

**SMART CONSTRUCTION APPLICATIONS
TERMS AND CONDITIONS**

These Terms and Conditions, including an end-user license agreement, (“**Terms**”) apply to the software services (“**Services**”) provided by Komatsu Europe International NV, Mechelsesteenweg 586, 1800 Vilvoorde, Belgium (“**Komatsu**”, “**we**”, “**us**” or “**our**”) to professional customers (“**Customer**”, “**you**” or “**your**”) under the Smart Construction brand. The Services are made available through the Smart Construction online portal (“**Portal**”) or another online channel as may be made available by Komatsu and its affiliates.

By purchasing a subscription for one or more Services (“**Subscription**”) through the Portal, by signing a purchase order form or confirming your registration as a Customer for one or more Services through any other online channel made available by Komatsu, 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.

We may change, amend or supplement these Terms from time to time at our own discretion whenever we have a legitimate reason for doing so. You will be informed of such change, amendment or supplement before it takes effect. If you continue to use our Services after such change, you will be deemed to have accepted all such changes, amendments or supplements. Articles XII.6, § 1, 8°, XII.7, § 1, XII.8 and XII.9 of the Belgian Code of Economic Law do not apply.

Article 1 Description

- 1.1. **Service description and compatibility** – The Services are essentially the provision of online applications (“**Apps**”) through a software-as-a-service model and published through the Portal. All Services require you to upload data (“**Customer Data**”) into the respective Apps. Such data may be uploaded manually by you via a user interface or automatically through the use of dedicated hardware with which the Services are intended to be used (“**Hardware**”) or mobile devices (“**Devices**”). Information concerning the compatibility requirements of the Services is available on request.

Article 2 Activation of the Services and Account Management

- 2.1. **Service activation** – When you have completed the payment for your first Service, the Service will show up in your overview of Subscriptions when you sign in to your account on the Portal. This presupposes that you are a registered Customer in the Portal. Your registration, access to and use of the Portal are governed by the terms and conditions of the Portal (“**Portal Terms**”). You must accept the Portal Terms in order to have access your overview of active Subscriptions. Your account in the Portal will be linked to your account for the Services. Account management for the Services is a dedicated process, but we reserve the right to unify account management processes for the Portal and the Services.
- 2.2. **Appointment of Authorized Users** – Through a dedicated account management service you can appoint members of your organization, i.e. directors, employees or contractors, as users (“**Users**”) who can use the Services on your behalf and can sign in with a personalized user account (“**User Account**”). Depending on the Service, you are able to determine for each User Account to which Customer Data the User should have access.
- 2.3. **Account and access rights management** – You are solely responsible for managing your Subscriptions, which includes, but is not limited to, timely procuring, renewing or cancelling your Subscriptions. You are also solely responsible for managing all access rights to the Services and your Customer Data, including both issuing as well as revoking access rights. You understand that all login credentials to Administrator and User Accounts are personal and must be kept confidential. It is up to the 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 Administrator or User Account by resetting the corresponding password.

Article 3 Use of the Services

- 3.1. **Infrastructure and internet** – You understand and agree that some Services may require access to the firmware, operating systems or application programming interfaces (“**APIs**”) of your Hardware and Device. 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. 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.
- 3.2. **Training** – 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.
- 3.3. **Intended use** – You acknowledge and agree that the Services are only to be used for the purposes and in the manner described in our corresponding documentation, made available through our website <https://www.smartconstruction.io/> (“**Website**”), the Portal or in any of our Service-related brochures, manuals, policies and/or guidelines. 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.
- 3.4. **Partner Services** – 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 hire a specialist service provider. You can work with one of our certified Smart Construction partners (“**Partners**”) which have the required skills and knowhow to provide such services (“**Partner Services**”). A Partner can also help you to select the Services you require and assist you in the purchase and initiation process. 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.
- 3.5. **Use of Customer Data** – 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, 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; and (e) 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.
- 3.6. **Security and Service suspension** – 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 APIs or third-party integrations (“**TPIs**”), 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. 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.
- 3.7. **Availability and service levels** – 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. 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 8.2 below. 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.
- 3.8. **Backups** – 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.
- 3.9. **Support** – If you require 1st level support, i.e. general documentation, basic support and explanations, easy troubleshooting and problem identification, you are kindly requested to contact your Partner. For 2nd and 3rd level support, typically for technical issues specific to your case and more general incidents which impact the whole or a significant part of the Services, you can contact your Partner who will then contact us.
- 3.10. **Geographical limitation** – The Subscription purchased by the Customer is only valid in the following regions (“Territory”): the European Economic Area, the United Kingdom and Switzerland. 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. Please contact your Partner for more information.
- 3.11. **Indemnification for unacceptable use** – You will indemnify, defend and hold Komatsu and its affiliates harmless against any claims, actions or damages which are caused by any use you make of our Services which violates these Terms, Specific Terms or any applicable laws or regulations. You shall pay all costs and expenses, including reasonable expenses related to legal representation, which we incur in relation to such damages, actions or claims. We have the right, at our own expense, to exclusively defend ourselves for any such claim or action in which case you will provide all assistance and information we require to build up such defense.

