

Annexure B -
KOMATSU AUSTRALIA
TERMS & CONDITIONS – PARTS AND SERVICE

1. DEFINITIONS

"Agreement" means the agreement between Komatsu and the Purchaser for the supply of the Goods and/or Services, comprising the relevant order and these Conditions.

"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 Contract 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.

"Conditions" means these terms and conditions, as amended from time to time.

"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 or corruption of data, 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.

"Delivery" means when the Goods are picked up by a carrier or otherwise leave Komatsu's premises or as agreed in writing.

"Exchange" means the exchange of the Purchaser's own used part for a new, remanufactured (Reman, Komponent Exchange, Service Exchange) or used part supplied by Komatsu.

"Goods" or "Services" (or both) collectively and severally means the parts, components, fluids, oils or other parts or services described in the attached quotation or invoice for purposes of supply by Komatsu to Purchaser.

"IP" means all industrial and intellectual property rights whether protectable by statute, common law or equity including without limitation, all copyright in the goods and all materials provided in connection with the goods, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, design rights (registrable or not), trade mark rights (registered or not), circuit layout design rights and excluding non-assignable moral rights.

"Komatsu" means Komatsu Australia Pty Ltd ABN 63 053 514 739.

"Price" means the total monetary amount for the sale of the Goods or Services (excluding GST).

"Purchaser" means the entity placing an order for Goods or Services.

"Related Bodies Corporate" means related bodies corporate as defined in the Corporations Act 2001.

"Services" means any service or repair of specified equipment supplied under a Komatsu service quotation or invoice.

2. APPLICATION OF CONDITIONS

2.1 Goods and Services are supplied or Exchanged, solely on the basis of these Conditions, any terms put forward by the buyer are rejected.

2.2 Terms of contract, conditions or offer in any specification, purchase order or other document submitted by the Purchaser are excluded.

2.3 Variations or additions to these Conditions are effective only if agreed in writing by Komatsu.

2.4 The Purchaser's request to buy Goods or Services or submission by the Purchaser of a purchase order for the Goods or Services is deemed to be an offer to purchase the Goods or Services (order) subject to these Conditions. Komatsu may accept or reject an order in its sole discretion.

2.5 An order to purchase Goods or Services is only accepted when it is acknowledged by Komatsu either orally or in writing or by Delivery.

2.6 Komatsu may vary these Conditions from time to time and will provide the Purchaser with replacement Conditions. The subsequent placing of an order by the Purchaser is deemed as acceptance of these Conditions.

2.7 Unless stated otherwise by Komatsu, the Price for the Goods and Services is firm for 30 days from its original date unless sooner withdrawn by Komatsu.

3. PRICE

3.1 Unless otherwise stated by Komatsu:

(a) Prices exclude GST, customs duty, levies, tariffs, delivery costs and any export packing or special packing if required, taxes whether present or future, direct or indirect (except for taxes levied on Komatsu's income); and

(b) Goods pricing will be invoiced and payable in accordance with Komatsu's standard price list applying at the date of order of the Goods.

4. DELIVERY

4.1 Delivery and availability dates are indicative only. Komatsu will use reasonable efforts to deliver the Goods by the delivery date specified by it.

4.2 Komatsu (including its Related Bodies Corporate) is not liable for any damage or loss, including Consequential Loss, to the Purchaser resulting from any delay in delivery of Goods or Services.

5. PAYMENT

5.1 The Purchaser must pay the Price without deduction or set-off within 30 days of an order or on or before Delivery whichever occurs first. Time is of the essence for payment.

5.2 Where the Purchaser is approved by Komatsu for trading on credit terms, payment is due for all Goods and Services provided, within 30 days from the end of the month of invoicing. All other sales are on a cash on delivery basis.

5.3 The Purchaser indemnifies Komatsu for any losses, costs or fees incurred or arising in connection with recovery of any overdue payment.

