

# LIEBHERR GENERAL SALES TERMS AND CONDITIONS

All deliveries made and services carried out by Liebherr Sales Klang Sdn Bhd (Company No. 589287-A), (hereinafter referred to as "LIEBHERR") as well as all payments to be made to LIEBHERR in relation thereto shall be exclusively governed by the following terms and conditions of sale. LIEBHERR does not accept – and herewith explicitly rejects – any conflicting terms in any purchase order or other document submitted by the CLIENT. Any deviation made or requested by the CLIENT from any offer made by LIEBHERR shall only be binding upon LIEBHERR if (and only to the extent) such deviation has been specifically accepted by LIEBHERR in writing.

## 1. PRICE AND PAYMENT TERMS

1.1 Except as may be otherwise agreed in writing, all prices shall be "Ex works" supplying facilities of LIEBHERR ("EXW" / Incoterms 2010), excluding Goods & Service Tax (or similar taxes, dues and duties) and packaging.

With respect to services (assembly, erection, repairs and similar services), LIEBHERR shall charge its then current hourly rates and prices for the goods used in the provision 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 constitute working time. For overtime, night work and work on Sundays or public holidays, the then current LIEBHERR surcharges shall apply. Travel expenses as well as the out-of-pocket expenses then charged by LIEBHERR shall apply and be invoiced separately.

1.2 Payments to LIEBHERR shall be made without offset or deduction (and free from any charges, fees and similar) immediately on receipt of invoice.

1.3 If the applicable payment date and/or payment period is not complied with by CLIENT, LIEBHERR shall be authorized to charge and invoice CLIENT – without need of any particular notification to this effect – with an annual finance charge of 8% (eight percent), of the past due balances, together with all other costs (including reasonable attorneys' fees) incurred by LIEBHERR as a result of or in relation to the non-compliance of CLIENT with payment terms. The above compensation for finance charges and related costs is not in lieu of any other remedy that LIEBHERR may have pursuant hereto, under any other agreements with CLIENT and/or at law.

## 2. DELIVERIES; DUTY TO COOPERATE

2.1 The agreed periods or dates of delivery of the goods or services shall be automatically extended for such period of time as LIEBHERR is prevented from or delayed in complying with its respective obligations by causes outside of LIEBHERR's control, including, without limitation, any act of God, accident, fire, earthquake, flood, explosion, strike, act of a public enemy, war, rebellion, insurrection, sabotage, transportation delay, shortage of raw material, energy or machinery, executive, judicial or administrative act, regulation order or decree of any government (collectively "Events of Force Majeure"). Any such Event of Force Majeure shall also automatically suspend, for its respective duration, the legal consequences of any default situation for which LIEBHERR is to be held responsible. Upon occurrence of any such Event of Force Majeure LIEBHERR may cancel unfulfilled orders in full or in part by giving written notice thereof. Should LIEBHERR cancel such order in full or in part in accordance with the above, it shall forthwith refund CLIENT any such amount of advance payments as is attributable to the cancelled part of the order and CLIENT shall not be entitled to any other compensation and/or remedy with respect to the so cancelled order (or part thereof).

2.2 LIEBHERR reserves the right to make delivery in installments.

2.3 The compliance of LIEBHERR with the agreed periods or dates of delivery is subject to the CLIENT's compliance with all of its contractual obligations.

2.4 If LIEBHERR has agreed to provide services as part of its obligations, the CLIENT shall assist LIEBHERR in the performance of such services by providing (at its sole expense and at such time and place as LIEBHERR may request) such number and types of auxiliary personnel, equipment 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 CLIENT applies irrespective of whether or not the erection and assembly of Goods have been included in the contract price or a lump sum has been agreed in compensation for the respective contract. Any on-site infrastructure necessary for the provision of services (e.g. foundations, energy supply etc.) shall be completed prior to the arrival of the LIEBHERR personnel at the work site. Furthermore, it shall be the CLIENT's sole responsibility to effect and maintain such adequate security measures on the work site as may be necessary to properly protect personnel and equipment. LIEBHERR assumes no liability whatsoever with respect to the acts or omissions of any auxiliary personnel assigned to it for the purpose of the performance of its services or for any damages to or damages caused by the equipment and any other goods put at LIEBHERR's disposal by the CLIENT.

## 3. TRANSFER OF RISK

Except as may be otherwise agreed in writing, the risk of loss to the goods in transit shall be transferred to CLIENT "Ex Works" supplying facilities of LIEBHERR ("EXW" – Incoterms 2010). If LIEBHERR has undertaken through written agreement to this effect to ship the goods to CLIENT, the risk of loss to the goods in transit shall be transferred to CLIENT upon their delivery to the first carrier.

