplier of such modification or cancellation of requirements as soon as reasonably practicable. Upon receipt of PERI's notification, the Supplier shall accommodate the modifications or cancellation of requirements as notified by PERI. In the event that the Supplier gives PERI a written request for adjustment of the prices and/or the delivery times and deadlines within seven (7) days upon receipt of PERI's notification, PERI will consider making adjustments to the prices and delivery times and deadlines and if PERI decides to make such adjustments, PERI will notify the Supplier of its decision as soon as reasonably practicable.
- 7.8. Without prejudice to any other rights or remedies available to it under this Terms and Conditions, the Contract or applicable laws, PERI may refuse to accept or reject or

return all or any portion of any delivered Deliverables (including services) which are found to be defective, damaged, spoilt or not complying with PERI's order and/or the Contract. The Supplier shall remove the returned/rejected Deliverables at its own risk and expense within 48 hours of having been notified of such return or rejection of Deliverables by PERI. Within seven (7) days of receipt of such notification of return and/or rejection by PERI, the Supplier shall, at its/his/her own costs, replace all returned or rejected Deliverables with Deliverables that are fit and marketable and comply with PERI's requirements under PERI's order and the Contract. The Supplier shall advise PERI the earliest delivery date of the replacement Deliverables. PERI is entitled to seek for damages from the Supplier in the event that replacement Deliverables cannot be delivered within seven (7) days as mentioned above and the Deliverables are urgently required for operations of PERI. If the Supplier fails to deliver replacement Deliverables in time, PERI may replace them with Deliverables from a third party and charge the Supplier the cost thereof and terminate the Contract.

**8. Import and export licences**

If Deliverables are subject to governmental import and/or export regulations, then the Supplier shall procure the requisite licences for import and/or export of the Deliverables. This shall be at the Supplier's own cost and in good time prior to delivery of the Deliverables to PERI.

**9. Documents, information and documentary evidence**

- 9.1. Documents provided by PERI and indications given by PERI, such as illustrations, drawings, indications of weights and dimensions, shall be binding on the Supplier.
- 9.2. At the latest upon dispatch of the Deliverables, the Supplier shall hand over to PERI the required quality certificates as well as all documents required for the delivery and for the contractually-specified and ordinary use of the Deliverables, such as test certificates, analysis reports, and formal acceptance certificates. These documents shall be handed over to PERI immediately and at the latest upon delivery of the Deliverables.
- 9.3. The indications stated in the quality certificates, formal acceptance certificates, test certificates and analysis reports shall be deemed to be quality agreements concerning the Deliverables to be supplied by the Supplier.

**10. Title and copyright**

- 10.1. Title to the Deliverables shall pass to PERI upon receipt and acceptance of the Deliverables by PERI.
- 10.2. For the purpose of using specimens, cost quotations, drawings, documentation and similar information, both physical and virtual, the Supplier grants to PERI an exclusive right of use. Use by the Supplier or the respective copyright owner is excluded. Granting of the right of use shall be free of charge, without limitation in terms of content and for an indefinite period.
- 10.3. Specimens, cost quotations, drawings, documentation and similar information, both physical and virtual, in respect of which ownership has passed to PERI or in which PERI has been granted an exclusive right of use under the above clause, may be used and passed on to third parties by PERI within the framework of ordinary business transactions.



**11. Inspection for defects**

- 11.1. Prior to dispatch of the Deliverables to PERI, the Supplier must check the Deliverables to ensure that they are complete and free from defects. In the course of such checking, the Supplier must undertake final checks and, if appropriate, final tests which shall enable the Supplier to ensure that the entire consignment is free of defects and complete.
- 11.2. PERI inspects the items delivered on a sample basis only with regard to visible defects. The inspection will be performed in the ordinary course of business. In other respects, the Supplier shall not require PERI to examine the items delivered for completeness and freedom from defects. The Supplier shall not raise any plea concerning delayed assertion of defects regarding non-visible defects.
- 11.3. If PERI fails to immediately notify of the visible defect or incompleteness of a Deliverable, PERI shall not lose the rights which it holds against the Supplier in respect of defects.
- 11.4. Any inspection or other action by PERI under this clause 11 shall not reduce or affect the Supplier's obligations under PERI's order and/or the Contract, and PERI shall have the right to conduct further inspections after the Supplier has carried out such remedial action as providing replacement Deliverables.

