

KOMATSU GENERAL CLOUD TERMS AND CONDITIONS

These General Cloud Terms and Conditions (hereinafter referred to as “**Terms**”) apply to the software services provided through a software-as-a-service model (“**Services**”) provided by Komatsu Europe International NV, Mechelsesteenweg 586, 1800 Vilvoorde, Belgium (“**Komatsu**”, “**we**”, “**us**” or “**our**”) to professional customers (“**Customer**”, “**you**” or “**your**”). The Services are provided through an online channel as may be made available by Komatsu and its affiliates. The Customer and Komatsu shall each be a “**Party**” and shall together be referred to as “**Parties**”.

By purchasing a subscription for one or more Services (“**Subscription**”) through one of our online sales channels, by signing a purchase order form, confirming your registration as a Customer for one or more Services through any other online channel made available by Komatsu or by generally using our Services, you confirm that you are a duly authorized representative of your organization acting as Customer and you acknowledge to have received, read and to fully agree with these Terms in their entirety without reservation, including the limitations of liability and disclaimers of warranty contained herein. Such acceptance of the Terms constitutes a binding legal agreement between you and Komatsu (“**Agreement**”).

For some Services these Terms may be complemented and/or amended by Service-specific terms (“**Specific Terms**”). The Specific Terms will be made available to you before you purchase the corresponding Subscription, sign the corresponding purchase order form or confirm your registration as Customer for such Service. With your subsequent purchase, signature or confirmation the Specific Terms become an integral part of the Agreement between you and Komatsu.

In the event you procure Services through a Komatsu-authorized reseller, you understand and agree that (i) Komatsu never becomes a party to such agreement, which remains between you and the Komatsu-authorized reseller, unless with our explicit consent to the contrary, and (ii) any such agreement for the use of one or more Services between you and the Komatsu-authorized reseller shall in no event grant you more extensive usage rights, and shall never include any additional warranties and assurances purported to be provided by Komatsu, with regard to such Services beyond what has been set forth herein.

Article 1 General

- 1.1. In case of a conflict between these Terms on the one hand and any Specific Terms or other agreement duly executed between Komatsu and Customer on the other hand, these Terms will prevail, with the understanding that the Specific Terms, other agreement or any other later amendment thereof may override or amend the provisions of these Terms if and to the extent that the Specific Terms, other agreement or amendment specifically identifies the provisions of these Terms that it intends to override or amend and that the executed version of the Specific Terms, other agreement or amendment has been approved and duly signed by an authorized representative of each Party.
- 1.2. The language of, and under, these Terms will be English. The same applies for all Services provided by Komatsu to Customer under these Terms. Komatsu has the right, however, to make courtesy translations available of documentation and materials provided in relation to the Services.
- 1.3. Where reference is made to certain laws or regulations, such reference shall also include any change, replacement or annulment of said laws or regulations, including any related executive decisions.
- 1.4. Where possible given the context, singular words shall be interpreted as also including the plural and vice versa.

- 1.5. Any general terms and conditions, terms of sale and/or procurement, invoicing and payment terms or any other specific terms of Customer do not apply, even if they provide that they do apply.
- 1.6. The titles and headings included in these Terms are for convenience only and do not express in any way the intended understanding of the Parties. They shall not be taken into account for the interpretation of the provisions of these Terms.
- 1.7. The words “include”, “including” and all forms and derivatives thereof shall mean “including but not limited to”.

Article 2 Definitions

- 2.1. For the purposes of the Terms, capitalized terms shall have the meaning as specified by reference in the preamble or text of these Terms or as defined as follows:
 - a. **Affiliate:** means, with respect to each party, any corporation, firm, partnership or other entity which directly or indirectly controls or is controlled by or is under common control with that party. For purposes of this definition, “control” shall be presumed to exist if one of the following conditions is met: (a) direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors, and (b) the ability, directly or indirectly – for example through one or more

- intermediaries - to direct or cause the direction of the management and policies of an entity.
- b. **Application Programming Interface or API:** a standardised set of classes, methods, functions and constants that serves as the interface offered by Komatsu to Customer to allow the Software to communicate with the Services.
- c. **Business Day:** all days of the week, except for Saturdays, Sundays and official Belgian holidays.
- d. **Confidential Information:** any information, data, materials or knowledge kept in whatever form (whether on paper or transmitted or stored electronically) belonging to, concerning or under the control of one of the Parties (the “**Disclosing Party**”) which is made available or disclosed to the other Party (the “**Receiving Party**”) in connection with the Agreement and which is commercially proprietary, sensitive, non-public or confidential by nature, whether or not explicitly indicated as such by one of the Parties. Information that in any case shall be considered as confidential: (i) trade secrets, (ii) technical details (including software, both in source and object code as well as non-public documentation) of, and knowhow about any technical processes, systems, infrastructures, networks and interfaces, (iii) all data and information of Komatsu and Customer related to each other’s employees, customers and suppliers, (iv) information regarding business operations and strategies, (v) and the contents of the Agreement. Information which shall not be considered as confidential: any information for which the Receiving Party can demonstrate that (i) it was in the possession of, or was rightfully known by, the Receiving Party without an obligation to maintain its confidentiality prior to receipt from the Disclosing Party; (ii) was or has become generally available to the public other than as a result of disclosure by the Receiving Party or its agents; (iii) after disclosure to the Receiving Party, was received from a third party who, to the Receiving Party’s knowledge, had a lawful right to disclose such information to the Receiving Party without any obligation to restrict its further use or disclosure; (iv) was independently developed by the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party; or (v) that the Disclosing Party has disclosed to unaffiliated third parties without similar restrictions.
- e. **Client Application:** means software offered by Komatsu to Customer which Customer can download and/or install on Customer’s own hardware to use in connection with one or more Services.
- f. **Customer Data:** means any data and information which Customer uploads to one or more Services or which is created solely due to Customer’s use of a Product or a Service and which cannot be construed as a trade secret of, or encumbered by Intellectual Property Rights owned by, Komatsu or any of Komatsu’s Affiliates.
- g. **Data Act:** EU Regulation 2023/2854 of 13 December 2023 on harmonised rules on fair access to and use of data.
- h. **Digital Services Act or DSA:** EU Regulation 2022/2065 on a Single Market for Digital Services.
- i. **Effective Date:** means the date on which Customer accepts these Terms as described in the preamble of these Terms.
- j. **Fees:** the amounts payable by Customer to Komatsu for use of the Services as communicated by Komatsu.
- k. **Force Majeure:** circumstances beyond the control of a Party and that could not reasonably have been foreseen and that prevent the total or partial performance of any obligation under (i) these Terms, or (ii) any agreement or document further thereto, such as natural disaster, war, civil war, insurrection or riot, fire, flood, explosion, earthquake, electrical disconnection as a result of any of the above events, global or regional internet outage, pandemics, including any consequences thereof such as governmental measures or restrictions which lie outside the control of either party and cannot reasonably be mitigated by either of the Parties, strikes or labour disputes causing cessation, slowdown or interruption of work, national emergency, act or omission of any governmental authority or agency.
- l. **GDPR:** EU Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- m. **Intellectual Property Rights or IPR:** all brands, logos, trademarks, service marks, internet domain names, models and designs, patents, copyrights (including all rights relating to software) and moral rights, rights relating to databases,

