

# CONDITIONS OF SALE AND HIRE – 16/02/2015

## 1. CONTRACT

- 1.1. These Conditions replace in their entirety any previous terms and conditions published, issued or used by or any division or subsidiary/branch of PERI.
- 1.2. These Conditions will be deemed to be incorporated into all Contracts, Applications, Proposals and/or Orders.
- 1.3. The Proposed Customer or Customer acknowledges that its acceptance of these Conditions is a condition of PERI entering into any Contracts, Applications, Proposals and/or Orders with the Proposed Customer or Customer.
- 1.4. Any Contract, Application, Proposal or Order may be varied only with PERI's prior written consent.
- 1.5. Any Proposal, tender or quotation submitted by PERI may at any time prior to acceptance of an Order by PERI in respect of the hire and/or sale of Product be varied or withdrawn by PERI. Clerical, typing or other errors made in, or in respect of, any Proposal, tender or quotation shall be subject to correction by PERI and the corrected Proposal, tender or quotation shall apply.
- 1.6. Subject to clause 1.5 a Proposal, quotation or tender submitted by PERI shall remain valid for 30 days from the date of such quotation or tender.
- 1.7. Terms and conditions submitted by a Proposed Customer or Customer with a purchase order or otherwise do not form part of any Contract, Application, Proposal or Order unless expressly agreed in writing by PERI. These Conditions will prevail over the Proposed Customer or Customer's terms and conditions (if any).
- 1.8. The acceptance by a Proposed Customer or Customer of the sale and/or hire of Product by PERI shall constitute acceptance by the Proposed Customer or Customer of the sale and/or hire by PERI of such Product solely on these Conditions and any terms and conditions contained in the relevant Proposal (if any).
- 1.9. To obtain a Proposal from PERI, the Proposed Customer or Customer must provide PERI with all information required by PERI and plans, calculations and specifications which clearly specify:
  - 1.9.1. the Proposed Customer's or Customer's proposed use of the Product;
  - 1.9.2. the nature and purpose of the project on which the Product will be used;
  - 1.9.3. the Site;
  - 1.9.4. whether the Proposed Customer or Customer requires PERI to organise delivery of the Product to the Site; and
  - 1.9.5. the dates and duration when the Proposed Customer or Customer wishes to hire the Product.
- 1.10. Upon request by the Proposed Customer or Customer, PERI may (in its absolute discretion) provide the Proposed Customer or Customer with a Proposal, which will:
  - 1.10.1. be subject at all times to the information provided by the Proposed Customer or Customer to PERI; and
  - 1.10.2. be subject at all times to availability of Product; and
  - 1.10.3. will constitute an offer to the Proposed Customer or Customer capable of acceptance by the Proposed Customer or Customer within 30 days after the date of the Proposal.
- 1.11. Subject to PERI approving and accepting the Proposed Customer's Application, the Customer shall accept the Proposal by either:
  - 1.11.1. notifying PERI in writing of its acceptance of the Proposal; or
  - 1.11.2. placing an Order with PERI for the Product, which will be deemed acceptance of the Proposal;

at which time a legally binding Contract will come into existence, which Contract will incorporate the terms of the Proposal and these Conditions but will be subject at all times to PERI having the right to terminate, at its absolute sole convenience, the Contract at any time within 14 days of the Contract coming into existence.
- 1.12. Once an Order made by the Customer has been confirmed by PERI, it cannot be cancelled or modified without PERI's prior written consent.
- 1.13. In the event of a cancellation in accordance with clause 1.12, the Customer shall reimburse PERI for all costs, loss of profits and expenses incurred by PERI as a result of the cancellation whether such expenses were incurred before or after the date of cancellation. A certificate signed by or on behalf of PERI will be conclusive evidence of all such costs, loss of profits and expenses incurred by PERI.
- 1.14. The Contract will constitute a hire contract with respect to all Products except those Products, which are expressly indicated by PERI to be sale Products. The Contract will constitute a sale contract with respect to sale Products.

## 2. PRODUCT

- 2.1. All Products ordered by the Customer are subject to availability. If the Products noted in an Order are not available, PERI reserves the right to offer alternative Products to the Customer. The Customer may accept the alternative Products by notifying PERI in writing of its acceptance.

- 2.2. Unless otherwise agreed in writing between the parties, PERI does not warrant that the Products are new or unused, or are fit for their intended purpose, or will be unaffected by the conditions (including weather and ground conditions) of the Site or the proposed use of the product.
- 2.3. The Customer warrants that it will use the Product at all times in a good, safe and prudent workmanlike manner and in accordance with all directions and instructions issued by PERI and in accordance with all applicable laws (including to avoid doubt, all relevant occupational health & safety and worksite safety laws regulations and codes) and will keep the Product securely stored when not in use.
- 2.4. No alterations or modifications are to be carried out by the Customer to Products owned by PERI without PERI's prior written consent.
- 2.5. The Customer shall not transfer, sell, mortgage, charge or otherwise deal with any Product owned by PERI or allow the Products to be removed from the Site except in circumstances where the Customer is returning the product to PERI.

