

**Komatsu New Zealand Limited**  
**Used Equipment Purchase Terms and Conditions**

**1. Agreement**

- 1.1 These Conditions apply to all Purchase Orders issued by Komatsu.
- 1.2 Purchase Orders are only valid if issued on a standard Komatsu Purchase Order form with a Komatsu purchase order number.
- 1.3 These Conditions prevail over any terms submitted by the Supplier whether in the Supplier's terms of sale or in any other document issued by the Supplier. The acceptance of a Purchase Order by the Supplier will be deemed as the Supplier's acceptance of these Conditions.
- 1.4 The Supplier must advise Komatsu of receipt and acceptance of Purchase Orders promptly. The Supplier will be taken to have accepted a Purchase Order if it does not reject it within 7 days after it is issued.

**2. Price**

- 2.1 Prices in each Purchase Order cannot be increased by the Supplier unless such increase has been agreed to in writing by Komatsu.
- 2.2 No charge will be allowed for packing, crating, cartage or freight unless specified in the Purchase Order.
- 2.3 The consideration for each supply under each Purchase Order is exclusive of GST. If GST is payable the consideration for the supply will be increased by an amount of the GST and the Supplier must provide a tax invoice to Komatsu to enable Komatsu to claim input tax credits in respect of the supply.

**3. Payment**

- 3.1 Purchase Orders are placed on the basis that all prices include the Supplier's delivery to Komatsu at the address shown on the Purchase Order unless otherwise specified in the Purchase Order.
- 3.2 Invoices for Goods provided in accordance with each Purchase Order will be paid by Komatsu following acceptance of the Goods and receipt by Komatsu of a correctly rendered invoice which quotes the correct Purchase Order number.

**4. Delivery**

- 4.1 Goods must be supplied to Komatsu within the times specified in each Purchase Order.
- 4.2 Komatsu may, without liability to the Supplier, cancel the whole or any portion of any Purchase Order if the relevant Goods are not supplied within the time stipulated in the Purchase Order. Komatsu may seek damages from the Supplier for any direct losses resulting from the delay.
- 4.3 The Supplier must, with each delivery, provide to Komatsu sufficient documentation identifying the Goods delivered.
- 4.4 Unless stated otherwise in the Purchase Order, the Supplier must, at its cost, unload the Goods at the specified location.

**5. Liability**

- 5.1 The Supplier indemnifies, and keeps Komatsu indemnified, from and against each liability, loss, judgement or expense incurred by reason of the Supplier's breach of any of the provisions of the Agreement or any claim or proceedings arising from any alleged infringement by Komatsu of the intellectual property rights of any person arising from purchase or use of the Goods.

**6. Confidentiality**

- 6.1 All information contained in drawings, specifications and technical data that may be provided by Komatsu for preparing quotations or carrying out each Purchase Order are strictly

confidential and are issued on the condition that they are the property of Komatsu and are issued on loan and may not be copied or transferred to a third party without Komatsu's prior written consent and they are to be used for no other purpose other than for preparing a quotation or fulfilling a Purchase Order and must be returned to Komatsu on completion of the Purchase Order or on request.

- 6.2 The placing of a Purchase Order does not entitle the Supplier to use Komatsu's name for any purpose.

**7. Specification of Goods**

- 7.1 All Goods must conform to Specification. In the event of Goods not being to Specification Komatsu reserves the right to reject those Goods in whole or in part. If Goods are rejected Komatsu will not be required to hold the Goods on behalf of the Supplier for more than 30 days after they are received. For Goods that comprise services, the Supplier warrants that the services will be provided with all due care and skill.
- 7.2 All Goods supplied must be of good and merchantable quality and reasonably fit for the purposes for which they are purchased. The Supplier must provide Komatsu with any applicable manufacturer warranties for the Goods and if the Supplier is not the manufacturer it must assign to Komatsu (and to any purchaser from Komatsu) the benefit of any manufacturer warranties for the Goods.

**8. Warranties**

- 8.1 Unless otherwise agreed in writing, the Supplier warrants to Komatsu that:
  - (a) it has clear and unencumbered title to the Goods and such title will transfer to Komatsu upon payment for the Goods; or any encumbrances to the Goods are fully disclosed and all relevant information provided to Komatsu;
  - (b) the Goods conform to the manufacturer's original specifications and no modification, alterations or additions have been made to the Goods other than by or at the direction of the manufacturer;
  - (c) the Goods are free from known defects and faults and on delivery will be in the same condition as they were when inspected by Komatsu;
  - (d) the Goods include all manuals, operating instructions and other user documents originally supplied with the Goods (or copies thereof);
  - (e) the Goods have been maintained in accordance with the manufacturer's specifications and recommendations;
  - (f) a complete maintenance and service history will be provided with the Goods;
  - (g) unless notified in writing by Supplier prior to the date of this Agreement, there are no faults in the Goods which would prevent the Goods being used for their intended purpose;
  - (h) the Supplier has provided Komatsu with all available information concerning health and safety about the Goods received from the designer or manufacturer and all relevant records relating thereto;
  - (i) the Supplier has complied with all relevant occupational health and safety requirements regarding the goods, the records relating to the goods and their sale to Komatsu; and
  - (j) nothing in these conditions excludes or limits any condition or warranty that might be implied into the contract by law.

