

Komatsu – Purchase Order Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions:

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

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

Contract IP means IP created by or on behalf of the Supplier in the performance of the Services;

Goods means any goods supplied by the Supplier to Komatsu;

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property or **IP** means all present and future rights conferred by statute, common law, equity of otherwise by law, anywhere in the world or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, patterns, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable and includes moral rights and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967;

Komatsu means either Komatsu Australia Pty Ltd (ABN 63 053 514 739), Komatsu Australia Properties Pty Ltd (ABN 70 053 513 518) or Joy Global Australia Pty Ltd (ABN 58 000 049 392), as indicated in the applicable PO;

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth);

Moral Rights Consent means the moral rights granted under the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws;

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth);

Personnel means an employee, director, agent or representative of a party;

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

Specification means the specification for the Goods and Services contained in the relevant PO together with any other information referred to in the PO or contained in the relevant quotation or documentation provided by the Supplier relevant to the type, quality or nature of the Goods and Services;

Services means the services (if any) stated in the PO and as otherwise reasonably required or inferred from the PO and this Agreement;

Supplier means the supplier specified in the Purchaser Order;

Sustainable Packaging means those packaging materials which are fit for purpose, resource efficient, made from low impact materials, and reusable or recyclable at the end of their useful life; and

Warranty Period means the period stated in the Purchaser Order (or if no period is stated in the PO, then the period of 12 months) commencing on the later of:

- where the Supplier's obligations under this Agreement are the supply of Goods only, the date of acceptance of the Goods by Komatsu;
- for Goods that will be installed on a machine, when the Goods are installed by Komatsu on the machine; or
- where the Supplier's obligations under this Agreement include Services, the date on which the Services are last provided, and with respect to any defects, any further period under clause 7.5.

2. AGREEMENT

2.1 These Conditions apply to all POs issued by Komatsu.

2.2 POs are only valid if issued on a Komatsu PO form with a Komatsu PO number.

2.3 These Conditions prevail over any terms submitted by the Supplier whether in the Supplier's terms of sale or in any other document issued by the Supplier. The acceptance of a PO by the Supplier will be deemed as the Supplier's acceptance of these Conditions.

2.4 The Supplier must advise Komatsu of receipt and acceptance of POs promptly. The Supplier will be taken to have accepted a PO if it does not reject it within 7 days after it is issued.

3. PRICE

3.1 Prices in each PO cannot be increased by the Supplier unless such increase has been agreed to in writing by Komatsu.

3.2 No charge will be allowed for packing, crating, cartage or freight unless specified in the PO.

3.3 The consideration for each supply under each PO is exclusive of GST. If GST is payable the consideration for the supply will be increased by an amount of the GST and the Supplier must provide a tax invoice to Komatsu to enable Komatsu to claim input tax credits in respect of the supply.

4. PAYMENT

4.1 POs are placed on the basis that all prices include the Supplier's delivery to Komatsu at the address shown in the PO unless otherwise specified in the PO.

4.2 Invoices for Goods provided in accordance with each PO will be paid by Komatsu, following acceptance of the Goods and receipt by Komatsu of a correctly rendered invoice, within 30 days of the end of the month in which the invoice is received. The invoice must quote the correct PO number.

4.3 Komatsu may set off any amount owed by the Supplier to Komatsu against any amount of money that is owed by Komatsu to the Supplier.

5. DELIVERY

5.1 Goods must be supplied to Komatsu within the times specified in each PO, time is of the essence for the delivery of the Goods and/or Services.

5.2 Komatsu may, without liability to the Supplier, cancel the whole or any portion of any PO if the relevant Goods are not supplied or Services performed within the time stipulated in the PO.

5.3 At the time of delivery of the Goods the Supplier must provide to Komatsu a delivery docket in duplicate setting out the:

- Komatsu part number(s) (if applicable) and details of the Goods;
- PO number;
- Dispatch and delivery dates;
- Quantity and description of the Goods;
- Number of packages delivered; and
- Name of the person who delivered the Goods, in a form acceptable to Komatsu, for signature by Komatsu, and the Supplier must retain one copy so signed.

5.4 If stated in the PO, the Supplier must deliver the Goods at its cost to the location specified in the PO. Komatsu will unload the Goods at this location unless the PO provides otherwise.

