

KOMATSU TELEMATICS TERMS AND CONDITIONS

These Telematics Terms and Conditions (hereinafter referred to as “**Telematics Terms**”) apply to services collecting, storing, transferring and/or accessing telematics data captured from sensors and systems on board Komatsu-branded construction equipment and related products (“**Telematics Services**”) provided by Komatsu to Customers as well as to the use by Komatsu, Customer and third parties of such telematics data. The Telematics Terms are to be considered Specific Terms which complement the Komatsu General Cloud Terms and Conditions (“**Terms**”).

Article 1 Definitions

1.1. For the purposes of the Telematics Terms, capitalized terms shall have the meaning as specified by reference in the preamble or text of these Telematics Terms, as referenced or defined in the Terms or as defined as follows:

- a. **Content Data:** means data which is typically or regularly protected by intellectual property rights, including without limitation, textual, audio, visual or audiovisual content.
- b. **Equipment:** means Komatsu-branded construction machines and/or their appurtenances sold separately which are able to generate Telematics Data and which can communicate Telematics Data.
- c. **Komatsu Data:** refers to Telematics Data, Telematics Service Data as well as any data that has been aggregated, inferred or derived from those data and Content Data that is made available to the Customer either directly via the Product or via an interface on the Related Services, whatever the format or structure.
- d. **Telematics Data:** means any and all readily available Equipment-generated raw and pre-processed digital information originating from, or captured by, the on-board sensors, control units, embedded software, connectivity devices or other electronic systems fitted to the Equipment and relating to (a) the Equipment’s use by the Customer or its Users, or (b) the Equipment’s environment. Without limitation, Telematics Data includes (i) operational metrics such as engine or motor hours, fuel or energy consumption, idle- and run-time, productivity indicators (e.g. load counts and cycle times), hydraulic or pneumatic pressures, temperatures and similar performance parameters; (ii) diagnostic information comprising error, fault or event codes, service alerts, firmware or software logs, safety-system warnings and other self-diagnostic outputs generated by the Equipment; (iii) locational and movement data such as GNSS/GPS co-ordinates, speed, heading, geofence entry or exit

notifications, time-stamped position histories and related data points; (iv) environmental readings including ambient or component temperature, vibration, tilt/roll, humidity, noise level and other physical conditions sensed or inferred by the Equipment; (v) and usage records such as operator identifiers (where configured), work cycles, attachment or tool changes, access-control events and any related time-stamped activity logs. Telematics Data is captured automatically in the ordinary course of operation, may be stored temporarily on the Equipment and/or transmitted by any available wired or wireless network, including but not limited to cellular, satellite, Wi-Fi and LPWAN, to remote servers, cloud services or third-party platforms. For the avoidance of doubt, Telematics Data does not include manually-entered records, contractual documentation or other information created independently of the Equipment.

- e. **Telematics Service:** a Service provided in connection with the Equipment, able to collect, store, transfer and/or access Telematics Data and the absence of which would prevent the Equipment from performing one or more of its functions, or which otherwise adds to, updates or adapts the functions of the Equipment.
- f. **Telematics Service Data:** data representing the digitisation of the Customer’s or Customer’s Users’ actions or of events related to the Equipment and generated by Customer’s use of one or more Telematics Services.

Article 2 Subject matter and scope

- 2.1. These Telematics Terms, complementing Komatsu’s Terms, govern (i) Customer’s use of Telematics Services, (ii) Customer’s access to the Telematics Data and Telematics Service Data, as well as (iii) Customer’s extended access to Komatsu Data. Komatsu shall make the list of Equipment generating Telematics Data and its Telematics Services available upon request. At the latest upon taking possession of the Equipment Customer shall be informed of the Telematics Data

- and Telematics Service Data in accordance with Komatsu's legal obligations.
- 2.2. Without prejudice to Article 3 below, the Telematics Services covered hereunder shall become available, and the corresponding Subscription active, in accordance with the Terms.
 - 2.3. Customer understands and agrees that access to Komatsu Data shall at all times be conditional upon Customer being (a) the owner of the Equipment; (b) the party contractually entitled to use the Equipment on the basis of a rental, lease or similar agreement granting a stable right of use; or (c) the party procuring the Telematics Service. Upon Komatsu's simple request, Customer shall provide the evidence required to prove its right to access as set forth in this clause.
 - 2.4. Customer understands and agrees that the format, manner, frequency and volume in which the Komatsu Data is made available is solely determined by Komatsu in accordance with its legal obligations and the technical constraints of its Equipment, Telematics Services, infrastructure and systems.
 - 2.5. The Customer understands and agrees that ownership and control to Komatsu Data, that is not Telematics Data or Telematics Service Data, is and shall remain vested in Komatsu and that the Customer can only access, use and share such data as set out in these Telematics Terms or subject to the prior written consent of Komatsu.
 - 2.6. Notwithstanding clause 1.1 of the Terms, in case there is a conflict between a provision of the Terms and a provision in these Telematics Terms, the provision in the Telematics Terms will prevail.