- software, knowhow, and other rights, as well as all other industrial and intellectual rights, in any case independent from whether or not they have been registered and with the inclusion of registration applications as well as all equivalent rights or means of protection leading to a similar result anywhere in the world.
- n. **Interruption:** the impossibility of using the key features of one or more Services for a period of more than one (1) Business Day.
 - o. **Malfunction:** an occurrence where the Services, the API or the Web App do not perform in accordance with the Specifications.
 - p. **New Functionalities:** new functionalities developed by Komatsu in the future which are integrated in the Services, the API or the Web App.
 - q. **Partner:** a Komatsu distributor, dealer or any other partner company with whom Komatsu has a prior agreement or understanding for the provision of assistance to Customer for use of one or more Services and/or the provision of Partner Services.
 - r. **Partner Services:** services which a Partner provides to Customer on the basis of a services agreement between Partner and Customer and which are complementary to Customer's use of the Services.
 - s. **Product:** any hardware product sold or otherwise made available on the market by Komatsu which is intended to be used by a Customer in connection with one or more Services.
 - t. **Software:** a computer program running on whatever hardware belonging to Customer which Customer uses to connect and use the Services through an API or other technical interface.
 - u. **Specifications:** the technical requirements, characteristics and properties relating to the use of the Services, a Client Application, an API or Web App as made available by Komatsu in its documentation, operating manuals or websites.
 - v. **Territory:** the geographical area to which Komatsu has limited the validity of a Subscription.
 - w. **Transfer(s):** the transfer of Customer Data to the Services through a Web App or API or any other interface made available by Komatsu.
 - x. **User:** the natural person who, as a representative of Customer, is authorized to use one or more Services and to that end

has a personal User Account providing access to such Services.

- y. **User Account:** the unique credentials (such as a username and password) created and assigned to an individual authorized by the Customer to access and use the Services in accordance with these Terms. A User Account includes associated User-specific settings, preferences, and permissions that govern the scope of actions and information available to that User within the Services.
- z. **Web App:** means an interface and application provided by Komatsu through the browser which Customer can access to use one or more Services.

Article 3 Subject matter and scope

- 3.1. These Terms govern your access to and use of the Services provided by Komatsu as well as any use of Customer Data which was part of a Transfer. The Services are essentially the provision of online applications through a software-as-a-service model. All Services require you to generate or upload Customer Data, either through use of a Product connected to a Service or use of the Service directly through a Web App, API or other interface made available by Komatsu. Information concerning the compatibility requirements of the Services with particular Products or Software is available on request.
- 3.2. The Services are solely provided in a business-to-business relationship and these Terms do not confer any rights to consumers under consumer protection laws. If you are a consumer, you should cease your use of the Services immediately.
- 3.3. Parties shall perform their obligations under the Agreement in good faith and shall refrain from any communications or statements regarding one another which are defamatory, derogatory, slanderous or otherwise inappropriate.

Article 4 Service activation & account management

- 4.1. Unless explicitly agreed otherwise in writing, the Service will be activated and become available to Customer when complete payment of the Fees for such Services has been received by Komatsu.
- 4.2. Unless explicitly agreed otherwise in writing, Customer shall:
 - a. receive an initial administrator User Account to set up the Services for Customer's use and to create further User Accounts;
 - b. be solely and exclusively responsible for User Account management for managing all access rights to the Services and the Customer Data, including both issuing as

well as revoking access rights. You understand that all login credentials to User Accounts are personal and must be kept confidential. It is up to Customer to set up the notification and escalation procedures in case login credentials are lost, stolen, illegally appropriated or in any other way misused. In such event Customer shall block access to the compromised User Account by resetting the corresponding password and shall inform Komatsu immediately.

