



MACHINE REBUILD WARRANTY

Dump Trucks - (HD465/HD605) Wheel loaders - (WA500/WA600)

Komatsu Australia Pty Ltd (ABN 63 053 514 739) (**Komatsu**) warrants to You for the applicable Warranty Period that the Selected Powertrain Components in the Rebuild Schedule of the applicable Machine supplied by Komatsu are free from Defects in material and workmanship, subject to the terms of this Warranty.

1. Definitions

In this Warranty, the following definitions apply:

Acknowledgement means the Acknowledgment of Receipt and Acceptance of this Warranty by You;

Business Hours means normal trading hours of Komatsu or Komatsu Service;

Condition Report means the condition report provided by Komatsu for the Selected Powertrain Components;

Consumables includes ground engaging tools, fuels, oils, lubricants, coolants, batteries, filters and other items customarily regarded as consumables in the industry;

Defect or **Defective** means any Selected Powertrain Component in the Rebuild Schedule which does not comply with OEM specifications, or which is faulty, materially non-conforming, inoperable, and unsafe or not operating properly;

Komatsu means Komatsu Australia Pty Ltd (ABN 63 053 514 739);

Komatsu Service means Komatsu's nominated servicing establishment;

KOWA means Komatsu Oil Wear Analysis;

Machine means the Komatsu HD465 and/or HD605 dump trucks and/or WA500 and/or WA600 Wheel loaders and attachments (if any) specified in the Acknowledgement and includes the Parts and attachments but excludes Non-Komatsu Attachments;

Maintenance Program means the program, specified by the OEM and/ or Komatsu, that details the processes, methods and Your responsibilities for the Machine and maintenance and includes the Manuals provided by Komatsu with the Machine;

Manuals means any operation & maintenance, service or other manual or instruction or recommendation or other information supplied to You by the OEM or Komatsu in relation to the Machine and/or the Selected Powertrain Components;

Non-Komatsu Attachments means an attachment to or supplied with the Machine which is not manufactured by Komatsu or any member of the Komatsu group of companies;

OEM means the manufacturer of the Machine or Selected Powertrain Component (as the context requires);

Out of Scope Schedule means the schedule containing the list of Parts that form a portion of the Selected Powertrain Components that were not repaired and/or replaced by Komatsu as part of the Rebuild and not covered under this Warranty;

Part means the parts and assemblies for the Selected Powertrain Components excluding those parts covered by the Komatsu Standard Machine and New Parts warranties or covered by any OEM warranty for Non-Komatsu attachments and excludes Consumables;

PM means preventative maintenance;

PM Clinics means a visual inspection and measurement of the performance output of the Machine and its functions;

PM Servicing means services on the Machine in compliance with the service schedule set out in the Machine's Manuals;

Rebuild means the rebuild of the applicable Machine;

Rebuild Date means the earlier of:

(a) the date of the Komatsu invoice for the Rebuild; or

(b) the date on which Komatsu notifies You that the Rebuild is complete or it deems them complete;

Rebuild Schedule means the schedule containing the list of Selected Powertrain Components for the applicable Machine as set out in this Warranty;

Required Documents includes all documents relevant to the Machine including without limitation, Warranty registration documents, proof of purchase documents, commissioning documents and maintenance records;

Reusability Guidelines means those guidelines used by Komatsu to determine whether or not a Part or Parts are acceptable to be reused as part of the Rebuild of the Machine.

Selected Powertrain Components means only those powertrain and engine components and parts of the applicable Machine specified in the Rebuild Schedule to this Warranty that are marked as being covered under this Warranty;

SMR means the service meter reading of the Machine;

Warranty means this Machine Rebuild Warranty document;

Warranty Period means for a Selected Powertrain Component that is listed as:

(a) "Bronze" in the Rebuild Schedule, 24 months from the Rebuild Date or 4,000 hours (whichever occurs first);

(b) "Silver" in the Rebuild Schedule, 36 months from the Rebuild Date or 6,000 SMR hours (whichever occurs first); and

(c) "Gold" in the Rebuild Schedule, 60 months from the Rebuild Date or 10,000 SMR hours (whichever occurs first);

Wear(able) Items includes but are not limited to, undercarriage, windows, operator seat, upholstery, trimmings, hoses, pipes, work attachments and linkages, pins, bushes, wear pads, pre-cleaners, mufflers, tyres, rims, V-belts, wiper blades, electrical items (excluding alternators and starter motors);

Your Responsibilities means those actions required to be undertaken by You to lodge a claim under this Warranty;

You means the person or business who initially purchased the Machine from Komatsu and *Your* has a corresponding meaning.

2. Warranty as to materials and workmanship

2.1 Komatsu warrants that the Selected Powertrain Components in the Rebuild Schedule will be free from Defects in the:

(a) materials supplied by Komatsu; or

(b) workmanship of Komatsu or Komatsu Service,

subject to these terms and conditions for the Warranty Period.