Article 3 Factory-fit generation of Telematics Data

- 3.1. Komatsu reserves the right to provide, activated at the factory ("factory-fit") or in any case before the Equipment has been transferred into possession of Customer:
 - a. Telematics Data generation capabilities on the Equipment; and
 - b. corresponding Telematics Services.
 The existence of such factory-fit capabilities and Telematics Services, as well as the existence of these Telematics Terms, shall be communicated to Customer at the latest upon the sale of the Equipment.
- 3.2. Customer understands and agrees that the provisions in these Telematics Terms related to the use of Telematics Data apply from as soon as Customer takes possession of the Equipment. If Customer does not agree with these Telematics Terms, Customer has the right to request at the moment of sale that the factory-fit Telematics Data generation capabilities be de-activated for that Equipment. When Customer buys the Equipment from a Komatsu-appointed distributor or dealer,

the request to de-activate must be made to such distributor or dealer. If the Customer does not issue such de-activation request, these Telematics Terms will be deemed accepted.

- 3.3. Any use by the Customer of Telematics Services using factory-fit Telematics Data generation capabilities, shall be subject to Customer's prior acceptance of these Telematics Terms.
- 3.4. Without prejudice to Customer's right to request that factory-fit Telematics Services are disabled for its Equipment in accordance with clause 3.2, Komatsu reserves the right to tie the Subscription for Telematics Services, corresponding to factory-fit Telematics Data generation capabilities, to the lifetime of such Equipment, with a maximum of twelve (12) years. Komatsu also reserves the right to extend, at its own discretion, the Subscription beyond the maximum period of twelve (12) years if (a) the Equipment is not yet end-of-life, (b) Customer has not asked to de-activate the Telematics Data generation capabilities and (c) Customer continues to actively use the Equipment.
- 3.5. Each use of Telematics Services, requires Customer to have an active Subscription. When Customer is a Komatsu-appointed distributor or dealer or Customer has otherwise bought the Equipment from Komatsu directly, Customer's access to the Telematics Services shall be activated at the latest upon Customer's request to Komatsu to activate, which shall first be made after delivery of the Equipment. When Customer has bought the Equipment from a Komatsu-appointed distributor or dealer, or has rented or leased the Equipment, the request to activate must be made to such distributor or dealer or the party from whom the Equipment was rented or leased, as applicable.
- 3.6. When Customer sells the Equipment to another customer or rents such Equipment in the context of long-term rental to another customer, Customer (a) shall immediately inform the other customer of the Equipment's capabilities to generate Telematics Data and (b) shall inform Komatsu or the Komatsu-appointed distributor or dealer of the sale or long-term rental and shall provide the contact details of the buyer or long-term renter, allowing Komatsu to take the necessary arrangements with the buyer or long-term renter related to the Telematics Data and the Telematics Services. Customer shall indemnify and hold Komatsu harmless for any damages, claims or actions brought by the third-party buyer against Komatsu for violation of Komatsu's obligations under the Data Act, GDPR and other related legislation when such violation is the direct result of Customer not having informed Komatsu or the Komatsu-appointed distributor or dealer of the sale or long-term rental of the Equipment. In no event shall Customer be allowed to transfer Customer's own access credentials and Customer accounts to the new customer.

3.7. When Customer is a Komatsu-appointed distributor or dealer:

- a. Customer shall provide to its customers full information about the factory-fit Telematics Data generation capabilities of the Equipment and the Telematics Services. Customer shall specifically refer its customers to the information made available for such purposes by Komatsu;
- b. Customer shall make available, at the latest upon the sale of the Equipment to its customer, a copy of the Terms and these Telematics Terms to its customer and shall provide Komatsu with the contact details of that customer;
- c. Customer is solely and exclusively responsible that only authorized personnel and suppliers have access to the Telematics Data and the Telematics Service Data of itself and of its customers for the purposes as described herein;
- d. Customer is solely and exclusively responsible to inform its customers of its access to and use of Telematics Data and Telematics Service Data for other purposes than those described in clause 4.5 and to obtain its customers' consent for such other purposes for access.

