

Komatsu Online (NZ) Terms and Conditions of Use ("Terms of Use")

1. DEFINITIONS

Account means the account that a Purchaser (or a user authorised by the Purchaser) will need to register for on the Site to submit an Order on the Site in accordance with clauses 1 and 3 of these Terms of Use;

Agreement means the agreement between Komatsu and a Purchaser for the supply of the Goods, comprising of these Terms of Use and Komatsu's 'Terms & Conditions – Parts and Service', a copy of which is located at:

<https://www.komatsu.co.nz/getmedia/354ce91c-4fde-4aef-ac7c-db8beef7a143/NZ-Terms-and-Conditions-of-Parts-and-Service.pdf>;

Business Day means a day which is not a Saturday, Sunday or a public holiday in New Zealand;

Claim means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with these Terms of Use or its subject matter, whether arising under contract (including under any warranty or indemnity or any other breach, actual or anticipatory), in equity, in restitution, negligence or any other tort, strict liability, under statute or otherwise at all;

Confirmation of Order means Komatsu's email to You, in which Your Order is accepted;

Consequential Loss means all loss of actual or anticipated profit, loss of use, loss of productivity, loss of revenue, business interruption of any nature, loss of contracts, loss of opportunity, increased costs and expenses, wasted expenditure, loss arising from delay, loss by reason of shutdown or non-operation or increased cost of borrowing capital or financing, loss of business reputation or goodwill and all special, indirect and consequential losses whether caused by or contributed to by a breach of contract or statute, breach of warranty (express or implied), tort, strict liability or any other cause whatsoever;

Defect or defective means those Goods which do not comply with OEM specifications, or which are faulty, materially non-conforming, inoperable, unsafe or not operating properly;

Delivery means the process in clause 6 of these Terms of Use;

Delivery Fee means any charges the Purchaser is liable to have the Goods delivered to the nominated address;

Delivery Address means the address nominated by the Purchaser (or the user authorised by the Purchaser) for the Goods to be delivered;

Goods means the parts, components, products, fluids, oils or other parts ordered on the Site;

GST has the meaning specified in the *Goods and Services Tax Act 1985*, at the rate prevailing from time to time, and has the same meaning when used herein;

KCSC means Komatsu's Customer Support Centre;

Komatsu or **Us** means Komatsu New Zealand, a branch of Komatsu Australia Pty Ltd (ABN 71 143 476 626), a company incorporated in Australia;

Order means the order submitted by You to the Site to purchase Goods;

Purchaser means the entity placing an order for the Goods;

Site means the "Komatsu Online" website located at: mykomatsu.co.nz; and

You means the Purchaser (and including the user who has been authorised by the Purchaser to establish an Account on the Site) and *Your* has a corresponding meaning.

2. ACCESS AND USE OF THE SITE

2.1 You must only use the Site in accordance with these Terms of Use and any applicable law. You will be bound by these Terms of Use each time you submit an Order. Each Order You place will be a separate contract between You and Komatsu for the supply of Goods.

2.2 You must not:

- (a) interfere (or attempt to interfere) or disrupt (or attempt to disrupt) the Site or the servers or networks that host the Site;
- (b) use (or attempt to use) data mining, robots, screen scraping or similar data gathering and extraction tools on the Site; or
- (c) interfere (or attempt to interfere) with security-related or other features of the Site.

2.3 To place Orders and access some features of the Site, You must register an Account with Komatsu. To register an Account, You must:

- (a) give Us accurate and current personal information including Your name, address, and a valid email address; and
- (b) be at least 18 years old and have the capacity to enter into a legally binding agreement with Us.

2.4 You are solely responsible for the activity that occurs on Your Account (including Orders placed using Your Account), and You must keep Your Account password secure. Komatsu is not responsible for any unauthorised activity on Your Account if you fail to keep your Account login information secure. Komatsu may refer fraudulent, abusive or illegal activity to the relevant authorities.

2.5 If You wish another person to use Your Account, You must first give them Your express permission. You must not use another person's Account without their express permission. If You suspect or become aware of any unauthorised use of Your Account or that Your password is no longer secure, You must notify Komatsu immediately and take immediate steps to re-secure Your Account (including by changing Your password).

2.6 Komatsu does not warrant that the Site will be available at all times and without disruption and provides no warranties in relation to the content of any other website linked to or from the Site.

2.7 You must not link to the Site or any part of the Site in a way that damages or takes advantage of Komatsu's reputation, including but not limited to:

- (a) in a way to suggest or imply that You have any kind of association and affiliation with Komatsu, or approval and endorsement from Komatsu when there is none; or
- (b) in a way that is illegal or unfair.

3. INFORMATION ON THIS SITE

3.1 The Site and the content on the Site are subject to copyright, trademarks and other intellectual property rights. These rights are owned by or licensed to Komatsu.

3.2 You must not reproduce, transmit, communicate, adapt, distribute, sell, modify or publish or otherwise use any of the material on the Site, including audio and video excerpts, except as permitted by statute or with Komatsu's prior written consent.