5.5 Subject to clause 17, the Goods, on delivery, must be free of all Security Interests, liens and encumbrances.

6. TIME AND DELAY

6.1 **Notice of delay:** The Supplier must promptly give written notice to Komatsu upon the Supplier becoming aware of any event or circumstance which is causing or is likely to cause delay to:

- the delivery of the Goods by the date for delivery; and
- the completion of the Services by the date for supply.

6.2 **Extension of time:** At any time, Komatsu may extend (for the benefit of Komatsu and without being under any obligation to the Supplier to do so) the date for delivery of the Goods or the date for supply of the Services.

7. SPECIFICATION OF GOODS AND DEFECTS

7.1 **Specifications:** All Goods and Services must conform to Specification. In the event of Goods and Services not being to Specification, Komatsu reserves the right to reject those Goods and Services in whole or in part. If Goods are rejected, Komatsu will not be required to hold the Goods on behalf of the Supplier for more than 30 days after they are received.

7.2 **Quality:** All Goods supplied must be of acceptable quality and be fit for the purposes for which they are manufactured in accordance with the Specification for the Goods and any documentation provided by the Supplier and be free of defects in design and workmanship.

7.3 **Manufacturer warranties:** The Supplier must provide Komatsu with any applicable manufacturer warranties for the Goods and if the Supplier is not the manufacturer, it must assign to Komatsu (and to any purchaser from Komatsu) the benefit of any manufacturer warranties for the Goods.

7.4 **Defects:** The Supplier must, as and when directed by Komatsu during the Warranty Period, rectify any defects, errors or deficiencies in the Goods and Services (including the Specification) within the time specified in the direction, and the rectification is at the Supplier's risk and cost.

7.5 **Further Warranty Period:** For Goods and/or Services or parts thereof rectified under clause 7.4, a further warranty period will be effective from the date of rectification for a period equal to the remainder of the initial Warranty Period or 6 months from the date of rectification, whichever is the greater.

7.6 Sustainable Packaging

(a) The Supplier must ensure that as far as is reasonably practicable, it will use Sustainable Packaging in the packaging of all of the Goods that it supplies to Komatsu under this Agreement. The Supplier's use of Sustainable Packaging should reduce environmental impact, use resources efficiently and minimise landfill, whilst ensuring the packaging maintains product quality, durability, appearance and safety.

(b) The Supplier must, amongst other things, ensure that it is:

- minimising the amount (size, weight and thickness) of material used for packaging;
- maximise the use of renewable/recycled materials;
- optimising packaging design for handling, transport and logistics; and
- promote recycling to its customers and suppliers using appropriate logo and messaging such as the 'Australasian Recycling Label' on primary packaging.

(c) The Supplier must, on request from Komatsu, provide evidence to Komatsu that it is complying with its Sustainable Packaging obligations under this clause.

7.7 General Packaging

The Supplier warrants that:

- the Goods will be individually packed and identified with the Komatsu part number;

