

KOMATSU NEW ZEALAND LIMITED - TERMS AND CONDITIONS OF EQUIPMENT RENTAL

Definitions

Agreement means the agreement between Komatsu and the Customer for the rental of the Equipment comprising the Equipment Rental Agreement, these rental terms and conditions and any attached schedules.

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 this Agreement 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.

Commencement Date means the commencement date set out in the Rental Details.

Commencement SMU means the service meter units (Hours) registered on the Equipment as at the Commencement Date, as stated in the Rental Details.

Completion Date means the completion date set out in the Rental Details.

Consequential Loss means all loss of actual or anticipated profit, loss of use, loss of productivity, loss of revenue, loss of contracts, loss of opportunity, increased costs and expenses, wasted expenditure, loss or corruption of data, loss arising from delay, loss by reason of shutdown or non-operation or increased cost of borrowing capital or financing 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.

Consumables means all fuel, oil, fuses, light globes, fire extinguishers, fire systems, buckets, dump bodies (including liner packages), ground engaging tools, undercarriage, tyres, hydraulic hoses (external/work equipment/lift cylinder area only), brake linings (operational wear), drive and ancillary belts, and all other non-OEM items (including fast fuels, service couplers, isolation switches).

Customer means the customer set out in the Rental Details and includes the Customer's employees, executors, administrators, agents and representatives.

Customer Maintenance Obligations means the maintenance obligations of the Customer as specified in Schedule 4.

Equipment means the equipment set out in the Rental Details including any and all accessories, keys, tools, attachments, parts, manuals, instructions and packing and transferable materials, substitute and replacement Equipment, unless indicated to the contrary in these terms.

Equipment Maintenance Schedule means the maintenance schedule to which the Equipment must be maintained as set out in Schedule 3.

Equipment Rental Agreement means the cover page or pages entitled "Equipment Rental Agreement".

Inspection Report means the inspection report set out in Schedule 1 outlining the condition of the Equipment prior to the Commencement Date and the condition of the Equipment on the Completion Date. The physical inspection and subsequent report on the Completion Date may be completed before demobilisation of large machines at the Customer's Site or when the Equipment is returned to Komatsu for smaller machines.

Hours means total hours of operation of the Equipment as measured by on-board electronic measuring systems.

Insurance Value means the value the Equipment must be insured for, if the Customer is responsible for insuring the Equipment under this Agreement.

Komatsu means Komatsu New Zealand Limited NZBN 9429050679508 or any of its related companies (as defined in section 2(3) of the Companies Act 1993, provided that a reference to a company in that section will refer to any company or body corporate, notwithstanding the jurisdiction of incorporation or establishment of the relevant company or body corporate).

Komatsu Maintenance Obligations means the maintenance obligations with respect to the Equipment as set out in Schedule 5.

KOWA means Komatsu oil wear analysis.

Minimum Monthly Hours means the minimum amount of hours the Customer will be charged for each month, regardless of whether the actual Hours are less.

Minimum Monthly Rate means the minimum rate the Customer will be charged each month, regardless of whether the actual Hours are less.

Operation and Maintenance Manual means the most current manual issued or approved by Komatsu containing the operating and service instructions for the Equipment and includes all other manuals, the most current Manufacturer's instructions or Komatsu requirements as to the Equipment issued to the Customer.

Personal Information has the meaning as in the Privacy Act 1993.

Refuelling and Ad Blue Charge means the charge specified in the Rental Details, payable where the Equipment is returned without full tank(s) of fuel and Ad Blue (if applicable).

Rental Charges means the rental charged by Komatsu to the Customer for the rent of the Equipment as set out in the Rental Details.

Rental Details means the section of the Equipment Rental Agreement entitled "Rental Details".

Rental Return Conditions means the conditions set out in Schedule 2.

Site means the location at which the Equipment is to be located as set out in the Rental Details, or such other location as agreed by Komatsu.

Term means the period from the Commencement Date to the Completion Date or such other period as the parties may agree in writing.

1 Agreement

- (a) Komatsu rents the Equipment to the Customer on the terms and conditions set out in this Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes any and all prior negotiations, representations, warranties or agreements.
- (b) This Agreement may only be varied in writing signed by both parties.
- (c) This Agreement commences on the Commencement Date and continues for the Term unless terminated sooner in accordance with its terms.