**9. Variations**

- 9.1 The Supplier must not vary a Purchase Order, the Goods or any part of them without the prior written consent of Komatsu.
- 9.2 Komatsu may at any time direct the Supplier to vary a Purchase Order, the number, type or specification of the Goods and to the extent that the Supplier can reasonably comply with that direction, it must do so.

#### **10. Insurance**

- 10.1 For Goods supplied all risks insurance for the replacement value of the Goods is to be effected by the Supplier and is to remain in force up to delivery of the Goods at Komatsu's address shown on each Purchase Order. The Supplier must maintain a public liability insurance policy and a professional indemnity insurance policy (where it supplies professional services) at levels that are consistent with normal industry practice for providers of the relevant Goods.

#### **11. Title and Risk**

- 11.1 Title to the Goods free of encumbrances and all other adverse interests passes to Komatsu upon the later of delivery and payment being made for the Goods. Risk in the Goods passes to Komatsu upon delivery.

#### **12. Personal Property Securities Act 1999 ("PPSA")**

- 12.1 Komatsu acknowledges that, until payment has been made for the Goods, the Supplier may register a Security Interest in favour of the Supplier in respect of the Goods and their proceeds.
- 12.2 Komatsu undertakes to:
- (a) promptly do all things and execute all documents which the Supplier may reasonably require to enable the Supplier to attach, enforce, register, protect and maintain the perfection of its security interest; and
  - (b) give the Supplier written notice of any change in its name and/or any other change to its details.
- 12.3 Komatsu waives its rights to receive a copy of any verification statements under section 148 of the PPSA.
- 12.4 Komatsu will give the Supplier notice if another party with a security interest in the Goods seizes or otherwise deals with the Goods in a way that might impact the Supplier's Purchase Money Security Interest.
- 12.5 To the maximum extent permitted by law, Komatsu and the Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134.
- 12.6 In this clause "proceeds" and "Security Interest" have the meanings given to those expressions in the PPSA.

#### **13. Termination**

- 13.1 If the Supplier is in default of its obligations under these Conditions (including where it does not satisfy the solvency test as defined in the *Companies Act 1993* or commits an act of bankruptcy), Komatsu may, on notice to the Supplier, immediately terminate this Agreement.
- 13.2 If this Agreement is terminated under clause 13.1, the Supplier is liable for and indemnifies Komatsu against any additional costs and expenses incurred by Komatsu in acquiring goods similar to the Goods and any other losses suffered as a result of the termination.

#### **14. Privacy**

- 14.1 The Supplier must ensure that any collection, use and transfer of any Personal Information in the course of providing Goods under this Agreement complies with all applicable laws in New Zealand including the Information Privacy Principles in the Privacy Act 1993 (NZ);

- 14.2 Where necessary, the Supplier must obtain all necessary consents in relation to the collection, use and transfer of Personal Information required under this clause from the relevant individual.

#### **15. General**

- 15.1 The Supplier must not assign the benefit of, or otherwise create an interest in its rights under this Agreement unless it obtains the prior written consent of Komatsu. Komatsu may assign any or all of its rights under this Agreement to any person.
- 15.2 Time is of the essence of this Agreement.
- 15.3 The failure of Komatsu to insist upon strict performance of any of these Conditions is not to be construed as a waiver.
- 15.4 Komatsu may set off any amount owed by the Supplier to Komatsu against any amount of money that is owed, or may become owing, by Komatsu to the Supplier. The Supplier waives any right to set off any amount that is, or may become, owing by the Supplier to Komatsu against any amount owing by Komatsu to the Supplier.
- 15.5 The Agreement is governed by the laws of New Zealand and Komatsu and the Supplier agree to irrevocably submit all disputes arising between them to the jurisdiction of the New Zealand courts.

#### **16. Definitions and Interpretation**

In these Conditions:

**Agreement** means the agreement between Komatsu and the Supplier for the supply of the Goods, comprising the relevant Purchase Order, these Conditions and any other document referred to in the Purchase Order;

**Conditions** means these terms and conditions, as amended from time to time;

**Goods** means any goods, products, materials or services supplied by the Supplier;

**GST** has the meaning given in the *(Goods and Services Tax Act 1985)*;

**Komatsu** means Komatsu New Zealand Limited NZBN 9429050679508 or any other Komatsu group company as indicated on the applicable Purchase Order;

**Purchase Order** means a purchase order issued by Komatsu to a Supplier;

**Specification** means the specification for the Goods contained in the related Purchase Order together with any other information referred to in the Purchase Order or contained in the relevant Quotation or documentation provided by the Supplier relevant to the type, quality or nature of the Goods; and

**Supplier** means the supplier of the Goods the subject of a Purchaser Order.