- (b) individual packaging will provide adequate protection of the Goods against damage whilst in storage including:
 - (i) rust protection (including against rust ingress) where applicable;
 - (ii) being wrapped at all times;
 - (iii) any sensitive components being sleeved with either sponge, paper, bubble wrap etc against breakage and chaffing;
 - (iv) sharp edges being appropriately covered to prevent injury to material handlers and other personnel; and
 - (v) any components sensitive to water having basic water protection such as plastic bags;
 - (c) those Goods that comprise hazardous goods such as batteries will be identified with hazardous labels and appropriate consignment markings (hazmat labels and declarations) including a material safety data sheet and the relevant UN codes where applicable;
 - (d) those Goods over 15kg must be able to be handled by material handling equipment with lift points marked on the Goods;
 - (e) all consolidated orders will be packaged ensuring separation; and
 - (f) the Goods will be transported in accordance with all Laws.
- 8. SERVICES**
- 8.1 Standard of the Services:** If any Services are supplied, the Supplier must:
- (a) carry out the Services professionally and in a timely manner;
 - (b) in undertaking the Services exercise all proper professional skill, care, attention and judgment which may be expected of a Supplier experienced in providing services similar to the Services;
 - (c) ensure that all of the Supplier's Personnel carrying out the Services have appropriate qualifications and experience, and hold any required licences;
 - (d) provide any documents relevant to the Services; and
 - (e) ensure that the Services will be, in every respect, fit for their intended purpose and comply with all requirements of, and to be inferred from, this Agreement.
- 8.2 Errors in the Services:** The Supplier must, at its cost, re-perform all or any part of the Services in order to rectify any errors or omissions in the Services it has supplied or undertaken, including rectifying any errors or omissions in any documents provided as part of the Services.
- 9. ACCESS TO AND CONDUCT ON KOMATSU'S SITE**
- 9.1 Access:** The Supplier must only access a Komatsu site during the hours and on the days notified by Komatsu.
- 9.2 Conduct:** The Supplier must comply, and must ensure that its Personnel and subcontractors comply, with all conditions and restrictions applying to the use or occupation of a Komatsu site and any adjoining land, as notified to the Supplier by Komatsu from time to time.
- 10. COMPLIANCE WITH LAWS, DIRECTIONS AND POLICIES**
- 10.1 Compliance with laws:** In performing its obligations under this Agreement, the Supplier must comply with, and must ensure that the Goods and Services comply with all:
- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Goods and Services;
 - (b) certificates, licences, consents, permits, approvals and requirements of any organisations having jurisdiction in connection with the carrying out of the Goods and Services; and
 - (c) relevant Australian Standards, guidelines and codes of practice.
- 10.2 Consents:** The Supplier must obtain all consents, licences, permits and approvals applicable from time to time in connection with the performance of its obligations under this Agreement and ensure that all such consents, licences, permits and approvals are in full force and effect at all times.
- 10.3 Work health and safety:** Without limiting clause 10.1, the Supplier must:
- (a) comply, and must ensure that its Personnel, including its subcontractors comply, with all laws, standards and codes of practice in respect of work health, safety and environmental matters which apply or may apply to the Goods and Services or the relevant site and any work health, safety and environmental policies, procedures and requirements issued by or on behalf of Komatsu or any relevant authority to the Supplier from time to time;
 - (b) adopt safe systems of work and take all possible and reasonably practicable steps and measures to eliminate risk to the health and safety of workers and other persons and to avoid and minimise the consequences of work health and safety issues;
 - (c) ensure that its workers are appropriately trained, inducted and supervised;
 - (d) if and when on a Komatsu site and when using Komatsu's facilities and without limiting clause 10.2, comply with all directions, procedures and policies relating to work health, safety and security requirements relating to the Komatsu site and facilities and any other reasonable requirements of Komatsu;
 - (e) consult, co-operate and co-ordinate activities with Komatsu where Komatsu and the Supplier have a duty in relation to the same matter;
 - (f) if requested by Komatsu, promptly provide copies of:
 - (i) its work health and safety policies and other evidence to demonstrate that it has met, and is meeting, at all times, its obligations under this clause 10.3 and all laws in relation to work health and safety; and
 - (ii) any documents, reports, registers or records which the Supplier is required to prepare, maintain or provide in connection with its obligations under any laws in relation to work health and safety;
 - (g) immediately notify Komatsu of every work related accident, incident, injury or illness or environmental damage that occurs in relation to the performance of the supply and delivery of the Goods and Services or on Komatsu's site; and
 - (h) investigate incidents that are notifiable by law and provide a copy of the investigation report to Komatsu.
- 10.4 Compliance with directions:** The Supplier must promptly comply with any direction given by Komatsu in connection with this Agreement or the supply and delivery of the Goods and Services.
- 10.5 Compliance with policies:** The Supplier must comply with the provisions of Worldwide Code of Business Conduct issued by Komatsu Limited, a copy of which is located at <https://home.komatsu/en/company/conduct/>.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1** The Supplier grants to Komatsu a non-exclusive, perpetual, irrevocable and royalty free licence to use (and sub-licence others to use), all intellectual property rights in the Goods and Services to the extent necessary for the use, operation, repair, maintenance or servicing of the whole or any part of the Goods and/or to enjoy the benefit of the Services.
- 11.2** Intellectual Property in all Contract IP is assigned to and vests in Komatsu as those rights are created.
- 11.3** To the extent that a person, other than a Komatsu representative has Moral Rights in any copyright work supplied by the Supplier to Komatsu under this PO, the Supplier will obtain a Moral Rights Consent from that person and provide it on request by and in a form acceptable to Komatsu.
- 12. INDEMNITY**
- 12.1** The Supplier indemnifies, and keeps Komatsu indemnified, from and against any liability, loss, damage, claim or expense (including legal fees on an indemnity basis) for death of or personal injury, disease or illness to any person, property damage or breach of third party IP rights arising directly or indirectly from a negligent act, error or omission of the Supplier or the Supplier's Personnel except to the extent of liability which is caused or contributed to by a breach of this PO by Komatsu or Komatsu's Personnel.
- 12.2** The indemnity in this Agreement is a continuing, separate and independent obligation and survives termination of this Agreement.
- 13. CONFIDENTIALITY**
- 13.1** All information contained in drawings, specifications and technical data (including any Komatsu Limited Machine Protocols) that may be provided by Komatsu for preparing quotations or carrying out each PO are strictly confidential and are issued on the condition that they are the property of Komatsu and are issued on loan and may not be copied or transferred to a third party without Komatsu's prior written consent and they are to be used for no other purpose other than for preparing a quotation or fulfilling a PO and must be returned to Komatsu on completion of the PO or on request.
- 13.2** The Supplier will maintain an adequate and robust Information Technology (IT) system reasonably acceptable to Komatsu for ensuring the security and maintaining the confidentiality of all information provided to it by Komatsu.
- 13.3** The Supplier must ensure that its IT system is regularly updated with the latest malware and anti-virus software (and other security measures) to ensure that its IT systems are not susceptible to a cyber security incident.
- 13.4** The placing of a PO does not entitle the Supplier to use Komatsu's name for any purpose.
- 13.5** If any Komatsu branded Goods are supplied by the Supplier to Komatsu the Supplier must not use those Goods for display or advertising without Komatsu's prior written consent. In the event of such consent being given, each such display or advertisement must be approved in writing by Komatsu prior to the erection of such display or the publication of such advertisement.
- 14. VARIATIONS**
- 14.1** The Supplier must not vary a PO, the Goods and Services or any part of them without the prior written consent of Komatsu.
- 14.2** Komatsu may, at any time, direct the Supplier to vary a PO, by changing the number, type or specification of the Goods, and to the extent that the Supplier can reasonably comply with that direction, it must do so.
- 15. INSURANCE**
- 15.1** For Goods supplied all risks insurance for the replacement value of the Goods is to be effected by the Supplier and is to remain in force up to delivery of the Goods at Komatsu's address shown on each Purchase Order.
- 15.2** The Supplier must maintain a public liability insurance policy, a products liability insurance policy (where the Supplier is supplying Goods) and a professional indemnity insurance policy (where it supplies professional services) at levels that are consistent with normal industry practice for providers of the relevant Goods and Services.