2.2 In the event that any of the Selected Powertrain Components in the Rebuild Schedule is found to be Defective in either materials or workmanship during the Warranty Period, Komatsu shall at its cost and at its option:

(a) repair the Defective Selected Powertrain Component by either repairing or replacing any Defective parts (which may include in Komatsu's discretion, repairing or replacing any Consumables rendered unusable by the Defect); or

(b) replace the Defective Selected Powertrain Component,
in accordance with this Warranty, subject to these terms and conditions.

3. Services to be provided by Komatsu

3.1 Any services to which You are entitled under this Warranty shall be provided to You by Komatsu or Komatsu Service during Business Hours.

3.2 If You are entitled to any of the services under this Warranty, then reasonable travel and transportation costs for our service personnel between Your site and Komatsu Service will be paid by Komatsu.

3.3 Transportation costs for the Machine or Selected Powertrain Component and any repaired or replacement Machine or Selected Powertrain Component whether to or from (as Komatsu directs) Komatsu or Komatsu Service for the purposes of any Warranty claim are at Your expense unless Komatsu advises You otherwise in writing.

4. How a claim is made and evaluated - 'Your Responsibilities'

4.1 All claims and associated enquiries by You under this Warranty must be notified in writing to Komatsu or to the nearest Komatsu Service.

4.2 Komatsu has no obligation under this Warranty unless You notify Komatsu of any warranty claim promptly and no later than seven (7) days from becoming aware of any potential claim and allow Komatsu reasonable access to the Machine or Selected Powertrain Components the subject of the Warranty claim in order to evaluate the claim.

4.3 In order to lodge a valid claim under this Warranty, You must:

- (a) provide Komatsu with a Purchase Order or other agreed notice stating 'subject to warranty' and specifying the details of the warranty claim;
 - (b) provide all Required Documents to Komatsu;
 - (c) pay for all non-warranted labour costs; pay for any non-warranted shipping charges if any; pay for any non-warranted travel costs if any and pay the non-warranted transport costs if any, associated with moving the Machine or Selected Powertrain Component to Komatsu Service;
 - (d) pay the costs incurred if any, to investigate any claim found not to be covered by this Warranty.
- Failure to comply with any of these requirements may invalidate or reduce your warranty entitlements.

5. Termination of the Warranty

5.1 This Warranty ceases at the end of the Warranty Period.

5.2 If Komatsu replaces a Selected Powertrain Component or any Part, the replaced Selected Powertrain Component or Part becomes the property of Komatsu. The replacement Selected Powertrain Component or Part is Your property and is warranted for the balance of the Warranty Period.

5.3 If Komatsu repairs a Selected Powertrain Component or Part, the repaired Selected Powertrain Component or Part is warranted for the balance of the Warranty Period that applied to the original Selected Powertrain Component or Part.

6. Application of this Warranty

6.1 This Warranty applies only to those Selected Powertrain Components in the Rebuild Schedule for the applicable Machine used within Australia within the Warranty Period and for which Komatsu is the authorised distributor.

6.2 In addition to Your Responsibilities under clause 4, this Warranty is subject to the following additional requirements:

- (a) the Machine being maintained by Komatsu at Your cost for the Warranty Period in accordance with the Maintenance Program;
- (b) all oil sampling for the Machine is via KOWA at Your cost which includes Komatsu:
 - (i) completing oil sampling at 500/1,000 SMR hour intervals for the Warranty Period;
 - (ii) notifying You of any action required from the KOWA samples; and
 - (iii) attending to the actions set out in the KOWA report and You paying for any non-warranted costs associated with these actions;
- (c) PM Clinics to be carried out by Komatsu at 2,000 SMR hour intervals at Your cost which includes Komatsu:
 - (i) notifying You of any action required from the PM Clinic report; and
 - (ii) attending to the actions set out in the PM Clinic report and You paying for any non-warranted costs associated with these actions;
- (d) PM Servicing to be carried out by Komatsu at Your cost which includes Komatsu:
 - (i) servicing the Machine at 500/1,000 SMR hour intervals and providing You with a PM Service report which includes a quote on all safety and reliability related defects; and
 - (ii) rectifying all safety and reliability related defects set out in the PM Service report and You paying for any non-warranted costs associated with the rectification;
- (e) Komtrax, Komtrax Plus or similar Komatsu remote equipment monitoring system to be fitted to the Machine and communicating at all times during the Warranty Period and Komatsu:
 - (i) notifying You of any safety and reliability related defects identified with the Machine that require action;
 - (ii) attending to the rectification of all safety and reliability related defects as identified by the data generated from the relevant Komtrax, Komtrax Plus or similar Komatsu remote equipment monitoring system, and You paying for any non-warranted costs associated with the rectification; and
 - (iii) notifying You of any misuse of the Machine by the operator and/or site related issues that may affect the life of the Selected Powertrain Components and You rectifying the misuse of the Machine by the operator and/or site related issues and paying for any applicable costs; and
- (f) Komatsu to be Your first point of contact for all breakdowns, inspections and/or repairs for the Machine during the Warranty Period.

