

TERMS AND CONDITIONS OF ORDER

1. **INTERPRETATION.** The following expressions have the following meaning:
 - (a) "the Company" means Komatsu Forklift Australia Pty Ltd and its successors in title;
 - (b) "the Customer" means the person indicated as such and the person's successors in title;
 - (c) "Equipment" means the item(s) described and all attachments, accessories, parts and tools (if any) making up the complete item at the date of delivery; and
 - (d) "Order" means an offer to purchase by the Customer under these terms and conditions which has been accepted by the Company
2. **CANCELLATION OR VARIATION OF ORDERS.** Orders (whether made in writing, including by facsimile, or telephone) cannot be cancelled or varied except with the Company's consent and on terms which will indemnify the Company against all loss, costs and expenses it has incurred. Deposit paid is not refundable.
3. **PURCHASE PRICE.** the purchase price quoted in this order and confirmed by the Company in writing, is calculated on minimum wage rates, average hours of workmen employed in executing this order and the Australian dollar selling rate at the date of quotation. If, after the date of quotation, rates of wages increase, standard hours of workmen decrease, the Australian dollar selling rate changes or there is an increase in the price of materials used under this order, or by reason of any other cause beyond the Company's control the Company may increase the price by an amount equivalent to the additional cost it incurs. Unless otherwise stated, the purchase price is exclusive of GST and other similar taxes and imposts, the expenses of and incidental to putting the Equipment in a deliverable state, and the costs (if any) of delivery, all of which are the responsibility of the Customer.
4. **INSPECTION OF REPAIR WORK.** The Customer may inspect any repair work at the Company's premises during normal business hours. The Company accepts no responsibility for any damage to the Equipment while the Company's possession.
5. **PERFORMANCE.** All orders will be filled as promptly as possible. The Company is not liable for loss, injury or damage of any kind (including consequential loss) for any failure or delay in delivery from causes beyond control of the Company or its suppliers, including fire, flood, strike, judicial or governmental decree, judicial or governmental proceedings, equipment or parts shortage or the requirements of other customers. The Company is not obliged to deliver the goods if the Customer has failed to perform its obligations under this contract.
6. **WARRANTY.** The Company warrants all Equipment sold by it is free from defects in workmanship and materials provided they are used for the purpose for which they were manufactured. Subject to Clause 19, the Company's entire liability under this warranty is to repair or replace free of charge any Equipment or materials which are found at the Company's inspection to be defective in workmanship or material as set out in the attached "Warranty".
7. **INTERNAL COMPONENTS AND MATERIALS.** The Company makes no warranty (express or implied) in respect of internal parts, components or materials supplied by third party contractors. The the extent available, the Customer has the benefit of any warranty given to it by third party contractors, including the warranty attached to this quotation.
8. **LOSS.** The Company is not liable for any loss (including injury or damage or delay) or for any consequences of any loss beyond the Company's control including loss caused by malfunction or defect in or failure of the Equipment. The Company will not under any circumstances be liable for any consequential or indirect loss or damage howsoever caused.
9. **INDEMNITY.** The Company shall not be liable, and the Customer shall indemnify and hold the Company harmless against any liability, loss, expense or demand by or from any person arising from the use, operation (other than by the Company) or possession of any of the Equipment including negligence or misuse by the Customer or any person associated with the Customer.
10. **CLERICAL ERRORS.** All clerical, mathematical and typographical errors and omissions in this order may be corrected by the Company at its discretion.
11. **TIME OF DELIVERY.** The time of delivery shall be calculated from the date of the Company's written acceptance of the order or delivery of the vehicle at the Company's works, whichever is applicable. Every effort will be made to deliver within the time specified but the Company is not liable for failure to deliver within that time.
12. **DELIVERY, INSPECTION AND ACCEPTANCE.** All deliveries are to be collected from the Company's premises unless otherwise agreed. Where delivery is to take place elsewhere, the Company accepts no responsibility for loss or damage to the Equipment arising in or during transit through ant cause whatsoever. The Customer must promptly inspect the Equipment upon delivery and must notify the Company in writing within seven days of inspection of any reason the Company believes the Equipment is not in accordance with the order. If the Customer fails to notify the Company to the extent permitted by law, the goods shall be deemed to have been accepted by the Customer.
