

General terms and conditions of purchase

Any and all deliveries or services ordered by LIEBHERR shall be exclusively governed by the following general terms and conditions of purchase. LIEBHERR does not accept – and herewith explicitly rejects – any conflicting terms in any offer or other document submitted by the CONTRACTOR.

1.

Order

Notwithstanding any pre-submitted offers, contracts shall be concluded exclusively on the basis of and in full compliance with the content of the order placed by LIEBHERR in writing, by e-mail or telefax.
2.

Order confirmation

Orders placed by LIEBHERR shall be immediately confirmed by the CONTRACTOR by return in writing, by e-mail or telefax. Deviations from the order shall be clearly pointed out in the written order confirmation and shall only be binding upon LIEBHERR if and to the extent the latter explicitly accepts such deviations in writing, by e-mail or telefax; a reception of the goods or services without reservation shall in no event be considered as an acceptance of such deviations.
3.

Time of delivery and performance

3.1.

The binding time of delivery or performance shall be as specified in the order.

3.2.

In case of an impending delay in delivery or performance, in whole or in part, LIEBHERR shall be immediately informed by the CONTRACTOR in writing, by e-mail or telefax, thereby indicating the reasons for and the probable duration of the delay.

3.3.

If LIEBHERR is prevented from or delayed in accepting delivery or performance due to an event not reasonably foreseeable and outside of LIEBHERR's control, in particular, but without limitation, trade restrictions, sanctions, natural disasters or extreme natural events, epidemics, operational disruptions, labour disputes and the like, LIEBHERR shall be entitled to postpone the time of delivery or performance accordingly without being in default. Furthermore, if such event exceeds a period of 4 weeks, LIEBHERR shall be entitled to cancel the contract in whole or in part and the CONTRACTOR shall not be entitled to any claim for damages.
4.

Costs and risk confirmation

Unless otherwise agreed, deliveries of goods or performance of services, shall be effected according to 'DDP place of destination' (Incoterms 2020), in particular, at the costs and risk of the CONTRACTOR at the location specified by LIEBHERR. The respective good shall be packed in accordance with the intended mode of transport and in compliance with any LIEBHERR specifications as well as any applicable packaging-specific standards, whereby environmentally friendly packaging materials shall be preferred. Any hazardous good shall be marked by the CONTRACTOR accordingly with reference to the specific type of danger emanating from the hazardous good and the CONTRACTOR shall inform LIEBHERR of any precautionary measures that may be necessary. Furthermore, with the delivery of the good, the CONTRACTOR shall, free of charge, provide LIEBHERR with any and all relevant customs and export control data, including without limitation, the indication of the country of origin (non-preferential origin) and, if requested by LIEBHERR a supplier declaration of preferential origin (for European suppliers) or a certificate of preference (for non-European suppliers), the customs tariff number (HS-Code), the AL number, the ECCN number, technical specifications for checking the list of goods etc.
5.

Cancellation

5.1

If the delivery of goods or the performance of services by the CONTRACTOR is delayed or otherwise not in compliance with the contract, LIEBHERR shall be entitled – without prejudice to any other rights or remedies it may have under contract or at law and provided that the CONTRACTOR has not remedied the respective default within a reasonable grace period – to cancel the contract in whole or in part. Furthermore, LIEBHERR shall also be entitled to claim a penalty according to section 8.2 hereof.

5.2

If insolvency, receivership, bankruptcy or similar proceedings are commenced by or against the CONTRACTOR, or if such an application is dismissed due to lack of funds, LIEBHERR shall be entitled to cancel the contract immediately. The same shall also apply if LIEBHERR – at its sole discretion – determines that the CONTRACTOR's creditworthiness or ability to pay its debts as and when due has deteriorated, thus endangering LIEBHERR's rights under or in relation to the contract, provided that LIEBHERR has unsuccessfully requested the CONTRACTOR to perform its obligations or to provide it with corresponding means of security.
6.

Warranty and guarantee

6.1

The CONTRACTOR is aware that LIEBHERR is certified according to ISO 9000/9001. The CONTRACTOR hereby explicitly guarantees that the goods or services shall – in addition to any other requirements of the contract – also entirely meet the quality requirements resulting from these standards.

