

# **Hire and Sale Terms and Conditions**

Version: October 2020

## HIRE CONDITIONS

These Hire Conditions apply to the hire of goods. If you are purchasing goods and/or services, the Sale Conditions on page 1 apply to you.

The Customer's attention is drawn to Hire Conditions 5.1, 6.9, 5.13, 6.17, 9, 8 and 13.

Please read these Hire Conditions carefully before placing an Order. By placing an Order you agree to be bound by these Hire Conditions. If you do not accept these Hire Conditions then you will not be able to make an Order. You should keep a copy of these Hire Conditions for future reference. The Company reserves the right to modify these Hire Conditions from time to time (see clause 21.2).

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in these Hire Conditions:
- Business Day** means a day other than a Saturday, Sunday or public holiday in England, when the banks in London are open for business.
- Company** means PERI Limited, registered in England and Wales with company number 02403512.
- Commencement Date** means the date on which the Customer takes delivery of the Goods.
- Customer** means the company, firm or person who agrees to hire the Goods from the Company.
- Data Controller** has the meaning given in the Data Protection Legislation.
- Data Processor** has the meaning given in the Data Protection Legislation.
- Data Protection Legislation** means (i) the Data Protection Act 2018; (ii) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679); (iii) any successor legislation, as amended or updated from time to time.
- Data Subject** has the meaning given in the Data Protection Legislation.
- Deliverables** means the deliverables, including any written document, maintenance manual, training manual or video, instructions, drawing, plan, design, picture, or other image or information in any form, supplied by the Company to the Customer in respect of or in connection with the Goods.
- Delivery Date** means the estimated date of delivery of the Goods, as set out in the Order.
- Delivery Location** means the delivery location for the Goods which shall be the Company's premises or other location agreed between the Company and the Customer in writing (or in the case of deliveries outside the UK, the location agreed in line with the Incoterm).
- Force Majeure Event** has the meaning given in clause 14.
- Goods** means the goods and/or equipment (or any part of them) to be supplied by the Company to the Customer, as set out in the Order.
- Hire Conditions** means these conditions as amended from time to time in accordance with clause 21.
- Hire Contract** means the contract between the Company and the Customer for the hire of Goods in accordance with these Hire Conditions.
- Incoterm** means the incoterm specified in the Order or agreed in writing between the Company and the Customer, having the same meaning given in the Incoterms Rules 2020 – *ICC Official Rules for the Interpretation of Trade Issues*, published in September 2019 by the International Chamber of Commerce, as amended or superseded from time to time.
- Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer and other operating software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or associated with the Goods and/or the Deliverables.
- Order** means the Customer's order for the hire of Goods as set out in the order confirmation issued by the Company to the Customer, or the Customer's written acceptance of the Company's quotation, or in email or other written correspondence between the Company and the Customer, as the case may be.
- Personal Data** has the meaning given in the Data Protection Legislation.
- Price** means the price payable by the Customer to the Company in respect of the purchase of the Goods in accordance with clause 8.2.

**Rental Payments** means the rental payments payable by the Customer to the Company for the hire of Goods in accordance with clause 4 (each a **Rental Payment**).

**Rental Period** means the period of hire of the Goods, as set out in the Order.

**Sale Conditions** means the Company's conditions of sale from time to time.

**Specification** means the description or specification (including any related plans, designs and drawings) for the Goods provided by the Customer to the Company or agreed in writing between the Company and the Customer.

**VAT** has the meaning given in clause 3.3.

**Warranty Period** has the meaning given in clause 9.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **party** includes its successors and permitted assigns.
- 1.4 A reference to a statute or statutory provisions is a reference to it as amended or re-enacted, and includes all subordinate legislation made under that statute or statutory provision.
- 1.5 Any words following the terms **including, include, in particular, for example**, or any similar expressions shall be construed as illustrative and shall not limited the sense of the words, description, definition, phrase or terms preceding those terms.
- 1.6 A reference to **writing** or **written** includes email but not fax.

### 2. FORMATION OF THE CONTRACT

- 2.1 This Hire Contract forms the whole agreement between the Company and the Customer in respect of the hire of Goods, and no other express terms, written or oral, shall be incorporated into the Hire Contract.
- 2.2 These Hire Conditions apply to the Hire Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade custom, practice or course of dealing.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Hire Contract or have any contractual force.
- 2.4 The Company's employees or representatives (other than the Company's directors in writing) are not authorised to do any of the following things on behalf of the Company:-
  - (a) vary any of these terms or introduce any other terms, written or oral, into the Hire Contract; or
  - (b) give any advice, make any representation, agree any condition precedent or enter into any collateral contract.
- 2.5 The Order constitutes an offer by the Customer to hire the Goods from the Company on these Hire Conditions and the Hire Contract shall come into existence at the time of the Company issuing written acceptance of the Customer's offer by way of an order confirmation document.
- 2.6 All Orders accepted by the Company are accepted subject to the Goods and labour being available to the Company and by accepting an Order the Company does not give a warranty as to availability.
- 2.7 Any quotation given by the Company shall not constitute an offer, and is valid for 30 days from its date of issue.

### 3. RENTAL PERIOD

- 3.1 The Rental Period shall start on the Commencement Date and shall continue until the earlier of:
  - a) return of the Goods in good working order to the Company in accordance with clause 5; or
  - b) purchase of the Goods by the Customer in accordance with clause 8.
- 3.2 The Customer agrees that any Order accepted by the Company is subject to a minimum Rental Period of 4 weeks.

### 4. PRICE

- 4.1 The Rental Payments shall be the four weekly payments set out in any order confirmation issued by the Company, or if one is not issued the payments set out in the Order. If Rental Payments are not set out in the Order, they shall be the four weekly payments provided as part of any quotation provided by the Company to the Customer, or otherwise agreed in writing.
- 4.2 If no monthly payments have been provided as part of a quotation or have otherwise been agreed in writing, the Rental Payments shall be the overall price for the hire of the Goods for the duration of the Rental Period provided as part of any quotation provided by the Company, or otherwise agreed in writing, divided into equal monthly payments.
- 4.3 Unless otherwise agreed in writing by the Company, the Rental Payments exclude all costs and charges of packaging, delivery of the Goods and/or costs of returning the Goods (including loading, unloading, courier fees, import/export licences and customs duties), insurance or any other costs and charges in relation to, or arising from, any credit facility or bank charges, which will be quoted separately and payable by the Customer in addition to the Rental Payments.

