



## NEW PARTS WARRANTY

### 12 Months & Unlimited Hours

Komatsu Australia Pty Limited ABN 71 143 476 626 (Komatsu) warrants to You for twelve (12) months from the Sale Date that any new Part sold to You by Komatsu is free from Defects in material and workmanship, subject to the terms of this Warranty.

This Warranty covers all new Parts supplied by Komatsu to You excluding those covered by our Standard Machine or Machine Extended Powertrain warranties.

#### 1. Definitions

In this Warranty, the following definitions apply:

**Business Hours** means normal trading hours of Komatsu or Komatsu Service;

**Consumables** includes Ground Engaging Tools, fuels, oils, lubricants, coolants, batteries, filters and other items customarily regarded as consumables in the industry;

**Defect or defective** means any Part which does not comply with OEM specifications, or which is faulty, materially non-conforming, inoperable, unsafe or not operating properly;

**Komatsu** means Komatsu Australia Pty Ltd;

**Komatsu Service** means Komatsu's nominated servicing establishment;

**Machine** means the Komatsu equipment in which a Part is designed to be installed;

**Maintenance Program** means the program, specified by the OEM and/ or Komatsu, that details the processes, methods and Your responsibilities for Machine and Parts maintenance and includes the Manuals provided by Komatsu with the Machine;

**Manuals** means any operation, service or other manual or instruction or recommendation or other information supplied to You by the OEM or Komatsu in relation to the Part or any Machine in which it is fitted;

**Non-Komatsu Attachments** means an attachment to or supplied with the Machine which is not manufactured by Komatsu or any member of the Komatsu group of companies;

**OEM** means the manufacturer of the Machine or Part (as the context requires);

**Part** means the new part purchased by You from Komatsu excluding those parts covered by Komatsu Standard Machine and Machine Extended Powertrain warranties and excludes Consumables;

**Required Documents** includes all documents relevant to the Machine including without limitation, Warranty registration documents, proof of purchase documents, commissioning documents and maintenance records;

**Sale Date** means the earlier of either: (A) the date You take possession of the Part; or (B) the date you pay for the Part;

**Warranty** means this document;

**Warranty Period** means twelve (12) months from the Sale Date;

**You** means the person or business who initially purchased the Machine from Komatsu and *Your* has a corresponding meaning.

#### 2. Warranty as to materials and workmanship

2.1 Komatsu warrants that the Part sold to You by Komatsu will be free from Defect in the:

- (a) materials supplied by Komatsu; or
- (b) workmanship of Komatsu

subject to these terms and conditions for the Warranty Period.

2.2 In the event that any Part is found to be defective in either materials or workmanship during the Warranty Period, Komatsu shall at its cost and at its option:

- (a) repair the defective Part; or
  - (b) replace the defective Part with any of a new, used or reman Part;
- in accordance with this Warranty, subject to these terms and conditions.

#### 3. Services to be provided by Komatsu

3.1 Any services to which You are entitled under this Warranty shall be provided to You by Komatsu or Komatsu Service during Business Hours.

3.2 Transportation costs for the Machine or Part and any repaired or replacement Machine or Part whether to or from (as Komatsu directs) Komatsu or Komatsu Service for the purposes of any Warranty claim are at Your expense unless Komatsu advises You otherwise in writing.

#### 4. How a claim is made and evaluated- 'Your Responsibilities'

4.1 All claims and associated enquiries by You under this Warranty must be notified in writing to Komatsu or to the nearest Komatsu Service.

4.2 Komatsu has no obligation under this Warranty unless You notify Komatsu of any warranty claim promptly and no later than seven (7) days from becoming aware of any potential claim and allow Komatsu reasonable access to the Part and if required, the Machine, the subject of the Warranty claim in order to evaluate the claim.

4.3 In order to lodge a valid claim under this Warranty, You must:

- (a) provide Komatsu with a purchase order stating 'Subject to Warranty' and specifying the details of the warranty claim;
- (b) provide evidence to Komatsu that the Machine or Part was purchased from Komatsu and is under Warranty as at the claim date;
- (c) provide all other Required Documents to Komatsu;
- (d) pay for or provide all non-warranted labour and bear all non-warranted labour costs; pay for any non-warranted shipping charges if any; pay for any non-warranted travel costs if any and pay the non-warranted transport costs if any, associated with moving the Machine or Part to Komatsu Service;
- (e) pay the costs of making the claim and the costs incurred if any, to investigate any claim found not to be covered by this Warranty.

Failure to comply with any of these requirements may invalidate or reduce your warranty entitlements.

#### 5. Termination of the Warranty

5.1 This Warranty ceases at the end of the Warranty Period.

5.2 If Komatsu replaces a Part, the replaced Part becomes the property of Komatsu. The replacement Part is Your property and is warranted for the balance of the Warranty Period.