## 3. DELIVERY

- 3.1. If the Customer has agreed to collect the Product from the Storage Depot, such collection will be at its own risk and expense and it must comply with clauses 3.3.1 to 3.3.4 of these Conditions.
- 3.2. If PERI has agreed to arrange delivery of the Product to the Site:
  - 3.2.1. PERI will not be required to arrange for the unloading of the Product at the Site;
  - 3.2.2. PERI will not be liable for any Claims arising from:
    - (a) a delay in delivery of the Product; or
    - (b) a failure to deliver the Product, to the site if such delay or failure arises as the result of a circumstance beyond the control of PERI. Notwithstanding late delivery, the Customer must accept and pay for the Product in accordance with the terms of the Contract.
- 3.3. If PERI procures a third party to deliver the Product to the Site, then immediately after delivery, the Customer must:
  - 3.3.1. sign and provide PERI with the form of acknowledgement provided from time to time by PERI in which the Customer:
    - (a) acknowledges receipt of the Product;
    - (b) specifies the number and type of Products delivered;
    - (c) acknowledges that the Customer has inspected the Products; and
    - (d) confirms that the Products are in good condition, of good quality, comply with the Customer's specifications and comply with PERI's Proposal; and
  - 3.3.2. notify PERI in writing of any apparent defects of the Product;
  - 3.3.3. pay for all delivery costs including freight and handling costs as claimed in an invoice issued by PERI pursuant to the terms set out in clause 5.7, and the Customer agrees to indemnify PERI for these costs, and the Customer must keep waiting times to a minimum and provide cranes where necessary; and
  - 3.3.4. before accepting delivery of the Product to the Site by a third party, notify the third party of any apparent transport damage to the Product.

## 4. TERM

- 4.1. If the Product is hired Product the term of the Contract will commence on the Commencement Date and will end on the date the Customer has complied with clause 10. If the delivery by PERI or the collection by the Customer of the Product takes place later than as agreed between the parties due to a request of the Customer, then the Commencement Date will be the date the Product is ready for delivery or collection (which will be determined by PERI in its absolute discretion).
- 4.2. In no circumstances will the term of a hire Contract be:
  - 4.2.1. less than 2 weeks unless otherwise agreed in writing; or
  - 4.2.2. affected by the Customer not using or only partially using the Product whether or not for a reason outside the control of the Customer or otherwise.

## 5. PRICES AND PAYMENT CONDITIONS

- 5.1. The prices quoted by PERI for the supply of Product and/or services exclude GST and any relevant duties unless expressly stated otherwise by PERI. All GST, other taxes and/or charges imposed and/or levied by or payable to any government or governmental authority upon or with respect to any Contract, the Product or other material described in any Contract or the purchase price payable, shall be for the account of the Customer and shall be payable at the same time as the invoice from PERI to which they relate.
- 5.2. Any additions or increases in the cost of the supply of Product and/or services as a result of any additions or increases in charges, duties, taxes (including the rate of GST) or costs associated with manufacture or supply of Product and/or

