



PERI Business Terms

A. PERI General terms and conditions

1. Scope of Application

- 1.1 The PERI terms and conditions apply solely to business transactions with companies within the meaning of Section 14 of the Bürgerliches Gesetzbuch (BGB – German Civil Code), legal persons under public law or special funds under public law.
- 1.2 The PERI terms and conditions apply to all services performed within the scope of ongoing business relationships and also to any services that are performed in the future, even if these conditions have not been expressly agreed on again. Additionally, the current version of PERI's price list valid at the time of completion of the contract and the Code of Practice of the Quality Protection Association for Concrete Formwork – in the Version of April 2003 –(Güteschutzverband Betonschalungen e. V. , GSV) shall apply (available free of charge at www.gsv-betonschalungen.de or per fax under +49 7309 951229).
- 1.3 The PERI general terms and conditions apply to all contractual relationships. In addition the following shall apply:
 - 1.3.1 PERI terms and conditions of sale (Section B), to the sale of formwork, formwork elements, accessories and other parts;
 - 1.3.2 PERI terms and conditions of hire (Section C), to hiring formwork, formwork elements, accessories and other parts;
 - 1.3.3 PERI terms and conditions of assembly (Section D), to assembly, even if assembly is a service supplementary to hiring;
 - 1.3.4 PERI terms and conditions for technical processing and briefing (Section E), to technical processing (engineering and structural calculations services) and the briefing of purchasers, even if the technical processing is a service supplementary to hiring;
 - 1.3.5 PERI terms and conditions for the licensing and use of software (Section F), to licensing and using software.
- 1.4 The PERI terms and conditions of hire and for supplementary services are based on the general conditions of the FVBS (www.fvbs-betonschalungen.de) (Association for the Promotion of Concrete Formwork).

2. Defence Clause

Unless otherwise expressly agreed by contract, only the terms and conditions set forth in Section 1 shall apply. Other provisions, in particular the purchaser's own terms and conditions will not form a part of the contract, even if PERI has not expressly stated its objection thereto.

3. Conclusion of the contract

Offers made by PERI are subject to confirmation. A contract is not created until PERI has issued a written order confirmation. The scope of services by PERI will be finally determined by the written order confirmation and annexes. Ancillary agreements and alterations require written confirmation from PERI, unless the PERI employee is authorised to agree on the ancillary agreements or alterations.

4. General Provisions

- 4.1 The purchaser must make the following available free of charge, if required, for PERI's use or joint use: the necessary storage and working space on the construction site, access routes and connecting rail tracks, cranes and hoisting devices, tools and water and power connections. The purchaser shall bear the cost of consumption and of a gauge or meter.
- 4.2 PERI shall not be obliged to provide guarantees or performance guarantees, in particular monetary performance guarantees.
- 4.3 The Verdingungsordnung für Bauleistungen (VOB/B – Standard Contracting Rules for the Award of Public Works Contracts) shall not apply.
- 4.4 PERI will not participate, even partially, in a contractor's all risks insurance policy or comparable insurance policy.
- 4.5 PERI shall not be obliged to provide the following evidence: Document of compliance from the health insurance company stating that employees are insured, document of compliance from the responsible tax office, document of compliance from the responsible employee benefits programme, document of compliance from the trade association, proof of third party liability insurance or other proof that is generally only required from subcontractors.

5. Miscellaneous Provisions

- 5.1 PERI shall store personal data in accordance with the legal requirements.
- 5.2 If individual conditions of the PERI terms and conditions of business become ineffective, this will not affect the remaining conditions.
- 5.3 The place of jurisdiction for all disputes arising from the contractual relationship is the PERI headquarters. PERI reserves the right to bring legal action at the purchaser's own legal place of jurisdiction.
- 5.4 The laws of the Federal Republic of Germany shall apply, excluding the CISG.

B. PERI terms and conditions of sale

1. Dates and deadlines

- 1.1 All delivery dates and deadlines given apply only approximately.
- 1.2 Deliveries will only commence after the complete clarification of all details of performance. The adherence to any agreed delivery deadlines requires the compliance with all contractual and cooperation obligations by the purchaser.
- 1.3 Dates and deadlines will not commence before the presentation of all necessary official credentials and authorisations by the purchaser and/or settlement of any down payments due.
- 1.4 Delivery obligations are subject to correct and punctual deliveries to PERI, unless the incorrect or late delivery to PERI is the fault of PERI.
- 1.5 In the case of force majeure or other hindrances which are beyond PERI's control, the dates and deadlines will be extended according to their effects; these include but are not limited to: walkouts, strikes, lockouts, governmental bans, energy and transport difficulties as well as production malfunctions etc.
- 1.6 If PERI is in default in contractual performance for other reasons, the default damage to be evidenced is limited to 0.5% of the contractual price of the outstanding delivery for each full week of default and is limited to a maximum of 5% of the contractual value.

2. Transfer of risk

- 2.1 The risk of the objects to be delivered passes to the purchaser at the time when transferred to the shipper or freight carrier or to the purchaser itself, even if delivery is prepaid.
- 2.2 The type of dispatch and packaging may be determined by PERI.
- 2.3 The cost of delivery (including tolls) and packaging shall be borne by the purchaser.

3. Taking Delivery

- 3.1 The purchaser shall take delivery even if there are minor defects in the goods. The purchaser shall inspect the goods immediately upon delivery and inform PERI in writing of any defects (if possible on the delivery note). In all other respects the obligation of the purchaser to inspect the goods and lodge complaints is governed by section 377 of the Handelsgesetzbuch (HGB – German Commercial Code). For deliveries of large quantities of identical quality, delivery of an entire batch of goods may only be rejected as defective if the defects have been determined using an accepted representative random sampling procedure.
- 3.2 Partial deliveries are permissible.
- 3.3 Performance is deemed rendered if the subject matter of performance corresponds to the terms of the contract or, if performance is delayed or made impossible by the purchaser, if PERI issues notification that it is ready to perform.

4. Acceptance

- 4.1 In the case of an express agreement on acceptance, the purchaser must accept the subject matter of performance at PERI's storage facility or plant.
- 4.2 On request, a record must be kept of the acceptance.
- 4.3 If the purchaser does not appear on the agreed date of the

acceptance meeting, despite having been invited in good time and informed of the consequences of failure to attend, the subject matter of performance shall be deemed approved in accordance with the contract.

