

**STANDARD TERMS AND CONDITIONS APPLICABLE TO ALL CONTRACTS FOR THE SALE OF GOODS BY
PERI FORMWORK & SCAFFOLDING LIMITED. ("PERI")**

1. In this agreement reference to a purchaser includes a reference to natural persons, juristic persons, associations of persons, trusts, joint ventures, and any other entity.
2. The purchaser shall from time to time purchase goods from PERI on the terms and conditions set out in this document.
3. Each purchase shall be a separate contract of sale governed by these terms and conditions, as well as the standard terms and conditions contained in PERI'S written quotation and/or acceptance of order documents. The purchaser acknowledges that a copy of these standard form documents has been furnished to him/it and that he is acquainted with and accepts the terms and conditions contained therein.
4. All sales are for cash, payment to be made before delivery of the goods, unless PERI has before the sale agreed in writing to grant credit to the purchaser. Where credit is granted the purchase price shall be payable within thirty (30) days from the date of a statement to be sent by PERI to the purchaser before the last day of the month in which the sale is concluded. If the statement is sent to a postal or physical address provided by the purchaser in the acceptance or order referred to above it shall be deemed to have been received by the purchaser two days after the date on which it was posted.
5.
 - 5.1. All payments shall be made in the currency as invoiced, free of any deduction at PERI'S address reflected in the relevant contract. The purchaser hereby irrevocably waives his right to rely on set-off. The purchaser shall not be entitled to withhold payment of any amount under circumstances where he/it alleges that PERI failed to comply with any of its obligations in terms of the contract.
 - 5.2. Unless otherwise instructed in writing, PERI is entitled in its sole discretion to appropriate monies paid by the purchaser towards any debt owed to it.
 - 5.3. Multiple purchasers in terms of a contract are jointly and severally liable for payment of the purchase price.
 - 5.4. In the event that the purchaser fails to make timeous payment on due date of any amount owing to PERI, all and any other amounts owing to PERI shall immediately become due and payable forthwith, notwithstanding that any applicable credit periods in respect thereof have not yet expired and the monies would not otherwise be due and payable.
 - 5.5. No fees, charges or interest shall be levied by PERI on overdue payments owing for goods sold in terms hereof. This shall not derogate from PERI'S right to charge morae interest at the legal rate once a written letter of demand has been addressed to the purchaser placing the purchaser in morae and calling for payment of overdue amounts.
6.
 - 6.1. Delivery of the goods shall take place on a date and at a place reflected in the contract.

- 6.2. Upon delivery all risks pertaining to the goods shall pass to the purchaser. Pending full payment of the purchase price ownership in the goods shall, despite delivery thereof, remain vested in PERI.
- 6.3. The costs of delivery shall be paid by the purchaser unless otherwise agreed in the contract.
- 6.4. It is the duty of the purchaser when delivery is made to ensure that he receives what he has purchased. A delivery note shall be signed by or on behalf of the purchaser and unless the purchaser disputes that proper delivery was made in writing delivered to PERI before 17h00 on the day following the day on which delivery took place, it shall be deemed that all the goods purchased and reflected on the delivery note were in fact delivered in good order and condition.
- 6.5. If a delivery note is signed by an employee of the purchaser the employee shall be deemed to have authority to accept delivery on behalf of the purchaser and to sign the delivery note.
- 6.6. If the delivery note is signed by a person who is not an employee of the purchaser such person shall be deemed to have the necessary authority referred to above.
- 6.7. Should the delivery of the goods be delayed, hindered, prevented or interfered with by any circumstances, which in the sole and absolute discretion of PERI are outside its control, the time(s) for such deliveries shall be extended accordingly.
7. If credit is granted to the purchaser on condition that security is to be provided, the purchaser undertakes to sign all documents and to perform all acts necessary to furnish the said security failing which PERI shall be entitled to refuse to deliver the goods.
8.
 - 8.1. Until the purchase price has been paid in full and, if PERI so requests, the purchaser shall insure the goods against loss or damage and pay all the premiums in connection with such insurance on due date. The policy shall be ceded to PERI which shall be entitled to call for proof that the premiums thereunder are paid on due date.
9. Until the full purchase price has been paid:-
 - 9.1. The purchaser shall keep the goods free from attachment, liens, or any form of encumbrance whatsoever.
 - 9.2. The purchaser shall not be entitled to sell or dispose of the goods.
 - 9.3. The purchaser shall not be entitled to change or modify the goods nor to use them for any purpose other than the purpose for which they were designed. The purchaser shall, further,

(where applicable) comply with all prescriptions and directives relating to the use of the goods.

9.4. The purchaser shall keep the goods at the address to which the goods are removed by delivery and shall not be entitled to remove the goods to any other address without the prior written consent of PERI first being had and obtained.

9.5. PERI or its appointees shall, at all reasonable times, be entitled to inspect the goods and, for that purpose, enter upon any premises on which the goods are kept.

10.

10.1 In the event of the purchaser failing to pay any amount on due date or in the event of him failing to comply with any of his obligations in terms of this agreement PERI shall be entitled

10.1.1. either to insist on specific fulfillment of its obligations by the purchaser, alternatively

10.1.2. Without notice to the purchaser to cancel the agreement, repossess the goods and claim such damages as it may suffer as a result of the said breach.