- services by PERI, including without limitation increases due to variations in exchange rates, the cost of transport or shipping, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court orders, regulations or bylaws, between the date of PERI's acceptance of the Customer's order and the date of supply of the relevant Product and/or services shall be borne by the Customer, even if the Products are sold on terms such as delivered or duty paid terms.
- 5.3. Unless otherwise stipulated, all references to dollars are references to the lawful currency of Australia.
- 5.4. Hire costs will be charged from the Commencement Date and sale costs will be deemed to be ex PERI yard.
- 5.5. Unless otherwise specified in the quotes for prices stated in PERI's Proposal, the prices charged for the Products will be the prices charged by PERI from time to time for the Product.
- 5.6. The costs for:
- 5.6.1. specific packing requirements of the Customer;
- 5.6.2. delivery by PERI of the Product to the Site; and
- 5.6.3. pre-assembly work to the Product,
- if undertaken by PERI pursuant to an agreement between PERI and the Customer will not be included in PERI's price list for the Products and will be charged at the rates charged from time to time by PERI.
- 5.7. Subject to clause 5.8, invoices may be submitted by PERI to the Customer each calendar month and must be paid by the Customer:
- 5.7.1. if hired Product, within 14 days nett from date of invoice; and
- 5.7.2. if sale Product, within 30 days nett from date of invoice
- 5.7.3. if issued for any other reason, within 30 days nett from date of invoice
- 5.8. In respect of any sale Product or hire Product, PERI reserves the right to send a Payment Claim under the *Building and Construction Industry Security of Payment Act 1999 NSW* (as amended) or where appropriate, the equivalent State legislation that may be applicable in other States, and in that event, the due date for payment will be 10 business days after the claim is sent.
- 5.9. The Customer shall not (nor shall it be entitled to) set off or deduct from any amount payable to PERI under any Contract any amount(s) disputed by the Customer or any amount(s) owing or alleged to be owing by PERI to the Customer on any account whatsoever.
- 5.10. Interest is payable to PERI by the Customer on any amount outstanding from time to time after the due date for payment at the rate of 1.7 percent per month until full payment of such amount.
- 5.11. Until all monies due to PERI by the Customer on any account whatsoever are paid in full and title to the sale Product passes to the Customer in accordance with these Conditions, the Customer agrees that:
- 5.11.1. the sale Product shall be held by the Customer in a fiduciary capacity as bailee for and on behalf of PERI;
- 5.11.2. the Customer irrevocably gives PERI and its agent(s) the right, without notice, to enter the premises of the Customer at any time for the purpose of inspecting, removing or taking possession of the sale Product or any part of the sale Product;
- 5.11.3. if PERI enters the Customer's premises pursuant to clause 5.11.2 PERI and its agent(s) shall be entitled to use all reasonable force to gain access to the premises and shall not be liable for any damage or loss occasioned to the Customer or its premises and the Customer shall indemnify PERI and its agent(s) against any loss or damage suffered by any person, PERI or its agent(s) arising from such repossession;
- 5.11.4. the Customer shall store the Product separately from goods owned by the Customer and shall identify them as Products of PERI;
- 5.11.5. if, without the prior written consent of PERI, the sale Products or any part of them have been on-sold by the Customer prior to all monies due to PERI having been paid:
- (a) then the proceeds or debtors of the Customer arising from such on-sales shall be the property of PERI and shall be held on a fiduciary basis and retained in a separate account payable to PERI on demand;
- (b) the Customer agrees to hold all proceeds or debtors of the Customer on trust for PERI and
- (c) the Customer agrees to deposit all proceeds in a separate bank account and agrees not to mix the proceeds with any other moneys and agrees to account to PERI upon demand for such sums.
- 5.12. The Customer agrees to indemnify PERI against any damages, loss costs, liabilities or penalties which PERI may suffer or incur as a result of the Customer acting in breach of clause 5.11.
- 5.13. Invoices must be paid by the Customer notwithstanding any Claims made by the Customer against PERI, which may be dealt with by the Customer separately. Overdue accounts are subject to Stop Credit at PERI's discretion.
- 5.14. The Customer shall be responsible for ensuring that their account does not at any time exceed any credit limit notified to them by PERI. Should the account at any time exceed the said credit limit then the Customer must immediately make payment to PERI of an amount sufficient to reduce the account to no more than the amount of the said credit limit.
- 5.15. Security for payment – The Customer:
- 5.15.1. Agrees to charge with payment of all monies owed to PERI
- (a) by way of fixed charge of all books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property; and
- (b) by way of floating charge the whole of the Customer's other undertaking, property & assets and
- 5.15.2. Hereby grants to PERI a general lien over all property of the Customer until payment is made in full of all monies payable by the Customer to PERI.
- 5.16. If any part of an amount owing to PERI is at any one time overdue, then the whole amount owing to PERI at that time is deemed immediately due and payable.
- 6. INSURANCE**
- 6.1. The Customer must keep the Products insured for their full insurable value with a reputable insurer against loss and damage and all other risks for Products of that kind from time the risk in the Products passes to the Customer until the time title in the Products passes to the Customer.
- 6.2. The Customer holds the proceeds of that insurance on trust for PERI up to the amount it owes PERI in respect of those Products, and must keep such proceeds in a separate account until the liability to PERI is discharged and must immediately pay that amount to PERI.
- 6.3. On and from the Commencement Date, the Customer will effect public risk insurance for not less than \$20,000,000 for any one Claim to cover all property damage, personal injury and deaths caused or contributed to by the Product or by the parties pursuing their rights under these Conditions or any Contract with a reputable insurer.
- 6.4. All such insurance is to be in the name of the Customer with the interest of PERI noted thereon.
- 6.5. The Customer shall if requested provide proof of such insurance to PERI upon request.
- 7. CLAIMS**
- 7.1. Within 7 days after the Commencement Date, the Customer must notify PERI (and any third party procured by PERI to deliver the Product to the Site) in writing of any defects in or damage to the Products, which were not apparent to the Customer upon the Commencement Date.
- 7.2. Subject to clause 7.4, the Customer may make Claims against PERI with respect to defects in or damage to the Product only if it has complied with clause 7.1.
- 7.3. With the exception of formply, provided that ownership of the Product has transferred to the Customer, all sold Products will be guaranteed by PERI against manufacturing defects for 12 months from the Commencement Date.
- 7.4. The Customer will not be entitled to make a Claim against PERI if it has not complied with clause 2.3.
- 7.5. Subject to clauses 7.1 to 7.4, PERI may (in its absolute discretion) repair or replace any Product which contains manufacturing defects or which is damaged, but will not otherwise be liable to the Customer for any other Claims which may arise as a result of such alleged or actual defect or damage, including, without limiting the generality of the foregoing, Claims relating to consequential loss or delay or Claims arising out of tort (including negligence).
- 7.6. The Customer acknowledges that if any dispute arises concerning any Order (and including any question of identity or authority or any telephone, facsimile or computer generated Order) the internal records of PERI shall be conclusive evidence of what was ordered in all respects.
- 7.7. The Customer acknowledges and agrees that no set offs or deductions are permissible by the Customer concerning the Customer's obligations under these Conditions or any Contract.
- 8. RISK AND OWNERSHIP**
- 8.1. Unless agreed otherwise in writing by the parties, the risk of loss or damage to Products shall pass to the Customer at the time of dispatch from the Storage Depot or when the Customer is notified that the Products are available for dispatch or collection from the Storage Depot, as the case may be.
- 8.2. Notwithstanding that the Customer has possession of the Products, title to the Products remains with PERI, and no legal or equitable interest or property in the sale Products whatsoever will pass to the Customer, until the full amount for the sale Products has been paid in cleared funds and there is no money owing by the Customer to PERI for any other Product delivered and/or services provided by PERI or on any account whatsoever, whether as a result of sale or hire.
- 8.3. Until title in sale Product passes to the Customer in accordance with these Conditions, the Customer must comply with all of the following conditions:
- 8.3.1. Keep the Product in its possession and control.
- 8.3.2. Keep the Product in good repair and condition, excluding fair wear and tear.