Article 5 Use of the Services

- 5.1. You understand and agree that some Services may require access to the firmware or operating systems of your Products or other hardware or devices or may require you to install a Client Application. It is the Customer's sole responsibility to have the appropriate and compatible geographical and topographical location, communication infrastructure, hardware and devices required to use the Services and the Client Application in accordance with the Specifications. Komatsu reserves the right to update or amend the Specifications at any time, at its own discretion and without prior approval of Customer and such update or amendment shall be timely communicated to Customer.
- 5.2. Unless we explicitly provide a communication service as part of the Services, you are required to have an adequate and working internet connection on those locations where you wish to use the Services. Komatsu and its affiliates accept no responsibility or liability for any claims or damages arising out of any interruption or breakdown of your internet connection, including where such interruption or breakdown leads to loss, unwanted alteration or destruction of Customer Data.
- 5.3. You understand that some Services have specific functions or need to be used in such settings or circumstances that the Users of these Services need to be trained in using these Services. You acknowledge that it is your responsibility to ensure that all your Users receive such training and that Komatsu and its Affiliates can never be held responsible and liable for any claims or damages arising out of incorrect use of the Services by you or your Users. Unless explicitly agreed otherwise in writing, Komatsu's sole responsibility in this respect is the timely publication of any Specifications that Komatsu deems necessary for use of the Services.
- 5.4. You acknowledge and agree that the Services and any Client Application are only to be used for the purposes and in the manner described in these Terms, applicable Specific Terms and the

Specifications as well as any reasonable technical warnings or instructions which Komatsu may send to ensure safe and secure use of the Services and the Client Application. In no event are you to use the Services as your sole solution for issuing safety-, security- or hazardous incident-related warnings, nor as your only mechanism for evacuation, rescue or first aid. You are responsible to ensure that your use of the Services complies with all laws and regulations which apply to your activities and/or in your local jurisdiction.

- 5.5. For certain Services the installation and use of particular hardware and/or the collecting and uploading of the necessary Customer Data may require specialist skills, tools and knowhow, which you may not have and for which you may want to engage a Partner providing Partner Services. Note, however, that any agreement for Partner Services would be your responsibility and between you and the Partner only. Komatsu will not be a party to such an agreement and we are in no way responsible or liable for any claims or damages arising from the provision or your use of the Partner Services.
- 5.6. We make commercially reasonable efforts to keep the Services and the Customer Data safe from illegal access by unauthorized third parties as well as from any other unwanted or illegal behavior from such third parties. You acknowledge, however, that security can never be completely guaranteed, and that security will necessarily be a joint effort. You agree that we may suspend your or one of your User's access to the Services, including through API, Web App or other interfaces whenever such use may be construed as (a) a violation of these Terms, applicable Specific Terms or any rights, including intellectual property rights, of Komatsu, our affiliates, Partners or a third party, (b) a threat to the security or integrity of the Services, including, but not limited, due to viruses, Trojan horses, spyware, malware, ransomware or any other form of malicious code, (c) in any way hateful, obscene, discriminating, racist, slanderous, spiteful, hurtful or in some other way inappropriate or illegal, or (d) in direct competition with the properly communicated commercial interests of Komatsu or our affiliates. When such unauthorized use is not remedied within a five (5) Business Day period, Komatsu shall have the right to make the suspension permanent and to terminate this Agreement. In case you become aware of a security incident which affects or may affect the Services in any way, you will immediately inform us through the appropriate support channels so that we may take appropriate action to mitigate the impact of the incident and remedy, where required in collaboration with you, its adverse effects.
- 5.7. Komatsu provides support in the manner set forth in any Specific Terms or in the Specifications. Any

additional or more specific support shall be rendered to the extent that Komatsu agrees to provide such additional or specific support in accordance with a service level agreement duly signed by Komatsu. Customer understands and agrees that, insofar duly communicated by Komatsu, Komatsu may decide to appoint a Partner as provider of support to Customer for use of the Services, in which case Customer will have to enter into an agreement for Partner Services with such Partner;

- 5.8. Komatsu reserves the right to limit the validity of a certain Subscription to the Territory. In the event that such limit applies, Komatsu shall inform Customer thereof at the latest upon conclusion of the Agreement. In the event that such limit applies, you acknowledge and agree that you cannot use the Services outside this Territory. Note that for specific Services there may be technical risks when using the Service outside of the country where you bought it.
- 5.9. Komatsu shall make its best efforts to inform you of planned Interruptions, or any other planned system outages or unavailability of the Services, an API or other methods for Transfer (e.g., for maintenance, updates and upgrades). You understand, however, that we may reduce or temporarily stop the availability of the Services, an API or other method of Transfer in whole or in part, without prior notification whenever such is required for urgent maintenance, urgent updates or urgent upgrades (e.g., vulnerability management).

Article 6 Customer Data

- 6.1. Use of the Services will lead to the collection of Customer Data. We will make commercially reasonable efforts to keep the Customer Data confidential and will only share it with our Affiliates, suppliers, contractors, subcontractors or Partners where such is necessary to (a) provide you the Services; (b) protect our interests or claims in legal proceedings or alternative dispute resolution mechanisms; (c) comply with applicable laws and regulations or with a valid request from a competent supervisory, judicial or other authority; (d) engage in research for the development of new products or services; (e) develop new products or services and (d) to improve our Services. We may also aggregate and anonymize Customer Data, ensuring that data can no longer be attributed to the Customer at which time it shall no longer be considered Customer Data, and combine it with data of other customers to improve our Services, develop additional products and services, conduct market studies or allow our Affiliates and Partners to do the same. When entering into this Agreement, you understand and agree with such collection and use of your Customer Data and you

acknowledge that you will hold Komatsu and its affiliates harmless from any claim brought against us, our Affiliates or Partners for such use of the Customer Data.

- 6.2. Unless stipulated otherwise in applicable Specific Terms, while we use our best efforts to ensure that all data processed when using our Services is appropriately backed up with reasonable recovery point and time objectives, we make no result-based representation or warranties regarding the completeness, accuracy, efficacy or timeliness of such backups. It is your responsibility to keep backups of your Customer Data.
- 6.3. In the event of termination of this Agreement for whatever reason and unless explicitly agreed otherwise between the Parties, Customer shall have the right to export all Customer Data from the Services in accordance with Article 15.

