

Komatsu Forest Purchasing General Conditions

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Definitions

Komatsu	- the Komatsu Forest unit closing a Supply Agreement and any Komatsu Forest operating unit Participating in such.
Supplier	- the company supplying a Product to Komatsu.
Product	- the item delivered by the Supplier to Komatsu.
Parties	- the Supplier and Komatsu.
Third Party	- a party which is not the Supplier or belonging to Komatsu Forest.

These Purchasing General Conditions shall be applicable to individual orders as well as to individual orders and continuous orders, where deliveries are made according to delivery plans.

1. Technical Documents

All technical documents, instructions for use and maintenance, certificates and drawings related to the Product shall be included in the contract price and shall be issued and supplied to Komatsu before the delivery of the Product. Komatsu has the right to use and copy these materials for Komatsu's own purposes and for use in Product training sessions. Komatsu also has the right to include or use such technical material when compiling instructions or manuals necessary for finalizing Komatsu's product or for the use of the end products.

All drawings and technical documents relating to the Product or its manufacture, submitted by one Party to the other, shall remain the property of the submitting party. Such documentation may not, without the consent of the submitting party, or except as stated herein be used or copied, reproduced, transmitted or communicated to a Third Party.

2. Confidentiality

All information, technical documentation, know-how and equipment including electronically stored data and geometries, to which a Party has obtained access through the Parties' business relationship, shall for the duration of the Supply Agreement, and for ten (10) years thereafter, be treated as confidential and may not be used for any other purpose than for the deliveries to Komatsu. Copying or reproduction of such confidential information is permitted only within the framework of fulfillment of a Party's obligations and with regard to the copyright laws and regulations.

The Supplier shall at Komatsu's request either return or destroy everything referred to in this section, including copies thereof.

The provisions in this section do not limit Komatsu's rights according to section 1.

3. Delivery Terms

Agreed trade terms shall be construed in accordance with INCOTERMS 2010. If no trade terms are specifically agreed, the delivery clause shall be FCA Supplier's factory.

The Supplier shall adhere to the packing instructions submitted by Komatsu.

4. Delivery

The method of planning of deliveries differs between the different Komatsu units, see Supply Agreement for details. Unless otherwise agreed, planned volumes shall be regarded as forecasts only and shall not be binding on Komatsu. However, the Supplier shall maintain sufficient production and delivery capacity to ensure that deliveries can be made in accordance with forecasted volumes in the delivery plans. The Supplier shall immediately inform Komatsu if there is a risk of divergence from agreed deliveries and shall also take all available measures to avoid any such divergence.

If the Supplier delivers a quantity either in excess of Komatsu's call off or prematurely, Komatsu shall not be responsible for taking delivery or storing or maintaining such Products and shall further be entitled to return any such excess or prematurely delivered quantity to the Supplier at the Supplier's expense or receive compensation for storage costs.

Komatsu is not obliged to inspect the Product at the time of delivery but only when it will be used in Komatsu's production and then only be taking samples at random and without having to dismantle the Product or making similar extraordinary inspections.

5. Delayed deliveries

If the Supplier realizes that he will be unable to deliver the Product at the agreed time, he shall immediately notify Komatsu in writing, stating the reason for the delay and, if possible, a date when the delivery can be expected.

In the event of a late delivery of a Product, Komatsu is entitled to (i) completely or partly terminate the purchase of the Product and of other Products which Komatsu does not consider having any use of due to the late delivery, and (ii) make substitute purchases from other suppliers. The Supplier shall compensate Komatsu's direct and indirect losses and damages arising out of or relating to the late delivery.

The Supplier's liability for indirect losses under this section and under section 11 shall,

for each event which causes the loss or damage, be limited to an amount equivalent to ten per cent (10%) of the higher of the purchase value of (i) all Products delivered by the Supplier to the concerned Komatsu unit during a twelve month period immediately preceding the event which caused the loss or damage; and (ii) all Products that the Supplier is obliged to deliver during the immediately following twelve-month period as set out in the Supply Agreement with accompanying delivery plan.

6. Purchase Price and Terms of Payment

All prices include packing, packing material, service fees and all costs due to invoicing.

Payments shall be made within the agreed terms of payment calculated from the receipt of the invoice by the addressee stated on the order, but not earlier than the day on which the goods have arrived physically at the agreed address, and shall also be made in accordance with the other conditions that the Parties have agreed upon in writing. The term of payment shall, in the absence of any other agreement, be minimum sixty (60) days. Payment within this time conditions that the invoice is correctly addressed and contains all information necessary to Komatsu. The invoice must not be marked for the attention of any individual.

When the Supply Agreement includes the supply of technical documents, the calculation of time of payment shall not commence until the documents have been received and accepted.

Payment does not imply any acceptance of the delivery or of the invoiced amount.

