

KOMATSU EQUIPMENT TERMS & CONDITIONS OF RENTAL AGREEMENT

GENERAL

Komatsu Equipment Company's ("Company") sales transactions are based on these sales terms, and (i) this document, together with any additional writings signed by Company, 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, Renter's purchase order, a course of dealing, Company's performance or delivery, or in any other way except in writing signed by an authorized representative of Company, and (ii) these terms are intended to cover all activities of Company and Renter hereunder, including, rental and use of Equipments, Parts, Services and all related matters. Any references by Company to Renter's specifications and similar requirement are only to describe the Equipments, Parts, and Services covered hereby and no warranties or other terms therein shall have any force or effect. Catalogs, circulars and similar pamphlets of the Company are issued for general information purposes only and shall not be deemed to modify the provisions hereof.

The Agreement formed hereby and the language herein shall be construed and enforced under the Uniform Commercial Code as in effect in the State of Utah, USA on the date hereof. The governing language shall be in the English language. In the event of a dispute as to the meaning of any translation into any other language, the English language meaning shall govern and the other language translation shall be amended to conform to such meaning.

DEFINITIONS

Rental Period: Company hereby rents the Equipment to Customer ("Renter") for the period commencing on its delivery to Renter and ending upon its return to Company's premises or called off appropriately with a verification number, subject to charge for minimum rental period. Company may terminate rental at any time by written notice to Renter and/or by retaking the Equipment. Unless otherwise specified, rental is for one-day period. No allowance will be made for Sundays, holidays, or time in transit or for any period of time the Equipment may not be in actual use while in Renter's possession.

Excess Usage Charge: Rental Rates are for normal and reasonable use of Equipment not exceeding eight (8) hours per day. Excess Usage (Overtime) rates will apply for any time above and beyond normal and reasonable use.

Receipt and Use of Equipment: By accepting delivery, Renter acknowledges that they have received the Equipment and all attachments used, by the Renter to connect the Equipment to Renter's towing motor vehicle, in good working and secure condition. Renter shall not abuse, harm or improperly operate the Equipment and shall possess and operate it in conformance with all applicable laws and regulations.

Failure of Equipment: In the event of any failure of the leased Equipment, of any nature whatsoever, Renter shall notify Company of the failure and at Renter's expense shall immediately return it to Company's premises. Without Company's written authorization Renter shall not incur any expense for Company's account for the repair of the Equipment.

Tire Repair or Replacement: Renter acknowledges that repair and replacement of tires are not included in the rental rate and agrees to pay for the repair or replacement (allowance for reasonable depreciation) of any tires returned to the dealer in damaged condition, regardless of the cause of the damage, reasonable wear and tear accepted.

Return of Equipment: At the termination of this Agreement, Renter shall return all of the Equipment to Company's premises during Company's regular business hours, in the condition, cleanliness, and repair as when delivered to Renter, subject only to reasonable wear and tear. Renter must notify Company that the equipment was delivered to the Company's premises. Renter shall be liable for all damages to or loss of the Equipment occurring because it was not returned within Company's regular business hours. If Company has agreed to deliver the Equipment to Renter or to pick up the Equipment from Renter, Renter shall be responsible for all loss or damage to the Equipment from time of delivery to Renter and until picked up by Company.

Hazardous Materials: Renter represents and warrants that it shall return all Equipment, including any and all attachments, tools and machinery leased from Company free of all regulated substances including, but not limited to, hazardous substances, hazardous materials, hazardous wastes, toxic substances, or pesticides, as those terms are defined in applicable federal, state, and local environmental laws, regulations, and rules. Renter shall indemnify and hold Company harmless from and against any and all liabilities, of whatsoever kind or nature, imposed on incurred by, or served against Company in any way relating to Renter's breach of the above warranty.

Damaged Equipment/Reasonable Wear and Tear: If the Equipment is returned in a damaged or excessively worn condition, Renter shall pay Company the reasonable cost of repair and pay rental on the Equipment at the regular rental rate until repairs have been completed. Company shall be under no obligation to commence repair work until Renter has paid therefore. Reasonable wear and tear shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one-shift (eight hour per day) basis. The following shall not be deemed reasonable wear and tear: Damage resulting from lack of lubrication or maintenance of necessary oil, water, and air pressure levels; damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual; damage resulting from any collision, overturning, or improper operation of the Equipment, including overloading or exceeding the rated capability of the Equipment of any part thereof; and wear resulting from use in excess of a one-shift basis. Repairs to the Equipment shall be made to the reasonable satisfaction of Company, and in a manner that will not adversely affect the operations or value of the Equipment, such as welding instead of replacing a part.

