

Standard Terms and Conditions



I. DEFINITIONS

- a) In these Terms and Conditions:
 - i) "Company" means PERI Formwork Systems Inc.
 - ii) "Customer" means the company, firm or person who agrees to buy the Equipment from PERI.
 - iii) "Quotation" means the written quotation from PERI to the Customer and the attachments thereto.
 - iv) "Agreement" means these Standard Terms and Conditions, the Quotation as executed by PERI and the Customer, and any written amendments thereto.
 - v) "Equipment" means the equipment described in the Quotation together with any parts, accessories, replacements, or additions, now or hereafter related to or affixed thereon. Any reference to the Equipment shall, where appropriate, include a reference to part of it.
 - vi) "Assembly Instructions" means the written instructions delivered together with the Equipment, or available from PERI to the Customer on request, describing how the Equipment is to be assembled, installed, and maintained.

2. ENTIRE AGREEMENT

- a) The Agreement as defined herein forms the entire agreement between PERI and the Customer and no other express or implied terms, written or oral, shall be incorporated into the Agreement.
- b) Amendments to the Agreement must be in writing and executed by PERI and the Customer.
- c) In the event of any conflict or inconsistency between the Standard Terms and Conditions and the Quotation, the Standard Terms and Conditions shall govern but only to the extent of any such conflict or inconsistency.
- d) Any provision of this Agreement prohibited by or unlawful or unenforceable under any applicable law shall, at the sole option of PERI, be ineffective without invalidating the remaining provisions of this Agreement; provided, however, that to the extent that the provisions of any such applicable law can be waived, they are hereby waived by Customer.
- e) This Agreement cannot be cancelled by the Customer. An order once placed with and accepted by PERI, can only be cancelled with PERI's written consent and upon terms that will indemnify PERI against loss.

3. QUOTATIONS

- a) Any Quotation given by PERI is valid for 30 days only.
- b) Offer is subject to credit approval.
- c) Unless otherwise stated in writing by PERI, prices are quoted and payable on a component basis.
- d) The price of Equipment and other prices referred to in this Agreement do not include HST, GST, or other applicable taxes nor do they include delivery or collection charges, which will be quoted separately.
- e) Prices listed in the Quotation are subject to change due to fluctuations in raw material prices. Information regarding these price changes is available on request from PERI.
- f) Price is FOB PERI local yard or as specified in the Quotation.
- g) If the Quotation fails to set out the price of Equipment for sale, the price shall be PERI's standard list price as of the date of the Quotation.
- h) Unless specified otherwise in the Quotation, Equipment supplied is "Used Equipment". Equipment supply is subject to availability and may be substituted without notice or counter charge to PERI.
- i) PERI pallets and baskets used in order to transport the Equipment will be charged per pallet as required and at the price specified in the quotation. The quantity will be determined at the time of shipping.

4. IMMEDIATE SALE/CONDITIONAL SALE OF EQUIPMENT

- a) The paragraphs below relate to any sale or conditional sale of Equipment or other materials by PERI to the Customer as indicated in the Quotation.
- b) PERI hereby sells to Customer the Equipment listed in the Quotation.
- c) Customer will pay to PERI the purchase price for the Equipment listed in the Quotation.
- d) In the case of an immediate sale, the purchase price will be paid prior to delivery.
- e) In the case of a conditional sale, the purchase price will be paid within 30 days from the date of invoice.
- f) Until the Customer has discharged all of its obligations under this Agreement (including payment obligations): i) PERI, shall, at Customer's risk, retain title to and ownership of all Equipment, and ii) Customer hereby grants PERI, as security for Customer's obligations under this Agreement, a continuing first priority security interest in and hypothecation of Customer's interest in the Equipment and in all proceeds thereof. Customer intends such security interest to attach upon the execution of this Agreement. Customer acknowledges that it has received value and has acquired rights in the Equipment. Customer agrees that PERI has all rights of a secured party under the *Personal Property Security Act* (Ontario) and at law and in equity. Such security interest shall be a "purchase money security interest" (as such term is used in the *Personal Property Security Act* (Ontario)).
- g) Upon discharge by Customer of all its obligations under this Agreement, Customer shall acquire title to and ownership of the Equipment free of encumbrances caused by PERI.
- h) Customer shall not allow the equipment to become subject to any claim, privilege, lien, charge, encumbrance, levy, security interest, mortgage, pledge, hypothecation, seizure, trust attachment, judicial process, ownership interest, license, sublease or other right in favour of any person which would give such person a claim in priority to PERI (in any case, an "Encumbrance") unless such Encumbrance is caused by PERI or authorized in writing by PERI.