10.2. In the event of PERI being unable to repossess the goods because they have been lost or due to the purchaser being unable to return the goods to PERI or in the event of the repossessed goods, in the sole discretion of PERI being damaged beyond repair, the parties agree that the damages suffered by PERI shall be the cost incurred by PERI to replace the goods as per PERI'S equipment stock list which is updated twice a year and which list will be prima facie evidence of the replacement value and will be determined and agreed to as liquidated damages between the parties. . Upon payment of the cost of replacement the purchaser shall be entitled to remove the damaged goods from PERI'S premises failing which PERI shall be entitled to sell such goods at a price determined by it and to credit the purchaser's account with the net proceeds of such sale.

10.3. If the goods, repossessed by PERI, have to be transported to PERI'S premises (of its choice) this shall be done at the risk and at the cost of the purchaser irrespective of whether the transport is undertaken by PERI or a third party. Under no circumstances shall PERI be liable for any damage whatsoever caused to the goods during transportation and notwithstanding that such damage was caused by any act or omission of any employee or agent of PERI or the third party.

10.4. Upon receipt of the goods at the said premises PERI shall without delay prepare a return note reflecting the items returned and a brief description of the condition in which each item is returned.

10.5. An assessor appointed by PERI, which may be an employee of PERI, shall thereupon determine the nature and extent of any damage to any of the goods and the estimated costs of repair thereof.

10.6. The purchaser shall be entitled to have a representative present on the occasions referred to in the two preceding subparagraphs. If such a person is present he/she shall sign the

return note and the written report prepared by the assessor. By signing the return note and/or the report by the assessor the person shall bind the purchaser and the contents of the document, so signed, shall be binding on the purchaser.

- 10.7. If no person is in attendance on the occasions referred to above the return note and report by the assessor shall be forwarded by fax, e-mail or prepaid registered post to the purchaser who shall be bound thereby unless objection is made thereto in writing within three (3) days after receipt thereof. The objection shall specify the specific items or entries to which objection is made. Notwithstanding such objections those items or entries to which objection is not made, shall be binding on the purchaser.

11 Dispute Resolution

- 11.1 Any dispute arising out of, or in connection with, this Agreement shall be finally resolved under the Rules of Africa ADR and under the direction of its Secretariat, by one or more arbitrators appointed according to its Rules. Which contact details are listed hereunder:

**Maisels Chambers
4 Protea Place
SANDTON
Johannesburg**

CONTACT DETAILS

**Tel: +27 (0)82 837 5029
Fax: +27 11 320 0533
P.O.BOX 653007 Benmore 2010
E-Mail: africa-adr@vodamail.co.za
Website: <http://www.africaadr.com>**

- 11.2 Should any dispute, disagreement or claim arise between the parties (called hereafter "the dispute") connected with or concerning this Agreement, the parties shall first try to resolve the dispute by negotiation. This entails that the one party invites the other in writing to a meeting in an attempt to resolve the dispute within 7 (seven) days from date of the written invitation;
- 11.3 If the dispute has not been resolved by such negotiation, the parties shall submit the dispute to mediation to be administered by Africa ADR upon the terms set by the Africa ADR Secretariat. **PERI TO DECIDE ON THRESHOLD FOR MEDIATION EXAMPLE R50 000 AND LESS FORCED MED R 50 000.00 AND ABOVE IMMEDIATE ARBITRATION**

11.4 Failing a resolution by mediation, the dispute, if arbitrable in law, shall be finally resolved under the Rules of Africa ADR and under the direction of its Secretariat by one or more arbitrators appointed according to its Rules.

11.5 The Parties hereby agree that Arbitration will be held in South Africa, Pretoria being neutral ground and the arbitration will be held in terms of South African law principles.

11.6 In the event of mediation failing and the dispute has been referred to arbitration the Customer who is the signatory to this agreement and who is duly authorised to enter into this agreement alternatively PERI's representative hereby agree to refer all disputes and differences between the parties:

(i) Arising out of or in connection with the application between the parties;

(ii) Alternatively, the disputes and differences set out herein under:

(a) The failure to make payment in terms of PERI's invoice for the sale of goods and statement within 7 days of transmission to the Customer for whatever reason;

(b) The failure to make payment in terms of PERI's invoice for dirtied and damaged goods and statement within 7 days of transmission to the Customer for whatever reason;

(c) The failure to make payment in terms of PERI's invoice for Sale by loss goods and statement within 7 days of transmission to the Customer for whatever reason.

for final resolution in accordance with the Rules of Africa ADR and under the direction of its Secretariat by an arbitrator or arbitrators appointed under its Rules.

11.7 In the event of the customer failing to:

11.7.1 Disclose to PERI's representative the location of the goods upon written request and within 48 hours and remain in default to disclose the location of the goods;

11.7.2 Disclose to PERI's representative the endorsed insurance policy as described in clause 8.1 herein above upon written request and within 48 hours and remain in default to disclose, deliver and or exhibit a copy of the insurance policy in favour of PERI's and remain in default to do so;

And in such an event PERI's may in their absolute and sole discretion may refer the dispute upon motion to Rules of Africa ADR and under the

direction of its Secretariat to arbitrate the dispute in terms of their expatriated rules for the return of the equipment to PERI's possession.