Article 4 Using and sharing Telematics Data and Telematics Service Data

- 4.1. Subject to these Telematics Terms, the Customer is entitled to use the Telematics Data and Telematics Service Data made available by Komatsu for any lawful purpose and/or share the Telematics Data and Telematics Service Data freely with third parties.
- 4.2. The Customer may directly make available to third parties the Telematics Data and Telematics Service Data with relevant metadata necessary to interpret and use those data. However, prior to proceeding to sharing the Telematics Data and Telematics Service Data, the User agrees to inform Komatsu of its intention to share the Telematics Data and Telematics Service Data.
- 4.3. Komatsu shall, upon request of the Customer or a party acting on its behalf, make available the Telematics Data and Telematics Service Data, together with the relevant metadata necessary to interpret and use those data, to third parties. Komatsu shall make the Telematics Data and Telematics Service Data available to the third party without undue delay.
- 4.4. The Customer understands and accepts that its right to have the Telematics Data and Telematics Service Data shared is not absolute. In particular, Komatsu may, insofar allowed under applicable law:

- a. make the provision of Telematics Data and Telematics Service Data to third parties conditional on the third party agreeing to specific terms and conditions, as well as payment on the part of the third party. Payment will generally be requested where the third party is a business;
- b. refuse the access, use or the further sharing of Telematics Data and Telematics Service Data if such processing could undermine security requirements of the Equipment; or
- c. refuse sharing the Telematics Data and Telematics Service Data qualifying as personal data under the GDPR with third parties where this is contrary to the rights granted to data subjects under the GDPR, or where the Customer is not the data subject and no valid legal basis under the GDPR exists.
Customers that are not data subjects with regard to the specific Telematics Data and Telematics Service Data shall in writing provide a valid legal basis to Komatsu at the moment of requesting the sharing of Telematics Data and Telematics Service Data with a third party.

4.5. Customer understands and accepts that Komatsu and its Affiliates shall be allowed to use, and allow its Komatsu-appointed distributors and dealers to use, the Telematics Data and Telematics Service Data for the following purposes:

- a. performing any agreement with Customer or activities related to such agreements, such as the issuance of invoices, the generation and provisions of reports or analyses, financial projections, impact assessments, etc.;
- b. providing support, warranty, guarantee or similar services or to assess Customer's, Komatsu's, Komatsu's Affiliates' or third-party claims related to the Equipment, Products or Services;
- c. monitoring and maintaining the functioning, safety and security of the products and services sold, marketed or otherwise commercialized by Komatsu and its Affiliates and ensuring quality control;
- d. improving the functioning of any products and services offered by Komatsu or its Affiliates;
- e. developing new products and services, including artificial intelligence solutions, by Komatsu, its Affiliates or third parties acting on behalf of Komatsu, in collaboration with other parties or through special purpose companies (such as joint ventures); and
- f. aggregating the Telematics Data and Telematics Service Data with other data or

to create aggregated, inferred or derived data, for any lawful purpose, including with the aim of selling or otherwise making available such aggregated, inferred or derived data to third parties, provided such data does not allow for Customer-specific data transmitted to Komatsu from the Equipment or Telematics Services to be identified, or allow a third party to derive such Customer-specific data from datasets.

Customer understands and agrees that the above limitation of purposes shall not necessarily apply to Komatsu Data that does not qualify as Telematics Data or Telematics Service Data, such as Content Data and data that has been aggregated, inferred or derived from the Telematics Data or Telematics Service Data.

