General Conditions of Maintenance and Repair

Last updated August 6, 2024

Scope of validity

These General Conditions of Maintenance and Repair (this “Agreement “) apply to work undertaken in connection with maintenance, repair, modification, and recommissioning of equipment (collectively, the “Service Works “).

This Agreement covers the plant location(s) and equipment in question and may not be applicable to an individual repair made solely per customer Purchase Order (not part of a long-term service agreement) and does not apply to any other location where the Customer might possess Komax Group Corporation (“Komax Group”) equipment. Additional locations or equipment must be covered under separate agreements or amended to this Agreement. Komax Group technical service personnel must accept and sign such change and the price will be adopted according to the in the Agreement agreed conditions.

If this Agreement is purchased to cover equipment after the initial warranty period has expired, the equipment must be inspected by Komax Group prior to Komax Group’s acceptance of this Agreement. All replacement parts and any maintenance procedures deemed a requirement for proper equipment function during the inspection must be completed or ordered by the Customer and confirmed by Komax Group before this Agreement will be considered valid. During these initial and subsequent acceptance inspections, the Customer is responsible for Komax Group travel and labor expenses.

Scope of performance

The scope of performance shall be set forth in Komax Group Order Acknowledgement and the work report of the service personnel.

Conclusion of contract

The Agreement shall be deemed to have been entered into upon the Customer’s receipt of Komax Group written acknowledgement stating Komax Group acceptance of the order (Order Acknowledgement) or Komax Group commencement of the Service Works.

Any conditions stipulated by the Customer which are in contradiction to the terms and conditions of this Agreement shall only be valid if expressly acknowledged by Komax Group in writing.

Plans, technical documentation, and computer programs

Each party to this Agreement retains all its rights to plans, technical documents and computer programs, including, without limitation, checking and test programs, provided to the other party. The party receiving such documents acknowledges these rights and shall not make these documents available to any third party, either in whole or in part, without the prior written consent of the other contracting party, nor use them for purposes other than those for which they were handed over.

Rights and obligations of the Customer

The Customer shall instruct Komax Group as to the irregularities, damage or deficiencies observed which make the Service Works necessary, or the Customer shall indicate the scope of inspection to be done by Komax Group.

The Customer-specific requirements relevant to the equipment in question shall be made available to Komax Group.

The Service Works shall be performed by Komax Group at the Customer’s premises or Komax Group premises, at Komax Group discretion. If the Service Works are carried out at the Customer’s premises, the Customer shall provide Komax Group personnel with suitable workshop facilities.

All spare parts used in connection with the Service Works shall be obtained by Customer in due time and placed at the disposal of Komax Group personnel in so far as they are not to be supplied by Komax Group pursuant to the Order Acknowledgement.

The Customer shall dismantle and transport the equipment in accordance with Komax Group instructions.

The Customer shall immediately inform Komax Group if special consideration is required in connection with third parties or other contractors, or if relevant regulations must be observed.

The Customer hereby represents and warrants that the Customer executes maintenance and cleaning work according to the manual.

If equipment is to be repaired at Komax Group premises, then the Customer agrees to deliver such equipment for service in accordance with the Return Material Authorization (RMA) procedures described below. Prior to returning any equipment to Komax Group, the Customer shall:

- Obtain a Komax Group RMA Number by the method agreed to by Komax Group and the Customer.

- Ship the equipment, transportation, and insurance pre-paid, to Komax Group and include with the equipment a written description of claimed damage or deficiencies. If the Customer chooses to decline the shipping insurance, it must be stated in writing to Komax Group.

- The equipment shall be packed in the original shipping container or comparable strong cartons.

- All freight charges for any shipment Komax Group to the Customer shall be the responsibility of the Customer, and Komax Group is hereby authorized to direct shipment carriers to bill all charges directly to the Customer or Komax Group can prepay the freight with the carrier and include the costs in the service invoice ("prepay and add") as agreed to by Komax Group and the Customer.

Rights and obligations of Komax Group

Komax Group shall carry out the Service Works in a workmanlike manner, using qualified personnel.