2 Rental Charges and Other Charges

- (a) Rental Charges are payable from the Commencement Date and until this Agreement is terminated in accordance with clause 7.
- (b) The Customer must pay all amounts specified or determined in the Rental Details (including any applicable Refuelling and Ad Blue Charge) together with:
 - (i) a charge for delivery and mobilisation, commissioning, and decommissioning, demobilisation, and return of the Equipment to the designated Komatsu branch;

- (ii) any taxes, duties (including stamp duty) levies, charges or imposts payable in respect of this Agreement or the transactions contemplated by it;
 - (iii) a sum equal to the amount of any goods and services tax (GST) payable by Komatsu on any supplies made by Komatsu under or in connection with this Agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate; and
 - (iv) any costs or expenses reasonably incurred by Komatsu in enforcing this Agreement, as a result of the Customer's breach or in order to return the Equipment to the same condition as at the Commencement Date (including cleaning costs).
- (c) The Customer must pay the Rental Charges within 30 days of invoice date.
 - (d) The Customer must pay interest, calculated daily, on any amount not paid within 30 days of the date due for payment. The rate of interest is the Westpac New Zealand's indicator lending rate from time to time plus 3% per annum. Interest is payable on demand and may be capitalised at such times as Komatsu may determine in its sole discretion.
 - (e) If any Rental Charges are 30 days or more in arrears, Komatsu may, on written notice to the Customer, remotely disable the Equipment until payment has been made. The Customer must ensure that the Equipment is safely positioned prior to being disabled.

3 Use of Equipment (Customer Obligations)

- (a) The Equipment always remains Komatsu's property and the Customer only has a right to use it. Title to the Equipment will at all times remain in Komatsu's name. Unless expressly set out in the Agreement, the Customer has no option or right to purchase the Equipment.
- (b) The Customer must do everything necessary to protect the interests of Komatsu in the Equipment, making it clear to others that Komatsu is the owner of the Equipment.
- (c) The Customer must immediately inform Komatsu of any repairs required to the Equipment and these repairs must be completed by Komatsu unless agreed in writing.
- (d) The Customer must permit Komatsu to affix plates or marks of ownership on the Equipment to indicate Komatsu's ownership.
- (e) The Customer must not in any way deface, remove, vary or otherwise erase any identifying marks, plates, numbers, notices or safety information on the Equipment.
- (f) The Customer must not disable, interfere or tamper with any electronic monitoring systems attached to the Equipment (such as KOMTRAX satellite positioning systems) nor in any way otherwise alter, modify, tamper with, damage or repair the Equipment without Komatsu's prior written consent.
- (g) The Customer must not part with possession or control of the Equipment without Komatsu's prior written consent.
- (h) The Customer must not give, or permit any person (except Komatsu) to take an interest in, or any form of security over, the Equipment.
- (i) All attachments and replacements to any part of the Equipment must be approved by Komatsu in writing and any attachments and replacements to any part of the Equipment become Komatsu's property. Third party attachments must not be attached to the Equipment without Komatsu's prior written consent. Adjustments required to accommodate approved attachments must be made by Komatsu;
- (j) Prior to the Commencement Date, the Inspection Report must be signed by both parties. By signing the Inspection Report, the Customer agrees that the Inspection Report is accurate, complete and free of error and ambiguity.
- (k) Risk in the Equipment passes to the Customer upon delivery of the Equipment to the Customer and remains with the Customer until the Equipment is collected by Komatsu or returned to Komatsu's premises by the Customer.
- (l) The Customer bears the risk of any loss or damage (including without limitation, damage to the Equipment caused by vandalism, theft, any force majeure event), whether caused by the Equipment or its operation and all costs incurred with respect to the Equipment, including the cost of repairing or replacing the Equipment at full replacement value, salvage costs and Rental Charges incurred while the Equipment is repaired or replaced during the Rental Term whether or not the Equipment or the Customer is insured.
- (m) The Customer must ensure that the Equipment is:
 - (i) operated by a suitably trained, licensed, experienced and (where necessary) certified operator and is operated in accordance with the Operation and Maintenance Manual and Komatsu's instructions and all relevant laws, regulations, rules and regulatory guidelines;
 - (ii) kept clean, including the removal of excess material in Equipment undercarriage, to allow for safe and efficient operation.
 - (iii) returned to Komatsu in accordance with the Rental Return Conditions and Inspection Report;
 - (iv) used for the purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment; and
 - (v) not removed from the Site without Komatsu's prior written consent.
- (n) The Customer must:
 - (i) perform the Customer Maintenance Obligations;
 - (ii) ensure that the Equipment is maintained in accordance with the Equipment Maintenance Schedule, or as directed by Komatsu, by making the Equipment available to Komatsu at the relevant times for Komatsu to carry out the Komatsu Maintenance Obligations;
 - (iii) pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment including all Consumables, fittings and accessories;
 - (iv) unless otherwise detailed in the Agreement, undertake Komatsu's KOWA oil sampling program throughout the Term and ensure that submission cards are completed correctly;
 - (v) at its expense, promptly comply with the reasonable requirements of Komatsu as to the repair, renewal or replacement of any portion or part of the Equipment; and
 - (vi) at its expense, keep the Equipment secure and parked with any supplied vandal protection fitted and, where possible, within a lockable compound when not in use.
- (o) The Customer must immediately notify Komatsu in writing, and provide full details, of any loss, theft, breakdown or damage to the Equipment. Komatsu will use reasonable endeavours to repair or replace the Equipment at Komatsu's discretion and at the Customer's expense after receiving such notification. Any Equipment supplied as a replacement will be supplied for the unexpired balance of the Term on the same terms and conditions as this Agreement.

