

# General Terms and Conditions of Sale and Service

Liebherr USA, Co., Mining

- 1. Exclusive Terms; Entire Agreement.** These terms and conditions ("General Terms") apply to all goods (including equipment and parts) ("Goods") and services ("Services") provided by Liebherr USA, Co., Mining ("Liebherr") to or for the purchaser ("Buyer") under any purchase order, sales contract, quotation, offer or order acknowledgement (as applicable, "Order") or invoice. Any warranty certificate(s) provided by Liebherr together with the Order shall form a part of that Order. Together with the Order, if any, and Liebherr's invoice, these General Terms constitute the entire agreement between the parties with respect to the purchase of the applicable Goods and Services (the "Agreement"). The parties are not relying upon any statements or representations not contained in the Agreement. In the event of any conflict among the documents making up the Agreement, the documents will be interpreted in the following order of precedence: (1) the warranty certificate(s) presented by Liebherr (if any); (2) these General Terms; and (3) the Order. For the avoidance of doubt, any Order placed telephonically for parts or service with respect to any Liebherr equipment shall be governed by these General Terms. Unless expressly stated otherwise on its face, no Order will be binding on Liebherr until Liebherr's acceptance, as evidenced by the signature of its authorized representative, its delivery of a written Order Acknowledgement, or its delivery of the Goods or performance of the Services. Any purchase order, acknowledgment or other form of correspondence sent by Buyer will be deemed an offer, which is only accepted when confirmed by Liebherr's written Order Acknowledgement. To the extent that any Buyer purchase order, acknowledgment or other form of correspondence is inconsistent with these General Terms or contains additional terms, these General Terms will control, and Liebherr expressly rejects any such additional or conflicting terms and conditions. Liebherr will not be bound by any agreement or modification of the terms hereof that is not in a writing signed by an authorized representative of Liebherr.
- 2. Payment Terms; Taxes.** Unless otherwise noted on the Order or Liebherr's invoice, Buyer's payment for the Goods and Services will be made to Liebherr, without deduction or setoff, within thirty (30) days after invoice date. Any amount not paid by the due date, will bear interest from the date due until paid at the rate of the lesser of 1.5% per month or the maximum amount permitted by law. If Buyer disputes an invoice, it must inform Liebherr within ten (10) business days after date of invoice, including the nature of the dispute. Buyer will pay the undisputed amount within the thirty (30) days after date of invoice. Buyer agrees to pay all expenses of collection, including reasonable attorneys' fees if amounts owing by Buyer are submitted for collection. Liebherr's charge for Goods and Services does not include any sales, use, excise or other taxes payable to any governmental authority with respect to the provision of Goods and Services. Buyer will pay the amount of such taxes and/or reimburse Liebherr promptly for the amount that Liebherr may be required to pay on behalf of Buyer. Any price quoted is based in part on the present cost to Liebherr of machines, attachments and components, which cost may be affected by changes in availability of materials, market conditions, excise taxes, customs duties or tariffs, or other factors beyond Liebherr's control. In the event of any such cost increase applicable to any machine, attachment or component included in the Goods and Services quoted by Liebherr, Liebherr reserves the right to increase the quoted price of the affected Goods and Services by an amount up to the increase in costs.
- 3. Drawings; Data; Instructions.** All illustrations, drawings, technical data sheets, specifications of weight, capacity and consumption data and other data concerning the Goods and Services are approximate unless otherwise expressly stated in the Order. All such materials and other documents of Liebherr, and all intellectual property rights therein, relating to the Order are and will remain the property of Liebherr. Without the prior written consent of Liebherr, which may be withheld, conditioned or delayed in its sole discretion, Buyer shall not use or disclose or make accessible to any third party any such materials or documents or the contents thereof, or any commercial information relating to this Agreement, including pricing for Goods and Services.
- 4. Delivery of Goods.** Liebherr will arrange delivery of Goods at Buyer's risk and expense as set forth in the Order or, if not specified, EXW Liebherr's facility (which may be located outside North America), Incoterms 2020. Liebherr will use commercially reasonable efforts to meet the delivery date; however, such delivery date is an estimate only and Liebherr will not be liable for any delay. Liebherr may make delivery in installments, which may be separately invoiced. If Buyer requests a delay in delivery, Buyer will pay all reasonable charges for packing, storing and insuring the Goods pending delivery. Liebherr's prices for Goods are ex works Liebherr's location, unpacked and uninsured. Liebherr may revise any prices on any unshipped Goods by giving Buyer written notice thereof. Buyer must notify Liebherr in writing prior to the date on which such Goods are shipped if Buyer is unwilling to accept the revised price(s) or Buyer will be deemed to have agreed to such revision. If Buyer does so notify Liebherr, Liebherr may perform the