- 12 Without derogating from the provisions of the preceding clause and while any amount is still payable to PERI, PERI shall be entitled to cancel the relevant sale contract(s) without notice and immediately repossess the goods in the event of anyone or more of the following events occurring:
 - 12.1 the estate of the purchaser is provisionally or finally sequestered or liquidated, as the case may be;
 - 12.2 the purchaser commits an act of insolvency as defined in the Insolvency Act or PERI forms the reasonable belief in all the circumstances that the purchaser is unable to pay its indebtedness to PERI in the ordinary course of business; or
 - 12.3 The purchaser enters or attempts to enter into a compromise with its creditors.
- 13 If the purchaser is not a natural person and a change should occur in the ownership of the juristic person, trust or association of persons or other entity or in the event of a change occurring in the members of a private company or close corporation the purchaser shall immediately advise PERI thereof in writing.
- 14 No relaxation or indulgence granted by PERI to the purchaser shall be deemed to be a waiver of any of PERI'S rights in terms hereof nor shall such relaxation or indulgence be a novation of any of the terms and conditions of this contract.
- 15 Should PERI decide in its sole and absolute discretion to institute legal or arbitration proceedings in order to enforce its rights hereunder, the purchaser shall be liable to pay PERI'S costs on the scale as between attorney and own client including collection commission to which PERI'S attorneys may be entitled according to law and the costs attendant upon ascertaining the whereabouts of the purchaser and/or the goods.
- 16 The purchaser consents to the jurisdiction of the High Court of Tanzania (Commercial Division). Despite the foregoing, PERI is entitled, in its absolute sole discretion, to proceed with legal action in any other competent Court or to have any dispute between PERI and the purchaser resolved by way of arbitration in terms of clause 11 above.

17

17.3 Except if reduced to writing and signed by or on behalf of PERI, PERI gives no warranty whether express or implied that the goods are free from latent or patent defects and are suitable for the purposes acquired by the purchaser.

17.4 To such extent permitted by the law, no representations regarding the condition, quality or suitability of the goods are binding on PERI unless those

representations have, likewise, been reduced to writing and signed by or on behalf of PERI.

17.5 PERI acknowledges that on occasions and at the request of the purchaser PERI presents the purchaser with a suggested set of design criteria relevant to the goods to be utilised by the purchaser. The parties do hereby agree that such presentation of design criteria by PERI is done without charge as a service to the purchaser and is such that PERI can accept no liability or responsibility in respect thereof. Under no circumstances whatsoever shall PERI at any time or for any cause whatsoever, be liable for any damage or loss or for any claims for consequential loss or damage which may be sustained by the purchaser arising from the design criteria referred to above, or for any claims made by any other person whatsoever arising therefrom in connection with the design criteria, or in connection with this contract and/or the goods, and the purchaser hereby indemnifies PERI against all such claims.

17.6 Notwithstanding anything else contained herein it is agreed that all specifications, illustrations, drawings, diagrams, price lists, dimensions, delivery dates and performance figures as well as oral and/or written advice furnished by PERI and/or its employees or representatives and representations in regard thereto, are approximate and are furnished for information purposes only and, unless specifically guaranteed in writing by PERI, same shall not form part of the contract nor bind PERI in any manner whatsoever and the purchaser admits that he has not been induced to enter into the contract thereby.

18 In the event of it being found that PERI in any manner acted in breach of its obligations in terms of the contract it shall under no circumstances be liable for consequential damages suffered by the purchaser. The purchaser's claim shall be limited to a refund of the purchase price or part thereof, as the case may be, and such costs that were incurred by the purchaser to return the goods to PERI.

19 Unless the purchaser, within a period of fourteen (14) days from the date of delivery of a statement disputes the correctness of any entry on the statement in writing delivered to PERI, the statement shall be deemed to be correct in every respect and shall in any Court of Law or arbitration proceedings constitute prima facie proof that the goods reflected therein were in fact sold and delivered to the purchaser and that all debits, credits and other entries on the statement are correct.

This clause applies equally to cash sales.

20 Notwithstanding the provisions of clause 19, hereof it is agreed that a certificate signed by any of PERI'S directors, its secretary or accounting officer stating the amount owing by the purchaser to PERI at any time shall, for the purposes of legal or arbitration proceedings, be prima facie proof of the facts contained in the certificate without it being necessary to prove the appointment of the signatory to such certificate.

21 The terms and conditions set out herein, and the written terms and conditions set out in the relevant quotation or order acceptance, constitute the whole agreement between parties In respect of any sale. No amendment thereof, addition thereto, omission therefrom or consensual cancellation thereof will be valid unless reduced to writing and signed by all the parties thereto. Terms which have not been included herein and in the contract documents referred to herein, including implied or tacit terms, do not form part of the contract between the parties and no waiver of any of the terms or conditions of the contract shall be binding on the parties unless reduced to writing and signed by all the parties thereto.