

GENERAL TERMS AND CONDITIONS OF PURCHASE

An order of Komatsu Germany GmbH (hereinafter referred to as “Komatsu”) is subject to the exclusive application of the General Terms and Conditions of Purchase as set below:

§ 1 Application

These Terms and Conditions of Purchase shall apply exclusively. Contrary or differing terms of the Supplier shall only apply if Komatsu expressly agrees upon in writing. These General Terms and Conditions of Purchase shall also apply if Komatsu accepts a delivery or performance of the Supplier despite its knowledge of or contrary differing terms.

These Terms and Conditions of Purchase shall govern all deliveries of the Supplier to Komatsu, in particular contracts for the sale and/or the delivery of movable goods (hereinafter “goods”), irrespective of whether the Supplier manufactures the goods or purchases the goods from Sub-suppliers.

These Terms and Conditions of Purchase shall become applicable in its then current version as Frame Agreement for future contracts for the sale and/ or the delivery of goods with the same Supplier without the necessity for Komatsu to refer to them in any individual case.

These Terms and Conditions of Purchase only apply vis à vis merchants, governmental entities, or special governmental estates in the meaning of sec. 310 para. 1 BGB (German Civil Code). Individual agreements with Suppliers in individual cases (including side-agreements, supplemental terms of modifications) take priority over these Terms and Conditions. The contents of such agreements are valid only in form of an addendum to a Contract by written agreement or written confirmation from Komatsu.

§ 2 Offer and Acceptance

Orders of Komatsu, agreements as well as amendments/ supplements thereof shall only be binding in writing or in qualified electronic form pursuant to sec. 126 a, 127 BGB (German Civil Code). The requirements of the written form shall be deemed to be fulfilled using a copy of an original signed and communicated to the Supplier via electronic means.

Obvious errors (for example typos or calculation errors) and incompleteness of orders including underlying documents have to be pointed out by the Supplier to Komatsu for correction or completion before acceptance; otherwise the Contract is deemed not concluded.

In the event that the Supplier does not disagree in writing within 7 working days of receipt with an order of Komatsu, the order shall be accepted by implication.

A delayed acceptance will be deemed a new offer and needs to be confirmed by Komatsu.

§ 3 Correspondence

Correspondence resulting from the completion of the orders shall be directed exclusively to the purchasing department of Komatsu including details of the order number.

Any agreement with other departments of Komatsu amending the conditions established in each contract shall require explicit written confirmation by the purchasing department in form of a supplement to the contract.

§ 4 Prices and payment conditions

The price specified in the order is a fixed net price and shall exclude additional charges of any type. Unless otherwise agreed in writing, the price shall include delivery CIP to the business address of Komatsu, including packaging. The return of packaging requires a separate agreement.

Value added tax applicable at the date of invoice is to be indicated separately in the Supplier’s invoice.

Unless otherwise agreed in writing, the price is due and payable within 14 days after the receipt of the delivery and a proper invoice with a 3 % discount or net within 30 days after the receipt of the delivery and a proper invoice.

The Parties do not owe each other interest from due date, however, the claim for payment of delay interest remains intact.

Komatsu reserves all rights to offset or retain payment provided by applicable law. Komatsu is in particular entitled to retain otherwise due payments as long as Komatsu has claims resulting from incomplete or defective services against the Supplier. The Supplier has a right to set off or to retain payment only in case of legally binding or undisputed counterclaims.

The Supplier shall not be entitled to assign his receivables or to have its receivables collected by a third party unless Komatsu gives prior written permission, which may not be unreasonably refused.

In the event that the Supplier assigns its receivables to a third party without permission of Komatsu, the assignment is nonetheless valid. Komatsu may however make payments to the Supplier or the third party at its discretion with the effect of discharging the receivables.

§ 5 Delivery and export control

The Supplier is not entitled to have the services owed by him being performed by third parties (for example by Subcontractors) unless by prior written consent by Komatsu has been given.

The dates and deadlines concerning delivery determined in the order or otherwise agreed upon are binding.

For deliveries to Hannover it is to be noted that the formal opening hours of the Goods Receivable Department, with the exception of holidays, are as follows: Monday to Thursday from 06.00 to 13.00 and Friday from 06:00 to 11:00. Deviating delivery times require special agreement.

The Supplier shall immediately inform Komatsu of any threatening or existing delay in delivery, the reason for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.

The Supplier is obliged to observe the delivery and dispatching regulations indicated in the order and to quote the order number of Komatsu on all shipping documents and/ or delivery notes.

If the delivery note is missing or incomplete, Komatsu is not responsible for any delays in handling or payment resulting therefrom.

The Supplier shall be obliged to inform Komatsu without delay in the event that a delivery is subject, in whole or in part, to export restrictions under German or any other law. If the Supplier omits to point out any existing export restrictions, this shall be deemed to be confirmation that no export restrictions exist.

