Reman Liebherr-Ettlingen GmbH

GENERAL TERMS AND CONDITIONS OF SALE

FB 1335

Any and all deliveries made or services performed by LIEBHERR as well as any and all payments to be made to LIEBHERR in relation thereto shall be exclusively governed by the following General 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.

1. PRICE AND PAYMENT TERMS

1.1 Unless otherwise agreed in writing, any and all prices shall be "Ex Works" main offices of LIEBHERR ("EXW" - Incoterms 2020), excluding value added tax (or similar taxes, dues or duties) and packaging.
With respect to services (in particular, but without limitation, assembly, repair, maintenance or similar 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.

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

1.3 If any applicable payment date or payment period is not complied with by the CLIENT, LIEBHERR shall be authorized to charge and invoice the CLIENT - without need of any particular notification to this effect - an annual finance charge of 8 %-points (eight percentage points) above the then current Main Refinancing Rate set by the European Central Bank, but in no event less than an annual finance charge of 10% (ten percent), of the past due balances, together with any and all other costs (including, without limitation, reasonable attorneys' fees) incurred by LIEBHERR as a result of or in relation to the CLIENT's non-compliance with applicable payment terms. The above compensation for finance charges and other costs shall be without prejudice to any other right or remedy that LIEBHERR may have pursuant hereto, under any other contract with the CLIENT or at law.

2. TIME OF DELIVERY OR PERFORMANCE, DUTY TO COOPERATE

2.1 The agreed periods or dates of delivery of the goods or performance of the services shall be automatically extended for such period of time as LIEBHERR is prevented from or delayed in complying with its respective obligations by any causes outside of LIEBHERR's control, including, without limitation, any act of God, accident, fire, earthquake, flood, explosion, strike, act of public enemy, war, rebellion, insurrection, sabotage, transportation delay, shortage of raw material, energy or machinery, executive, judicial or administrative act or regulation, order or decree of any government (hereinafter collectively referred to as "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 contracts in whole or in part by giving written notice thereof. Should LIEBHERR cancel any such contract in whole or in part in accordance with the above, it shall forthwith refund to the CLIENT any such amount of advance payments as is attributable to the cancelled part of the contract and the CLIENT shall not be entitled to any other compensation, right or remedy with respect to the so cancelled contract (or part thereof).

2.2 LIEBHERR reserves the right to deliver or perform in instalments.

2.3 The compliance of LIEBHERR with the agreed periods or dates of delivery or performance is subject to the CLIENT's compliance with any and 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 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 the CLIENT 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 the CLIENT'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 the CLIENT.

3. TRANSFER OF RISK

Unless otherwise agreed in writing, the risk of loss of or damage to the goods in transit shall be transferred to the CLIENT "Ex Works" main offices of LIEBHERR ("EXW" - Incoterms 2010). If LIEBHERR has undertaken, through written agreement to this effect, to ship the goods to the CLIENT, the risk of loss of or damage to the goods in transit shall be transferred to the CLIENT upon their delivery to the first carrier.

4. RETENTION OF TITLE

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

4.2 If the retention of title and property as set forth in Section 4.1 hereof is not enforceable in accordance with the applicable laws of the country where the goods are located, a corresponding mean of security in the form and of the substance enforceable in that country shall be deemed as agreed. The CLIENT will execute (or support LIEBHERR in the execution of) any documents and/or perform (or support LIEBHERR in the performance of) any other action necessary for or in relation to the establishment and maintenance of such security instrument.

4.3 The CLIENT hereby assigns to LIEBHERR any and all claims and rights resulting from the resale, the letting or leasing or any other transaction with respect to the delivered goods, irrespective of whether or not the delivered goods have been attached to or connected or processed with any other goods, and LIEBHERR hereby accepts such assignment. To the extent that the value of the assigned claims exceeds the secured debts by more than 20% (twenty percent), LIEBHERR shall release the assigned claims to the CLIENT upon request. The CLIENT shall be entitled to collect the claims and to assert its other rights in relation thereto only to the extent that the CLIENT meets its payment obligations towards LIEBHERR and/or is not insolvent.

5. DELAY, ACCEPTANCE, DEFECTS, WARRANTY, LIABILITY

The following provisions set forth the sole and exclusive remedies available to the CLIENT under the contract or otherwise in connection with the goods or services to which these General Terms and Conditions of Sale apply:

5.1 If LIEBHERR exceeds the contractually agreed periods or dates of delivery or performance or any other term (including, without limitation, any extension thereof that may apply in accordance with Section 2 hereof) by more than 8 (eight) weeks, the CLIENT shall be entitled to cancel the contract by giving a respective written notice by registered mail, always provided that LIEBHERR does not remedy such default within 14 (fourteen) calendar days; notwithstanding anything to the contrary in the contract or at law, LIEBHERR shall in no event be liable for any damages that the CLIENT may incur as a result of or in relation to such cancellation.