5. Prices

- 5.1 The number of units determined at the time of delivery will be used for the calculation.
- 5.2 If there is an increase in the price of materials or raw materials, wages and salaries and production costs between the completion of the contract and the delivery, PERI is entitled to increase the agreed prices accordingly bearing in mind any possible decreases in prices in other cost categories. On request, PERI must provide evidence to purchaser of the price reduction factors and of concrete price increases.
- 5.3 All prices are subject to the addition of value added tax at the statutory rate.

6. Terms of payment

- 6.1 All invoices are payable 30 calendar days after receipt of the invoice.
- 6.2 The purchaser is not entitled to any rights of retention unless the counterclaim on which the right of retention is based has been either acknowledged by PERI or declared final and absolute. In this case the right of retention will not become due until one month after the announcement of its assertion by the purchaser.
- 6.3 Offsetting is permitted only against a claim either acknowledged by PERI or declared final and absolute.
- 6.4 Claims against PERI of any nature may only be transferred by the purchaser to third parties with PERI's written consent.
- 6.5 With the payment of the first instalment, the value added tax for the complete payment is due.

7. Request for complete payment

- 7.1 If the purchaser falls into arrears and no progress is made within a period of two weeks, PERI is entitled to make all receivables payable.
- 7.2 If it becomes apparent after conclusion of the contract that the claim for payment is endangered by the purchaser's lack of ability to perform, the seller is entitled to exercise its rights under section 321 BGB (defence of insecurity).
- 7.2.1 PERI then also has the right to make all receivables payable under the current business relationship with the purchaser, which receivables have not become statute-barred.
- 7.2.2 In all other respects the defence of insecurity also encompasses all further outstanding deliveries and services from the business relationship with the purchaser.

8. Retention of Title

- 8.1 All delivered items remain the property of PERI pending full payment of all receivables, including future payments resulting from the business relationship.
- 8.2 The allocation of individual receivables to an ongoing invoice or netting-out and the recognition thereof does not cancel the retention of title.
- 8.3 If the delivered items are processed to form new commodities by the purchaser, the processing takes place on behalf of PERI, without any obligation arising from this on PERI's part. The new item becomes PERI's property. In the case of processing with goods that do not belong to the purchaser, PERI acquires joint ownership of the new item in accordance with the proportion between the value of the goods to which PERI retains title and the other goods at the time of processing.
- 8.4 The purchaser is obliged to store purchased goods to which PERI retains title separately from third party goods, rental goods or purchased goods to which it has title. If, contrary to this obligation, goods to which PERI retains title are mingled or mixed with other goods and/or are mixed or mingled with rental goods and the goods to which PERI retains title or rental goods cannot be separated from the other goods, PERI will become joint owner in accordance with the provisions of statute.
- 8.5 If the purchaser acquires sole ownership or joint ownership as

a result of the mixing, the purchaser now already agrees to transfer the joint ownership to PERI in accordance with the proportion between the value of the goods to which PERI retains title or hired goods and the other goods at the time of the mingling or mixing. The value of PERI's goods will be determined in accordance with the list price with an appropriate used parts discount. In such cases, the purchaser must store at no charge goods that are the property or joint property of PERI, which are also deemed to be goods to which PERI retains title.

- 8.6 If goods to which PERI retains title are sold by the purchaser alone or with other goods, the purchaser now already agrees to assign the receivables from the resale thereof in an amount equal to the value of the goods to which PERI retains title, together with all ancillary rights and priority over the remainder. If the sold goods with reserved title are the joint property of PERI, the assignment of the receivables encompasses the amount that corresponds to the purchaser's portion of the joint ownership. The value of the goods will be determined in accordance with PERI's list price with an appropriate used parts discount.
 - 8.7 PERI grants the purchaser the right to collect the receivables mentioned in the previous paragraph, and reserves the right to cancel this right.
 - 8.7.1 PERI will not exercise its own right to collect as long as the purchaser settles its payment obligations and also those owed to third parties.
 - 8.7.2 At PERI's request, the purchaser must indicate the names of the debtors of the assigned receivables and notify them of the assignment. PERI also has the right to notify the debtors of the assignment itself.
 - 8.8 The purchaser must inform PERI immediately of any compulsory execution proceedings by third parties with regard to the goods to which PERI retains title or the assigned receivables, providing the documents necessary for opposition. In the case of non-payment, application for or opening of insolvency proceedings (any rights of the insolvency administrator in accordance with the Insolvenzordnung (InsO – German Insolvency Act) are unaffected) or judicial composition proceedings, the right to resell, use or install the goods to which PERI retains title and authorisation to collect the assigned receivables is revoked. In the case of proceedings concerning a cheque or bill of exchange, the right to collect is also revoked. In these cases, PERI has the right to collect the goods to which it retains title.
 - 8.9 If the purchaser has mixed/mingled the goods to which PERI retains title and/or rental goods with other goods, PERI has the right, in collaboration with the purchaser and based on the invoicing documents, to separate out firstly its rental goods and then the goods to which it retains title.
 - 8.10 The decision as to which goods are rental goods and which are goods to which PERI retains title will be made amicably with reference to the invoicing documents. If the purchaser does not take part in this separation, PERI has the right to effect it with the assistance of an expert.
 - 8.11 If the security to which PERI is entitled as a result of the prior assignment exceeds the value of the secured receivables by more than 10%, PERI is obliged to transfer the goods back or release them to this extent as it chooses. The value of PERI's secured receivables is determined by the price at which PERI invoiced the purchaser.
 - 8.12 If the purchaser incorporates a receivable assigned to PERI from a resale of delivered goods as part of a current account relationship existing with its customer, the receivables from this current account are assigned in their entirety. After netting out, they are replaced by the recognised account balance which is deemed assigned to PERI up to an amount equal to the amount of the original receivable.
- ## **9. Non-payment of a payment obligation**
- 9.1 If PERI withdraws from the contract as a result of the non-fulfilment of a payment obligation or behaviour by the purchaser in breach of duty, or if it recovers delivered products

for other reasons resulting from the retention of title, the purchaser must pay for having been provided with the goods for the period of time when it was in possession thereof in the form of appropriate compensation for use.

- 9.2 The payment may not exceed the purchase price. In addition, compensation must also be paid for the expenses incurred as a result of the contract. The right to claim for damages remains reserved.