The Supplier shall provide Komatsu with a proof of origin without undue delay containing all essential information, in particular:

- the export list number according to annex AL of the German export administration regulations or equivalent list items of applicable export lists;
- for US goods, the ECCN (Export Control Classification Number) of the US Export Administration Regulations (EAR);
- the commercial origin of his goods and of the components of his goods, including technology and software, as well as whether the goods were transported through the U.S.A., were manufactured or stored in the U.S.A. or made using US technology;
- the statistical goods number (HS code) of his goods; and
- a contact in its organization for clarification of any queries of Komatsu.

Suppliers from member states of the European Union are obliged to provide Komatsu with supplier declaration for goods with preferential origin status in accordance with EU Regulation (EC) 1207/2001 without request. The Supplier may provide Komatsu with a long-term supplier declaration. In this event, the Supplier shall be responsible for ensuring that this declaration presented to Komatsu is up to date.

These information and declarations are to be provided by the Supplier free of charge.

If an additional charge is levied upon Komatsu or its customers by a customs authority on account of errors in the declaration of origin due to incorrect details of origin provided by the Supplier, or if Komatsu suffers any other financial disadvantage as a result thereof, the Supplier shall be liable for this.

§ 6 Contractual penalty

In case of culpable delay in delivery, Komatsu is entitled to a contractual penalty in the amount of 1 % of the order value per commenced week.

The contractual penalty can be asserted in addition to the claim for performance of contractual obligations. Statutory claims exceeding the amount of the contractual penalty shall remain unaffected.

The contractual penalty will be credited against any further damages to which Komatsu may be entitled due to the delay.

If SUPPLIER proves that the incurred damages are lower than the penalty, it only has to reimburse for these lower damages.

§ 7 Passing of risk

Delivery shall be DDP to the address specified in the order. In order to avoid a delay in acceptance, the Supplier must offer its services to Komatsu explicitly if an activity or contribution from Komatsu (for example the provision of material) has been agreed for a particular or determinable time. If Komatsu gets into default of acceptance, the Supplier is entitled to claim his additional expenses according to the statutory provisions (para. 304 BGB (German Civil Code)). If the subject of a contract is an individual good to be manufactured by the Supplier (custom-made item) the Supplier shall have further rights only if Komatsu was obliged to contribute and is liable for the failing contribution.

§ 8 Incoming goods investigation and warranty

All product descriptions which become subject of an individual contract – in particular by any naming or reference in the order or become incorporated into the contract like these General Terms and Conditions are deemed to be agreements of characteristics in the meaning of para. 434 para. 1, sent. 1 BGB (German Civil Code). In this respect, there is no difference whether the product description originates from Komatsu, the Supplier or the Manufacturer.

Contrary to para. 442 para. 1 sent. 2 BGB (German Civil Code), Komatsu has unrestricted warranty rights, even if Komatsu did not detect a defect due to gross negligence at the time of concluding the contract.

With regard to the commercial obligation to inspect the goods and register complaints, the statutory provisions (paras. 377, 381 HGB – German Commercial Code) apply with the following proviso: The obligation of Komatsu to inspect the goods is limited to defects which are apparent at the incoming goods investigation including the delivery papers and are unconcealed during random quality controls (for example, transport damages, wrong or short supplies). If a formal acceptance is agreed, no incoming goods investigation is necessary. Otherwise, it may be decisive in how far an investigation under consideration of the specific circumstances within ordinary business activities can be expected. The obligation to register complaints remains intact for later detected defects. In any case, the complaint is registered in time if, in case of apparent defects, it is registered within 10 calendar days after receipt or, if the defect was not apparent within 10 calendar days, after detection. In order to preserve the warranty rights, the punctual sending of the complaint notification is sufficient.

Expenses incurred by the Supplier for the purpose of investigation and remediation are borne by him, even if it is later found that no defect existed. Komatsu's liability for damages in case of unjustified requests for rectification of defects remains intact; the liability, however, only applies if Komatsu had recognized or failed to recognize by way of gross negligence, that no defect existed.

In deviation of para. 438 para. 1 No. 3 BGB (German Civil Code), the general limitation period for warranty claims is three years from transfer of risk. If a formal acceptance is agreed, the limitation period begins with the acceptance. The three-year limitation period shall also apply to claims based on deficiencies in title whereby the statutory limitation period for actions for recovery of property (para. 438 para. 1 No. 1 BGB (German Civil Code)) remains intact, claims due to deficiencies in title or law are not time-barred in any case where a third party can still claim the right against Komatsu (in particular failing limitation). During this period, Komatsu is entitled at its discretion in particular to demand from the Supplier the rectification of the defect or the delivery of a defect-free good including necessary expenses related thereto, in particular transport, material and labor costs. The right to claim damages, in particular damages instead of performance, remains reserved for Komatsu. If Komatsu is entitled to claim non-contractual damages for defects, the general statutory limitation period (paras. 195, 199 BGB (German Civil Code)) shall apply unless limitation periods of the law of sales might allow for a longer limitation period.

