

CUSTOMER PERSONAL DATA SHARING AGREEMENT

Only for Customers established in the European Economic Area

The online services which (a) monitor, assist or accompany your ownership, possession, operation, status, deployment or use in general of Komatsu machines or (b) involve planning, organising, facilitating, managing, mapping, visualizing or structuring activities on jobsites where Komatsu machines are being deployed are offered to you, the customer established in the European Economic Area and as such subject to the GDPR (“Customer”), by KOMATSU EUROPE INTERNATIONAL NV (“Company”), a corporation organized and existing under the laws of Belgium, with registered office at 1800 Vilvoorde, Belgium, Mechelsesteenweg 586, registered in Brussels under the company number and VAT number (BE)(0)404.968.268. You can contact us on the aforementioned address, by email komtrax.support@komatsu.eu and/or by phone on +32 2 255 24 11.

Company subscribed to "KOMATSU'S WORLDWIDE CODE OF BUSINESS CONDUCT" and ensures all employees understand how important it is to observe the rules of the business community. KOMATSU's code of conduct can be consulted at <http://www.komatsu.com/CompanyInfo/profile/conduct/>.

You understand that by using these online services, personal data of your staff members, contractors, service providers or other parties you engage in the use of your Komatsu machines or on job sites where you deploy Komatsu products and services, are processed.

You, your officially Komatsu appointed distributor (“Distributor”), where applicable the Dealer or Sub-dealer and Company are jointly responsible as controllers for such processing of personal data. Company and Distributor have put in place the necessary contractual arrangement to govern such personal data processing between them, as is required by applicable European data protection law, particularly with Regulation (EU) 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 (General Data Protection Regulation; hereinafter: “GDPR”). The present addendum (“Addendum”) provides for a similar arrangement between you, the Customer, and Company (together referred to as the “Parties”).

By registering online as a Customer, you (a) acknowledge to have read and understood this Addendum, and (b) you accept it in its entirety without reservation.

1. General

1.1 Any notion starting with a capital will be defined in this Addendum by explicit reference. Furthermore, the following definitions will apply:

- a) Affiliate: with respect to Customer of Company, 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” will be presumed to exist if one of the following conditions is met: (a) in the case of corporate entities, 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) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entities;
- b) Customer: the natural or legal person to whom Distributor, Dealer or Sub-dealer provides Products on the basis of a sales, leasing or rental agreement for professional (commercial / industrial / civilian) use only;
- c) Dealer: the company or other legal entity which has purchased the Products from Distributor and sells them to Sub-dealer or sells, leases or rents them directly to Customer;
- d) Sub-dealer: the company or other legal entity which has purchased the Products from Dealer and sells, leases or rents them directly to Customer
- e) Effective date: the date on which this Addendum commences as agreed between the Parties, which is the date on which Customer registers for one or more Services.
- f) Products: the (a) new machines and used machines (“Machines”) and attachments which bear the trade mark or name of Komatsu and (b) the spare parts and / or (remanufactured) components which are to be installed in or upon aforementioned machines and attachments, all of which are supplied by or on behalf of Company for professional (commercial/industrial/civilian) use only;
- g) Komatsu: Komatsu Limited a corporation organized and existing under the laws of Japan with registered office at nr. 3-6 Akasaka 2-Chome, Minato-Ku, Tokyo, Japan;
- h) Subsidiary: any company or other form of commercial legal entity in which a Party or Komatsu has control either directly or indirectly (‘control’ being presumed to exist if one of the conditions set forth in section 1.1a) above is met);
- i) Services: the Machine Centred Services and Jobsite Centred Services which Company makes available to Customer and which consequently lead to personal data processing;
- j) Machine Centred Services (“MCS”): online IT supported services which involve monitoring, assisting and/or accommodating the ownership, possession, operation, status, deployment or use in general of Machines;
- k) Jobsite Centred Services (“JCS”): online IT supported services which involve planning, organising, facilitating, managing, mapping, visualizing or structuring activities on jobsites where Machines have been, are or will be deployed;
- 1.2 The notions of “personal data”, “data subject”, “controller”, “processor”, “processing”, “consent”, “profiling”,

“recipient”, “pseudonymisation”, “personal data breach”, “joint controllers”, “record of processing activities”, “data protection impact assessment”, “prior consultation” and “data protection officer” will have the same meaning as in articles 4, 26, 30, 35, 36 and 37 GDPR respectively.

