

## **KUEC Auction Membership Rules**

### **General Rule:**

Those who will participate in the KUEC Auction shall comply with this KUEC Auction Membership Rules.

KUEC may revise this KUEC Auction Membership Rules from time to time if necessary.

### **Section 1. Membership**

The KUEC Auction (hereinafter referred to as "the Auction") is available only to its registered members (hereinafter referred to as "Members" or individually a "Member"). Those who fall into one of the following items may obtain membership and be entitled to participate in the Auction.

- (1) Distributors, dealers, affiliated rental companies and similar legal entities of Komatsu Group,
- (2) Used-equipment dealers operating in Japan or overseas, who have ever traded with KUEC since its foundation and were approved by KUEC, or
- (3) Used-equipment dealers without any previous business relationship with KUEC who are allowed by KUEC to be new members (however, limited to certified used-equipment dealers).

### **Section 2. Registration**

An applicant for new membership registration, who does not fall into item (1) and (2) of Section1, shall follow the procedure outlined below:

1. Fill out and submit the Auction membership registration form issued by KUEC.
2. If KUEC approves the membership registration, KUEC requests the new Member to deposit tender bond.
3. The new Member shall deposit tender bond of 500,000 yen or the equivalent sum in U.S. dollars, by means of bank transfer into the bank account designated by KUEC, by the day before the Auction it will participate in. After depositing the tender bond, the new Member shall be notified of obtain an Auction registration number by KUEC.
4. KUEC keeps the tender bond as long as the Member retains its membership. If the Member becomes a successful bidder, it may have the tender bond released and credited against the purchase price. In this case, the Member shall redeposit the tender bond in order to participate in the next Auction. KUEC may at its discretion exempt particular Members from the redeposit requirements in consideration of such Member's past performance. However, KUEC shall refund the tender bond at the request of the Member. In this case, the membership shall be revoked and the relevant ex-Member shall apply for membership registration again to participate in the Auction.
5. In the case that the Member is liable to pay compensation to KUEC pursuant to Section 10.2, the tender bond which KUEC keeps will be appropriated for the compensation.

### **Section 3. Disqualification**

1. Members who have neither participated in the Auction for 2 years or more nor have any ordinary business with KUEC shall lose their membership.
2. Members may withdraw from their membership at their own discretion. KUEC will refund the remaining tender bond (if any) at the time of the withdrawal.
3. Once KUEC determines that a Member falls into the cases listed below, KUEC may unilaterally revoke its membership, without consent of the Member, after giving a prior notice. In such cases, KUEC shall not refund the remaining tender bond to the Member.
  - (1) If any false statement is included in the Auction membership registration form,
  - (2) If the Member violated any applicable laws, regulations or common commercial practices intentionally or by negligence or if it is very likely to violate them,
  - (3) If the Member violated any part or parts of KUEC Auction Membership Rules (hereinafter referred to as "the Rules") or if it is very likely to violate the Rules , or
  - (4) If KUEC determines that the Member should be disqualified for any reasons other than the above.

### **Section 4. Warranty and Indemnity**

1. Products put up for the Auction (hereinafter referred to as "Exhibits" or individually a "Exhibit") are traded "as is". KUEC and auctioneers do not provide any warranty for Exhibits. KUEC accepts no claim from Members concerning the performance, quality or alleged defect of Exhibits.
2. If any loss or damage is incurred or suffered by a third party from or in connection with any Exhibits after a successful bid, then it is the sole responsibility of the successful bidder to solve the problem at its own expense. KUEC shall not be liable for any such loss.
3. KUEC shall not be liable for any injury or any other damage to life, body or property of the participants in the Auction arising at the Auction site.

### **Section 5. Auction System**

1. Members have an opportunity to see and inspect the Exhibits on the inspection day designated by KUEC. Before participating in the Auction, Members are encouraged to make an inspection at their own expense and responsibility.
2. On the Auction day, Members receive a bidding card that carries their Auction registration number at the information desk and then participate in the Auction.
3. Members are not allowed to participate in the Auction for the Exhibits which they themselves offer for sale. KUEC strictly forbids re-purchase of such Exhibits. If such conduct is identified by KUEC, the relevant Member shall be forbidden from participating in the Auction thereafter.
4. The prices of all Exhibits are quoted on EX-stockyard of the relevant Auction site basis.
5. The Auction shall be operated in either the parade (bidding-up) system or tender system in Japanese yen.
  - (1) Parade auctions follow the procedure below:

- [1] Each Exhibit has a reserve price, which is a starting price of the auction. If no bidder raises a bidding card at the starting price, then the Auction for that Exhibit is handled as void.
  - [2] The conductor announces then current prices of the Exhibits and an electric bulletin board also displays them simultaneously. Those who display their bidding card are regarded as bidders.
  - [3] The prices of the Exhibits are set in the bidding-up system. The Auction continues until the last bidder, who is offering the highest price, is left. The last bidder becomes a successful bidder.
- (2) Tender auctions follow the procedures below:
- [1] Each Exhibit has a reserve price, which is the lowest acceptable tender price. If the highest bidding price does not reach the reserve price, then the Auction for that Exhibit is handled as void. Also, if no bidder appears, the Auction for that Exhibit is handled as void.
  - [2] A successful bidder is determined based on bid. A bidder is requested to enter its Auction registration number, company name and bidding price on the designated form and put it in the bidding box.
  - [3] The Member who offered the highest bidding price becomes a successful bidder. If there are more than two successful bidders, KUEC determines which one is winner by means of a lottery.
6. KUEC may at its own discretion resolve all disputes, controversies or differences arising with regard to the progress or procedure of the Auction.