Komax Group will examine the scope of the Service Works to determine the amount of work and material required. If labor and/or material requirements exceed the agreed scope of the Service Works, such excess shall, unless objected to by the Customer prior to the commencement of the Service Works, also be provided and invoiced.

Komax Group shall be entitled to refuse to undertake the Service Works or to discontinue the same if the safety of personnel is not assured or the Customer does not fulfil its obligations.

Komax Group shall inform the Customer once the Service Works are completed. These notifications can be given orally at the time of completion or, if the Customer requests, in writing.

For reporting, the Customer shall make time available to Komax Group during working hours.

Notice of warning

The inspection findings, as well as any oral or written statements by Komax Group to the Customer concerning the condition, deployment, safety and usability of the equipment being serviced, as well as any reservations expressed in the same form in respect of orders, instructions or measures of the Customer or other factual circumstances, shall be deemed a notice of warning and shall exempt Komax Group from any liability.

Time schedule for performance

All indications concerning time-limits for performance are based on estimates and are not binding.

A binding time-limit for performance can be agreed upon only after the scope of the Service Works has been determined.

Any binding time-limit for performance shall be suitably extended upon the occurrence of any of the following events:

- If the instructions required by Komax Group to carry out the Service Works are not provided in suitable time, or if the Customer subsequently changes such instructions; or

- If the Customer does not comply with its contractual obligations, if it does not comply with the duties pursuant to **Rights and Obligations of the Customer**, or the terms of payment pursuant to **Terms of Payment** on time or in the proper manner; or

- In the case of circumstances beyond the control of Komax Group, including, without limitation, the threat or actuality of mobilization, war, civil war, rioting or sabotage, as well as labor disputes, accidents, illnesses, pandemic, action by any governmental authority including prohibition of imports or exports or a substantial increase in custom duties late or incorrect deliveries of necessary material, actions or omissions by local or state authorities, unforeseeable transportation hindrances, fire, explosion, or natural incidents.

  A time-limit shall be considered complied with, even though parts are missing, or readjustments still must be made, if operation for the intended purpose is possible and unhindered.

Pricing and supplementary costs

Unless otherwise agreed to by the parties, the Service Works shall be invoiced to the Customer according to the time spent and material used based on Komax Group rates. This shall also apply to the preparation of technical documents, inspection reports, expert's reports

and the evaluation of measurements and tests in connection with the order. The cost of materials also includes the costs of the use of special tools and equipment, as well as consumables and incidental material. Komax Group rates are subject to change upon prior notice to the Customer.

Travel times as well as a reasonable amount of preparatory time and winding up time after the journey which is necessary for compliance with this Agreement shall be deemed to be working time.

The Customer shall certify the performance by signing the respective reports. If the Customer refuses to grant certification without reason, or it is not granted in due time, the entries of Komax Group personnel shall serve as a basis for calculation.

All travel expenses of Komax Group incurred in connection with the performance of the Service Works, including, without limitation, transportation costs, hotel expenses and personnel daily allowances, shall be invoiced to the Customer.

The Customer shall be informed of the results of the inspection prior to the commencement of the Service Works. Any statements concerning the expected costs are estimates only and shall not be binding. Should the Customer, based on the inspection, not wish the Service Works to be executed, the costs incurred for the inspection as well as the disassembling and reassembling work shall be charged to the Customer.

The costs incurred for transportation, dismantling and installation shall be borne by the Customer.

Terms of payment

All amounts due to Komax Group shall be paid by the Customer within 30 days of the date of the invoice.

Payments are to be made in US dollars to Komax Group by the Customer without deductions of any kind (discount, expenses, taxes, fees, etc.).

The Customer shall be responsible for and shall pay to Komax Group, or if requested by Komax Group, directly to the taxing authority, all applicable taxes, fees, levies, imports, duties, withholdings or other charges (including any interest and penalties thereon but excluding taxes related to Komax Group income), if any imposed by any taxing authority by reason of the delivery of the Service Works.

The Customer is not allowed to withhold or decrease payments because of complaints, claims for counterclaims not accepted by Komax Group. The payments are also to be made should the Service Works be delayed or become impossible for reasons beyond the control of Komax Group.