- 1.3 Where reference is made to certain laws or regulations, such reference will also include any and all related executive decisions as well as any change, replacement or annulment of said laws or regulations.
- 1.4 This Addendum will apply to all processing of personal data by Company and Customer as joint controllers as a consequence of providing and using the Services. Parties specifically acknowledge and agree that this Addendum will become an integral part of agreements executed between them for the provision and use of one or more specific Services (“Specific Agreements”) (e.g. a specific learning management system for providing online trainings).
- 1.5 Customer acknowledges that performance of its obligations under this Addendum may require that Customer, as entity who is closest to the data subject, makes certain modifications, amendments or supplements to its existing data processing arrangement with the Customer’s customer or partners or the data subjects. Customer therefore undertakes to make the necessary contractual arrangements with its customers and partners as may be required to give full effect to the obligations contained in this Addendum, particularly, but not limited to, the obligations in clauses 5.1 and

6.1. The categories of possible data subjects for MCS and JCS include, but are not limited to, the categories listed in Annex I.

- 1.6 This Addendum comprises the present terms, together with all its annexes (“Annexes”) and (if any), their attachments, exhibits and appendices, all as may be amended from time to time by Company.
- 1.7 In the event of a conflict or an inconsistency between the terms of this Addendum and any Specific Agreement in which specific terms and conditions regarding the processing of personal data have been included, the Specific Agreement will take precedence.
- 1.8 Customer explicitly agrees that any of its own terms and conditions pertaining to the processing of personal data as joint controller with Company as a consequence of providing and using the Services will not apply. Parties’ internal data protection policies and information security requirements, policies and procedures will only apply insofar they do not contradict or in any way conflict with the terms and conditions of this Addendum.

2. Scope of the Addendum

- 2.1 This Addendum sets out the mutual obligations and responsibilities of the Parties as joint controllers with respect to the processing of personal data for the purposes determined in clause 4.1 below.
- 2.2 For the personal data processing activities which are covered by clause 4.2 below, the Party undertaking the activity is presumed to be sole controller under this Addendum. This

Addendum will not apply to the processing activities identified in this clause 2.2.

3. Term

3.1 This Agreement will commence on the Effective Date and will continue for as long as Customer makes use of, and is entitled to make use of, the Services.

4. Purposes of the personal data processing activities

4.1 Company and Customer acknowledge and agree to jointly determine the following purposes for the processing of personal data in the context of the Services:

- a) to provide and use the Services in accordance with the applicable Specific Agreement governing such Services, as determined by Company and as accepted by Customer for the objectives mentioned in Annex I;
- b) evaluating, analyzing and reporting on providing and using the Services;
- c) taking appropriate technical and organizational measures to ensure an appropriate level of security of the personal data processed; this may include pseudonymization, anonymization and encryption;
- d) complying with any reasonable and legitimate request from competent law enforcement agents or representatives, judicial authorities, governmental agencies or bodies, including competent data protection authorities which is either

directed at both Parties simultaneously or at one Party specifically who requires the other Party's assistance in complying with such request;

- e) the preservation of the legitimate interests of the Customer, Distributor, Company, Dealer, Sub-dealer or the subcontractors of Company in judicial proceedings;
- f) the transfer of personal data to recipients within or outside the European Economic Area (EEA) if such transfer is required for achieving the objectives described in Annex I or has been requested specifically by the Customer;
- g) evaluating, improving and ensuring the proper functioning of: (i) the Services, including through periodic maintenance, incident reporting under applicable laws and legislation, and troubleshooting; and (ii) any devices or infrastructure used in providing the Services in order to ensure in particular the safety, adequacy and overall usefulness.

4.2 Each Party is solely and exclusively responsible as controller for the processing of personal data where such processing relates to:

- a) all processing purposes which are not covered in clause 4.1;
- b) the monitoring of performance of data subjects in execution of their tasks as employee or independent contractor;
- c) a Party's information activities or

the promotion of its own services and/or services of its commercial partners.

5. Authorizations and permissions for processing personal data

5.1 Considering Customer's more direct connection to data subjects, Customer will obtain on behalf of Company the necessary authorizations and/or permissions for the processing of personal data for the purposes mentioned under clause 4.1.

