



KOMATSU AUSTRALIA PTY LTD

KOMTRAX TERMS AND CONDITIONS

DATED: 8 MARCH 2012

These terms and conditions (**Conditions**) govern the use of the remote monitoring and management system for construction and mining equipment known as "KOMTRAX" provided by or on behalf of Komatsu Australia Pty Ltd (ACN 143 476 626) (**Komatsu Australia**). By using KOMTRAX on your Komatsu equipment (**Equipment**) you agree to follow and be bound by these Conditions. Komatsu Australia may revise these Conditions at any time without notice to you. Revised Conditions will be available at www.komatsu.com.au. By continuing to use KOMTRAX after any amendment becomes effective, you agree to be bound by these Conditions as amended.

What KOMTRAX services will be provided?

Komatsu Australia will provide the services described in the GLOBAL KOMTRAX Web Reference Manual (Customer Screen) as varied from time to time. GLOBAL KOMTRAX Web Reference Manual (Customer Screen) is available at www.komatsu.com.au

What does KOMTRAX do?

The KOMTRAX system transmits information about your Equipment to the Komatsu Australia's KOMTRAX server. If KOMTRAX is activated on your Equipment, Komatsu Australia will use the information provided by your Equipment for the purpose of supplying you with the KOMTRAX services and collecting data in relation to the Equipment. You consent to Komatsu Australia and any of its related bodies corporate accessing information in relation to your Equipment and you grant Komatsu Australia a non-exclusive, irrevocable licence to electronically access the Equipment to perform data retrieval functions for those purposes, including for the purposes of monitoring component life, service intervals and availability of the Equipment.

Komatsu Australia may disclose information about your Equipment to its related bodies corporate, KOMTRAX service providers, authorised Komatsu Australia dealers and any emergency services.

KOMTRAX is not continually connected to your Equipment. Information about your Equipment is only transmitted in the following circumstances:

- Periodically – your Equipment will send a status message containing its identity, SMU reading and information about its location.
- In specific circumstances – your Equipment may send a message which contains specific information about your Equipment.
- In exceptional circumstances – such as in an emergency, your Equipment may send information about Equipment faults as well as information about whether the Equipment is moving or stopped. If your Equipment is tracked as part of the KOMTRAX services, information about your Equipment's movement may also be collected.

What hardware is required to use KOMTRAX?

The hardware required to operate KOMTRAX varies by Equipment model. Contact your Komatsu dealer or Komatsu Australia for details.

How much do KOMTRAX services cost?

As at the date of this document, Komatsu Australia provides access to KOMTRAX services free of charge. Komatsu Australia reserves the right, at its sole discretion, to suspend or terminate the provision of KOMTRAX free of charge at any time.

What is the availability of the KOMTRAX services?

KOMTRAX services will be provided to Equipment only:

- within Australia, New Zealand and New Caledonia;
- if a genuine KOMTRAX Controller has been installed in the Equipment as original equipment by Komatsu Australia or any of its related bodies corporate;
- when your Equipment is within the operating range of Komatsu Australia's carrier and in an area not affected by operationally adverse atmospheric and topographical conditions (for example, bad weather or when indoors or underground); and
- subject to the technological limitations of the communication and GPS systems that the KOMTRAX services rely upon including Komatsu Australia's carrier service being operational or available and the availability of GPS location information.

What are the limitations of the KOMTRAX services?

Apart from the technological limitations outlined above, KOMTRAX services may also be affected by the electrical system design and architecture of your Equipment. For example, if your Equipment's battery is discharged or disconnected, or if the KOMTRAX Controller or electrical component is damaged, then KOMTRAX services may not be available. The installation of covers or guards over the antennas may also obstruct GPS signals and affect KOMTRAX availability.

The availability of KOMTRAX services is also subject to government regulations or orders, the capability limitations of the KOMTRAX services' systems and any modifications and upgrades that may be carried out to those systems.

Komatsu Australia does not make any representation or warranty as to the accuracy, completeness, currency, suitability or reliability of the information contained or provided by it in connection with any KOMTRAX services.

What must you do?

You are responsible for the proper care and repair of the KOMTRAX Controller and its associated accessories. You must not disassemble, tamper or transfer the KOMTRAX Controller between Equipment.

You must:

- keep your KOMTRAX log-on details confidential;
- not disclose your log on details for KOMTRAX system to any third party; and
- not use KOMTRAX services in any way that may be unlawful or abusive or negligent or misleading or cause or risk damage to Komatsu Australia's business, reputation, employees, contractors, agents, representatives, site invitees or facilities, any third parties or the general public. You will be responsible and liable for any third party use of the KOMTRAX services or the KOMTRAX Controller whether it is with or without your knowledge.

When can the KOMTRAX services be terminated?

Komatsu Australia may vary, suspend, discontinue or terminate the KOMTRAX services at any time without notice and liability for any reason, including for convenience, required maintenance, repair or for nuisance, safety reasons or any other reason whatsoever.

Limitation of liability

You acknowledge that you use KOMTRAX at your own risk. In no event will Komatsu Australia, its related bodies corporate and any of their respective officers, directors, employees or agents be liable to you or any other person for any direct or indirect loss, liability, damage, claim, injury or death (including without limitation direct or indirect loss of actual or anticipated profit or revenues, loss by reason of shutdown or non-operation, increased cost of borrowing capital or financing, or loss of use, or productivity) (**Loss**) suffered or incurred by you arising from or in connection with KOMTRAX or any KOMTRAX services including, without limitation, the termination of KOMTRAX services. To the extent that any liability cannot be excluded by law, Komatsu limits its liability for any Loss suffered or incurred by you under this agreement to the minimum allowed by law.

All legal, statutory or equitable liability, conditions or warranties of any type in relation to KOMTRAX are excluded. However, nothing in these Conditions will limit those provisions of the *Competition and Consumer Act 2010 (Cth)* 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 Australia 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 Australia 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.

Miscellaneous

The provision of KOMTRAX services may include third party data, for example, location of towns. The use of any third party data is on an "as is" basis and Komatsu Australia does not represent or guarantee that the data is effective, complete, accurate or fit for any particular purpose.

You are responsible to service and maintain your Equipment in accordance with all manufacturer's recommendation and warranty obligations. You are responsible for procuring and maintaining your own insurance for personal injury, property loss and other insurances which a prudent person in your position would maintain in connection with the Equipment.

Notice to you will be deemed to be given if deposited with Australia Post and addressed to your last known address. These Conditions are governed and construed according to the law of the State of New South Wales for Equipment located in Australia and the law of New Zealand for Equipment located in New Zealand.

You acknowledge that Komatsu Australia (or its related bodies corporate or licensors) is the sole owner of any and all trade marks, copyright and other intellectual property rights pertaining to KOMTRAX.

This document represents the entire agreement between you and Komatsu Australia in relation to the provision of the KOMTRAX services. These Conditions may only be amended by Komatsu Australia. Komatsu Australia may assign or transfer any of Komatsu Australia's rights or obligations under this agreement at any time.

Komatsu Australia's failure to exercise or enforce any one or more of its rights under these Conditions will not constitute a waiver of such rights unless such waiver is granted by Komatsu Australia in writing.

If any clause or part of any clause of these Conditions is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from these Conditions without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.