6.2

Unless explicitly stated otherwise in this section 6, the statutory warranty provisions shall apply. The warranty period shall be – with the exception of longer time limits provided by applicable law – two years. This period shall not be deemed to commence before the goods or services have been put into their intended operation or use, however it shall end three years after the time of delivery/acceptance at the latest. If a defect appears within the first twelve months from the time of the transfer of risk, such defect shall be deemed as having already existed at the time of the transfer of risk.

6.3

Without prejudice to any other rights or remedies LIEBHERR may have under contract or at law, LIEBHERR may – at its sole discretion and without having to offer the CONTRACTOR the prior opportunity to do so – always decide to remedy any defective goods or services itself or have them remedied by a third party. Any and all costs and expenses in connection with the remedy of a defect – of whatever kind or nature – shall be borne by the CONTRACTOR.

6.4

If any defective goods are replaced or repaired or if any defective services are re-performed, the original warranty period shall restart once again.

6.5

The CONTRACTOR shall explicitly guarantee the goods delivered or services performed to be free from any kind of defects throughout the warranty period.
In the event of goods relying on digital components contained within or connected to such goods to fulfil their specified functions, the CONTRACTOR shall guarantee that LIEBHERR will be provided with updates, in particular, but without limitation, security updates, necessary to maintain the compliance of the goods with the contract for such period as LIEBHERR may reasonably expect on the basis of the nature and purpose of the goods and taking into account the circumstances and the nature of the contract. Furthermore, the CONTRACTOR shall inform LIEBHERR of the availability of such updates accordingly.

6.6

The CONTRACTOR shall be responsible for any acts or omissions of its sub-contractors or sub-suppliers as if such were the acts or omissions of the CONTRACTOR.

6.7

The CONTRACTOR shall waive – except for apparent defects – any objection of late examination and/or late notice or claim of defects; payment by LIEBHERR shall in no event be considered as a waiver of any right of LIEBHERR to claim any defects.

6.8

To the extent LIEBHERR has provided a warranty to a customer that does not exceed the statutory warranty obligations towards such customer, LIEBHERR shall be entitled to claim for warranty or reimbursement of any costs for such provided warranty from the CONTRACTOR, even if the warranty period according to section 6.2 has expired.

6.9

If it is to be expected that a claim can be raised against LIEBHERR or the CONTRACTOR under applicable product liability or similar liability as a result of a product hazard based on a defect or fault in the goods or services LIEBHERR shall be entitled, at its sole discretion, to remedy such defect or fault itself or have such defect or fault remedied by a third party on CONTRACTOR's expense, irrespective of whether or not the warranty period for the specific goods or services has already expired. However, LIEBHERR shall remedy such defect or fault or have such defect or fault remedied at the lowest possible cost and shall inform the CONTRACTOR as soon as possible about the measures taken.
7.

Compliance

7.1

The CONTRACTOR guarantees to fully comply with all laws, regulations, directives applicable to the CONTRACTOR in connection with the delivery of goods or performance of services as well as any LIEBHERR-guidelines and requirements known to the CONTRACTOR and the LIEBHERR-Supplier Code of Conduct (hereinafter referred to as the 'Applicable Regulations').

7.2

If and to the extent the Applicable Regulations include any reporting, documentation or other obligations of the CONTRACTOR (in particular, but without limitation, regarding environmental laws, standards, etc.), the CONTRACTOR shall proactively and on its own expense fulfil these reporting, documentation and other obligations in full and within the prescribed deadlines. Even in the absence of corresponding legal reporting, documentation or other obligations of the CONTRACTOR, the CONTRACTOR shall support LIEBHERR and its affiliates (companies, that, directly or indirectly are controlled by or are under common control by Liebherr-International AG with its seat in 1630 Bulle/Switzerland, where 'control' means the possession, directly or indirectly, of an ownership interest exceeding 50 % of the voting securities) in fulfilling any such reporting, documentation or other obligations relating to LIEBHERR without delay and at its own expense at the request of LIEBHERR or its affiliates.

7.3

LIEBHERR shall at any time be entitled to audit the CONTRACTOR's compliance with the Applicable Regulations or to have such compliance audited by an independent third party (e.g. auditor).

7.4

The CONTRACTOR undertakes to enter into a corresponding agreement with its subcontractors in accordance with sections 7.1 to 7.3.

7.5

In the event that the CONTRACTOR or his subcontractors breaches an Applicable Regulation, LIEBHERR shall be entitled to cancel the contract immediately.
8.

