

Liebherr-Australia Pty. Ltd.

Terms and Conditions of Purchase

In these Terms:

us, we, our means Liebherr-Australia Pty Ltd ACN 007 970 452 and its related bodies corporates or associated entities (within the meaning of the *Corporations Act* 2001 (Cth)).

you, your means the person supplying goods or services to us.

goods mean the equipment, parts or other material ordered by us from you from time to time.

modern slavery has the meaning given to the term under the modern slavery law.

modern slavery law means the *Modern Slavery Act* 2018 (Cth) and any other equivalent laws of any state/territory.

services mean any work of any nature whatsoever that you perform for us.

small business contract means a small business within the meaning of section 23(4) of the *Australian Consumer Law*.

You and we agree that:

- only these Terms apply to this contract of purchase and sale entered into by us with you unless otherwise agreed in writing. By accepting an order from us or delivering goods or services to us you are deemed to have accepted these Terms.
- we may amend or cancel our order at any time before delivery and will not be liable for any cost incurred by you as a result of any such amendment or cancellation and will be entitled to a full refund of any deposit paid to you.
- goods must be packed in accordance with our instructions or, if there are no instructions, they must be safely and securely packed in accordance with normal commercial practice.
- you must deliver the goods or services to us by the date, and at the place, set out in our order.
- unless our order states otherwise, the goods must be delivered free-in-store.
- all deliveries must be accompanied by a delivery note setting out our order number, a description of the goods and the quantity of goods supplied.
- goods must be new (unless otherwise specified on our order), of merchantable quality, fit for their purpose, free from defects, strictly conform to our specifications and comply with all applicable laws and recognised industry standards (including Australian Standards).
- you warrant that you have full unencumbered title in the goods and in any materials incorporated in the goods and all such goods are supplied free of all liens, charges or other security interests.
- you warrant that the supply of the goods will not give rise to any infringement of any intellectual property rights, including patents, trademarks and copyright.
- acceptance of the goods or services occurs if we do not notify you that the goods or services do not comply with these Terms (or any other terms specified on our order) within 21 days of delivery.
- you will, at your cost, promptly replace any goods or rectify any services which do not comply with these Terms (or any other terms specified on our order) at any time up to 12 months after delivery even if we have accepted them.
- title to, and risk in, the goods pass to us when we accept the goods.
- the price for goods and /or services (including all taxes) is that which we were last notified of in writing before we placed the order.
- if we accept the goods or services, we will pay the price for the goods or services within 45 days after the end of the month in which your invoice is rendered.
- where you are not a small business contract, we can deduct or set-off against any amount we owe you any amount you owe us, and we can withhold payment for any goods or services which do not comply with these Terms even if we have accepted them. In all other cases, each party can deduct or set-off against any amount owed to the other party and each party can reasonably withhold payment for any goods or services which do not comply with these Terms even if a party have accepted them.
- you shall be liable and compensate us for loss or damage of any kind (including direct, indirect and consequential loss and damage of business revenue, loss of profits, failure to realise expected profits or savings or other commercial or economic loss of any kind and legal costs on a solicitor client basis), however caused arising out of or in any way related to the goods, the inability to use the goods fully or at all, or failure or delay in delivery of the whole or any instalment of the goods;
- where you are not a small business contract, you release us from, and shall indemnify, keep indemnified and hold us harmless from all claims arising in connection with the goods and/or services.
- where you are not a small business contract, any default or other financial indebtedness by you, whether under this

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agreement or another agreement you have with us becomes, at our sole discretion, immediately due and payable, or becomes capable of being declared immediately due and payable by us, before the scheduled date for payment.

19. where you are not a small business contract, should we be in default of this agreement our liability will be limited to the payment of the purchase price for the accepted goods or services and you release us from and we will not be liable for any claim for loss or damage of any kind (including legal costs, direct, indirect and consequential loss and damage of business revenue, loss of profits, failure to realise expected profits or savings or other commercial or economic loss of any kind), however caused arising out of our default;
20. where you are not a small business contract, you cannot transfer your rights responsibilities or obligations under these Terms without our prior written consent. You must not grant any security interest in any goods supplied or to be supplied under these Terms and must not purport to register any such interest on the Personal Property Security Register, as established under the *Personal Property Securities Act 2009* (Cth). In all other cases, neither party can transfer their rights, responsibilities or obligations under these Terms without the prior written consent of the other party which shall not be unreasonably withheld.
21. where you are not a small business contract, we may terminate this contract of purchase and sale immediately if you breach any part of these Terms (or any other terms specified on our order) or if you become insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth) (as amended or replaced from time to time). In all other cases, either party may terminate this contract of purchase and sale immediately if the other party breach any part of these Terms or if either party become insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth) (as amended or replaced from time to time).
22. you must (a) not be directly engaged in modern slavery, or do anything that would be an offence under the modern slavery law; (b) upon our request, you must provide us with reasonable access to your records and premises for the purposes of the modern slavery law; (c) report to us any actual or suspected instances of modern slavery in the supply chain of any of your goods and/or services; and (d) cooperate with us (to the extent reasonably required by law), to facilitate training of employees, suppliers and contractors on the modern slavery law.
23. if you comprise more than one person, these Terms bind you jointly and severally.
24. time is of the essence in the performance by you of your obligations under these Terms.
25. these Terms prevail over any terms you seek to impose on the order for goods or services or otherwise.
26. these Terms are in addition to any rights we may have at law, in equity or under statute.
27. where you are not a small business contract, we may amend or replace these Terms at any time by notice to you.
28. these Terms will not be construed against us merely because we prepared them.
29. these Terms (together with any other terms specified on our order) set out the whole agreement between you and us relating to the goods or services and are governed by the laws of South Australia; and
30. you will submit to the jurisdiction of South Australian courts for any proceedings arising out of these Terms.
31. where you are not a small business contract, you represents and warrants in favour of us that as at the date of this Agreement it employs 100 or more full-time employees or had AUD10,000,000 or more in turnover for the last income year that ended on or before date of this Agreement. In giving this representation and warranty, you confirm that you have considered Schedule 2, Part 2-3 of the *Competition and Consumer Act 2010* (Cth).

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