

Terms and Conditions of Trade

1. These terms of trade shall apply to all contracts (hereinafter referred to as "the contract") between Liebherr and its customers ("the Customer") unless specifically excluded or amended by the parties in writing, provided that if there is a conflict between any quotation, confirmation of order, invoice, written agreement or proposal or other document issued by Liebherr and these terms of trade, the former shall prevail. Unless otherwise specifically stipulated in writing to the contrary, the terms hereof shall supersede and prevail over any terms and conditions contained in any documents submitted by the Customer.
2. Upon receipt of any order placed by the Customer, Liebherr shall have the right to issue a written confirmation of order and, in the event of Liebherr electing to issue a confirmation of order, acceptance of the order shall only take place upon the despatch of such confirmation of order to the customer.
3. Should any confirmation of order, written quotation, rental proposal, invoice or other written agreement or document contain terms at variance with and/or in addition to these terms of trade, ("the other terms"), the Customer shall be deemed to accept the other terms unless, within seven days of receipt thereof, the Customer notifies Liebherr in writing that it elects to reject the other terms.
4. Unless a specific date of delivery is expressly specified by Liebherr in writing, delivery shall be made within a reasonable time.
5. Should Liebherr have reason to apprehend that the Customer may not, or be unable to discharge its obligation to pay the purchase price or rental or portion thereof, Liebherr shall be entitled
 - 5.1 to delay or suspend performance of its undertakings unless or until the Customer has satisfied Liebherr that its apprehension is ill-founded, and
 - 5.2 should the Customer fail so to satisfy Liebherr, to cancel the contract.
6. Payment of the purchase price or rental or any other amounts owing to Liebherr shall be made by the Customer by the due date/s thereof and in the manner provided in the confirmation of order or invoice issued by Liebherr.
7. Notwithstanding delivery of the goods to the Customer in the event of a sale, ownership of the goods shall be retained by Liebherr and shall not pass to the Customer until payment of the purchase price has been made in full to Liebherr.
8. Any guarantee by Liebherr in respect of goods sold or leased by Liebherr to the Customer shall be limited to any written guarantee which may be issued by Liebherr to the Customer at the time of sale or lease.
9. Save for any written guarantee issued by Liebherr as aforesaid, Liebherr shall not be liable to the Customer for or in respect of any defects in the goods and Liebherr gives no warranties whatsoever and any warranties otherwise implied in respect of the goods shall be deemed to be excluded.
10. Without derogating from the provisions of 9 above and notwithstanding any guarantee issued by Liebherr, Liebherr shall not be liable for-
 - 10.1 any defects in the goods which are aggravated by, or any damage resulting from, continued use or operation of the goods after the defects manifested themselves or after the Customer should have become aware thereof;
 - 10.2 any defects in or breakdown of or damage to the goods due to or arising from the failure or omission to comply with any of Liebherr's operating instructions or the directions on warning plates fitted to the goods, in the use or operation of such goods;
 - 10.3 any defects in or damage to the goods arising from faulty or negligent handling, operating, maintenance or erection or alterations or repairs to the goods carried out by anyone other than Liebherr or its nominated representative;
 - 10.4 the loss of hydraulic fluids or oil arising from or due to any defects in the goods;
 - 10.5 defects in the following goods or components thereof:
 - 10.5.1 ground engaging parts;
 - 10.5.2 magnet coils, electric motors, fuses and contacts;
 - 10.5.3 wire ropes;
 - 10.5.4 connections, gaskets, oil seals and filters;
 - 10.5.5 v-belts, tyres and brake-linings.
11. Should the Customer be in arrears in respect of any amount/s payable by it to Liebherr, or to any cessionary to whom Liebherr has ceded any of its claims against or rights to payment from the Customer, the rights of the Customer under and in terms of any guarantee issued by Liebherr shall be suspended until payment is made by the Customer of the said amount/s, and in the event of the Customer failing to make payment of the said amount/s within 10 days of written demand by Liebherr or the said cessionary for such payment, the guarantee shall be deemed to be cancelled.
12. Save by virtue of any order of a competent court, the Customer shall not be entitled on any grounds whatsoever to return any of the goods to Liebherr after delivery thereof to the Customer, without the prior written consent of Liebherr, and should the Customer so do in breach of this clause, the goods returned shall be at the sole risk and expense of the Customer.
13. Unless otherwise provided, any amount not paid by the Customer by the due date thereof shall bear interest at the rate of 5% above the prime interest rate charged by Liebherr's bankers calculated and capitalised from the due date to the date of payment. A certificate issued by any bank manager shall be prima facie proof of the prevailing prime interest rate.
14. The Customer acknowledges that it was not induced to enter into any contract with Liebherr by any representations made by or on behalf of Liebherr, other than as set out in these terms of trade.
15. Unless otherwise specifically provided, delivery of all goods purchased or hired shall be made by Liebherr at its premises.
16. The risk in or to goods sold or hired shall pass to the Customer on tender of delivery thereof by Liebherr, from which date the Customer shall be liable to Liebherr for storage charges and cost of insurance of the goods.
17. Should Liebherr transport or cause anyone else to transport any of the goods from Liebherr's factory or any other place to a site appointed by the Customer, such transport shall be at the sole risk of the Customer.
18. The erection of any equipment comprising the goods at a site appointed by the Customer or anyone on its behalf shall be carried out at the sole risk of the Customer.
19. The Customer shall not be entitled to withhold payment of any amount payable to Liebherr for any reason whatsoever and the Customer shall not be entitled to set off against amounts payable to Liebherr any present or future claims which the Customer may have against Liebherr from whatsoever cause arising.