- 5.3 If Komatsu repairs a part, the repaired Part is warranted for the balance of the Warranty Period that applied to the original Part.

## **6. Application of this Warranty**

- 6.1 This Warranty applies only to those Parts sold to You by Komatsu and used within Australia within the Warranty Period.
- 6.2 This Warranty is conditional upon the Machine being maintained by You in accord with the Maintenance Program.
- 6.3 This Warranty does not apply:
- (a) if You breach or do not comply with any of Your Responsibilities in item 4. above or otherwise;
  - (b) if any Defect is caused or contributed to by Your misuse, negligence, accident, or failure to maintain or use the Machine or the Part in accordance with the Maintenance Program or the recommendations of Komatsu or the OEM;
  - (c) if any Defect arises as a result of or in connection with, a condition identified through the Maintenance Program or otherwise, for which Komatsu has recommended certain action to You and You fail to comply with that recommendation;
  - (d) in relation to alterations, modifications or repairs to a Part or Machine, including the fitting of attachments parts or use of consumables, that are not authorised or approved by Komatsu and which in Komatsu's reasonable judgment, cause or contribute to the Defect;
  - (e) to repairs or replacements required due to normal maintenance or operating services for the Machines or Parts, including but not limited to inspections, adjustments, tune-ups, fuel, lubricants, or Consumables, routine or scheduled parts repairs or replacements;
  - (f) if You have delayed more than seven (7) days in notifying of any potential Defect after first becoming aware of it;
  - (g) if You have unreasonably delayed in providing the Machine or Part to Komatsu after first becoming aware of it;
  - (h) if You fail to adhere to any recommendation made by Komatsu;
  - (i) if You fail to supply the Required Documents when requested by Komatsu; or
  - (j) if Komatsu in its sole discretion determines any use or installation of the Machine or Part has caused or contributed to the Defect.
- 6.4 If otherwise applicable, the Vienna Convention (Contracts for the International sale of Goods) does not apply to this Warranty or the Machine or Parts and is excluded in its entirety.

## **7. Limitation of Warranty**

- 7.1 To the extent permitted by law, this Warranty is exclusive and is in lieu of all other express or implied warranties, conditions and representations of merchantability or fitness for any particular purpose, whether statutory or otherwise.
- 7.2 Without limiting the generality of clause 7.1, no warranty is given and Komatsu disclaims and excludes all express and implied warranties, conditions and representations in respect of:
- (a) used or reconditioned Parts or Parts which are not new at purchase;
  - (b) parts, components or attachments not sold by Komatsu; or
  - (c) defects caused or contributed to, or arising as a result of, or in connection with, any of the items in 7.2 (a)- (b) above provided always that nothing shall limit any warranty given independently to You by any OEM of parts, components or attachments referred to in 7.2(a) and (b) or for Non-Komatsu Attachments.
- 7.3 The liability of Komatsu to You for loss, damage, injury or property damage, whether direct or indirect, special or consequential or otherwise, arising out of breach of this Warranty, shall be limited to requiring Komatsu to comply with clause 2.2.
- 7.4 Komatsu shall not be liable to You or to any other third parties in contract, tort or equity, for breach of any statute (to the fullest extent permitted by law) or in any other action, including but not limited to:
- (a) direct or indirect loss of profit or revenue, loss of use of any Machine, Part, part, component, or associated equipment, cost of capital, cost of substituted equipment, facilities or service, downtime costs, labour costs in connection with or arising out of the supply, performance or use of the Machine or Part or any service performed by Komatsu; or
  - (b) any direct or indirect losses or special or consequential loss or damage or otherwise of any kind whatsoever, arising directly or indirectly from any act, omission, breach, error, default, or delay of Komatsu or its employees or representatives in connection with, or arising out of, the supply, performance or use of the Machine or Part in the performance of, or in relation to this Warranty.
- 7.5 Nothing herein shall limit those provisions of the Competition and Consumer Act 2010 including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia 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 under those statutory provisions shall be limited at its option to:
- (a) in the case of goods:
    - i. the replacement of goods or the supply of equivalent goods; or
    - ii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - iii. the payment of the cost of having the goods repaired; or
    - iv. the repair of the goods; and
  - (b) in the case of services:
    - i. the supply of the services again; or
    - ii. the payment of the cost of having the services supplied again.
- 7.6 Subject to clause 7.5, the benefits to you given by this Warranty are in addition to any other rights and remedies you may have as a consumer under a law in relation to the goods or services to which this Warranty relates. If you are acquiring goods from Komatsu as a "consumer" as defined under Australian Consumer Law, then Komatsu advises that its goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

## **8. Assignment or Transfer Subject to Condition**

You shall not assign or transfer any of Your rights or obligations under this Warranty unless in accord with Komatsu's then current Warranty transfer procedure.

## **9. Governing Law**

This Warranty is governed by the laws of New South Wales.

**Komatsu Australia Pty Ltd**  
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