Article 4 APIs, TPIs and exchange of data

- 4.1. **Use of APIs and TPIs** – For certain Apps we, at our own discretion, may make APIs, TPIs or other methods of data exchange available as shall be communicated to you via the Website or the Portal. Note that your use of such APIs or TPIs may be subject to Specific Terms or terms and conditions of third parties.
- 4.2. **Limitation of liability** – While we allow the use of such APIs and TPIs in connection to our Services as communicated, you understand that we have no control over the way the Customer Data are handled by the hardware or software of third parties with which you may wish to connect or integrate nor over the quality or accuracy of the data that such hardware or 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 third-party hardware you have integrated with or connected to.

Article 5 Intellectual property

- 5.1. **Intellectual Property Rights** – Intellectual property rights (“IPR”) shall be understood as 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.
- 5.2. **Ownership of IPR** – You acknowledge and agree that all IPR in relation to the Services 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 Services by Komatsu, our affiliates, employees, consultants or subcontractors, 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.
- 5.3. **Third-party software** – 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 via our Website or Portal 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.
- 5.4. **License to use the Services** – Upon payment of the Subscription fee as described below and subject to these Terms and any Specific Terms which may apply Komatsu grants you within the Territory a limited, non-exclusive, non-transferable, non-sub-licensable right to access and use the Services 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 to a third-party. Unless stipulated otherwise in applicable Specific Terms, the license does not include the right to download or install a copy of the Apps, considering that the Services are provided through a software-as-a-service model.

- 5.5. **Ownership of Customer Data** – All IPR and ownership rights related to the Customer Data shall vest, and remain vested, in you. You grant us, our affiliates, contractors, subcontractors and our Partners a license to use your Customer Data for the purposes mentioned in clause 3.5 of these Terms.
- 5.6. **Use of logos and trade names** – 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 6 Data protection

- 6.1. **Compliance with data protection law** – As part of providing you the Services, personal data of your Users and of others may be processed in the sense of Article 4 of EU Regulation 2016/679, i.e. the General Data Protection Regulation (“**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**”).
- 6.2. **Our role** – 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.
- 6.3. **Your role** – You will always be a controller for processing personal data in the context of the Services and the Agreement.
- 6.4. **Komatsu as controller** – When we process your personal data as controller, we will provide you with a privacy statement before any processing takes place. 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.
- 6.5. **Komatsu as processor** – 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 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, 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, 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 7 Payment and invoicing

- 7.1. **Subscription Fee** – Unless explicitly stipulated otherwise in writing by Komatsu, the fee for a Subscription (“**Subscription Fee**”) shall always be in euro and shall be excluding VAT. The Subscription Fee, unit details and the duration of your Subscription shall be communicated via the Portal or listed in the purchase order form. For certain Services additional modalities related to Subscription scope and duration and the payment and invoicing of Subscription Fees will be included in the Specific Terms.
- 7.2. **Changes** – The Services are offered in a dynamic and changing environment, which means that we may have to change our Subscription Fees to adapt to changing market conditions, national regulations and other internal and external factors. Such changes will only impact the Subscription Fees of new or additional Subscriptions.
- 7.3. **Invoicing and payment** – Unless stipulated otherwise in any Specific Terms, the Subscription Fee 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. You agree that we will send you the invoice electronically via e-mail. We reserve the right to make the Services you have ordered available to you once you have paid your Subscription Fee in full through one of the payment modalities we have made available to you.