**12. Warranty**

- 12.1. The Supplier unconditionally and irrevocably represent and warrant that each of the warranties is true and accurate and not misleading in any material respect as given as of the date of the Contract and remain true and accurate and not misleading in any material respect during the continuance of the business relationship between PERI and the Supplier.
- 12.2. The Supplier shall provide a warranty to PERI that the Deliverables will:
  - (a) be free from defects of design, workmanship and materials;
  - (b) be of merchantable quality and be fit for any particular purpose held out by PERI at the time PERI's order is placed;
  - (c) conform to applicable specifications, designs, samples and/or other requirements specified by PERI;
  - (d) be free and clear of all liens, security interests or other encumbrances;
  - (e) not infringe or misappropriate any third party's intellectual property rights such as patent and design; and
  - (f) comply with all statutory requirements and regulations relating to the sale of the Deliverables.
- 12.3. The Supplier undertakes to repair and return or replace the Deliverables which are found to be defective as a result of faulty materials or workmanship within six (6) months of delivery and installation.
- 12.4. The Supplier shall provide PERI with Deliverables that conform to or exceed any formula, specifications, samples and data which are part of the Contract.
- 12.5. These warranties survive any delivery, inspection, acceptance or payment of or for the Deliverables with respect to PERI. These warranties are cumulative and in addition to any other warranty provided by law or equity. Each of the warranties is separate and independent.
- 12.6. Insofar as, with regard to the assertion of warranty claims, it is a pre-requisite that a reasonable grace period set for performance or subsequent performance expires without the performance or subsequent performance having successfully been performed, the reasonable grace period may not be longer than seven (7) days from receipt of the performance request by the Supplier.

- 12.7. If PERI has had to take back the item manufactured by the Supplier as a result of its defectiveness, or the PERI End Customer has reduced the purchase price, then in the context of the sale of a newly manufactured item, PERI may claim reimbursement from the Supplier of the expenses which PERI would have had to bear in relation to its End Customer, if the defect asserted by the PERI End Customer had existed already at the time of transfer of risk to PERI. PERI shall be entitled to require the Supplier to repair and return the Deliverables or to supply replacement Deliverables in accordance with PERI's order, the Contract and PERI's requirements within seven (7) days after the Supplier takes back the defective item from PERI.

**13. Recall**

- 13.1. PERI shall be entitled, at its absolute discretion, to recall its products supplied to the End Customer (the "recall") if sufficient suspicion arises that the product supplied by the Supplier has a serial defect. In this context, serial defects shall mean that at least a few items from the category owed by contract have the same or a similar defect. Recall within the meaning of this clause means that PERI may take any and all measures in order to ensure that the PERI End Customer does not suffer any disadvantage through use of the Deliverables, in particular, PERI may announce warnings and arrange for the exchange of the defective Deliverables.
- 13.2. If PERI notifies the Supplier that a recall has occurred pursuant to 13.1 above, the Supplier shall provide PERI with all requisite information in order to ensure that PERI is in a position to assess the impact and consequences of the serial defect, in order to fully remove the defect in each recalled PERI End Product. In this context, the Supplier shall in any event notify PERI of the batch number and all information relating to manufacture and development of the batch in question.
- 13.3. The Supplier shall assume the costs of the recall. Costs of recall shall be the following:
  - Costs of return delivery of the PERI End Products supplied to the PERI End Customer;
  - Costs of repair and exchange of the defective PERI End Products;
  - Costs of the delivery of the repaired and/or exchanged PERI End Products to the PERI End Customer as shall take place following the recall by PERI;
  - Costs of scrapping the defective Deliverables insofar as full remedy of the defects in the Deliverables is not possible on the part of either PERI or the Supplier by way of repair;
  - Costs of scrapping the PERI End Products delivered back to PERI within the framework of the recall, insofar as PERI cannot achieve full remedy of the defects in the PERI End Products through repair;
  - Costs of the employees engaged at PERI for the purpose of remedying all defects in the context of the recall, at a standard hourly rate of HKD520 (subject to the level of non-conformance);
  - Costs and expenses of price reductions and damages claims asserted by PERI End Customers against PERI.
- 13.4. The Supplier shall be under a duty, at its own expense, to resupply to PERI replacements in respect of all Deliverables exchanged by PERI within the framework of the recall.

