

# KOMATSU AFRICA HOLDINGS (PTY) LTD

## TERMS AND CONDITIONS

### Website Terms and Conditions of use

#### 1. Introduction

- 1.1. Welcome to [www.komatsu.co.za](http://www.komatsu.co.za) ("the Website"). The Website is made available to you by Komatsu Africa Holdings (Proprietary) Limited, with Registration Number 1995/005549/07, a limited liability private company incorporated in the Republic of South Africa and having its registered address at 17a Brickfield Road, Sunnyrock Ext 11, Germiston, 1459 ("the Company"; "we"; "us"; or "our").
- 1.2. These Website Terms and Conditions of Use ("Terms and Conditions") govern your access to and use of the Website (including all information, content, reports, data, databases, graphics, interfaces, web pages, text, files, software, product names, company names and intellectual property made available by or through the Website ("Content")).
- 1.3. These Website Terms and Conditions are binding and enforceable against every person who accesses, uses or views this Website or any part thereof ("you" or "your").

#### 2. Acceptance of our Terms

- 2.1. The Company permits the use of this Website subject to these Terms and Conditions.
- 2.2. If you do not agree to be bound by these Terms and Conditions, or any subsequent modification, do not access, browse or otherwise use this Website.
- 2.3. **You understand, acknowledge and agree that these Terms and Conditions constitute a legally binding agreement between you and the Company and by accessing, browsing and/or using the Website in any way, you acknowledge that you have read and agree to be bound by these Terms and Conditions unconditionally.**
- 2.4. **Your continued use of the Website shall constitute your acceptance of these Terms and Conditions.**

#### 3. Access and use of information

- 3.1. You agree that your use of this Website is limited to access to Content as detailed on the Website.
- 3.2. If you do not agree to be bound by these Terms and Conditions, or any subsequent modification, do not access, browse or otherwise use this Website.
- 3.3. You agree and acknowledge that the Company is entitled to provide goods or services to you through subsidiaries or affiliated entities.

#### 4. Proprietary Rights

- 4.1. You acknowledge and agree that the Website and the Content may contain proprietary and confidential information including trademarks, service marks and patents protected by law, including but not limited to copyright and trademark laws.
- 4.2. The Company retains all right, title and interest in and to its intellectual property that is used in connection with the Website, including the Content. You will not acquire any right, title or interest in or to the Website or the Content.
- 4.3. Except for personal, non-commercial internal use, you are prohibited from using (including, without limitation, distributing, modifying, reproducing in whole or part, uploading, transmitting, licensing, selling or publishing) the Content, or any part thereof, unless expressly authorised by the Company in writing or as may be otherwise provided for in law.
- 4.4. Where any of the Content has been licensed to the Company or belongs to any third party, your rights of use will also be subject to any terms and conditions which that licensor or third party imposes from time to time and you agree to comply with such third party terms and conditions.

#### 5. Submitted Content

- 5.1. You may send to the Company comments, questions, suggestions or ideas relating to the Website.
- 5.2. Subject to the privacy provisions below, you agree to the Company reproducing, disclosing and distributing the information you submit to the Company to other third parties without limitation. **All remarks, suggestions, ideas, or other information communicated to the Company through the Website shall become the sole and exclusive property of the Company and the Company shall not be obligated to compensate you in any form.**

#### 6. Availability and Termination

- 6.1. Although we will use reasonable endeavours to maintain the availability of the Website, except during scheduled maintenance periods, we reserve the right to discontinue providing the Website or any part thereof with or without notice to you.

- 6.2. **The Company may in its sole discretion terminate, suspend and modify this Website, with or without notice to you. You agree that the Company will not be liable to you in the event that it chooses to suspend, modify or terminate this Website.**
- 6.3. These Terms and Conditions will continue to apply in perpetuity until terminated by us at any time for any reason.