5.4 The Goods remain Komatsu's property until the Price is paid in full. The Purchaser must: (a) keep the Goods in its possession and control; (b) keep the Goods in good repair and condition, excluding fair wear and tear; (c) keep the Goods stored separately and marked so that the Goods are clearly and easily identifiable as Komatsu's property and if requested, promptly inform Komatsu of the location of the Goods; and (d) not sell, assign or lease the Goods or any interest in them, or permit any Security Interest, charge, pledge, lien or other encumbrance to be created in relation to them.

5.5 If the Purchaser fails to pay to Komatsu all monies due under this Agreement by the due date, Komatsu has the right and irrevocable licence from the Purchaser, to, at any time and without notice, via its representatives, enter the Purchaser's premises and to repossess the Goods or any part of them.

6. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) ("PPSA")

6.1 The retention of title in clause 5.4 gives rise to a Purchase Money Security Interest under the PPSA in favour of Komatsu in respect of the Goods and their proceeds.

6.2 If the Purchaser defaults on any monies due under this Agreement, Komatsu has the irrevocable right to seize the Goods without notice and deal with the Goods as Komatsu sees fit.

6.3 To the maximum extent permitted by law, the following provisions of the PPSA do not apply to the enforcement by Komatsu of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143. The Purchaser waives its rights to receive any verification statements under Section 157 of the PPSA.

6.4 In clauses 5 and 6 "proceeds", "Purchase Money Security Interest" and "Security Interest" have the meanings given in the PPSA.

7. RISK AND INSURANCE

7.1 Risk in the Goods passes to the Purchaser upon Delivery. The Purchaser must fully insure the Goods, and hold the benefit of any claim on trust for Komatsu, from the time risk in the Goods passes to the Purchaser until title in the Goods passes from Komatsu to the Purchaser.

8. **WARRANTIES AND EXCLUSIONS**

- 8.1 Unless Komatsu states otherwise, the Goods or Services are warranted in accordance with the applicable warranty relevant at the date of supply listed at:
<https://www.komatsu.com.au/pages/terms-conditions>
- 8.2 All other conditions and warranties of any type in relation to the Goods or Services are excluded to the maximum extent allowed by the law. Nothing in these Conditions limit those provisions of the Competition and Consumer Act 2010 (Cth) nor any other 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 is 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.
- 8.3 The Purchaser, in connection with the Goods or Services, indemnifies and keeps indemnified Komatsu, its Related Bodies Corporate, its officers, agents, employees, subcontractors, vendors and other contractors (Indemnitees) against all claims, demands, losses, costs, liabilities and expenses arising directly or indirectly out of:
- (a) injury to or death of any person (including Indemnitees) to the extent not caused by Komatsu;
 - (b) damage to or destruction of any property (including that of Indemnitees), to the extent not caused by Komatsu
 - (c) any modification, alteration or use of the Goods that is not in accordance with (without limitation) any applicable law or the Goods manufacturer's recommendations or Komatsu's instructions or the manuals relating to the Goods.
- 8.4 Notwithstanding anything to the contrary in these Conditions or elsewhere and to the full extent permitted by law, Komatsu (including its Related Bodies Corporate) is not liable to the Purchaser under contract, at law or otherwise for any Consequential Loss, liquidated damages, delay penalties or any performance guarantees.
- 8.5 Notwithstanding anything to the contrary in these Conditions or elsewhere and to the full extent permitted by law, Komatsu's total cumulative liability to the Purchaser for all liabilities, damages, losses, costs and expenses suffered or incurred under or connection with this Agreement by the Purchaser, for all Claims in the aggregate, is limited to the amount paid by the Purchaser to Komatsu for the Goods and Services the subject of the Claim.

9. **DEFAULT**

- 9.1 The Purchaser must pay Komatsu interest (at the ANZ Bank Indicator Lending Rate effective from time to time plus 2% p.a.) on any amount not paid by the due date until payment in full is received by Komatsu.
- 9.2 Komatsu may by written notice to the Purchaser immediately end this Agreement or otherwise refuse to supply Goods or Services if:
- (a) the Purchaser fails to perform any of its obligations under this Agreement;
 - (b) the Purchaser dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business;
 - (c) anything happens that indicates that there is a significant risk that the Purchaser is or will become unable to pay debts as they fall due; or
 - (d) a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to the Purchaser or any of its assets.
- 9.3 The rights and remedies provided in these Conditions will not affect any other rights or remedies available to Komatsu.