**14. Retention of title**

- 14.1. Insofar as PERI provides the Supplier with components, PERI reserves title thereto. Processing or combining with other items owned by a party other than PERI by the Supplier shall be undertaken on behalf of PERI. In the event of processing or combining, PERI shall acquire co-ownership of the



processed and combined items in the ratio of the value of the part of the item owned by PERI as compared with the other processed parts of the item at the time of processing or combining.

- 14.2. Models, specimens, production facilities, tools, measuring and testing devices, other equipment provided, designs, drawings, artworks, diagrams, flow-charts, specifications, photos and films, software programmes, samples, database, work standard sheets and printing templates, both physical and virtual, provided to the Supplier by PERI shall remain in the ownership of PERI.
- 14.3. The documents listed in clause 14.2 may only be disclosed to third parties subject to PERI's prior written consent. PERI may request for the return of the documents referred to in clause 14.2 at any time, unless otherwise expressly agreed in an individual instance. The Supplier shall hold no rights of retention with regard to the documents referred to in clause 14.2.

**15. Liability and indemnity**

- 15.1. If a claim is made against PERI under product liability on account of a defect in a Deliverable and/or death, personal injury or damage to property arising therefrom or in relation thereto, then the Supplier must indemnify PERI against all liabilities, costs, expenses, damages or losses incurred by PERI in connection with and for such claim.
- 15.2. If a claim is made by a third party against PERI for infringing commercial or intellectual property rights including patent rights in respect of any Deliverables or items supplied by the Supplier, then the Supplier must indemnify PERI against all liabilities, costs, expenses, damages or losses incurred by PERI in connection with and for such claim.
- 15.3. Further, PERI shall only be liable according to this Terms and Conditions, PERI's order, the Contract, common law and/or the statutory provisions of the Ordinance.

**16. Invoices**

- 16.1. Invoices shall be issued in duplicate separately for each order and delivery, and they shall include an indication of the order number and other order identifiers and be sent to PERI's address (PERI (Hong Kong) Limited, 19D, Tower B, Billion Centre, 1 Wang Kwong Road, Kowloon Bay, Hong Kong), unless a different invoice address is indicated in the order.
- 16.2. Duplicate invoices must be marked as such. Duties, imposts, levies or value added tax (if any) and their relevant identification numbers (if available) must be shown separately in the invoice.
- 16.3. Invoices not duly issued pursuant to the terms of clause 16.2 shall be returned to the issuer.

**17. Insurance**

- 17.1. PERI shall not assume the costs of insurance for Deliverables, in particular freight forwarding insurance.
- 17.2. The Supplier is informed that PERI is an SVS and RVS<sup>1</sup> prohibition customer.
- 17.3. The Supplier shall, at its own expense, maintain and carry insurance, which include without limitation freight forwarding insurance and product liability, in full force and effect with financially sound and reputable insurers for the Deliverables. Upon PERI's request, the Supplier shall provide PERI with a certificate of insurance from the Supplier's insurer

evidencing the insurance coverage as requested by PERI. The certificate of insurance shall name PERI as an additional insured. The Supplier shall provide PERI with thirty (30) days' advance written notice in the event of a cancellation or material change in the Supplier's insurance policy. Except where prohibited by law, the Supplier shall require its insurer to waive all rights of subrogation against PERI's insurers and PERI or the indemnitees.