contract at the original Order price or cancel the remaining portion of the Order.

5. **Insurance.** Except as otherwise set forth in the Agreement, once the Goods are shipped, Buyer assumes and shall bear all risk of loss, destruction or damage to the Goods, and Buyer shall be responsible for obtaining and maintaining insurance against such loss in an amount sufficient to cover the entire purchase price of the Goods until the purchase price has been paid in full. Prior to shipment of the Goods, if the purchase price has not been paid in full, Buyer shall furnish to Liebherr a certificate of insurance evidencing such coverage and naming Liebherr as an additional insured. Such policy shall be primary and shall provide that the insurance may not be canceled or materially altered without thirty (30) days' advance written notice to Liebherr. In the event of any failure of Buyer to furnish and maintain insurance required hereunder, Liebherr at its option and without waiving the default of Buyer, shall have the right to obtain such insurance for, and in the name of, Buyer. In such event Buyer shall pay the cost thereof upon demand and shall furnish all information required by the insurance carrier.
6. **Acceptance of Goods.** Buyer will inspect the Goods immediately upon receipt and will have ten (10) days thereafter to give written notice to Liebherr of any claim that the Goods are of insufficient quantity, do not conform to the agreed upon terms and/or that they contain material defects. If Buyer fails to give such notice, Buyer will be deemed to have accepted the Goods as conforming to the Agreement. Buyer waives any rights Buyer may have otherwise had after the expiration of such ten (10) day period to revoke acceptance or claim breach of warranty with respect to any material defects that could have been discovered with reasonable diligence upon such inspection.
7. **Cancellation of Orders; Returned Goods.** In addition to any other rights that Liebherr may have under applicable law or other agreements with Buyer, Liebherr may at any time alter or suspend credit or refuse to ship Goods or cancel unfilled Orders when, in Liebherr's opinion, the financial condition of Buyer or the status of Buyer's account warrants such action. No Order may be reduced or cancelled without prior written consent by Liebherr, in Liebherr's sole discretion. Any returned parts will be subject to inspection and approval for restocking by Liebherr. Liebherr is not obligated to accept or provide Buyer with any credit for parts that do not pass inspection or that are returned to a facility other than Liebherr's designated facility or more than thirty (30) days after initial delivery to Buyer. Buyer will pay a twenty percent (20%) restocking fee on all returned parts. If Liebherr determines that a returned part needs to be remanufactured in order to be resold, Buyer will be liable for the remanufacturing costs. Consumables, including, but not limited to filters and wire ropes, cannot be returned.
8. **Services.** Except as expressly set forth in the Agreement, Liebherr is not obligated to provide any installation, maintenance, repair, or other assistance in connection with this Agreement or the Goods. In providing any Services pursuant to this Agreement, Liebherr's technician shall be entitled to rely on Buyer's instructions, guidance, and directions, and the parties agree such reliance is reasonable. Except as set forth in the Agreement, for Services Liebherr shall charge its then current hourly rates and prices for the material used in the performance of such Services; the time spent for the purpose of travelling to and from the work site as well as the waiting time spent at the work site shall constitute working time. For overtime, night work and work on Sundays or public holidays,