- 4.4 The Rental Payments and other costs and charges payable in connection with this clause 4 are exclusive of value added tax (VAT) or other applicable tax or duty, which shall be payable by the Customer on receipt of a valid tax invoice from the Company at the prevailing rate.
- 4.5 Where at any time before the Commencement Date:
- any factor beyond the Company's control (including foreign currency exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other costs);
  - any request by the Company to change the Order including any change to the Delivery Date, Delivery Location, Rental Period, the Goods and/or the Specification; or
  - any delay caused by any instructions of the Customer or failure by the Customer to give the Company adequate or accurate information or instructions in a timely manner,
- the Company may increase the Rental Payments accordingly by giving notice to the Customer.
- 4.6 Where the Goods are prevented from working for a period of one working week or more, idle time shall apply and the Rental Payments shall be reduced by one third (or such other idle time rate as the Company agrees in writing) for the duration of the idle time. The Company reserves the right to charge the full Rental Payment if it reasonably believes the Goods have been used by the Customer at any time during the idle time.
- 5 PAYMENT**
- 5.1 In the case of Customers without a pre-agreed credit facility:
- the Company reserves the right to require advance payment of an amount equal to up to three months' Rental Payments before accepting an Order;
  - the Company reserves the right to require payment of a security deposit as security against all loss and damage to the Goods whilst in the Customer's possession;
  - the Company shall invoice the Customer for each Rental Payment and the Customer shall pay within 7 days of the date on which an invoice is issued by the Company to the Customer.
- 5.2 In the case of Customers with a pre-agreed credit facility, the Company shall invoice the Customer for each Rental Payment and the Customer shall pay within 30 days following the end of the month in which an invoice is issued by the Company to the Customer.
- 5.3 The Company shall invoice the Customer separately from time to time for any additional costs and charges arising under the Hire Contract pursuant to clauses 3.2 and/or 3.3 or otherwise. The Customer shall pay the invoice within 30 days following the end of the month in which an invoice is issued by the Company to the Customer by any of the following methods:
- electronic bank transfer;
  - credit card;
  - debit card; or
  - cheque (please allow 5 Business Days for cheque clearance).
- 5.4 All payments made by the Customer shall (unless otherwise agreed by the Company in writing) be paid in the currency in which they are invoiced (or, if no invoice is issued, in pounds sterling) and cleared funds by the payment deadlines set out in clauses 4.1 and 4.3. The time for payment is of the essence of the Hire Contract.
- 5.5 The Company may, without affecting any other right or remedy available to it, at any time following a breach of any of these Hire Conditions by the Customer, withdraw or revise a Customer's credit facility with immediate effect or require immediate payment of any invoice rendered to the Customer.
- 5.6 If the Customer fails to pay a Rental Payment or any other payment due under the Hire Contract by the due date for payment in accordance with this clause 4, the Company may:
- charge interest on overdue invoices at the rate of 5% above the Bank of England's base lending rate from time to time, which shall accrue on a daily basis from the due date until payment of all overdue amounts, whether before or after judgment;
  - notwithstanding clause 4.7(a), claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 on any overdue sum payable by the Customer to the Company;
  - withhold supply of any undelivered Goods due to the Customer;
  - terminate the Hire Contract; and/or
  - appropriate any payment made by the Customer pursuant to the Hire Contract or any other contract between the Company and the Customer as the Company, in its sole discretion, thinks fit.
- 5.7 The Customer may not withhold or deduct payment of any Rental Payments or other amount due to the Company (in whole or in part) by reason of any right of set off or counterclaim for any reason whatsoever, save for any deduction or withholding required by law.
- 6 DELIVERY AND RETURN OF GOODS**
- 6.1 For delivery of Goods within the UK, the Company shall, subject to clear instructions from the Customer, use reasonable endeavours to make the Goods available for delivery at the Delivery Location on the Delivery Date. Delivery shall be deemed to take place upon completion of loading of the Goods onto the delivery vehicle of the Customer or independent carrier at the Delivery Location for onward transportation to the Customer. Any independent carrier engaged by or on behalf of the Customer shall be deemed to be the Customer's agent. The Customer shall be responsible for ensuring the Goods are insured and the Company shall have no liability in relation to any damage to the Goods following delivery.
- 6.2 For delivery of Goods outside of the UK, subject to receipt of clear instructions from the Customer, the Company shall use reasonable endeavours to deliver the Goods to the Delivery Location on the Delivery Date with such insurance prescribed by the Incoterm. Delivery shall be deemed to have taken place in line with the Incoterm.
- 6.3 The Company may deliver by separate instalments, each of which may, at the Company's option, be invoiced separately and shall constitute a separate Hire Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.4 The Company shall procure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, relevant Company and Customer reference numbers, the type and quantity of the Goods (and code number of the Goods, where applicable), any instructions applicable to the Goods (or where such instructions are available for the Customer to view) and, if the Order is being delivered by instalments, the outstanding balance of the Goods remaining to be delivered.
- 6.5 If the Customer (or the Customer's agent) fails to accept the Goods on the Delivery Date or fails to give the Company adequate delivery instructions then, save where such failure or delay is caused by the Company's failure to comply with the Hire Contract or by a Force Majeure Event, delivery shall be deemed to have been completed at 9.00 am on the third Business Day following the Delivery Date and:
- the Company may invoice the Customer for all Rental Payments payable in respect of the minimum Rental Period in accordance with clause 3.2;
  - the Company may store the Goods until actual delivery to the Customer. The Customer shall be liable for the cost of storage and insurance, and any other ancillary costs and expenses, incurred by the Company in connection with storage of the Goods, in respect of which the Customer shall indemnify the Company; and/or
  - if the Company has incurred transportation or other costs in connection with delivery of the Goods, the Company may invoice the Customer for such costs in connection with clause 3.2.
- 6.6 The Customer shall, at its own cost, obtain such import and/or export licences and other licences, permissions and consents as the Company may reasonably require from time to time in order to hire the Goods and comply with its obligations under the Hire Contract, and the Customer shall make those licences and consents available to the Company prior to the Delivery Date. The Customer shall indemnify the Company against any failure to comply with its obligations under this clause 5.9.
- 6.7 The Delivery Date is approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time of delivery of the Goods is not of the essence of the Hire Contract.
- 6.8 The Company shall use reasonable endeavours to notify the Customer of any delay that, in the Company's opinion, may affect the Delivery Date and the Company reserves the right to unilaterally change the Delivery Date up to 7 days before the Delivery Date by giving written notice to the Customer.
- 6.9 If the Company fails to deliver the Goods by the Delivery Date, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the aggregate sum of all Rental Payments for the duration of the Rental Period.
- 6.10 The Company shall have no liability for any failure to deliver the Goods by the Delivery Date to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with all relevant licences, permissions and consents, adequate delivery instructions or any other information or instructions that are relevant to the hire of the Goods.
- 6.11 If the Company's performance of any of its obligations under the Hire Contract is prevented or delayed by any act or omission of the Customer, or failure by the Customer to perform any of its obligations under the Hire Contract:
- without prejudice to any other right or remedy available to it, the Company shall have the right to suspend delivery of the Goods until the Customer remedies the default and shall be relieved of any of its obligations to the extent that performance of such obligations is prevented or delayed as a result of the Customer's default; and
  - the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations under the Hire Contract.
- 6.12 The Customer shall promptly notify the Company in writing of any shortage of, or damage to, the Goods following delivery and, in any event, within 7 days of delivery.
- 6.13 At the end of the Rental Period the Customer shall, at its own cost, return the Goods to the Company, which shall be deemed to take place at the moment of unloading the Goods at the Return Location.
- 6.14 The Goods must be returned to the Company cleaned, bundled, and secured onto pallets. The Company reserves the right to charge the Customer for any costs incurred by the Company in remedying any default under this clause 6.14.
- 6.15 The Company reserves the right to refuse to accept the return of the Goods if, in the Company's sole opinion:
- the Goods have been loaded onto the vehicle in an unsafe manner that may reasonably be expected to cause damage to the Goods;
  - the Customer has failed to comply with its obligations in clause 6.14; and/or

- c) the Company reasonably believes some or all of the goods being returned are not the Goods supplied by the Company to the Customer under the Hire Contract.

in which case the Rental Period shall continue until the Goods have been returned to the Company in a manner reasonably acceptable to the Company.