- (p) If the Equipment breaks down or becomes unsafe to operate, the Customer must immediately stop using the Equipment, notify Komatsu, and ensure that the Equipment does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property. The Customer must not repair, or attempt to repair, the Equipment without Komatsu's prior written consent.
- (q) Komatsu reserves the right to exchange or replace the Equipment with an equivalent item and if the Equipment is exchanged all terms and conditions of this Agreement apply to the exchanged or replaced Equipment.
- (r) The Customer warrants and agrees that it will at all times comply with all applicable legislative or relevant industry requirements (including in respect of any Site), including with all the requirements of the Health and Safety in Employment Act 1992 (including any amendments), any regulations issued pursuant to that Act and any applicable codes of practice.

4 Access and Inspection

- (a) The Customer must provide Komatsu with access to the Site for the purpose of inspecting the state of repair of the Equipment, to perform the Komatsu Maintenance Services and to otherwise exercise its rights under this Agreement. Access will take place during normal business hours and reasonable notice will be given to the Customer (except in an emergency when no notice is required).
- (b) Komatsu may do anything that the Customer should have, but has not, done under this Agreement and Customer must reimburse Komatsu for all its costs so incurred by Komatsu.

5 Privacy

- (a) The Customer agrees that Komatsu may obtain, disclose or use information, including Personal Information:
 - (i) about Customer's credit worthiness, or for the purpose of obtaining and maintaining credit information file about the Customer or collecting overdue payments; and
 - (ii) about the Customer for the purpose of providing services to the Customer.
- (b) Komatsu will ensure that any Personal Information that it collects, uses and transfers in the course of providing goods and services under this Agreement will comply with all applicable laws in New Zealand, including any Codes of Practice issued by the Privacy Commissioner and the Privacy Act 1993.

6 Insurance

- (a) During the Term, the Customer, at its own expense, must effect, with a reputable insurance company in New Zealand, the following insurances in the joint names of Komatsu and the Customer for their respective interests:
 - (i) plant and equipment insurance for physical loss of or damage to the Equipment for the insurance value (refer to Rental Details);
 - (ii) third party and public liability in respect of bodily injury (including death) and property damage for not less than NZD\$20 million for any one occurrence; and
 - (iii) such other insurance as Komatsu may reasonably require.
- (b) The Customer must provide evidence of the currency of these insurances to Komatsu on request.

7 Termination, Expiry and Return of Equipment

- (a) At the end of the Term:
 - (i) a report as to the condition of the Equipment must be signed by both parties. All expenses required to bring the Equipment to the condition required by clause 3 must be paid by the Customer;
 - (ii) any money owing under this Agreement must be paid by the Customer within 30 days of the final invoice;
 - (iii) the Customer must make the Equipment available to Komatsu at the Site and provide all reasonable assistance for its removal. Unless otherwise detailed in the Rental Details, all costs of decommissioning and transport from the Site must be paid by the Customer;
 - (iv) the Customer must return to Komatsu the keys, the Operation and Maintenance Manual and all instruction and maintenance manuals provided with the Equipment. If the Operation and Maintenance Manual is not returned to Komatsu, Customer must pay Komatsu the replacement cost at Komatsu's then current price list rate.
- (b) If the Customer fails to return the Equipment to Komatsu at the end of the Term, the Customer must continue to pay the Rental Charges and observe its other obligations under this Agreement. Continued payment of the Rental Charges does not give the Customer any right to retain possession of the Equipment or limit any other rights which Komatsu may have.
- (c) The fundamental provisions of this Agreement are that the Customer pays all money due under this Agreement on time and fulfils its obligations under clause 3 (Use of Equipment), clause 7 (Return of Equipment) and clause 6 (Insurance).
- (d) Komatsu may, on notice to the Customer, terminate this Agreement with immediate effect if:
 - (i) the Customer does not comply with a fundamental provision of this Agreement;
 - (ii) the Customer is in breach of any other provision of this Agreement and that breach is not remedied within 30 days of receipt of notice from Komatsu;
 - (iii) an order is made or proceedings are taken for the winding up of the Customer; or
 - (iv) the Customer becomes insolvent or a receiver, manager, provisional liquidator or administrator/s is appointed or takes possession of the whole or a substantial part of the assets of the Customer.
- (e) On termination of this Agreement by Komatsu, the Customer must:
 - (i) immediately return the Equipment to Komatsu in accordance with clause 7(a), failing which the Customer must pay Komatsu the replacement value of the Equipment; and
 - (ii) pay Komatsu the present value of all Rental Charges that would have been payable during the Term (assuming a rate of usage the same as that prior to termination). The present value will be calculated using the Westpac New Zealand's indicator lending rate on the date of termination.
- (f) Komatsu may enter the Site or any other premises on which the Equipment is located and take possession of the Equipment.
- (g) Any termination of this Agreement does not affect any other right or remedy which Komatsu might have.