Article 7 Use of an API or other method of Transfer

- 7.1. For certain Services we, at our own discretion, may make APIs or other methods for Transfer available as set forth in the relevant Specifications.
- 7.2. Access and use of the API and other methods for Transfer is personal and granted to Customer only. In no event can Customer grant access to the API and other methods for Transfer to a third party without the explicit consent of Komatsu.
- 7.3. Any implementation by Customer of an API or other method of Transfer shall strictly comply with the Specifications. The Specifications are made available “as is” and without any express or implied warranty.
- 7.4. The cost of any developments needed to let the Software communicate with the API or other method of Transfer shall be borne by Customer. Komatsu is not required to perform such developments on behalf of Customer.
- 7.5. The fact that you are given access to the testing environment does not mean that we endorse your Software. The testing environment is made available “as is” and “as available”. Komatsu is not required to make custom developments so that you may interact or connect with the testing environment. Any access codes, API keys and other access credentials to the testing environment are personal and shall be kept confidential by you. If we suspect or obtain proof that your access codes, API keys or other credentials have been sold, licensed, or otherwise made available or disclosed to third parties which are not authorized, we reserve the right to revoke them without any obligation to reissue such credentials. You are only allowed to use the API keys and testing environment in connection with the Software. You are solely and exclusively responsible for your actions in the testing environment.

- 7.6. Komatsu reserves the right to refuse at its own discretion Customer's access to the production environment of the API or API and other methods for Transfer if Komatsu is of the reasonable opinion that the connection built by Customer does not conform to the Specifications, these Terms or applicable laws or regulations or does not function properly.
- 7.7. Customer will be solely and exclusively responsible to demonstrate that the connection with its Software will have no detrimental effect on the Services and that the communication between Software and API will take place in accordance with the Specifications.
- 7.8. The API is solely meant to connect Software to one or more Services. Any other use must be authorized explicitly by Komatsu.
- 7.9. Komatsu reserves the right to throttle Customer's access to the API or other methods for Transfer or to impose quota whenever Customer's use of the Services poses a disproportionate burden on Komatsu's infrastructure, systems and associate technical resources.
- 7.10. Customer will use its best efforts to ensure that the Software is updated within one (1) month of receipt of the new Specifications. The one-month period is reduced to three (3) weeks for changes to the Specifications made in order to comply with new legislation. In the event that Customer is not able to make the requested changes within the period provided for in the previous clause 5.5, Customer agrees to inform Komatsu thereof via e-mail within fifteen (15) Business Days after receipt of the Specifications or, if the changes to the Specifications are made in order to comply with new legislation, within five (5) Business Days after receipt of the new Specifications.
- 7.11. Komatsu may refuse communication via API and/or disconnect and/or suspend Customer from using another method for Transfer, when:
- there are legitimate technical reasons (e.g., when your use of the API or other method for Transfer exceeds any imposed quota);
 - your use of the API or other method for Transfer is any way abusive or excessive;
 - when such use does not comply with the Specifications, these Terms, applicable law or regulations or other documents, manuals, descriptions or materials provided by Komatsu;
 - your use is construed as a threat to the security of any of the Services, their underlying assets, systems and resources or the safety, rights, interests or reputation of Komatsu, its Affiliates, contractors, Partners, other customers or third parties;
 - you use or intend to use any technology, including robots, spiders, crawlers and similar retrieval solutions, to scrape, copy, harvest or otherwise automatically obtain in bulk any information available on one of our Services.
- 7.12. In the event of an Interruption or Malfunction:
- Komatsu reserves the right to suspend the processing of Transfers, with immediate effect and without the need for a prior written notice as soon as the Interruption and/or Malfunction is discovered, and, when such Interruption or Malfunction is attributable to Customer, for as long as Customer has not remedied it in the deadline set out in clause 7.12.c below.
 - Komatsu will notify Customer by e-mail of any Interruption and/or Malfunctioning as soon as reasonably possible.
 - Customer undertakes to remedy any Interruption attributable to Customer within three (3) Business Days after receipt of the notification of the Interruption and any Malfunctioning attributable to Customer within fifteen (15) calendar days after receipt of such notification.
- 7.13. While we allow the use of such APIs or other method for Transfer in connection to our Services as communicated, you understand that we have no control over the way the Customer Data are handled by your Software with which you may wish to connect or integrate nor over the quality or accuracy of the data that such Software exchanges with our Services. Unless explicitly stipulated otherwise in any Specific Terms, we do not assume any responsibility and accept no liability for any claims or damages which may arise from any loss of quality, accuracy or any alteration of Customer Data, any defect in the Services or any defects in your infrastructure, equipment, hardware or software caused by the Software you have integrated with or connected to.

Article 8 Compliance with laws

- 8.1. Customer shall at all times remain solely responsible for compliance with any and all obligations under applicable law or regulations incumbent upon Customer. Nothing in these Terms shall be construed as Komatsu or its Affiliates assuming such responsibility on behalf of Customer.
- 8.2. Customer agrees to cooperate with Komatsu in addressing notices related to illegal or infringing content, in accordance with applicable notice-and-action procedures as required by the DSA.
- 8.3. Where applicable, Komatsu shall enable Customer to access and use product data and related service data, including Customer Data, in compliance with the Data Act, subject to any lawful and contractual restrictions, set forth in Specific Terms. Komatsu reserves the right to refuse such access and use

where it would undermine the security of a Product or results in a serious adverse effect on health, safety or security of natural persons. Customer shall observe any measures which Komatsu has put in place to protect its Confidential Information where such Confidential Information includes product data or related service data. Customer shall not use its access rights under the Data Act to develop products or services which compete directly with the Products and/or Services.

- 8.4. Komatsu shall make all mandatory information about its Services, as required under Chapter VI Data Act, available in the Specifications made available on its website.