13. **PAYMENT.**
 - (a) Unless otherwise agreed in writing the purchase price is payable in full at or prior to delivery. If the Customer fails to pay the purchase price as required the Company may (without prejudice to any other rights available to it).
 - (i) charge the Customer interest from the due date until payment, at the rate charged by the Company's principal bank for overdraft accommodation on an equivalent amount; or
 - (ii) give the customer written notice that the Company intends to resell the goods after seven days from the giving of notice.
 - (b) If the Customer fails to pay the purchase price (including any interest within 7 days of receiving a notice under 13(a)(i)) the Company may resell the goods and is released from all obligations under the contract. In that event, the Customer shall pay the Company;
 - (i) all charges incurred in the storing and handling the goods until resold;
 - (ii) interest at the rate set out in clause 13(a)(i) on the purchase price from the date when payment was due until resold;
 - (iii) the difference between the purchase price on resale and purchase price under this order;
 - (iv) the difference between any expense incurred under the resale and the expenses which would have been incurred under this order; and
 - (v) the Company's gross profit which would have arisen on the sale to the Customer in acknowledgement that the Company has been deprived of a probable customer for other like goods.
14. **RETURN OF MATERIALS.** Materials returned without the Company's consent will not be accepted for credit unless they are proved to be defective.
15. **CUSTOMER'S PROPERTY, TITLE AND RISK.** All Customer's property in the possession of the Company shall be entirely at the Customer's risk in all respects and the Company accepts no responsibility for any loss or damage while the Equipment is in the Customer's possession or through failure to re-deliver the Equipment or any part of it unless such loss or damage is caused by the Company's breach of its obligations under these conditions.
 - (a) Notwithstanding delivery of the Equipment, title to the Equipment remains with the Company until the monies owing by the Customer to the Company have been paid in full whether such monies are in respect of a particular order or on any other account whatsoever.
 - (b) The Equipment is at the Customer's risk from the first occurrence of any of the following events;
 - (i) the passing of property to the Customer;
 - (ii) the physical delivery of the goods to the Customer;
 - (iii) the physical delivery to a carrier or bailee whether named by the Customer or not.
 - (c) The Company is under no obligation to give the Customer a notice referred to in section 35(3) of the Sale of Goods Act (NSW) 1923 or the equivalent in other States and Territories.
16. **AUTHORITY and EXCLUSION:** The Customer, or the officer on its behalf, warrants that they have the authority to enter into this order and/or to authorise maintenance work on the vehicle or Equipment. The Customer acknowledges and accepts that any terms or conditions that it seeks to include or substitute (for these terms and conditions) by whatever means, shall be excluded and of no effect, unless specifically accepted in writing by the Company Secretary prior to acceptance of the order.
17. **LIEN.** Nothing in this contract affects any lien that the Company may have over the Equipment.
18. **CONDITIONS APPLYING TO SECOND-HAND EQUIPMENT** ("Equipment").

The purchaser admits and acknowledges that;

 - (a) he has had the opportunity to inspect the Equipment;
 - (b) the Equipment is sold with any defects and faults;
 - (c) the conditions applying to orders set out above apply to the sale of Equipment; and
 - (d) the Company shall not be responsible for any loss or damage to the Equipment or caused by the Equipment.
19. **CUSTOMER'S RIGHTS.** All conditions or warranties binding to the Company with regard to the state, quality, fitness or condition of the Equipment or services supplied by the Company (express or implied) are to the extent that the law permits, expressly excluded. The law provides that certain warranties with respect to the state, quality, fitness or condition of the goods or services supplied by the Company (such as those under the Trade Practices Act) cannot be excluded. The Customer has the benefit of those warranties and conditions. However, to the maximum extent permitted by law, the liability of the Company arising from a breach of any conditions or warranties is limited to the repair or replacement of the goods or services, as set out in the attached warranty.