

**SMART CONSTRUCTION CUSTOMER PORTAL  
TERMS AND CONDITIONS**

These Terms and Conditions (“**Portal Terms**”) apply to your registration on and use of the customer portal (“**Portal**”) 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. Through the Portal you can find information regarding our Smart Construction services (“**Services**”) and information regarding our certified Smart Construction partners (“**Partners**”), you can purchase a subscription for one or more Services (“**Subscription**”) and you can request support from a Partner.

By clicking the activation link in the account activation e-mail (“**Activation E-mail**”) or by completing your registration process on the Portal, 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 Portal Terms in their entirety without reservation, including the limitations of liability and disclaimers of warranty contained herein. The Portal Terms must be read in conjunction with the applicable terms and conditions for the Services (“**Services Terms**”) you purchased.

We may change, amend or supplement these Portal 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 the Portal 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. **Description of the Portal** – The Portal is essentially an online platform which allows you to register as a Customer, create an administrator account (“**Administrator Account**”) and portal user accounts (“**Portal Account**”), manage those Administrator and Portal Accounts, browse through the Services, purchase Subscriptions and contact a Partner if you require support. The Portal provides you with a gateway to the Services for which you have already purchased a Subscription.

#### **Article 2 Account registration and activation**

- 2.1. **Portal registration** –The registration process on the Portal is initiated by the Partner you are in contact with, but we may also allow you to register yourself on the Portal. When the process is initiated by the Partner, the Partner will collect from you your basic company information and forward that to us. We will then register you on the Portal and you will receive the Activation E-mail. By clicking the link in the Activation E-mail you will be prompted to set a new password for your Administrator Account and the registration process will be complete.  
When the process is initiated by you, you will follow the registration process as shown on the Portal. You will receive the Activation E-mail. By clicking the link in the Activation E-mail you will have access to your Administrator Account and the registration process will be complete.
- 2.2. **Appointment of Authorized Portal Users** – When you are signed in with the Administrator Account, you will be able to see all your Subscriptions. You can appoint members of your organization, i.e. directors, employees or contractors, as users (“**Portal Users**”) who can access and use the Portal on your behalf and can sign in with a personalized user account (“**Portal Account**”).
- 2.3. **Account and access rights management** – After activation of the Administrator Account you are solely responsible for managing the Administrator Account and the Portal Accounts on the Portal, which includes both issuing as well as revoking access rights. You understand that all login credentials to Administrator and Portal 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 Portal**

- 3.1. **Internet connection** – You understand that the Portal is provided as online web portal and that you require a compatible device, operating system and browser as well as a working internet connection to be able to access and use the Portal. It is your responsibility to have such device, operating system and browser available as well as an adequate and working internet connection on those locations where you wish to use the Portal. 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. **Intended use** – You acknowledge and agree that the Portal and all features and functionalities contained therein are only to be used for normal business purposes. You are responsible to ensure that your use of the Portal complies with all laws and regulations which apply to your activities and/or in your local jurisdiction.
  - 3.3. **Partner assistance** – If you require assistance with finding the correct information on the Portal or with the selection and ordering of appropriate Subscriptions, you can contact your Partner for support using the support toggles on the Portal. The support rendered by the Partner, is the Partner’s sole responsibility. We are only responsible for the information we provide ourselves about our Services on our website, the Portal, our own marketing materials or otherwise confirmed by us in writing. In no event can the Partner bind Komatsu or its affiliates, including for the provision of the Portal or the Services.
  - 3.4. **Partner Services** – Our Partners have the opportunity to provide information concerning services (“**Partner Services**”) which these Partners offer in conjunction with, or ancillary to, your use of the Services. You understand and agree that we do not warrant, and bear no responsibility whatsoever for, the accuracy, adequacy, legality and desirability of the information concerning the Partner Services as made available by the Partners, which remains the Partners’ sole responsibility. Such information is provided for informative purposes only and shall not be construed as a binding offer to provide one or more Partner Services nor as a commitment of Komatsu that Partner shall provide such Partner Services to you under any conditions. Partner Services cannot be ordered in the Portal directly but must be ordered from the Partner offering the Partner Services.
  - 3.5. **Use of Account Data** – Use of the Portal will lead to the collection of data concerning your organization, your Administrator and Portal Accounts, your individual Portal Users and any use you make of the Portal (“**Account Data**”). This does not include any data, personal or otherwise, which is defined as Customer Data in the Services Terms. We will use Account Data to (a) provide you access to and use of the Portal, (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) inform you about our, our affiliates’ and our partners’ products, services, activities, offerings and promotions; and (e) to improve our products and services and create or develop new products and services. We may also aggregate and anonymize Account Data, ensuring that data can no longer be attributed to the Customer, at which time it shall no longer be considered Account Data and which we may use at our own discretion. When accepting these Portal Terms, you understand and agree with such collection and use of your Account 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 Account Data.
  - 3.6. **Security and access suspension** – We make commercially reasonable efforts to keep the Portal and your Account 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 Portal Users’ access to the Portal whenever such use may be construed as (a) a violation of these Portal Terms, applicable Services 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 Portal and its underlying systems, 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 Portal 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** – The Portal is provided on an “as is” and “as available” basis. The Portal requires maintenance, including updates and upgrades, from time to time, which may lead to temporary unavailability of the Portal. We will make commercially reasonable efforts to inform you in a timely manner of such unavailability.
  - 3.8. **Backups** – We use our best efforts to ensure that all data processed when using the Portal is appropriately backed up. Note that backups of data collected, generated, transferred or in any other way processed as part of your use of the Services is governed by the Services Terms.
  - 3.9. **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 Portal which violates these Portal 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 Intellectual property