15.3 The Supplier must maintain workers' compensation insurance policies as required by law.

15.4 The Supplier must provide evidence of all insurances on request by Komatsu.

16. TITLE AND RISK

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

16.2 Risk in the Goods passes to Komatsu upon delivery.

17. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ("PPSA")

17.1 Komatsu acknowledges that, until payment has been made for the Goods, the Supplier may register a Security Interest in favour of the Supplier in respect of the Goods and their proceeds.

17.2 Komatsu undertakes to:

- (a) promptly do all things and execute all documents which the Supplier may reasonably require to enable the Supplier to attach, enforce, register, protect and maintain the perfection of its security interest; and
- (b) give the Supplier written notice of any change in its name and/or any other change to its details.

17.3 Komatsu waives its rights to receive a copy of any verification statements under section 157 of the PPSA.

17.4 Komatsu will give the Supplier notice if another party with a security interest in the Goods seizes or otherwise deals with the Goods in a way that might impact the Supplier's Security Interest.

17.5 To the maximum extent permitted by law, Komatsu and the Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135.

17.6 In this clause and clause 5, "proceeds" and "Security Interest" have the meanings given to those expressions in the PPSA.

18. TERMINATION

18.1 If the Supplier is in default of its obligations under this Agreement (including where it becomes insolvent as defined in the *Corporations Act 2001* (Cth) or commits an act of bankruptcy), Komatsu may, on notice to the Supplier, immediately terminate this Agreement.