#### **Section 6. Conclusion of Purchase Contract**

- 1. A purchase contract on an Exhibit between KUEC and the successful bidder shall be deemed concluded when the bidder successfully won the bid.
- 2. The successful bidder receives a confirmation form that shows the name and price of the Exhibit and promptly sign its name thereon.

#### **Section 7. Terms of Payment**

- 1. Members operating in Japan shall pay the price within 1 week after the last day of the Auction. The successful bidder shall pay, into the bank account designated by KUEC, the price of the subject product (hereinafter referred to as the "Purchased Product") as well as the consumption tax applicable under the Japanese law (currently 5% of the price) in Japanese yen.
- 2. Members operating overseas shall remit the price within 2 weeks after the last day of the Auction.
- 3. If the payment of the price stipulated in this Section (in case of members operating in Japan, within 1 week after the last day of the Auction, and in case of members operating overseas, within 2 weeks after the last day of the Auction) should be delayed, the successful bidder shall pay annual interest of 14 % to KUEC depending on the number of days delayed.
- 4. If no payment of the price is made within 30 days after the last day of the Auction, KUEC may cancel the purchase contract. In such cases, the successful bidder shall pay 20% of the price to KUEC as a liquidated damages.

#### **Section 8. Delivery of the Purchased Product and transfer of the ownership**

- 1. "Delivery" herein shall be considered to have been effected when the successful bidder completes the carrying-out of the Purchased Product of the Auction yard.
- 2. In case of the Members operating in Japan,
  - (1) The successful bidder shall carry the Purchased Product out of the Auction yard on his/her own responsibility within 30 days from the last day of the Auction, after completing the payment set forth in Section 7.
  - (2) KUEC shall arrange the Delivery of the Purchased Product to the successful bidder at the request thereof promptly after the payment of the price is confirmed.
  - (3) If the item (1) above should not be fulfilled within 30 days after the last day of the Auction, the successful bidder shall pay 1,000 yen per day as a storage cost for each item of the Purchased Products for the period from the Delivery date set forth in the item (1) above until the shipment thereof or the cancellation of the purchase contract are made.
- 3. In case of the Members operating overseas,
  - (1) After the payment of the price set forth in Section 7 is confirmed by KUEC, the successful bidder shall carry the Purchased Product out of the Auction yard on his/her own responsibility within 30 days from the last day of the Auction on the terms and conditions separately agreed between the successful bidder and KUEC, and KUEC shall arrange the Delivery of the Purchased Product to the successful bidder at the request thereof.
  - (2) If the item (1) above should not be fulfilled within 30 days after the last day of the Auction, the successful bidder shall pay 1,000 yen per day as a storage cost for each item of the Purchased Products for the period from the Delivery date set forth in the item (1) above until the shipment thereof or the cancellation of the purchase contract are made.
- 4. The ownership of the Purchased Product shall be transferred to the successful bidder upon the Delivery of the Purchase Product.
- 5. Risk of loss on the Purchased Product shall be transferred from KUEC to the successful bidder at the time of successful bidding unless otherwise agreed between the successful bidder and KUEC.

#### **Section 9. Export Control**

If the Purchased Product is used overseas or exported to overseas, the successful bidder shall take all the necessary actions at its own responsibility to comply with the import/export control laws and regulations of Japan and the destination countries as well as the provision of "Notice on export control" stipulated in the Exhibit List separately distributed at the Auction.

#### **Section 10. Cancellation and Indemnity**

1. Unless otherwise agreed in an individual purchase contract, KUEC may cancel a purchase contract if the successful bidder has violated any of the provisions of the Rules. When KUEC cancels the purchase contract, it shall not be obliged to treat the bidder who offered the second highest price as the successful bidder, and may dispose of the Purchased Product at its discretion.
2. Regardless of whether KUEC has exercised the cancellation right stipulated in the previous item, the successful bidder shall be liable to indemnify KUEC for damages or any losses if it has violated any of the provisions of the Rules.

**Section 11. Governing Laws**

The Rules and purchase contracts shall be construed and governed by the Japanese laws.

**Section 12. Discussion**

Issues that are not stipulated or decided by the Rules and questions concerning interpretation of the same shall be resolved through faithful discussion between KUEC and the Members concerned.