Article 9 Intellectual property

- 9.1. You acknowledge and agree that all IPR in relation to the Services, any API or method of Transfer or Client Application provided by Komatsu are owned by Komatsu and its licensors. Any IPR, industrial or other proprietary rights with respect to works created and/or made available in the context of the Client Application, Services by Komatsu, our Affiliates, employees, consultants or (sub)-contractors, whether or not created in performance of this Agreement, such as software, documentation, training materials, marketing materials or any other materials, documents, drawings, technology, skills, knowhow and information related to software, whether or not preceding the entry into force of this Agreement, shall be vested exclusively in, or licensed to, us and/or our respective licensors, as the case may be. You will take any and all actions necessary, and assign all rights as may be required, to ensure that all rights and title to IPR as described in this clause will vest in us. We hereby accept any such assignment.
- 9.2. You understand that as part of the Services we may use software owned or licensed to third parties, which may be subject to separate terms and conditions. In such event, we will inform you of the use of such third-party software. Insofar and to the extent allowed under applicable law, we disclaim any liability with regard to such third-party software or the use you make thereof.
- 9.3. Upon payment of the Fees as described below and subject to these Terms and any Specific Terms which may apply and only to the extent necessary to use the Services and the Client Application, Komatsu grants you, within the Territory if the validity of a Subscription is territorially limited, a limited, non-exclusive, non-transferable, non-sub-licensable right to access and use the Services and the Client Application for the intended professional purposes for the duration of your Subscription. Such license shall not include a right to copy, analyze, decompile, make public, re-

engineer, distribute, transfer to third parties, translate, reproduce, modify, change or create derivative works of the works encumbered with IPR of Komatsu or its licensors, nor the right to sell, lease, rent or loan the Services or the Client Application to a third-party. You are only allowed to make a copy of the Client Application for backup purposes. Unless stipulated otherwise in applicable Specific Terms and unless a Client Application is explicitly offered in relation to specific Services, the license does not include the right to download or install a copy of any software, considering that the Services are provided through a software-as-a-service model.

- 9.4. All IPR and ownership rights related to the Customer Data shall vest, and remain vested, in you. You grant us, our Affiliates, suppliers, contractors, subcontractors and our Partners a license to use your Customer Data for the purposes mentioned in Article 6 of these Terms.
- 9.5. You will not remove any trademarks, trade names logos or brands from any aspect or component of the Services. You grant Komatsu, for the duration of this Agreement, a non-exclusive, non-assignable, worldwide license without right to grant sub-licenses to use and display your logo and trade name for the communication about, and the promotion of, Services to show that you are a customer.

Article 10 Confidentiality

- 10.1. Each Party acknowledges that it may be furnished, receive or otherwise have access to Confidential Information of the other Party in connection with the Agreement. The Receiving Party will keep the Confidential Information of the Disclosing Party confidential and secure and will protect it from unauthorised use or disclosure by using at least the same degree of care as the Receiving Party employs to avoid unauthorised use or disclosure of its own Confidential Information of a similar nature, but in no event less than reasonable care. This does not prevent either Party to submit Confidential Information of the other Party in any legal proceedings against the other Party.
- 10.2. The Receiving Party may disclose Confidential Information of the Disclosing Party to any Partner, employee, officer, director, agent, supplier, contractor, representative or Affiliate who has a need to know the information for the purposes of the Agreement and who is bound to the Receiving Party to protect the confidentiality of the information in a manner substantially equivalent to that required of the Receiving Party. The Receiving Party may also disclose Confidential Information of the Disclosing Party to the Receiving Party's regulatory agencies and auditors provided they are made aware of the Receiving

Party's obligations of confidentiality with respect to the Disclosing Party's Confidential Information and execute confidentiality agreements as required by these Terms.

- 10.3. If any unauthorised disclosure, loss of, or inability to account for any Confidential Information of the Disclosing Party occurs, the Receiving Party will promptly notify the Disclosing Party and will cooperate with the Disclosing Party and take such actions as may be necessary or reasonably requested by the Disclosing Party to minimize the violation and any damage resulting from it and to prevent a recurrence of the violation.
- 10.4. If the Receiving Party becomes legally compelled to disclose any Confidential Information of the Disclosing Party in a manner not otherwise permitted by these Terms, the Receiving Party will provide the Disclosing Party with prompt notice of the request (unless legally precluded from doing so) so that the Disclosing Party may seek a protective order or other appropriate remedy. If a protective order or similar order is not obtained by the date by which the Receiving Party must comply with the request, the Receiving Party may furnish that portion of the Confidential Information that it determines it is legally required to furnish.
- 10.5. Each Party's Confidential Information will remain the property of that Party. Nothing contained in these Terms will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or by implication, any rights or license to the Confidential Information of the other Party. Any such obligation or grant will only be as provided by other provisions of these Terms.
- 10.6. When Confidential Information of the Disclosing Party is no longer required for the Receiving Party's performance under the Agreement, or in any event upon expiration or termination of the Agreement, the Receiving Party will return all materials in any medium that contain Confidential Information, unless stipulated otherwise in these Terms or any Specific Terms or, at the Disclosing Party's election, destroy them. Parties agree that Confidential Information which is stored outside the live production environment of the Receiving Party but kept solely as part of a general data backup can be kept, notwithstanding the previous, up until such time when the Confidential Information is overwritten at the next incremental or full backup made, provided that such overwriting happens at the latest ninety (90) calendar days after the expiration or termination of this Agreement. At the Disclosing Party's request, the Receiving Party will certify in writing that it has returned or destroyed all copies of the Disclosing Party's Confidential Information in the possession or control of the Receiving Party's or any of its Affiliates or subcontractors.

