



CONDITIONS OF SALE

These conditions apply to all dealings between **KOMATSU AUSTRALIA PTY LTD** (“the Company”) and the Customer unless the Company otherwise agrees in writing.

1. PRICE AND PAYMENT

- (a) The price quoted or invoiced is based on costs, taxes, duties, awards, statutes, rate of exchange and conditions as at the date hereof. The price is subject to increase by an amount equivalent to all increases in costs, taxes, duties, awards, statutes, rates of exchange and conditions taking place prior to delivery of the goods or performance of the services. The price does not include the cost of delivery from the Company’s premises.
- (b) Until payment in full of all moneys owing to the Company:
 - (i) the goods shall remain the Company’s property;
 - (ii) if in the Customer’s possession, the goods will be held as bailee and returned immediately on demand unused and undamaged; and
 - (iii) the Customer will indemnify the Company against any claim or liability for damage or injury to or by the goods.
- (c) The consideration for any supply has been calculated initially without regard to, and is exclusive of, the goods and services tax (“GST”). If GST is payable in respect of any supply, the Company may increase the price for the supply (“original amount”) by an amount sufficient so that the total amount payable in respect of the supply, after discounting for the amount of any GST payable in respect of the supply, is equal to the original amount.

2. DESCRIPTION

- (a) Any representation, promise, statement or description not given in writing by an authorised representative of the Company is expressly excluded. The Customer acknowledges that it has relied solely upon its own inspection, skill and judgment and not on any other representation, promise, statement or description.
- (b) All photographs, weights, illustrations, dimensions and other particular given in or accompanying a quotation or order or contained in descriptive literature are approximate only and deviations therefrom shall not give rise to any claim against the Company.

3. ACCEPTANCE AND DELIVERY

- (a) All goods shall be at the Customer's risk on leaving Company's premises, even if the Company has agreed to deliver the goods to a location nominated by the Customer. The Customer, at its own cost will insure the goods from the time they leave the Company's premises. The Customer will indemnify the Company against any claim or liability regarding damage or injury to or by the goods after dispatch from the Company's premises.
- (b) The Customer shall inspect the goods immediately on their arrival and within seven (7) days from that inspection give notice to the Company of any claims that the goods are not in accordance with the contract. If the Customer does not give such notice the goods shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to accept and pay for the goods.
- (c) The Company may resell any goods not taken by the Customer within seven (7) days from the date of attempted delivery and, at its option, deem the contract repudiated or, by subsequently substituting other goods, treat the contract as subsisting.

4. DELAY IN DELIVERY AND FORCE MAJEURE

- (a) Delivery and availability dates are approximate only. The Company will use its best endeavours to meet these estimates but is not liable for delay from any cause whatsoever.
- (b) If for any cause beyond the Company's control, the Company is prevented from or delayed in making delivery or performance the Company may either extend the time for delivery or performance for a reasonable period or terminate the contract. The Customer shall not have any claim for damages and shall pay for all deliveries made or services performed prior to the date of such termination and all expenses incurred and moneys paid by the Company in connection with the contract. Causes beyond the Company's control shall include without limitation any act of God, war, strike, lock out, industrial dispute, governmental or semi-governmental award, enactment, priority or restriction, fire, flood, storm or tempest, delay in obtaining licences, transport, labour or materials, accidents, damage to the Company's works or business or those of its suppliers.
- (c) The time of delivery in any quotation or order represents the time at which the goods are to be ready for dispatch from the Company's premises and if applicable, the Company is to be allowed the further time necessary to cover transit from the Company's premises. The Company does not accept orders under penalty for late delivery.

5. WARRANTIES

- (a) Where the Customer is a consumer as defined by any relevant law such as the Trade Practices Act 1974 (Commonwealth) and similar State laws, certain conditions and warranties (“the consumer warranties”) cannot be excluded, restricted or modified. The Customer then has the benefit of both the consumer warranties and any other warranty that may be provided by the Company or by the manufacturer of the goods. To the extent permitted by Law, all implied Warranties and conditions are excluded.
- (b) Subject to clause 5(a), if any of the goods are expressly warranted by a manufacturer or supplier other than the Company, that warranty is not a warranty of the Company and the Company shall have no liability in respect of any breach thereof. The Company in its absolute discretion may present such claims to the manufacturer or supplier on behalf of the Customer.