10. Warranty

A) Expected quality

For goods that are intended for the manufacture of concrete areas that will remain visible, the expected quality of the sale item is determined by the version of the "quality criteria for concrete formwork" data sheets issued by the Güteschutzverband Betonschalungen e.V (Concrete Formwork Quality Protection Association) in force and effect on the date of conclusion of the contract.

B) For sale of new products

- 10.B.1 PERI shall deliver new products or repair new products delivered, if they are proven to be defective as a result of circumstances that occurred before the transfer of risk.
- 10.B.2 The retention of title (item 8) also applies to parts replaced as part of the exchange procedure.
- 10.B.3 The purchaser must give the seller appropriate time and opportunity for subsequent performance, otherwise PERI is released from its liability and from the warranty for the resulting consequences.
- 10.B.4 If the complaint is justified, PERI will bear the direct costs of the repair or, in the case of the delivery of a replacement, of the replacement part, as well as the shipping costs. If the delivery or assembly locations are outside the Federal Republic of Germany, the level of total costs to be borne is limited to the order amount.
- 10.B.5 If the purchaser is culpably jointly responsible for causing the defect, in particular if it has not met its obligation to avoid damage and deterioration, after PERI has effected the repair, PERI is entitled to claim compensation corresponding to the level of the purchaser's joint responsibility in causing the defect.
- 10.B.6 The purchaser may choose to withdraw from the contract if the seller was given an appropriate deadline for subsequent performance – taking into account the statutory exceptional cases – and if this deadline has passed without any progress being made. If a defect is not significant, the purchaser only has a right to reduce the purchase price.

C) For sale of used products

The sale of used goods takes place with no warranties of any kind.

11. Liability

- 11.1 PERI is only liable in the event of deliberate acts or omissions, a culpable breach of material contractual obligations, gross negligence by executives or managerial employees, culpable fatal or physical injury, damage to health, fraudulent concealment of defects, guaranteed absence of defects, defects insofar as liability is stipulated under the Produkthaftungsgesetz (German Product Liability Act), also in the case of damage on account of a breach of duties in the contract negotiations, irrespective of the legal ground – including, in particular, damage not caused to the items delivered themselves.
- 11.2 In the case of a breach of material contractual obligations, PERI is also liable in the event of gross negligence on the part of non-managerial employees, as well as slight negligence. In cases of slight negligence, liability is limited to damage typical of the contract and reasonably foreseeable. Material contractual obligations in the abovementioned context exist if the exclusion of liability relates to an obligation, performance of which is necessary to enable the due implementation of the contract at all and which the purchaser can regularly rely on compliance with.
- 11.3 Any other liability, irrespective of the legal grounds, in particular for compensation for damages that do not occur to the delivered item, is excluded.
- 11.4 PERI does not accept liability for the consequences of defects for which warranty is excluded.

12. Statute of Limitations

Unless otherwise agreed, the limitation period for claims by the purchaser that arise against PERI on the occasion of and in connection with the delivery of the goods is one year after the delivery, irrespective of the legal grounds.

13. Purchase after hire

- 13.1 If PERI agrees with a purchaser that the purchaser may buy some or all of the hired material at the end of a hire contract, the purchase price, unless otherwise agreed upon, will be calculated as follows: New price of hired material as per PERI's price list less a reasonable used material discount, less the rent paid, plus any processing and financing costs.
- 13.2 PERI is not obligated to complete a contract for the sale of the goods following a hire contract.

C. PERI terms and conditions of hire

1. Basis for calculation, quality of hired material, rental deposit

- 1.1 Offers by PERI are based on the reserved quantity of hired material (PERI list of materials) for a specified hire period. If in an individual case a different calculation model is offered by PERI, the following applies:
- 1.2 The amount of the area to receive formwork, the time period in which the area to receive formwork is to be completed and the concreting cycle planning will only form an integral part of the rental contract if these have been specified by the hirer. The hirer shall provide this information by handing over execution plans and schedules (time schedule). The hirer is solely responsible for any alterations.
- 1.3 Hired material is generally used equipment; there is no entitlement to new material. The hired material must be in a clean and functional state. The hired material will be examined before delivery and after the return at the plant according to the GSV regulations. The formwork skin may show skilled and correctly performed areas of repair. Any special requirements for the formwork skin shall be agreed upon by PERI and the hirer in advance.
- 1.4 With regard to the expected quality of the hired material, the version of the guideline on quality criteria of rental formwork of the concrete formwork quality control association (Güteschutzverband Betonschalungen e.V., GSV) of April 2003, and, in addition, the PERI assessment criteria for hired material in the version in force and effect upon conclusion of the contract shall apply. These are available free of charge from fax no. +49 7309 951229.
- 1.5 PERI is entitled to make delivery of the formwork conditional upon payment of a rental deposit. The maximum total of this deposit is three times the monthly rental charge. PERI may use this deposit to settle outstanding payments to be effected by the hirer during or after the ending of the rental relationship.

2. Additional services

The hirer may order additional services from PERI; this includes, for example, engineering services in the form of structural stress calculations or planning for the use of formwork; transport and logistics services; also, under a PERI MS Plus contract, repair of damage caused by unprofessional handling of the formwork material; cleaning when the hired material is returned. The additional services must be paid for by the hirer.

3. Delivery of the formwork

- 3.1 Delivery of the hired material is to be taken by the hirer unless the material has major defects. Partial deliveries are permissible.
- 3.2 Upon receipt of the hired material, the hirer shall inspect it immediately to ensure that it is complete and fully functional as far as this is reasonably possible in the normal course of business. It is especially important to count the number of package units (packages).
- 3.3 Missing or faulty parts must be noted on PERI's delivery note and PERI must be informed thereof immediately in writing. If the hirer fails to do so, the delivery is assumed to be accepted, unless the defect is of a kind that is not discernable during such an inspection.