- 6.16 In the event the Goods are returned to the Company not in good working order and/or damaged beyond reasonable wear and tear (including breakages, cuts or drilling), the Company shall, at its option:
- if such defect is remediable, charge the Customer for all costs incurred in remedying the defect;
  - require the Customer to purchase the Goods in accordance with clause 8;
  - charge the Customer for all costs incurred by the Company in manufacturing and/or otherwise obtaining replacement Goods; and/or
  - deduct monies from any security deposit paid in accordance with clause 5.1b) in full or part satisfaction of any costs payable by the Customer to the Company under clause 6.16c).
- 6.17 The Customer shall indemnify the Company against any failure to comply with its obligations under this clause 5.

## 7 HIRE OF GOODS

- 7.1 For the duration of the Rental Period:
- the Customer shall, unless otherwise agreed by the Company in writing, be responsible for the proper handling, assembly, dismantling, storage, maintenance and cleaning of the Goods; title to the Goods shall remain with the Company, and the Customer shall have no right, title or interest in or to the Goods (save for possession and use under the terms of the Hire Contract, including any Goods purchased by the Customer in accordance with clause 8);
  - the Goods shall be at the risk of the Customer and the Customer must insure the Goods against all insurable risks for the Company's list price for the Goods from the time of delivery and, at the Company's request, the Customer shall procure that the Company's interest in respect of the Goods is noted on the insurance policy maintained by the Customer;
  - if the Goods are destroyed by an insured risk the Customer shall hold the insurance proceeds as the Company's trustee;
  - the Customer shall not encumber the Goods in any way;
  - the Customer shall keep the Goods in its possession and under its control, and at the location agreed in the Order;
  - (if applicable) the Customer may only use the Goods for the purpose agreed between the Company and the Customer;
  - the Customer shall not remove, deface or obscure any identifying mark on or relating to the Goods;
  - the Customer shall maintain the Goods in good working order and keep the same safely and securely;
  - no alteration, modification, repair or otherwise shall be made to the Goods without the prior written consent of the Company;
  - the Goods shall not be irrevocably incorporated with other goods. In the event the Customer incorporates the Goods with other goods, the Customer agrees and accepts that the Company's decision as to ownership of such Goods shall be conclusive and binding on the Customer;
  - the Customer shall promptly provide the Company with such information relating to the Goods as the Company may require from time to time;
  - the Customer shall, at its own cost, comply with all laws, statutes, regulations and codes of practice applicable to it and its use of the Goods, including health and safety laws;
  - the Customer shall indemnify, and keep indemnified, the Company in respect of any loss, cost, demand, claim or damages incurred by it arising out of or in connection with any breach of this clause 7.1.
- 7.2 The Company shall not, other than in connection with the exercise of its rights under the Hire Contract or applicable law, interfere with the Customer's quiet possession of the Goods.
- 7.3 This clause 6 shall survive termination of the Hire Contract to the extent it relates to the Company's rights. The Customer shall have no rights under this clause following termination.

## 8 PURCHASE OF GOODS

- 8.1 If the Customer wishes to purchase the Goods it shall notify the Company in writing and pay to the Company all outstanding Rental Payments (if any), any administration costs and expenses or other costs and expenses that the Company incurs in respect of the purchase of the Goods, and the Price, in accordance with clause 5.3. The Sale Conditions shall apply to the purchase of the Goods (subject to the provisions of this clause 8).
- 8.2 The Price means the price payable by the Customer to the Company in respect of the purchase of the Goods under this clause 8, as set out in the Order. If the Price is not set out in the Order then it shall be the price provided as part of any quotation (which shall not constitute an offer and shall be valid for 30 days from its date of issue), or the Company's list price at the relevant time, or otherwise agreed by the Company in writing.
- 8.3 Following receipt of the Price and all outstanding monies due under the Hire Contract (if any), title to the Goods shall transfer to the Customer. The Company may, at its sole discretion, elect that title to the Goods shall pass to the Customer notwithstanding the fact the Company is awaiting payment of the Price from the Customer.

- 8.4 The Goods shall transfer to the Customer in the condition and in the location in which they are found on the date of transfer.

## 9 WARRANTIES

- 9.1 The Company warrants that on delivery and for a period of 12 months from the date of delivery (**Warranty Period**) the Goods shall:
- conform in all material respects with their description, applicable Specification and applicable statutory and regulatory requirements;
  - be free from material defects in design, material and workmanship;
  - are of satisfactory quality (within the meaning of the Sales of Goods (Implied Terms) Act 1973); and
  - be fit for the purpose held out by the Company.
- 9.2 Except as provided in clause 9.1, all terms, conditions, warranties or descriptions implied by law, or expressed orally or in writing by the Company's employees or agents or otherwise, as to the quantity, quality or fitness for purpose of the Goods or their conformity to any samples or description provided by or on behalf of the Company or otherwise, are expressly excluded.
- 9.3 These Hire Conditions shall apply to any repaired or replacement Goods supplied by the Company pursuant to clause 8.1

## 10 CLAIMS

- 10.1 In the event of any claim arising out of breach of warranty or these Hire Conditions (including any statutory warranty or condition which is not excluded by these Hire Conditions), the Company shall, subject to clause 10.2, at its option:
- make good any shortfall and repair the defective Goods at its own expense;
  - remove the defective Goods to allow replacement and replace them free of charge with replacement Goods which conform to the Hire Contract; or
  - remove the defective Goods and refund the Rental Payments payable in respect of the defective Goods in full or in part and/or decrease future Rental Payments in respect of the Goods.
- 10.2 The liability under clause 10.1 does not extend to meeting any cost incurred by the Customer in removing and/or replacing the Goods, or any costs incurred by any third party (unless otherwise agreed in writing by the Company), and in any case is conditional upon:-
- there having been no unauthorised alteration or addition to the Goods;
  - the Customer not making any further use of the Goods after giving notice of any defect;
  - the Customer giving written notice of any defect to the Company and providing sufficient detail for the Company to assess the nature and extent of the defect immediately upon becoming aware of it during the Warranty Period;
  - the Company being allowed all reasonable facilities to inspect the Goods and investigate the complaint and comply with clause 10.1; and
  - at the request and cost of the Company, the Customer returning such Goods to the Company's place of business.
- 10.3 The Company shall not be liable for the Goods' failure to comply with the warranties in clause 9 if:
- the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice;
  - the defect arises as a result of the Company following any Specification supplied by the Customer;
  - the Customer alters or repairs such Goods without the prior written consent of the Company;
  - the defect arises as a result of fair wear and tear, wilful damage or negligence of the Customer or any other person other than the Company, or abnormal working conditions; or
  - the Goods differ from their description or the Specification as a result of changes made to ensure compliance with applicable statutory and regulatory requirements.
- 10.4 The Company reserves the right to charge the Customer for the transportation, testing and/or refurbishment of any Goods returned and subsequently deemed not defective or found to be out of warranty, or in respect of which the Company has no liability in accordance with clause 8
- 10.5 The Customer shall have no right of rejection of the Goods and the Company shall have no liability for breach of warranty or condition except as provided in clause 10.1.

## 11 INSTALLATION AND OTHER SERVICES

In the event the Company is required to install, assemble or provide any other service to the Customer arising out of or in connection with the Goods, the Sale Conditions shall apply to the extent they relate to services provided by the Company.

## 12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 All and any Intellectual Property Rights in, or arising out of or in connection with, the Goods and/or any Deliverables (other than Intellectual Property Rights in any materials provided by the Customer) shall belong to and vest in the Company.
- 12.2 The Company grants to the Customer, free of charge, a non-exclusive, worldwide licence in respect of such rights to the extent necessary to enable the Customer to make reasonable use of the Goods and/or Deliverables.