10. **EXCHANGE**

- 10.1 If the Purchaser requests the Exchange of its used part, Komatsu may, in its sole and absolute discretion decide whether it will accept the Purchaser's Exchange used part and if so on what terms. If Komatsu accepts the Purchaser's Exchange used part, Komatsu will invoice the Purchaser ("Exchange Invoice") on the basis that the Purchaser's Exchange used part is provided to Komatsu within 10 business days of receipt by the Purchaser of Komatsu's Exchange part and the Purchaser's Exchange used part meets Komatsu's minimum condition requirements as notified by Komatsu from time to time ("Core Return Criteria"). If Komatsu determines within 10 business days of receipt of the Purchaser's Exchange used part that it does not meet the Core Return Criteria then Komatsu may charge the Purchaser an amount required to bring the Purchaser's Exchange used part up to the standard of the Core Return Criteria. If Komatsu determines that the Purchaser's Exchange used part is beyond economic repair, Komatsu will invoice the Purchaser, at Komatsu's list price of a corresponding new part less the Exchange Invoice amount. If the Purchaser's Exchange used part is not provided to Komatsu within 10 business days of receipt by the Purchaser of Komatsu's Exchange part (or such later date as may be agreed by Komatsu in writing) then Komatsu will invoice the Purchaser, at Komatsu's list price of a corresponding new part less the Exchange Invoice amount.
- 10.2 The Purchaser warrants that it has or will have unencumbered title to any used part provided by it to Komatsu for the purposes of an Exchange.
- 10.3 The Purchaser authorises Komatsu to pay any monies given to it for the purposes of removing any encumbrance on any used part provided by the Purchaser to Komatsu in connection with an Exchange.

11. **FORCE MAJEURE**

- 11.1 A party is not liable for failure to perform, or delay in performing, an obligation, except an obligation to pay money, if the failure or delay arose from a cause beyond the reasonable control of that party.

12. **MISCELLANEOUS**

- 12.1 Komatsu retains all right, title, interest and ownership in all IP rights in any Goods or Services provided to the Purchaser under this Agreement.
- 12.2 An order may only be cancelled with Komatsu's written consent.
- 12.3 The Purchaser grants to Komatsu and its personnel, a non-exclusive and irrevocable licence to access the Goods, and to enter premises, at no cost, to enable Komatsu to perform data retrieval functions for the purpose of monitoring component life, service intervals or machine availability of Goods. Komatsu will only accept return of any Goods in accordance with its then current return policy which is available from Komatsu upon request.
- 12.5 If GST is imposed on any supply made in accordance with this Agreement, the recipient must pay an additional amount equal to the GST payable in connection with that supply promptly following receipt of a tax invoice. Expressions used in this condition which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning when used in this Agreement.
- 12.6 The Vienna Convention on the Sale of International Goods (and any enabling legislation in any State or Territory) is excluded from this Agreement.
- 12.7 This Agreement is governed by the laws of New South Wales.

Annexure C -

KOMATSU AUSTRALIA

ADDITIONAL TERMS & CONDITIONS – REMOTE PILOTED AERIAL SYSTEMS (RPAS)

These terms and conditions are in addition to, and supplement, Komatsu's Terms & Conditions – Parts and Service (“**Conditions**”). Capitalised terms not otherwise defined in this document have the meaning provided in the Conditions. The definition of “Services” in the Conditions, is amended under this document, to include the provision of remote piloted aerial system (RPAS) services.

