

## KOMATSU FORKLIFT USA LLC. TERMS & CONDITIONS OF SALE

**General. Komatsu Forklift USA LLC.**'s ("Komatsu") sales transactions are based on valid quotes, Komatsu invoices, and these Sales Terms and Conditions ("**Terms and Conditions**"). Together with any additional writings signed by Komatsu, these Terms and Conditions represent a final, complete and exclusive statement of the Agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence, Buyer's purchase order, a course of dealing, Komatsu's performance or delivery, or in any other way except in writing signed by an authorized representative of Komatsu. The Terms and Conditions are intended to cover all activity of Komatsu and Buyer hereunder, including, sales and use of Equipment, Parts, and all related matters (references to work include construction, installation and start-up). Any references by Komatsu to Buyer's specifications and similar requirement are only to describe the Equipment and Parts covered hereby and no warranties or other terms therein shall have any force or effect. Catalogs, circulars and similar pamphlets of Komatsu are issued for general information purposes only and shall not be deemed to modify the provisions hereof.

### **Definitions.**

**Equipment** means all whole equipment (including attachments) and machinery that is sold by Komatsu to Buyer and specified on the cover page.

**Parts** means all components, assemblies and parts that are sold by Komatsu to Buyer.

**Price** means the price as announced or quoted from time to time by Komatsu to Buyer in effect on date of shipment, quotation, or as agreed to.

**General Terms of Sale.** All shipments are FCA the applicable shipping point unless otherwise expressly stated by Komatsu.

Full risk of loss (including transportation delays and losses) shall pass to the Buyer upon delivery of product at the FCA point or Komatsu's plant or warehouse, as applicable, and shall not release Buyer from its obligation to pay the purchase price. Title shall also pass pursuant to the terms of trade (Incoterms (2020)), set out in herein, unless otherwise agreed by the parties.

Komatsu's responsibility for shipments ceases upon delivery to the transportation company, and any claims for shortages, delays or damages occurring thereafter shall be made by the Buyer directly to the transportation company. Any claims against Komatsu for shortages in shipments shall be made within fifteen (15) days after receipt of shipment.

Shipments are subject to credit approval and receipt of all acceptable documents required for shipping release; on Parts and rebuild orders; all documents are required a minimum of thirty (30) days prior to shipment and specification changes will not be accepted within this thirty (30) day period. Quoted shipping charges are estimates; actual charges in effect at time of shipment will apply.

All Equipment and Parts shall be finally inspected and accepted within five (5) days after arrival at point of delivery. All claims whatsoever by Buyer (including claims for shortages) excepting only those provided for under the Standard Warranty and Patent Infringement Clauses hereof must be asserted in writing by Buyer within said ten (10) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of Equipment, Parts or work and Buyer's remedy for lesser defects shall be those provided for under the Standard Warranty and Patent Infringement Clauses.

Komatsu shall not be responsible to Buyer or any of Buyer's customers for any loss, non-performance, damage, detention, or delay resulting from fire, floods, strikes, lockouts, delays in manufacture, unavoidable casualty, delays in transportation or delivery of materials, embargoes, insurrections or riots, civil or military authority, rail car shortages, acts of God, acts of Buyer, or by any causes beyond Komatsu's reasonable control. Any delays so occasioned shall affect a corresponding extension of Komatsu's performance dates, which are, in any event, understood to

be approximate. In no event shall Buyer be entitled to incidental or consequential damages for late performance or a failure to perform.

Buyer is responsible for the loading and unloading of the Equipment. If Komatsu employees assist in loading or unloading the Equipment, Buyer assumes the risk of any resulting damage or injury and shall indemnify, defend and hold harmless Komatsu from and against any loss, cost or expense (including attorneys' fees and expenses) arising from or related to the same, whether or not caused, in whole or in part, by Komatsu's negligence or the negligence of Komatsu's employees, agents or assigns

**Default by Buyer.** If any amount owed by Buyer is not paid promptly when due or if the property be removed or disposed of or encumbered or if other breach occurs, all unpaid sums shall, at the option of Komatsu, become immediately due and payable, and Buyer agrees to return the property on demand, and, to the extent permitted by law.

Komatsu or its assigns may without notice or legal process enter any premises where the property may be and take possession of it and retain all prior payments as partial compensation for its use, and the property may be sold with or without notice at private or public sale, with or without having the property at the sale, at which Komatsu or its assigns may purchase, and the proceeds thereof, less expenses of retaking, repairing, holding, reselling and reasonable attorney's fees, credited upon the amount unpaid, and Buyer will pay the balance forthwith as liquidated damages for the breach of this contract, any surplus, however, to be paid to Buyer. For any outstanding account balances, a one and one half percent (1.5%) interest per month will be charged on a monthly basis. Komatsu reserves the right, in its sole discretion, to modify, amend, or change its terms of sale without advance notice to Buyer. No deductions shall be made by Buyer from any payment on any account or other debt whatsoever without prior written consent of Komatsu.