- 4.1. **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.
- 4.2. **Ownership of IPR** – You acknowledge and agree that all IPR in relation to the Portal and all of its contents 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 Portal by Komatsu, our affiliates, employees, consultants, subcontractors or Partners, whether or not created in performance of these Portal Terms, 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.
- 4.3. **License to use the Portal** – Upon activation of your Administrator Account and subject to these Portal Terms Komatsu grants you a limited, non-exclusive, non-transferable, non-sub-licensable right to access and use the Portal for the intended professional purposes for as long as you have an active Administrator Account. 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 your access to the Portal to a third-party.

#### Article 5 Data protection

- 5.1. **Compliance with data protection law** – As part of providing you the access to and use of the Portal, personal data of your Portal 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”).
- 5.2. **Our role** – For the processing of personal data on the Portal we act as controller.
- 5.3. **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 creating and activating the Administrator Account and Portal Accounts and for the purposes of Subscription purchase, renewal or cancellation.

#### Article 6 Fee and ordering process

- 6.1. **Fee for the Portal** – Registration and activation on, and use of, the Portal is free of charge.
- 6.2. **Placing an order** – Orders for Subscriptions may be placed via the Portal, following the Subscription order process. The fee for a Subscription (“Subscription Fee”), and the conditions for payment and invoicing of the Subscription Fee are governed by the Services Terms, without prejudice to clause 6.3 below.
- 6.3. **Payment methods** – We reserve the right to add or remove payment methods on the Portal for payment of Subscription orders. Applicable payment methods will be shown on the Portal at the moment of placing your order. Certain payment methods may be subject to additional terms or to the terms and conditions of the third-party payment provider offering the payment method, which you accept when using the payment method.

#### Article 7 Termination and cancellation

- 7.1. **Termination** – Without prejudice to our right to suspend your use of the Portal as set out in clause 3.6 above, we have the right to terminate your access to and use of the Portal immediately without prior recourse to a judge or incurring any costs when:
  - a. you commit a violation of these Portal Terms, the Services Terms or any laws or regulations which may apply to your access to or use of the Portal and you did not remedy such violation within three (3) 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.

- 7.2. **Active Subscriptions** – You acknowledge and agree that you cannot close your Administrator Account and therefore terminate your use of the Portal as long as you have an active Subscription. If you do not have active Subscriptions, you can terminate your access and use of the Portal at any time.
- 7.3. **Account Data** – It is your responsibility to ensure that you have a copy of all Account Data before you delete your Administrator Account.

#### Article 8 Warranty and liability

- 8.1. **Warranty** – We will make all best efforts to perform our obligations under these Portal Terms and we make no express or implied warranties in connection with your use of the Portal, 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 Portal Terms.
- 8.2. **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 Portal Terms and/or your access to or use of our Portal 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, our liability under the Portal Terms shall be limited to 500,00 euro in aggregate. We shall not be liable for any claim arising under these Portal Terms, unless we receive notice from you by registered letter of the claim within one (1) year after the termination of your Administrator Account.

#### Article 9 Miscellaneous

- 9.1. **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 Portal 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 Portal 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.
- 9.2. **Entire Agreement** – These Portal Terms 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.
- 9.3. **Conflicting terms** – In case of a conflict between or among these Portal Terms and applicable Services Terms, the Services Terms will prevail. You agree that any deviation from what is stipulated in these Portal Terms must, unless stipulated in the Services Terms, always be agreed in writing and signed by authorized representatives of both Customer and Komatsu.
- 9.4. **Language** - The language of the Portal, and of and under these Portal Terms shall be English. We have the right, however, to make courtesy translations available to you, but cannot be obliged to do so.
- 9.5. **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.
- 9.6. **Assignment** – You may not assign any of your rights and obligations hereunder to another party without our written consent.
- 9.7. **Severability** – If any provision in or any part of the Portal Terms is or becomes invalid, non-binding or unenforceable, such provision will be severed from the Portal Terms, the remainder of these Portal 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.
- 9.8. **Logging** – We, or one of our affiliates, register access to the Portal for operational and security reasons. We keep an up to date log in which we store data relating to your access to and use of the Portal. You agree that this log provides evidence that access has been gained to the Portal and that the Portal has been used in a certain way, unless proof to the contrary.
- 9.9. **Relationship** – Komatsu, in providing the Portal, 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 Portal Terms.

- 9.10. **Subcontracting** – We may subcontract to third parties any part of providing the Portal and any components thereof, including, but not limited to hosting, data centre, database and security services.
- 9.11. **Applicable law** – These Portal 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.
- 9.12. **Dispute resolution** – All disputes, controversies or claims arising out of or in connection with these Portal Terms shall first be submitted to the competent courts in Brussels, Belgium.