- 4.6. Where the Telematics Data and Telematics Service Data should qualify as personal data under the applicable data protection legislation, the provisions of the previous clause shall not apply and (i) where Komatsu acts a controller, those of the applicable privacy statements prevail and (ii) where Komatsu acts a processor, the applicable data processing agreements prevail. With regard to the Services, the relevant data processing agreement can be found under Article 11 of the Komatsu Cloud Terms and Conditions.
- 4.7. Customer explicitly acknowledges that no additional remuneration shall be due for the purposes stated under clause 4.5.
- 4.8. Subject to these Telematics Terms, Komatsu may at its own discretion share with third parties the Telematics Data and the Telematics Service Data, if and when:
 - a. the Telematics Data and the Telematics Service Data is used by the third party exclusively within the context of the purposes under clause 4.5; and
 - b. Komatsu contractually binds the third party:
 - (i) not to use the Telematics Data and the Telematics Service Data for any purposes or in any way going beyond the use that is permissible in accordance with clause 4.5.
 - (ii) to apply essentially equivalent protective measures agreed under Article 6.
- 4.9. For the avoidance of doubt, Customer understands and agrees that Komatsu may engage processing services, such as cloud computing services (including infrastructure as a service, platform as a service and software as a service), hosting services, or similar services for the purposes set out under clause 4.1. Unless otherwise agreed in writing between Komatsu and Customer, third parties receiving the Telematics Data and the

Telematics Service Data from Komatsu shall be permitted to do the same.

Article 5 Use Restrictions

- 5.1. Komatsu undertakes not to use the Telematics Data and Telematics Service Data to derive insights about the economic situation, assets and production methods of the Customer or about the use of the Equipment or the Telematics Services by the Customer in any manner that could undermine the commercial position of the Customer on the markets in which the Customer is active.
- 5.2. Customer undertakes not to engage in the following:
 - a. use the Komatsu Data to develop products that compete with the Equipment or the Telematics Services nor share the Komatsu Data with a third party with that intent;
 - b. use the Komatsu Data to derive insights about the economic situation, assets and production methods of Komatsu, Komatsu's Affiliates, or a third party manufacturer whose products are integrated in the Equipment;
 - c. use coercive means to obtain access to Komatsu Data or, for that purpose, abuse gaps in Komatsu's, Komatsu's Affiliates' or Komatsu's suppliers' technical infrastructure;
 - d. share or request to share the Komatsu Data with a third party considered a gatekeeper under Article 5.3 Data Act; and/or
 - e. use the Komatsu Data it receives for any purposes that infringe European Union law or applicable national law.

Article 6 Protection Measures

- 6.1. Komatsu undertakes to apply the protective measures to the Telematics Data and Telematics Service Data that are commercially reasonable in the circumstances, considering the state of the art, the potential harm suffered by Customer as a result of data loss or disclosure of the Telematics Data and Telematics Service Data to unauthorised third parties, and the costs associated with the protective measures.
- 6.2. The previous is without prejudice to additional technical protection measures that Komatsu may take to prevent unauthorised access to Komatsu Data and Komatsu's Confidential Information, as well as to ensure compliance with Komatsu's legal obligations and these Telematics Terms.
- 6.3. Customer agrees not to alter or remove the technical protection measures applied by

Komatsu, unless explicitly agreed in advance and in writing by Komatsu.

- 6.4. In addition to the foregoing, Customer agrees to apply additional protective measures as may be requested by Komatsu from time to time, with regard to Komatsu Confidential Information or specific Komatsu Data. Those additional protective measures, if any, shall be provided in an annex to this Telematics Terms.

Article 7 Modifications

- 7.1. Komatsu may, in good faith and in accordance with applicable law, unilaterally alter the specifications of the Komatsu Data or the access arrangements, or altogether remove data access, if:
- this is objectively justified. This may be the case where this is required as result of an immediate security vulnerability in the line of the Equipment or the Telematics Services, a change in the applicable legal requirements, or a change in Komatsu's infrastructure;
 - the Komatsu Data is construed as Confidential Information. In that case, the alteration may consist in requiring additional measures to preserve confidentiality as a condition for sharing the Komatsu Data; and/or
 - Komatsu is highly likely to suffer serious economic damage from disclosure of particular Komatsu Data.

Where the change has the potential to negatively affect data access and use by Customer, Komatsu undertakes to provide Customer with reasonable notice before the modification takes effect.

Article 8 Audit

- 8.1. To safeguard the Confidential Information contained in the Komatsu Data and the rights and interests of Komatsu and its Affiliates set forth herein, Komatsu shall have the right to audit Customer. Audits will be carried out either by Komatsu or an independent third party appointed by Komatsu. Audits will only be performed in the following circumstances:
- where reasonable doubt exists with regard to Customer's compliance with its obligations under these Telematics Terms;
 - where reasonable doubt exists with regard to the application of protective measures by Customer;
 - where the access and/or use to the Komatsu Data by Customer has the potential to lead to product safety concerns or issues in the Equipment;

- where Customer makes unauthorized use of the Komatsu Data or otherwise breaches its obligations under clause 5.2; and/or
- where Komatsu shares data with one or more third parties at the request of Customer, but the third party breaches its obligations, including its payment obligations in relation to Komatsu.

