

## Liebherr-Australia Pty. Ltd. New Zealand Terms and Conditions of Sale



In these Terms:

**us, we, our** means Liebherr-Australia Pty Ltd ACN 007 970 452 and its related bodies corporate or associated entities.

**you, your** means the person purchasing *goods* from *us*.

**goods** means the equipment, parts or other material ordered by *you* from *us* from time to time and includes any goods described on the order form attached to these Terms.

*You and we agree that:*

- 1 only these Terms apply to all contracts of sale entered into by *us* with *you* unless otherwise agreed in writing. By placing an order with *us* or accepting delivery of *goods* from *us* *you* are deemed to have accepted these Terms;
- 2 any quotation given by *us* is an invitation to treat and *we* reserve the right to accept *your* order or not;
- 3 *you* cannot cancel an order or assign *your* interests under these Terms without *our* written consent. We may assign or transfer any of its rights or obligations under this contract. Each assignee or transferee will have the same rights against *you* under this contract as if named as *us*. Without limitation to the foregoing, We may at any time without your consent assign, transfer, mortgage, charge, grant a security interest over, declare a trust in respect of, or in any other way dispose of, all or any part of our rights (including rights to receive payment of money), interests, benefits, claims or title to the same under or in connection with this contract in connection with any sale of accounts receivable arising in connection with goods purchased by *you* under this contract to a financier of our choice. An assignment of rights only by *us* under this clause does not relieve *us* from any of its obligations or liabilities arising under this contract.
- 4 a sale of *goods* to *you* is not a sale by sample and any illustrations, drawings, specifications of weight, capacity and consumption data or other data provided by *us* concerning the *goods* ("documents") shall be considered approximate. All documents and intellectual property rights in relation to documents remain *our* property and *you* must not disclose the documents to any other person without *our* prior written consent;

- 5 *we* shall be at liberty to supply *goods* answering the description of the *goods* notwithstanding the fact that this contract shall be deemed to be a contract for the supply of specific goods and, without limiting the generality of the foregoing, *goods* sold in accordance with this contract may incorporate such structural, design and mechanical alterations or modifications as are from time to time made by *us*;
- 6 subject to the next paragraph, *we* make no representation, warranty or undertaking regarding the character, quality, condition, suitability or fitness of the *goods* and, to the extent permitted by law, all implied terms as to those matters are excluded;
- 7 on any *goods*, *we* give *our* standard product warranty (the terms of which *you* acknowledge receipt) current at the date of delivery and, except as otherwise expressly provided in writing by *us*, this is the only warranty applicable to the *goods*;
- 8 unless expressly prohibited by any applicable law, *we* shall not be liable (whether in contract, tort, under any statute or otherwise) 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), 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*. In any event, to the extent the law allows, *our* liability will be limited, at *our* option, to any one or more of the replacement and the repair, or the payment of the cost of replacement or repair of the *goods*. *We* shall not be liable for costs of replacement or repair or any loss or damage of any kind exceeding the amount that *you* have paid to *us* for the *goods*;
- 9 the price for the *goods* is that which applies when *you* are invoiced for the *goods*;
- 10 *we* may revise any prices specified on any unshipped *goods* by giving *you* written notice thereof. If *you* are unwilling to accept the revised price or prices, *you* must notify *us* in writing prior to the date on which such *goods* are shipped, otherwise *you* will be deemed to have

agreed to such revision. In the event *you* do notify *us*, *we* shall have the option to perform the contract at the original order prices or to cancel the contract. The prices specified herein do not include and *you* shall pay in addition thereto:

- (a) the cost of packing the *goods* and delivering the *goods* to *your* nominated address;
- (b) any sales, consumption, excise, goods and services, value-added or similar taxes or governmental charges now or hereafter imposed on the production, sale or shipment of the *goods* by *us*;

- 11 notwithstanding the preceding paragraph if the cost to *us* of the *goods* has increased or decreased as a result of alterations to the rate of exchange of the Australian dollar with any foreign currency or the imposition of or variations in customs duty or any taxes or duty of any country on or in respect of the *goods* *you* agree that the price of the *goods* shall be varied by the amount of such increase or decrease;
- 12 if *we* have agreed to install the *goods* *you* will pay the installation cost specified and, at *your* cost and expense, prepare *your* premises for installation of the *goods*;
- 13 unless otherwise provided by *us* in writing *you* must pay the price for the *goods*, and any applicable goods and service tax without any deduction, withholding or set-off;
- 14 if *you* do not pay on time, then *we* may charge *you* interest at *our* overdraft rate plus 2%;
- 15 unless otherwise expressly stated on the order form, the terms of delivery of the *goods* shall be FOB ex-*our* premises. *We* reserve the right to make delivery in instalments, and all such instalments shall be separately invoiced and paid for when due without regard to subsequent deliveries;
- 16 *we* may arrange shipment on *your* behalf at *your* cost and *we* may select the route and manner of shipment, but *we* shall not be liable for any damage sustained in transit. Risk in the *goods*, including loss or damage to the *goods* in transit, passes to *you* when the *goods* leave *our* premises. *You* are deemed to have accepted the *goods* at this point and must insure the *goods* for their full replacement value and, pending payment for the *goods*, hold the proceeds of that insurance on trust for *us*;
- 17 if the *goods* are so damaged in transit that it cannot be determined if they conformed to these Terms, it shall be presumed that they did so conform;
- 18 title to the *goods* passes to *you* when *you* pay for them and, if *you* pay by cheque, payment occurs when *we* are credited with the full amount of that cheque;
- 19 until title passes, *you* hold the *goods* as fiduciary and bailee, must store the *goods* separately from all other property, keep them in the same condition and must not sell or part with possession of the *goods* without *our* prior written consent. If *you* do sell the *goods* to a third party either in contravention of this clause or with *our* consent, *you* shall be deemed to have assigned all *your* rights against that third party and must hold the purchase price received from the third party on trust for *us*;

- 20 *you* acknowledge that these Terms create a security interest under the *Personal Property Securities Act 1999* (NZ). *You* consent to *us* effecting and maintaining a registration on the Personal Property Securities Register and agree to do anything which *we* reasonably request to enable *us* to exercise *our* rights in connection with the security interest.

- 21 without prejudice to any other rights *we* may have, if *you* breach these Terms, all amounts which *you* owe *us* become immediately payable, *we* may retain any deposit paid by *you* on account of the purchase price, *we* and *our* employees and agents may enter *your* premises to recover *goods* unpaid for and *we* will not be liable for any damage caused to *your* premises or property in retaking possession of the *goods* and *you* shall indemnify *us* against all costs and expenses incurred by *us* in retaking possession of the *goods*;

- 22 *we* may alter or suspend credit or refuse to ship *goods* or cancel unfulfilled orders when, in *our* opinion, *your* financial condition or account warrants such action.

- 23 *we* may terminate this contract immediately if *you* breach any part of these Terms or if *you* become insolvent;

- 24 if *you* comprise more than one person, these Terms bind *you* jointly and severally;

- 25 *you* may not amend or vary these Terms and these Terms prevail over any terms *you* seek to impose on the order for the *goods*. No course of prior dealings or usage of trade shall be used to supplement or explain these Terms. *We* may amend or replace these Terms at any time by notice to *you*;

- 26 these Terms will not be construed against *us* merely because *we* prepared them or rely on them;

these Terms set out the whole agreement between *you* and *us* relating to the *goods* and are governed by the laws of New Zealand. Both parties will submit to the non-exclusive jurisdiction of New Zealand courts for any proceedings arising out of these Terms