Komatsu and the Purchaser agree as follows:

1. SERVICES

1.1 **Performance of Services:** Komatsu may issue the Purchaser with a quotation (“**Quotation**”) for the provision of Services. The Purchaser may from time to time issue a purchase order (“Purchase Order”) to Komatsu. Each Purchase Order will, if accepted by Komatsu, become binding and is subject to the Quotation, this document and the Conditions (to the exclusion of any terms and conditions submitted by the Purchaser). Komatsu agrees to use commercially reasonable efforts to perform, or cause to be performed, for the Purchaser the Services and to deliver to the Purchaser the deliverables described in the quotation (“**Deliverables**”), according to the specifications (“**Specifications**”), each as set out in the applicable Quotation. Notwithstanding anything to the contrary, Komatsu is not responsible for any delays or additional expenses resulting from weather conditions at Purchaser's job site(s) which could adversely impact the quality of Data (as defined in clause 0) to be collected. The Purchaser agrees and acknowledges that some of the Services and Deliverables are provided by Skycatch, Inc. (a Delaware corporation) (“**Skycatch**”) and the Purchaser must access Skycatch's web, server, mobile and desktop applications and other resources to receive the benefit of the Services. Access to Skycatch's web, server, mobile and desktop applications is subject to Skycatch's terms and conditions, available at www.skycatch.com which must be agreed to by the Purchaser in order for access to be granted. Komatsu is not liable to provide the Services if Skycatch's terms and conditions are not agreed to. Komatsu provides no warranties and makes no representations in relation to the Skycatch web, server, mobile and desktop applications, including in relation to their availability, timeliness or accuracy.

1.2 **Acceptance:** Unless otherwise specified by Komatsu, each Deliverable is deemed accepted upon delivery to the Purchaser.

1.3 Purchaser's Obligations

- (a) **General:** The Purchaser acknowledges that the Purchaser's timely provision of (and Komatsu's access to) the Purchaser's job site, facilities, equipment, assistance, cooperation, and complete and accurate information and data from the Purchaser's officers, agents and employees (“**Cooperation**”) is essential to the performance of the Services, and that Komatsu will not be liable for any deficiency in performing the Services if such deficiency results from the Purchaser's failure to provide full Cooperation as required. Cooperation includes, but is not limited to, (a) designating an appropriate representative to interface with Komatsu during the course of the Services, (b) allocating and engaging additional resources as may be required to assist Komatsu in performing the Services, (c) informing Komatsu of any existing or potential hazards or unsafe conditions on Purchaser's job site which could impact Komatsu's performance of the Services or cause injury or harm to any Komatsu personnel, and (d) providing access to the job site and fulfilling all other obligations set out in this clause 0. Unless otherwise stated in the Quotation, Komatsu's invoice for the Services is due 30 days from the end of the month of issue.
- (b) **Mission Plan & Environmental Specifications:** With respect to drone flights, Komatsu and the Purchaser will work together to create a mission plan that sets out the recommended flight pattern and other instructions designed to enable accurate capture of the Raw Data (as defined in clause 0) described in a Quotation (“**Mission Plan**”). In addition to the Mission Plan, Komatsu may specify Environmental Operating Specifications (“**Environmental Specifications**”), that set out the environmental conditions under which Raw Data (as defined in clause 0) must be captured. The Purchaser acknowledges that it has read and understood the Environmental Specifications, if any, and Mission Plan (if Purchaser has not yet received the Mission Plan, Purchaser agrees that it will carefully review such Mission Plan prior to flight). The Purchaser expressly acknowledges that Komatsu will not be liable for any defects or errors in any Deliverables (e.g., blurred or missing images), including if such defects or errors are caused by Purchaser's demand for Komatsu to perform the Services in a manner that is inconsistent with the Mission Plan or Environmental Specifications. The Purchaser agrees and acknowledges that Raw Data is captured at a particular point in time and is representative of the environmental conditions at the job site at the time of capture. The environmental conditions at the job site may change following collection of the Raw Data.
- (c) **Permits; Licenses:** The Purchaser acknowledges that certain government licenses, permits, authorizations, or other regulatory approvals (“**Approvals**”) may be required in order to fly a drone as part of, or in connection with, the Services at the site. The Purchaser agrees to provide reasonable assistance and cooperation to Komatsu in obtaining all Approvals necessary for Komatsu to pilot the drone. Komatsu has no obligation to pilot any drones unless and until Komatsu receives all necessary Approvals, and Komatsu is not responsible for any delays or failures to perform the Services resulting from any such failure to obtain any necessary Approvals. The Purchaser shall defend, indemnify, and hold harmless Komatsu and its employees, officers, directors, shareholders, affiliates, agents, representatives, licensors, suppliers and service providers, from and against all claims, actions, demands, losses, liabilities, damages, costs, and expenses (including solicitor's fees) arising from or relating to (a) any Approvals with respect to the drone or its use, (b) or any existing or potential hazards or unsafe conditions on the Purchaser's job site.