5. PAYMENT

- a) In the case of Customers without a pre-agreed credit facility:
 - i) Equipment for purchase, as an immediate sale, will be invoiced and payment made prior to delivery.
 - ii) Payment may be made by the following methods: (i) Certified Cheque, (ii) Bank Draft (iii) Cheque (allow 5 business days prior to delivery for cheque clearance) (iv) Visa/Mastercard (v) wire (vi) e-transfer.
- b) In the case of Customers with a pre-agreed credit facility:
 - i) In the case of Equipment for purchase, as a conditional sale, the purchase price will be paid within 30 days from the date of invoice, unless different payment terms are agreed in the Quotation.
 - ii) Equipment for purchase, as an immediate sale, will be invoiced and payment made prior to delivery.
 - iii) Payment may be made by the following methods: (i) Certified Cheque, (ii) Bank Draft (iii) Cheque (allow 5 business days prior to delivery for cheque clearance) (iv) Visa/Mastercard (v) wire (vi) e-transfer.
- c) PERI may, at any time and at its sole discretion, withdraw with immediate effect a Customer's credit facility.
- d) The time for payment is of the essence of the Agreement.
- e) All payments and other amounts due from Customer to PERI under this Agreement are absolute, unconditional and payable without set off, compensation, counterclaim, or abatement.
- f) Customer shall be responsible for and pay all taxes immediately upon such taxes becoming due. Taxes includes all taxes, imposts, levies, fees, duties, and charges now or hereafter imposed by any federal, provincial, municipal, or other taxation authority on Customer or the Equipment or the rental, delivery, possession, use, maintenance or lease of the Equipment or on PERI in respect of any of the foregoing including, sales, excise, use, property, business, transfer, goods and services, and value added taxes and including penalties or interest based on late payment of such amounts.
- g) The Customer shall pay interest at a rate of eighteen per cent (18%) per annum on all invoice amounts and any other amounts payable under this Agreement, in each case from the date any such amount becomes past due, until such amounts are paid in full.
- h) In addition to any other remedies available to PERI under this Agreement or by law, if the Customer fails to pay an invoice within 30 days of the invoice date, PERI may, without notice to the Customer: (i) withhold supply of any Equipment due to the Customer, and (ii) appropriate any payment made by the Customer to PERI under this Agreement or any other contract with PERI to payment of the Equipment or equipment supplied under any other contract with the Customer as PERI may in its sole discretion think fit.