Article 11 Data protection

- 11.1. As part of providing you the Services, personal data of your Users and of others may be processed in the sense of Article 4 GDPR. Both Customer and Komatsu acknowledge that such processing may take place and agree to comply with their respective obligations under the GDPR and applicable national data protection legislation (together referred to as "**Data Protection Law**").
- 11.2. Our role under Data Protection Law changes depending on the processing activities under consideration. When we process your personal data as authorized representative when you purchase, renew or cancel your Subscription, we act as controller. When we process personal data which you upload during User Account management activities or during your use of our Services as part of your Customer Data, we only process on your behalf and instruction and therefore act as processor.
- 11.3. You will always be a controller for processing personal data in the context of the Services and the Agreement.
- 11.4. When we process your personal data as controller, we will provide you with a privacy statement before any processing takes place, among others through our public website. You are kindly asked to read this privacy statement. You understand, however, that we are required to process your personal data for the purposes of Subscription purchase, renewal or cancellation.
- 11.5. When we process personal data on your behalf as processor, we will process the personal identification data of your Users as well as any personal data of data subjects you choose to upload as part of the Customer Data. This processing, including data transfers outside the EEA, will be performed only (a) upon your documented instructions which will at minimum include for the purpose of performing the Services as described under these Terms and any applicable Specific Terms or (b) to comply with our legal or judicial obligations. If it is for the purpose of performing our legal or judicial obligations, we will inform you immediately in writing in advance thereof, unless we are legally or judicially not allowed to do so. All persons we have authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. We will take all measures required pursuant to Article 32 GDPR, which are set forth in Annex I and for which you agree that they fulfill the requirements of Article 32 GDPR, and will respect the conditions referred to in Articles 28.2 and 28.4 GDPR for engaging a sub-processor. You authorize us to engage other processors and agree with the already engaged sub-processors. Such list of engaged sub-processors is available upon

request. Taking into account the nature of the processing, we will assist you to take appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligations to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR. We will also assist you in ensuring compliance with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of processing and the information available to us. At your choice and without prejudice to clause 10.6, we will delete or return all the personal data to you after the end of the provision of all Services relating to processing, and delete existing copies unless EU or Member State law requires storage of the personal data. We will make available to you all information necessary to demonstrate compliance with Article 28 GDPR, and will allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you. We will immediately inform you if, in our opinion, an instruction infringes the GDPR or other EU or Member State data protection provisions. An audit can be conducted if we have been notified about it by registered mail at least three weeks in advance, maximum once per contract year, and on all days (between 9:00am-5:00pm) except on Saturdays, Sundays, days that are an official holiday in Belgium, and days on which we are collectively closed because of holiday. Audits will be performed at your expense. Unless explicitly otherwise agreed upon, our costs and the time spent by our staff on an audit or in assisting you in ensuring compliance with the obligations pursuant to Articles 32 to 36 GDPR, will be invoiced at an hourly rate of 120 euro per staff member.

Article 12 Payment and invoicing

- 12.1. Unless explicitly stipulated otherwise in writing by Komatsu, the Fees shall always be in euro and shall be excluding VAT. The Fees, Subscription unit details and the duration of your Subscription shall be communicated via the online sales channel or listed in the purchase order form.
- 12.2. Komatsu reserves the right to index the Fees payable under these Terms on an annual basis on the 1st of January in accordance with the Agoria Index for wages in technology companies (Digital PC 200) for all households (the base period is 2025, with index figure = 100) as published by Agoria and available here: <https://www.agoria.be/nl/diensten/data-analyse/referteloonkosten/overzichtstabellen> or any index replacing it, hereinafter referred to as the "Index." The indexation shall be calculated using the following formula: $\text{Current Fees} * (0,20 + 0,80 * ((\text{Index figure for the calendar month occurring four months before the indexation date}) / (\text{Index figure for the same calendar month one year earlier})))$. The resulting indexed Fees shall be the new fees and shall be rounded to the nearest whole euro.
- 12.3. The Services are offered in a dynamic and changing environment, which means that we may have to change, insofar allowed under applicable law, our Fees to adapt to changing market conditions, national regulations and other internal and external factors. Any change in the Fees for the Services, except in case of indexation as described above, shall be communicated to Customer before such change enters into effect and such changes will only impact the Fees of new or additional Subscriptions.
- 12.4. The Fees will be invoiced after you complete your order for a Subscription and the invoice is payable within thirty (30) days after the end of the month in which you received the invoice, unless Komatsu offers direct payment options which you choose to use, in which case payment shall be made instantly. You agree that we will send you the invoice electronically.
- 12.5. Customer shall pay all amounts invoiced in full without any deduction, withholding or set-off.
- 12.6. If Customer disputes an invoice or any part thereof, Customer shall notify Komatsu in writing within five (5) Business Days of receipt of the invoice, specifying the grounds of the dispute and providing any supporting documentation. Customer shall in any case be required to pay any undisputed portion of the invoice within the aforementioned payment term. The Parties shall endeavor, in good faith, to resolve any dispute regarding the remaining portion as soon as practicable. If Customer fails to provide written notice of a dispute within the period set forth above, the invoice shall be deemed accepted and payable in full.
- 12.7. Customer shall have no right to withhold, suspend, or delay payment of any amounts due under this Agreement, whether in whole or in part, on the basis of any alleged set-off, counterclaim, or other claim against Komatsu.
- 12.8. Customer expressly waives any and all rights of set-off or retention under Belgian law or otherwise except for finally adjudicated or undisputed claims and insofar as such waiver is permissible under mandatory law.
- 12.9. If Customer fails to pay any amount within the payment term, interest shall accrue on the outstanding balance at the statutory commercial interest rate under Belgian law on late payment in commercial transactions, from the first day following the payment term until the date of full payment. Customer shall be liable for all reasonable collection costs, including but not limited to legal fees and court costs, incurred by Komatsu in seeking to recover overdue amounts.