- 3.4 If such a defect is discovered at a later date, this discovery must be communicated to PERI immediately upon discovery, otherwise the delivery will be deemed accepted even in respect of this defect.
- 3.5 In order to preserve the rights of the hirer a notification made in good time is sufficient. If PERI has maliciously concealed a defect, PERI may not invoke the abovementioned provisions.
- 4. Transfer of risk**
- 4.1 The risk for hired material passes to the hirer at the time when transferred to the shipper or freight carrier or to the hirer itself. If the delivery is carried out by PERI, PERI is liable for the proper and diligent selection of the freight carrier.
- 4.2 Types of shipping and packaging, such as pallet cages, forklift truck pallets, transportation containers, etc. may be determined by PERI, taking the interests of the hirer into consideration. In the case of delivery in pallet cages, the hirer must use the same pallet cages for the return shipment.
- 4.3 Shipping costs, freight costs, packaging costs and unloading costs are borne by the hirer. The hirer shall also bear the cost of waiting times during loading and unloading on the construction site as long as these times are in excess of two hours, unless hirer is not responsible for the waiting time.
- 5. Use of the hired material**
- 5.1 The hirer must observe the currently valid regulations contained in PERI's assembly and usage instructions (Aufbau- und Verwendungsanleitung (AuV)), as well as the appropriate laws on work safety and the accident prevention stipulations of the employer's liability insurance association. The assembly and usage instructions will be provided to the hirer by PERI free of charge.
- 5.2 In particular, the hirer is responsible for appropriate and professional storage, interim and final cleaning, maintenance of the formwork skin, use of separating agents and for compliance with the advice included in the assembly and usage instructions, product posters and operating instructions provided (also applicable to accessory parts).
- 5.3 The hirer is obliged to treat the hired material with care and take all steps to ensure that its value and efficiency are not reduced.
- 5.4 All load-bearing parts, in particular formwork girders, may only be loaded or used in accordance with the load tables and structural stress values, which are available on request. The hirer is required to request the tables and structural stress values from PERI and to apply these data on their own responsibility.
- 5.5 Any damage arising, including damage to accessory parts hired, is the responsibility of the hirer, unless the damage occurred despite compliance with the obligations given in item 5 hereof and with usual construction regulations.
- 6. Supervision and protection obligations**
- 6.1 The hirer must continually monitor the hired items at the place of use and separate damaged parts. The maintenance and repair obligations are assumed by the hirer during the rental period.
- 6.2 The hirer must carefully protect the hired material against theft. In the case of theft, the hirer is obliged to inform PERI and the responsible authorities of this immediately in writing. A copy of the police notification shall be immediately sent to PERI.
- 6.3 The hirer is responsible for lost hired material unless it has properly fulfilled all of its obligations under item 6.2.
- 7. Dates and deadlines**
- 7.1 Delivery periods or other deadlines are only approximate, unless they are expressly identified in the contract as being binding.
- 7.2 Delivery periods begin only after clarification of all performance details. The hirer must meet all necessary contractual and cooperation obligations in order for any agreed delivery periods to be observed.
- 7.3 If a delivery by PERI is culpably delayed, the hirer is obliged to set an appropriate grace period in written form. Only after this grace period has expired may the purchaser withdraw from the contract.
- 7.4 The delivery obligations are subject to correct and punctual supply to PERI itself, unless the incorrect or delayed supply is caused by PERI.
- 7.5 Cases of force majeure or other impediments that are beyond PERI's control, e.g. walkout, strike, lock out, government bans, energy and transportation difficulties and also interruptions in operation etc. extend the periods and postpone the deadlines in accordance with their effects. This also applies if cases such as these occur to a prior supplier or sub-supplier of PERI.
- 7.6 Claims for compensation of the damage as a result of delayed performance are excluded so long as PERI or persons that PERI is responsible for have not acted with intent or gross negligence.
- 7.7 Any default damage is limited to 0.5% of the contract price of the delayed performance for each full week of delay, however, not exceeding 5% of the contract price.
- 7.8 The contract price in case of hiring is the rental price for 3 months. The general limitations on liability (item 17) also apply.
- 8. Warranty**
- 8.1 For defects as to quality in the hired material, PERI provides the following warranty subject to the following conditions and with the following scope which excludes all other claims: All parts that are discovered to be defective as a result of circumstances existing before the transfer of risk will be either repaired or replaced by a new part in accordance with the hirer's wishes free of charge.
- 8.2 If repair or replacement delivery fails, the hirer does not have to pay the rental charge if the defect means that the item cannot be used for the contractually agreed purpose.
- 8.2.1 The hirer must pay only an appropriately reduced rental charge for the period of time during which the use of the item is impaired.
- 8.2.2 Insignificant reductions of usability are to be ignored.
- 8.3 Claims are excluded if PERI is hindered in its attempts to inspect alleged defects or if the proof requested by PERI is not made available immediately.
- 8.4 In derogation from item 17, claims for damages or for self-repair and compensation for necessary expenditure in accordance with section 536a BGB are excluded, unless PERI is responsible for deliberate acts or gross negligence.
- 9. Signage, advertising**
- 9.1 PERI has the right to post advertisements of an appropriate size for the company and its products at visible positions on the hired materials.
- 9.2 PERI also has the right to photograph the objects and use these in PERI advertising (catalogues, brochures, reference lists, etc.), giving the name of the hirer.
- 9.3 The placement of advertisements for the hirer or for third parties, in particular the building owner, on the hired items requires advance written approval from PERI insofar as this requires an alteration to the substance of the hired material.
- 9.4 The costs for the placing of advertisements for the hirer or third parties are borne by the hirer.
- 10. Period of hire**
- 10.1 The minimum hire period is one month.
- 10.2 The hire period begins on the day on which the equipment leaves PERI's storage facility and ends when it arrives back at the storage facility specified in the contract by PERI.
- 10.3 If the equipment is picked up later than agreed and the hirer is responsible for this, the day on which it was ready for shipping is counted as the first day of hire.
- 10.4 In the case of pre-assembled equipment, the hire period begins when the assembly time agreed in the hire contract begins as far as this is reasonable.
- 10.5 The risks of use of the hired materials are borne by the hirer. No reductions or interruptions are allowed in the rental charge due to public holidays, poor weather or technical stoppages. PERI's legal liability for the breach of its duties is not affected hereby.

11. Subletting

- 11.1 PERI hired material may not be hired or loaned to third parties; nor are other methods of making equipment available to benefit third parties or to PERI's disadvantage permitted, unless PERI has given written approval. The use of formwork by a subcontractor of hirer does not require approval as defined in the previous sentence.
- 11.2 Receivables from third parties resulting from making the hired material available are already assigned to PERI.
- 11.3 PERI must be informed immediately of seizure or any other interferences.
- 11.4 Transfer of the hired material by the hirer to a construction site other than that given in the hire contract requires express written approval from PERI. In the case of infringement of this rule, a contractual penalty calculated using equitable discretion will be payable, in the case of a dispute, the penalty will be determined by the competent district court. In addition, PERI reserves the right to file an appropriate claim if the total damages are higher than this amount. The hirer, however, is free to prove that damages were lower.