- 8.3.3. Keep the Product stored separately and marked so that the Product is clearly and easily identifiable as PERI's property and inform PERI of the location of the Product, if requested.
- 8.3.4. Not sell (except in accordance with clause 8.9), assign or let the Products or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
- 8.3.5. Maintain and allow PERI to inspect records which do any of the following:
- Identify any unpaid Product owned by PERI.
  - Detail third parties to whom the Customer sells or otherwise disposes of the unpaid Product.
  - Detail payments made by such parties for the unpaid Product.
- 8.4. The Customer indemnifies PERI against any claim, action, damage, loss, liability, cost, expense that PERI suffers, incurs or is liable for in respect of PERI's exercise of its rights under this clause 8.
- 8.5. Notwithstanding any other provision of these Conditions, all hire Product will remain the sole and absolute property of PERI.
- 8.6. All Products sold to the Customer by PERI will remain the sole and absolute property of PERI until such time as PERI has been paid by the Customer all monies due & owing to it by the Customer in relation to any account.
- 8.7. Risk in the sold Product and/or hired Product will pass immediately from PERI to the Customer upon delivery of the Product to a carrier for transport to the Customer or delivery into the Customer's custody and control (whichever is sooner).
- 8.8. Until the Customer has complied in full with clause 10, the hired Product will be at the Customer's risk and the Customer release PERI and holds PERI harmless from and indemnifies PERI against all claims howsoever arising, whether directly or indirectly, and which arise out of the use or non-use of the hired Product including but not limited to any theft, accidental damage, or destruction caused by an event of force majeure, whether or not such an event may be caused by the negligence of PERI.
- 8.9. Until all sale product has been paid for the Customer shall not sell, dispose of or otherwise deal with the Product or any part thereof, unless the Customer obtains PERI's prior written consent to any sale, disposal or dealing in the Product.
- 9. PERSONAL PROPERTY SECURITIES ACT 2009**
- 9.1. The Proposed Customer or Customer acknowledges that any Contract and these Conditions constitute a security agreement in favour of PERI for the purposes of section 20 of the PPSA and that a security interest exists in:
- Product (and their proceeds) previously supplied (whether by sale or hire) by PERI to the Proposed Customer or Customer (if any)
  - All Product (and their proceeds) to be supplied (whether by sale or hire) by PERI to the Proposed Customer or Customer in the future
  - All of the Proposed Customer or Customer's present and after-acquired property in which Product or materials supplied or financed by PERI have been attached or incorporated.
- 9.2. The Proposed Customer or Customer acknowledges that the security interest granted by the Proposed Customer or Customer to PERI pursuant to clauses 5.11, 8 and 11 of these Conditions shall constitute a purchase money security interest as defined in section 14 of the PPSA.
- 9.3. Until ownership of the Product passes to the Proposed Customer or Customer in accordance with these Conditions, the Proposed Customer or Customer waives its rights under the following provisions of Chapter 3 of the PPSA:
- to receive a notice of intention of removal of an accession (section 95).
- 9.4. Until ownership of the Product passes to the Proposed Customer or Customer in accordance with these Conditions, the Proposed Customer or Customer waives its rights under the following provisions of Chapter 4 of the PPSA:
- to receive a notice that PERI decides to enforce its security interest in accordance with land law (section 118);
  - to receive a notice on enforcement action against liquid assets (section 121(4));
  - to receive a notice of disposal of Product by PERI purchasing the Product (section 129);
  - to receive a notice to dispose of Product (section 130);
  - to receive a statement of account following disposal of Product including details of payment to other creditors (section 132(3)(d));
  - to receive a statement of account if no disposal of Product for each 6 month period (section 132(4));
  - to receive notice of any proposal of PERI to retain Products (section 135);
  - to object to any proposal of PERI to either retain or dispose of Product (section 137(2));
  - to redeem the Product (section 142);
  - to reinstate the security agreement (section 143).
- 9.5. The Proposed Customer or Customer further agrees that where PERI has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- 9.6. Until ownership and title of the Product passes to the Proposed Customer or Customer in accordance with these Conditions, the Proposed Customer or Customer must not give to PERI a written demand or allow any other person to give PERI a written demand requiring PERI to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- 9.7. The Proposed Customer or Customer acknowledges that it has received value as at the date of first delivery of the Product and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to PERI under these Conditions.
- 9.8. In addition to any other rights under these Conditions or otherwise arising, the Proposed Customer or Customer irrevocably grants to PERI the right, without notice to the Proposed Customer or Customer, to exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Proposed Customer or Customer, to search for and seize, dispose of or retain those goods in respect to which the Proposed Customer or Customer has granted a Security Interest to PERI. The Proposed Customer or Customer shall indemnify PERI from any Claims made by any third party as a result of such exercise.
- 9.9. The Proposed Customer or Customer agrees and undertakes to:
- sign any further documents, provide any further information (which information the Proposed Customer or Customer warrants to be complete, accurate and up-to-date in all respects) and do such further acts which PERI may reasonably require to enable registration of the security interest granted to PERI under these Conditions and/or any Contract on the Personal Property Securities Register ("PPSR");
  - give PERI not less than 14 days written notice of any proposed change in the Proposed Customer or Customer's name and/or any other changes in the Proposed Customer or Customer's details (including but not limited to changes in the Proposed Customer or Customer's address, facsimile number, email address, trading name or business practice);
  - pay all costs incurred by PERI in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Conditions including executing subordination agreements.
  - be responsible for the full costs incurred by PERI (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and
- 9.10. The Proposed Customer or Customer waives any rights it may have under any section of the PPSA listed in section 115(1) of the PPSA upon enforcement of any security interest by PERI.
- 9.11. Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by PERI, the Proposed Customer or Customer waives the right to receive a verification statement.
- 9.12. The Proposed Customer or Customer agrees that immediately on request by PERI the Proposed Customer or Customer will procure from any persons considered by PERI to be relevant to its security position such agreement and waivers as PERI may at any time require.
- 9.13. Pursuant to section 275(6) of the PPSA, the Proposed Customer or Customer agrees it will not disclose to an interested person information pertaining to PERI's purchase money security interest without prior approval of PERI.
- 9.14. This clause 9 will survive the termination of any Contract to the extent permitted by law.
- 10. RETURN OF PRODUCT TO STORAGE DEPOT**
- 10.1. If hired Product is no longer required by the Customer, the customer will return the Product to the Storage Depot during PERI's normal business hours. The Customer will provide PERI with no less than 24 hours notice in advance of such return.
- 10.2. The Customer warrants it will return the hired Product to the Storage Depot dismantled, cleaned and in a condition ready for use again, bundled and palletted according to dimensions.
- 10.3. If the Customer does not comply with clauses 10.1 and 10.2, PERI may (in its absolute discretion) comply with the same as agent irrevocably appointed by the Customer, and at the cost of the Customer, such costs to be charged by PERI at the rates charged by PERI for such work from time to time and will be payable by the Customer within 30 days of the issue of an invoice by PERI and:
- The Customer will do all things necessary to assist PERI in this regard; and
  - Will indemnify PERI against all Claims, which may arise as a result of PERI taking action pursuant to this clause.
- 11. PURCHASE OF HIRED PRODUCT**
- 11.1. PERI may (in its absolute discretion) sell any hired product to the Customer if requested by the Customer provided all moneys due to PERI have been paid by the Customer and in which case clause 8 will apply.
- 11.2. The purchase price for such Products will be determined by PERI pursuant to its Proposal and the Customer will not be entitled to any deduction in price for