- 12.3 The Customer shall not remove, suppress or modify any trade mark, copyright or other proprietary marking belonging to the Company from the Goods and/or any Deliverables, and shall not reverse compile engineer, tamper with, or in any way alter or modify the Goods and/or the Deliverables without the prior written consent of the Company.
- 12.4 The Customer shall promptly and fully notify the Company of:
- any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and
  - any claim by any third party that comes to the Customer's notice that the Goods and/or Deliverables infringes the rights of any person.
- 12.5 The Customer agrees (at the Company's request and reasonable expense) to do all such acts and things as may reasonably be required to assist the Company in taking or resisting proceedings in relation to any infringement or claim referred to in clause 10.4.
- 13 CONFIDENTIALITY**
- 13.1 Any information exchanged in the course of the hire of Goods under the Hire Contract shall be treated as strictly confidential by the Company and the Customer, and each party agrees not to use such information for its own purposes (other than implementation of the Hire Contract), nor without the prior written consent of the other party, disclose to any third party (except its employees, officers, representatives or subcontractors who need to know such information for the purposes of carrying out obligations under the Hire Contract, or its professional advisers, or as may be required by any law or any governmental or regulatory authority) any such information, unless such information is public knowledge already at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Hire Contract, or subsequently becomes lawfully into the possession of either the Company or the Customer from a third party. The Company and the Customer shall each use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 13.2 This clause 11 shall survive termination of the Hire Contract.
- 14 DATA PROTECTION**
- 14.1 The Company and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Company is the Data Processor in respect of any Personal Data.
- 14.2 Each party warrants to the other that it will process Personal Data in compliance with the Data Protection Legislation and have appropriate technical and organisational security measures to:
- prevent unauthorised or unlawful processing of Personal Data, and prevent the accidental loss or destruction of, or damage to, Personal Data;
  - ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage, and the nature of the Personal Data to be protected.
- 14.3 It is the responsibility of each party to ensure that its staff members are appropriately trained to handle and process Personal Data in accordance with the Data Protection Legislation.
- 14.4 The Customer shall, in respect of the Personal Data it discloses to the Company, ensure that it provides clear and sufficient information to Data Subject(s), in accordance with the Data Protection Legislation, of the purposes for which it will process Personal Data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation, including, if such Personal Data will be transferred to the Company, that fact and sufficient information about the transfer and the purpose of such transfer to enable the Data Subject(s) to understand the purpose and risks of such transfer.
- 14.5 The Customer acknowledges that the Company is reliant on the Customer for obtaining consent from any Data Subject as regards storing and processing their Personal Data and direction as to the extent to which the Company is entitled to use and process the Personal Data. Consequently, the Company will not be liable for, and the Customer shall indemnify the Company against, any claim brought by a Data Subject arising from any action or omission by the Company, to the extent that such action or omission resulted directly from the Customer's failure to obtain such consent or instructions, or the Customer's breach of these Hire Conditions.
- 14.6 The Company may authorise a third party to process the Personal Data provided that the third party's contract is on terms which are substantially the same as those set out in these Hire Conditions as regards data protection.
- 14.7 The Company will use Personal Data provided by the Customer to:
- perform its obligations under the Hire Contract;
  - process payments;
  - give information to the Customer about the Goods; and
  - give information to the Customer about related goods and services offered by the Company or another member of the Company's group (provided the Customer consents to receive such information).
- 14.8 The Company will hold and process Personal Data in accordance with its privacy policy set out on its website (as amended from time to time).
- 14.9 The parties each agree to provide such assistance as is reasonably required to enable the other party to comply with a request from a Data Subject who exercises its rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
- 14.10 The parties shall each comply with its obligations to report a data protection breach to the appropriate supervisory authority and (where applicable) a Data Subject under the Data Protection Legislation, and shall inform the other party of any such breach irrespective of whether there is a requirement to notify any supervisory authority or relevant Data Subject(s).
- 14.11 The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data breach in a expeditious and compliant manner.
- 14.12 This clause 12 shall survive termination of the Hire Contract.
- 15 OTHER COMPANY LIABILITY**
- 15.1 Subject to the other provisions of these Hire Conditions, the Company shall have no liability for ascertaining whether the Goods are suitable or reasonably fit for the purpose for which they were ordered or for any advice it may give whether by itself, its employees or agents as to the application or suitability of Goods for any purpose whatsoever.
- 15.2 Incidental to the hire of Goods, the Company may agree to provide a design service in respect of the use of the Goods. All plans, calculations, designs, method statements and design advice produced by the Company before or after the Commencement Date are, unless otherwise agreed by the Company in writing, intended to be only a general guide and based upon equipment supplied by the Company, and the Customer agrees that no reliance is or will be placed upon the design advice. It is the Customer's sole responsibility to check the adequacy, accuracy, suitability and completeness of the design advice.
- 15.3 The Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- loss of profit; or
  - loss of sales or business; or
  - loss of agreements or contracts; or
  - loss of anticipated savings; or
  - loss of use or corruption of software, data or information; or
  - loss of or damage to equipment or property; or
  - loss of or damage to goodwill; or
  - any indirect or consequential loss arising under or in connection with the Hire Contract.
- 15.4 Subject to clause 13.3, the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Hire Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of:
- the aggregate sum of all Rental Payments payable for the duration of the Rental Period; and
  - the limit of the Company's insurance cover in place from time to time.
- 15.5 Nothing in these Hire Conditions shall limit or exclude the Company's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - fraud or fraudulent misrepresentation; or
  - breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973; or
  - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
  - any other matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 15.6 This clause 13 shall survive termination of the Hire Contract.
- 16 FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Hire Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or communication or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 17 TERMINATION**
- 17.1 The Company may terminate the Hire Contract at any time upon giving not less than one month's notice in writing to the Customer.
- 17.2 Without affecting any other right or remedy available to it, the Company may terminate the Hire Contract with immediate effect by giving notice in writing to the Customer if:
- the Customer fails to pay any amount due under the Hire Contract on the due date for payment and fails to make such payment in full within 10 Business Days after receipt of notice in writing to do so;
  - the Customer commits a material breach of any of its obligations under the Hire Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing to do so;

- c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- e) (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- h) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- j) any event occurs, or proceedings are taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(b) to clause 15.2(h) (inclusive); or
- k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

17.3 Upon termination:

- a) the Customer's consent to the Customer's possession of the Goods shall terminate and the Company may, without notice and at the Customer's expense, require the Customer to dismantle the Goods and retake possession of the Goods, and the Company and its agents may enter any premises of the Customer or any third party where the Goods are stored in order to recover them;
- b) if the Goods cannot be readily identified by the Company and/or its agents, the Company may require the Customer to purchase the Goods in accordance with clause 8;
- c) all outstanding sums payable by the Customer to the Company under the Hire Contract or any other contract between the Customer and the Company shall become immediately due;
- d) the Customer shall pay to the Company any costs and expenses incurred by the Company in recovering the Goods and/or in collecting all outstanding sums due pursuant to clause 17.3(c);
- e) by way of compensation, the Customer shall pay to the Company a sum equal to the Rental Payments that would, but for the termination, have been payable if the Hire Contract had continued, calculated pro rata from the date on which the Company served notice to terminate the Hire Contract until the end of the Rental Period;
- f) the Customer shall return any materials, equipment and property owned by the Company or its personnel to the Company immediately, and in any event within 5 Business Days of termination.