12. Return of formwork

- 12.1 The hired material will be returned at the expense and risk of the hirer.
- 12.2 Transportation insurance shall only be acquired if expressly requested and at the expense of the hirer.
- 12.3 The hirer is obliged to return the hired material complete, in its original technical condition, without any damage beyond normal wear and tear, dismantled in a clean and usable way, bundled according to dimensions, on pallets and/or in a form that can be unloaded by a forklift truck.
- 12.4 Hired material that is unusable or lost must be replaced by the hirer in accordance with the provisions of statute. Hired material is deemed unusable if it cannot be repaired at reasonable cost. Under the conditions of sentence 1, the hirer must also bear the cost of the disposal of scrap parts, for example cut formwork supports.
- 12.5 The hirer must return the hired material itself unless otherwise expressly arranged in writing at the time of the conclusion of the contract.
- 12.6 Item 4 applies analogously to the return delivery of the hired material.
- 12.7 Mechanical parts that are lubricated with grease, e.g. spindles and screws, must be returned lubricated with grease.
- 12.8 The hirer must prove that it has returned the hired material complete by means of an acknowledgment of receipt from PERI (return delivery note).
- 12.9 After the end of the hire period, the hirer is obliged to return the hired material to the address specified in the contract (plant) at its own expense. If the return is made to another location at PERI's request, PERI will bear the transportation costs from the address mentioned in the contract or the nearest branch.
- 12.10 The hirer must ensure that the hired items of the same type are not mixed up. If hired and purchased items and other items are mixed up, the hirer has the burden of proof to identify which items are the hired items, which are the purchased items and which are the other items. In case of doubt, PERI is entitled to identify or select the items that are to be considered hired and to ask for these to be returned when the hire relationship ends.
- 12.11 The hirer must provide proof that the entire amount of hired material has been returned.

13. Cleaning and damage

- 13.1 If the hirer carries out the cleaning before return delivery to PERI, it should be performed to a level of quality that corresponds to the guidelines of the Güteschutzverband Beton-schalungen e.V (Concrete Formwork Quality Protection Association), version April 2003, save as otherwise agreed.
- 13.2 Wear and tear as a result of appropriate use is included in the rental price. Exempted therefrom is damage to the formwork that is caused by an infringement by the hirer of the require-

ments laid out in item 2. Damage in this context shall in particular include all piercing, indentation or drilling in the formwork skin of frame and element formwork. The provisions governing the burden of proof remain unaffected. The resulting repair and cleaning costs shall be borne by the hirer, unless the hirer is not responsible for the damage.

- 13.3 Due to the appropriate and professional expertise required, repairs shall only be carried out by PERI.

14. Scope of compensation

- 14.1 If the hirer has to pay damages to PERI resulting from legal or contractual liability standards as a result of the non-return of the hired material, in particular in the case of total damage or loss of the rental material, the damages are calculated in accordance with the replacement value of the goods according to the current version of the PERI price list at the time when the contract was concluded, minus a used parts discount for decrease in value amounting to 15% of the list price.
- 14.2 The hirer is allowed to prove a higher decrease in value than that given under item 14.1.
- 14.3 PERI's entitlement to the rental charges due up until the occurrence of the loss remains unaffected.

15. Calculation, payment and payment delay

- 15.1 After the minimum hire period (see item 10.1) the rent will be calculated according to calendar days.
- 15.2 Rental invoices are issued either for a calendar month or on a 30 day basis. The rental charge is payable 10 calendar days after receipt of the invoice.
- 15.3 No discounts are offered on rental invoices and additional services as defined in item 2.
- 15.4 If the hirer issues a direct debit authorisation for the accounting process, a 2% discount is granted with effect from the date of receipt of the invoice.
- 15.5 Cheques are accepted only for payment purposes.
- 15.6 Default interest is calculated in accordance with Section 288 BGB; however default interest amounts to at least 11% p.a.
- 15.7 The hirer is not entitled to any rights of retention unless the counterclaim on which the right of retention is based is either declared final and absolute or has been acknowledged by PERI. In this case, the right of retention will not become due until one month after the announcement of its assertion by the hirer.
- 15.8 Offsetting is permitted only against payment claims recognised by PERI or declared final and absolute.
- 15.9 The hirer may only assign claims against PERI to a third party, irrespective of the nature of such claims, if PERI has given its written consent.

16. Premature termination of the contract

- 16.1 PERI has the right to terminate the contract and all other contracts with the hirer without notice and to request the return or picking up of the hired material if: the hirer's payment of the rental charges for a full month is delayed by more than 10 days; if a bill of exchange or cheque from the customer is disputed by either the hirer or a third party; an application for insolvency is made or insolvency proceedings are initiated with regard to the assets of the hirer, in which case any administrator's rights after the insolvency are unaffected; if the hired material is not used or maintained appropriately or in accordance with PERI's regulations in spite of reminders being issued. In the case of the material being treated with extreme lack of care, no reminder is required.
- 16.2 The costs that arise as a result of withdrawal will be borne by the hirer.
- 16.3 After termination without notice PERI is entitled to request compensation for damages instead of the remaining rental charge.
- 16.4 In the case of notice of termination, an objection is already made to the further use of the hired material in accordance with section 545 BGB.

17. Lessor's liability

- 17.1 PERI is only liable for the breach of contractual and non-contractual obligations in the case of deliberate acts and gross

negligence. These limitations do not apply in cases of culpable breach of material contractual obligations if the purpose of the contract is jeopardised, in cases of compulsory liability in accordance with the Produkthaftungsgesetz (Product Liability Act) or bodily injury. Furthermore these limitations do not apply to claims on account of fault during the contractual negotiations. Material contractual obligations in the abovementioned context exist if the exclusion of liability relates to an obligation, performance of which is necessary to enable the due implementation of the contract at all and which the hirer can regularly rely on compliance with. The rules with regard to the burden of proof are not affected by this.