any Product discounts but PERI will offset from the purchase price, the costs already paid by the Customer for the Product (excluding timber goods), up to six months of rental, after deducting all packing, delivery, finance, administration and other costs incurred by PERI as a result of the Contract.

## 12. DEFAULT AND TERMINATION

12.1. An event of default will have occurred under these Conditions and under any Contract if:

- 12.1.1. Any amount is outstanding and due and payable by the Customer to PERI but is unpaid;
- 12.1.2. The Customer breaches any term or obligation of a Contract or is in default of any other Contract between PERI and the Customer;
- 12.1.3. The Customer fails to take delivery of or collect any Product in accordance with a Contract;
- 12.1.4. The Customer fails to provide any letter of credit, Bill of Exchange or any other security required by PERI from time to time;
- 12.1.5. PERI obtains unfavourable reports on the financial standing of the Customer;
- 12.1.6. The Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business;
- 12.1.7. The Customer fails to perform any of its obligations under these Conditions or any Contract including failure to pay any amount by its due date;
- 12.1.8. A trustee in bankruptcy, controller, administrator, receiver and/or manager, liquidator, or provisional liquidator is appointed to the Customer or to any guarantor to administer the Customer's affairs or the guarantor's affairs;
- 12.1.9. The Customer is a trustee of a trust and without PERI's written consent ceases to be a sole trustee or if the Customer omits to do anything or breaches the terms of the trust, capital of the trust is distributed, the trust is wound up or terminated or steps are taken to do so or an application is made or an order sought from any Court concerning the trust assets or the administration of the trust;
- 12.1.10. An application is made or proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding the Customer up or placing the Customer in any kind of insolvency or other external administration;
- 12.1.11. The Customer becomes bankrupt or insolvent, goes into voluntary or compulsory liquidation or a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to the Customer or any of its assets;
- 12.1.12. Anything happens that reasonably indicates that there is a significant risk that the Customer is or will become unable to pay debts as they fall due. This includes execution or distress being levied against any income or assets of the Customer; a meeting of the Customer's creditors being called or held; a step being taken to make the Customer bankrupt; and the Customer entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement;
- 12.1.13. Product is or was used for the commission of any offence which might result in the confiscation or forfeiture of Product to the Commonwealth of Australia or to any Federal or State authority or execution or distress is levied or attempted to be levied in respect of any of the Product or execution or distress is levied in respect of any of the Customer's goods or property; or
- 12.1.14. A third part makes any claim to hired Product or asserts any entitlement, lien or right of retention in respect of hired product.

12.2. Upon the happening of an event of default, and without notice to the Customer:

- 12.2.1. All amounts owing by the Customer to PERI will immediately become immediately due and payable.
- 12.2.2. PERI may terminate any Contract with the Customer.
- 12.2.3. PERI may take steps to recover all outstanding monies, including engaging a mercantile agency or instituting legal proceedings. The Customer is liable for any costs of taking steps to recover the amount the costs of a mercantile agency, court costs and legal costs on a full indemnity basis.
- 12.2.4. Interest will apply to recovery costs owing by the Customer to PERI at the rate of 1.7 percent per month, from the date the costs are incurred.
- 12.2.5. PERI may elect to suspend from time to time some or all its obligations under these Conditions or any Contract with the Customer, including offering further credit, until full payment is received by PERI. The non-performance of obligations suspended by PERI is not a breach of these Conditions or any Contract and the Customer remains bound by its obligations to PERI.
- 12.2.6. PERI shall be entitled as a condition of resuming delivery under any Contract suspended in accordance with clause 12.2.5 to require prepayment of such security as it may in its sole discretion require for any further Contracts or outstanding Contracts, orders or deliveries.

12.2.7. PERI shall be entitled, without prejudice to any of its rights and remedies, to terminate in whole or in part any Contract to which the Customer is a party.

12.2.8. PERI may exercise all rights resulting from the failure to pay money at any later time despite the supply of Product by PERI after it becomes aware of a failure by the Customer to pay money.

12.2.9. The right to terminate a Contract may be exercised concurrently with the suspension of obligations by PERI.

12.3. If a Contract is ended because of the Customer's default and the Customer owes PERI money, the money becomes immediately payable immediately to PERI.

12.4. The acceptance by PERI of any payment from or on behalf of the Customer after the specified due date thereof shall not constitute a waiver of the Customer's obligations to make further payments.

12.5. In the event of such of such termination PERI shall, after taking into account payments made by the Customer, be entitled to be paid by the Customer for work done and expenditure made under the Contract up to and including the date of termination and any direct and indirect loss suffered by PERI including without limitation PERI's loss of profit on the Contract and the legal costs of PERI (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach.

12.6. Termination of the Contract pursuant to this clause 12 shall be without prejudice to the rights of PERI accruing up to the date of termination.

12.7. Without prejudice to PERI's rights to obtain payment of amounts due and payable to it, the Customer irrevocably authorises PERI and/or its agent(s) to, without notice, enter the premises of the Customer or any property where PERI believes the Product is located or stored, at any time for the purpose of inspecting, removing or taking possession of the any Product.