7. Packing

The Supplier shall comply with the packing instructions of Komatsu. If the Supplier deems the instructions unfit for the goods, or is unwilling to act in accordance with the instructions for any other reason, the Supplier shall notify Komatsu thereof and Komatsu shall decide on the procedure. If notification is omitted and the packing is not in conformance with the packing instructions of Komatsu, Komatsu shall be entitled to charge the Supplier for any extra handling costs incurred and if the goods are damaged due to inferior packing. The Supplier shall immediately upon the request of Komatsu deliver substitute Products at the Supplier's expense, or alternatively can Komatsu make substitute purchases from other suppliers at the Suppliers expense.

Komatsu is entitled to determine the packing sizes when ordering the goods.

8. Testing

In order to ensure that Komatsu is given the opportunity to reassure that a Product is free from defects, the Supplier shall, prior to delivery of new or changed Product, manufacture and perform quality control of samples in accordance with Komatsu's from time to time valid requirements relating to testing.

Once a sample has been approved, alteration of the function, appearance, characteristics, material, production method, place of manufacture, tool or other equipment, which may affect the Product, may be done only after written approval by Komatsu. Delivery may thereafter be made only after renewed approval of an altered sample. Komatsu's approval of samples shall not affect the Suppliers liability and obligations in accordance with the Supply Agreement and does not in any way limit Komatsu's right to present claims.

9. Purchase Inspection and Quality

Komatsu or Komatsu's representative shall be entitled to perform inspections related to quality control and/or manufacture of the Product at the Supplier's production plant at times desired by Komatsu both during manufacture of the Product and after completion thereof. For this purpose the Supplier shall make available to Komatsu all documents in his possession relating to manufacture and manufacturing processes and shall place at the disposal of Komatsu free of charge any necessary equipment and premises. Furthermore the Supplier undertakes to take care, that Komatsu has the possibility to perform such inspections also at the production plants of the Supplier's sub-suppliers.

The inspections and tests performed by Komatsu shall in no respect decrease the Supplier's obligations and responsibilities stipulated in the Supply Agreement and do not in any way limit Komatsu's right to present claims.

10. Warranty

The Supplier warrants that the Products supplied are free from defects. A specimen of a Product shall be considered defective if

- (i) in any respect deviates from the technical specification,
- (ii) does not possess the characteristics that the Supplier has referred through samples, prototypes or in marketing,
- (iii) is not as safe as Komatsu could reasonably have expected,
- (iv) is not fitted for the particular purpose for which the Parties intended it to be used, or
- (v) otherwise deviates from what Komatsu reasonably could have expected

The warranty period is 24 months from the date on which the end product has been taken into use, but shall not exceed 30 months from the date on which the goods have been received by Komatsu. Claims shall be presented no later than 6 months after the end of the warranty period.

The above-stated time limits shall, however, not apply, should there be a risk of personal injury or damage to property other than the defective part, or of a repetitive defect. The Parties may conclude a separate agreement for the handling of warranty claims and for a more far-reaching warranty liability.

11. Liability of defects or shortcomings

In the event that a Product is defective in accordance with section 10 above or a delivery does not contain the agreed quantity, Komatsu shall be entitled to (i) demand immediate rectification, or (ii) demand immediate delivery of substitute Product(s).

If a defective Product cannot be repaired or replaced without delay or if there is a risk of production disturbances at Komatsu or delivery disturbance from Komatsu, Komatsu shall be entitled, without obtaining the Supplier's consent and at the Supplier's expense, to make the necessary repair work or completely or partly annul the purchase of the Product and other such Products that Komatsu does not consider having any use of due to the defect or shortcoming, and also to undertake substitute purchases from another supplier.

The Supplier shall compensate Komatsu for any loss or damage, direct as well as indirect, arising out of or relating to the defect or shortcoming in delivery, including but not limited to costs for assembly and disassembly, detection and analysis, scrapping and transportation, taking into consideration the limits stated in section 5 paragraph 3.

If Komatsu due to a delivery of a defective Product considers it necessary to inspect all Products of the same kind delivered by the Supplier, Komatsu is entitled, after giving the Supplier notice thereof, to make such inspection at the Supplier's expense and without awaiting the Supplier's approval. The notice shall describe the nature of the defect as well as the time and place of the inspection. If possible, the Supplier shall be present at the inspection.

12. Product Liability and Insurance

Except to the extent the Product has been designed or specified by Komatsu, the Supplier shall assume liability for the Product being in compliance with the requirements of valid laws, statutes and regulations.

The Supplier shall compensate Komatsu for all direct and indirect losses and damages including any claims for losses and damages made by Third Parties against Komatsu arising out of or relating to an end-product or specimen or Product having caused personal injury or property damage due to the fact that the Product was defective.

When a claim is presented on account of such a loss or damage, Komatsu shall immediately notify the Supplier and the Parties shall undertake the investigations that are called for in order to defend such claims in the best possible way. At Komatsu's request the Supplier shall also assist Komatsu in the event of any dispute.

If there is a risk of end-product causing personal injury or property damage due to defects in the supplied Product, Komatsu has the right to decide on the recall of the end product, and if Komatsu thus decides the Supplier shall compensate Komatsu for its costs in conjunction with such recall.