**18. Assignment and pledging**

- 18.1. The assignment or pledging of contractual claims shall only be valid subject to PERI's prior written consent.
- 18.2. The Supplier shall not assign, transfer, delegate, subcontract or dispose of its/his/her rights and/or obligations under this Terms and Conditions, PERI's order, the Contract without the prior written consent of PERI. Any purported assignment, transfer, delegation, subcontracting or disposal in violation of this clause 20 shall be null and void. No assignment, transfer, delegation, subcontracting or disposal shall relieve the Supplier of any of its obligations under this Terms and Conditions, PERI's order, the Contract and/or the statutory provisions of the Ordinance.
- 18.3. PERI may at any time assign, transfer, delegate, subcontract or dispose of any or all of its rights and/or obligations under this Terms and Conditions, PERI's order, the Contract and/or the statutory provisions of the Ordinance without the Supplier's prior written consent.

**19. Replacement parts**

- 19.1. The Supplier shall be under a duty to hold replacement parts for the period of anticipated technical use, but for at least ten years following delivery according to reasonable terms and conditions.
- 19.2. If the Supplier discontinues the manufacture of replacement parts, it shall be under a duty to notify PERI accordingly and to give PERI an opportunity to place a final order.

**20. References and publications**

When giving references or making publications, the Supplier may only use the corporate name or trademark of PERI, if PERI has previously consented thereto in writing.

**21. Suspension**

- 21.1. PERI shall be entitled to suspend any acceptance obligation.
- 21.2. Suspension shall take place by way of written declaration to the Supplier.
- 21.3. During the suspension period, contractual rights and duties shall be in abeyance.
- 21.4. For the avoidance of doubt, payment by PERI with respect to the Deliverables shall not constitute acceptance.

**22. Termination by the Supplier due to suspension**

- 22.1. If the suspension pursuant to clause 21 lasts for longer than three months, then the Supplier shall be entitled to terminate the contract. In such event, the Supplier shall have a claim to payment of the agreed remuneration. However, it must offset that amount which it has saved by way of expenses or acquired through other use of its working capacities or wilfully failed to acquire as a result of rescission of the contract.
- 22.2. In the event of termination by the Supplier pursuant to clause 22.1, it shall be presumed that the Supplier shall be owed 5% of the agreed remuneration pertaining to the part of the

<sup>1</sup> SVS/RVS are insurances taken out by freight forwarders which are commonly used in Germany. Insurance policy under this Terms and Conditions shall apply Clause 17.3.





delivery and/or service not yet rendered; this shall not apply if PERI or the Supplier can demonstrate that the Supplier is owed a higher or lower amount.

**23. PERI's right of termination**

- 23.1. PERI shall be entitled to terminate the contract in whole or in part at any time before delivery of the Deliverables or services or any part of them by giving the Supplier prior written notice, whereupon the Supplier shall discontinue all work on PERI's order and/or the Contract. In such event, the Supplier shall be entitled to the agreed remuneration. However, it must offset that amount which it has saved by way of expenses or acquired through other use of its working capacities or wilfully failed to acquire as a result of termination of the contract. It shall be presumed that, following termination by PERI, the Supplier shall be owed 5% of the agreed remuneration pertaining to the part of the delivery and/or service not yet rendered; this shall not apply if PERI or the Supplier can demonstrate that the Supplier is owed a higher or lower amount.
- 23.2. Without affecting any other right or remedy available to it, PERI may terminate PERI's order and/or the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:
- (a) the Supplier commits a material breach of this Terms and Conditions, PERI's order, the Contract and/or the statutory provisions of the Ordinance, which is irremediable or the Supplier fails to remedy within a period of seven (7) days after being notified in writing of such breach; or
  - (b) the Supplier enters into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), is being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), has a receiver appointed to any of its assets or ceases to carry on business or operation, in the relevant jurisdiction.

