

## **1. Scope**

1.1 These General Terms and Conditions of Business for the purchase of goods and services (hereinafter referred to as "Terms and Conditions") apply exclusively to the business transactions of PERI Vertrieb Deutschland GmbH & Co. KG established at 89264 Weissenhorn, Daimlerstraße 24-28, Germany, or an affiliated company within the meaning of §§ 15 ff. AktG (hereinafter referred to as "PERI"), companies within the meaning of § 14 of the German Civil Code ("BGB"), legal entities governed by public law or special assets under public law (hereinafter referred to as "Supplier").

1.2 These terms and conditions apply exclusively to all deliveries and services of the Supplier to PERI. Other provisions, in particular the Supplier's general terms and conditions, do not apply, irrespective of whether they have been expressly rejected by PERI or not. These Terms and Conditions also apply exclusively if PERI performs or accepts a service without reservation in the knowledge of other terms and conditions.

1.3 These terms and conditions also apply to future similar legal transactions between PERI and the Supplier.

1.4 Individual agreements between PERI and the Supplier are given priority in individual cases. Subject to evidence to the contrary, the content of such agreements shall be subject to a written contract or written confirmation by PERI.

1.5 Indications of the applicability of legal provisions have only clarification purposes. The statutory provisions, therefore, apply independently of any corresponding clarification, insofar as they are not directly amended or expressly excluded in these terms and conditions.

## **2. Conclusion of Contract / Contract**

2.1 Offers, cost estimates, and other services of the Supplier that prepare the conclusion of the contract shall be free of charge. Unless the offer provides for a longer binding period, the Supplier is bound to its offer for four (4) weeks.

2.2 Orders from PERI are only legally binding if they are placed in writing. Orders made orally or by telephone require subsequent written confirmed by PERI in order to be effective. In order to preserve the written form, telecommunication means that do not transmit at least one (1) copy or facsimile of the signature of the exhibitor, in particular simple e-mails are sufficient.

2.3 The Supplier is obliged to confirm orders within a maximum period of five (5) working days by way of a binding order confirmation in text form via email to [confirmation@peri.de](mailto:confirmation@peri.de) or by delivery or performance. After this period, PERI is no longer bound by the order. Any delayed acceptance will be considered a new offer and requires acceptance by PERI. An order confirmation that deviates from the order, in particular concerning quantities, prices, delivery dates, properties of the ordered deliveries or services, is deemed to be a new offer and requires acceptance by PERI.

2.4 If an order from PERI is not (belatedly) received by the Supplier within the period in which the Supplier adheres to its offer submitted to PERI, the Supplier must notify PERI of the delayed receipt of the order from PERI immediately after receipt of the order declaration from PERI.

## **3. Prices and Payment**

3.1 The prices stated in the order are binding.

3.2 Unless otherwise stated in PERI's order, the prices are binding to DDP Incoterms® 2020 including packaging and loading as well as VAT at the statutory rate, unless this is shown separately in the invoice.

3.3 Invoices must be sent separately for each order and delivery, specifying the order number and other order identification numbers (including vendor number, item number, order item) as a PDF via e-mail to [invoice@peri.de](mailto:invoice@peri.de). Multiple invoices may not be combined into one PDF.

3.4 A duplicate invoice must be marked as such. The tax number must be indicated on the invoice.

3.5 The agreed price is due for payment within thirty (30) calendar days of full and defect-free delivery or service (including any agreed acceptance) and receipt of a proper invoice for payment. If PERI pays within fourteen (14) calendar days, the Supplier shall grant PERI a three percent (3%) discount on the net amount of the invoice.

3.6 Insofar as PERI is obliged to make advance payments in individual cases, the Supplier must, in return, provide PERI with a self-debt guarantee of a credit institution that is fully authorized in Germany collateral for the reimbursement of overpaid advance payments due to final non-performance or bad performance.

3.7 Payments made by PERI to the Supplier do not constitute recognition of the Supplier's delivery or performance as being in accordance with the contract.

