

PERI Terms and Conditions of Purchase

PERI Werk Günzburg GmbH

Valid from 01.05.2018



1. Scope

- 1.1 These Terms and Conditions of Purchase of PERI Werk Günzburg GmbH, Kimmerle-Ring 14, Rudolf-Diesel-Straße, 89312 Günzburg (hereinafter referred to as "PERI"), shall apply exclusively in business transactions with undertakings within the meaning of Section 14 of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), with public legal entities or with a public law special fund (hereinafter referred to as "the Supplier").
- 1.2 The PERI Terms and Conditions of Purchase (hereinafter also referred to as "the Terms and Conditions") shall apply with regard to all services, including future services rendered within the framework of on-going business relations, even if these general Terms and Conditions of Purchase are not expressly agreed upon.

2. Protective clause

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

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

As far as PERI requires and uses the products previously acquired and to be acquired in future from the Supplier (hereinafter also referred to as "the Deliverables") for the purpose of further processing to create products to be manufactured by PERI itself and described in further detail in the specification/service description/order (hereinafter referred to as "the PERI End Products") and for resale to customers of PERI (hereinafter referred to as "the PERI End Customers") section 13 applies.

4. Conclusion of contract

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

5. Prices and payment

- 5.1 The prices shown in the order shall be binding.
- 5.2 Unless stated otherwise in PERI's order, prices shall apply in the statutory amount including packaging and shipping plus value added tax in the statutory amount.
- 5.3 Cost quotations submitted by the Supplier to PERI shall be binding upon the Supplier and free of charge.
- 5.4 Unless otherwise agreed in writing, PERI shall pay the purchase price within 14 days of receipt of invoice at 3%

discount or within 30 days of receipt of invoice at 2% discount or within 60 days of receipt of invoice net.

- 5.5 The time limit for payment pursuant to clause 5.4 shall commence upon receipt of the Supplier's invoice, provided such invoice fulfils the requirements of clause 16, but not before delivery in full of the Deliverables owed by the Supplier.
- 5.6 If a formal acceptance procedure is required to take place, the payment period shall not commence, in derogation from clause 5.5, before formal acceptance of the Deliverables by PERI.
- 5.7 Payments made by PERI to the Supplier shall not qualify as acknowledgment that the Supplier's delivery or service is in accordance with the contractual terms.

6. Delivery deadlines

- 6.1 The delivery times and deadlines indicated in PERI's order shall be binding upon the Supplier and PERI.
- 6.2 In the event of delay in delivery attributable to the Supplier, PERI shall be entitled to liquidated damages for delayed delivery in the amount of 0.5% of the delivery value per complete week of delay, but not more than a total of 5% of the delivery value. PERI reserves the right to assert further statutory claims. The Supplier shall be entitled to provide documentary evidence to PERI to the effect that, as a result of the default, either no loss or a significantly smaller loss has arisen. The liquidated damages under this clause shall be reduced accordingly in the event that the Supplier evidences a lesser default loss.
- 6.3 Circumstances jeopardizing compliance with agreed delivery deadlines must be immediately notified by the Supplier in writing to PERI. PERI's right to withdraw from the contract or to claim damages for non-fulfilment according to statutory provisions remains unaffected.

7. Delivery, transfer of risk, receipt

- 7.1 Partial delivery and partial performance by the Supplier shall not be permitted.
- 7.2 Unless otherwise agreed, shipping and packaging costs, customs duties, fees and other levies shall be borne by the Supplier. The Incoterms DDP which are valid at the time of conclusion of the contract shall apply.
- 7.3 The Supplier must include, with each consignment, delivery notes indicating the content, the order number and/or other order identifier. If shipping papers are not included with a delivery, then the goods supplied shall be stored at the cost and risk of the Supplier until the arrival of the shipping papers, unless the Supplier is not responsible for the absence of the shipping papers.
- 7.4 In the case of the delivery of Deliverables for which the Supplier is not under a contractual obligation to set them up or assemble them at the place of performance, the risk of accidental loss shall pass to PERI upon receipt of the Deliverables at the shipping address indicated by PERI. In the event that a formal acceptance procedure must be conducted by PERI, the relevant time of transfer of risk shall be the time of completed formal acceptance by PERI.
- 7.5 The costs for the disposal of packaging material shall be borne by the Supplier.
- 7.6 The Supplier shall owe an obligation in kind, however, not limited to a stock.