## 7. Disclaimer of Warranties

- 7.1. **You agree that your use of the Website is entirely at your own risk and you assume full responsibility for and risk or loss resulting from your use of the Website or reliance on any information on the Website.**
- 7.2. Whilst the Company takes reasonable measures to ensure that the content of the Website is accurate and complete, the Company makes no representations or warranties, whether express or implied, as to the quality, operation, integrity, availability or functionality of the Website or as to the accuracy, completeness or reliability of any information on the Website.
- 7.3. **The Company disclaims liability for any damage, loss or liability, whether direct, indirect or consequential in nature, arising out of or in connection with your access to or use of the Website and/ or any content therein unless otherwise provided by law.**
- 7.4. **The Website and the Content are provided to you on an “as is” and “as available” basis without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, completeness, or non-infringement, as may be allowed in law.**
- 7.5. **We do not warrant or represent, whether express or implied, that the Website will function on an uninterrupted basis, be error free or be free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardise or otherwise impede in any manner the operation, stability, security functionality or content of your computer system, computer network, hardware or software in any way.. You accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation or content of a computer system, computer network, any handset or mobile device, or your hardware or software, save where such risks arise due to the gross negligence or wilful misconduct of the Company.**
- 7.6. **The Company thus disclaims all liability for any damage, loss or liability of any nature whatsoever arising out of or in in connection with your access to or use of the Website.**

## 8. Limitation of Liability

- 8.1. **In no event shall the Company, its affiliates, officers, directors, employees, shareholders or agents of any of them be liable for any inaccurate information published on the Website, save where such liability arises from the gross negligence or wilful misconduct of the Company, its affiliates, officers, directors, employees, shareholders or agents of any of them.**
- 8.2. **THE COMPANY, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS OR AGENTS OF ANY OF THEM SHALL IN NO EVENT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHICH MIGHT ARISE FROM YOUR USE OF, OR RELIANCE UPON, THE WEBSITE OR THE CONTENT CONTAINED ON THE WEBSITE; OR YOUR INABILITY TO USE THE WEBSITE, AND/OR UNLAWFUL ACTIVITY ON THE WEBSITE AND/OR ANY LINKED THIRD PARTY WEBSITE.**
- 8.3. The above limitation shall apply whether or not the Company has been advised of or should have been aware of the possibility of such damages.
- 8.4. **YOU HEREBY INDEMNIFY THE COMPANY AGAINST ANY LOSS, CLAIM OR DAMAGE WHICH MAY BE SUFFERED BY YOURSELF OR ANY THIRD PARTY ARISING IN ANY WAY FROM YOUR USE OF THE WEBSITE AND/OR ANY LINKED THIRD PARTY WEBSITE TO THE GREATEST EXTENT PERMITTED BY LAW.**

## 9. Privacy

- 9.1. **We respect your privacy and the Company is committed to ensuring that any personal information submitted on the Website is treated with the utmost privacy and that it has reasonable safeguards in place to protect your personal information when such information is submitted, accessed, stored or handled on the Website.**
- 9.2. We respect your privacy and the Company is committed to ensuring that any personal information submitted on the Website is treated with the utmost privacy and that it has reasonable safeguards in place to protect your personal information when such information is submitted, accessed, stored or handled on the Website.
- 9.3. The Company may collect your information which may be automatically provided via “Cookies”. “Cookies” are small text files a website can use to recognize repeat users, facilitate the user’s ongoing access to and use of a website and allow a website to track usage behaviour and compile aggregate data that will allow the website operator to improve the functionality of the website and its content. The type of information collected

via cookies is not used to personally identify you. If you do not want information collected through the use of cookies, there is a simple procedure in most browsers that allows you to deny or accept the cookie feature. Please note however that cookies may be necessary to provide you with certain features available on our Website, and thus if you disable the cookies on your browser you may not be able to use those features, and your access to our Website will therefore be limited.