**18 THIRD PARTIES**

Nothing in the agreement between the Company and the Customer or their course of dealing shall confer or purport to confer on any third party any benefit or right to enforce any term of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**19 NOTICES**

- 19.1 Any notice or other communication given to a party under or in connection with the Hire Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, or email.
- 19.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if sent by email, one Business Day after transmission (provided a delivery or read receipt is received by the sender).
- 19.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**20 ASSIGNMENT AND SUBCONTRACTING**

- 20.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Hire Contract.
- 20.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Hire Contract without the prior written consent of the Company.

**21 SEVERANCE**

If any court or competent authority finds that any provision of the Hire Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall be deemed modified to the extent necessary to make it valid, legal and enforceable. If such modification is not possible, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Hire Contract shall not be affected.

**22 WAIVER**

A waiver of any right or remedy under the Hire Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Hire Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**23 VARIATION**

- 23.1 Subject to clause 21.2, any variation to the Hire Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the parties.
- 23.2 The Company may unilaterally amend these Hire Conditions by giving the Customer not less than 1 month's notice.

**24 GOVERNING LAW AND JURISDICTION**

The Hire Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the jurisdiction of the courts of England.

Version: October 2020

## SALE CONDITIONS

These Sale Conditions apply to the sale and purchase of goods and services. If you are hiring goods, the Hire Conditions on page 6 apply to you.

The Customer's attention is drawn to Sale Conditions 5.1, 5.13, 5.15 7.2, 8 and 13.

Please read these Sale Conditions carefully before placing an Order. By placing an Order you agree to be bound by these Sale Conditions. If you do not accept these Sale Conditions then you will not be able to make an Order. You should keep a copy of these Sale Conditions for future reference. The Company reserves the right to modify these Sale Conditions from time to time (see clause 21.2).

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in these Sale Conditions:
- Business Day** means a day other than a Saturday, Sunday or public holiday in England, when the banks in London are open for business.
- Company** means PERI Limited, registered in England and Wales with company number 02403512.
- Completion Date** means the estimated date for completion of the Services, as set out in the Order.
- Customer** means the company, firm or person who agrees to purchase the Goods and/or Services from the Company.
- Data Controller** has the meaning given in the Data Protection Legislation.
- Data Processor** has the meaning given in the Data Protection Legislation.
- Data Protection Legislation** means (i) the Data Protection Act 2018; (ii) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679); (iii) any successor legislation, as amended or updated from time to time.
- Data Subject** has the meaning given in the Data Protection Legislation.
- Deliverables** means the deliverables, including any written document, maintenance manual, training manual or video, instructions, drawing, plan, design, picture, or other image or information in any form, supplied by the Company to the Customer in respect of or in connection with the Goods and/or Services.
- Delivery Date** means the estimated date of delivery of the Goods, as set out in the Order.
- Delivery Location** means the delivery location for the Goods and/or Services which shall be the Company's premises or other location agreed between the Company and the Customer in writing (or in the case of deliveries outside the UK, the location agreed in line with the Incoterm).
- Force Majeure Event** has the meaning given in clause 14.
- Goods** means the goods (or any part of them) to be supplied by the Company to the Customer, as set out in the Order.
- Incoterm** means the incoterm specified in the Order or agreed in writing between the Company and the Customer, having the same meaning given in the Incoterms Rules 2020 – *ICC Official Rules for the Interpretation of Trade Issues*, published in September 2019 by the International Chamber of Commerce, as amended or superseded from time to time.
- Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer and other operating software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or associated with the Goods and/or Services and/or the Deliverables.
- Order** means the Customer's order for the supply of Goods and/or Services as set out in the order confirmation issued by the Company to the Customer, or the Customer's written acceptance of the Company's quotation, or in email or other written correspondence between the Company and the Customer, as the case may be.
- Personal Data** has the meaning given in the Data Protection Legislation.
- Price** means the purchase price payable by the Customer to the Company for the supply of Goods and/or Services in accordance with clause 3.
- Sale Conditions** means these conditions as amended from time to time in accordance with clause 21.

**Sale Contract** means the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Sale Conditions.

**Services** means the services to be supplied by the Company to the Customer, as set out in the Order.

**Services Start Date** means the estimated date on which the provision of Services will start, as set out in the Order.

**Specification** means the description or specification (including any related plans, designs and drawings) for the Goods and/or Services provided by the Customer to the Company or agreed in writing between the Company and the Customer.

**VAT** has the meaning given in clause 3.3.

**Warranty Period** has the meaning given in clause 7.1.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **party** includes its successors and permitted assigns.
- 1.4 A reference to a statute or statutory provisions is a reference to it as amended or re-enacted, and includes all subordinate legislation made under that statute or statutory provision.
- 1.5 Any words following the terms **including, include, in particular, for example**, or any similar expressions shall be construed as illustrative and shall not limited the sense of the words, description, definition, phrase or terms preceding those terms.
- 1.6 A reference to **writing** or **written** includes email but not fax.

### 2. FORMATION OF THE CONTRACT

- 2.1 This Sale Contract forms the whole agreement between the Company and the Customer in respect of the sale and purchase of Goods and/or Services, and no other express terms, written or oral, shall be incorporated into the Sale Contract.
- 2.2 These Sale Conditions apply to the Sale Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade custom, practice or course of dealing.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods, or illustrations or descriptions of the Services, contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Sale Contract or have any contractual force.
- 2.4 The Company's employees or representatives (other than the Company's directors in writing) are not authorised to do any of the following things on behalf of the Company:-
- (c) vary any of these terms or introduce any other terms, written or oral, into the Sale Contract; or
  - (d) give any advice, make any representation, agree any condition precedent or enter into any collateral contract.
- 2.5 The Order constitutes an offer by the Customer to purchase the Goods and/or Services from the Company on these Sale Conditions and the Sale Contract shall come into existence at the time of the Company issuing written acceptance of the Customer's offer.
- 2.6 All Orders accepted by the Company are accepted subject to raw materials, components and labour being available to the Company and by accepting an Order the Company does not give a warranty as to availability.
- 2.7 Any quotation given by the Company shall not constitute an offer, and is valid for 30 days from its date of issue.
- 2.8 All of these Sale Conditions shall apply to the supply of Goods and Services, except where application to only Goods or Services is specified.

### 3. PRICE

- 3.1 The Price for the Goods and/or Services shall be the price set out in the Order. If the Price is not set out in the Order, it shall be the price provided as part of any quotation provided by the Company to the Customer, or otherwise agreed by the Company in writing.
- 3.2 Unless otherwise agreed in writing by the Company, the Price excludes all costs and charges of packaging, delivery of Goods and/or costs of returning the Goods (including loading, unloading, courier fees, import/export licences and customs duties), insurance or any other costs and charges in relation to, or arising from, any credit facility or bank charges, which will be quoted separately and payable by the Customer in addition to the Price.
- 3.3 The Price and other costs and charges payable in connection with this clause 3 are exclusive of value added tax (VAT) or other applicable tax or duty, which shall be payable by the Customer on receipt of a valid tax invoice from the Company at the prevailing rate.
- 3.4 Where at any time before delivery of the Goods and/or commencement of the Services:
- (a) any factor beyond the Company's control (including foreign currency exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Company to change the Order including any change to the Delivery Date(s), Delivery Location, Services Start Date, the Completion Date, and the scope of the Services and/or the Specification; or