6. LIMITATION OF LIABILITY

- (a) To the extent permitted by law, the liability of the Company for a breach of the consumer warranties and/or any warranty provided by the Company is limited, at the option of the Company, to the repair or replacement of the goods or the cost of such repair or replacement or the performance of the services again.
- (b) Parts and labour for repair or replacement under clause 6(a) shall be provided by the Company during normal working hours at a place of business of the Company. The Company shall have no liability for the cost of transportation of the goods to such place of business.
- (c) The Customer’s property under the Company’s custody or control will be entirely at the Customer’s risk as regards loss or damage from all causes to that property or caused by that property.
- (d) The Customer releases the Company from any claim action or liability for consequential loss or damage to persons or property including, without limitation, loss of use of the goods or of profits, or loss on resale, arising by reason of delays, non-delivery, defective materials or workmanship, negligence, or any act, matter, conduct or thing done, permitted or omitted by the Company.
- (e) All rejected parts or defective parts shall be the property of the Company to dispose of as it sees fit.
- (f) The Company accepts no responsibility for loss of or damage to or maintenance of secrecy with respect to any plans, drawings, samples or other materials supplied by the Customer to the Company.

7. TRADE IN

- (a) Any machine traded in by the Customer shall remain the Customer's property and at the Customer's risk until delivery at Customer's expense to the Company's nominated point of delivery.
- (b) Any machine traded-in by the Customer shall be delivered to the Company in the same state and condition it was in at the time of appraisal by the Company and shall be free from all encumbrances and third party interests. If it is not so delivered the Company may terminate any contract for the acquisition of those goods.

8. GENERAL

- (a) These Conditions of Sale shall prevail over all inconsistent conditions in any specification, order, quotation or any other document.
- (b) The Company is only obliged to supply goods or perform services if the order by the Customer is accepted in writing by an authorised representative of the Company including without limitation, acceptance of the terms of payment. The Company at its absolute discretion may refuse any order and may refuse to proceed with any order should the Customer's trade reference be unsatisfactory to the Company.



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 - (iv) the Customer will indemnify the Company against any claim or liability for damage or injury to or by the goods.
- (c) The price for any supply has been calculated initially without regard to, and is exclusive of, the goods and services tax (“GST”). The Customer must pay to the Company on demand any goods and services tax, value added tax or any other like tax (“GST”) which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with these conditions by the Company, (together with any fine, penalty or interest payable because of a default of the Customer). The amount paid by the Customer to the Company on account of GST must be sufficient to ensure that the economic benefit to the Company of any order remains the same whether GST applies or not. The Company will give the Customer a tax invoice.

2. DESCRIPTION

- (a) Any representation, promise, statement or description not given in writing by an authorised representative of the Company is expressly excluded. The Customer acknowledges that it has relied solely upon its own inspection, skill and judgment and not on any other representation, promise, statement or description.
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descriptive literature are approximate only and deviations therefrom shall not give rise to any claim against the Company.

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- (a) The Customer has the benefit of any warranty that may be provided by the Company or by the manufacturer of the goods. To the extent permitted by Law, all warranties and conditions that are not expressly included in these terms and conditions are excluded.
- (b) Subject to clause 5(a), if any of the goods are expressly warranted by a manufacturer or supplier other than the Company, that warranty is not a warranty of the Company and the Company shall have no liability in respect of any breach thereof. The Company in its absolute discretion may present such claims to the manufacturer or supplier on behalf of the Customer.
- (c) The parties acknowledge that all goods and services supplied by the Company pursuant to this Agreement are acquired by the Customer for the purpose of its business and, accordingly, the provisions of the Consumer Guarantees Act 1993 shall not apply in relation to the provision of such goods and services.

6. LIMITATION OF LIABILITY

- (a) To the extent permitted by law, the liability of the Company for a breach of any warranty provided by the Company is limited, at the option of the Company, to the repair or replacement of the goods or the cost of such repair or replacement or the performance of the services again.
- (b) Parts and labour for repair or replacement under clause 6(a) shall be provided by the Company during normal working hours at a place of business of the Company. The Company shall have no liability for the cost of transportation of the goods to such place of business.
- (c) The Customer's property under the Company's custody or control will be entirely at the Customer's risk as regards loss or damage from all causes to that property or caused by that property.
- (d) The Customer indemnifies the Company against any claim, action or liability for consequential loss or damage to persons or property including, without limitation, loss of use of the goods or of profits, or loss on resale, arising by reason of delays, non-delivery, defective materials or workmanship, negligence, or any act, matter, conduct or thing done, permitted or omitted by the Company.
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