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8. Import and export licences

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

9. Documents, information and documentary evidence

9.1 Documents provided by PERI and indications given by PERI, such as illustrations, drawings, indications of weights and dimensions, shall be binding.

9.2 At the latest upon dispatch of the Deliverables, the Supplier shall hand over to PERI the required quality certificates as well as all documents required for the delivery and for the contractually-specified and ordinarily use of the Deliverables, such as test certificates, analysis reports, and formal acceptance certificates. These shall be handed over immediately and at the latest upon delivery of the goods.

9.3 The indications stated in the quality certificates, formal acceptance certificates, test certificates and analysis reports shall be deemed to be quality agreements concerning the Deliverables to be supplied by the Supplier.

10. Title and copyright

10.1 Title to the Deliverables shall pass to PERI upon handover of the Deliverables to PERI.

10.2 For the purpose of using specimens, cost quotations, drawings, documentation and similar information, both physical and virtual, the Supplier grants to PERI an exclusive right of use within the meaning of Section 31 (3) of the Copyright Act (*Urheberrechtsgesetz*, UrhG). Use by the Supplier or the respective copyright owner is excluded. Granting of the right of use shall be free of charge, without limitation in terms of content and for an indefinite period.

10.3 Specimens, cost quotations, drawings, documentation and similar information, both physical and virtual, in respect of which ownership has passed to PERI or in which PERI has been granted a right of use under the above clause, may be used and passed on to third parties by PERI within the framework of ordinary business transactions.

11. Inspection for defects

11.1 Prior to dispatch of the Deliverables to PERI, the Supplier must check the Deliverables to ensure that they are complete and free from defects. In the course of this the Supplier must undertake final checks and, if appropriate, final tests which shall enable him to ensure that the entire consignment is free of defects and complete.

11.2 PERI inspects the items delivered on a sample basis only with regard to visible defects. The inspection will be performed in the ordinary course of business. In other respects the Supplier shall not require PERI to examine the items delivered for completeness and freedom from defects. The Supplier shall not raise any plea concerning delayed assertion of defects regarding non-visible defects.

11.3 If PERI fails to immediately notify of the visible defect or incompleteness of a Deliverable, then the Deliverables shall not, however, be deemed approved within the meaning of Section 377 (2) and (3) phrase 2 of the Commercial Code (*Handelsgesetzbuch*, HGB). In this context, PERI shall not lose the rights which it holds against the Supplier in respect of defects.

12. Warranty

12.1 The Supplier shall provide a warranty to PERI within the framework of the statutory provisions. In so far as, with regard to the assertion of warranty claims, it is a pre-requisite that a reasonable grace period set for performance or subsequent performance expires without the performance or subsequent performance having successfully been performed, the reasonable grace period may not be longer than 5 working days from receipt of the performance request by the Supplier.

12.2 If PERI has had to take back the item manufactured by the Supplier as a result of its defectiveness, or the PERI End Customer has reduced the purchase price, then with regard to the rights of PERI against the Supplier described in Section 437 of the Civil Code, exceptionally no deadline shall be required to be set in respect of the defect asserted by the PERI End Customer. In such event, in the context of the sale of a newly manufactured item, PERI may claim reimbursement from the Supplier of the expenses which PERI would have had to bear in relation to its End Customer pursuant to Section 439 (2) of the Civil Code, if the defect asserted by the PERI End Customer had existed already at the time of transfer of risk to PERI. In the above instances, Section 476 of the Civil Code shall apply, subject to the proviso that the time limit shall begin to run upon transfer of risk to the PERI End Customer. The reimbursement claims for expenses specified in 12.2 shall become statute-barred two (2) years after delivery of the item. The statute of limitations for warranty claims of PERI against the Supplier regarding a defect in a newly-manufactured item sold to the PERI End Customer shall occur at the earliest two (2) months after the date on which PERI has fulfilled the claims of its End Customer. This suspension of expiration shall end at the latest five (5) years after the date on which the Supplier has delivered the item to PERI.