8 Indemnities

- (a) The Customer irrevocably indemnifies Komatsu against and holds Komatsu harmless from:
 - (i) all loss or destruction of or damage to the Equipment however caused; and
 - (ii) all costs, charges, expenses, liabilities, losses, damages, claims, fines and penalties (including legal costs on a full indemnity basis) suffered or incurred by Komatsu, its officers, directors, employees or agents in connection with:
 - (A) the condition, use, operation, control, maintenance, repair or storage of the Equipment;
 - (B) any breach of or non-compliance with any registration, licence permit, authorisation; statute, regulation or by-law relating to the use of the Equipment; or
 - (C) any breach of this Agreement by Customer or Komatsu exercising any of its rights under this Agreement.
- (b) The Customer is not liable under this clause to the extent that the relevant matter was caused or contributed to by the negligent act, error or omission of Komatsu nor in respect of matters for which Komatsu is liable under this Agreement.
- (c) These indemnities continue after this Agreement expires or terminates.

9 Repair

- (a) Subject to the Customer complying with the Customer Maintenance Obligations, Komatsu will repair any defects of design or manufacture in the Equipment during the Term.
- (b) Komatsu will have no liability under this clause, and the Customer is liable if:
 - (i) the Customer breaches or does not comply with any of its obligations under this Agreement, including the Customer Maintenance Obligations;
 - (ii) the defect or malfunctions are caused by or in connection with the misuse, negligence, accident or failure to maintain or use the Equipment in accordance with the maintenance program and current applicable instructions issued by Komatsu;
 - (iii) the defect or malfunctions arise out of, or in connection with a condition identified through application of the maintenance program and for which Komatsu recommended to the Customer the way in which to remedy the condition and the Customer failed to observe Komatsu's recommendation for the remedy of that condition;
 - (iv) in relation to alterations, modifications or repairs to the Equipment, including the fitting of attachments, that are not authorised or approved by Komatsu in writing and that in the sole judgment of Komatsu adversely affect the performance or safety of the Equipment;
 - (v) in relation to the supply of the Customer Maintenance Obligations or other operating services for the Equipment, including providing inspections, adjustments, tune-ups, fuel, lubricants, or consumable parts, where such parts are or should be replaced as a part of normal maintenance or operating services.
 - (vi) the Customer has delayed providing the Equipment to Komatsu after the Customer has notified Komatsu of the potential defect;
 - (vii) the Customer fails to comply with any manual or adhere to any recommendation made by Komatsu; or
 - (viii) Komatsu in its sole discretion determines any use of the Equipment to be improper.
- (c) Komatsu does not provide any performance guarantee of the Equipment nor of its availability.

10 Komatsu Maintenance Obligations

- (a) Komatsu will perform the Komatsu Maintenance Obligations at the Site or as otherwise notified by Komatsu to the Customer in writing.
- (b) Any matters that are not expressly included in the Komatsu Maintenance Obligations are excluded from the Komatsu Maintenance Obligations. If such excluded work is performed by Komatsu for the Customer then Komatsu may, in addition to the Rental Charges, charge for such work (including any services or goods supplied) at its then applicable rates and prices.
- (c) The Komatsu Maintenance Obligations assume:
 - (i) that the Customer will, and the Customer must, fully and properly perform the Customer Maintenance Obligations;
 - (ii) the details provided by the Customer in respect to the Equipment, including the application, use and site location of the Equipment, are complete and accurate and have been notified to Komatsu in writing. The Customer must, as soon as practicable, notify Komatsu of any changes to such details; and
 - (iii) no third party attachments have been fitted to the Equipment without Komatsu's prior written consent.
- (d) If the Site is located more than 100 kilometres from a Komatsu branch, Komatsu may, on a per kilometre basis, charge the Customer for any travel kilometres to Site required for the provision of maintenance services under this Agreement in excess of 100 kilometres.

11 Limitations of Liability

- (a) To the extent permitted by law, all legal, statutory or equitable liability, conditions or warranties of any type in relation to the Equipment are excluded. Nothing in this Agreement will limit those provisions of statutes 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 Komatsu is entitled to do so, its liability under those statutory provisions will be limited at its option to:
 - (i) in the case of goods:
 - (A) the replacement of the 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; and
 - (ii) in the of Services:
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (b) Notwithstanding anything to the contrary in this Agreement, Komatsu will not be liable for any Consequential Loss.
- (c) Notwithstanding anything to the contrary in this Agreement or elsewhere and to the full extent permitted by law, Komatsu's total cumulative liability to the Customer for all liabilities, damages, losses, costs and expenses suffered or incurred under or connection with this Agreement by the Customer, for all Claims, is limited to the amount paid by the Customer to Komatsu for the Goods and Services.