Liebherr's then current surcharges shall apply. Travel expenses as well as out-of-pocket expenses shall be charged and invoiced separately. If Liebherr has agreed to provide Services, Buyer shall assist Liebherr in the performance of such Services by providing (at its sole expense and at such times and places as Liebherr may require) such number and types of auxiliary personnel, equipment, material and any other type of goods or support (e.g., winches, rails, electricity, etc.) as may be necessary to perform the Services. The above undertaking of Buyer applies irrespective of whether or not the Services have been included in the contract price for a delivery of goods or a lump sum has been agreed for the respective contract. Any on-site infrastructure necessary for the performance of the services (e.g., foundations, energy supply etc.) shall be completed prior to the arrival of Liebherr's personnel at the work site. Furthermore, it shall be Buyer's sole responsibility to effect and maintain such adequate security measures on the work site as may be necessary to properly protect any personnel and equipment. Liebherr assumes no liability whatsoever with respect to the acts or omissions of any auxiliary personnel assigned to it for the performance of its services or for any damages to or damages caused by any equipment, material and other goods put at Liebherr's disposal by Buyer.

9. **Force Majeure.** Liebherr will not be liable for any delay in or impairment of performance resulting in whole or in part from fires, floods, avalanches, earthquakes, or other catastrophes; strikes, lockouts or labor disruptions; pandemic or epidemic; wars, riots, civil commotion, vandalism, terrorist acts, or embargo delays; government allocations or priorities; shortages, delays or failures of transportation equipment; shortages of fuel, labor or materials; severe weather conditions; any applicable governmental or judicial law, regulation, order or decree, or any other circumstance or cause beyond the reasonable control of Liebherr. In any such event, Liebherr may cancel unfilled Orders by giving written notice thereof, and, if no such notice is given, Liebherr's performance obligation will be suspended until such time as it can reasonably resume work.
10. **Security Interest.** Title to all Goods shall remain with Liebherr until the purchase price for such Goods has been paid in full. Buyer grants to Liebherr a security interest in the Goods and all Proceeds (as defined in the Uniform Commercial Code), which security interest will survive until payment in full for the Goods. Buyer authorizes Liebherr to execute and file financing statements covering the Goods. Buyer will notify Liebherr in writing within thirty (30) days of any change of Buyer's name or state of organization and take such other action as Liebherr deems necessary to protect its security interest. Until the purchase price has been paid in full, Buyer shall keep the Goods free of all liens, taxes, encumbrances and seizure or levy, shall not use the same illegally, or damage, abuse, misuse the Goods, sell, loan, or otherwise transfer possession of the Goods without the written permission of Liebherr. The Goods are held by Buyer at its risk and expense, with no abatement in any obligation on Buyer's part in the event of loss or damage.
11. **Warranty.**
  - (a) For Goods Orders, except as may be set forth in the warranty certificate (if any) presented with the applicable Order, Liebherr warrants all new Liebherr Goods to be free from defects in material and workmanship for a period of six (6) months after the date of shipment. Buyer's sole remedy under this warranty will be the repair or replacement of any part

acknowledged by Liebherr to be defective within the warranty period, at Liebherr's expense. Unless otherwise determined by Liebherr, repairs to or replacement of defective Goods will be made by Liebherr. If Liebherr determines to ship Buyer a part for replacement by Buyer, Buyer must have the defective part returned to Liebherr within fifteen (15) days after Liebherr ships the replacement part to Buyer, or else Buyer will be liable to pay Liebherr's then-current list price for the replacement part. This warranty will not apply to (1) consumables, including, without limitation, filters and wire ropes, (2) normal maintenance services, or (3) any product that has been damaged in any accident by fire, flood, or any act of God, or abused or misused or that has been repaired or altered by anyone other than Liebherr. All used Goods are sold AS-IS and Liebherr makes no representations or warranties as to such Goods.