## 4. RETENTION OF TITLE

4.1 LIEBHERR reserves full title in and property to all goods until such time as CLIENT has fully paid all and any amount owed to LIEBHERR as a result of or in relation to the respective order.

4.2 If the retention of title as set forth in the provisions of Section 4.1 herein is not enforceable in accordance with the laws of the country where the goods are located, then CLIENT and LIEBHERR will enter into a corresponding security instrument in the form and of the substance permissible in that country. CLIENT will execute (and/or support LIEBHERR in the execution or any other action necessary for or in relation to the establishment) upon request of LIEBHERR any documents necessary to perfect such security instrument.

4.3 If the laws of country where the goods are located permit agreements for the retention of title (or other similar security instruments) that provide a broader form of security to the benefit of LIEBHERR (such as, without limitation, the right of the parties to generally assign the proceeds of a possible re-sale of the goods by the CLIENT to LIEBHERR), then CLIENT shall promptly inform LIEBHERR thereof and shall execute upon request by LIEBHERR any documents necessary to perfect such broader form of security to the benefit of LIEBHERR.

4.4 CLIENT shall forthwith notify LIEBHERR of any seizure, confiscation or the imposition of any other form of rights on the goods to the benefit of third parties (whether by contract or operation of law) until CLIENT has performed in full all of its obligations hereunder.

## 5. DEFAULT, DEFECTS, WARRANTY, INDEMNIFICATION

The following provisions set forth the sole and exclusive remedies available to the CLIENT under this Agreement or otherwise in connection with the sale of the goods to which these terms apply:

5.1 If LIEBHERR exceeds the contractually agreed date or period of delivery or any other term (including any extension thereof) that may apply in accordance with the provisions of Section 2.1 hereof) by more than 8 (eight) weeks, CLIENT shall be entitled to cancel the order, always provided LIEBHERR has not remedied such default within 14 (fourteen) calendar days after having received a corresponding written request through registered mail from CLIENT, and, notwithstanding anything to the contrary provided or at law, LIEBHERR shall in no event be liable for any and all damages that CLIENT may incur as a result of or in relation to such cancellation.

5.2 If CLIENT suffers damages as a direct result of an intentional default of LIEBHERR to deliver the goods or perform the services when due, CLIENT shall be entitled to claim and receive from LIEBHERR, as liquidated damages, a financial compensation at the rate of 0.5% (zero point five percent) of the price of the goods or services in delay per full week of delay, but in no event more than 5% (five percent) of the price of respective goods or services. The above remedy shall be in lieu of all and any other remedy that CLIENT may have pursuant hereto, any other contract or at law. In no event shall LIEBHERR be liable for any delay in delivery or performance caused by negligence.

5.3 Immediately upon the delivery of goods and/or the completion of services, CLIENT shall thoroughly inspect the goods or services. Any damage, defect or other non-compliance with order that CLIENT notices as a result of such inspection shall be immediately, but in no event later than within 48 (forty-eight) hours after delivery of the goods and/or completion of services, be notified to LIEBHERR. Any damages, defects or other non-compliances with order, that CLIENT could not reasonably have detected in the course of such thorough inspection and that become apparent thereafter, shall be notified to LIEBHERR immediately upon their detection, but in no event later than within 48 (forty-eight) hours after such detection. In its notification, CLIENT shall specify the damage, defect or other non-compliance with order detected, the number and date of the respective delivery documents and/or invoice and the circumstances under which such damage, defect or other non-compliance with order became apparent. Should CLIENT fail to comply with any of the above requirements, then the respective goods or services shall be deemed accepted. CLIENT shall compensate LIEBHERR for the costs incurred as a result of or in relation to any non-justified claim and/or any claim that does not comply with the above requirements.

5.4 LIEBHERR warrants the goods and services to be free from defects in material and workmanship at the time of shipment or (to the extent services are concerned) the completion of their performance. Without limiting the provisions of Section 5.3 above, the warranty period for goods shall be of either 12 (twelve) months after delivery or of 1000 services hours, whichever occurs first, and the warranty period for services shall be of 3 (three) months following the completion of their performance. With respect to spare parts, the warranty period shall be of either 6 (six) months after delivery or of 500 services hours, whichever occurs first. The burden of proof with respect to any defects that CLIENT may claim as being covered by this warranty shall rest upon CLIENT.