Article 13 Auto-renewal

- 13.1. For the purposes of this clause:
- a. “Current Term” means, as the context requires, the Initial Subscription Term or any subsequent Renewal Term.
 - b. “Initial Subscription Term” means the fixed period stated in the Order Form during which the Customer is entitled to use the relevant Cloud Service.
 - c. “Renewal Term” means each successive period of the same duration as the Initial Subscription Term that commences immediately after the end of the Current Term.
- 13.2. Unless Subscriptions are explicitly offered for a one-time fixed term as specified in (a) the online sales channel or purchase order form or during the registration as Customer in any other online channel or (b) in any Specific Terms, Subscriptions shall renew automatically for the Renewal Term unless either Party gives the other Party written notice of non-renewal at least sixty (60) days before the end of the Current Term. The notice period shall be reduced to thirty (30) days if the Initial Subscription Term or the previous Renewal Term was thirty (30) days.
- 13.3. Without prejudice to clauses 12.2 and 12.3 above, Komatsu may adjust the Fees with effect from the next Renewal Term, provided it notifies Customer of the revised Fees at least sixty (60) calendar days before the end of the Current Term.
- 13.4. Where a Subscription is renewed for an indefinite period, either Party may terminate the Subscription for convenience on one (1) month’s written notice.

Article 14 Termination and cancellation

- 14.1. The Agreement commences on the Effective Date and shall continue until (i) all Subscriptions have ended and (ii) until the switching or exporting process set forth in Article 15 has been completed, or, if Customer does not opt for switching or export but for erasure, after the Transition Period. Customer shall be notified of such expiration or termination.
- 14.2. Without prejudice to our right to suspend your use of the Services as set out in clause 5.6 above, we have the right to terminate your Subscription immediately and thus permanently revoke your access to and use of one or more of our Services without prior recourse to a judge or incurring any costs when:
- a. you commit a violation of these Terms, the Specific Terms or any laws or regulations which may apply to your access to or use of our Services and you did not remedy such violation within three (3) Business

Days after receiving a notice of default from us via e-mail; or

- b. you become insolvent or unable to pay your debts as they become due or you enter into or file (or have filed or had commenced against you) a petition, arrangement, application, action or other proceeding seeking relief or protection under applicable bankruptcy laws.
- 14.3. Unless stipulated otherwise in Specific Terms, when we decide to discontinue one or more Services in whole or in part, which we may do at any time, and thus decide to (partially) cancel your Subscriptions, you will be reimbursed pro rata for the time of your Subscription which has not yet lapsed. Any Fees pertaining to your use of the Services preceding the date of cancellation will remain due. If you cancel your Subscription or if we terminate your Subscription as outlined in clause 14.2 above, all Fees for then on-going Subscriptions remain due and you are not eligible for any compensation or refund for Subscription time not used.
- 14.4. Termination of the Agreement, for any reason, will not affect any accrued rights or liabilities or payments due or the coming into force or continuing in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after termination.
- 14.5. Article 6, Article 8, Article 9, Article 10, Article 11, Article 14, Article 15 and Article 16 shall survive and continue in full force and effect in accordance with these Terms notwithstanding the expiration or termination of the Agreement to the extent required for the fulfilment of the purposes set forth in those Articles.

Article 15 Switching services

- 15.1. Without prejudice to Article 14, Customer shall have a right to switch to a service equivalent to the Services but offered by another service provider or to switch to Customer’s own on-premise IT infrastructure or to have all Customer Data erased. Customer shall notify Komatsu of its intent to switch or export one (1) month before the switching or exporting process shall be initiated. The switching or exporting process shall be concluded within a transition period of 30 calendar days (“**Transition Period**”) after the end of the aforementioned one-month notice period. If Customer has objective reasons to presume that the Transition Period of thirty (30) calendar days is not sufficient, Customer shall have the right to extend the Transition Period once for an additional period of twenty (20) calendar days.
- 15.2. Komatsu shall provide all reasonable assistance, including by providing all reasonably relevant

information, to Customer to perform the switching or exporting process. Any information related to known continuity risks associated with the switching process shall be included in the Specifications.

- 15.3. If a Subscription ends for whatever reason, you must ensure that you have downloaded all your Customer Data. Unless specifically stipulated otherwise in applicable Specific Terms and without prejudice to clause 10.6, we shall permanently delete all Customer Data remaining in our Services within 30 calendar days after the end of the Transition Period or any extension thereof in accordance with clause 15.1.

Article 16 Warranty and liability

- 16.1. We will make all commercially reasonable efforts to perform our obligations under these Terms and we make no express or implied warranties in connection with the Services, including in particular the fitness for a particular purpose, merchantability or the compliance thereof with any legal or regulatory requirement, unless agreed otherwise in these Terms. The Services are provided on an “as is” and “as available” basis. You understand and agree that the Services are provided in a novel and dynamic environment, meaning that the Services are subject to change from time to time and that availability of certain features and functions may vary over time and geography. Unless prohibited by mandatory law, Komatsu may at all times decide to suspend, modify or permanently cancel the whole or part of the Services, in which case you will be reimbursed in accordance with clause 14.3 above. The Services require maintenance, including updates and upgrades, from time to time, which may lead to temporary unavailability of one or more Services. We will make commercially reasonable efforts to inform you in a timely manner of such unavailability. At our discretion we may opt to provide certain service level commitments regarding one or more particular Services. Such service level commitments shall always be agreed upon by Komatsu in writing by inclusion in the Specific Terms.
- 16.2. Nothing in these Terms shall exclude or limit either Party’s liability for (i) death or personal injury caused by its negligence, or (ii) fraud or willful misconduct.
- 16.3. Neither Party will be held liable for non-performance of its obligations under these Terms where such is made impossible due to Force Majeure. In case of a Force Majeure, each Party will (i) notify the other Party immediately after the occurrence, first by telephone and subsequently via e-mail, about the occurrence, the possible cause and the impact thereof on the performance

of the Agreement, (ii) keep the other Party permanently informed in the same way on further developments, and (ii) undertake its best efforts to eliminate and at least minimize the effects of a Force Majeure event as soon as possible. If a Force Majeure event continues to hinder or prevent a Party from properly or timely performing its obligations for a period of twenty (20) Business Days, the other Party may terminate the Agreement immediately by registered letter without recourse to a court.