Article 8 Termination and cancellation

- 8.1. **Termination** – Without prejudice to our right to suspend your use of the Services as set out in clause 3.6 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:
- 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) days after receiving a notice of default from us via e-mail; or
 - 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.

Upon termination all outstanding Subscription Fees and other amounts owed to us become due.

- 8.2. **Cancellation** – 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 cancel your Subscriptions, you will be reimbursed pro rata for the time of your Subscription which has not yet lapsed. Any Subscription Fees applicable before the date of cancellation will remain due. If you cancel your Subscription or if we terminate your Subscription as outlined in clause 8.1 above, all Subscription Fees for then on-going Subscriptions remain due and you are not eligible for any compensation or refund for Subscription time not used.
- 8.3. **Return of Customer Data** – 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, we reserve the right to permanently delete all Customer Data remaining in our Apps. If you request support to retrieve your Customer Data, we may decide to provide such support at our own discretion and we will agree with you on a fee charged for such support rendered.

Article 9 Warranty and liability

- 9.1. **Warranty** – We will make all best 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.
- 9.2. **Limitation of liability** – Insofar and to the extent allowed under applicable law, under no circumstances and in no event will Komatsu or its affiliates be liable to you for any damages, direct, indirect, punitive or of any other kind, arising out of these Terms and/or your access to or use of our Services unless such damages are the direct result of our gross negligence, willful misconduct or fraud. We will never be held liable for any indirect or consequential loss or damage suffered by you, such as any loss of profits, revenue, turnover or any other potential financial or commercial opportunities, whether this loss or damage arises from a breach of contract or duty in tort. Insofar and to the extent allowed under applicable law and unless stipulated otherwise in applicable Specific Terms, our liability shall be limited to the amounts paid by you for the Services in the twelve (12) months preceding the event that gave rise to the liability and shall never exceed, in aggregate, 50.000,00 euro. We shall not be liable for any claim arising under these Terms, unless we receive notice from you by registered letter of the claim within one (1) year after the end of our Agreement with you.

Article 10 Miscellaneous

- 10.1. **Force Majeure** – Force majeure events, understood as circumstances beyond our control which we could not have reasonably foreseen and which prevent the total or partial performance of any obligation under these Terms or any Specific Terms, such as natural disaster, war, civil war, insurrection or riot, fire, flood, explosion, earthquake, electrical outages as a result of any of the above events, global or regional internet outages, pandemics leading to restrictions on normal activities, strikes or labour disputes causing cessation, slowdown or interruption of work, national emergency or any act or omission of any governmental authority or agency, shall relieve us, for as long as such event continues, from those obligations under these Terms. We will inform you as soon as reasonably possible of the force majeure event and its effects. As soon as, and to the extent that, the force majeure is lifted, we will resume our obligations concerned. You will not be entitled to claim damages or refunds for any such non-performance in these circumstances.
- 10.2. **Entire Agreement** – These Terms, any Specific Terms and your order of the Subscription constitute the entire agreement between the 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.
- 10.3. **Conflicting terms** – In case of a conflict between or among these Terms and those of Specific Terms, the Specific Terms shall prevail. In case of a conflict between these Terms and the Portal Terms, these Terms will prevail. You agree that any deviation from what is stipulated in these Terms or any Specific Terms must always be agreed in writing and signed by authorized representatives of both Customer and Komatsu.
- 10.4. **Language** - The language of the Services, and of and under these Terms shall be English. We have the right, however, to make courtesy translations available to you, but cannot be obliged to do so.
- 10.5. **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.
- 10.6. **Assignment** – You may not assign any of your rights and obligations hereunder to another party without our written consent.
- 10.7. **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.
- 10.8. **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.
- 10.9. **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.
- 10.10. **Subcontracting** – We may subcontract to third parties any part of the Services, including, but not limited to hosting, data centre, database and security services.
- 10.11. **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.
- 10.12. **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.