**Acceptance and Cancellation.** All orders shall be subject to acceptance by Komatsu at such location, as Komatsu shall determine. Komatsu may refuse to accept any order for any cause. After acceptance, Buyer may not cancel an order, without the written consent of Komatsu. After acceptance of any order, any damages or expenses incurred by Komatsu as a result of cancellation, or any change requested by Buyer or Buyer's customer, will be included in Komatsu's invoice to Buyer, unless a prior written waiver of such expense is obtained from Komatsu.

If Buyer wrongfully rejects or revokes acceptance of items tendered under this Agreement or fails to make a payment due on or before delivery or repudiates this Agreement, Komatsu shall at its option have a right to recover as damages either the price as stated herein (upon recovery of the price the items involved shall become the property of the Buyer) or the profit (including reasonable overhead) which Komatsu would have made from full performance, together with incidental damages and reasonable costs.

**Trade-in.** If applicable, all trade-in allowances are on the basis of equipment delivered to the yard appointed by Komatsu. Buyer irrevocably sells, assigns, transfers and conveys possession, ownership and title of any trade-in Equipment described on the face of this order. Customer warrants that it is the sole owner of the trade-in Equipment, that it has power and authority to sell the trade-in Equipment, and that no lien or any encumbrance of any kind or nature exists against the trade-in Equipment. Customer shall not withhold, offset, recoup or debit any other amounts owed (or to become due and owing) hereunder or otherwise to Komatsu or any of its affiliates against any other amount owed (or to become due and owing) to it or its affiliates.

**Taxes.** Any sales, use or any other applicable taxes imposed on this sale or on this transaction are not included in the price. Such taxes shall be listed separately on the invoice to the Buyer. Buyer agrees to pay promptly all taxes, assessments, license fees and other public or private charges when levied or assessed against the Equipment, or this contract, or any accompanying note, and

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to satisfy all liens against the same. Komatsu will accept a valid exemption certificate from the Buyer if applicable, however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and Komatsu is required to pay the tax covered by such exemption certificate, Buyer agrees to promptly reimburse Komatsu for the taxes paid.

**Security Interest.** Buyer agrees that Komatsu shall retain a security interest in and to the property sold hereunder and any additions or improvements thereto, until payment of the entire purchase price to Komatsu. Buyer shall execute a Uniform Commercial Code Financing Statement for filing by Komatsu to perfect the security interest retained in Komatsu. If any note is given in connection herewith, it shall evidence the indebtedness only and not full payment and the security interest retained by Komatsu constitutes security for the payment of amounts owing under the note. Unless otherwise provided on the face of this agreement, or any note in connection therewith, the purchase price shall bear interest at the rate of eighteen percent (18%) per annum or, if different, the highest non usurious rate allowed by law, upon the unpaid balance, if any, until maturity and after maturity at the highest lawful rate. The security interest of Komatsu in the property sold hereunder shall also extend to all amounts owing under the terms of this contract, including, without limitation, interest, court costs and attorney's fees if incurred by Buyer. Upon delivery of the equipment purchased hereunder, Buyer agrees to execute such notes, security agreements, financing statements and other documents requested by Komatsu to evidence the obligation and security interest provided herein. Komatsu's security interest includes proceeds of collateral, if any.

**Standard Warranty.** The terms and conditions of the respective Komatsu Standard Warranty are applicable to all new Equipment and Parts marketed by Komatsu. In the event any Equipment sold hereunder is a used machine, it is sold "as is" and without any warranty or guarantee as to condition.

**The foregoing warranty is exclusive and in lieu of all other express, statutory and implied warranties applicable to Equipment including, without limitation, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE.**

Subject to Seller's Standard Warranty, Seller and Buyer each release the other from liability for or damage to each other's material, machinery, equipment, or other property. Seller and Buyer each agree to indemnify and hold harmless the other, their respective officers, directors, employees and agents from and against any claim (including costs, reasonable litigation expenses and attorneys' fees, and other expenses) for personal injury to or death of any person or damage to property of third parties, to the extent directly caused by negligent acts or omissions of the indemnifying party, its agents or employees, arising out of the sale, installation, use or provision of Equipment or Parts, or activities of the indemnifying party in connection with the same.

**Komatsu shall not be held liable or responsible for any damages, whether on account or personal injuries or otherwise, suffered or sustained in the operation of the Equipment, nor for any damages resulting to the Buyer by reason of any delays or alleged failure of said Equipment to operate.**

**IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, OR ALLEGED NEGLIGENCE LIABILITY WITHOUT FAULT OR OTHER TORT THEORIES, SHALL KOMATSU, OR ITS PARTNERS, AFFILIATES OR SUBSIDIARIES BE LIABLE FOR INDIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE EQUIPMENT OR PARTS OR ANY ASSOCIATED WORK EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, LABOR COSTS, OR CLAIMS OF CUSTOMERS, BUYERS OR LESSEES FOR SUCH DAMAGES. THE REMEDIES HEREIN ARE THE EXCLUSIVE REMEDIES UNDER THIS WARRANTY.**

**Special Tooling.** Notwithstanding any tool, die or pattern changes or amortization in connection herewith, all special tooling and related items shall be and remain the property of Komatsu.