13. Recall

13.1 PERI shall be entitled, at its absolute discretion, to recall its products supplied to the End Customer (recall) if sufficient suspicion arises that the product supplied by the Supplier has a serial defect. In this context, serial defects shall mean that at least a few items from the category owed by contract have the same or a similar defect. Recall within the meaning of this clause means that PERI may take any and all measures in order to ensure that the PERI End Customer does not suffer any disadvantage through use of the Deliverables, in particular, PERI may announce warnings and arrange for the exchange of the defective Deliverables.

13.2 If PERI notifies the Supplier that a recall has occurred pursuant to 13.1 above, the Supplier shall provide PERI with all requisite information in order to ensure that PERI is in a position to assess the impact and consequences of the serial defect, in order to fully remove the defect in each recalled PERI End Product. In this context, the Supplier shall in any event notify of the batch number and all information relating to manufacture and development of the batch in question.

13.3 The Supplier shall assume the costs of the recall. Costs of recall shall be the following:
- Costs of return delivery of the PERI End Products supplied to the PERI End Customer;
- Costs of repair and exchange of the defective PERI End Products;

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- Costs of the delivery of the repaired and/or exchanged PERI End Products to the PERI End Customer as shall take place following the recall by PERI;
 - Costs of scrapping the defective Deliverables insofar as full remedy of the defects in the Deliverables is not possible on the part of either PERI or the Supplier by way of repair;
 - Costs of scrapping the PERI End Products delivered back to PERI within the framework of the recall, insofar as PERI cannot achieve full remedy of the defects in the PERI End Products through repair;
 - Costs of the employees engaged at PERI for the purpose of remedying all defects in the context of the recall, at a standard hourly rate of EUR 60.00;
 - Costs and expenses of price reductions and damages claims asserted by PERI End Customers against PERI.
- 13.4 The Supplier shall be under a duty, at its own expense, to resupply to PERI replacements in respect of all Deliverables exchanged by PERI within the framework of the recall.
- 14. Retention of title**
- 14.1 In-so-far as PERI provides the Supplier with components, PERI reserves title thereto. Processing or combining with other items owned by a party other than PERI by the Supplier shall be undertaken on behalf of PERI. In the event of processing or combining, PERI shall acquire co-ownership of the processed and combined items in the ratio of the value of the part of the item owned by PERI as compared with the other processed parts of the item at the time of processing or combining.
- 14.2 Models, specimens, production facilities, tools, measuring and testing devices, other equipment provided, drawings, work standard sheets and printing templates provided to the Supplier by PERI shall remain in the ownership of PERI.
- 14.3 The documents listed in clause 14.2 may only be disclosed to third parties subject to PERI's prior written consent (Section 183 of the Civil Code) (Confidentiality). PERI may request the documents referred to in clause 14.2 at any time, unless otherwise expressly agreed in an individual instance. The Supplier shall hold no rights of retention with regard to the documents referred to in clause 14.2.
- 15. Liability**
- 15.1 If a claim is made against PERI under its producer's liability on account of a defect in a Deliverable, then the Supplier must indemnify PERI in respect of the producer's liability resulting from the defect.
- 15.2 If a claim is made by a third party against PERI for infringing commercial property rights and/or patent rights in respect of items supplied by the Supplier, then the Supplier must indemnify PERI for such claim.
- 15.3 Further, PERI shall only be liable according to the statutory provisions.
- 16. Invoices**
- 16.1 Invoices shall be issued in duplicate separately for each order and delivery, and they shall include an indication of the order number and other order identifiers and be sent to PERI's address (PERI Werk Günzburg GmbH, Kimmerle-Ring 14, 89312 Günzburg, GERMANY), unless a different invoice address is indicated in the order.