Damages, recourse, penalty, indemnification

8.1

LIEBHERR shall in any case be fully entitled to any and all claims for damages or recourse, including, without limitation, to any and all claims according to any relevant product or strict liability regulations. Furthermore, LIEBHERR shall be entitled to claim the defect itself as being a damage. Exclusions of liability in favour of the CONTRACTOR or obligations for LIEBHERR to pass on exclusions of liability to third parties shall be deemed as not agreed.

8.2

If LIEBHERR cancels the contract for delayed or otherwise non-compliant performance by the CONTRACTOR, LIEBHERR shall – without prejudice to any other rights or remedies LIEBHERR may have under contract or at law, in particular, but without limitation, according to sections 5, 6 and 8.1 hereof – be entitled to claim and receive from the CONTRACTOR a penalty in the amount of 5 % (five percent) of the contract value in lieu of its claim for the CONTRACTOR's strict performance of the contract. If LIEBHERR faces delayed or otherwise non-compliant performance by the CONTRACTOR (even if only with respect to any documentation or other ancillary obligations) without, however, cancelling the contract, LIEBHERR shall – without prejudice to any other rights or remedies LIEBHERR may have under contract or at law, in particular, but without limitation, according to sections 5, 6 and 8.1 hereof – be entitled to claim and receive from the CONTRACTOR a penalty in the amount of 1 % (one percent) of the contract value for every commenced week during which the delay or other non-compliance remains unremedied, however 5 % (five percent) at the maximum, in addition to the CONTRACTOR's strict performance of the contract. In case of a delay being caused by force majeure the CONTRACTOR's obligation to pay the penalty and/or damages shall be suspended for the duration of such impediment by force majeure, provided, however, that LIEBHERR has been informed of such circumstance immediately. However, the CONTRACTOR's obligation to pay the penalty shall exist even if the delay or other non-compliance has been caused without any negligence of the CONTRACTOR and shall be without prejudice to any right of LIEBHERR to claim for damages in excess of the penalty.

8.3

The CONTRACTOR shall defend, fully indemnify and hold LIEBHERR, its affiliates, distributors and agents, and their respective officers, directors and employees, harmless from any and all claims, suits, actions, liabilities, damages and costs (including, without limitation, attorney's fees) arising out of or in relation to any third-party damage caused by or related to any goods delivered or services performed by the CONTRACTOR and/or any breach of any other obligation of the CONTRACTOR.

8.4

The CONTRACTOR shall effect and maintain throughout the duration of the contractual relation with LIEBHERR a business and product liability insurance with a scope of coverage as is customary in the market and provide LIEBHERR with insurance certificates evidencing such insurance coverage upon request.
9.

Third parties' rights

9.1

The CONTRACTOR hereby explicitly guarantees that the goods delivered or services performed do not infringe any third party's rights, in particular, but without limitation, intellectual property rights.

9.2

The CONTRACTOR shall defend, fully indemnify and hold LIEBHERR, its affiliates, distributors and agents, and their respective officers, directors and employees, harmless from any and all claims, suits, actions, liabilities, damages and costs (including, without limitation, attorney's fees) arising out of or in relation to the actual or alleged infringement of any such third party's rights (including, without limitation, intellectual property rights) by any goods delivered or services performed by the CONTRACTOR.
10.

Drawings, tools and models

Any and all drawings, sketches, tools, technical documents, samples, models or similar, which have been submitted or financed by LIEBHERR for the delivery of goods or performance of services by the CONTRACTOR, shall remain or be transferred into the property of LIEBHERR and shall neither be released to any third parties nor be used for any purpose other than the one agreed with LIEBHERR. They shall be returned to LIEBHERR immediately upon request or, without need of a respective request, upon the termination of the contract.
11.

Place of performance, governing law and legal venue

11.1

Unless otherwise agreed, the place of performance shall be at the main offices of LIEBHERR as stated in the order or, as applicable, the place where the ordered services are to be performed.

11.2

Any and all legal relations between the CONTRACTOR and LIEBHERR out of or in relation to the contract shall be governed by and construed in accordance with German law – in case of international transactions under consideration of the English version of the UNCITRAL-Convention on the International Sale of Goods dated April 11th, 1980 ('CISG') – as amended by the provisions of these general terms and conditions of purchase.