- (b) For Service Orders, Liebherr warrants that all services will be performed in a workmanlike manner. Any claim for breach of this warranty must be made within six (6) months after the date of performance of the services. Buyer's sole remedy in the event of a breach of this warranty will be re-performance of the services by Liebherr at Liebherr's expense.
- (c) THE WARRANTIES IN THIS SECTION 11 ARE THE ONLY WARRANTIES APPLICABLE TO ANY GOODS AND SERVICES AND ARE EXPRESSLY IN LIEU OF ANY WARRANTIES OR CONDITIONS OTHERWISE IMPLIED BY LAW (INCLUDING ANY WARRANTIES OTHERWISE IMPLIED BY LAW BY THE MANUFACTURER OF THE GOODS OR ITS COMPONENT SUPPLIERS), INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES STATED HEREIN ARE THE ONLY REMEDIES AVAILABLE.
- (d) All information, including, without limitation, performance estimates, provided by Seller or the manufacturer with regard to the Goods, whether provided as a statement of the Good's specifications or capabilities or as a specific estimate with regard to Buyer's operations, is based upon expected performance under normal operating conditions, including, without limitation, the use of an experienced operator and conditions that conform to the specifications provided by Buyer, and such information is provided without guarantee or warranty of any kind. Neither Seller nor the manufacturer shall have any liability for performance estimates or estimates of wear rates of any parts.

12. **Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THE AGREEMENT THAT MAY BE CONSTRUED TO THE CONTRARY (a) IN NO EVENT WILL LIEBHERR, THE MANUFACTURER OF THE GOODS, ITS COMPONENT SUPPLIERS, NOR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, OR AGENTS (THE "LIEBHERR PARTIES"), BE LIABLE FOR ANY DELAY, WORK STOPPAGE, LOSS OF USE OF MACHINERY, LOSS OF TIME, INCONVENIENCE, LOSS OF PROFITS, OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM, ATTRIBUTABLE TO, OR BASED ON DEFECTS IN THE GOODS AND SERVICES, NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR OTHER TORT, WARRANTY, CONTRACT, INDEMNITY, BREACH OF ANY PROMISE TO REPAIR OR REPLACE THAT MAY BE CONTAINED HEREIN, STRICT LIABILITY OR OTHERWISE, AND (b) THE MAXIMUM AGGREGATE LIABILITY, IF ANY, OF THE LIEBHERR PARTIES FOR ALL DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION ALL

CONTRACT DAMAGES, WHETHER RESULTING FROM, ATTRIBUTABLE TO, OR BASED ON DEFECTS IN THE GOODS AND SERVICES, NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR OTHER TORT, WARRANTY, CONTRACT, INDEMNITY, BREACH OF ANY PROMISE TO REPAIR OR REPLACE THAT MAY BE CONTAINED HEREIN, STRICT LIABILITY OR OTHERWISE WITH RESPECT TO ANY GOODS AND SERVICES, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PARTICULAR DEFECTIVE GOODS AND SERVICES.