- (c) any delay caused by any instructions of the Customer or failure by the Customer to give the Company adequate or accurate information or instructions in a timely manner, the Customer may increase the Price accordingly by giving notice to the Customer.
- 3.5 The Customer agrees that any Order accepted by the Company is subject to a minimum Price of £250.
- 4. PAYMENT**
- 4.1 In the case of Customers without a pre-agreed credit facility:
- the Company reserves the right to require payment in full from the Customer before accepting an Order for Goods or Services;
  - Goods shall be paid within 7 days of the date on which an invoice is issued by the Company to the Customer or (if earlier) by the Delivery Date;
  - the Company reserves the right to require a deposit from the Customer in respect of the Services and shall invoice the Customer at regular intervals during the performance of the Services and/or on completion of the Services. The Customer shall pay within 7 days of the date on which an invoice is issued by the Company to the Customer or (if earlier) by the Services Start Date.
- 4.2 In the case of Customers with a pre-agreed credit facility:
- the Company shall invoice the Customer for any Goods purchased on or after completion of delivery and the Customer shall pay within 30 days following the end of the month in which an invoice is issued by the Company to the Customer;
  - the Company shall invoice the Customer at regular intervals during the performance of the Services and/or on completion of the Services, and the Customer shall pay within 30 days of the date of the invoice.
- 4.3 The Company shall invoice the Customer separately from time to time for any additional costs and charges arising under the Sale Contract pursuant to clauses 3.2 and/or 3.3 or otherwise. The Customer shall pay the invoice within 30 days following the end of the month in which an invoice is issued by the Company to the Customer.
- 4.4 Payment may be made by any of the following methods:
- electronic bank transfer;
  - credit card;
  - debit card; or
  - cheque (please allow 5 Business Days for cheque clearance).
- 4.5 All payments made by the Customer shall (unless otherwise agreed by the Company in writing) be paid in the currency in which they are invoiced (or, if no invoice is issued, in pounds sterling) and cleared funds by the payment deadlines set out in clauses 4.1 to 4.3. The time for payment is of the essence of the Sale Contract.
- 4.6 The Company may, without affecting any other right or remedy available to it, at any time following a breach of any of these Sale Conditions by the Customer, withdraw or revise a Customer's credit facility with immediate effect or require immediate payment of any invoice rendered to the Customer.
- 4.7 If the Customer fails to pay the invoice by the due date for payment in accordance with this clause 4, the Company may:
- charge interest on overdue invoices at the rate of 5% above the Bank of England's base lending rate from time to time, which shall accrue on a daily basis from the due date until payment of all overdue amounts, whether before or after judgment;
  - notwithstanding clause 4.7(a), claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 on any overdue sum payable by the Customer to the Company;
  - withhold supply of any undelivered Goods due to the Customer and/or the provision of Services;
  - terminate the Sale Contract; and/or
  - appropriate any payment made by the Customer to such of the Goods and/or Services (including goods and/or services supplied under any other contract with the Customer) as the Company, in its sole discretion, thinks fit.
- 4.8 The Customer may not withhold or deduct payment of any invoice or other amount due to the Company (in whole or in part) by reason of any right of set off or counterclaim for any reason whatsoever, save for any deduction or withholding required by law.
- 5. DELIVERY OF GOODS AND COMPLETION OF SERVICES**
- 5.1 For delivery of Goods within the UK, the Company shall, subject to clear instructions from the Customer, use reasonable endeavours to make the Goods available for delivery at the Delivery Location on the Delivery Date. Delivery shall be deemed to take place upon completion of loading of the Goods onto the delivery vehicle of the Customer or independent carrier at the Delivery Location for onward transportation to the Customer. Any independent carrier engaged by or on behalf of the Customer shall be deemed to be the Customer's agent. The Customer shall be responsible for ensuring the Goods are insured and the Company shall have no liability in relation to any damage to the Goods following delivery.
- 5.2 For delivery of Goods outside of the UK, subject to receipt of clear instructions from the Customer, the Company shall use reasonable endeavours to deliver the Goods to the Delivery Location on the Delivery Date with such insurance prescribed by the Incoterm. Delivery shall be deemed to have taken place in line with the Incoterm.
- 5.3 The Company may deliver by separate instalments, each of which may, at the Company's option, be invoiced separately and shall constitute a separate Sale Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.4 In the event the Goods comprise timber and/or panel products, the Customer shall not be entitled to reject the Goods if the Company delivers up to 10% more or less than the quantity of such Goods ordered, but a pro rata adjustment shall be made to the Price on receipt of notice from the Customer that the wrong quantity of Goods was delivered. The Customer must notify the Company of any shortage/surplus in writing within 7 Business Days of the date of delivery.
- 5.5 The Customer shall promptly notify the Company in writing of any shortage of, or damage to, the Goods following delivery and in any event within 7 days of delivery.
- 5.6 The Company shall procure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, relevant Company and Customer reference numbers, the type and quantity of the Goods (and code number of the Goods, where applicable), any instructions applicable to the Goods and, if the Order is being delivered by instalments, the outstanding balance of the Goods remaining to be delivered.
- 5.7 If the Customer (or the Customer's agent) fails to accept the Goods on the Delivery Date or fails to give the Company adequate delivery instructions then, save where such failure or delay is caused by the Company's failure to comply with the Sale Contract or by a Force Majeure Event, delivery shall be deemed to have been completed at 9.00 am on the third Business Day following the Delivery Date and:
- the Company may store the Goods until actual delivery to the Customer or until the Goods are disposed of in accordance with these Sale Conditions. The Customer shall be liable for the cost of storage and insurance, and any other ancillary costs and expenses, incurred by the Company in connection with storage and/or disposal of the Goods, in respect of which the Customer shall indemnify the Company; and/or
  - the Company may sell the Goods at the best price readily obtainable. The Customer shall be liable to pay all costs and expenses incurred by the Company in connection with the sale and storage of the Goods in accordance with clause 5.7(a). If the Goods are sold for less than the Price payable by the Customer, the Customer shall be liable to pay the shortfall to the Company.
- 5.8 The Company shall use reasonable endeavours to complete the provision of Services by the Completion Date.
- 5.9 The Customer shall, at its own cost, obtain such import and/or export licences and other licences, permissions and consents as the Company may reasonably require from time to time in order to supply the Goods and/or Services and comply with its obligations under the Sale Contract, and the Customer shall make those licences and consents available to the Company prior to the Delivery Date and/or the Services Start Date. The Customer shall indemnify the Company against any failure to comply with its obligations under this clause 5.9.
- 5.10 The Delivery Date, the Services Start Date and the Completion Date are approximate only and the Company shall not be liable for any delay in delivery of the Goods, or starting the provision of Services, or completion of the Services, howsoever caused. Time of delivery of the Goods and time of starting the provision of, and completion of, the Services are not of the essence of the Sale Contract.
- 5.11 The Company shall use reasonable endeavours to notify the Customer of any delay that, in the Company's opinion, may affect the Delivery Date, the Services Start Date and/or the Completion Date and the Company reserves the right to unilaterally change such dates up to 7 days before the Delivery Date or the Services Start Date or the Completion Date (as applicable) by giving written notice to the Customer.
- 5.12 If the Company fails to deliver the Goods by the Delivery Date or start the provision of the Services by the Services Start Date, or complete the provision of Services by the Completion Date, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods and/or services of similar description and quality in the cheapest market available, less the Price.
- 5.13 The Company shall have no liability for any failure to deliver the Goods by the Delivery Date, or start the provision of the Services by the Services Start Date, or complete the provision of the Services by the Completion Date, to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with all relevant licences, permissions and consents, adequate delivery instructions or any other information or instructions that are relevant to the supply of the Goods and/or Services.
- 5.14 If the Company's performance of any of its obligations under the Sale Contract is prevented or delayed by any act or omission of the Customer, or failure by the Customer to perform any of its obligations under the Sale Contract:
- without prejudice to any other right or remedy available to it, the Company shall have the right to suspend delivery of the Goods and/or provision of the Services until the Customer remedies the default and shall be relieved of any of its obligations to the extent that performance of such obligations is prevented or delayed as a result of the Customer's default; and
  - the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations under the Sale Contract.
- 5.15 The Customer shall indemnify the Company against any failure to comply with its obligations under this clause 5 and clause 9.6.