2. Data

2.1 **Definitions:** The following definitions apply:

- (a) “**Data**” means Raw Data and Processed Data.
- (b) “**Identifiable Data**” means Data that identifies Purchaser or any individual.
- (c) “**Intellectual Property Rights**” means all patent rights, copyright rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other proprietary or intellectual property rights.
- (d) “**Internal Business Purposes**” means the Purchaser's own internal use in supporting the Purchaser's internal business operations and not to provide services to any third party in support of such third party's business.
- (e) “**Processed Data**” means data that results from the analysis, processing, modification, stitching, aggregation and other transformation of Raw Data by or for Komatsu, including the conversion of 2-dimensional images to 3-dimensional renderings of Raw Data.
- (f) “**Raw Data**” means the images and other data collected or received from the Purchaser, or by Komatsu or a third party on the Purchaser's behalf, in connection with the Services prior to analysis and other processing of such images and other data, and includes images and data (a) captured by Komatsu drones such as images of sites, facilities, and/or projects, and (b) otherwise received from the Purchaser.
- (g) “**Reports**” means a Deliverable made available to the Purchaser as a result of the Services that includes information, analyses, summaries and reports relating to the Data.
- (h) “**Skycatch Content**” means all content, data or information made available through or contained within the Skycatch web, server, mobile and desktop applications, including, without limitation, text, documents, charts, logos, buttons, icons, “look and feel” and screenshots, audio and video recordings, graphics, photographs, still and moving images, sound, illustrations, information, and software, including the organization and arrangement of all such content, and all derivative works of any such content. Skycatch content excludes, (x) Raw Data and (y) any Content provided by an External Service (as defined below).
- 2.2 **Rights to Raw Data:** The Purchaser exclusively owns all right, title, and interest in and to all Raw Data, including all Intellectual Property Rights therein; provided, however, that the Purchaser hereby authorises and grants Komatsu and Skycatch all permissions, rights and licenses necessary or useful for Komatsu and Skycatch to perform the Services, including the right to collect, transmit, process, distribute, modify, reproduce, display, archive, analyze, aggregate, use, execute, create derivative works of, and otherwise perform all operations on the Raw Data in order to perform the Services. Komatsu and Skycatch are not responsible for the content of any Raw Data and Komatsu or Skycatch may at any time and without prior notice remove, edit or block any Raw Data that Komatsu or Skycatch determine to be in violation of this Agreement or Skycatch's Terms of Service.
- 2.3 **Rights to Processed Data:** Komatsu (and/or Skycatch) exclusively own all right, title, and interest in and to all Processed Data, including all Intellectual Property Rights therein. Notwithstanding anything set forth herein, Komatsu and Skycatch may use, disclose, and otherwise exploit all Processed Data that is not Identifiable Data without restriction or obligation to the Purchaser, on a non-confidential basis or otherwise, both during and after the term of this Agreement.