- (d) The provisions and guarantees of the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods or services from Komatsu for the purposes of a business in terms of section 2 and section 43 of the Consumer Guarantees Act 1993.
- (e) These limitations of liability continue after this Agreement expires or is terminated.

12 Sub Hire

- (a) The Customer must obtain Komatsu's prior written consent before entering into a sub hire arrangement and parting with possession or control of the Equipment.
- (b) If, at its sole discretion, Komatsu allows the Customer to part with possession or control of the Equipment by way of a sub hire arrangement, the Customer must:
 - (i) provide Komatsu with detailed information about the identity of each of the sub hirer and the location at which the Equipment will be kept; and
 - (ii) ensure that any subcontract agreement provides Komatsu the right to enter the Site or any other place where ever the Equipment is located for the purpose of inspection and/or repair of the Equipment.
- (c) If Komatsu requests, as security for all the Customer's obligations to Komatsu, whether under this Agreement or otherwise, the Customer must assign, as directed by Komatsu, all the Customer's rights under those sub hire arrangements in such form as Komatsu may request.

13 Personal Property Securities Act 1999 ("PPSA")

- (a) The Customer acknowledges that the lease of Equipment under this Agreement gives rise to a Purchase Money Security Interest under the PPSA in favour of Komatsu in respect of the Equipment and any proceeds.
- (b) The Customer undertakes to:
 - (i) promptly do all things, execute all documents and/or provide any information which Komatsu may reasonably require to enable Komatsu to attach, enforce, register, protect and maintain the perfection of its first priority security interest; and
 - (ii) give Komatsu not less than 14 days' prior written notice of any proposed change in its name and/or any other change to its details; and
 - (iii) immediately on request by Komatsu (and at the Customer's expense) obtain from any third party such agreements and waivers of any Security Interest that any third party has in the Equipment, to ensure that Komatsu is provided with or retains a first priority security interest in the Equipment.
- (c) The Customer waives its rights to receive a copy of any verification statements under Section 148 of the PPSA.
- (d) If the Customer defaults on any monies due under this Contract, Komatsu has the right to seize the Equipment after giving written notice of such intention to the Customer.
- (e) Equipment seized under clause 13(d) may be disposed of, retained by, or otherwise dealt with by Komatsu, in any way Komatsu sees fit.
- (f) The Customer must give Komatsu notice if another party with a security interest in the Equipment seizes or otherwise deals with the Equipment in a way that might impact Komatsu's Purchase Money Security Interest.
- (g) To the maximum extent permitted by law, the Customer and Komatsu agree that the following provisions of the PPSA do not apply to the enforcement by Komatsu of its security interest in the Equipment: sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134.
- (h) In this clause "proceeds", "Purchase Money Security Interest" and "Security Interest" have the meanings given to those expressions in the PPSA.

14 Force Majeure

If Komatsu's ability to perform its obligations under this Agreement is adversely affected by any cause beyond Komatsu's reasonable control (**Force Majeure Event**), then Komatsu may, if it chooses, end this Agreement or suspend it for up to 3 months by giving the Customer written notice. Komatsu will not be liable for any loss, damage or liability which the Customer incurs as a result, whether directly or indirectly.

15 Rental Details

The Customer agrees and acknowledges that not all of the information set out in the Rental Details relating to the Equipment, such as the serial number of the Equipment, may be available for insertion into the Rental Details at the date of execution of the Equipment Rental Agreement. When such information is available Komatsu will notify the Customer and the Customer authorises Komatsu to insert such details into the Rental Details.

16 General Provisions

- (a) The Customer must not assign this Agreement without the prior written consent of Komatsu.
- (b) The Customer, or the person signing this Agreement on the Customer's behalf, warrants that it is authorised to enter this Agreement.
- (c) No time or indulgence by Komatsu will be deemed to be a waiver of any of Komatsu's rights.
- (d) Notices and other communications under this Agreement must be in writing sent by mail to or left at the addresses set out in the Rental Details (or as subsequently advised in writing by the relevant party).
- (e) In this Agreement, "including" and "includes" are not words of limitation;
- (f) This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

SCHEDULE 1- INSPECTION REPORT

See attached.

If not included at the time of signing the Agreement, the Inspection Report is to be prepared by Komatsu and signed on behalf of both parties prior to the Commencement Date.

SCHEDULE 2 – RENTAL RETURN CONDITIONS

The Equipment must meet the following minimum condition requirements of Part A or Part B of this Schedule upon termination or expiration of the Term applicable to the Equipment. Part A specifies the requirements for wheel type Equipment. Part B specifies the requirements for track type Equipment.

Capitalised terms not otherwise defined in this document have the meaning given to them in the Definitions section of the Terms and Conditions of Equipment Rental.