5.2 Unless explicitly allowed in a provision of applicable mandatory law, Parties acknowledge and agree that consent of the data subject, where this data subject's personal data are processed in the context of an employment agreement, will not be considered a valid legal basis for the processing of personal data for the purposes listed in clause 4.1. Parties acknowledge and agree that the processing of personal data for the purposes listed in clause 4.1. will, where possible, first and foremost be based on the necessity of the processing for the performance of an agreement with the data subject (article 6.b GDPR) or on the necessity of the processing for the purposes of the legitimate interests pursued by Company, Komatsu, Distributor, Dealer, Sub-dealer, Affiliates or Subsidiaries (article 6.f GDPR).

6. Information provided to data subjects

6.1 Customer will properly and fully inform data subjects, or will ensure that data subjects are properly and fully informed, on behalf of both Parties of the processing of their personal data via the Services. Customer therefore

warrants that minimally all information which is mandatory under Articles 13 and 14 GDPR will be provided.

6.2 As part of the obligation to inform the data subjects, Customer will make the essence of this Addendum available to the data subjects.

7. Data quality obligations

7.1 Customer will correct, amend or delete all personal data which are inaccurate, outdated or generally irrelevant. If Customer is not able to make the correction, amendment or deletion itself, Customer will contact Company as soon as possible via e-mail.

7.2 Without prejudice to purposes which may be determined by one Party as controller and communicated as such to the data subject, Parties warrant that personal data processed under this Addendum will only be retained in identifiable form for as long as required to achieve the purposes listed in clause 4.1. or as long as required by a legal or regulatory obligation or a judicial order, whatever is the longest.

7.3 It is Customer's responsibility to ensure that all personal data it processes, or allows to be processed, via the Services, can be processed by Customer and Company as outlined in this Addendum in compliance with any applicable processing requirements originating from national, regional or local law, regulations, executive decisions or customs to which Customer or Customer's customer is subject.

8. Processors and recipients of personal data

8.1 Customer will only engage processors

of good repute to process personal data under this Addendum on its behalf. These processors will be bound by a written agreement which will in no way contradict, annul, impede or diminish Customers' obligations and commitments under this Addendum.

- 8.2 Parties agree that personal data processed under this Addendum can only be shared with the categories of recipients listed in Annex I.

9. Collaboration and information sharing

- 9.1 Each Party will be responsible to comply with the obligation to keep a record of personal data processing activities and the obligation to undertake a data protection impact assessment or even prior consultation of the supervisory authority when an intended processing activity is likely to result in a high risk to the rights and freedoms of the data subject.
- 9.2 Each Party will cooperate in good faith with the competent data protection authorities in the performance of its tasks. If and when Customer is confronted with a request for information of or an investigation by such competent data protection authority pertaining to a processing activity covered by this Addendum, Customer will inform Company of the request or investigation as soon as possible, unless Customer is prohibited to do so by a legal or regulatory obligation to confidentiality. Such information will minimally include the motivation, reasons or circumstances which triggered the request or investigation, as well as the subject matter of the request or investigation.

10. Security and confidentiality

- 10.1 Parties will implement appropriate technical and organisational security measures to protect personal data processed against accidental or unlawful destruction or loss, alteration, unauthorised disclosure or access.
- 10.2 Without prejudice to article 8 above, Parties will treat personal data processed as strictly confidential and will not disclose or make it available to any third parties without having informed the data subject appropriately. Parties will also protect and safeguard personal data processed against any disclosure, transfer or publication with at least the same degree of care as it uses for its own confidential or proprietary information, but in no event with less than reasonable care.
- 10.3 Parties will only disclose and make personal data available on a strict "need-to-know" basis to those of its staff members, including but not limited to its shareholders, directors, employees, trainees, authorized agents and representatives, who require such disclosure or availability given their direct involvement in achieving the purposes outlined in clause 4.1. Such staff members will be bound in writing (or by a similarly binding electronic declaration) to the same obligations as the Parties themselves as set forth in clause 10.2.

11. Data Breaches

- 11.1 In the event of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed under this

Addendum (hereinafter: “Data Breach”), the Party who identifies, is informed of or confronted with the Data Breach will take all necessary measures to limit the impact of the Data Breach and mitigate as far as possible the risks associated with the Data Breach.