**Changes In Parts.** Komatsu reserves the right to change the design of or add improvements to the Equipment and Parts at any time without prior notice to Buyer and without incurring any obligation to modify or install the same on Parts previously purchased by Buyer. Komatsu reserves the right at any time to discontinue the manufacture of any model or any Part without prior notice and without incurring any obligation to Buyer.

**Buyer Not An Agent.** Nothing in these Terms & Conditions shall be construed as constituting Buyer as the agent or legal representative of Komatsu for any purpose whatsoever. Buyer is not granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of Komatsu, or to bind Komatsu in any manner or thing whatsoever.

**Patent Infringement.** Komatsu and its suppliers shall defend any suit or proceeding brought against Buyer based on a claim that any Equipment or Parts that has been designed and manufactured by Komatsu and furnished under this Agreement constitutes an infringement of any patent of the United States, if notified promptly, in writing, and given authority, information and assistance (at Komatsu's expense) for the defense of same, and Komatsu shall pay all damages and costs awarded therein against Buyer. In case said Equipment or Part is in such suit held to constitute infringement and the use of said Equipment or Part is enjoined, Komatsu shall, at its own expense and at its option, either procure for Buyer the right to continue using said Equipment or Part; or replace same with a non-infringing Equipment or Part; or modify it so it becomes non-infringing; or remove said Equipment or Part and refund the Price billed, less any reasonable charge, by Komatsu at the time of initial sale. The foregoing states the entire liability of Komatsu for patent infringement by said Equipment or Part.

The preceding paragraph of this Section shall not apply to any Equipment or Part manufactured to Buyer's design. As to such Equipment or Parts, or any part thereof, Komatsu assumes no liability whatsoever for patent infringement.

**Assignment.** Buyer may not assign this agreement or any right or obligation hereunder without the prior written consent of Komatsu. If Komatsu assigns this agreement, it shall not be assignee's agent for any purpose; Buyer will settle all claims, defenses, set-offs and counterclaims it may have directly with Seller, and not set up any thereof against Komatsu's assignee. No waiver, or change in this contract or any related instruments, shall bind such assignee unless in writing signed by one of Komatsu's officers.

**Limitation on Export.** Buyer agrees that it will not (i) sell, export or otherwise dispose of any Equipment or Parts (ii) sell, lease or otherwise dispose of any Equipment or Parts to any person, firm, corporation, or governmental entity which Buyer knows (or has reason to believe) will export, resell or otherwise dispose of such Equipment or Parts, into any country or territory wherein the sale, lease, use or other disposition of such Equipment or Parts are prohibited or regulated by any law or regulation of the United States of America, provided that this Section shall not apply to any regulated transaction if the United States of America has expressly authorized such sale, lease, export or other disposition and the transaction is otherwise lawful.

**Insurance.** Buyer agrees to procure forthwith and maintain fire insurance with extended or combined additional coverage on the property for the full insurable value thereof for the life of this contract and promptly deliver each policy to Komatsu or assigns with a standard long form endorsement attached thereto, showing loss payable to Komatsu, and assigns as respective interest may appear; acceptance of policies in lesser amounts or risks shall not be a waiver of Buyer's foregoing obligations.

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**Force Majeure.** These Terms and Conditions shall be subject to strikes, lockouts, accidents, fire, delays in manufacture or transportation, acts of God, embargoes, or governmental action or any other cause beyond the control of Komatsu, the occurrence of which shall absolutely absolve Komatsu from any liability hereunder.

**Buyer's Obligations.** Buyer agrees to pay reasonable attorney's fees and court costs for the enforcement of Komatsu's right after Buyer's default.

If Buyer by its conduct or notice breaches any of the terms of this contract, Komatsu shall be entitled to retain any advanced deposit as liquidated damages without any restriction on Komatsu to institute legal action for actual damages sustained as the result of the breach which are in excess of the deposit so forfeited.

Failure of Komatsu to declare any default by Buyer or to enforce any term of this contract shall not constitute a waiver of the right of Komatsu to enforce any term hereof or to declare any default (including that not enforced so declared) in the future; all of Buyer's rights hereunder are cumulative and not alternative.

**Governing Law; Forum.** This Agreement shall be governed, construed and enforced by the laws of the state in which the sale is made, and that if legal action is brought to enforce this Agreement, that courts located in such state shall be the exclusive jurisdiction and legal venue for said action without regard to principles of conflict of laws.