5.5 LIEBHERR's obligation and Buyer's sole remedy under the warranty extended in the provisions of Section 5.4 above is limited to either the repair or replacement, at LIEBHERR's option and expense, of any good or service (or part thereof) found to be defective by LIEBHERR (for the purpose of the Sections 5.5 and 5.6 hereinafter collectively referred to as "Remedies"). If LIEBHERR repeatedly fails in its performance of the Remedies and CLIENT so requests, LIEBHERR undertakes at its option to either grant CLIENT a reasonable price reduction or, provided the non-remedied defect is of such nature and substance, that CLIENT is materially impaired in the use of the good or service, to grant CLIENT the right

to cancel the respective contract. The Remedies shall be the only remedies available to CLIENT. Title to the goods or parts thereof replaced by LIEBHERR in the course of the performance of the Remedies shall pass to LIEBHERR. The costs of corrective actions performed by CLIENT or third parties mandated by CLIENT shall not be reimbursed by LIEBHERR.

5.6 The performance of the Remedies shall in no event extend the original warranty period.

5.7 Without limiting any other obligation of accountability that CLIENT may have pursuant hereto or otherwise, CLIENT shall account for (and prove) as part of any warranty claim (but only to the extent that such information may of relevance with respect to a given defect) the following:

5.7.1 The exclusive use of original LIEBHERR-spare parts;

5.7.2 The receipt of a written approval from LIEBHERR prior to the use or operation of any attachment used in connection with the goods;

5.7.3 The performance of modification or repair work on the goods exclusively by authorized personnel; and

5.7.4 The performance of services on the goods exclusively by LIEBHERR-service technicians in accordance to the applicable LIEBHERR service manuals.

5.7.5 Furthermore, but without limitation, CLIENT shall send any replaced parts to the nearest LIEBHERR-service office/agency for examination.

Should CLIENT fail to comply with any of the above obligations, then CLIENT shall be deemed to have waived its rights under the above warranty and any warranty claim of CLIENT shall be excluded.

5.8 The above warranty shall not apply to any:

5.8.1 Used goods;

5.8.2 Normal wear and tear of goods (including parts thereof);

5.8.3 Normal maintenance services as well as to the parts, fuel and auxiliary materials used in the performance thereof;

5.8.4 Damages caused to the goods (including parts thereof) as a result of or in relation to improper operation, abuse or misuse;

5.8.5 Damages caused to the goods (including parts thereof) as a result of or in relation to the use of improper fuel or other means used for the proper functioning of the goods (such as, without limitation, oil);

5.8.6 Consequences of the use of apparatus or modifications to the goods (including parts thereof) that have not been approved by LIEBHERR;

5.8.7 Damages to or destruction of the goods as a result of or in relation to acts of third parties or acts of God;

5.8.8 Damages resulting out of or in relation to the operation of the goods prior to the completion of their repair as well as operation of the goods despite the occurrence of a defect;

5.8.9 Damages resulting out of or in relation to improper repair of the goods (including parts thereof) by parties other than LIEBHERR;

5.8.10 Infringement of any foreign copyright, trademark or patents.

5.8.11 Non-compliance of the goods (including parts thereof) or services with any foreign regulations or laws as well as the lack of customer specific modifications that have not been explicitly agreed to by LIEBHERR in writing;

5.8.12 Deviations of the goods (including parts thereof) or services from the agreed measures, weights or quality, which are usually tolerated in trade or by common standards;

5.8.13 Non-LIEBHERR furnished goods (including parts thereof).

5.9 In order to give LIEBHERR the possibility to correct defects or to replace defective parts, the CLIENT shall grant LIEBHERR a remedy period of not less than 14 (fourteen) calendar days from the receipt of a corresponding written request from CLIENT which shall be sent to LIEBHERR by means of a registered letter; such remedy period shall be reasonably extended in case the operating conditions of LIEBHERR so require. Should LIEBHERR elect to perform the necessary corrective actions at the facilities of CLIENT, then the latter shall grant LIEBHERR reasonable and safe access to the respective goods (or parts thereof).

5.10 Should the goods to be corrected be located in a place other than the place of performance, then LIEBHERR shall bear the cost of the corrective action only to such extent as would have been caused if the corrective actions would have been performed at the place of performance.

5.11 Should the goods (including any parts thereof) actually infringe copyrights, trademarks or patents granted in the country of domicile of LIEBHERR, and should, furthermore, such infringement prevent CLIENT from using the goods (including any part thereof) or substantially impair its possibilities to use the goods (including any part thereof), then LIEBHERR shall, in its discretion and at its expense, either procure for CLIENT the right to use the goods (including any parts thereof) free of any liability to third parties that may be resulting out of the given infringement or replace the good or part found to be infringing, within a reasonable period of time, by a non-infringing good (or part). The foregoing states the entire liability of LIEBHERR with respect to infringement of copyrights, trademarks or patents by goods or parts thereof. In no event shall LIEBHERR be liable for any infringement based upon the manufacture, use or sale of the goods or any parts thereof that result out of or in relation to the combination of such goods or parts with apparatus or things not furnished under the order.