5.2 If the CLIENT suffers damage as a direct result of an intentional default of LIEBHERR to deliver the goods or perform the services when due, the CLIENT shall be entitled to claim and receive from LIEBHERR, as liquidated damages, a financial compensation in the amount 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 the respective goods or services. The above remedy shall be in lieu of any and all other rights or remedies that the CLIENT may have pursuant hereto, under 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 the goods or the completion of the services, the CLIENT shall thoroughly inspect the goods or services. Any damage, defect or other non-compliance with the contract that the CLIENT detects as a result of such thorough inspection shall be immediately, but in no event later than within 48 (forty-eight) hours after the delivery of the goods or completion of the services, notified to LIEBHERR. Any damage, defect or other non-compliance with the contract that could not reasonably have been detected by the CLIENT in the course of such thorough inspection and that becomes apparent thereafter, shall be notified to LIEBHERR immediately, but in no event later than within 48 (forty-eight) hours after its detection. In its notification, the CLIENT shall specify the damage, defect or other non-compliance with the contract 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 the contract became apparent. Should the CLIENT fail to comply with any of the above requirements, the respective goods or services shall be deemed as accepted by the CLIENT. The CLIENT shall compensate LIEBHERR for any and all costs incurred as a result of or in relation to any non-justified claim or any claim that does not comply with the above requirements.

5.4 LIEBHERR exclusively warrants the goods delivered or services performed 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 prejudice to Section 5.3 above, the warranty period for goods shall be either 12 (twelve) months from their delivery or 2000 operating hours, whichever occurs first, and the warranty period for services shall be 12 (twelve) months from the completion of their performance. With respect to spare parts, the warranty period shall be either 6 (six) months from the delivery or 1000 operating hours, whichever occurs first. The burden of proof with respect to any defects that the CLIENT claims as being covered by this warranty shall rest upon the CLIENT.

5.5 LIEBHERR's obligation and the CLIENT's sole remedy under the warranty extended in 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 Sections 5.5 and 5.6 hereinafter collectively referred to as "Remedies"). If LIEBHERR finally fails in its performance of the Remedies and the CLIENT so requests, LIEBHERR shall either grant the CLIENT a reasonable price reduction or, provided that the non-remedied defect is of such nature and substance that the CLIENT is materially impaired in its use of the respective good or service, grant the CLIENT the right to cancel the respective contract. The Remedies shall be the only remedies available to the 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 the CLIENT or third parties mandated by the CLIENT shall not be reimbursed by LIEBHERR.

5.6 The performance of the Remedies shall in no event extend the original warranty period set forth in Section 5.4 hereof.

5.7 Without prejudice to any other obligation to provide proof that the CLIENT may have pursuant hereto or otherwise, the CLIENT shall as part of any warranty claim send any replaced parts to the nearest LIEBHERR-office for examination and prove the following circumstances, to the extent such may be of relevance with respect to the causation of the claimed defect:
- 5.7.1 the exclusive use of original LIEBHERR-spare parts;
- 5.7.2 the receipt of a written approval by LIEBHERR prior to the use or operation of any attachments in connection with the goods;
- 5.7.3 the performance of modifications or repair work exclusively by authorized personnel; and
- 5.7.4 the performance of (maintenance) services by LIEBHERR-service technicians in accordance with the applicable LIEBHERR-service manuals.

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

5.8 The above warranty shall however not apply with respect to any:
- 5.8.1 used goods;
- 5.8.2 normal wear and tear of the goods (or parts thereof);
- 5.8.3 normal (maintenance) services as well as the parts, fuel and auxiliary materials used in the performance thereof;
- 5.8.4 consequences of any improper operation, abuse or misuse of the goods (or parts thereof) as well as physical damage to the goods (or parts thereof);
- 5.8.5 consequences of the use of any improper fuel or other means used for the functioning of the goods (such as, without limitation, oil);
- 5.8.6 consequences of the use of any attachments or modifications to the goods (or parts thereof) that have not been approved by LIEBHERR;
- 5.8.7 damage or destruction as a result of or in relation to the acts of any third parties or Events of Force Majeure;
- 5.8.8 damage or destruction as a result of or in relation to the operation of the goods (or parts thereof) prior to the completion of their repair and/or operation of the goods (or parts thereof) despite the occurrence of a defect;
- 5.8.9 damage or destruction as a result of or in relation to any improper repair or attempted repair by third parties other than LIEBHERR;
- 5.8.10 infringement of any foreign copyrights, trademarks or patents;
- 5.8.11 non-compliance of the goods (or parts thereof) or services with any foreign regulations or laws or any lack of customer specific modifications that have not been explicitly agreed to by LIEBHERR in writing;
- 5.8.12 deviations of the goods (or parts thereof) from the agreed measures, weights or quality, which are usually tolerated in trade or by common standards;
- 5.8.13 non-LIEBHERR furnished goods or services.