12.8. If PERI enters the Customer's premises or any property pursuant to clause 12.7 PERI and its agent(s) shall be entitled to use all reasonable force to gain access to the premises or property and shall not be liable for any damage or loss occasioned to the Customer or its premises or the property and the Customer shall indemnify PERI and its agent(s) against any loss or damage suffered by any person, PERI or its agent(s) arising from such repossession.

12.9. For valuable consideration and to secure performance of the Customer's obligations under the Contract, for as long as any money remains due by the Customer to PERI, the Customer irrevocably appoints PERI as its attorney, with power to appoint substitutes and to remove those substitutes and to appoint other substitutes to:

- 12.9.1. do any thing or things that the Customer is required to do under the Contract;
- 12.9.2. conduct and settle any disputes or legal action affecting the Product or any insurance policy in respect of the Product and to give effectual receipts and releases in respect of same;
- 12.9.3. do anything the Customer may reasonably do to protect PERI's interests in the Product or to secure repayment of any amount owing by the Customer to PERI;
- 12.9.4. to do all acts including executing any document which PERI is of the opinion is reasonably necessary to protect its rights pursuant to the contract; and
- 12.9.5. take immediate possession of any goods without prejudice to any other rights and without being liable in any way to any party.

12.10. The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against PERI while the Customer is in such breach or default.

12.11. The Customer irrevocably authorises the payment directly to PERI of any debt due to the Customer by any debtor of the Customer in reduction of any amount due by the Customer to PERI under these Conditions or otherwise.

12.12. The Customer cannot assign any Contract or any of its rights under any Contract or any interest the Customer may have in any PERI product without prior written consent of PERI which consent may not be unreasonably withheld.

## 13. PERI'S OBLIGATIONS

13.1. Notwithstanding any other provision of these Conditions, if the Proposed Customer or Customer breaches a term of any Contract, Application, Proposal or Order PERI shall not be bound to perform its obligations under that Contract, Application, Proposal or Order until the breach is remedied by the Proposed Customer or Customer.

## 14. FORCE MAJEURE

14.1. Should PERI be delayed, hindered, or otherwise prevented from complying with these Conditions or any Contract, Application, Proposal or Order by reason of events or circumstances beyond the reasonable control of PERI including but not limited to Acts of God, wars, riots, strikes, lockouts, trade disputes or labour disturbances, breakdown of plant or machinery, accident, storm, fire, flood, difficulties or shortages in obtaining material, fuel, transport or labour, the late receipt of the Proposed Customer or Customer's specifications, requirements or other necessary information or any other circumstances affecting the supply of goods or services, then PERI shall not be liable to the Proposed Customer or Customer for any loss or damage which may be

suffered by the Proposed Customer or Customer whether as a direct or indirect result of any such occurrences.

14.2. In the event of any delay resulting from the happening of any event, occurrence or circumstance referred to in clause 14.1 hereof, the Proposed Customer or Customer shall accept a delayed delivery of the Product and shall not be entitled to cancel or modify any Contract, Application, Proposal or Order.

**15. LIMITATION OF LIABILITY**

15.1. The Proposed Customer or Customer agrees to assume all risks, release, hold harmless and indemnify PERI from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any financial or economic loss including indirect or consequential loss or damage which may be suffered by the Proposed Customer or Customer or by any third party arising out of or in any way connected with:

- 15.1.1. the supply of Product or the performance of services by PERI;
- 15.1.2. the sale, possession, maintenance, storage or use of the Product, whether singly or in combination with any other thing or process;
- 15.1.3. any breach of any warranty or condition of any Contract, Application, Proposal or Order be it express, implied or otherwise;
- 15.1.4. by reason of breach of these Conditions, or of statutory duty or by reason of tort (including but not limited by negligence).

15.2. Except as otherwise expressly provided in these Conditions and to the extent permitted by law, all statements, warranties, representations, provisions, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to any Proposal, quotations or tenders submitted by PERI, Orders accepted by PERI, Product (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and/or services or their supply, being provisions which might otherwise form part of these Conditions or any Contract, Application, Proposal or Order or that is collateral to these Conditions or any Contract, Application, Proposal or Order, are hereby excluded in their entirety and are of no effect whatsoever.

15.3. The Proposed Customer or Customer warrants to PERI that it has not relied on any representation or statement made by or on behalf of PERI other than as expressly set out in a Contract, Application, Proposal or Order and has notified PERI of any specific requirements that it has in relation to the Product.

15.4. To the fullest extent permitted by law:

- 15.4.1. the Proposed Customer or Customer acknowledges that it relies on its own skill and judgement in relation to Product and/or services supplied to it by PERI; and
- 15.4.2. PERI shall be under no liability as to fitness and suitability for purpose of the Product unless that purpose has been specifically notified to PERI in writing prior to the formation of the relevant Contract, Application, Proposal or Order and the Proposed Customer or Customer shall otherwise be responsible for testing and determining the suitability of the Product for the purpose for which they are intended to be used.

15.5. Notwithstanding any other provision of these Conditions or any Contract, Application, Proposal or Order or otherwise, if any liability on the part of PERI arises to or in favour of the Proposed Customer or Customer (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of Product and/or services by PERI, PERI's liability for all such loss, damage, harm and injury in all and any circumstances shall be limited in aggregate to the payment by PERI of the sum not exceeding 5 percent of the monies payable to PERI pursuant to the relevant Contract, Application, Proposal or Order.

**16. TEST AND PERFORMANCE**

16.1. PERI does not guarantee the performance limits stated in any Proposal, quotation, tender or any Contract, Application or Order unless such limits are expressly guaranteed by PERI in writing.