In case of imminent danger, Komatsu is entitled to remedy defects itself at its Supplier's cost upon respective notification to Supplier.

§ 9 Industrial property rights

The Supplier shall be responsible for ensuring that no third-party rights are violated in connection with the delivery.

The Supplier shall be responsible for ensuring that all goods are free of third-party industrial property rights and in particular that the supply and use of the delivery goods does not in any way infringe patents, licenses or other industrial property rights of third parties. The Supplier shall indemnify Komatsu and their customers from claims by third parties for any infringement of industrial property rights and shall bear all costs incurred by Komatsu in this context.

The contracting parties will inform each other without delay if they become aware of potential risks of infringement or alleged infringement cases and to provide the opportunity to antagonize respective claims mutually.

§ 10 Product liability and insurance

The Supplier shall, upon first demand, indemnify Komatsu and hold it harmless from and against any and all liability or claims of third parties based on the manufacture, delivery, storage, or use of the delivered goods. The above indemnification shall not apply if the claim is based on the intentional or grossly negligent breach of duties by Komatsu.

Within its indemnity obligation, the Supplier shall have to compensate expenses according to paras. 683, 670 BGB (German Civil Code) which result from the use of third parties including products recalls undertaken by Komatsu.

The Parties will – as far as possible and reasonably to be expected – inform each other in advance about the content and scope of recall measures and provide each other with an opportunity to comment.

The Supplier shall maintain a product liability insurance with a comprehensive coverage of EUR 10 million per case of personal injury and property damage for the duration of the contract, i.e. until expiration of the respective limitation period for warranty claims. Any further warranty claims shall remain unaffected.

§ 11 Documentation and objects of Komatsu

Komatsu shall retain ownership and copyright of all performance documentation, drawings, calculations, devices, tools, models and other contractual objects. They must be used exclusively for the execution of the order of Komatsu; once the order has been completed, the objects named above must be returned to Komatsu without any further request.

During the term of contract, the Supplier must safely store the objects named above at its own expense and take out insurance cover for the objects at replacement value, in particular against fire, water and theft.

The objects named above must not be made accessible to third parties without the express written permission of Komatsu. They may not be used for any other purpose than the one agreed upon.

Processing, amalgamation or joining of objects provided by Komatsu undertaken by the Supplier is deemed to be done on behalf of Komatsu. In case that through processing, amalgamation or joining with goods of third parties, ownership by third parties is retained, Komatsu shall acquire partial ownership of the new object in a relative value of the goods provided compared to the other goods.

§ 12 Applicable law and jurisdiction

The business relationship between Komatsu and the Supplier as well as any disputes arising thereof shall be governed by the laws of the Federal Republic of Germany excluding the Convention on Contracts for the International Sale of Goods (CISG).

Conditions and effects of a retention of title are subject to the law at the place where the good is located if an agreement on the applicable law in favor of German law is invalid.

Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with the business relationship of the Parties shall be the place of business of Komatsu, unless there is an exclusive statutory place of jurisdiction. Komatsu is, however, also entitled to initiate proceedings against the Supplier at the Supplier's general place of jurisdiction or at the place of performance of the delivery obligation.

§ 13 Data protection

The Supplier agrees that Komatsu processes and, in particular, stores the Supplier's data received in connection with the business relation, especially with an order, in compliance with the German Federal Data Protection Act for the fulfilment of own business purposes of Komatsu, as far as this is conducted within the scope of the purpose of the contract or if this is necessary for safeguarding justified interests of the Supplier and there is no reason to believe that the legitimate interest of the Supplier in the exclusion of the processing of these data prevails.

§ 14 REACH-clause

With regard to all materials, processes and products delivered to Komatsu, the Supplier has to observe and fulfil the specifications and provisions resulting from EU regulation (EC) No. 1907/2006 ("REACH"- Regulations) in its effective version.

§ 15 Code of Conduct for Suppliers

The Supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the Supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees, any child labor organized crime or other anti-social activities. Moreover, the Supplier will take responsibility for the health and safety of its employees and will act in accordance with the applicable environmental laws. The Supplier will use its best efforts to promote this Code of Conduct among its suppliers.

In addition to other rights and remedies Komatsu may have, Komatsu may terminate the contract in case of breach of the above obligations by the Supplier. However, provided that the Supplier's breach of contract is capable of remedy, Komatsu's right to terminate is subject to the proviso that such breach has not been remedied by the Supplier within a reasonable grace period set by Komatsu.

§ 16 Final provisions

The INCOTERMS in force at the time of contracting shall apply for the interpretation of the commercial terms.

These General Terms and Conditions shall be executed in both German and English language. In the event of any inconsistency between the German and the English version the German version shall prevail.

Komatsu Germany GmbH
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