Part A - Wheel type Equipment

1 Physical Condition and Appearance

- 1.1 The Equipment must have the same overall appearance as at the Commencement Date. This must be as recorded in the Inspection Report which was signed by the Customer on delivery or collection of the Equipment.
- 1.2 The Equipment must have good overall appearance and must function properly for the purpose for which it was intended. All corrosion and impact damage to cabin or panel-work must have been repaired in a professional manner and repainted either in manufacturer's standard colours or in the colours in which it was painted at the Commencement Date. The Equipment serial number plate must be in place and legible.
- 1.3 There must be no obvious damage and any accident, abuse and vandal damage must have been repaired and/or otherwise corrected in accordance with the manufacturer's recommendations and good engineering practice.
- 1.4 All Equipment controls, including the controls of ancillary Equipment must operate correctly and the Equipment must be capable of consistent operation through the full range of its functions in accordance with the manufacturer's specifications.
- 1.5 All windows, windscreens, mirrors, lenses, gauges or glass which is broken, missing or defaced must be replaced. OEM monitoring, warning, alarm, bucket load weighing systems and data recording systems, including KOMTRAX, must be complete and operational.
- 1.6 All service, working, and travel lights, must be complete and in full operating order. All electrical wiring, batteries, switches, fuses and circuit breakers must be complete and operational.
- 1.7 The interior fittings and accoutrements of the cabin must be free from damage, abuse and deficiencies with all seating, linings, mouldings, dashboard, accessory Equipment and services being complete and functioning properly. This includes radios/CD players, audio speakers, UHF/2 way radios, cabin lighting, heater, demister, air conditioner, cabin pressuriser, windscreen washers and windscreen wipers.
- 1.8 All decals, labels, and signwriting showing any name or identification marks other than those applied by the manufacturer or required under New Zealand regulations must have been removed and any remedial work required as a result of the removal of such decals, labels or signwriting must be carried out to the body or structure of the Equipment prior to the return of the Equipment and to a standard appropriate for resale purposes.
- 1.9 The ROPS/FOPS structure must be complete, undamaged, and must not have been modified in any way by welding, drilling, cutting, extending or the attachment of accessories. The certification plate must be in place and legible.
- 1.10 Upon return to Komatsu, the Equipment must comply with State workplace health and safety regulations and/or relevant safety / industrial regulations pertaining to this type of Equipment including relevant noise emission regulations. The Equipment must be capable of being immediately operated by a third party purchaser or hirer, without further major repair, replacement, alteration or improvement.

2 Mechanical Condition

- 2.1 The Equipment must have been serviced and maintained in accordance with the manufacturer's recommendations and if the Customer has maintained or repaired the Equipment, a copy of the service history is to be submitted to Komatsu upon the return of the Equipment. Parts used in maintenance and repair, with the exception of ground engaging tools and manufacturer approved hardware or filters, must be of genuine OEM supply.
- 2.2 As part of the scheduled maintenance, the Equipment must have had oil samples taken at the approved intervals. These samples must be of the genuine KOWA (Komatsu Oil Wear Analysis) program and the samples must be submitted and processed correctly, with the correct details completed on the sample submission cards. This includes listing the customer as "Komatsu Australia Rental" and the site listed as the Customer's name and site.
- 2.3 The engine must operate according to the specification of the manufacturer with no oil or coolant leaks or excessive smoke. There must be no ingress of coolant into the lubrication or hydraulic systems. The mountings of the engine, engine accessories, engine controls and radiator must be secure with no broken or missing fittings, fasteners or connections. Any engine protection devices fitted must be complete and operational.
- 2.4 The transmission, torque converter, HST motors and pumps, drop box, differentials and final drives must function correctly without binding, grabbing, unintended slippage, overheating or excessive noise. The mountings of these components must be free from any breakage or damage.
- 2.5 The radiator and cooling system in general must not be clogged with dust, mud or any other blocking substance and will be free from leaks, punctures or holes. The system must be capable of sustaining the Equipment within the normal operating temperature range as specified by the manufacturer and must be filled with the correct coolant solution (including anti-freeze additive) in compliance with the manufacturer's recommendations.
- 2.6 All hydraulic cylinders and actuators must be in good working order, not bent and must operate as originally specified when new. Any scoring or pitting that may have occurred must be limited to the extent that the cylinder does not leak in normal operation. All hydraulic pumps and motors are to function properly and to be devoid of cracked casings and damaged mountings. All hydraulic hoses, valves, connections and couplings must be free from leaks and damage to hoses must be limited to the outer casing only.
- 2.7 All operation, maintenance, and service manuals must be returned with the unit at the end of the Term along with any service records.