Disclaimer of Warranties and Waiver of Damages: Company makes no warranties, expressed or implied, as to the Equipment's merchantability or fitness for any particular purpose. Renter's sole remedy for any failure of or defect in the Equipment shall be the termination of the rental charges at the time of failure, provided the Equipment is returned to the Company within twenty-four (24) hours. Company shall not be responsible for any loss, damage or injury to Renter and Renter's property, including lost profits, incidental, special or consequential damages, in any way connected with the operation of, use of, defect in or failure of Equipment.

INDEMNITY AND HOLD HARMLESS AGREEMENT FOR PERSONAL INJURIES AND INJURIES OF THEIR PARTIES

The Renter shall indemnify, protect, and hold harmless Company, its agents, affiliates, officers, employees and subsidiaries from and against any and all claims, demands, causes of action, costs, attorney fee, or other liabilities (including Company's negligence) for damages to property and for injury or death to persons which may arise out of or be connected with any of Company's negligent acts, procedures, uses, maintenance, procedures, operations, handling, storage, erection, assembly or disassembly, servicing or transportation of Equipment or any other acts related to rented items provided to the customer. Except for intentional wrongdoing or willful negligence on the part of Company or any of its agents or employees, the Renter shall also, to the fullest extent permitted by law indemnify, protect, and hold harmless Company from and against any and all claims, demands, causes of action, costs, attorneys fees, or to other liabilities, (including Company's negligence) arising from any death, accident, injury or other occurrence, caused by the negligence of Company or the Renter's use of their rentable items; and arising from any interruption, discontinuance or interference with from Renter's or third parties service or business interest which may be occasioned or which may be claimed to have been occasioned by any action of Company pursuant to or consistent with this contract. The Renter shall provide legal defense, including attorneys fees and costs, for any and all lawsuits, causes of actions, claims, mediation, arbitrations, or other proceedings brought by their parties and agrees to pay and satisfy any legal obligation incurred by Company and resulting from such lawsuit or proceeding. This indemnification Agreement, by the Renter in favor of Company, shall provide Company with full and complete indemnification, including defense of any suits, actions, or other legal proceedings resulting from and claims for damages to property and injury or death to persons and shall apply to all claims, demands, suits, and judgments of whatever nature which shall be made or assessed against Company for furnishing rented items or services under the terms of this Agreement or for any other thing done or omitted in conjunction with Company dealing with the Renter.

EQUIPMENT PROTECTION PLAN

By Renter accepting Equipment Protection Plan (EPP), provided, Renter takes reasonable precautions to protect Equipment, Company assumes on a non-deductible basis risk of direct physical loss of or damage to the leased Equipment except the following risk assumed by Renter:

A deductible of:

- \$5,000 or 20% (which ever is higher) of the repair costs for each piece of Equipment, including attachments, for damage to said each piece of Equipment including attachments
- Or, \$5,000 or 20% (which ever is higher) of the replacement cost of each piece of Equipment, including attachments, for loss of any piece of Equipment because of theft, vandalism, or malicious mischief.

The following items are excluded from EPP coverage:

- Accessories, such as air hose, tool steel, electric cord, blades, welding cable, liquid fuel tanks, and other similar items are excluded from theft coverage.
- Loss or damage resulting from overloading or exceeding the rated capacity of Equipment.
- Loss or damage to motors or other electrical appliances or devices caused by artificial electrical current.
- Damage to tires and tubes caused by blowout, bruises, cuts, road hazards, or other causes inherent in the use of Equipment.
- Loss or damage resulting from lack of lubrication or other normal servicing of Equipment.
- Loss due to mysterious disappearance, or shortage disclosed on inventory.
- Loss or damage caused by infidelity of Renter, his employees, or persons to whom the Equipment is entrusted.
- Use of Equipment in violation of any of the terms of this Agreement.
- Failure to file police report.
- Damage from using straight gas in 2 cycle motors.
- Failure to keep Equipment in a locked enclosure or guarded when not in use. If Renter has insurance covering such loss or damage, Renter shall exercise all rights available to him under said insurance, take all actions necessary to process said claim, and Renter further agrees to assign said claim and any and all proceeds from such insurance to Company. Upon request of Company, Renter shall furnish name of his insurance agent, insurance Company, and complete information concerning insurance coverage carried. Company's waiver of claims against Renter as herein set forth is contingent upon Renter's prompt making of a submission to Company of copy of police report where applicable.