11.2 When Customer detects a Data Breach, Customer will notify Company, in accordance with clause 14.1 and without undue delay, of both the nature and scope of the Data Breach allowing Company to gauge the risks for the rights and freedoms of impacted data subjects, as well as the measures taken to limit its impact and mitigate the risks.

11.3 Parties agree that Company will assess the risk level of each Data Breach which is directly caused by a flaw, defect, inconsistency or anomaly in the Services itself as provided by Company, and Company will solely and exclusively decide whether the risk level warrants notification to competent data protection authorities and/or data subjects.

For every other Data Breach, the Party who identifies, is informed of or confronted with a Data Breach, will be responsible for notifying, insofar required under applicable data protection law, the Data Breach to the supervisory authority and, where appropriate, for communicating the Data Breach to the data subjects impacted by the Data Breach.

12. Transfer of personal data

12.1 Parties and their third party processors may process personal data both in- and outside the EEA insofar as required for the purposes listed in clause 4.1. For all

transfers of personal data to countries outside the EEA, Parties warrant and undertake to transfer personal data only to countries outside the EEA on the basis of an adequacy decision of the European Commission or, where no adequacy decision is available, on the basis of standard data protection clauses adopted by the European Commission or any other legal ground explicitly allowed by the GDPR.

12.2 Company will transfer personal data in the context of this Addendum to Komatsu in Japan. To this end Company and Komatsu will put in place the standard data protection clauses as set out in Commission Decision 2004/915/EC of 27 December 2004 (notified under document number C(2004) 5271), or any update, amendment or replacement thereof which may be issued by the European Commission from time to time.

13. Rights of data subjects

13.1 Each Party will be responsible for granting data subjects their rights to the extent required under applicable personal data protection law. However, Parties acknowledge and agree that data subjects wishing to exercise one or more of their rights with respect to the processing activities covered by this Addendum, will be referred to the controller responsible (“Responsible Controller”) in the following order of precedence (in descending order):

- a) Customer;
- b) Company.

13.2 The Party who receives a request of a data subject to exercise one or more rights, will do a first quick check regarding the validity and legitimacy of the request and will subsequently

confirm to the data subject receipt of his request, refer him to the Responsible Controller or inform the data subject of the defective nature of his request. The data subject will at all times be required to provide sufficient, adequate and recent proof of identity whenever the data subject addresses a request to exercise one or more of such rights to a Party.

- 13.3 Every request that seems valid on the face of it, will be communicated as soon as possible to the other Party. Each Party will honour the valid and founded requests communicated to it with respect to the personal data processed under its control. The Party to whom the request was communicated by the Responsible Controller, will inform the Responsible Controller as soon as it has done all that is necessary to honour the request or to inform the Responsible Controller that the request cannot be honoured as well as the reasons for such refusal.
- 13.4 The Responsible Controller will communicate to the data subject all that is required to adequately inform him that both Parties have honoured the request or the reasons for which the whole or part of his request could not be honoured.

14. Communication

- 14.1 For questions and information regarding the processing of personal data under this Addendum, Customer can contact Company by sending an e-mail to PrivacyOffice@komatsu.eu.
- 14.2 Each Party will determine for itself whether a data protection officer needs to be assigned. If Customer is required to assign a data protection officer, the

contact details of the data protection officer will be communicated to Company upon simple request.

15. Liability and indemnity

- 15.1 Each Party will be liable and will (a) compensate the other Party for the damages it suffers and (b) indemnify the other Party for claims of the competent data protection authorities or of data subjects or third parties regarding damages they suffered, as a consequence of that Party's violation of its obligations under the GDPR, the GDPR's binding executive measures or this Addendum;
- 15.2 Parties will not be liable for indirect damages, which will include without limitation loss of profit or turnover, missed savings, loss of customers or business opportunities, damage to reputation or image and moral damages.
- 15.3 The Customer warrants and undertakes to notify Company as soon as possible if a claim is brought by a data protection authority or data subject, or in case an incident causing damages occurs with respect to the processing of personal data under this Addendum. Without prejudice to clause 15.1, Company will, at its own discretion, be entitled to intervene in any ensuing judicial proceeding, but Company will bear the costs and expenses of its intervention including but not limited to fees for legal representation. Parties will in any case cooperate in good faith to limit the damages as much as reasonably possible.