3.3 You acknowledge and agree that:

- (a) all pictures and images of Goods displayed are for illustrative purposes only;
- (b) any accessory featured with the Goods is for illustrative purposes only, and may be sold separately; and
- (c) where Komatsu provides dimensions and measurements in the description of the Goods, it is Your responsibility to ensure that the actual size of the Goods is suitable for Your purposes prior to submitting Your Order (including whether there is appropriate and safe access to Your Delivery Address for delivery of the Goods).

3.4 Due to photographic and screen limitations associated with the representation of the Goods, some actual Goods may differ to a small extent in visual appearance (for example in colour) from the way they appear on the Site.

3.5 Komatsu reserves the right not to honour any incorrect offers represented on the Site made by genuine human or system error. Where Your Order is affected by an error on the Site (for example, in a description, an image, price or otherwise), Komatsu will reject that part of the Order affected by the error. You will be refunded the value of that part of Your Order affected by the error, and Komatsu will fulfil the remainder of Your Order. If You are not satisfied with the partial fulfilment of Your Order, You can return Your Order to Us pursuant to the terms of Komatsu's Credit and Returns Policy (a copy of which is available from Komatsu upon request).

4. PLACING AN ORDER

4.1 When making an Order, You must follow the instructions on the Site as to how to make Your Order and for making changes to Your Order before You submit it.

4.2 Once You select the Goods that You wish to order, irrespective of any previous price You have paid for the Goods, You will then be shown the price You must pay including GST and any other charges. Unless otherwise stated, all charges are in New Zealand dollars.

4.3 If You choose to pay via credit card, You must pay for the Order in full at the time of ordering. You must be fully entitled to use the payment method or account used for purchases. The payment method or account must have sufficient funds or credit facilities to cover the Order. Komatsu reserves the right to obtain validation of Your payment details before providing You with the Goods and carry out security checks from time to time.

4.4 If You discover that You have made a mistake with Your Order after You have submitted it to the Site, please contact the KCSC by phone on 0800 566 2878 immediately. Komatsu cannot guarantee that it will be able to amend Your Order in accordance with Your instructions.

4.5 When You place an order, You will receive from Us an Order Confirmation by email. This email will only be an acknowledgement and will not constitute acceptance of Your Order. Komatsu is not obliged to supply the Goods to You until it has accepted Your Order. Komatsu may in its discretion refuse to accept an Order from You for any reason, including but not limited to unavailability of stock. Should Komatsu not have the stock available, it may offer You alternative Goods (in which case Komatsu may require You to re-submit Your Order) or arrange a backorder for You, through the KCSC or a Komatsu branch.

4.6 You consent to Komatsu contacting You, using the personal information provided on the Order, to notify You of Your order updates by email or SMS.

5. PRICE AND PAYMENT

- 5.1 When you place an Order, Komatsu will charge You and You agree to pay the price and any applicable Delivery Fee.
- 5.2 All prices are in New Zealand Dollars and, if GST applies, inclusive of GST. Any fees and charges (including Delivery Fees) imposed by these Terms of Use also include GST where applicable.
- 5.3 Komatsu reserves the right to change or alter prices without notice to You. If You have already submitted an Order at a particular price, Komatsu will supply Your Goods at that price (unless your Order is affected by a pricing error, in which case clause 3.5 will apply).
- 5.4 Lay-by or partial payment is not available for any Order.

6. DELIVERY

- 6.1 Komatsu will use its best endeavours to deliver the Goods to You at the place of delivery requested by You within the time indicated by us at the time of Your Order, but Komatsu does not guarantee any firm delivery dates.
- 6.2 Komatsu will use its best endeavours to let You know if it does not expect to be able to meet the estimated delivery date, but, to the extent permitted by law, Komatsu will not be liable to You for any losses, liabilities, costs, damages, charges or expenses including any Consequential Losses arising out of late delivery.
- 6.3 You will be required to sign for Your delivery. If there is no-one available to sign for the delivery, Komatsu's couriers will leave a "Sorry we missed you" card or similar notice and You will need to call the carrier details on the card to arrange another delivery.
- 6.4 If the delivery or collection is delayed for more than two weeks through an act or omission on Your part, then Komatsu may (without affecting any other right or remedy available to it) do either or both of the following:
 - (a) charge You for its reasonable storage fees and other costs reasonably incurred by it; or
 - (b) no longer make the Goods available for delivery or collection and notify You that it is cancelling the applicable Order, in which case Komatsu will process a refund and credit the funds to Your credit card or Komatsu Account, as applicable, any money paid, less its reasonable administration charges (including for attempting to deliver and then returning the Goods, and any storage fees as provided for above).
- 6.5 It might not be possible for Komatsu to deliver to some locations. If this is the case, Komatsu will inform You using the contact details that You provide to us when you make Your Order and arrange for cancellation of the Order or delivery to an alternative delivery address.
- 6.6 All risk in the Goods will pass to You upon delivery.
- 6.7 You must take care when opening the packaging containing the Goods so as not to damage the Goods.
- 6.8 If You place consecutive or separate Orders, Komatsu cannot consolidate Your Orders. A separate Delivery Fee, if applicable, will apply to each Order.