- 2.4 **Rights to Deliverables and Reports:** Subject to the terms and conditions of this Agreement, (a) Komatsu grants to the Purchaser a worldwide, non-exclusive, non-transferable license to use, within the Purchaser's enterprise only, the Deliverables and the Reports, solely for the Purchaser's Internal Business Purposes, and (b) the Purchaser may reproduce Reports solely for the Purchaser's Internal Business Purposes and subject to any restrictions applicable to such Reports that are included in this Agreement or communicated to the Purchaser in the course of performance of the Services. Except for the foregoing license, Komatsu retains all rights in the Deliverables and Reports.
- 2.5 **Use of Identifiable Data:** The Purchaser hereby irrevocably and perpetually grants to Komatsu and Skycatch the right and license to retain, modify, reproduce, create derivative works of, and use all Identifiable Data (whether Raw Data or Processed Data) for the purpose of internally developing, maintaining, supporting, and improving Komatsu's and Skycatch's technology, products, and services and to create aggregate data or other Processed Data. Except as provided herein, Komatsu may disclose Identifiable Data only as Komatsu believes to be necessary or appropriate: (a) to comply with applicable legal requirements, including legal process and law enforcement requests; (b) to protect Komatsu's rights, property, and operations, including to enforce Komatsu's agreements, policies, and terms and conditions, and to protect the rights, property and operations of Komatsu's affiliates, business partners, Purchasers, or others; (c) to protect the personal safety of any individual; and/or (d) to third parties in the event of a sale or transfer of all or a part of Komatsu's business, assets, or stock.
- 2.6 **Third Parties:** The authorisations granted to Komatsu under this Agreement, including under this clause 0, will extend to service providers and other contractors exercising such rights and licenses on Komatsu's behalf, and Komatsu may share Raw Data, Processed Data, and Identifiable Data with such third parties who provide services on Komatsu's behalf, subject to the restrictions applicable to Komatsu with respect to any Identifiable Data.
- 2.7 **Purchaser's Representations and Warranties:** The Purchaser represents and warrants to Komatsu that the Purchaser (i) has obtained all required licenses, permits, authorisations, or other regulatory approvals for Komatsu and/or Skycatch to use, disclose and otherwise process the Raw Data on Purchaser's behalf, (ii) and has obtained all rights, licenses and consents required to grant Komatsu the rights and licenses set forth in this Agreement, including rights to use and disclose Identifiable Data as provided under this Agreement.
- 2.8 **Restrictions:** Except to the extent that the Purchaser receives prior written permission from Komatsu, the Purchaser may not: (i) reverse engineer or decompile the Deliverables; (ii) modify, create derivative works from, display, mirror, publish, distribute, transmit, transfer, license, sublicense, sell, market, or lease any portion of the Deliverables or any Skycatch Content; (iii) use any or all of the Deliverables or Skycatch Content for third-party training, commercial time-sharing or service bureau use; (iv) use the Deliverables or Skycatch Content for any illegal or unauthorized purpose, including without limitation any purpose in violation of any Laws (as defined below) in Komatsu's or the Purchaser's jurisdiction or any other applicable jurisdiction; (v) interrupt or attempt to interrupt operation of any Skycatch web, server, mobile or desktop applications; (vi) remove or obscure any trademark symbols, copyright notices, or other intellectual property rights notices in the Deliverables or Skycatch Content; (vii) provide or transmit to Komatsu or Skycatch any Data that contains any personally identifiable information or any other data that is subject to regulation under any data protection legislation applicable to the processing or use of such data, (viii) interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running any Skycatch web, server, mobile or desktop applications or attempt to do so; (ix) take any action that imposes, or may impose, as determined in Komatsu's sole discretion, an unreasonable or disproportionately large load on its infrastructure; (x) upload to Skycatch any invalid data, viruses, worms, or other software agents or malware; (xi) bypass the measures used to prevent or restrict use or copying of any Deliverables or Skycatch Content; or (xii) use the Services in, or in connection with, hazardous environments requiring fail-safe performance, such as the operation of nuclear facilities; aircraft navigation, communication, or control systems; direct life support machines; weapons systems; or other uses in which failure could lead directly to death, personal injury, or severe physical or environmental damage.
- 2.9 **Feedback:** If the Purchaser provides Komatsu with any suggestions, ideas, feedback, error identifications, or other information related to any Komatsu technology, products, or services ("**Feedback**"), the Purchaser hereby assigns to Komatsu all right, title and interest in and to all Feedback, including all Intellectual Property Rights therein, and agrees to assist Komatsu, at Komatsu's expense, in perfecting such rights and obtaining assignments of such rights from all individuals involved in generating the Feedback.