- 8.2. Each audit shall be announced to Customer at least five (5) Business Days in advance. The audit shall be conducted at the expense of Komatsu, unless it reveals that Customer is in breach of its obligations set out under the previous clause 8.1. In such case, the cost of the audit shall be borne by Customer.

Article 9 Use of the Telematics Data API

- 9.1. Komatsu-appointed distributors can be given the written permission by Komatsu to sublicense Komatsu's API giving access to Telematics Data to the distributors' customers. The sublicense shall only be granted for the same purposes as those for which APIs are licensed by Komatsu under the Terms.
- 9.2. Any applicable Fees for the use of the API providing access to Telematics Data shall be set forth in the relevant order form.
- 9.3. Customer understands and agrees that the provision of Telematics Data via the API is regarded as additional service in the framework of the purchase of Equipment and does not constitute a decisive element of such purchase.
- 9.4. In addition to clause 7.2 of the Terms, if Customer wants the API providing access to Telematics Data to be activated for a third party provider acting on Customer's behalf, such will be explicitly requested. No activation for a third party provider will take place before Komatsu's prior approval of that third party provider. Customer remains solely responsible for the use of the API by its approved third party provider. Komatsu has the right to refuse to approve, or revoke given approval for, a third party provider if and when that third party provider offers goods and/or services which are in indirect or direct competition with Komatsu's own goods and/or services, including but not limited to the Services provided under the Terms. The third party provider is in any case not allowed to transfer Telematics Data to any other party than Customer.

Article 10 Warranty

- 10.1. Without prejudice to Article 16 (Warranty and liability) of the Terms and unless explicitly stated otherwise in our online offer process or a purchase order accepted by us, Komatsu makes its best efforts to make Telematics Services available to Customer on Business Days during office hours.

Article 11 Termination and cancellation

- 11.1. Without prejudice to Article 14 (Termination and cancellation) of the Terms, the Telematics Terms will immediately terminate, without recourse to a court or incurring a charge:
- a. upon the destruction or decommissioning of the Equipment or the discontinuation of the Telematics Service and the Customer has no other Equipment or Telematics Service generating Telematics Data or Telematics Service Data;
 - b. Customer has lost the stable right to use the Equipment generating Telematics Data (e.g. due to sale, end of lease or rental, etc.) and therefore also loses the right to use the Telematics Service associated with that Equipment.
- 11.2. Customer understands and agrees that the termination of the Telematics Terms necessarily means that the Customer loses the right to use the Telematics Services covered hereunder.
- 11.3. Notwithstanding clause 15.3 of the Terms, Customer understands and agrees that Komatsu reserves the right to store, for the purposes mentioned in clause 4.5, the Telematics Data and the Telematics Service Data for a period of ten (10) years after the termination of these Telematics Terms. Komatsu may decide, at its own discretion, to delete such Telematics Data and Telematics Service Data earlier. For the avoidance of doubt, the ten (10) year period does not apply for Telematics Data and Telematics Service Data which have been aggregated in accordance with clause **Error! Reference source not found.** above and which may be stored indefinitely.
- 11.4. In any case, if Customer breaches its obligations under these Telematics Terms, Komatsu has the right to request Customer
- a. to erase the Komatsu Data made available by Komatsu, including any copies thereof; and/or
 - b. to end the production, offering, placing on the market or use of goods, derivative data or services produced on the basis of knowledge obtained through the Komatsu Data or the import, export or storage of infringing goods for those purposes and destroy any infringing goods, where there is a serious risk that the unlawful use of those data will cause significant harm to Komatsu or a third-party's trade secrets or where such a measure would not be disproportionate in light of the interests of Komatsu or a third-party trade secret holder; and/or
 - c. compensate a party (including third parties) suffering from the misuse or disclosure of such unlawfully accessed or used Komatsu Data.
- 11.5. The termination of the Telematics Terms does not affect the rights and liabilities that have been accrued up to the time of termination hereof. Termination of these Telematics Terms, whatever the cause, shall leave the rights of Komatsu to use the Komatsu Data generated prior to the termination unaffected..