6. DELIVERY

- a) Delivery shall be deemed to take place at the moment of loading the Equipment onto the delivery vehicle of the Customer or independent carrier for transportation to the Customer.
- b) A bill of lading or delivery and acceptance certificate shall accompany each delivery of equipment. Such a bill of lading or delivery and acceptance certificate must be signed for by the Customer on receipt of delivery of the Equipment. PERI shall not be responsible for the condition of any Equipment delivered or any discrepancies between the quantities listed on the bill of lading or delivery and acceptance certificate and actual quantities received unless Customer notifies PERI in writing within 24 hours following Customer's receipt of delivery. Failure to notify PERI in writing within 24 hours shall constitute a waiver of every claim or demand concerning the discrepancy in quantities or condition of any Equipment delivered and Customer shall be deemed to have unconditionally accepted the Equipment.
- c) PERI shall load the Equipment for shipping to the Customer. The Customer is responsible for unloading the Equipment upon delivery to the Customer.
- d) Customer agrees to take delivery of all Equipment no later than 30 days from the date of Customer's acceptance of this Agreement. Customer will provide PERI with at least 2 weeks' prior written notice and lead time for the delivery of any of the Equipment.
- e) PERI shall not be responsible for any delays due to strikes, transportation of Equipment, wars, epidemics, floods, acts of God, or any other cause whatsoever. Under no circumstances will PERI be liable for any loss, damage, or other inconvenience of any kind resulting from the lack of performance of a common carrier or other third party shipper.
- f) All delivery documents must be signed by an authorized person at the delivery address.
- g) PERI may deliver by separate installments, each of which may at PERI's option be invoiced separately.
- h) If the Customer fails to accept the Equipment or fails to give PERI adequate delivery instructions, then PERI may, at its sole discretion, do one or more of the following:
 - i) Store the Equipment until actual delivery to the Customer or until the Equipment is disposed of pursuant to this Agreement. The Customer shall be liable for the costs of storage and insurance of the Equipment under this section.
 - ii) Make appropriate arrangements with a common carrier to ship such Equipment to Customer on Customer's behalf and Customer hereby declares and agrees that such common carrier shall be the agent of Customer and all risks of transport and costs incurred by PERI for transport are the obligation of the Customer.
 - iii) Sell the Equipment. The Customer shall be liable to pay the costs of the sale. Further, if the Equipment is sold for less than the total purchase price payable by the Customer, the Customer shall be liable to pay PERI the difference in price as well as the costs of sale.
- i) Any delivery dates stated in the Agreement are approximate only and PERI is not liable for any delay in delivery of the Equipment, however caused. Time of delivery is not of the essence of the Agreement.

7. ASSEMBLY AND INSTALLATION

- a) The Customer is responsible for the proper handling, maintenance and installation of the Equipment. The Customer shall install, maintain and use the Equipment in a careful and prudent manner in compliance and conformity with safe industry practices and in accordance with Assembly Instructions as provided by PERI and the requirements of all applicable laws, ordinances and regulations. If Assembly Instructions have not been provided to the Customer, for any reason whatsoever, the Customer shall first obtain a copy of the applicable Assembly Instructions from PERI prior to installing the Equipment.
- b) Customer shall at its expense keep the Equipment in good repair, condition, and working order. Customer shall not alter or modify the Equipment without PERI's prior written consent, until Customer has discharged all of its obligations under this Agreement (including payment obligations). Any alterations, additions or improvements to the Equipment shall be at Customer's expense and shall immediately form part of the Equipment and become subject to PERI's first priority security interest, if a conditional sale.
- c) Incidental to the supply of the Equipment, PERI may agree to provide engineering or design services in respect of the use of the Equipment, in which case all plans, calculations, designs, method statements and design advice produced by PERI before or after delivery of the Equipment are intended to be only a general guide. It is the Customer's sole responsibility to check the adequacy, accuracy, suitability and completeness of the design advice.
- d) PERI may provide the Customer with engineering or design services at the prices set out in the Quotation. Where PERI has provided the Customer with engineering or design services in connection with the use of the Equipment, the following conditions shall apply:
 - i) PERI engineering and design services are based on the information and assumptions provided to PERI by the Customer. Customer warrants that the information and assumptions provided to PERI in this regard are accurate and complete. PERI is entitled to rely, without further due diligence, on the information and assumptions provided to it by the Customer in the performance of PERI engineering and design services.
 - ii) Customer agrees to release PERI and to indemnify and hold PERI harmless from and against any and all liability or claims for damages or injuries sustained by any person or property by reason of a defect, deficiency or flaw in such engineering or design services if caused or contributed to in whole or in part by inaccurate, incomplete, or misleading information or assumptions provided by the Customer.
 - iii) All drawings, designs, plans, specifications, and other materials generated through PERI engineering and design services shall remain the sole property of PERI and shall be returned by the Customer to PERI immediately upon the earlier of: (1) Default by Customer; or (2) the termination of the Agreement. The Customer acknowledges and agrees that any such information contained therein shall not be disclosed to any third parties without the prior written consent of PERI.
 - iv) PERI shall not be responsible for any claim or demand in respect of any engineering data, drawings or specifications which are not marked or stamped by a Professional Engineer engaged by PERI where such approval is required.
- e) Customer hereby releases PERI and indemnifies and holds harmless PERI for any and all injury, damage, or other loss to the Customer or a third party resulting from the Equipment being handled, assembled, installed, maintained or used in an improper or careless manner or other than as provided for in the Assembly Instructions.