## Procedures and Terms of Auctions

### **1) Prices**

- (1) Prices of products put up for the Auction (hereinafter referred to as "Exhibits") are announced by the conductor in units of 10,000 yen and are also displayed on an electric bulletin board simultaneously.
- (2) The prices displayed on an electric bulletin board are accompanied by the equivalent prices in US dollars, but only for reference.
- (3) Exhibits are all traded "as is".
- (4) The prices of all Exhibits are quoted on EX-stockyard of the relevant Auction site basis and do not include the consumption tax (currently 5% of the price).
- (5) With regard to inland transport charges, shipping charges, wash charges and disassembly charges, refer to the attachment.
- (6) After a successful bid is made, cancellation of the bid for any reason is prohibited.

### **2) Warranty**

- (1) KUEC does not provide any warranty for Exhibits.
- (2) Specifications and description of Exhibits in this EXHIBIT LIST are presented only for your reference. KUEC shall not be liable for any errors in the specifications or description. You see and check Exhibits by yourself and then participate in the Auction.

### **3) Payment and Delivery of Purchased Product**

- (1) We accept payment only in Japanese yen.
- (2) Delivery herein shall be considered to have been effected when you, as the successful bidder, complete the carrying-out of the Purchased Product from the Auction yard.
- (3) If you are operating in Japan, you have to pay the price of the purchased product (hereinafter referred to as the "Purchased Product") within 1 week after the last day of the Auction. You have to carry the Purchased Product out of the Auction yard within 30 days from the last day of Auction, after completing the payment thereof.
- (4) If you are operating overseas, you have to remit the price within 2 weeks after the last day of the Auction. You have to carry the Purchased Product out of the

Auction yard within 30 days after the last day of Auction, after completing the payment thereof, on the terms and conditions separately agreed between you and KUEC.

#### **4) Notice on Export Control**

(1) Compliance with Export Control Laws and Regulations

In case of using the Purchased Product overseas or exporting the same from Japan, the successful bidder shall take all the necessary actions to comply with (i) the then current Foreign Exchange and Foreign Trade Law, Export Trade Control Order and Foreign Exchange Order (hereinafter collectively referred to as “Export Control Laws and Regulations”) as well as (ii) U.S. re-export regulations and (iii) other rules KUEC may furnish from time to time in writing.

In addition, the successful bidder is hereby requested to follow KUEC’s policy to refrain from promoting any trade that could conflict with (i) any resolutions of the United Nations or other reputable international conventions, (ii) any export related guidance notified by the government authority of Japan, or (iii) any principles, ethics or moral practices that are prevalent in the international business community.

(2) Use and Customers (including End-users, hereinafter collectively referred to as “Customers”)

The successful bidder shall commit himself neither to use the Purchased Product for any of the below mentioned purposes nor to re-transfer/resell to any individual or entity (including any government or governmental body, subdivision or agency) who will use the Purchased Product for such purposes or who is/has ever been engaged in related activities;

- [1] sale, development, production, use or storage of conventional weapons, weapons of mass destruction (including nuclear weapons, chemical weapons, biological weapons, and their dissemination devices, missiles and unmanned aircrafts for their delivery
- [2] sale, development, production, use or storage of those materials (including machine tools) related to the aforementioned weapons, devices and systems
- [3] other uses outside Japan for which prior approval of Japanese Ministry of Economy, Trade and Industry are necessary under the provisions of relevant export control laws and regulations

(3) Examination

After the successful bidder wins a bid, KUEC may examine the legitimacy under the Export Control Laws and Regulations of the successful bidder, Customers and intended use of the Purchased Product. Please note that KUEC might take the following actions as a result of such examination.

Depending on the laws and regulations of the countries of destination concerning environment protection, product safety and so on, the same rule as described above may apply.

- [1] extension of the delivery due date
- [2] imposition of certain restrictions on the resale by the successful bidder and/or the Customers
- [3] cancellation of the purchase contracts entered into between KUEC and the successful bidder

Without prejudice to the generality of the foregoing, and unless and until announced otherwise in the future, every successful bidder is expressly requested to obtain prior written approval of KUEC, in the form attached hereto, whenever it intends to resell the Purchased Product to Islamic Republic of Iran, Republic of the Sudan, Syrian Arab Republic or North Korea.

Please contact us for detailed procedures.

[Contact Number]

KOMATSU USED EQUIPMENT CORP.

Sales Support Dept. Auction Group

TEL : 045 (450) 5569 / FAX : 045 (450) 5568

E-mail : kuec-auciton@komatsu.co.jp

Please note that KUEC will not be liable for any damage incurred by the successful bidder as a result of any of the aforementioned prospective actions or definitive request.

(4) Customers

The successful bidder shall cause the Customers to abide by any of the terms and conditions stipulated in (1), (2) and (3) above.

## **5) Compliance with other regulations**

The successful bidder who exports the subject products from Japan shall comply with, in addition to Export Control Laws and Regulations specified in 4) above, the laws and regulations of the countries of destination concerning environment protection, product safety and so on, and shall complete all required steps (including without limitation required modifications, governmental approvals, etc.) in accordance with such laws and regulations.