**24. PERI's right of withdrawal**

- 24.1. PERI shall be entitled to withdraw from the contract if the Supplier's operations are disrupted and this has occurred without any fault on the part of PERI (hereinafter referred to as "Operational Disruptions"), in particular, in the event of force majeure or transportation bottlenecks.
- 24.2. PERI shall not be entitled to withdraw pursuant to the terms of clause 24.1 if the Operational Disruptions are merely short-term or if the services of Supplier are fixed in nature.

**25. Taxes, fees, levies**

All taxes, fees, duties, imposts and levies in connection with services rendered outside Hong Kong shall be borne by the Supplier unless otherwise agreed.

**26. Costs of return transportation of packaging**

The Supplier shall reimburse PERI for the reasonable costs of return transportation for packaging of Deliverables which it shall have paid to third parties.

**27. Place of performance and fulfilment**

The place of performance and fulfilment for the obligations of the Supplier in relation to PERI shall be the registered office of PERI (Hong Kong) Limited at 19D, Tower B, Billion Centre, 1 Wang Kwong Road, Kowloon Bay, Hong Kong.

**28. Jurisdiction and choice of law**

- 28.1. Jurisdiction for all disputes arising from the contractual relationship under this Terms and Conditions, PERI's order and/or the Contract shall be at the registered office of PERI

(Hong Kong) Limited at 19D, Tower B, Billion Centre, 1 Wang Kwong Road, Kowloon Bay, Hong Kong. PERI reserves the right to bring judicial actions at the statutory place of jurisdiction in which the Supplier is incorporated or carries on its business and/or operation.

- 28.2. The laws of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") shall apply exclusively, excluding all conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**29. Severance clause**

In the event that any individual provisions of this Terms and Conditions should be or become invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the remaining provisions of this Terms and Conditions. The parties undertake in such event to replace any invalid, illegal or unenforceable provision with a valid, legal and enforceable term which comes as close as possible to the actual and economic intent of this Terms and Conditions. The same shall apply with regard to any contractual gap in this Terms and Conditions.

**30. Variation**

Except as set out in this Terms and Conditions, any variation to PERI's order and/or the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by PERI.

**31. Force majeure**

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under PERI's order and/or the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such party or if it could have been foreseen was unavoidable. If such event or circumstance prevents the Supplier from supplying the Deliverables and/or services for more than six (6) weeks, PERI shall have the right, without limiting its other rights or remedies, to terminate PERI's order or the Contract with immediate effect by giving 14 days' written notice to the Supplier.

**32. Waiver**

No waiver by any party of any of the provisions of this Terms and Conditions and/or of the Contract shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Contract, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Terms and Conditions and/or the Contract shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.



**33. Confidentiality**

- 33.1. Each party undertakes that it shall not, at any time during the continuance of business relationship between PERI and the Supplier and for a period of five (5) years after the termination of the business relationship between PERI and the Supplier, disclose to any person any confidential information (including but not limited to all materials, equipment, tools, copyright, rights in designs and any other intellectual property rights in all drawings, specifications and data supplied by PERI to the Supplier) (hereinafter referred to as the "Confidential Information") of the other party, except as permitted by clause 33.2 below.
- 33.2. Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information must comply with this clause 33; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 33.3. Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 33.4. All materials, equipment, tools, copyright, rights in designs and any other intellectual property rights in all drawings, specifications and data supplied by PERI to the Supplier shall at all times be and remain the exclusive property of PERI, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until they are returned to PERI, and shall not be disposed of or used in any way other than in accordance with PERI's written instructions or authorization.
- 33.5. For the protection of the business and goodwill of PERI:
- (a) the Supplier shall not ship materials under her own name directly to the job site or designated end of PERI's customer;
  - (b) the Supplier's logo and details shall not show on the materials, packages and any delivery documents to PERI's customer; and
  - (c) the Supplier shall not directly or indirectly attempt to solicit from a current client, customer, or business partner of PERI in any form.

Any material breach of this clause will cause PERI substantial and irrevocable damage and therefore PERI shall have the right to seek specific performance and injunctive relief from judicial authority.