

# 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** means the equipment, parts or other material ordered by *us* from *you* from time to time.

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

*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* passes 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;
- 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;
- 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*;
- 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;
- 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);
- 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);
- if *you* comprise more than one person, these Terms bind *you* jointly and severally;
- time is of the essence in the performance by *you* of *your* obligations under these Terms;
- these Terms prevail over any terms *you* seek to impose on the order for *goods* or *services* or otherwise;
- these Terms are in addition to any rights *we* may have at law, in equity or under statute;
- we* may amend or replace these Terms at any time by notice to *you*;
- these Terms will not be construed against *us* merely because *we* prepared them;
- 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
- you* will submit to the jurisdiction of South Australian courts for any proceedings arising out of these Terms.