If the Customer fails to make payment on the agreed dates, it shall – under the provision of other rights being claimed and without formal notice – be liable to pay interest on the overdue amount(s) from the date due at a rate equal to 10% per annum. Payment of default interest shall not release the Customer from paying the sums due under the terms of this Agreement.

Ownership, bearing of risk, and insurance

Unless otherwise agreed, replaced parts remain the Customer’s property.

The Customer bears the risk of damage to or loss of the equipment to be worked upon or any part thereof during performance of the Service Works, even if such incidents occur at Komax Group premises or during necessary transportation or storage.

It is the duty of the Customer to obtain insurance against losses of any kind.

If an environmentally appropriate disposal of replaced parts or of consumables (oils, gases, dust, etc.) resulting from the service is required, the Customer shall arrange it.

Warranty; liability for defects

Komax Group guarantees for a period of 1 month after the completion of the Service Works and in accordance with the following provisions that the work has been carried out in a workmanlike and careful manner.

In the event that the equipment worked upon, parts of the same or replacement parts delivered or installed under the terms of the Agreement prove to be defective or unusable during the warranty period, and if this proves to be due to poor performance of the Service Works or defective material supplied by Komax Group, then such parts shall either be repaired or replaced (as determined by Komax Group in its sole discretion) by Komax Group within a reasonable period of time, provided that such defects are notified to Komax Group in writing during the warranty period, and immediately upon their detection.

Komax Group shall be only responsible for deficiencies related to the work performed under its supervision by the Customer’s personnel if it can be proven that such deficiencies are attributable to gross misconduct of Komax Group personnel during instruction or supervision.

No warranty shall be provided if the Customer or a third party undertakes modifications or repairs without written permission from Komax Group, or if the Customer does not immediately take appropriate measures to reduce the possible damage.

For parts repaired under warranty, Komax Group shall provide warranty to the same extent as for the original Service Works but not beyond the warranty period of the original Service Works.

Komax Group disclaims all other warranties. Any other conditions, representations, or warranties inconsistent with or additional to the foregoing warranty, whether express or implied, by statute, common law or otherwise, are excluded. KOMAX GROUP DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitations of liability

Komax Group shall be liable to the Customer only for such property damage which its personnel have caused through its fault in the execution of the Service Works or during the repair of any deficiencies.

KOMAX GROUP'S TOTAL LIABILITY ARISING UNDER THIS AGREEMENT, WHETHER IN AN ACTION FOR CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE FEES PAID BY CUSTOMER TO KOMAX GROUP FOR THE SERVICES PERFORMED UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM.

UNDER NO CIRCUMSTANCES WHATSOEVER SHALL KOMAX GROUP BE LIABLE TO THE CUSTOMER FOR ANY PUNITIVE, INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED UPON LOST GOODWILL, LOST RESALE PROFITS, LOSS OF USE OF MONEY, WORK STOPPAGE, IMPAIRMENT OF OTHER ASSETS, OR OTHERWISE, AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, NEGLIGENCE, MISREPRESENTATION, OR OTHERWISE.

Term of Agreement

Except for individual orders, this Agreement may be terminated by either party without cause upon thirty (30) days prior written notice to the other party. Notwithstanding the immediately preceding sentence, this Agreement may be terminated effective immediately by the party described below upon the first to occur of the following events:

- by Komax Group, in the event the Customer fails to make any payment to Komax Group when due hereunder or any applicable invoice; or

- by the terminating party, if the other party fails to perform any material obligation, duty or responsibility under this Agreement, and such failure or default remains uncured for ten (10) days after written notice to the other party; or

- by the terminating party, if any conduct or proposed conduct of the other party exposes or threatens to expose the terminating party to any liability or obligation, under any federal, state or local law (in which case this Agreement shall terminate without notice, but the terminating party shall provide notice to the other party as promptly as practicable after it becomes aware of such termination); or

- by the terminating party, if the other party becomes insolvent or makes an assignment for the benefit of creditors or shall file or have filed against it a petition in bankruptcy or reorganization under the U.S. Bankruptcy Code or other applicable law providing for such relief.

