

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Komatsu Forklift U.S.A., LLC (Komatsu), with its principal location at 8770 W. Bryn Mawr Ave., Suite 100, Chicago, Illinois 60631 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
- (2) Regulation. CARB adopted the "*Off-Road Large Spark Ignition Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2430-2439) (LSI Regulation) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from off-road spark-ignited large spark ignition (LSI) engines above 19 kilowatts, and equipment utilizing such engines.
- (3) Regulatory Provisions. The LSI Regulation requires all LSI engines that are manufactured for sale, sold, or offered for sale in California, or introduced, delivered, or imported into California for introduction into commerce to be covered by an Executive Order showing the engine meets the exhaust emission standards as determined; was properly tested following all required test procedures; contains an emission control label; meets all defect warranty requirements; and compliance with the reporting requirements. (Cal. Code Regs., tit. 13, § 2430-2439.)
- (4) Statutory Provision No person who is engaged in this state in the business of selling to an ultimate purchaser or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell, or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease, offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action. (Health & Saf. Code § 43153.)
- (5) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty thousand two hundred and fifty dollars (\$40,250.00 USD) for each strict liability violation of the

LSI Regulation, respectively, for each noncompliant engine or equipment. (Cal. Code Regs., tit. 13, § 2437; Health & Saf. Code § 43016; Health & Saf. Code § 43154.)

### CASE BACKGROUND

- (6) Corporate Entity. At all relevant times, Komatsu was organized under the laws of Delaware as a Corporation and conducted business in the State of California.
- (7) Allegations. This Settlement Agreement resolves Notice of Violation EPES-2021-C00609 which was issued on February 14, 2022. CARB alleges Komatsu violated the LSI Regulation by delivering or importing into California for introduction into commerce in California LSI engines in California that failed to comply with the requirements of the LSI Regulation by failing to obtain an Executive Order pursuant to the certification requirements and protocols (Cal. Code Regs., tit. 13, § 2430(a)(2)), meet the exhaust emission standards (Cal. Code Regs., tit. 13, § 2433), resulting in 37 violations, as outlined in Notice of Violation EPES-2021-C00609. CARB alleges that if paragraphs 1 through 7 were proven, civil penalties could be imposed against Komatsu for each and every vehicle involved in the violations and each day.
- (8) Acknowledgment. Komatsu admits to the facts in paragraphs 1 through 7, but denies any damages or liability resulted from said allegations.
- (9) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Komatsu has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Komatsu for the alleged violations referred to above in the Legal Background and Case Background, and Komatsu's agreement to complete all terms and conditions set forth below, CARB and Komatsu agree as follows:

- (10) Settlement Amount. Komatsu shall pay a civil penalty of eighteen thousand five hundred dollars (\$18,500.00 USD). Komatsu shall make all payments within thirty (30) calendar days from the date CARB notifies Komatsu of the full execution of the Settlement Agreement.
- (11) Civil Penalty Payment Method. Komatsu shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided

separately by CARB in a Payment Transmittal Form. Komatsu is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Komatsu in accordance with Paragraph 13 (Notices).

- (12) Documents. Komatsu shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, and a copy of the Payment Transmittal Form, to the physical address or email address in Paragraph 13 (Notices).
- (13) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Vehicle, Parts & Consumer Products Enforcement Branch / Engine and  
Parts Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Komatsu:

Komatsu Forklift U.S.A., LLC  
8770 W. Bryn Mawr Ave., Suite 100  
Chicago, Illinois 60631  
Email: Taimoor.Khan@global.komatsu

As to Komatsu's Legal Representation:

Komatsu America Corp.  
Office of the General Counsel  
8770 W. Bryn Mawr Ave., Suite 100  
Chicago, Illinois 60631  
Email: molly.foley@global.komatsu

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (14) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Komatsu shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (15) Repeat Violations. Komatsu agrees to comply with all applicable regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future. Komatsu has assured CARB that it has taken actions to prevent recurrence of issues that led to the allegations. Komatsu agrees to remove any future LSI engines that do not meet the LSI regulation from California as a result of any of Komatsu's failed system restrictions.
- (16) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 8 pages and 34 paragraphs.
- (17) Binding Effect. This Settlement Agreement binds Komatsu, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (20) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (21) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (22) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (25) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of full payment of the civil penalty and all other undertakings above, CARB hereby releases Komatsu and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (30) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty thousand four hundred fifty dollars (\$40,450.00 USD) per action under Health and Safety Code sections 43016 and 43154, for violations of the LSI Regulation. (Cal. Code Regs., tit.13, § 2437; Health & Saf. Code § 43016; Health & Saf. Code § 43154.) The penalty in this case is eighteen thousand five hundred dollars (\$18,500.00 USD). The per unit penalty in this case is approximately \$500 per

noncompliant engine. The penalty amount was reduced based on the Mitigating Factors described below in paragraph 32.

- (31) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the LSI engines did not meet the regulatory requirements, all of the emissions from them are presumed to be noncompliant.
- (32) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

Mitigating factors in this case include but are not limited to the following specific examples, one or more which may apply to each specific issue:

- (a) Komatsu voluntarily disclosed the alleged violation herein to CARB within 21 days of its discovery;
  - (b) Komatsu came into compliance quickly by expeditiously replacing all of the allegedly noncompliant forklifts in California with CARB certified forklifts, and fully cooperated with the investigation;
  - (c) Komatsu has taken specific action to prevent recurrence of the allegations by updating its systems and providing employee training; and
  - (d) Komatsu's compliance history with CARB.
- (33) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Komatsu or confidential settlement communications.

(34) Effect of Settlement/Reservation of Rights. The following shall apply:

- (e) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (f) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Komatsu with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Komatsu with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Komatsu to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (g) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Komatsu shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (h) This Settlement Agreement does not limit or affect the rights of Komatsu or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Komatsu, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (i) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Komatsu is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Komatsu's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Komatsu's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: September 27, 2022

**Komatsu Forklift U.S.A., LLC**

Signature: /S/

Name: Eiji Fukuda

Title: President

Date: September 20, 2022