## 6. TITLE AND RISK

- 6.1 Title to the Goods shall not pass to the Customer until the earlier of:
- the Company receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer (whether hired or sold) in respect of which payment has become due; and
  - the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer in accordance with clause 6.3.
- 6.2 Until title to the Goods has passed to the Customer, the Customer shall:
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - maintain the Goods in satisfactory condition;
  - notify the Company immediately if it becomes subject to any of the events listed in clause 15.2; and
  - promptly give the Company such information relating to the Goods as the Company may require from time to time.
- 6.3 Subject to clause 6.4, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- it does so as principal and not as the Company's agent; and
  - title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 6.4 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 15.2, or the Company reasonable believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Company and its agents may enter any premises of the Customer or any third party where the Goods are stored in order to recover them.
- 6.5 Risk in the Goods passes to the Customer on completion of delivery in accordance with clause 5.1 or clause 5.2 (as applicable).
- 6.6 The Customer must insure the Goods against all insurable risks for the Company's list price for the Goods from the time of delivery.
- 6.7 If the Goods are destroyed by an insured risk before the Customer has paid for them, the Customer shall hold the insurance proceeds as the Company's trustee.
- 6.8 This clause 6 shall survive termination of the Sale Contract to the extent it relates to the Company's rights. The Customer shall have no rights under this clause following termination.

## 7. WARRANTIES

- 7.1 The Company warrants that on delivery and for a period of 12 months from the date of delivery (**Warranty Period**) the Goods shall:
- conform in all material respects with their description, applicable Specification and applicable statutory and regulatory requirements;
  - be free from material defects in design, material and workmanship;
  - are of satisfactory quality (within the meaning of the Sales of Goods Act 1979); and
  - be fit for the purpose held out by the Company.
- 7.2 Except as provided in clause 8.1 all terms, conditions, warranties or descriptions implied by law, or expressed orally or in writing by the Company's employees or agents or otherwise, as to the quantity, quality or fitness for purpose of the Goods or their conformity to any samples or description, provided by or on behalf of the Company or otherwise, are expressly excluded.
- 7.3 These Sale Conditions shall apply to any repaired or replacement Goods supplied by the Company pursuant to clause 8.1

## 8. CLAIMS

- 8.1 In the event of any claim arising out of breach of warranty or these Sale Conditions (including any statutory warranty or condition which is not excluded by these Sale Conditions), the Company shall, subject to clause 8.2, at its option and expense, make good any shortfall and repair the Goods, or remove the Goods to allow replacement and replace them free of charge with replacement Goods which conform to the Sales Contract, or refund the Price of the defective Goods in full.
- 8.2 The liability under clause 8.1 does not extend to meeting any cost incurred by the Customer in removing and/or replacing the Goods, or any costs incurred by any third party (unless otherwise agreed in writing by the Company), and in any case is conditional upon:-
- there having been no unauthorised alteration or addition to the Goods;
  - the Customer not making any further use of the Goods after giving notice of any defect;
  - the Customer giving written notice of any defect to the Company and providing sufficient detail for the Company to assess the nature and extent of the defect immediately upon becoming aware of it during the Warranty Period;
  - the Company being allowed all reasonable facilities to inspect the Goods and investigate the complaint and comply with clause 8.1; and
  - at the request and cost of the Company, the Customer returning such Goods to the Company's place of business.

- 8.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 7.1 if:
- the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice;
  - the defect arises as a result of the Company following any Specification supplied by the Customer;
  - the Customer alters or repairs such Goods without the prior written consent of the Company;
  - the defect arises as a result of fair wear and tear, wilful damage or negligence of the Customer or any other person other than the Company, or abnormal working conditions; or
  - the Goods differ from their description or the Specification as a result of changes made to ensure compliance with applicable statutory and regulatory requirements.
- 8.4 The Company reserves the right to charge the Customer for the transportation, testing and/or refurbishment of any Goods returned and subsequently deemed not defective or found to be out of warranty, or in respect of which the Company has no liability in accordance with clause 8.
- 8.5 Subject to clause 5.4, the Customer shall have no right of rejection of the Goods and the Company shall have no liability for breach of warranty or condition except as provided in clause 8.1.
- 8.6 In supplying the Services, the Company doesn't assume any liability for any act or omission of the Customer, its employees, officers, agents, consultants or sub-contractors.

## 9. SUPPLY OF SERVICES

- 9.1 The Company shall supply the Services to the Customer in accordance with any applicable Specification in all material respects.
- 9.2 The Company warrants to the Customer that the Services will be provided using reasonable skill and care by a person who, in the Company's opinion, has the necessary qualifications or experience to carry out the Services.
- 9.3 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or otherwise agreed between the Company and the Customer in writing, but any such dates shall be estimates only and shall not be of the essence of the Sale Contract.
- 9.4 The Company reserves the right to amend any Specification if necessary to comply with applicable law or regulatory requirements, and if the amendment will materially affect the nature or quality of the Services, the Company shall notify the Customer as soon as possible.
- 9.5 If the Company is providing personnel to the Customer to provide the Services, the Company reserves the right to substitute such personnel (provided such person has, in the Company's opinion, the necessary qualifications or experience to provide the Services). Nothing in these Sale Conditions shall create a contract between the Customer and personnel supplied by the Company.
- 9.6 The Customer shall:
- co-operate with the Company in all matters relating to the Services;
  - at its own cost, provide the Company, its employees, agents, consultants and subcontractors with such access, facilities, information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - at its own cost, comply with all applicable laws, including health and safety laws;
  - keep all materials, equipment and other property belonging to the Company at the Customer's premises, or other location where the Services are to be provided by the Company, in safe custody at its own risk, and maintain any such items in good condition and not dispose of or use any such items other than in accordance with the Company's prior written instructions or authorisation; and
  - at its own cost, unless otherwise agreed by the Company in writing, comply with any additional obligations set out in the Specification.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All and any Intellectual Property Rights in, or arising out of or in connection with, the Goods and/or Services and/or any Deliverables (other than Intellectual Property Rights in any materials provided by the Customer) shall belong to and vest in the Company.
- 10.2 The Company grants to the Customer, free of charge, a non-exclusive, worldwide licence in respect of such rights to the extent necessary to enable the Customer to make reasonable use of the Goods and/or Services and/or Deliverables.
- 10.3 The Customer shall not remove, suppress or modify any trade mark, copyright or other proprietary marking belonging to the Company from the Goods and/or Services and/or any Deliverables, and shall not reverse compile engineer, tamper with, or in any way alter or modify the Goods and/or Services and/or the Deliverables without the prior written consent of the Company.
- 10.4 The Customer shall promptly and fully notify the Company of:
- any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and
  - any claim by any third party that comes to the Customer's notice that the Goods and/or Services and/or Deliverables infringes the rights of any person.
- 10.5 The Customer agrees (at the Company's request and reasonable expense) to do all such acts and things as may reasonably be required to

assist the Company in taking or resisting proceedings in relation to any infringement or claim referred to in clause 10.4.