5.12 LIEBHERR extends no representations or guarantee whatsoever with respect to the goods (including any parts thereof) or services, unless such representations and guarantees have been specifically accepted by LIEBHERR in writing. Should such representations and guarantees have been extended by LIEBHERR in accordance herewith and should LIEBHERR breach any such representation or guarantee, then the provisions of this Article 5 (in particular the provisions of Sections 5.3 to 5.12) shall apply accordingly.

5.13 In no event shall LIEBHERR be liable to the CLIENT for any misuse, abuse or any other improper use of the goods (including any parts thereof) or for any modification of the goods (including parts thereof) that has not received LIEBHERR's explicit prior written approval. CLIENT shall defend, fully indemnify and hold LIEBHERR, its affiliates, distributors or agents, and their respective officers, directors and employees, harmless from all and any damage, costs (including attorney's fees) and liabilities that the latter may incur as a result of or in relation to such misuse, abuse or any other improper use of the goods (including any parts thereof) or such non-authorized modification of the goods (including any parts thereof).

5.14 Any remedies or rights of CLIENT (whether under contract or at law) other than those specified herein above are herewith excluded. In particular, but without limitation, LIEBHERR shall in no event be liable for CLIENT's loss of profits, goodwill, use of the goods, time, inconvenience or other consequential or incidental damages.

5.15 If LIEBHERR has designed, developed or manufactured the goods on the basis of or considering construction data, drawings, models or other recommendations of the CLIENT, then LIEBHERR shall in no event be held liable for the correctness, fitness for purpose or other aspects that may derive from such data or recommendations of CLIENT, and undertakes no obligation whatsoever other than to build the goods (including parts thereof) in compliance with the with the data or recommendations furnished by the CLIENT.

5.16 The CLIENT shall defend, fully indemnify and hold LIEBHERR, its affiliates, distributor's or agents, and their respective officers, directors and employees, harmless from all and any damage, costs (including attorney's fees) and liabilities that the latter may incur as a result of or in relation to any claim by a third party alleging that LIEBHERR, by, through or in relation to the use of drawings, samples, models, other data or recommendations of CLIENT, has infringed any copyright, trademark or patent.

## 6. PLACE OF PERFORMANCE, LAW APPLICABLE AND VENUE

6.1 To the extent not otherwise agreed in writing, the place of performance for any purchase order (including any services performed in relation to such purchase order) shall be at the main offices of LIEBHERR or, provided LIEBHERR performs only services as part of a given order, the place at which such services are to be performed.

6.2 Any dispute arising out of or in relation to a given order shall be governed by and construed according to the provisions of the English version of the UNCITRAL-Convention on the International Sale of Goods dated April 11th, 1980 (the "Convention"), as amended by the provisions of these general terms and conditions of sale. Should the Convention not apply to a given order, or should the provisions of the Convention not apply to certain aspects, then the material laws of Singapore (excluding its conflict of laws provisions) shall apply.

6.3 Except as otherwise provided herein below, all and any disputes arising out of or in relation to a given order, including, without limitation disputes on its conclusion, binding effect, amendment and termination, shall be exclusively resolved by one or more arbitrators in accordance with the International Arbitration Rules of the Zurich Chamber of Commerce. The place of arbitration shall be Zurich, Switzerland, and the arbitration language shall be, except the parties agreed otherwise in writing, the English language. Notwithstanding the above arbitration provision, LIEBHERR reserves the right to bring an action before the ordinary competent courts at the place where CLIENT's main offices are located or where CLIENT disposes of property or other tangible goods.

## 7. GENERAL CONDITIONS

7.1 CLIENT shall not directly or indirectly assign the order or any of its rights or obligations hereunder, without the prior written consent of LIEBHERR.

7.2 The CLIENT undertakes to effect and maintain, until such time as the retention of title and property to the benefit of LIEBHERR has ceased in accordance with the provisions of Article 4 hereof, a broad and comprehensive form of insurance coverage for the goods. Such insurance coverage shall be on an "all risk" basis (including, but not limited to, theft and break-down) and shall cover the goods for their full replacement value. Upon request of LIEBHERR, CLIENT shall provide LIEBHERR with such form and type of evidence with respect to the existence of such insurance coverage as LIEBHERR may request.

The CLIENT assigns, until such time as the retention of title and property to the benefit of LIEBHERR has ceased in accordance with the provisions of Article 4 hereof, its rights to indemnify under the above insurance coverage to LIEBHERR.

7.3 Any amendment, extension, limitation or other modification of the present General Terms and Conditions of Sale shall have no binding effect upon LIEBHERR, unless LIEBHERR has specifically accepted such amendment, extension, limitation or other modification in writing.