16.2. PERI will use all reasonable efforts to supply Product having a material grade consistent with any material grade specified in any relevant Proposal, quotation, tender or any Contract, Application or Order.

16.3. Where PERI supplies Product not manufactured by it, the Product is subject to the chemical, mechanical and physical properties of the original manufacturer. PERI does not offer any warranty over such Product, except to the extent that they are subject to the warranty of the original manufacturer and PERI is able to pass on the benefit of such warranty to the Proposed Customer or Customer.

**17. MEASURES, DRAWINGS, DOCUMENTATION AND INFORMATION**

17.1. The parties agree that any descriptive and/or shipping specifications, statements, illustrations, drawings, data, dimensions or measurement in relation to the weight, dimensions, size, strength, density, quality, quantity or other characteristic in relation to any Product or other subject matter of any Proposal, quotation, tender or any Contract, Application or Order either submitted by PERI or otherwise provided by PERI to the Proposed Customer or Customer:

- 17.1.1. Do not form part of any Contract entered into between PERI and the Proposed Customer or Customer unless expressly agreed in writing by PERI; and
- 17.1.2. Are illustrative and approximate only are subject to a tolerance of plus or minus 10 percent in respect of the measurement or other quantification of all characteristics of all Product unless expressly agreed in writing by PERI.

17.2. If the Proposed Customer or Customer disputes PERI's assessment of the measurement or other quantification of any characteristic of the Product or a part thereof, PERI will not be liable in respect of such a discrepancy unless the Proposed Customer or Customer complies with clause 7 hereof.

17.3. Any drawings or other documents submitted and any information supplied by PERI to the Proposed Customer or Customer remain the property of PERI and constitute confidential information of PERI (to the extent that it is not in the public domain) and the Proposed Customer or Customer shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by PERI nor provide the same to third parties.

17.4. Where any drawings or other documents submitted by PERI with or as a part of a Proposal, quotation or tender are not incorporated into a Contract between PERI and the party to which such Proposal, quotation or tender was submitted they shall be returned to PERI within 7 days of expiry of the Proposal, quotation or tender or otherwise as reasonably required by PERI.

**18. DISPUTES**

18.1. In the event of any dispute between the parties arising out of the hire and/or sale of the Product, either party may give written notice of the existence of such dispute to the other whereupon both parties must immediately attempt to resolve the dispute in good faith.

18.2. The parties will consider using mediation procedures administered by the Australian Commercial Disputes Centre or its successor and the mediator will be the person appointed by the Secretary General of the Centre.

18.3. Failing resolution of the dispute, either party may refer the matter to arbitration.

18.4. No provision in this clause shall operate to prevent either party from instituting legal proceedings at any time

**19. INTELLECTUAL PROPERTY**

19.1. The hire and/or sale of Product to the Customer does not constitute a transfer of any intellectual property rights (including but not limited to any patent, utility model, trade mark, design or copyright) in the Product or any services or any part thereof and all such rights are to be expressly reserved to the true and lawful owners. The Customer shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the decompilation, disassembly and/or re-engineering thereof .

19.2. PERI does not warrant that the hire and/or sale by it and the use by the Customer of the Product does not and will not infringe the intellectual property rights of any third party whether such rights take the form of letters patent, registered designs, copyright, trade mark, or any other similar right.

19.3. Where PERI or its contract manufacturer of the Product or any part thereof provides the Product to the Customer's design and specifications the Customer agrees to indemnify and keep indemnified PERI and its related corporations against all actions, claims, loss, damages, costs and fines that PERI and/or its related corporations may incur or suffer as a result of a claim by a third party that the manufacture and hire and/or sale by PERI of the Product or any part thereof or the provision of any services infringes any intellectual property right of such third party.

19.4. The Proposed Customer or Customer shall indemnify PERI in respect of any infringement or alleged infringement of any intellectual property rights and shall be responsible for all losses, damages and expenses suffered or incurred by PERI as a result of any infringement relating to the subject of any Application, Proposal or Order between the Proposed Customer or Customer and PERI. In case of any dispute and/or claim arising in connection with any such infringement, PERI reserves the right at its discretion to terminate, and make null and void any Application, Proposal and/or Contract and to hold the Proposed Customer or Customer responsible for any loss caused thereafter to PERI.

19.5. The Proposed Customer or Customer agrees that all material, tooling, industrial and/or intellectual property employed in the preparation for hire and/or sale or production of any goods and/or services shall be and remain the property of PERI notwithstanding any contribution by the Proposed Customer or Customer relating thereto.

19.6. The Proposed Customer or Customer agrees that the copyright in any PERI drawings and associated documents remain the property of PERI and may not be reproduced or made available to any third parties without express written consent from PERI.

**20. CUSTOMER RESTRUCTURE**

20.1. The Proposed Customer or Customer shall notify PERI in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship within 7 days of the date of any such change.

**21. WAIVER**

21.1. The fact that PERI fails to do, or delays in doing, something that it is entitled to do under these Conditions or any Contract, Application, Proposal or Order, does not amount to a waiver of its right to do it. Any waiver must be agreed or communicated in writing by PERI.

21.2. Any waiver of these Conditions (or a part thereof) by PERI, shall not prejudice or affect PERI's rights and remedies in respect of any subsequent breach, non-performance or non-observance by the Proposed Customer or Customer of these Conditions or any Contract, Application, Proposal or Order.