## **4. Delivery and Service Time, Delivery, Delay in Delivery and Acceptance**

4.1 The delivery and performance times specified in the accepted order from PERI are binding. If no delivery and/or performance time is specified in the order and no other agreement has been made, the delivery and/or performance time shall be four (4) weeks from the conclusion of the contract. The Supplier is obliged to inform PERI immediately in writing if it is unlikely to be able to meet agreed delivery/performance times – for whatever reason. The arrival of the delivery at the delivery address or place of receipt specified in the order shall be decisive for compliance with delivery/performance times. If acceptance is contractually agreed, then successful acceptance shall prove decisive.

4.2 Unless otherwise agreed, deliveries will be made at the DDP Incoterms® 2020 in force at the time of the conclusion of the contract to the delivery address specified in the order.

4.3 Premature deliveries and services as well as partial deliveries and partial services by the Supplier are only permitted after prior consultation and written consent by PERI. Otherwise, PERI has the right to return the delivery at the expense and risk of the Supplier. Should PERI accept such a delivery, the payment period according to Subsection 3.5 does not begin before the agreed delivery/performance date.

4.4 The full order numbers and other agreed information (including creditor number, item number, order item, etc.) must be stated on all shipping notes, consignment notes or other delivery documents, invoices or other correspondence. A delivery note must be enclosed with the delivery.

4.5 The Supplier must, at the latest, upon delivery of the goods to be purchased by the Supplier (hereinafter referred to as "Delivery Items") hand over the required quality certificates to PERI and must provide all proofs required for the delivery and their contractually stipulated or customary use, such as test certificates, analysis reports, acceptance certificates, without delay, but at the latest upon delivery of the Delivery Items.

4.6 In the event of a delay in delivery for which the Supplier is responsible, PERI is entitled, without prejudice to other statutory claims, to demand payment from the Supplier of a contractual penalty of a quarter percent (0.25 %) of the delivery value of the delayed delivery per calendar day of delay, but not more than a total of five percent (5 %) of the delivery value of the delayed delivery. Forfeited contractual penalties shall be offset against other claims for damages due to delay.

4.7 Circumstances that jeopardize compliance with agreed delivery dates must be reported to PERI immediately in writing. PERI's right to withdraw from the contract or to claim damages for non-performance under the statutory requirements remains unaffected, subject to any imputation under Subsection 4.6

## **5 Transfer of Risk**

In the case of deliveries of Delivery Items for which the Supplier is not contractually obligated to set up or assemble at the place of performance, the risk of accidental loss and accidental deterioration of the Delivery Items shall pass to PERI upon the handover of the Delivery Items to the delivery address indicated by PERI. Insofar as acceptance by PERI is to take place, the decisive time for the transfer of risk is the time of acceptance by PERI. The handover or acceptance is the same if PERI is in default of acceptance.

## **6 Regulatory Compliance, Import, and Export**

6.1 The Supplier is responsible for ensuring that the Delivery Items or parts thereof comply with all applicable laws, guidelines, regulations, or other public law provisions and regulations of authorities and professional associations.

6.2 In particular, the Supplier must ensure that the Delivery Items or parts thereof are not subject to national or international export restrictions. Should a Delivery Item or parts thereof be subject to such an export restriction, the Supplier shall procure the necessary

export licenses for worldwide export at its own expense. Should a Delivery Item or parts thereof be subject to such export restrictions, it is the Supplier's responsibility to procure the necessary licenses for import and worldwide export at its own expense and in good time before delivery of the Delivery Items to PERI.

## **7 Rights of use**

7.1 For the use of samples, cost estimates, drawings, documentation, and similar information of a physical or intangible nature concerning individually manufactured goods, the Supplier grants PERI the exclusive right of use within the meaning of § 31 (3) of the German Copyright Act (UrhG). Any use by the Supplier or the respective author is excluded. The granting of the right of use is free of charge, is not limited to content, and is not limited in time.

7.2 Samples, cost estimates, drawings, documentation, and similar information of a physical or intangible nature, the ownership of which has been transferred to PERI or in which PERI is granted a right of use under the preceding paragraph, may be used by PERI in the context of proper business transactions and may be passed on to third parties.