The Supplier shall enter into and maintain a product liability insurance policy, which shall be valid as long as claims can be made against Komatsu under applicable laws or regulations. The Supplier shall at Komatsu's request also supply Komatsu with a copy of the insurance certificate. The Supplier may not terminate such insurance without prior written consent of Komatsu.

13. Tooling

If Komatsu is supplying tools or equipment for the manufacturing of the Product or if the Supplier acquires such tool or equipment at the specific request of Komatsu such tools shall be the property of Komatsu.

The Supplier shall at his own cost undertake to maintain tools and equipment in such a way that the Product specifications are complied with. The Supplier reassures that all tools that are the property of Komatsu will at all times be marked as specified by Komatsu and will maintain sufficient documentation as to verify that these are the property of Komatsu. The Supplier will also undertake to inform Komatsu in due time in the event that renewal will be needed. The Supplier shall at all times carry sufficient insurance, to cover any damage to these items.

The procedure with use and return of the tools shall correspond to what is mentioned above under section 1 and 2 for drawings and documents.

14. Force Majeure

The following circumstances as examples but not limited to, shall be considered "force majeure", if they impede the performance of the Supply Agreement: Industrial disputes and any other circumstances beyond the control of the Parties such as fire, war, general mobilization, seizure, currency restriction, insurrection, riot and acts of God. The Party wishing to claim relief shall notify the other Party in writing as soon as the intervention and the cessation of such circumstance take place. The Supplier shall notify Komatsu when the delivery can be expected.

15. Termination of the Supply Agreement

The Supply Agreement may be terminated by either Party with three (3) months notice prior to end of validity stated in agreement.

Komatsu may terminate the Supply Agreement with immediate effect if the Supplier's performance of the Supply Agreement is impeded for more than one (1) month by reason of "force majeure".

In addition to the above, a Party is entitled to terminate the Supply Agreement with immediate effect if:

- a) the other Party enters into composition negotiation, is declared bankrupt, goes into liquidation or for any other reason can be assumed to have become insolvent; or
- b) the other Party is acquired by a competitor to the first Party.

Termination according to this provision shall be done without unreasonable delay after such circumstance becomes known to the Party or should have become known to the Party. Termination shall be made in writing.

The Supplier undertakes to inform Komatsu of any change in its ownership and will irrespective of grounds for termination continue deliveries to Komatsu to the extent necessary, however minimum six (6) months from date of termination, at prices and other conditions valid before that date.

The Parties shall have no liability because of termination other than in accordance with the provisions above.

16. Transfer of the Supply Agreement

A Party may not transfer the rights or obligations under the Supply Agreement to any Third Party without the other Party's written consent. If an essential change takes place in the Supplier's ownership, it shall immediately be reported to Komatsu and the Supplier must assure that the Supply Agreement will be upheld. Komatsu may however, without the Supplier's consent transfer the Supply Agreement to any other company within Komatsu.

17. Applicable Law and Disputes

In case a Komatsu unit and the Supplier have the same domicile, the Supply Agreement will be governed and construed in accordance with the law in that country.

In other cases the Supply Agreement is to be governed and construed in accordance with Swedish substantive law with the exception for the law (1987:822) concerning international purchases unless otherwise agreed.

Disputes that cannot be resolved by negotiation by the Parties shall be settled in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitration proceedings shall be held in Stockholm, Sweden.

18. Environmental concern

The Supplier agrees to operate in an environmentally conscious manner. The Supplier's operations shall in all respects be carried out in compliance with the environmental laws and statutes applicable in the country (ies) in which the Supplier operates.

For Products containing chemical substances, Supplier shall meet all the requirements as foreseen in and regulation EC 1907/2006 concerning the Registration, Evaluation and Authorization of Chemicals (REACH).

19. Spare Parts

The Supplier shall pursuant to the conditions in the Supply Agreement guarantee the flexible supply of spare parts for the Product at commercially moderate prices for a period of ten (10) years after Komatsu's purchases for serial production from the Supplier have ceased.

20. Intellectual Property Rights

Any technology, including specifications, designs or tools provided by Komatsu, is the property of Komatsu and may not be used for other purposes than to fulfill the obligations in the Supply Agreement. In particular the Supplier shall not produce the Product for himself or sell to Third Parties if the product is manufactured wholly or partly in accordance with technical specifications or other technology, designs or tools provided by Komatsu.

The Supplier shall assume liability for and hold Komatsu harmless from all claims, expenses and proceedings related to infringements of patents or other immaterial rights in relation to the Product and the use thereof, unless the claimed infringements relates solely to technical specifications provided by Komatsu. The Supplier's responsibility and liability to hold Komatsu harmless continues even after the Supply Agreement has terminated in accordance with the period mentioned in section 10 or 15 as long as claims may be presented by a Third party against Komatsu.

21. Order of priority of Supply Agreement Documents

The Supply Agreement may comprise following documents:

1. Supply Agreement
2. Komatsu's order
3. Komatsu's Purchasing General Conditions
4. Supplier's order confirmation
5. Supplier's offer

Should the contents of the above-mentioned document be in conflict, they shall be valid in the sequence numbered with no 1 as the highest priority.