- 2.8 In general, the dump body, bucket or blade must be free from distortion. Cutting edges/ground engaging tools/body liners of the Equipment must be intact and of good appearance. Pro rata contribution towards wear of dump bodies, buckets, blades and GET will apply as determined by Komatsu.
- 2.9 The Equipment tyres must be in good condition having no side wall or carcass damage. Pro rata contribution towards wear of tyres will apply as determined by Komatsu.
- 2.10 All clearances at work equipment pins, bushes, trunnions and/or linkages, body mount pins & bushes must be within manufacturer's tolerances for normal operation. Front loading frame equipment and/or hoe attachment must be in good operational condition. Any stabilisers must be fully operational.
- 2.11 The main frame of the Equipment must be free from live cracks. Such repairs as may have been carried out to the frame of the Equipment must have been performed in a professional manner and in accordance with both good engineering practice and the recommendations of the manufacturer.

3 Other Conditions

- 3.1 If required by Komatsu, the Customer is to provide secure storage of the Equipment for up to 180 days after the end of the Term at no cost to Komatsu.
- 3.2 The Customer is to provide access to the Equipment during the Term and allow for mutually convenient demonstration of the Equipment operation if requested.
- 3.3 If the Customer is maintaining the Equipment and no maintenance labour is supplied by Komatsu during the Term, the Customer must provide access to the Equipment at least once every six months of the Term, if requested, to allow Komatsu assess the Equipment.
- 3.4 The Equipment is to be returned to a location in New Zealand, as nominated by Komatsu at the Customer's cost.
- 3.5 The Equipment must be returned to Komatsu with a full tank of fuel. If the Equipment is returned without a full tank of fuel, Komatsu will fill the tank and charge the Customer the per litre amount indicated in the Rental Details.

Part B - Track type Equipment

1 Physical Condition and Appearance:

- 1.1 The Equipment must have the same overall appearance as at the Commencement Date. This must be as recorded in the Inspection Report which was signed by the Customer on delivery or collection of the Equipment.
- 1.2 The Equipment must have good overall appearance and must function properly for the purpose for which it was intended. All corrosion and impact damage to cabin or panel-work must have been repaired in a professional manner and repainted either in manufacturer's standard colours or in the colours in which it was painted at Commencement Date. The Equipment serial number plate must be in place and legible.
- 1.3 There must be no obvious damage and any accident, abuse and vandal damage must have been repaired and/or otherwise corrected in accordance with the manufacturer's recommendations and good engineering practice.
- 1.4 All Equipment controls, including the controls of ancillary Equipment must operate correctly and the Equipment must be capable of consistent operation through the full range of its functions in accordance with the manufacturer's specifications.
- 1.5 All windows, windscreens, mirrors, lenses, gauges or glass which is broken, missing or defaced must be replaced. OEM monitoring, warning, alarm, bucket load weighing systems and data recording systems, including KOMTRAX, must be complete and operational.
- 1.6 All service, working, and travel lights, must be complete and in full operating order. All electrical wiring, batteries, switches, fuses and circuit breakers must be complete and operational.
- 1.7 The interior fittings and accoutrements of the cabin must be free from damage, abuse and deficiencies with all seating, linings, mouldings, dashboard, accessory Equipment and services being complete and functioning properly. This includes radios/CD players, audio speakers, UHF/2 way radios, cabin lighting, heater, demister, air conditioner, cabin pressuriser, windscreen washers and windscreen wipers.
- 1.8 All decals, labels, and signwriting showing any name or identification marks other than those applied by the manufacturer or required under New Zealand regulations must have been removed and any remedial work required as a result of the removal of such decals, labels or signwriting must be carried out to the body or structure of the Equipment prior to the return of the Equipment and to a standard appropriate for resale purposes.
- 1.9 The ROPS/FOPS structure must be complete, undamaged, and must not have been modified in any way by welding, drilling, cutting, extending or the attachment of accessories. The certification plate must be in place and legible.
- 1.10 Upon return to Komatsu the equipment must comply with New Zealand workplace health and safety law including regulations and/or relevant safety/industrial regulations pertaining to this type of Equipment including relevant noise emission regulations. The Equipment must be capable of being immediately operated by a third party purchaser or hirer, without further major repair, replacement, alteration or improvement.

2 Mechanical Condition

- 2.1 The Equipment must have been serviced and maintained in accordance with the manufacturer's recommendations and if the Customer has maintained or repaired the Equipment, a copy of the service history is to be submitted to Komatsu upon the return of the Equipment. Parts used in maintenance and repair, with the exception of ground engaging tools and manufacturer approved hardware or filters must be of genuine OEM supply.
- 2.2 As part of the scheduled maintenance, the Equipment must have had oil samples taken at the approved intervals. These samples must be of the genuine KOWA (Komatsu Oil Wear Analysis) program and the samples must be submitted and processed correctly, with the correct details completed on the sample submission cards. This includes listing the customer as "Komatsu Australia Rental" and the site listed as the Customer's name and site.
- 2.3 The engine must operate according to the specification of the manufacturer with no oil or coolant leaks or excessive smoke. There must be no ingress of coolant into the lubrication or hydraulic systems. The mountings of the engine, engine accessories, engine controls and

radiator must be secure with no broken or missing fittings, fasteners or connections. Any engine protection devices fitted must be complete and operational.