## **8 Quality, Defects Examination**

8.1 Deliveries and services must comply with quality agreements and the state of the art. In particular, the information presented in the quality certificates, acceptance certificates, test certificates, and analysis reports, as well as specifications agreed upon, are to be regarded a quality agreement

8.2 Without prejudice to PERI's obligations under Subsection 8.3, the Supplier must check the Delivery Items for completeness and lack of defects before delivering the Delivery Items to PERI. In doing so, the Supplier must carry out final initial checks and, where appropriate, final testing which enables the Supplier to ensure that the entire scope of delivery is free of defects and is complete.

8.3 For the commercial obligation to inspect and give notice of defects, the statutory provisions (§§ 377, 381 of the German Commercial Code ("HGB")) apply to the following provisions: In the case of deliveries of larger quantities, PERI's obligation to inspect is limited to defects that are revealed in the case of random inspections of goods under external inspection (including the delivery documents) (e.g. transport damage, false or under-delivery). The reprimand remains unaffected. Without prejudice to the investigative authority of PERI, the complaint (notification of defects) shall in any case be deemed to be immediate and timely if it is made within two weeks of discovery or, in the case of obvious defects from delivery.

## **9 Rights of Defect**

9.1 Unless otherwise specified below, PERI's rights in the event of material and/or legal defects are governed by the statutory provisions.

9.2 By way of derogation from § 443 (1) s. 2 of the German Civil Code (BGB), PERI is entitled to claims for defects without limitation even if PERI has remained

unaware of the defect at the time of conclusion of the contract as a result of gross negligence.

9.3 Without prejudice to the statutory rights of PERI, the following applies: If the Supplier fails to fulfill its obligation of supplementary performance - at PERI's discretion, by remedying the defect (repair) or delivering a defect-free item (subsequent delivery) – within a reasonable period of time set by PERI, PERI can remedy the defect itself and demand compensation from the Supplier for the necessary expenses. In urgent cases, such as endangering operational safety or preventing the occurrence of disproportionate damage, PERI is entitled to remedy an existing defect itself without setting a corresponding deadline and to demand compensation from the Supplier for the expenditure required for this purpose. The Supplier must be informed of such action without delay, if possible before the self-performance is carried out. The right of self-performance does not exist if the Supplier would be entitled to refuse corresponding subsequent supplementary performance under the statutory provisions. By way of derogation from § 438 (1) No. 3 BGB, the general limitation period for claims for defects is three years from the transfer of risk. Insofar as acceptance has been agreed upon, the period of limitation begins with acceptance.

9.4 The statutory recourse claims are fully entitled to PERI. The claims arising from Supplier recourse are also entitled to PERI if the defective goods have been further processed by PERI or another company, e.g. by installation in another product.

## **10 Recall, Serial Error**

10.1 Insofar as PERI requires and uses the Delivery Items for further processing to specifically manufactured by PERI, described in more detail in the specification/service description/order (hereinafter referred to as "PERI end products") and sells them to customers of PERI (hereinafter referred to as "PERI end customers"), the following applies.

10.2 In the event that, based on sufficient, the item delivered by the Supplier has a serial defect, PERI is entitled, at its sole discretion, to recall its final products delivered to the end customer (hereinafter referred to as "recall"). A serial error occurs when more than five percent of the Delivery Items have similar defects. Recall within the meaning of this Subsection means that PERI can take all measures to ensure that the end customer does not suffer any disadvantages through the use of the Delivery Items; in particular, PERI may issue warnings and arrange for the replacement of the defective Delivery Items.

10.3 If PERI notifies the Supplier of a recall under Subsection 10.2, the Supplier will provide PERI with all necessary information to enable PERI to assess the effects and consequences of the serial error in order to completely eliminate the defect in each recalled PERI end product. The Supplier shall in all cases communicate the batch number and all information concerning the production and development of the batch concerned.