Upon termination of this Agreement, (a) the due date of all undisputed amounts payable by the Customer to Komax Group shall be accelerated and shall become immediately due and payable as of the date of notice of termination, and (b) each party shall promptly return all property in its possession that rightfully belongs to the other.

No termination of this Agreement by any party shall constitute a waiver by such party of any claim it may have for damages caused by reason of any breach of or default under this Agreement. The rights of termination referred to in **Term of Agreement** are not intended to be exclusive and are in addition to any other rights and remedies available to either party at law or in equity. All rights and remedies under this Agreement may be exercised singularly or concurrently.

Governing law and forum

The agreement will be governed by the laws of either Illinois or New Hampshire law, excluding their conflict of law rules. Any legal action must be initiated within one year and one day after the cause of action has occurred. Disputes must be submitted toa court of competent jurisdiction in either Illinois or New Hampshire, and the Customer consents to the exclusive jurisdiction of such court.

Miscellaneous

If any provision of this Agreement or the application thereof to any persons or circumstances shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to persons or circumstances other than those to which it is held illegal, invalid or unenforceable shall remain in full force and effect and shall be construed so as to best effectuate the original intention of the parties

The failure or delay of either party at any time to insist on the other party's performance of any provision of this Agreement or to exercise any of its rights under this Agreement shall not be deemed a waiver thereof nor shall such failure or delay in any way prevent either party

from subsequently asserting or exercising such rights. Waiver of any provision of this Agreement by a party at any time shall not constitute a waiver of any other provision of this Agreement or a waiver of the same provision at any other time.

Neither Komax Group nor the Customer shall assign, transfer or delegate any of its rights, interests, or obligations under this Agreement without the other party's prior written consent, and any attempted assignment in violation hereof shall be null and void and of no effect whatsoever. Notwithstanding the foregoing sentence, Komax Group may utilize subcontractors and/or agents provided that Komax Group shall remain fully responsible for the actions of all subcontractors or agents. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, legal representatives and permitted assigns.

The section and paragraph headings contained herein are for reference only and shall not affect in any way the meaning or interpretation of this Agreement. The terms contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

This Agreement may be amended or modified only by a written instrument executed by each of the parties hereto.

During this Agreement and for a period of 12 months following the termination of this Agreement, the Customer, its parents, subsidiaries, affiliated companies and divisions and their employees, directors, managers and agents and other persons or entities over which it has control (the "Affiliates") shall not directly or indirectly, for the Customer's own account or for another person or entity, solicit the employment of any personnel of Komax Group without the prior written consent of Komax Group.

How to Contact Us

If you have any questions or comments about these Terms and Conditions or this site, please contact us by writing us at:

Komax Group Corporation
1100 East Corporate Grove Drive
Buffalo Grove, Illinois 60089-4507
United States of America
+1 847 537 6640
info.buf@Komax Groupgroup.com
https://www.Komax Groupgroup.com/en-us

Schleuniger N.A. Headquarters
87 Colin Drive
Manchester, NH 03103
+1 603 668 8117
Contact Us (schleuniger.com)
https://www.schleuniger.com

Komax Group Corporation
21605 Gateway Court
Brookfield, WI 53045
+1 262 252 4545
Sales.brf@Komax Groupgroup.com
https://www.Komax Groupgroup.com/en-us

Komax Group Corporation
9641 Plaza Circle Dr.
El Paso, TX 79927
+1 915 591 4551
info.buf@Komax Groupgroup.com
https://www.Komax Groupgroup.com/en-us

Komax Group de Mexico, S. de R.L. de C.V.
Av. Rio San Lorenzo #489, Parque Tecnoindustrial
Castro del
Rio, 5ta Etapa
C.P. 36814 Irapuato
Guanajuato
Mexico
+52 (462) 387-1200
sales.iro@Komax Groupgroup.com
https://www.Komax Groupgroup.com/en-mx

Cirris Inc. USA / Mexico
401 N 5600 W
Salt Lake City, UT 84116
info@cirris.com
https://cirris.com

Laselec Inc.
2605 N. Forum Drive
Grand Prairie, TX 75052
+1 847 460 7830
info.dfw@Komax Groupgroup.com
https://www.Komax Groupgroup.com/en-us

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