- 16.2 Duplicate invoices must be marked as such. Value added tax must be shown separately in the invoice. The tax ID number must be indicated in the invoice.
- 16.3 Invoices not duly issued pursuant to the terms of clause 16.2 shall be returned to the issuer.
- 17. Insurance**
- 17.1 PERI shall not assume the costs of insurance for Deliverables, in particular freight forwarding insurance.
- 17.2 The Supplier is informed that PERI is an SVS and RVS prohibition customer.
- 18. Assignment and pledging**
- The assignment or pledging of contractual claims shall only be valid subject to PERI's prior written consent (Section 183 of the Civil Code).
- 19. Replacement parts**
- 19.1 The Supplier shall be under a duty to hold replacement parts for the period of anticipated technical use, but for at least ten years following delivery according to reasonable terms and conditions.
- 19.2 If the Supplier discontinues the manufacture of replacement parts, it shall be under a duty to notify PERI accordingly and to give PERI an opportunity to place a final order.
- 20. References and publications**
- When giving references or making publications, the Supplier may only use the corporate name or trademark of PERI, if PERI has previously consented thereto in writing (Section 183 of the Civil Code).
- 21. Suspension**
- 21.1 PERI shall be entitled to suspend any acceptance obligation.
- 21.2 Suspension shall take place by way of written declaration to the Supplier.
- 21.3 During the suspension period, contractual rights and duties shall be in abeyance.
- 22. Termination by the Supplier due to suspension**
- 22.1 If the suspension pursuant to clause 21 lasts for longer than three months, then the Supplier shall be entitled to terminate the contract. In such event, the Supplier shall have a claim to payment of the agreed remuneration. However, it must offset that amount which it has saved by way of expenses or acquired through other use of its working capacities or wilfully failed to acquire as a result of rescission of the contract.
- 22.2 In the event of termination by the Supplier pursuant to clause 22.1, it shall be presumed that the Supplier shall be owed 5% of the agreed remuneration pertaining to the part of the delivery and/or service not yet rendered; this shall not apply if PERI or the Supplier can demonstrate that the Supplier is owed a higher or lower amount.
- 23. PERI's right of termination**
- PERI shall be entitled to terminate the contract at any time until the time of fulfilment by the Supplier. In such event, the Supplier shall be entitled to the agreed remuneration. However, it must offset that amount which it has saved by way of expenses or acquired through other use of its working capacities or wilfully failed to acquire as a result of termination of the contract. It shall be presumed that, following termination

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by PERI, the Supplier shall be owed 5% of the agreed remuneration pertaining to the part of the delivery and/or service not yet rendered; this shall not apply if PERI or the Supplier can demonstrate that the Supplier is owed a higher or lower amount.

24. PERI's right of withdrawal

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

25. Taxes, fees, levies

All taxes, fees and levies in connection with services rendered outside the Federal Republic of Germany shall be borne by the Supplier unless otherwise agreed.

26. Costs of return transportation of packaging

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

27. Place of performance and fulfilment

The place of performance and fulfilment for the obligations of the Supplier in relation to PERI shall be PERI Werk Günzburg GmbH, Kimmerle-Ring 14, 89312 Günzburg, GERMANY.

28. Jurisdiction and choice of law

- 28.1 Jurisdiction for all disputes arising under the contractual relationship shall be Günzburg, Germany. PERI reserves the right to bring judicial actions at the statutory place of jurisdiction of the Supplier.
- 28.2 The law of the Federal Republic of Germany shall apply exclusively, excluding all conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

29. Severance clause

In the event that any individual provisions of these Terms and Conditions should be or become invalid or inoperable, the remaining terms shall not be affected. The parties undertake in such event to replace any invalid or inoperable provision with a valid and operable term which comes as close as possible to the actual and economic intent of these Terms and Conditions. The same shall apply with regard to any contractual gap in these Terms and Conditions.