16. Termination

- 16.1 Termination for cause

Without prejudice to any of its other rights and obligations in applicable Specific Agreements, either Party may at its option terminate this Addendum, without prior recourse to the courts, by notifying the other Party (“Defaulting Party”) if any of the following events occurs:

- a) the Defaulting Party becomes insolvent or unable to pay its debts as they become due or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of Belgium; or
- b) the Defaulting Party commits a material breach of this Agreement that cannot reasonably be cured within 20 business days after the other Party has given the Defaulting Party notice of default (a “Material Breach”).

If a Material Breach of this Agreement is not capable of being cured within 20 Business Days but is capable of being cured within 40 Business Days, the cure period will be extended to 40 Business Days if the breaching Party:

- a) proceeds promptly and diligently to cure the breach;
- b) develops within 20 Business Days following written notice of breach from the non-breaching Party a complete plan for curing the breach; and
- c) cures the breach within 40 Business Days of receiving notice.

16.2 Termination for convenience

This Addendum will terminate automatically from the moment all Specific Agreements are terminated and in any case from the moment when the Customer no longer is entitled to use any of the Services.

- 16.3 If this Addendum or is terminated for whatever reason, Customer will stop processing personal data with the Services immediately. Each Party will solely be responsible as controller for continuing to process personal data through its own chosen means.

17. Miscellaneous

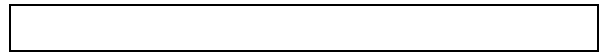
- 17.1 No amendments to this Addendum, nor any additions or deletions, will be effective unless agreed in writing by both Parties.

- 17.2 Whenever possible, the provisions of this Addendum will be interpreted in such a manner as to be valid and enforceable under the applicable law. However, if one or more provisions of this Addendum are found to be invalid, illegal or unenforceable, in whole or in part, the remainder of that provision and of this Addendum will remain in full force and effect as if such invalid, illegal or unenforceable provision had never been contained herein. Moreover, in such an event, the Parties will amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision, in such a way as to reflect insofar as possible the purpose of the invalid, illegal or unenforceable provision(s).

- 17.3 Any failure or delay by Company in exercising any right under this Addendum, any single or partial exercise of any right under this Addendum or any partial reaction or

absence of reaction by Company in the event of violation by Customer of one or more provisions of this Addendum, will not operate or be interpreted as a waiver (either express or implied, in whole or in part) of Company's rights under this Addendum or under said provision(s), nor will it preclude any further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver of a right following a specific failure by Company, this waiver cannot be invoked by the Customer in favour of a new failure, similar to the prior one, or in favour of any other kind of failure.

court proceedings on the merits.



17.4 All issues, questions and disputes concerning the validity, interpretation, enforcement, performance and termination of this Addendum will be governed by and construed in accordance with the law applicable in Belgium and no effect will be given to any other choice-of-law or conflict-of-laws rules or provisions (foreign or international, including the UN Convention on the Sale of Goods (if applicable)), that would cause the laws of any other jurisdiction to be applicable.

17.5 The Parties agree to try and solve any dispute regarding this Addendum through negotiations. Should negotiations fail, each Party has the right to submit the dispute to the competent courts in Brussels, Belgium.

The Parties retain at all times the right to request and obtain preliminary or interim relief via court proceedings without prior recourse to mediation including without limitation summary proceedings and other provisional measures within the framework of a

ANNEX I – DESCRIPTION OF SERVICES

Service category	<u>MCS</u>	<u>JCS</u>
Data subject(s)	operator of the Machine	everyone on jobsite; operator of the Machine
Processing purposes	<ul style="list-style-type: none"> • safety • warranty • security • misuse and theft prevention • training • improving machine and operational efficiency • enforce rental agreements • performance monitoring • product and service development 	<ul style="list-style-type: none"> • improving job site safety and efficiency • faster and more tailored support service • optimizing jobsite layout, machine resource allocation and driving routes • realtime jobsite monitoring and management • training
Recipients	<ul style="list-style-type: none"> • Komatsu • Company • Affiliates • Subsidiaries • Customer • Customer’s entities • Customer’s customers • operators and suppliers 	<ul style="list-style-type: none"> • Komatsu • Company • Affiliates • Subsidiaries • Customer • Customer’s entities • Customer’s customers • operators and suppliers