13. **Patent and Copyright Indemnity.** Liebherr shall defend, at its own expense, any claim or suit brought by a third party against Buyer based upon a claim of infringement of a United States patent or copyright resulting from the sale or use of the Goods and shall pay all costs, settlements or damages finally awarded as a result of such claim or suit. If such a suit is brought by a third party against Buyer based upon a claim of infringement of a United States patent or copyright resulting from the sale or use of any Goods, Buyer will immediately notify Liebherr of any such claim or suit; allow Liebherr and its affiliates exclusive control over the defense and/or settlement of any such claim or suit, and cooperate with Liebherr and its affiliates in the defense and/or settlement of any such claim or suit. In the event a final judgment is obtained against Buyer's use of any Goods, Liebherr and its affiliates may, at their option and expense, obtain the right to continued use, substitute substantially equivalent noninfringing goods, or take back any infringing Goods in Buyer's possession and refund the purchase price less a reasonable charge for use. Neither Liebherr nor its affiliates will have any liability or obligation to Buyer for any settlement or compromise of any suit or claim made without Liebherr's express written consent or for any infringement claim or suit to the extent based upon the use of the Goods in connection with or in combination with any equipment, devices or software not supplied by Liebherr or its affiliates, or use of the Goods in a manner other than as specified in Liebherr's or its affiliates' operations manual. THE FOREGOING STATES LIEBHERR'S AND ITS AFFILIATES' ENTIRE LIABILITY FOR PATENT AND COPYRIGHT INFRINGEMENT CLAIMS BASED UPON THE SALE OR USE OF THE GOODS.
14. **Resale.** Buyer represents and warrants that it is purchasing the Goods for its own use. Buyer shall not resell the Goods as "new". In addition, until Buyer has paid in full the purchase price and other charges due to Liebherr hereunder, Buyer shall have the right to resell the Goods, following completion of its use thereof, in the ordinary course of business only with Liebherr's prior written consent to such resale. Resale with Liebherr's consent shall be on a cash basis and, if not on a cash basis, shall be only on such terms and conditions as have been approved in advance by Liebherr in writing. Any and all cash proceeds of resale shall be fully accounted for by Buyer and promptly paid to Liebherr to be applied to the payment of Buyer's indebtedness hereby secured. Buyer shall deliver to Liebherr all non-cash proceeds of resale including the original executed copies of any sales contract between Buyer and its customer covering the goods, any chattel paper arising there from, any notes from Buyer's customer, and any and all other documents involved in the resale. Buyer shall execute and deliver to Liebherr such additional documentation regarding such non-cash proceeds as Liebherr, in its sole discretion, deems appropriate, including without limitation assignments of such sales contracts other chattel paper, notes, and security documents. Buyer acknowledges and agrees that Liebherr's consent to any resale of Goods by Buyer shall not create a dealership or any similar arrangement between Liebherr and Buyer with respect to any Liebherr products or services. This Section shall not apply to any

Goods with respect to which Buyer and Liebherr have executed a separate agreement specifically authorizing Buyer to resell or distribute.

15. **Nonsolicitation.** During and for a period of two (2) years after the performance of any services by Liebherr, Buyer will not, either directly or indirectly, on its own behalf or in the service of or on behalf of others, divert, solicit or hire away, or attempt to divert, solicit or hire away, any person employed or furnished by Liebherr, whether or not such employment is pursuant to a written agreement, is for a determined period or is at will.

16. **Miscellaneous.**

(a) The Agreement will be binding upon and inure to the benefit of the parties thereto and their respective successors and assigns. Buyer may not assign its rights under the Agreement without Liebherr's prior written consent, in its sole discretion.

(b) The Agreement will be governed by the laws of the Commonwealth of Virginia, without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods, and the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Vienna Protocol, will not apply.

(c) Except as provided in clauses (i) and (ii) below, with respect to any dispute, claim or controversy arising under, out of, in connection with or relating to the Agreement or the Goods or Services provided, or any course of conduct, course of dealing, statements (oral or written), or actions of Liebherr or Buyer relating to the Agreement, or the Goods or Services, Buyer agrees that any action at law, suit in equity or other judicial proceeding for the enforcement of this Agreement or any provision hereof shall be instituted only in the United States federal or state courts located within the Commonwealth of Virginia, provided that (a) Liebherr at its option may elect to sue Buyer at its principal place of business or in any jurisdiction in which the Goods or other assets of Buyer may be found, and (b) in the event an action is brought by a third party against a party hereto with regard to a claim as to which such party hereto may be entitled to indemnification under this Agreement, such party may, at its election, bring a third party action in the forum in which the original action is pending for indemnity against the indemnitor notwithstanding anything to the contrary in this Agreement.

(d) TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE, CLAIM OR CONTROVERSY BASED ON THE AGREEMENT OR THE GOODS OR SERVICES.

(e) In the event of any suit, action or proceeding of the nature referred to in the Agreement, the prevailing party will be entitled to its reasonable attorney fees, costs, and expenses incurred in such dispute, including any appeal thereof.