17.2 The assembly of the PERI products may only be performed in a manner that takes into consideration and observes the requirements set out in item 5 and follows the respective assembly and usage instructions. The use of PERI products in conjunction with the hirer's own parts or parts from another manufacturer is performed entirely at the hirer's own risk. PERI is excluded from all liability in relation to this.

17.3 PERI accepts no liability for the parts included in PERI's offer being complete for compliance with all relevant safety regulations with regard to the planned use of the formwork. PERI also accepts no liability for any health and safety coordination plan by the hirer, particularly with regard to assembly instructions, risk analyses and other information relevant to safety.

17.4 Irrespective of the basis of the claim, PERI is liable for damage to property or financial losses and personal injury only within the limitations of the existing commercial third party liability insurance. The sum covered is a flat rate of 5 million Euros for personal injury and property damage. If the insurer is not required to make a payment (e.g. excess, series of claims, maximum annual cover, risk exclusion) PERI will make the compensation payment.

17.5 Insofar as PERI's liability is excluded or limited, this also applies to the personal liability of PERI's employees, employee representatives and agents.

18. Liability of the hirer

18.1 The hirer is also liable in case of damage caused by fire, water or weather, as well as for theft, unless the hirer is not responsible for the resulting damage.

18.2 The hirer is obliged to insure the hired items against all risks that can be insured against, in particular theft, damage, fire, water, etc. by taking out appropriate insurance policies and to insure a stoppage in operation resulting therefrom.

18.3 The hirer is obliged to assign the claims against its insurance to PERI upon request in cases of damage.

D. PERI Terms and Conditions of Assembly

I. General assembly conditions

1. Assembly schedules

- 1.1 Assembly schedules may be provided by the purchaser, or by PERI if commissioned separately.
- 1.2 If pre-assembly is to be performed, the purchaser will receive the assembly schedule before the pre-assembly has started – within a reasonable timeframe protecting the interests of both PERI and the purchaser. The assembly schedules must comply with the accepted state of the art science and technology.
- 1.3 The purchaser must inspect these assembly schedules within a reasonable period of time to ensure that they are correct. The purchaser must countersign these schedules immediately after inspection as approval and send them back to PERI.
- 1.4 The purchaser must inform PERI immediately in writing if it thinks the assembly schedules need to be changed. If this information is not passed on, the assembly schedules are considered as having been approved unless they are not capable of being approved.
- 1.5 If the assembly schedules are to be provided by the purchaser, they must contain all necessary details for the production of the end product. These include, as well as the geometrical

form with all necessary measurements, construction and structural stress connections as well as materials and quality characteristics.

2. Alterations to schedules

If the purchaser wishes to alter the assembly schedules accepted according to item 1 above, or orders alterations shortly before the assembly commences or during assembly, PERI will inform the purchaser without delay of the resulting changes in the price and postponements. The purchaser must confirm these immediately and in writing otherwise PERI will carry out the work as shown in the original assembly schedules.

3. Purchaser's own property

- 3.1 PERI does not accept any liability for the use of the purchaser's own property.
- 3.2 Parts made available by the purchaser must be in a clean and functional condition. If this is not the case, necessary additional expenses (for example, inspection or sorting) are to be borne by the purchaser.

4. Assembly errors

If errors in assembly occur and PERI is responsible for these, the purchaser has a right to make a claim for free repairs.

5. Liability

- 5.1 PERI accepts liability vis-à-vis the purchaser for accountable defects that occur in the assembly work, within the framework of the assembly or third party liability insurance that it has taken out. The sum insured will be set based on the object in each case. The purchaser will be informed of the sum insured upon request. If the insurer is not required to make a payment (e.g. excess, series of claims, maximum annual cover, risk exclusion) PERI will make the compensation payment.
- 5.2 Otherwise, liability is limited to the level of damage that can be anticipated under usual circumstances unless PERI is charged with intent or gross negligence. The abovementioned liability limitation does not apply to damage to health, body and soul.
- 5.3 Claims for compensation are excluded, in particular claims from a breach of duty in accordance with section 280 BGB and claims resulting from delict, as long as the damage was not caused by actions involving deliberate acts or gross negligence and PERI is not liable as a result of a breach of the material obligations of the contract. In addition, the limitation of liability does not apply in cases of compulsory liability in accordance with the Produkthaftungsgesetz (Product Liability Act) or bodily injury or culpa in contrahendo. Material contractual obligations in the abovementioned context exist if the exclusion of liability relates to an obligation, performance of which is necessary to enable the due implementation of the contract at all and which the purchaser can regularly rely on compliance with.
- 5.4 The abovementioned liability limitations apply to fault by PERI as well as by its representatives and agents.

6. Dates and deadlines

- 6.1 If binding periods of time are set for assembly work, these will only begin when the purchaser has performed all of its cooperation obligations.
- 6.2 If deadlines are not adhered to in a culpable manner, the purchaser is obliged to set an appropriate time extension in written form.
- 6.3 After this extension period has expired, the purchaser may withdraw from the contract. All other claims for compensation as a result of delayed delivery are excluded so long as these are not based on deliberate acts or gross negligence.
- 6.4 Belated alteration requests on the part of the purchaser will be performed at the purchaser's expense insofar as is possible and reasonable. The deadlines will be extended according to the effect of these alterations.

II. Special conditions for assembly at the PERI plant

1. Acceptance

- 1.1 After the assembly work has been completed and after notification of completion has been given by PERI, formal acceptance will take place immediately and it will take place at the place of assembly.
- 1.2 A record shall be kept of the acceptance and this shall be signed by both the purchaser and the contractor.
- 1.3 If the purchaser does not attend the agreed acceptance meeting, the assembly is deemed approved insofar as it is free from defects. Insignificant defects will be ignored.

2. Unloading at the construction site

- 2.1 Material which has been pre-assembled at the PERI plant is to be unloaded with special care using suitable lifting equipment in order to prevent damage.
- 2.2 Before unloading, the goods shall be inspected together with the freight carrier to identify any damage, which, if any, is to be documented.

3. Delayed call-offs

- 3.1 If the purchaser fails to call off pre-assembled materials on the agreed date, the purchaser is deemed in creditor's default in acceptance without any further requirements. In this case the purchaser has to bear, in particular, any extra expenditure required, for example storage costs.
- 3.2 If the pre-assembled material is hired by the purchaser, the hire period begins at the time of when the creditor's default in acceptance commences.
- 3.3 In this case (item 3.2), any deterioration in quality due to storage, for example weather influences on high quality exposed concrete formwork, is to be borne by the purchaser.