**22. GENERAL**

- 22.1. Neither party may assign any right under this document without the other party's written consent.
- 22.2. All payments are to be made to PERI's head office in New South Wales.
- 22.3. These Conditions and any Contract, Application, Proposal or Order to which they apply shall be governed by the laws state of New South Wales in force for the time being and from time to time.
- 22.4. The Proposed Customer or Customer irrevocably submits generally and unconditionally to the jurisdiction of the Courts of the State or Territory nominated by PERI or failing nomination the Courts of the State of New South Wales in respect of claims, proceedings and matters arising out of or in respect of the said credit account or any said agreement.
- 22.5. If a clause or a part of a clause hereof or any provision of a Contract, Application, Proposal or Order can be read in a way that makes it illegal, unenforceable, void, voidable or invalid, but can also be read in a way that makes it legal, enforceable, not void, not voidable and valid, it must be read in the latter way.
- 22.6. If any clause or part of a clause hereof or any provision of a Contract, Application, Proposal or Order is illegal, unenforceable, void, voidable or invalid, that clause or part is to be treated as removed from these Conditions, but the rest of this document is not affected.
- 22.7. In these Conditions, unless contrary to or inconsistent with the context:
  - 22.7.1. **"Application"** means any Application for Commercial Credit Account completed by the Proposed Customer or Customer and submitted to PERI for approval and acceptance by PERI.
  - 22.7.2. **"Claims"** means all actual or threatened claims, demands, suits, proceedings, summonses, actions, costs, charges, expenses, liabilities, compensation, losses and damages (including consequential loss and damage) and interest whatsoever.
  - 22.7.3. **"Commencement Date"** means: if PERI has not agreed to pre-assemble the Product, on the earlier of:
    - (a) the date of delivery by PERI of the Product to the Site; and
    - (b) the date PERI advises the Customer that the Product is at the Storage Depot ready for collection by the Customer, and means: if PERI has agreed to pre-assemble the Product, on the date of commencement by PERI of the pre-assembly work.
  - 22.7.4. **"Conditions"** means these Conditions of Sale and Hire.
  - 22.7.5. **"Contract"** means a contract between PERI and the Customer for the hire or sale of the Product, the terms of which include the terms of the Proposal and these Conditions.
  - 22.7.6. **"Customer"** means any person, company and/or business named as the applicant in any Application approved and accepted by PERI, Proposal and/or Order or who is a party to a Contract and includes, where appropriate, any person who signs any Application, Proposal and/or Order or who is apparently authorised by the Customer to act on its behalf.
  - 22.7.7. **"GST"** means tax payable on taxable supplies under *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

- 22.7.8. **"Invoice"** means an invoice issued by PERI to the Customer for hire or sale of the Product.
  - 22.7.9. **"Order"** means an order placed by the Customer for Product to be delivered to the Site (subject to Product availability) pursuant to the terms of the Contract.
  - 22.7.10. **"PERI"** means PERI Australia Pty Limited (ABN 85 078 003 568) of 116 Glendenning Road, Glendenning NSW 2761 and includes, where appropriate, its branches, contractors, agents, employees and representatives.
  - 22.7.11. **"PPSA"** means the *Personal Property Securities Act 2009*.
  - 22.7.12. **"Product"** means any Formwork or Scaffolding systems or product supplied to the Customer by PERI including, without limiting the generality of the foregoing: planks, platforms, handrails, pallets and lifting equipment etc.
  - 22.7.13. **"Proposal"** means a statement in writing made by PERI and addressed to the Customer in which PERI specifies the terms of its proposal with respect to selling and/or hiring Product to the Customer. The Proposal will be deemed to incorporate these Conditions and may include quotes for prices of the Products.
  - 22.7.14. **"Proposed Customer"** means any person, company and/or business named as the applicant in any Application which is subject to PERI's approval and acceptance.
  - 22.7.15. **"Site"** means a particular site where the Customer has advised it will use the Product.
  - 22.7.16. **"Storage Depot"** means the storage depot nominated from time to time by PERI.
- 22.8. In these Conditions, unless contrary to or inconsistent with the context:
- 22.8.1. headings are for guidance only and do not affect interpretation;
  - 22.8.2. the singular includes the plural and vice versa;
  - 22.8.3. a reference to these Conditions, any Application, Proposal, Order or any other document includes a variation, novation or replacement of or supplement to any of them from time to time.

**PERI Australia Pty. Limited**  
ABN 85 078 003 568  
116 Glendenning Road  
GLENDENNING NSW 2761  
Tel: (02) 8805 2300  
Fax: (02) 9675 7277  
Email: [info@periaus.com.au](mailto:info@periaus.com.au)  
Web: <http://www.periaus.com.au>

**ACKNOWLEDGEMENT AND ACCEPTANCE BY THE PROPOSED CUSTOMER/CUSTOMER**

I / We:

_____	_____	_____
Title	Given name(s)	Surname
_____		
_____		
_____		
Address		
_____		
Organisation (if applicable)		
_____		
Position (if applicable)		

_____	_____	_____
Title	Given name(s)	Surname
_____		
_____		
_____		
Address		
_____		
Organisation (if applicable)		
_____		
Position (if applicable)		

Hereby declare that:

1. I have read and I understand the terms and conditions outlined in this document.
2. I am duly authorised to sign on behalf of and bind the Proposed Customer/Customer in respect of these terms and conditions of sale and hire.
3. To the extent that these terms and conditions are executed by or on behalf of a company, they are so executed in accordance with section 127 of the *Corporations Act 2001*.
4. I am not aware that the Proposed Customer/Customer has any unsatisfied defaults registered, unregistered defaults, pending judgments or orders which may impact on PERI's decision to extend credit or supply Product to the Proposed Customer/Customer.

The Proposed Customer/Customer agrees to be unconditionally bound by the terms and conditions contained in this document and acknowledges that all credit extended to the Proposed Customer/Customer and all Product supplied to the Proposed Customer/Customer are subject to and on these terms and conditions of sale and hire.

Execution  
Signed by the Customer(s):

X	_____
	_____
	_____
	Date

X	_____
	_____
	_____
	Date