8. PROPERTY AND RISK

- a) Risk in the Equipment passes to the Customer on delivery in accordance with section 6(a).
- b) Customer shall, until Customer's obligations hereunder are fully discharged (including payment in full for sale Equipment), bear the entire risk of loss, damage, destruction, theft, seizure or governmental taking of the Equipment or any part thereof. The Customer is not relieved of its obligations under this Agreement as a result of any loss.
- c) Customer assumes all risk of loss and liability for, and shall indemnify PERI and hold PERI harmless against any and all loss, damage, claims, expenses, or injury to persons (including death), or property of Customer or others, arising out of ownership, use, custody, control, or disposition of Equipment by Customer, its agents or employees, or by any third parties.
- d) PERI shall not be liable for any and all loss, damage, claims, expenses, or injury to persons (including death), or property of Customer or others, arising in any manner, directly or indirectly, out of ownership, use, custody, control, or disposition of Equipment by Customer, its agents or employees, or by any third parties.
- e) PERI shall have no liability in contract or in negligence or otherwise for consequential loss, special loss, indirect loss, or economic loss, howsoever arising, including damages for loss of business profits.
- f) PERI shall not be liable in damages or otherwise for any failure or delay on its part in the performance of any obligation hereunder caused by strike, lockout, riot, war, terrorism, epidemic, accident, act of God, industrial disturbance, governmental action or regulation, curtailment of or failure to obtain or deliver

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Equipment or sufficient or adequate raw materials, fuel, labour or utilities, industrial, transport, machinery or equipment breakdown, or for any cause whatsoever beyond PERI's reasonable control.

- g) The Customer shall not remove, disfigure or obscure any numbering, lettering or insignia displayed upon the Equipment, which could reasonably be seen to indicate PERI's ownership of such Equipment, until Customer has discharged all of its obligations under this Agreement (including payment obligations).
- h) Until the Customer's obligations hereunder are fully discharged (including payment in full for sale Equipment), PERI shall have the right at any time and from time to time, to be informed of and to enter the location where the Equipment is situated and the Customer hereby agrees to grant or to cause all other relevant persons to grant unrestricted access to the location for purposes of inspection by PERI.

9. INSURANCE

- a) Until the Customer's obligations hereunder are fully discharged (including payment in full for sale Equipment), the Customer shall, at its own expense, maintain:
 - i) comprehensive all risks insurance on the Equipment for its full list price value, such insurance to include: (a) PERI as additional insured, (b) a loss payable clause in favour of PERI as first payee, and (c) a waiver of subrogation in favour of PERI; and
 - ii) general public liability and property damage insurance with limits of liability equal to at least \$5,000,000 per occurrence (or such greater amount as PERI may require from time to time), and such insurance shall: (a) extend to all liabilities of the Customer arising out of its use or possession of Equipment, (b) include PERI as additional insured, and (c) include a cross-liability provision which insures each person insured thereunder in the same manner and to the same extent as if a separate policy had been issued to each.
- b) All insurance policies shall contain endorsements providing that: (i) thirty days' written notice shall be given to PERI before a policy lapses or is materially altered or cancelled; (ii) coverage shall be primary and not contributory; (iii) PERI's interest as additional insured shall not be invalidated or otherwise impacted by any act or omission, deliberate, negligent or otherwise, of Customer or its agents, servants or employees (such as a "standard mortgage section"); (iv) PERI shall not be responsible for payment of any premium; and (v) PERI may elect to have all proceeds of loss payable only to itself.
- c) Customer shall supply PERI, upon request, with certified copies of all insurance policies or other evidence satisfactory to PERI as proof of satisfaction of these insurance covenants.
- d) In the event of damage amounting to actual or constructive total loss of the Equipment, PERI shall be entitled to retain from all insurance proceeds an amount equal to the total amount payable to PERI by Customer hereunder as liquidated damages.
- e) If Customer fails to fulfill its insurance obligations hereunder, then, without prejudice to PERI's other rights and remedies, PERI shall have the right, but not the obligation, to procure insurance covering PERI's interest (but not Customer's interest) in the Equipment, in such form and amount and with such insurers as PERI shall determine from time to time, all at Customer's expense. Nothing herein shall be deemed to obligate or entitle PERI to act as an insurer hereunder or to arrange any insurance for the benefit of Customer. Nothing herein shall require PERI to secure, maintain in force or renew any insurance, in any amounts or upon any specific terms and conditions. PERI reserves the right to terminate any insurance coverage, which PERI may arrange, or allow same to lapse, without incurring any liability to Customer.