III. Special conditions for the assembly on the construction site

1. Protection obligations and responsibility

- 1.1 Unless otherwise agreed, the purchaser will take the necessary measures to protect people and property at the place where assembly is being performed at its own cost. The purchaser is liable for damages and loss of delivery parts and tools, unless it is not responsible for the damage or loss. This also applies to the parts that are temporarily stored on the purchaser's premises before the assembly is completed.
- 1.2 Levelling work, axle fixing and other measurement specifications must be performed by the purchaser on the site when the formwork is used for the first time. Fine adjustments are to be effected by the purchaser.

2. Equipment and construction site organisation

- 2.1 Hoisting machines such as cranes and/or forklift trucks, lifting equipment and operating personnel shall be provided free of charge by the purchaser for the required assembly schedules and with the required loading capacities. Corresponding waiting times for PERI employees will be charged to the purchaser.
- 2.2 Radiotelephone equipment for communication with the crane driver is to be supplied if necessary.
- 2.3 The purchaser shall supply an adequate assembly area of sufficient size for the work at hand.
- 2.4 In the vicinity of the crane, adequate storage space of sufficient size is to be made available for the storage of parts and pre-assembled materials.
- 2.5 The purchaser shall also provide daytime accommodation, tool boxes, site electricity and water. Building rubble will be disposed of free of charge.
- 2.6 Equipment and construction site organisation must be made available by the purchaser on every working day and free of charge.

3. Acceptance on the construction site

- 3.1 At the end of the assembly work and notification of such by PERI, formal acceptance of the works is to be carried out immediately. The acceptance is to take place at the place of assembly.

- 3.2 A record of the acceptance is to be made and signed by both the contractor and the purchaser.
- 3.3 If the purchaser fails to appear at the agreed acceptance meeting, the assembly work shall be deemed to have been accepted.

4. Imputation of staff

PERI provides no warranty and accepts no liability with regard to culpable behaviour on the part of persons provided by the purchaser. Such persons are agents of the purchaser.

5. Assembly and disassembly work

- 5.1 The costs of assembly and disassembly are borne by the purchaser.
- 5.2 Any travel or transportation costs or costs for deployment of machines (cranes etc) are to be borne by the purchaser. Furthermore the purchaser will bear any travel costs incurred by the contractor as long as these are reasonable.

6. Scheduled work

Scheduled work will be charged per hour according to the hourly rate in the PERI price list plus additional expenses (travel costs incl. board and lodging).

7. Additional expenses

- 7.1 If the assembly work is interrupted as a result of circumstances in construction, organisation of the construction site or otherwise caused by the purchaser, the necessary additional expenses will be reimbursed separately on a time and material basis.
- 7.2 The same applies to additional costs that go beyond the commissioned task, in particular to modifications to assembly and services, as well as other unforeseeable impediments that fall under the purchaser's area of responsibility. Insignificant additional expenses will be ignored.

E. PERI terms and conditions for technical processing and briefing

I. Technical processing

1. Engineering and structural stress services
With regard to engineering services in the scope of the HOAI (Fee Ordinance for Architects and Engineers) and especially section 67 of the HOAI, the minimum and the maximum rates will not be undercut or exceeded.
The costs of the structural stress measurements and planning services are to be borne by the purchaser.

2. Liability for engineering and structural stress services

- 2.1 PERI accepts liability for the engineering and structural stress services that it performs only in the case of direct damage to the building.
- 2.2 PERI is liable for damage resulting from its engineering and structural stress services only within the limitations of the existing commercial third party liability insurance (flat rate of 5 million Euros for personal injury and property damage). If the insurer is not required to make a payment (e.g. excess, series of claims, maximum annual cover, risk exclusion) PERI will make the compensation payment.
- 2.3 PERI accepts responsibility for the compliance of its goods and services with the recognised state of the art technology/architecture valid at the time at which the service is performed.
- 2.4 These limitations on liability do not apply in cases of deliberate acts or gross negligence on the part of PERI.

3. Legal regulations

In all other respects solely the provisions of statute apply to the engineering processing and any other works and services carried out by PERI.

II. Briefing of the purchaser

1. Areas of responsibility

- 1.1 PERI is responsible for providing a briefing by the assembly foreman for the responsible employees named by the purchaser only to the extent that is expressly agreed in the contract.
- 1.2 After successful briefing or the handing over of the operating instructions, the purchaser is solely responsible for the observance of all safety regulations.
- 1.3 The purchaser must provide all of the preconditions necessary for PERI to perform its services; in particular, it must provide public law authorisations.

2. Responsibilities of the foreman

- 2.1 The assembly foreman will provide instructions for the professional assembly and use of the PERI products usually using an assembly schedule. The assembly is the responsibility of the purchaser. PERI provides trained personnel, insured against illness and accidents and whose national insurance contributions have been paid by PERI.
- 2.2 The foreman is to be informed of the responsible site coordinator and provided with professionally capable personnel. The instruction language is German unless specifically otherwise agreed in writing at the time of conclusion of the contract.
- 2.3 The foreman has no authority to issue orders to the construction workers and is therefore not responsible for compliance with working safety regulations or other safety requirements or the operation of cranes or forklift trucks.
- 2.4 The foreman is not responsible for time schedules or for the usability or functionality of the purchaser's materials.
- 2.5 Even if a foreman is engaged, only the purchaser is responsible for the inspection of the necessary construction and structural stress requirements.

3. Working times and remuneration

- 3.1 The working times of the PERI employees are governed by the collective bargaining agreements applying to PERI. Working and travelling times will be documented using worksheets which are to be signed by the purchaser.
- 3.2 The remuneration will be charged to the purchaser according to the agreed hourly rates plus any increments for overtime or night work, unless otherwise agreed. The list of hourly rates and further increments will be provided to the purchaser free of charge by PERI on request.
- 3.3 The hourly rates do not include any daily allowances, costs for board and lodging, travelling costs and costs for the transportation of equipment and luggage.

4. Protocol

After the successful briefing by the foreman, the site coordinator is to sign a briefing protocol in order to confirm the complete and correct performance of the briefing obligations as well as the handing over of relevant documents.