20. Liebherr shall be entitled, in its sole discretion, to appropriate or allocate any payments received from the Customer to any indebtedness of the Customer to Liebherr.
21. A certificate by any director or manager of Liebherr in respect of any indebtedness of the Customer to Liebherr shall be *prima facie* evidence of the Customer's indebtedness to Liebherr.
22. While Liebherr remains the owner of the goods the Customer shall keep the goods in its possession and under its control and shall take reasonable care in the use of the goods and shall at its own expense maintain the goods in proper working order. The Customer shall furthermore keep the goods free from attachment, hypothec, or other legal charge or process.
23. Liebherr will not be liable to the Customer for any damages arising from consequential loss, personal injury, death or loss of profit or any other cause, whether due to or arising from any act or omission of Liebherr or any of its employees or agents, whether negligent or otherwise, or faulty design, defective materials or bad workmanship in or in respect of the goods or any other cause whatsoever.
24. The Customer hereby indemnifies Liebherr and holds it harmless from any and all loss, injury, damage and claims whatsoever and howsoever arising from or connected with the goods or the use or possession thereof in circumstances where such loss, injury, damage or claims are caused by any act or omission of the Customer.
25. Unless otherwise specifically stipulated in writing by Liebherr, Liebherr does not undertake or warrant that any goods consisting of plant or machinery will comply with any standards applicable or prescribed in any country other than the Republic of South Africa.
26. Any dispute arising between the parties, whether in regard to the interpretation of any terms of the contract, the carrying out of any of its terms or any other incident or aspect thereof may, at the option of Liebherr, be referred and submitted to arbitration in terms of the Arbitration Act No. 42 of 1965 as amended from time to time, and in the event of Liebherr electing to exercise the said option, the parties shall be precluded from resorting to any legal proceeding in a court of law in respect of such dispute.
27. Should the Customer default in complying with any provisions of the contract, or commit a breach of any of the terms thereof, Liebherr shall be entitled, without prejudice to any other right or remedy available to it in terms hereof or at law:
 - 27.1 to claim and recover from the Customer forthwith the whole of the balance of all amounts then outstanding whether due for payment or not, together with the interest as hereinbefore provided, or
 - 27.2 to cancel the contract, to repossess the goods, to retain all amounts paid by the Customer under the contract and to recover from the Customer such damages as Liebherr will have suffered in consequence of the default or breach and such cancellation, in which event Liebherr shall be entitled to retain until the final determination of such damages and as security for payment thereof by the Customer, all amounts paid by the Customer to Liebherr in terms hereof.
28. If the Customer fails to effect payment of any amount due to Liebherr on due date or commits any other breach of these terms of trade in circumstances where Liebherr remains the owner of the goods, the Customer undertakes to, and shall, forthwith restore the goods to Liebherr pending institution of an action by Liebherr for payment of any amounts due to it.
29. The following specific provisions shall apply in the event that the transaction entered into between Liebherr and the Customer is in respect of the rental of goods:
 - 29.1. Liebherr shall at all times during and after termination of the rental contract remain the owner of the goods.
 - 29.2. The Customer shall at its own cost procure and take delivery of the goods from Liebherr and shall hold the goods on behalf of Liebherr for the duration of the period of the rental agreement.
 - 29.3. Before accepting delivery of the goods, the Customer shall conduct a pre-delivery inspection of the goods.
 - 29.4. The goods shall be operated at the Customer's cost and only by competent and properly trained, licensed and qualified persons and shall be used only for the purposes for which they were designed and/or intended.
 - 29.5. The Customer shall not alter or modify the goods without the prior written consent of Liebherr.
 - 29.6. The Customer shall permit a representative of Liebherr to inspect and examine the goods at all reasonable times.
 - 29.7. The Customer acknowledges and agrees that the goods are movable property and that they will not under any circumstances accede to the property where they are kept or upon which they are installed.
 - 29.8. Unless otherwise agreed in writing by Liebherr, the Customer shall be liable for and shall bear all costs of the maintenance and repair of the goods.
 - 29.9. The Customer shall at its cost insure the goods against risks such as loss, damage, destruction as property of the nature of the goods is ordinarily insured. For the duration of the rental of the goods, the Customer shall keep the goods fully insured to the value of the goods. The Customer shall punctually pay all insurance premiums and shall, on demand, produce written proof to Liebherr that the goods are insured and all premiums have been paid. The customer shall ensure that the interests of Liebherr are noted on the said insurance policy. Any insurance held by the customer shall be primary to any insurance that Liebherr may have and be without any contribution by Liebherr.
 - 29.10. If the goods are damaged, destroyed or lost, the Customer shall immediately notify Liebherr thereof.
 - 29.11. If the goods are kept or stored in premises not owned by the Customer, it shall immediately notify the landlord of Liebherr's ownership of the goods and provide written proof of such notification to Liebherr.
 - 29.12. On termination of the rental the Customer shall return the goods to Liebherr as received, cleaned and oiled and in sound condition, fair wear and tear alone excepted.
30. No variation of or addition to these terms of trade shall be of any force or effect unless recorded in writing and signed by Liebherr.
31. No latitude, extension of time or other indulgence given or allowed by Liebherr to the Customer in respect of any payment or the performance of any other obligation hereunder shall operate as a waiver, novation or otherwise affect any of Liebherr's rights in terms of or arising from the contract or preclude Liebherr from enforcing at any time and without notice, strict and punctual compliance with each and every provision hereof.
32. The parties hereby agree that each clause of these terms of trade is severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect.
33. In these terms of trade words importing the singular include the plural and vice versa and words importing any gender include the other genders.