- 2.4 The transmission, torque converter, HST motors and pumps, main pumps, travel motors, drop box, differentials and final drives must function correctly without binding, grabbing, unintended slippage, overheating or excessive noise. The mountings of these components must be free from any breakage or damage.
- 2.5 The radiator and cooling system in general must not be clogged with dust, mud or any other blocking substance and will be free from leaks, punctures or holes. The system must be capable of sustaining the Equipment within the normal operating temperature range as specified by the manufacturer and must be filled with the correct coolant solution (including anti-freeze additive) in compliance with the manufacturer's recommendations.
- 2.6 All hydraulic cylinders and actuators must be in good working order, not bent and must operate as originally specified when new. Any scoring or pitting that may have occurred must be limited to the extent that the cylinder does not leak in normal operation. All hydraulic pumps and motors are to function properly and to be devoid of cracked casings and damaged mountings. All hydraulic hoses, valves, swivel joints, connections and couplings must be free from leaks and damage to hoses must be limited to the outer casing only.
- 2.7 All operation, maintenance, and service manuals must be returned with the unit at the end of the Term along with any service records.
- 2.8 In general, the bucket or blade must be free from distortion. Cutting edges/ground engaging tools of the Equipment must be intact and of good appearance. Pro rata contribution towards wear buckets, blades and GET will apply as determined by Komatsu.
- 2.9 The Equipment undercarriage must be complete with no rollers, track plates, guiding guards or covers missing or broken. All rollers must turn freely when the Equipment is moving and must have no oil leaks. Track adjusting and recoil mechanisms must be complete and operational with no broken recoil springs and no leakage of recoil cylinders. Pro rata contribution towards wear of undercarriage components will apply as determined by Komatsu.
- 2.10 All clearances at work equipment pins, bushes, trunnions and/or linkages and slew bearings must be within manufacturer's tolerances for normal operation.
- 2.11 The main frame of the Equipment must be free from live cracks. Such repairs as may have been carried out to the frame of the Equipment must have been performed in a professional manner and in accordance with both good engineering practice and the recommendations of the manufacturer.

3 Other Conditions

- 3.1 If required by Komatsu, the Customer is to provide secure storage of the Equipment for up to 180 days after the end of the Term at no cost to Komatsu.
- 3.2 The Customer is to provide access to the Equipment during the Term and allow for mutually convenient demonstration of the Equipment operation if requested.
- 3.3 If the Customer is maintaining the Equipment and no maintenance labour is supplied by Komatsu during the Term, the Customer must provide access to the Equipment at least once every six months of the Term, if requested, to allow Komatsu to assess the Equipment.
- 3.4 The Equipment is to be returned to a location in New Zealand, as nominated by Komatsu at the Customer's cost.
- 3.5 The Equipment must be returned to Komatsu with a full tank of fuel. If the Equipment is returned without a full tank of fuel, Komatsu will fill the tank and charge the Customer the per litre amount indicated in the Rental Details.

SCHEDULE 3 - EQUIPMENT MAINTENANCE SCHEDULE

As per OEM maintenance schedule, a copy of which has been provided to the Customer.

SCHEDULE 4 – CUSTOMER MAINTENANCE OBLIGATIONS

The Customer must, at its own cost, perform the following maintenance on the Equipment:

1. All maintenance requirements with a frequency below 250 hours.
2. Comply with the Daily Start-up Sheet for the applicable Equipment (as issued by Komatsu).
3. Clean the Equipment as is reasonably required for safe and efficient daily operation (including removing packed material in undercarriage).
4. Replacement and/or supply of all Consumables as required and to the satisfaction of Return Conditions as a minimum.

Schedule 5 – KOMATSU MAINTENANCE OBLIGATIONS

Komatsu to carry out all OEM schedule maintenance, including:

1. 250, 500, 1000 and 2000 Hour scheduled preventative maintenance servicing in accordance with OEM recommendations
2. 1000 or 2000 Hour scheduled preventative maintenance clinic in accordance with OEM recommendations
3. Condition monitoring of the Equipment by carrying out inspections and oil wear analysis
4. Remote monitoring of the Equipment (if the equipment for this has been fitted)
5. Providing a maintenance procedure and carrying out the maintenance services in accordance with the relevant OEM manuals

KOMATSU MAINTENANCE OBLIGATIONS exclude the following:

- (a) Customer Maintenance Obligations;
- (b) Customer obligations under the terms and conditions of rental (e.g. Customer liable for damage to Equipment, Return Conditions) and;
- (c) Maintenance this is required outside of the OEM maintenance schedule that is caused or contributed to by improper, excessive or negligent use of the Equipment by the Customer.