(f) If any provision of the Agreement conflicts with any statute or rule of law of any jurisdiction wherein it may be sought to be enforced, then such provision will be deemed null and void to the extent that it may conflict therewith, but without invalidating the remaining provisions of the Agreement.

(g) No modification of the Agreement will be binding upon Liebherr unless it is in writing, is signed by an authorized representative of Liebherr; and refers specifically to the Agreement and the portion(s) of such agreement it is intended to modify. Buyer authorizes Liebherr to insert serial numbers and/or model numbers into the Order to identify the Goods sold. Liebherr may correct errors therein.

(h) The following provisions of the Agreement will survive its termination for any reason: Sections 1 - 3, and 6 through 16.

(i) The parties hereto agree that the Agreement shall inure only to the benefit of the parties hereto and to no third parties except the manufacturer(s) of any components of the Goods.

(j) Unless otherwise specified herein, all notices, requests and other communications to any party shall be in writing (including facsimile transmissions and similar writings) and shall be given to such party at its address, facsimile number or email address set forth in the Agreement or such other address, facsimile number or email address as such party may hereafter specify for that purpose by notice to the other party. Each such notice, request or other communication shall be effective (i) if given by facsimile or email, when such facsimile or email is transmitted and confirmation of receipt obtained from the recipient, (ii) if given by mail, five days after such communication is deposited in the mails by certified mail, return receipt requested, first class postage prepaid, or (iii) if given by any other means, when delivered at the address specified in this Section.

(k) No delay or omission to exercise any right or remedy accruing to Liebherr upon any breach or default of Buyer shall impair any such right or remedy or be construed to be a waiver of any such breach or default; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

(l) Buyer shall not use the name, logo, or other marks of Liebherr or any of its affiliates, or any abbreviation thereof in any manner, including, but not limited to, advertising, trade display, or public statement, or for any commercial purpose without the prior written consent of Liebherr, which consent may be withheld in Liebherr's sole discretion for any or no reason.

(m) Liebherr operates in accordance with its Code of Conduct, which may be found at <https://www.liebherr.com/en/usa/about-liebherr/company-profile/compliance/compliance.html>. To the extent that Buyer requires its vendors to comply with any policies, rules or codes of conduct, Buyer acknowledges and agrees that Liebherr's Code of Conduct satisfies such requirement.

(n) Liebherr equipment incorporates technology that records, analyzes and transmits data regarding the equipment, including, without limitation, its use and activity. Liebherr and its affiliates may collect and utilize such data to provide services to Buyer, to monitor and support the equipment, and to support Liebherr's and its affiliates' product improvement and development efforts. Buyer expressly agrees that Liebherr and its affiliates may use, store, manipulate and/or aggregate

such data as Liebherr and its affiliates may elect, provided that neither Liebherr nor any of its affiliates discloses such data to third parties in a manner that would allow a third party to identify Buyer.

- (o) WARNING: The Goods and Services may expose Buyer personnel to chemicals, such as those found in lead and lead products, that are known to the State of California to cause cancer and/or birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- (p) WARNING: Breathing diesel engine exhaust may expose Buyer personnel to chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm. Always start and operate the engine in a well-ventilated area. If in an enclosed area, vent the exhaust to the outside. Do not modify or tamper with the exhaust system. Do not idle the

engine except as necessary. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

- (q) The Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. In addition, the Agreement may be executed through the use of counterpart signature pages. The signature of any party on any counterpart agreement or signature page shall be deemed to be a signature to, and may be appended to, any other counterpart. The signature of an officer of Liebherr is required for final acceptance of the Agreement by Liebherr. The Agreement may be executed and delivered by exchange of electronic copies showing the signatures of Buyer and Liebherr and those signatures need not be affixed to the same copy. Electronic copies showing the signatures of Buyer and Liebherr will constitute original, signed copies of the same Agreement requiring no further execution.

**[End of General Terms and Conditions of Sale and Service]**