- 2.10 **Reservation of Rights:** Other than rights expressly granted to the Purchaser in this Agreement, Komatsu (and Skycatch, as applicable) retains all of its right, title and interest in and to all of its Intellectual Property Rights, including in the Deliverables and Skycatch Content. Except as expressly provided in this Agreement, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights. Use of any Skycatch Content or other materials obtained through the Services for any purpose not expressly permitted by this Agreement is strictly prohibited.
3. **Warranty Disclaimer**
Except as specifically provided, and without limiting clause 8 of the Conditions, Komatsu makes no representations or warranties, either express or implied, including, without limitation, as to the condition of the Services provided or any Deliverables or Data developed, which are provided "as is", and Komatsu hereby expressly disclaims any implied warranties of merchantability, fitness for any particular purpose or need, accuracy or reliability of any data, reports, or deliverables, non-infringement of third party rights and title, and any warranties that may arise from course of dealing, course of performance or usage of trade in connection with any subject matter of this agreement. To the maximum extent permitted by applicable law, Komatsu assumes no liability or responsibility for any (i) errors, mistakes, or inaccuracies of content or loss of data or content; (ii) personal injury or property damage of any nature whatsoever resulting from the Purchaser's use of the Services, including any use of the services in connection with unmanned aerial vehicles or other hardware; (iii) any unauthorized access to or use of Skycatch's secure servers and/or any and all personal information stored therein; (iv) any interruption or cessation of transmission to or from any Skycatch web, server, mobile or desktop applications; (v) any bugs, viruses, trojan horses, malware or the like that may be transmitted to or through any Skycatch web, server, mobile or desktop application by any third party; and (vi) any errors or omissions in any content or for any loss or damage incurred as a result of the use of any content provided, emailed, transmitted, or otherwise made available by Komatsu or Skycatch in connection with the services.
4. **Confidentiality**
- 4.1 **Confidential Information:** By virtue of this Agreement, each party may disclose information that is confidential to such party ("**Confidential Information**"). For purposes of this Agreement, "Confidential Information" of a party means information, ideas, materials or other subject matter of such party, whether disclosed orally, in writing or otherwise, that is provided under circumstances reasonably indicating that it is confidential or proprietary. Confidential Information includes, without limitation, the terms and conditions of this Agreement; all business plans, technical information or data, software, product ideas, methodologies, know-how, calculation algorithms and analytical routines; and all personnel, the Purchaser, contracts and financial information or materials disclosed or otherwise provided by such party ("**Disclosing Party**") to the other party ("**Receiving Party**"). Confidential Information does not include information that (a) is already in the Receiving Party's possession at the time of disclosure to the Receiving Party, (b) is or becomes part of public knowledge other than as a result of any action or inaction of the Receiving Party, (c) is obtained by the Receiving Party from an unrelated third party without a duty of confidentiality, or (d) is independently developed by the Receiving Party. Without limiting the generality of, and notwithstanding the exclusions described in, the foregoing, Confidential Information of Komatsu includes (i) Komatsu's technology, including any portion thereof (such as software in both object code and source code form), (ii) Deliverables, (iii) Processed Data, (iv) modifications and derivatives of the foregoing, and (v) information or materials derived therefrom, whether or not marked as such.
- 4.2 **Restrictions on Use:** Except as expressly provided in this Agreement, the Receiving Party shall not use Confidential Information of the Disclosing Party for any purpose other than in furtherance of this Agreement and the activities described herein. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any third parties except as otherwise permitted hereunder. The Receiving Party may disclose Confidential Information of the Disclosing Party only to those employees or consultants who have a need to know such Confidential Information and who are bound to protect the confidentiality thereof under provisions (including, without limitation, provisions relating to nonuse and nondisclosure) that are no less protective than those that are used by the Receiving Party with its own information of like nature, but that require no less than reasonable care. The Receiving Party shall maintain Confidential Information of the Disclosing Party with at least the same degree of care it uses to protect its own proprietary information of a similar nature or sensitivity, but no less than reasonable care under the circumstances. Each party shall advise the other party in writing of any misappropriation or misuse of Confidential Information of the other party of which the notifying party becomes aware.
- 4.3 **Exclusions:** Notwithstanding the foregoing, this Agreement shall not prevent the Receiving Party from disclosing Confidential Information of the Disclosing Party to the extent required by a judicial order or other legal obligation, provided that, in such event, the Receiving Party shall promptly notify the Disclosing Party to allow intervention (and shall cooperate with the Disclosing Party) to contest or minimize the scope of the disclosure