9.4. **The Company will not use or disclose your personal information to third parties without your consent, unless the use or disclosure is -**

9.4.1. **required in order to comply with applicable law, order of court or legal process served on the Company; and/or**

9.4.2. **disclosure is necessary to protect and defend the rights or property of the Company.**

9.5. To the extent that you provide us with your personal information, we will -

9.5.1. treat your personal information as strictly confidential;

9.5.2. take appropriate technical and organisational measures to ensure that your personal information is kept secure and is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access;

9.5.3. provide you with access to your personal information to view and/or update personal details;

9.5.4. promptly notify you if we become aware of any unauthorised use, disclosure or processing of your personal information;

9.5.5. provide you with reasonable evidence of our compliance with our obligations under this clause 9 on reasonable notice and request; and

9.5.6. upon your request, promptly return or destroy any and all of your personal information in our possession or control.

9.6. We will not retain your personal information longer than the period for which it was originally needed, unless we are required by law to do so, or you consent to us retaining such information for a longer period.

9.7. The Company undertakes never to sell or make your personal details available to any third party unless we are compelled to do so by law.

9.8. We cannot guarantee that your communications will be free from unauthorised access by third parties.

Accordingly, **WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGES ARISING FROM THIRD PARTIES' UNAUTHORISED ACCESS OF YOUR PERSONAL INFORMATION.**

9.9. If you disclose your personal information to a third party, such as an entity which operates a website linked to this Website or anyone other than the Company, **THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, HOWSOEVER ARISING, SUFFERED BY YOU AS A RESULT OF THE DISCLOSURE OF SUCH INFORMATION TO THE THIRD PARTY.** This is because we do not regulate or control how that third party uses your personal information. You should always ensure that you read the privacy policy of any third party.

10. **Linked Third Party Websites**

10.1. The Website may contain links or references to other websites ("Third-party Websites") outside of our control, including those of advertisers. These Terms and Conditions do not apply to such Third-party Websites and the Company is not responsible for the practices and/or privacy policies of those Third Party Websites or the "cookies" that those sites may use

10.2. **Notwithstanding the fact that the Website may refer to or provide links to Third Party Websites, your use of such Third Party Websites is entirely at your own risk and we are not responsible for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from your use of such Third Party Websites or your reliance on any information contained thereon.**

11. **Jurisdiction**

11.1. These Terms and Conditions and our relationship and/or any dispute arising from or in connection with these Terms and Conditions shall be governed and interpreted in accordance with the laws of the Republic of South Africa.

11.2. Your continued use of the Website will constitute your consent and submission to the jurisdiction of the South African courts regarding all proceedings, transactions, applications or the like instituted by either party against the other, arising from any of these Terms and Conditions.

11.3. In the event of any dispute arising between you and the Company, you hereby consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Western Cape Division, Cape Town) notwithstanding that the quantum in the action or proceedings may otherwise fall below the monetary jurisdiction of that court.

12. **Entire Agreement**

12.1. You understand and agree that these Terms and Conditions constitute the entire agreement between you and the Company. You may be subject to additional terms and conditions when you use, purchase or access other services, affiliated services or third-party content or material.

13. Changes to the Terms

13.1. The Company reserves the right to modify these Terms and Conditions from time to time at our sole discretion and without prior notification to you. You are required to review these Terms and Conditions each time you access and/or use the Website. Any changes will only apply to your use of this Website after the change is displayed on the Website. If you use the Website after such updated or amended Terms and Conditions have been displayed on the Website, you will be deemed to have accepted such updates or amendments.

14. GENERAL

14.1. The Company may, in its sole discretion, at any time and for any reason and without prior written notice, suspend or terminate the operation of the Website or your right to use the Website or any of its Content.

14.2. You may not cede, assign or otherwise transfer your rights and obligations in terms of these Terms and Conditions to any third party.

14.3. If any term or condition contained herein is declared invalid, the remaining terms and conditions will remain in full force and effect.

14.4. Any failure on the part of you or the Company to enforce any right in terms hereof shall not constitute a waiver of that right.