F. PERI terms and conditions for the licensing and use of software

1. Conferring of rights

- 1.1 The Licensor (hereinafter referred to as "LN") acquires, upon payment of the agreed royalty, the non-exclusive and non-transferable right to use the programs set forth in the delivery note in accordance with the conditions set forth below ("Licence").
- 1.2 LN is entitled to use the software on a computer as a single terminal version and to install it for one user, unless the parties explicitly agree otherwise. The software shall be deemed installed and used if it is loaded onto a working memory (i.e. RAM) and stored in a permanent memory (e.g. hard disk, CD ROM) of the computer. LN must ensure, in particular, that simultaneous use by more than the agreed number of authorised users is excluded.

- 1.3 By the Licence grant set forth in item 1.1, LN has the gratis entitlement to produce one single reproduction of the software solely for its own use or to have it produced, insofar as this is done free of charge. It is admissible in particular to copy the software for LN's own scientific or non-commercial use onto any storage medium (e.g. DVD/CD ROM) USB stick), if it is guaranteed that PERI's copyright notice appears on such copy. It is further admissible to produce a backup copy.
- 1.4 LN is not authorised, in particular, to modify, process, translate, reverse engineer, reverse compile or decompile the software or produce derived works or, irrespective of whether it is temporarily or permanently, in whole or in part, to reproduce the software in a manner derogating from item 1.3, to publish, disseminate, hire or resell the software or to make it accessible to third parties for instance on the Internet.

2. Remuneration, payment

- 2.1 LN is obliged to pay the royalty agreed as a one-time fee.
- 2.2 All invoices are payable 30 calendar days after receipt of the invoice.

3. Right of retention, off set, assignment

- 3.1 LN has no rights of retention unless the counterclaim on which the right of retention is based is declared final and absolute or acknowledged by PERI. Off-setting is only permitted against a claim acknowledged by PERI or declared final and absolute.
- 3.2 LN may only assign claims against PERI to a third party, irrespective of the nature of such claims, if PERI has given its written consent.

4. Warranty and liability

- 4.1 The parties agree that it is not possible to have a program development which functions free of error in all application conditions.
- 4.2 When complaining of defects, LN is obliged to provide PERI with verifiable documentation of the type and occurrence of the complaints and to collaborate in isolating any errors. LN is itself responsible for securing its individual data.
- 4.3 The warranty period is for one year unless PERI is charged with intent or gross negligence. The period starts when the physical embodiment of the software (DVD/CD) is handed over. If the software is acquired by downloading online, the period shall start when the downloading is completed, or, at the latest, when the software is installed on the computer of LN.
- 4.4 PERI represents that it is the owner of the rights of use forming the subject matter of the contract and in particular that it is entitled to confer on LN the rights described in item 1 without this being opposed by any rights of third parties. If this should not be the case, PERI shall indemnify LN against all claims by third parties. No further guarantees or representations shall be given.
- 4.5 LN shall notify obvious defects immediately, but no later than two weeks after delivery or, in the case of an online download, after completion of the downloading. Other defects shall be notified immediately after discovery thereof. The warranty lapses with respect to defects not notified in good time. LN shall have all work on the program and the rectification of any defects carried out only by PERI or with PERI's approval.
- 4.6 PERI shall be liable on account of a breach of contractual and non-contractual obligations only in the event of deliberate acts and gross negligence, limited to the type of damage foreseeable at the time of conclusion of the contract. These restrictions do not apply in the event of a culpable breach of material contractual obligations, in cases of compulsory liability in accordance with the Producthaftungsgesetz (Product Liability Act), or in case of bodily injury. Material contractual obligations exist if the exclusion of liability relates to an obligation, performance of which is necessary to enable the due implementation of the contract at all and which LN can regularly rely on compliance with. The provisions governing the burden of proof remain unaffected hereby.
- 4.7 Insofar as the liability of PERI is excluded or limited, this shall also apply to the personal liability of PERI's personnel, employees, employee representatives and agents.

- 4.8 Furthermore, PERI is not liable for the lack of economic success of the software.
- 4.9 PERI is not liable for lost profits of LN, consequential damage caused by a defect or claims by third parties, with the exception of claims from an infringement of third party protective rights by the licensed material.

5. Term and right to give non-contractual notice of termination

- 5.1 LN has the right to exercise the right of use conferred on LN, for an unlimited period in principle.
- 5.2 PERI has the right to terminate the right of use conferred on LN without notice for good cause. Good cause is deemed to exist in particular in the event of serious infringements by LN of the copyright in the software. Upon receipt of notice of termination, all rights of use of LN shall lapse. In this case the original software shall be returned, all copies of the software destroyed and the software is to be removed from all data media.

6. Customer service

By purchasing the right of use, LN acquires gratis telephone service support for the programs forming the subject matter of the contract, at PERI's discretion, for a period of one year from handover or, if downloaded online, from the time of completion of the downloading. After expiry of this one year period, the support will be charged on a time and material basis.

7. Program update

Against payment of the respective remuneration, LN may obtain the respective update versions of the programs. It is only possible to obtain an update version if a maximum of two new releases have appeared since the version was acquired. If more than two new releases of the program have already appeared, then LN must acquire a new licence. When purchasing an update version of the Licence program, LN undertakes to return to PERI the program version used hitherto within two weeks of delivery and to fully delete the program from all data media and data memories.

8. Confidentiality, contractual penalty

- 8.1 LN undertakes to treat the programs and documentation in confidence and to take all necessary security precautions to prevent unauthorised copies from being made and passed on to third parties.
- 8.2 For each case of a culpable breach of this confidentiality provision or of item 1.4, LN undertakes to pay to PERI a contractual penalty in the amount of three times the first royalty for the respective program to the exclusion of the defence of Fortsetzungszusammenhang, whereby each single act will be deemed an individual infringement. The amount of this royalty is determined by PERI's price list in force and effect at the time of conclusion of the contract, irrespective of which royalty LN actually paid to PERI for the utilisation right. PERI reserves the right to assert a claim for damage exceeding this amount.

9. Miscellaneous provisions

If the software is licensed for or by a US governmental authority, the restricted rights for users of US government software shall apply in addition:

This software and any documentation has the limited rights of the US government users; the use, duplication and data transfer are covered by the restrictions FAR 12.212 (commercial computer use – limited rights) and DFAR 227.7202 (rights for technical data and computer software).

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