## 11. CONFIDENTIALITY

- 11.1 Any information exchanged in the course of the supply of Goods and/or Services under the Sale Contract shall be treated as strictly confidential by the Company and the Customer, and each party agrees not to use such information for its own purposes (other than implementation of the Sale Contract), nor without the prior written consent of the other party, disclose to any third party (except its employees, officers, representatives or subcontractors who need to know such information for the purposes of carrying out obligations under the Sale Contract, or its professional advisers, or as may be required by any law or any governmental or regulatory authority) any such information, unless such information is public knowledge already at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Sale Contract, or subsequently becomes lawfully into the possession of either the Company or the Customer from a third party. The Company and the Customer shall each use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 11.2 This clause 11 shall survive termination of the Sale Contract.

## 12. DATA PROTECTION

- 12.1 The Company and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Company is the Data Processor in respect of any Personal Data.
- 12.2 Each party warrants to the other that it will process Personal Data in compliance with the Data Protection Legislation and have appropriate technical and organisational security measures to:
- prevent unauthorised or unlawful processing of Personal Data, and prevent the accidental loss or destruction of, or damage to, Personal Data;
  - ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage, and the nature of the Personal Data to be protected.
- 12.3 It is the responsibility of each party to ensure that its staff members are appropriately trained to handle and process Personal Data in accordance with the Data Protection Legislation.
- 12.4 The Customer shall, in respect of the Personal Data it discloses to the Company, ensure that it provides clear and sufficient information to Data Subject(s), in accordance with the Data Protection Legislation, of the purposes for which it will process Personal Data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation, including, if such Personal Data will be transferred to the Company, that fact and sufficient information about the transfer and the purpose of such transfer to enable the Data Subject(s) to understand the purpose and risks of such transfer.
- 12.5 The Customer acknowledges that the Company is reliant on the Customer for obtaining consent from any Data Subject as regards storing and processing their Personal Data and direction as to the extent to which the Company is entitled to use and process the Personal Data. Consequently, the Company will not be liable for, and the Customer shall indemnify the Company against, any claim brought by a Data Subject arising from any action or omission by the Company, to the extent that such action or omission resulted directly from the Customer's failure to obtain such consent or instructions, or the Customer's breach of these Sale Conditions.
- 12.6 The Company may authorise a third party to process the Personal Data provided that the third party's contract is on terms which are substantially the same as those set out in these Sale Conditions as regards data protection.
- 12.7 The Company will use Personal Data provided by the Customer to:
- supply the Goods and/or Services;
  - process payments;
  - give information to the Customer about the Goods and/or Services; and
  - give information to the Customer about other related goods and services offered by the Company or another member of the Company's group (provided the Customer consents to receive such information).
- 12.8 The Company will hold and process Personal Data in accordance with its privacy policy set out on its website (as amended from time to time).
- 12.9 The parties each agree to provide such assistance as is reasonably required to enable the other party to comply with requests from a Data Subject who exercises its rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
- 12.10 The parties shall each comply with its obligations to report a data protection breach to the appropriate supervisory authority and (where applicable) a Data Subject under the Data Protection Legislation, and shall inform the other party of any such breach irrespective of whether there is a requirement to notify any supervisory authority or relevant Data Subject(s).
- 12.11 The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data breach in an expeditious and compliant manner.
- 12.12 This clause 12 shall survive termination of the Sale Contract.

## 13. OTHER COMPANY LIABILITY

- 13.1 Subject to the other provisions of these Sale Conditions, the Company shall have no liability for ascertaining whether the Goods are suitable or

reasonably fit for the purpose for which they were ordered or for any advice it may give whether by itself, its employees or agents as to the application or suitability of Goods for any purpose whatsoever.

- 13.2 Incidental to the supply of the Goods, the Company may agree to provide a design service in respect of the use of the Goods. All plans, calculations, designs, method statements and design advice produced by the Company before or after delivery of the Goods are, unless otherwise agreed by the Company in writing, intended to be only a general guide and the Customer agrees that no reliance is or will be placed upon the design advice. It is the Customer's sole responsibility to check the adequacy, accuracy, suitability and completeness of the design advice.
- 13.3 The Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- loss of profit; or
  - loss of sales or business; or
  - loss of agreements or contracts; or
  - loss of anticipated savings; or
  - loss of use or corruption of software, data or information; or
  - loss of or damage to equipment or property; or
  - loss of or damage to goodwill; or
  - any indirect or consequential loss arising under or in connection with the Sale Contract.
- 13.4 Subject to clause 13.3, the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Sale Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of:
- the Price; and
  - the limit of the Company's insurance cover in place from time to time.
- 13.5 Nothing in these Sale Conditions shall limit or exclude the Company's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - fraud or fraudulent misrepresentation; or
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
  - any other matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 13.6 This clause 13 shall survive termination of the Sale Contract.
- ## 14. FORCE MAJEURE
- Neither party shall be liable for any failure or delay in performing its obligations under the Sale Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or communication or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- ## 15. TERMINATION
- 15.1 The Company may terminate the Sale Contract at any time upon giving not less than one month's notice in writing to the Customer.
- 15.2 Without affecting any other right or remedy available to it, the Company may terminate the Sale Contract with immediate effect by giving notice in writing to the Customer if:
- the Customer commits a material breach of any of its obligations under the Sale Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing to do so;
  - the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
  - the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - (being an individual) the Customer is the subject of a bankruptcy petition or order; or
  - a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any

- part of its assets and such attachment or process is not discharged within 14 days; or
- f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
  - g) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
  - h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
  - i) any event occurs, or proceedings are taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(b) to clause 15.2(h) (inclusive); or
  - j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
  - k) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 15.3 Upon termination, all outstanding sums payable by the Customer to the Company under the Sale Contract or any other contract between the Customer and the Company shall become immediately due, and the Customer shall return any materials, equipment and property owned by the Company or its personnel to the Company immediately, and in any event within 5 Business Days of termination.

**16. THIRD PARTIES**

Nothing in the agreement between the Company and the Customer or their course of dealing shall confer or purport to confer on any third party any benefit or right to enforce any term of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**17. NOTICES**

- 17.1 Any notice or other communication given to a party under or in connection with the Sale Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, or email.
- 17.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if sent by email, one Business

Day after transmission (provided a delivery or read receipt is received by the sender).

- 17.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**18. ASSIGNMENT AND SUBCONTRACTING**

- 18.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Sale Contract.
- 18.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Sale Contract without the prior written consent of the Company.

**19. SEVERANCE**

If any court or competent authority finds that any provision of the Sale Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall be deemed modified to the extent necessary to make it valid, legal and enforceable. If such modification is not possible, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Sale Contract shall not be affected.

**20. WAIVER**

A waiver of any right or remedy under the Sale Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Sale Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**21. VARIATION**

- 21.1 Subject to clause 21.2, any variation to the Sale Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the parties.
- 21.2 The Company may unilaterally amend these Sale Conditions by giving the Customer not less than 1 month's notice.

**22. GOVERNING LAW AND JURISDICTION**

The Sale Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the jurisdiction of the courts of England.

Version: October 2020

Signed: \_\_\_\_\_  
For and on behalf of PERI Ltd

Signed: \_\_\_\_\_  
For and on behalf of the Customer

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_