11.3

The exclusive legal venue shall be the competent court at the main offices of LIEBHERR. However, LIEBHERR shall be free to opt for bringing an action to any competent court at the place where the CONTRACTOR's main offices are located or where the CONTRACTOR disposes of property or other tangible goods.
12.

General conditions

12.1

Without the prior written consent of LIEBHERR the CONTRACTOR shall not transfer, whether in whole or in part, any of its rights or obligations under the contract to any third parties and shall not engage any third parties in the delivery of goods or performance of services under the contract.

12.2

Any and all rights or remedies under these general terms and conditions of purchase shall be available to LIEBHERR irrespective of whether or not the CONTRACTOR has committed a fundamental breach of contract and regardless of the foreseeability of damage at the time of contract formation.

12.3

The CONTRACTOR shall keep any and all orders as well as any and all commercial, technical or other information related thereto strictly confidential and use them solely for the purposes of the contract.

Special Terms and Conditions of Purchase for Free and Open Source Software (FOSS-STC)

1.

Scope of application

The FOSS-STC shall apply to any purchase of any Product that contains software by Liebherr, regardless of the type of contract underlying the purchase. The FOSS-STC shall take precedence over our other purchasing conditions and the general terms and conditions of the supplier within the scope of the FOSS-STC.
2.

Definition

2.1

Free and Open Source Software (FOSS) in accordance with the FOSS-STC shall be software which license meets the requirements of "The Open Source Definition" (<https://opensource.org/osd>) of the Open Source Initiative and/or has been included in the publicly accessible lists of Open Source licenses or free licenses by the Open Source Initiative and/or the Free Software Foundation.

2.2

The FOSS-STC shall also apply to Public Domain software.
3.

Duties of Examination and Information of the Contractor

The Contractor is aware that non-compliance with the license conditions for FOSS may lead to copyright infringement and a defect in title in the products delivered to Liebherr. The Contractor is solely responsible for complying with the license conditions of all FOSS contained in the products delivered to Liebherr. This applies to both embedded systems and firmware updates, as well as any other distribution of software. The Contractor shall verify the software contained in its products for FOSS and obtain any necessary information from the suppliers of the Contractor. Compliance with the ISO/IEC 5230 standard shall be the responsibility of the Contractor.
4.

FOSS Documentation

The Contractor shall provide Liebherr, at the latest upon delivery of the product

a)

a Software Bill of Materials (SBOM) of the used FOSS components, their version numbers, and the applicable FOSS licenses as SPDX identifiers (<https://spdx.org/licenses/>), and

b)

a document for compliance with the FOSS licenses (Open Source Content Documentation), which includes all license texts and copyright notices related to the respective files, as well as any additional information that shall be provided upon delivery of the software according to the applicable licenses, and

c)

the complete and corresponding source code of the Foss contained in the product.

The obligation to provide the information mentioned herein shall not replace any statutory reporting and information obligations of the Contractor to prevent security vulnerabilities or similar issues.
5.

Use of Copyleft licenses

5.1

The Contractor shall ensure that software under copyleft licenses is used in the products only in a manner that does not carry the risk that Liebherr must license the product as FOSS when used in combination with its own software components or third-party software components, without obtaining prior consent from Liebherr. Copyleft licenses are understood to be those FOSS licenses whose terms require that modifications of the licensed software must also be licensed as FOSS when distributed.

5.2

The Contractor ensures that the license terms of all software components linked with FOSS under the GNU Lesser General Public License allow each user of the software to modify it for personal use and to perform reverse engineering to correct errors in such modifications.

5.3

The Contractor ensures that Liebherr is provided with the necessary information to compile and reinstall FOSS under the GNU Lesser General Public License, the GNU General Public License, and the GNU Affero General Public License (if available), especially when the product is an embedded system.
6.

Assurance

6.1

The Contractor assures that the products supplied to Liebherr do not infringe any third-party copyrights and that the license terms of all FOSS and other third-party software are fully complied with.
7.

Violation of these Foss-STC

7.1

In the event of any violation of these FOSS-STC, the Contractor shall promptly remedy the defect and/or replace non-compliant FOSS components with compliant components.

7.2

The Contractor agrees to indemnify and/or compensate Liebherr for all costs and damages arising from non-compliance with the assurances in these FOSS-STC.