10. WARRANTIES

- a) Customer acknowledges that it has selected the Equipment based on its own skill and judgment and further acknowledges and agrees that the Equipment may be either used or new Equipment and is being supplied by PERI on an "as is, where is" basis and that no representation, warranty or condition, whether statutory or otherwise, express or implied, oral or written, collateral or otherwise is being given by PERI as to description, fitness for purpose, condition, merchantability, durability, freedom from latent defects, quality, suitability or durability, or in respect of any other matter or thing whatsoever, all of which are hereby excluded and waived by the Customer.
- b) PERI specifically disclaims all implied warranties for the Equipment, including the implied warranties of merchantability and fitness for a particular purpose.

11. DEFAULT

- a) Each of the following is a default by Customer (a "Default"):
 - i) Customer fails to make any payment under this Agreement when due and payable.
 - ii) Customer fails to perform, observe or comply with any other obligation, term or condition of this Agreement.
 - iii) any event of default occurs under any other agreement between PERI and Customer.
 - iv) any representation or warranty made by Customer to PERI in connection with this Agreement is incorrect.
 - v) Customer makes any assignment for the benefit of its creditors, becomes insolvent, commits any act of bankruptcy, takes any action to wind-up or dissolve, ceases or threatens to cease to do business as a going concern, or any proceeding in bankruptcy, receivership, winding-up, dissolution, liquidation or insolvency is commenced by or against Customer or its property.
 - vi) PERI in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance by Customer under this Agreement is or is about to be impaired or the Equipment is or is about to be placed in jeopardy.

12. REMEDIES ON DEFAULT:

- a) On Default:
 - i) All unpaid amounts for sale as set out in the Quotation, and all other amounts payable hereunder, shall immediately become due and payable with interest chargeable at 18% per annum. These are liquidated damages and not a penalty.
 - ii) Customer shall, if PERI requests, immediately return the Equipment at Customer's expense to PERI.
 - iii) PERI may, without notice to Customer or resort to legal process, withdraw all services relating to the use of the Equipment.
 - iv) PERI may take possession of or disable the Equipment without demand, notice or resort to legal process and, subject to applicable law, may enter on the premises of the Customer or any other person for such purpose. Customer hereby gives permission to PERI to enter onto its premises to collect, disable, or take possession of the Equipment.
 - v) Customer will indemnify PERI and hold harmless PERI for any damages caused to it or third parties from PERI's actions resulting from a Default by the Customer.
 - vi) If PERI is able to obtain possession of the Equipment from the Customer, PERI may sell, rent, or otherwise dispose of the Equipment at its sole discretion, without notice to Customer, and retain the proceeds earned therefrom.
 - vii) All costs incurred by PERI on Default, including costs incurred to take possession of the Equipment and dispose of the Equipment, legal costs, expenses, costs to repair or restore the Equipment to its original condition (reasonable wear or tear excluded), carrier costs, costs of sale or lease, and other costs ("Enforcement Costs") shall be payable by the Customer to PERI.
 - viii) If the proceeds obtained by PERI from the disposition of the Equipment under this provision by sale, lease, or otherwise, are less than the amount owed by the Customer to PERI on Default, including liquidated damages, interest and Enforcement Costs, Customer shall be liable to PERI and shall pay PERI the deficiency.
 - ix) PERI may by notice in writing terminate this Agreement;
 - x) All rights and remedies of PERI, either under this Agreement or at law or in equity or otherwise afforded to PERI, are cumulative and not alternative.