10.4 The Supplier bears the costs of the recall. Costs of the recall are:

- Costs of returning the PERI end products delivered to the PERI end customer.
- Costs of repairing and replacing defective PERI end products.
- Costs of the delivery of the repaired and/or replaced PERI end products to the PERI end customer following a recall.
- Costs of scrapping the defective Delivery Items, insofar as the complete elimination of the defects in the Delivery Items by repair for PERI and the Supplier is not possible.
- Costs of scrapping the PERI end products returned to PERI as part of the recall, insofar as it is not possible for PERI to completely remedy the defects of the PERI end products.
- Costs of the employees employed by PERI who are deployed to remedy all defects in the context of the recall, at a flat rate of sixty (60) Euros.
- Costs and expenses to satisfy reductions and claims for damages that PERI's end customers claim against PERI.

10.5 The Supplier is obliged to supply PERI at its own expense with a replacement for all Delivery Items that have been replaced during the course of the recall by PERI.

## **11 Retention of Title**

11.1 Reservation of ownership of the Supplier that goes beyond the simple retention of title is excluded. If the Supplier has reserved the right of ownership of delivered items, this reservation of ownership only applies until payment of these items, unless PERI has already become the owner of these items through processing, connection, blending or mixing.

11.2 If PERI supplies parts to the Supplier, PERI reserves the title to this. Processing, blending or mixing by the Supplier with other items owned by a party other than PERI is carried out on behalf of PERI. In the event of processing, blending or mixing, PERI acquires co-ownership of the processed, blended and mixed items in the ratio of the value of PERI's item to the other processed items at the time of processing, blending or mixing.

11.3 Models, samples, production equipment, tools, measuring and testing equipment, otherwise provided materials, drawings, factory standard sheets, and print templates provided to the Supplier of PERI remain the property of PERI.

11.4 The documents specified in Subsection 11.3 may only be made available to third parties with the prior written consent of PERI (§ 183 BGB) (confidentiality). Unless otherwise expressly agreed to in individual cases, the documents referred to in Subsection 11.3 may be requested by PERI at any time. The Supplier does not have rights of retention with respect to the documents referred to in Subsection 11.3.

## **12 Producer and Product Liability**

12.1 If the Supplier is responsible for product damage, it must indemnify PERI for claims of third parties to the extent that the cause is set within its area of domination and organization and it is itself liable in the external relationship.

12.2 As part of its indemnification obligation, the Supplier must reimburse PERI expenses under § 683, 670 of the German civil code (BGB) arising from or in connection with the use of third parties, including recall actions carried out by PERI. PERI will inform the Supplier of the content and scope of recall measures – as far as possible and reasonable and will allow the Supplier the opportunity to comment. Further legal claims shall remain unaffected.

12.3 In order to secure any compensation claims, the Supplier must conclude operational and product liability insurance with a lump-sum coverage of at least five million Euro (EUR 5,000,000) per personal injury/property damage and maintain such insurance until the expiry of the limitation period for defect rights relating to the last order confirmed by the Supplier.

## **13 Confidentiality, Third-Party Intellectual Property Rights**

13.1 The Supplier undertakes to treat all information provided by PERI within the scope of the individual contract confidentiality and not to disclose it to any third party.

13.2 The information includes, in particular, all information in written form, including photocopies, as well as drafts, sketches, technical protocols, models, electronic data, regardless of the form in which this information is provided (for example, by means of conversations, long-distance calls, on data carriers of various kinds, by means of data transmission of any kind or by mailing). All information and know-how that are perceived visually and/or acoustically are also collected. Confidential information includes, in particular, all technical data, plans, drawings, calculations, execution instructions, information on developments relating to the goods and services, on research and development projects, and all company data.

13.3 The confidentiality obligation does not apply to information that is generally known and has been lawfully obtained from third parties.

13.4 If the Supplier detects that confidential information has been unlawfully disclosed to third parties, it must inform PERI of this immediately.

13.5 The Supplier must ensure that no third party intellectual property rights in Germany and abroad are infringed in connection with the delivery or service as well as the intended use of ordered goods of third parties in the domestic territory or abroad are infringed in connection with the delivery or service and the intended use of the ordered goods. If claims are made against PERI by a third party due to infringements of intellectual property rights, the Supplier must indemnify PERI against such claims and reimburse PERI for all expenses that PERI necessarily incurred from or in connection with the claim by a third party, insofar as the

damage caused originates in the Supplier's sphere of control and organization.