7. CANCELLATION

- 7.1 Komatsu may terminate an Order if the Goods are not available for any reason. Komatsu will notify You if this is the case and return any payment that You have made. Komatsu will process a refund and credit the funds to Your credit or debit card or Komatsu Account, as applicable, any money paid.
- 7.2 Unless provided for under these Terms of Use or as otherwise agreed by Komatsu, no cancellations or changes to Orders will be accepted, and the Goods will be delivered to the Delivery Address in the Order. You should carefully check that Your Order is accurate before You submit it. You may be able to return Goods pursuant to the terms of Komatsu's Credit and Returns Policy.

8. DEFECTIVE GOODS

- 8.1 New Goods are warranted in accordance with the terms and conditions of Komatsu's New Parts Warranty (a copy of which is available at: <https://www.komatsu.co.nz/getattachment/Pages/Terms-Conditions/New-Parts-Over-the-Counter-Warranty-NZ-121017.pdf?lang=en-NZ>)
- 8.2 If you have received Goods that are Defective, please contact the KCSC as soon as possible so they can guide You through the returns process and help resolve the problem as soon as possible. In order to assist the returns process, You may be required to send Komatsu images of the Defect for preliminary assessment.
- 8.3 If the Goods are confirmed by Komatsu to be Defective, Komatsu will rectify the Defect in the Goods in accordance with the terms and conditions of the Komatsu Warranty.

9. CHANGE OF MIND RETURNS

Komatsu will only accept the return of any Goods in accordance with its then current Credit and Return Policy.

10. WARRANTIES AND EXCLUSIONS

- 10.1 To the extent permitted by law, Komatsu does not warrant and it excludes all liability in respect of the accuracy, completeness, fitness for purpose or legality of any information accessed using the Site.
- 10.2 Komatsu excludes all liability of any kind for the transmission or the reception of or the failure to transmit or to receive any material of whatever nature.
- 10.3 You should not rely on any information accessed using the Site to make a purchasing decision – You should make your own enquiries before forming Your own opinion and taking any action based on any such information.
- 10.4 It is Your responsibility to ensure that the Goods are sufficient and suitable for Your purposes and meet Your individual requirements. Komatsu does not warrant that the Goods will meet Your individual requirements. You acknowledge that the Goods are standard and not made bespoke to fit any particular requirements that You may have.
- 10.5 All other conditions and warranties of any type in relation to the Goods are excluded to the maximum extent allowed by the law. Nothing in these Terms of Use limit those provisions of the Consumer Guarantees Act 1993 (Act) nor any other statutes, rules or regulations from time to time in force in New Zealand which imply or guarantee certain conditions or warranties or impose obligations on Komatsu which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which Komatsu is entitled to do so, its liability is limited at its option to:
 - (a) the replacement of Goods or the supply of equivalent Goods;
 - (b) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (c) the payment of the cost of having the Goods repaired; or
 - (d) the repair of the Goods.

11. LIMITATION OF LIABILITY

- 11.1 To the extent permitted by law Komatsu and its related bodies corporate expressly exclude all liability for loss, damage or injury, including Consequential Loss, whether under contract, tort, equity or otherwise, caused directly or indirectly by any errors in, omissions from, or actions taken or not taken on the Site.
- 11.2 Komatsu's total cumulative liability to You for all liabilities, damages, losses, costs and expenses suffered or incurred under or connection with these Terms of Use by You, for all Claims in the aggregate, is limited to the amount paid by You to Komatsu for the Goods.

12. INDEMNITY

You indemnify and hold Komatsu, its related bodies corporate and employees, harmless from and against any and all claims, demands, proceedings, losses and damages (actual, special and consequential) of every kind and nature, known and unknown, including reasonable legal fees, made by any third party due to or arising out of Your breach of these Terms of Use or Your breach of any law or the rights of a third party.

13. PRIVACY POLICY

For information about how Komatsu handles your personal information, refer to Komatsu's Privacy Policy located at: <https://www.komatsu.co.nz/getmedia/4aece853-eb14-4c24-bb16-39fec9186439/Komatsu-NZ-Privacy-Policy-17-11-2020.pdf>

14. GENERAL

- 14.1 **Severability:** If any provision of these Terms of Use is held to be unlawful, invalid or unenforceable, that provision shall be deemed severed and where capable the validity and enforceability of the remaining provisions of these Terms of Use will not be affected.
- 14.2 **Governing law:** These Terms of Use shall be governed by and construed in accordance with the laws of New Zealand and the jurisdiction of the courts of New Zealand.
- 14.3 **Change of the Terms of Use:** Komatsu reserves the right to amend these Terms of Use at any time. All amendments to these Terms of Use will be posted online. However, continued use of the Site will be deemed to constitute acceptance of the new Terms of Use.

These Terms of Use were last updated on 10 January 2019.