13. GENERAL CONDITIONS

- a) This Agreement and all rights, remedies and benefits of PERI hereunder may be assigned by PERI without notice to or the consent of Customer and Customer hereby accepts such assignment and waives signification of the act of assignment and the delivery of a copy of any assignment document. Upon such assignment, the assignee (the "Assignee") shall be entitled to enforce the rights and remedies and to receive all benefits, which would otherwise accrue to PERI under this Agreement. Upon notice of an assignment, Customer shall unconditionally pay to such Assignee all amounts due hereunder and shall not assert any claim or defence against such Assignee or which Customer may have had against PERI in any action for amounts due and payable hereunder, except the defence of payment to the Assignee.
- b) Subject to applicable legislation, Customer hereby consents to PERI conducting a credit investigation of Customer and to PERI making inquiries with financial institutions or other persons in a business relationship with Customer in connection therewith; Customer hereby authorizes and directs such persons to answer PERI's inquiries.
- c) Until the Customer has discharged all of its obligations under this Agreement (including payment obligations), Customer shall promptly notify PERI in writing of: (i) any change in Customer's name; (ii) any transfer, authorized or unauthorized, by Customer of any interest in or benefit from the Equipment; (iii) any change, authorized or unauthorized, by Customer in the location of any Equipment; and (iv) any change in the location of Customer's Head Office.
- d) This Agreement shall be governed by law of the Province of Ontario and the parties attorn to the jurisdiction of the courts of the Province of Ontario.
- e) If any dispute arises between the Parties relating to the application, interpretation, implementation or validity of this Agreement, the parties may agree to resolve the dispute by arbitration subject to the Ontario *Arbitration Act, 1991*. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.
- f) Subject to the terms hereof, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, beneficiaries, successors, and assigns.
- g) Any notice required or permitted to be given hereunder must be in writing and will conclusively be deemed to have been received by its recipient on the business day it is delivered or sent by email or facsimile transmission to the party's address or at such other address as such party specifies to the other party in writing or, if sent by regular or registered mail, provided there is no interruption in postal services, on the fifth business day after the day of mailing, addressed to such party at such address.
- h) Customer agrees to do all things and execute or obtain all documents as may be required by PERI in order to give effect to or better evidence this Agreement including the execution of financing statements or other documents to effect security registrations to protect PERI's interests, any acknowledgements required by any Assignee and any waivers or subordinations from any contractors, owners of the property where the Equipment is located, the mortgagor of such owner's property or the Customer's landlords or creditors.
- i) Notwithstanding any other sections hereof, all obligations of Customer, including the payment of sale invoices and other amounts payable by Customer hereunder, and all rights and remedies of PERI hereunder shall survive the termination of the Agreement.
- j) If PERI accepts a late or partial payment or delays the enforcement of its rights or remedies under this Agreement on any occasion, such acceptance or delay shall not constitute a waiver by PERI of its rights hereunder and all amounts and obligations owing under this Agreement shall continue to be payable when due.
- k) If more than one person executes this Agreement as Customer, their obligations hereunder shall be joint and several.
- l) Customer acknowledges receipt of a true copy of this Agreement and waives, to the extent permitted by applicable law, all rights to receive copies of financing statements, financing change statements, verification statements, or copies of other notices or filings made by PERI at any time in connection with this Agreement, any schedule thereto or any amendment thereof.
- m) The rule of *contra proferentem* does not apply to this Agreement. Each party has had opportunity to make changes to this Agreement.
- n) Customer has read and understood this Agreement and is signing this Agreement voluntarily and without duress. Customer has had the opportunity to obtain independent legal advice before executing this Agreement.
- o) Except as otherwise provided, the invalidity or unenforceability of any term of these Terms & Conditions does not affect the validity or enforceability of any other term. Any invalid term will be treated as severed from the remaining terms.
- p) Any use of the word "partner" or similar term or verbiage in PERI marketing or written materials is in the colloquial sense and does not imply that PERI has formed or intends to form any type of legal or equitable partnership, joint venture, fiduciary relationship or association with any past, current or prospective customers that is legally binding against PERI. PERI and its customers are independent contractors, and nothing in PERI's marketing, other materials or contracts to lease or sell formwork, scaffolding and related equipment, supplies and services to its customers shall be deemed to constitute any other form of relationship, expressly or by implication. No current, former or prospective customer has any implied right or express authority to assume or create any obligations on behalf of or in the name of PERI or to bind PERI to any other contract, agreement or undertaking with any third-party.