

# EDI Agreement ("Agreement")

between

Liebherr-Purchasing Services GmbH  
Liebherrstraße 12  
88457 Kirchdorf/Iller

as representative of the Liebherr companies listed in section I below.

hereinafter „LPS“

and

.....  
.....  
.....

hereinafter „Supplier“

## I.

For the purpose of this Agreement LPS does act in the name and on behalf of the Liebherr companies named in Annex 1. These companies are hereinafter referred to, jointly or individually, as „Liebherr“. Liebherr and the Supplier shall be referred to individually as “Party” and jointly as “Parties”.

## II.

### 1. Scope of Agreement

- 1.1 This Agreement stipulates the rights and obligations regarding the establishment, operation and maintenance of a system for the electronic interchange of data (“EDI”) between Liebherr and Supplier in connection with an existing supply agreement. This Agreement does not stipulate the rights and obligations out of or in connection with the supplies of goods or services by the Supplier. For such supplies separate agreements shall be made.
- 1.2 For the purpose of this Agreement “Data” shall mean information of any kind exchanged within the scope of an existing supply agreement, such as (without limitation hereto) delivery forecasts, delivery date schedules, purchase orders, arrear lists, bills of delivery, transport documents, credit notes, debit notes, invoices, information about stock rotation and amendments of the aforesaid documents.

- 1.3 With the exception of extraordinary cases, upon release in accordance with section 2.2, any transmission of Data relevant within the scope of a supply agreement shall be made by EDI.

Upon release of the first EDI-connection between the Supplier and a Liebherr company named in Annex 1 the Data agreed to in Annex 2 shall be transmitted by EDI. Upon release of any further EDI-connection between Supplier and any other Liebherr company named in Annex 2 the partners of this EDI-connection shall agree to the Data which shall be transmitted by EDI.

- 1.4 If Data, which should be transmitted exclusively by EDI according to section 1.3, are transmitted both by EDI and by any other means of communication (by post, facsimile or email), the Data transmitted by EDI shall prevail in case of discrepancies, to the extent as not otherwise agreed by the Parties either in this Agreement or individually.

## **2. Establishment, Release and service of EDI**

- 2.1 The Parties shall agree how and when the EDI connection shall be established as well as they shall agree on the parameters to be observed in this context.
- 2.2 Upon the establishment of the EDI connection, a test phase shall be agreed between the Parties. The Parties shall then jointly determine the end of the test phase and they shall further decide whether the EDI connection functions faultlessly and is suitable for daily business use ("Release").
- 2.3 Each Party shall bear its own costs for the establishment, any amendment or alteration, operation and service of the EDI connection.

## **3. Technical defects**

- 3.1 Each Party shall take all reasonable measures to avoid any disruption of the EDI connection having its origin within the sphere of influence of the Party. Each Party shall be liable to immediately remedy any such disruption that may occur.
- 3.2 Any defect shall be reported immediately by the Supplier to Liebherr and vice versa, by phone, facsimile or e-mail, thereby giving detailed information about the circumstances of the disruption, in particular its cause, extent and the expected duration. Further each Party shall immediately inform the other Party after such disruption is remedied.
- 3.3 During a disruption of the EDI connection, the exchange of Data shall be made in writing either by facsimile or e-mail. In this case, the Data so transmitted shall be legally binding.

## **4. Receipt and processing of Data**

- 4.1 Each Party shall check the Data it receives at least once per working day.

- 4.2 To the extent necessary each Party shall transcribe the Data it receives into the data format used by it and shall ensure that Data will be processed properly within the scope of its obligations to deliver goods or render services.
- 4.3 Each Party shall save the incoming and outgoing Data and document this in reproducible form. In particular, every Party shall save any modifications it makes to Data, which will or may have effects on the Party's deliveries or services.
- 4.4 Each Party shall keep its IT system permanently up and running for receiving and sending of Data. This means that sending and receiving of Data will also be possible outside the Party's usual business hours.
- 4.5 Each Party shall inform the other Party in the case of a planned downtime of the EDI connection, at least 4 weeks in advance by letter, phone, facsimile or e-mail, thereby indicating the reason, type and duration of the downtime.
- 4.6 Each Party shall be deemed to have received Data as soon as the Party is able under normal circumstances to take notice of the Data. This is the case if an automatic confirmation of the receipt of Data is sent to the sender, confirming the receipt of Data by the receiving Party. In the case of an exchange of Data by means of "Web-EDI" this is the case if the supplier is prompted that new Data are available for it on the data exchange server.

If Data are received outside normal business hours, the receiving Party shall be deemed having received the Data with the start of the usual business hours on the following working day.

- 4.7 If one Party has constructive knowledge or constructive notice of the fact that wrong or incomplete Data have been transmitted or that data transmission has failed, it shall immediately notify the other Party either by phone or facsimile.

## **5. Confirmation of EDI-connection**

Upon release of any EDI-connection between Supplier and any Liebherr-company named in Annex 1 or any alteration thereof Liebherr shall send a confirmation in textform (including email or other electronic documents) containing the date of release, the technical parameters and the scope of Data to be transmitted by EDI. In case of disagreement with the contents of this confirmation the Supplier shall object within 10 working days, otherwise he will be deemed to agree.

## **6. Other obligations of the Parties**

- 6.1 The Parties shall keep all Data transmitted by EDI confidential and shall not disclose them to any third Party, unless this is unavoidable in connection with its delivery of goods or rendering of services.
- 6.2 Upon request of Liebherr, Supplier shall transmit Data to Liebherr in other than electronic form, in particular documents which are required by the tax laws at the place of the registered offices of Liebherr (e.g. a "Summenprotokoll").

## 7. Liability / Indemnity

Notwithstanding anything to the contrary said in this Agreement, its Annexes, or any other document executed in connection with this Agreement, shall neither Party be liable to the other Party, by way of indemnity or by reason of any breach of this Agreement or any statutory duty or by reason of tort, for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any other direct or consequential damage whatsoever, provided that such loss or damage was not caused wilfully or by gross negligence by this Party against which claims are being made.

## 8. Term of the Agreement

8.1 This Agreement shall run for an indefinite period of time. Each Party may terminate this Agreement for convenience as of the end of each calendar year by giving a 3 months prior notice of termination to the other Party. Each Party may terminate this Agreement for a material reason without notice.

8.2 The Parties agree that the exchange of data by EDI is of the essence for the supply relationship between the Supplier and Liebherr. If the Supplier terminates this Agreement, Liebherr and the Supplier shall immediately enter into negotiations regarding the remedy of the reasons for the termination of this Agreement.

8.3 Every notice of termination must be given in writing.

## 9. Other agreements

9.1 The Parties agree that § 312 g of the German Civil Laws Codex (“BGB”), regarding obligations in electronic data exchange, shall not apply to this Agreement.

9.2 Any changes or supplements to this agreement shall be made in writing.

9.3 If any term of this Agreement or any portion thereof is or will become invalid, the validity of the remaining terms shall not be affected. Both Parties shall forthwith agree on terms replacing the invalid one whereby the replacing term should come as close as possible to the interests of the Parties at the time of the signing of the Agreement.

9.4 This Agreement shall be governed by German laws, thereby excluding its conflict of laws provisions. Place of jurisdiction shall be the registered office of LPS.

Date:

Date:

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Liebherr-Purchasing Services GmbH

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Supplier