(including application for a protective order). Further, each party may disclose the terms and conditions of this Agreement: (a) as required by the applicable securities laws, including, without limitation, requirements to file a copy of this Agreement (redacted to the extent reasonably permitted by applicable law) or to disclose information regarding the provisions hereof or performance hereunder to applicable regulatory authorities; (b) in confidence, to legal counsel; (c) in confidence, to accountants, banks, financing sources and their advisors, and potential acquirers; and (d) in connection with the enforcement of this Agreement or any rights hereunder. Notwithstanding anything to the contrary contained herein, Komatsu will not be restricted from, or have any liability for, use of Residuals for any purpose, including without limitation, for use in development, manufacture, promotion, sale and maintenance of its products and services; provided, however, this right to Residuals does not represent a license under any patents or copyrights of the Purchaser. The term "Residuals" means any information that is retained in the unaided memories of Komatsu's employees, contractors and other personnel who have had access to the Purchaser's Confidential Information. An employee's memory is unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

- 4.4 **Equitable Relief:** Each party (as Receiving Party) acknowledges that the Disclosing Party considers its Confidential Information to contain trade secrets of the Disclosing Party and that any unauthorized use or disclosure of such information would cause the Disclosing Party irreparable harm for which remedies at law would be inadequate. Accordingly, each party (as Receiving Party) acknowledges and agrees that the Disclosing Party will be entitled, in addition to any other remedies available to it at law or in equity, to the issuance of injunctive relief, without bond, enjoining any breach or threatened breach of the Receiving Party's obligations hereunder with respect to the Confidential Information of the Disclosing Party, and such further relief as any court of competent jurisdiction may deem just and proper.
- 4.5 **Return of Materials:** Upon request of the Disclosing Party, each party (as Receiving Party) will immediately return to the Disclosing Party all Confidential Information of the Disclosing Party embodied in tangible (including electronic) form or, at the Disclosing Party's discretion, destroy all such Confidential Information and certify in writing to the Disclosing Party that all such Confidential Information has been destroyed.
5. **Third-Party Services:** Certain functions and features of the Skycatch web, server, mobile or desktop applications may connect to services on the Internet that are owned or operated by third parties ("**External Services**"). Komatsu and Skycatch have no control over and is not responsible for External Services or for the operational activities, privacy practices, data collection practices, security or content of any External Services, and External Services may be subject to additional or different third-party terms and conditions and policies (collectively, the "**Third-Party Terms**"). The Purchaser agrees to comply with all Third-Party Terms applicable to External Services. Access to any External Services by the Purchaser in connection with the Services is at the Purchaser's own risk.
6. **Indemnification:** Upon request of Komatsu, the Purchaser agrees to defend (including responsibility for all court costs, costs of professionals and solicitor's fees) and/or settle any and all claims, suits, actions or proceedings brought by a third party (including governmental entities) against Komatsu, its affiliates, licensors and suppliers, and each of their respective employees, contractors, agents, officers and directors arising from or relating to (a) any breach or alleged breach by the Purchaser, (b) any representation by the Purchaser regarding the accuracy or reliability of any Raw Data, Processed Data, Skycatch Content, or Deliverable, or (c) the Purchaser's use of the Services, including any use of the Services in connection with unmanned aerial vehicles or other hardware, whether or not manufactured by or purchased from Komatsu (collectively "**Claims**"), and will pay all damages, fines, penalties, and other liabilities finally awarded or settlement amounts entered into to the extent based upon such a Claim. Komatsu agrees to give the Purchaser: (i) prompt written notice of the Claim, (ii) information and cooperation in connection with the defense and/or settlement of the Claim (at the Purchaser's expense) as reasonably required by the Purchaser, and (iii) full (and sole) authority to defend or settle the Claim, provided that Komatsu may participate with counsel of its own choosing at its own expense and further provided that any portion of any settlement or compromise which constitutes an admission or requires contribution from Komatsu will be subject to the prior written approval of Komatsu. Failure to so notify the Purchaser will not diminish indemnity obligations hereunder except to the extent such delay actually prejudices the defense of such matter.