## **14 Insurance**

14.1 PERI will not assume the costs of insurance for Delivery Items, in particular for forwarding insurance

14.2 PERI has independently insured itself against transport damage.

## **15 Assignment and Pledging**

15.1 The assignment or pledging of contractual claims is only effective with the prior written consent of PERI (§ 183 of the German Civil Code (BGB)).

## **16 Offset and Exercise of a Right of Retention**

16.1 PERI reserves the right to withhold or offset payments in an appropriate amount in the event of claims for defects or other claims asserted by PERI.

16.2 The offset or exercise of a right of retention by the Supplier due to disputed or non-legally established counterclaims is excluded, provided that the counterclaims are based on the same contractual relationship.

## **17 Spare Parts**

17.1 The Supplier is obliged to keep spare parts for the Delivery Items for the period of the expected technical use, but for at least ten (10) years after delivery on reasonable terms.

17.2 If the Supplier ceases the production of the spare parts, it is obliged to inform PERI of this with a reasonable lead time and to allow PERI to place a final order.

## **18 References and Publications**

18.1 When providing references or publications, the Supplier may only name the company or trademark of PERI if PERI has previously given written consent (§ 183 of the German Civil Code (BGB)).

## **19 Force Majeure**

19.1 If PERI is prevented from fulfilling its contractual obligations, in particular acceptance obligations, as a result of Force Majeure, riots, natural disasters, fire, water, epidemic or pandemic or other unforeseeable circumstances to include acts of God not attributable to PERI, such as strikes or lawful lockouts, operational or transport disruptions, or the effects of such events, the period for the provision of the contractual service shall be extended in each case by the duration of the hindrance.

19.2 PERI will immediately inform the Supplier of the commencement and likely end of such circumstances and will take all reasonable measures to remedy the obstruction as soon as possible.

19.3 If the hindrance prevents the fulfillment of the contract for more than three months, each party has the right to withdraw from the contract.



19.4 If the supplier is prevented from fulfilling his contractual obligations in particular delivery obligations, due to Force Majeure, the Supplier will take measures under Subsection 19.2. PERI may withdraw from the contract if the disability lasts longer than three (3) months.

## **20 Return Transport Packaging Costs**

20.1 The Supplier shall bear the appropriate return transport or disposal costs of the packaging of the Delivery Items.

## **21 Place of performance**

21.1 Unless otherwise agreed, the place of performance for the Supplier's obligations to PERI is the headquarters of PERI Vertrieb Deutschland GmbH & Co. KG, Rudolf-Diesel-Straße 24-28, 89264 Weissenhorn, Germany.

## **22 Place of Jurisdiction and Choice of Law**

22.1 The exclusive – also international – place of jurisdiction for all disputes arising out of or in connection with the contractual relationship is at the headquarters of PERI Vertrieb Deutschland GmbH & Co. KG, Rudolf-Diesel-Straße 24-28, 89264 Weissenhorn, Germany. PERI reserves the right to take legal action at the legal place of jurisdiction of the Supplier.

22.2 These terms and conditions and all legal relations between PERI and the Supplier are governed exclusively by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **23 Personal data**

23.1 PERI reserves the right to collect, store and use personal data within the meaning of the General Data Protection Regulation of employees of the Supplier in accordance with the PERI Data Protection Declaration, insofar as this is necessary and expedient for the fulfillment of the contractual agreement. The Supplier shall inform its affected employees of this and informs them of the PERI privacy policy. The PERI Privacy Policy is available at [www.peri.de/datenschutz.html](http://www.peri.de/datenschutz.html) and will also be made available in text form on request.

## **24 Severability clause**

24.1 Should individual provisions of these terms and conditions be or become ineffective or unenforceable, the remaining provisions shall remain unaffected. In such a case, the parties shall undertake to use an effective and enforceable provision instead of the invalid or unenforceable provision that is as appropriate as possible to the actual and economic purpose of these Terms. The same applies to a gap in conditions.