5.9 For the performance of the Remedies, the CLIENT shall grant LIEBHERR a remedy period of not less than 14 (fourteen) calendar days; such remedy period shall be reasonably extended if the operating conditions of LIEBHERR so require. If LIEBHERR elects to perform the Remedies at the facilities of the CLIENT, the latter shall grant LIEBHERR reasonable and safe access to the respective goods (or parts thereof).

5.10 If the defective goods are located in a place other than the place of performance, LIEBHERR shall bear the costs of any corrective actions only to such extent as they would have accrued if the corrective actions would have been performed at the place of performance.

5.11 If the goods (or parts thereof) actually infringe any copyrights, trademarks or patents granted in the country of domicile of LIEBHERR, and if, furthermore, such infringement prevents the CLIENT from using the respective goods or materially impairs its use of the respective goods, LIEBHERR shall, at its option and expense, either procure for the CLIENT the right to use the goods free from any liability to third parties that may result from the given infringement or replace the goods (or parts thereof) found to be infringing, within a reasonable period of time, by non-infringing goods (or parts). The provisions of Section 5.4 hereof shall apply accordingly. The foregoing states the entire liability of LIEBHERR with respect to the infringement of any copyrights, trademarks or patents by the goods (or parts thereof). In no event shall LIEBHERR be liable for any infringement based upon the manufacture, use, operation or sale of the goods (or parts thereof) that results from or in relation to a combination of such goods (or parts thereof) with any apparatus or things not furnished under the contract.

5.12 LIEBHERR extends no representations or guarantees whatsoever with respect to the goods or services, unless such representations or guarantees have been explicitly accepted by LIEBHERR in writing. Should such representations or guarantees have been extended by LIEBHERR in accordance herewith and should LIEBHERR breach any such representations or guarantees, then the provisions of this Section 5 (in particular, but without limitation, 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 other unusual or improper use of the goods (or parts thereof) or for any modification of the goods (or parts thereof) that has not received LIEBHERR's explicit prior written approval. The CLIENT shall defend, fully indemnify and hold LIEBHERR, its affiliates, distributors and agents, and their respective officers, directors and employees, harmless from any and all claims, suits, actions, liabilities, damages and costs (including without limitation attorney's fees) arising out of or in relation to any such misuse, abuse or other unusual or improper use of the goods (or parts thereof) or any such non-approved modification of the goods (or parts thereof).

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

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

5.16 The CLIENT shall defend, fully indemnify and hold LIEBHERR, its affiliates, distributors and agents, and their respective officers, directors and employees, harmless from any and all claims, suits, actions, liabilities, damages and costs (including without limitation attorney's fees) arising out of or in relation to LIEBHERR's use of any drawings, samples, models or other data or recommendations of the CLIENT.

6. PLACE OF PERFORMANCE, GOVERNING LAW AND LEGAL VENUE

6.1 Unless otherwise agreed in writing, the place of performance for any delivery of goods shall be at the main offices of LIEBHERR and for any performance of services at the place at which such services are to be performed.

6.2 Any and all legal relations between the CLIENT and LIEBHERR out of or in relation to the contract shall be governed by and construed in accordance with the English version of the UNCITRAL-Convention on the International Sale of Goods dated April 11th, 1980 ("CISG"), as amended by the provisions of these General Terms and Conditions of Sale. Should the CISG not apply to the contract or to certain aspects thereof, then the material laws of Switzerland (excluding any conflict of laws provisions) shall apply.

6.3 Any and all disputes arising out of or in relation to the contract, including, without limitation, disputes on its conclusion, binding effect, amendment or cancellation, shall be exclusively resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution. The place of arbitration shall be Zurich, Switzerland, and the arbitration language shall be, unless otherwise agreed by the parties in writing, the English language. Notwithstanding the above, LIEBHERR reserves the right to bring an action to any ordinary competent court at the place where the CLIENT's main offices are located or at the CLIENT's domicile, or at the place where the CLIENT disposes of property or other tangible goods.

7. GENERAL CONDITIONS

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

7.2 The CLIENT undertakes to effect and maintain at its expense, until such time as the retention of title and property for the benefit of LIEBHERR in accordance with Section 4 hereof has ceased, 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, the 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 hereby assigns, until such time as the retention of title and property for the benefit of LIEBHERR in accordance with Section 4 hereof has ceased, its rights to indemnity under the above insurance coverage to LIEBHERR.

7.3 Any amendment, extension, limitation or other modification of the contract or the present General Terms and Conditions of Sale shall not be binding upon LIEBHERR, unless LIEBHERR has explicitly accepted such amendment, extension, limitation or other modification in writing.

Referenz: LZB 1310-INT