6.3 This Warranty does not apply:

- (a) if You breach or do not comply with any of Your obligations under this Warranty including Your Responsibilities in clause 4 or Your requirements under clause 6.2;
- (b) if any Defect is caused or contributed to by Your misuse, negligence, accident, or failure to maintain or use the Machine or the Selected Powertrain Components in accordance with the Maintenance Program or the recommendations of Komatsu or the OEM;
- (c) if any Defect arises as a result of or in connection with, a condition identified through the Maintenance Program or otherwise, for which Komatsu has recommended certain action to You and You fail to comply with that recommendation;
- (d) in relation to alterations, modifications or repairs to a Machine or the Selected Powertrain Components, including the fitting of attachments parts or use of consumables, that are not authorised or approved by Komatsu and which in Komatsu's reasonable judgment, cause or contribute to the Defect;
- (e) to repairs or replacements required due to normal maintenance or operating services for the Machines or Selected Powertrain Components, including but not limited to inspections, adjustments, tune-ups, fuel, lubricants, or Consumables, parts repairs or replacements;
- (f) if You have delayed more than seven (7) days in notifying of any potential Defect after first becoming aware of it;
- (g) if You have unreasonably delayed in providing the Machine or Selected Powertrain Components to Komatsu after first becoming aware of it;
- (h) if You fail to adhere to any recommendation made by Komatsu;
- (i) if You fail to supply the Required Documents when requested by Komatsu; or
- (j) if Komatsu in its sole discretion determines any use or installation of the Machine or Selected Powertrain Components has caused or contributed to the Defect.

6.4 If otherwise applicable, the Vienna Convention (Contracts for the International sale of Goods) does not apply to this Warranty or the Machine and is excluded in its entirety.

7. Limitation of Warranty

7.1 To the extent permitted by law, this Warranty is exclusive and is in lieu of all other express or implied warranties, conditions and representations of merchantability or fitness for any particular purpose, whether statutory or otherwise.

7.2 Without limiting the generality of clause 7.1, no warranty is given and Komatsu disclaims and excludes all express and implied warranties, conditions and representations in respect of:

- (a) any Selected Powertrain Component not listed in the Rebuild Schedule;
- (b) any Part or Parts forming a portion of a Selected Powertrain Component in the Rebuild Schedule that Komatsu has confirmed in a Condition Report that is not within Komatsu's Reusability Guidelines, as set out in the Out of Scope Schedule;
- (c) Consumables;
- (d) Wear(able) Items;

- (e) attachments which are not manufactured and installed by Komatsu or for and on behalf of Komatsu, provided that nothing shall limit any warranties given independently to You by any manufacturer of such attachments;
 - (f) Machines, parts, attachments and components other than those supplied by Komatsu; or
 - (g) Defects caused or contributed to, or arising as a result of, or in connection with, any of the items in 7.2 (a) - (f) above.
- 7.3 The liability of Komatsu to You for loss, damage, injury or property damage, whether direct or indirect, special or consequential or otherwise, arising out of breach of this Warranty, shall be limited to requiring Komatsu to comply with clause 2.2.
- 7.4 Komatsu shall not be liable to You or to any other third parties in contract, tort or equity, for breach of any statute (to the fullest extent permitted by law) or in any other action, including but not limited to:
- (a) direct or indirect loss of profit or revenue, loss of use of any Machine, Part, part, component, or associated equipment, cost of capital, cost of substituted equipment, facilities or service, downtime costs, labour costs in connection with or arising out of the supply, performance or use of the Machine or Part or any service performed by Komatsu; or
 - (b) any direct or indirect losses or special or consequential loss or damage or otherwise of any kind whatsoever, arising directly or indirectly from any act, omission, breach, error, default, or delay of Komatsu or its employees or representatives in connection with, or arising out of, the supply, performance or use of the Machine or Part in the performance of, or in relation to this Warranty.
- 7.5 Nothing herein shall limit those provisions of the Competition and Consumer Act 2010 including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia which imply or guarantee certain conditions or warranties or impose obligations on Komatsu which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which Komatsu is entitled to do so, its liability under those statutory provisions shall be limited at its option to:
- (a) in the case of goods:
 - (i) the replacement of goods or the supply of equivalent goods; or
 - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of the goods; and
 - (b) in the case of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 7.6 Subject to clause 7.5, the benefits to you given by this Warranty are in addition to any other rights and remedies you may have as a consumer under a law in relation to the goods or services to which this Warranty relates. If you are acquiring goods from Komatsu as a "consumer" as defined under Australian Consumer Law, then Komatsu advises that its goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

8. Assignment or Transfer Subject to Condition

You shall not assign or transfer any of Your rights or obligations under this Warranty unless in accord with Komatsu's then current Warranty transfer procedure.

9. Governing Law

This Warranty is governed by the laws of New South Wales.

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