INSURANCE COVERAGE REQUIRED

Renter will be charged the Equipment Protection Plan fees if Renter has not provided proof on insurance. **Company does not provide Liability Insurance of any kind.** Renter must provide proof of insurance including General Liability coverage at \$1 million total aggregate limit and per occurrence. Business Automobile Liability insurance for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability of \$1 million for each occurrence for bodily injury and property damage.

The Equipment Protection Plan cannot be utilized for registered vehicles. Renter must provide "Hired Auto Liability" insurance when renting a licensed registered vehicle (an over the road vehicle). Coverage must include "Hired Auto Liability" with \$1 million total liability per accident and "Hired Auto Physical Damage" with limits of \$400,000. Company must be named as "Loss Payee and Additional Insured" on all Insurance certificates.

SUBLETTING AND LOCATION

No item of leased Equipment shall be sublet or assigned, or removed from the location at which Renter represented it was intended to be used, or removed from the State of Company's premises, except by written consent by Company.

RETAKEING OF EQUIPMENT

If the Equipment is not returned at the termination of the rental or for any reason it becomes necessary for the Company to retake the Equipment to protect it from loss or damage, Company and its agents may go upon Renter's property and retake the Equipment, without notice and legal process, and Renter waives all rights to a prior judicial hearing. Company and its agents may take all action reasonably necessary to retake the Equipment and Renter waives for himself, agents, and employees all claims for damages, and losses, physical and pecuniary caused by retaking by the Company. Renter Agrees to pay all costs and expenses incurred by Company in retaking the Equipment.

COMPLIANCE WITH LAW AND SAFETY REGULATIONS

As Company has no control over the use of the Equipment by Renter, Renter agrees at its sole expense to comply with all laws and regulations, including the Occupational Safety and Health Administration Act of 1970 (OSHA) and all other Federal, State and Local Laws, regulations and ordinances, which may effect the Equipment while it is in the possession of Renter and Renter shall indemnify and hold Company harmless from any liability or expense, including attorney's fees, resulting from any actual or asserted violations of such laws, regulations, and ordinances.

LEGAL FEES AND VENUE

Renter shall pay Company's actual legal fees and court costs incurred in enforcing the terms and conditions hereof. Renter agrees that this Agreement is to be construed under the laws of the State of Utah, and that if legal action is brought to enforce this Agreement, that Salt Lake County, Utah, shall be the exclusive jurisdiction and legal venue for said action.

BINDING EFFECT

This Agreement shall insure to the benefit of and be binding upon each of the parties hereto and each of their respective heirs, administrators, executors, personal representative, successors, parent companies, subsidiaries, affiliates, or assigns.

MERGER

This contract embodies the entire and final understanding between the parties hereto with respect to the rented items and supersedes any preexisting agreements, arrangements, representations, or warranties with respect to the rented items.

TERMS OF PAYMENT

Renter agrees to pay for all Equipments, Parts and Services rented or purchased, in accordance with the invoiced terms applicable at the date of each shipment, service, or F.O.B. point of distribution as established by Company from time to time. For any outstanding account balances, a one and one half percent (1.5%) interest per month will be charged on a monthly basis. Company reserves the right, in its sole discretion, to modify, amend, or change its terms of sale without advance notice to Renter. No deductions shall be made by Renter from any payment on any account or other debt whatsoever without prior written consent of Company.

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 billed separately to the Renter. Company will accept a valid exemption certificate from the Renter if applicable. However, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and the Company is required to pay the tax covered by such exemption certificate, Renter agrees to promptly reimburse Company for the taxes paid.

RISK OF LOSS

Full risk of loss (including transportation delays and losses) shall pass to the Renter upon delivery of product at the F.O.B. point or Company's Yard as applicable. Renter is responsible for all risks until the Equipment is returned to Company's premises or is pickup by Company's truck.

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 Company.

ASSIGNMENT

Renter may not assign this document or any right or obligation hereunder without the prior written consent of Company.