18.2 If this Agreement is terminated under clause 18.1, the Supplier is liable for and indemnifies Komatsu against any additional costs and expenses incurred by Komatsu in acquiring goods similar to the Goods and any other losses suffered as a result of the termination.

18.3 Komatsu may immediately terminate this Agreement on giving written notice to the Supplier if, in Komatsu's reasonable opinion, the Supplier has breached any term of this Agreement and has failed to rectify that breach after having been given not less than 30 days' notice of:

- (a) the nature of the breach; and
- (b) the requirement that the breach be rectified within 30 days' after the giving of the notice.

18.4 Komatsu may at any time and for any reason (including for its convenience) immediately terminate this Agreement by giving written notice to the Supplier. In such event, the Supplier's sole remedy is payment of any outstanding amounts due under this Agreement as at the date of termination together with its costs of materials ordered prior to the termination for which the Supplier has paid or is legally liable to pay provided that the Supplier cannot use the materials on other works, cannot supply the materials to a third party or cannot otherwise reasonably recover the cost of such materials. Where Komatsu pays the Supplier for the cost of these materials, these materials will be delivered to Komatsu.

19. PRIVACY

19.1 The Supplier must ensure that any collection, use and transfer of any Personal Information in the course of providing Goods and Services under this Agreement complies with all applicable laws in Australia including the Australian Privacy Principles in the *Privacy Act 1988* (Cth).

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

20. MODERN SLAVERY

20.1 The Supplier warrants that:

- (a) it investigates the risk of Modern Slavery within its operations, and those of its supply chain;
- (b) it has assessed and addressed the risks regarding Modern Slavery, including implementing appropriate due diligence and remediation programs;
- (c) it will notify Komatsu as soon as possible of any confirmed instances of Modern Slavery and the actions undertaken by the Supplier to remedy the issue;
- (d) it has the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in clauses 20.1(a) to 20.1(c);
- (e) upon request, the Supplier will provide evidence to Komatsu which validates the Supplier's compliance with this clause;
- (f) on reasonable written notice, the Supplier will permit Komatsu's Personnel or its nominated representatives to undertake verification activities to

validate the Supplier's compliance with this clause, including access to the Supplier's premises and records as required; and

- (g) it will include a clause similar to this clause 20 in all contracts it enters into with its own suppliers.

21. ANTI-SOCIAL FORCES

21.1 During the term of this Agreement, the Supplier warrants that it will not engage with any "Anti-Social Forces" (such as organised crime, hate groups, gangs, terrorists, groups engaged in child labour, slave labour, corruption or money-laundering etc) which pose a threat to the order and safety of civil society. If the Supplier engages with any Anti-Social Forces, or Komatsu has a reasonable basis to suspect such engagement, Komatsu may, on written notice to the Supplier, immediately terminate this Agreement.

22. DISPUTE RESOLUTION

22.1 If a dispute arises between the parties out of or in connection with this Agreement, either party may give the other a written notice of the dispute specifying the dispute and the details of the dispute.

22.2 Neither party will commence proceedings (other than for injunctive or other urgent relief) in respect of any such dispute before:

- (a) a notice under clause 22.1 has been issued; and
- (b) senior representatives of the parties have met at least once to attempt to resolve the dispute and 20 days have expired since the issue of the notice under clause 22.1.

23. GENERAL

23.1 **Assignment:** The Supplier must not assign the benefit of, or otherwise create an interest in its rights under this Agreement unless it obtains the prior written consent of Komatsu. Komatsu may assign any or all of its rights under this Agreement to any person.

23.2 **Time:** Time is of the essence of this Agreement.

23.3 **Waiver:** The failure of Komatsu to insist upon strict performance of any of these Conditions is not to be construed as a waiver.

23.4 **Subcontracting:** The Supplier will be liable for all acts and omissions of a subcontractor as if they were the acts and omissions of the Supplier. To the extent permitted by law, the operation of any proportionate liability legislation is excluded.

23.5 **Severance:** If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed, and the rest of this Agreement remains in force.

23.6 **Governing Law:** This Agreement is governed by the laws of New South Wales and Komatsu and the Supplier agree to irrevocably submit all disputes arising between them to the jurisdiction of the courts of New South Wales.