- 16.4. To the fullest extent permitted under applicable law, Parties shall not be liable for any indirect or consequential loss or damage suffered by the other Party, such as any loss of opportunity, profits, revenue, turnover or any other financial or commercial losses, whether this loss or damage arises from a breach of contract or duty in tort.
- 16.5. The liability and indemnification obligations of either Party under or in connection with these Terms are at all times, for each instance of liability, limited to the amount effectively paid out by the insurance company for such claim or demand. The maximum liability of either Party for claims arising out of, or in connection with, these Terms shall not exceed 50.000 EUR in aggregate.
- 16.6. Neither Party shall be liable for any claim arising under the Agreement, unless it has received notice by registered letter of the claim within two (2) years of the other Party becoming aware of the circumstances giving rise to the claim.

Article 17 Miscellaneous

- 17.1. **Entire Agreement** – These Terms, any Specific Terms and your order of the Subscription constitute the entire agreement between you and us with respect to the subject matter and supersedes all prior representations, writings, negotiations or understandings with respect to that subject matter. Your own terms and conditions, terms of sale, procurement or invoicing terms do not apply.
- 17.2. **Waiver** – No failure to exercise or any delay in exercising any right, power or remedy by Komatsu operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on us unless made in writing.
- 17.3. **Assignment** – You may not assign any of your rights and obligations hereunder to another party without our written consent.
- 17.4. **Severability** – If any provision in or any part of the Terms is or becomes invalid, non-binding or unenforceable, such provision will be severed from the Terms, the remainder of these Terms will remain in full force and effect, and you will negotiate with us in good faith to replace the severed provision with a provision that achieves,

- to the greatest extent possible, the intent of the severed provision.
- 17.5. **Logging** – We, or one of our Affiliates, register access to the Services for invoicing and security reasons. We keep an up to date log in which we store data relating to your use of our Services. You agree that this log provides evidence that access has been gained to the Services and that the Services have been used in a certain way, unless proof to the contrary.
- 17.6. **Relationship** – Komatsu, in providing the Services, acts as an independent contractor. You acknowledge and agree that we are not in an agency or partner relationship and that you nor we have any authority to represent one another as to any matters unless expressly authorized under these Terms.
- 17.7. **Subcontracting** – We may subcontract to third parties any part of the Services, including, but not limited to hosting, data centre, database and security services.
- 17.8. **Applicable law** – These Terms and all respective rights and obligations hereunder shall be governed by and shall be construed in accordance with the laws of Belgium without reference to its conflict-of-laws or similar provisions that would mandate or permit application of the substantive law of any other jurisdiction.
- 17.9. **Dispute resolution** – All disputes, controversies or claims arising out of or in connection with these Terms shall first be submitted to the competent courts in Brussels, Belgium.

ANNEX I – INFORMATION SECURITY MEASURES
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1. Policies and procedures have been established and are maintained in support of data security to include confidentiality, integrity, and availability across multiple system interfaces, jurisdictions, and business functions to prevent improper disclosure, alteration, or destruction.
2. Organization has created and maintains a control framework which captures standards, regulatory, legal, and statutory requirements relevant for its business needs. The control framework shall be reviewed at least annually to ensure changes that could affect the business processes are reflected.
3. Business continuity and security incident response plans exist that are subject to testing at planned intervals or upon significant organizational or environmental changes.
4. Data is periodically backed-up. Confidentiality, integrity and availability of the backup is ensured and data restoration from backup for resiliency is verified.
5. A disaster response plan has been established, documented, approved, communicated, evaluated and regularly updated.
6. Policies and procedures have been established, and supporting business processes and technical measures implemented, to restrict the installation of unauthorized software on organizationally owned or managed end-point devices (e.g., issued workstations, laptops, and mobile devices) as well as all other IT infrastructure components.
7. A data inventory is created and maintained, at least for any sensitive data and personal data.
8. Processes, procedures and technical measures to protect sensitive data throughout its lifecycle, are defined and implemented.
9. Physical security perimeters (e.g., fences, walls, barriers, guards, gates, electronic surveillance, physical authentication mechanisms, reception desks, and security patrols) have been implemented to safeguard sensitive data and information systems.
10. Information security policies and procedures have been established and made readily available for review by all impacted personnel and external business relationships.
11. A security awareness training program has been established for all employees of the organization and is mandated when appropriate.
12. User access policies and procedures have been established, and supporting business processes and technical measures implemented, to ensure appropriate identity, entitlement, and access management for all users with access to data and organizationally owned or managed (physical and virtual) application interfaces, infrastructure, network and systems components.
13. Processes, procedures and technical measures for the secure management of passwords have been defined, implemented and evaluated.
14. Establish, document, approve, communicate, apply, evaluate and maintain policies and procedures for logging and monitoring. Review and update the policies and procedures at least annually.
15. Agreements must include provisions specifying CSC (Cloud Service Consumers) access to data upon contract termination and will include:
 - a. Data format
 - b. Length of time the data will be stored
 - c. Scope of the data retained and made available to the CSCs
 - d. Data deletion policy
16. The company has a documented policy prohibiting the installation of non-approved applications or approved applications not obtained through a pre-identified application store.
17. Policies and procedures have been established, and supporting business processes and technical measures have been implemented, to triage security-related events ensuring timely and thorough incident management, as per established IT service management policies and procedures.
18. Develop and maintain an inventory of all supply chain relationships.
19. Policies and procedures have been established, and supporting business processes and technical measures implemented, to prevent the execution of malware on organizationally owned or managed user end-point devices (i.e., issued workstations, laptops, and mobile devices) and IT infrastructure network and systems components.