



CUMMINS SALES AND SERVICE PHILIPPINES INC.
WHOLLY OWNED SUBSIDIARY OF CUMMINS INC. U.S.A.
CONDITIONS OF SALES FOR MERCHANDISE AND SERVICES

All Merchandise and Services supplied by Cummins Sales And Service Philippines, Inc. (alternatively "CSSPI" or the "Seller") to the Customer are governed by the following terms of CSSPI:-

In these terms of sale, unless the context otherwise requires, the following expressions shall have the meaning set out against them:

"Document" includes but is not limited to the quotation form, confirmation order, invoice or receipt of the Seller where terms of sale appear.

"VAT" means the Value Added Tax chargeable pursuant to the National Internal Revenue Code, as amended.

"Merchandise" means goods, chattels, plant, equipment, machinery, stores, parts or components sold by the Seller.

"Party" means either the Seller or the Customer and "Parties" means the Seller and the Customer.

"Shipment" means the form or method of transporting the Merchandise whether by post, air express, air freight, rail, truck, road, ocean freight, or a combination of the above forms of transportation.

"Shipping Documents" include but is not limited to bills of lading, airway bills, postal receipts, commercial and consular invoices, delivery orders addressed to Transportation companies, customs or postal authorities, or to any other person or firm and also drafts, certificates of insurance, contracts or bills of sales, or any other Document similar to these by which delivery of the merchandise is effected to the Customer by the Seller together with the ownership and legal title thereto.

"Services" means such services (including but not limited to labor and work performed) rendered by the Seller to the Customer.

"Taxes" means any tax, including but not limited to VAT, withholding tax or duties of whatever nature, present and future, together with interest thereon and penalties in respect thereof.

1. Reference to the Parties hereto include their permitted assignees and/or the respective successors in title to substantially the whole of their respective undertakings.
2. Reference to any statute or statutory provision or order or regulation made thereunder include that statute, statutory provision, order or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date hereof.
3. References to persons shall include bodies corporate and unincorporated, association, partnerships and individuals. References to the singular shall include the plural and vice-versa.
4. The ownership of the Merchandise shall remain vested in the Seller unless and until the purchase price of the Merchandise has been paid to and received in full by the Seller.
5. If the Customer insures the Merchandise, the Customer agrees to ensure that the insurance policy will cover and protect the interests of the Seller as Owner of the Merchandise until such ownership no longer belongs to the Seller.
6. It is agreed that all persons including but not limited to the Customer, shipper, carrier or other third parties such as banks, transport companies, customs agents are, in respect of the Merchandise, subject to the directions or instructions of the Seller so long as ownership of the Merchandise vests in the Seller.
7. The Seller, as owner of the Merchandise, shall have the exclusive right to control the shipment; including the right to take possession thereof even though the same may, for the time being, be in the possession of third persons, such as banks, transport, companies, customs officials, or the Customer.



CUMMINS SALES AND SERVICE PHILIPPINES INC.
WHOLLY OWNED SUBSIDIARY OF CUMMINS INC. U.S.A.
CONDITIONS OF SALES FOR MERCHANDISE AND SERVICES

8. None of the following shall modify, restrict, alter or otherwise affect the Seller's right and/or status as owner of the merchandise to control the Shipment of such Merchandise:-
 - (i) The form or method of Shipment.
 - (ii) The form or method, including but not limited to time and place in which the Shipping Documents are endorsed or delivered.
 - (iii) That the Shipment is consigned to the Seller or to its order, or to the shipper or the Customer or carrier of their order, or to some third person such as but not limited to a bank, customs agent, transport company, or to an employee or agent of the Seller or the Customer.

9. All risk of Shipment, prior to delivery of the Merchandise at the address agreed by the Parties or at such other place as the Seller has agreed in writing to deliver the Merchandise or, where overseas Shipment is necessary to or from Philippines, prior to the port of entry or country of destination, whichever is earlier, will be borne by the Seller. Thereafter the risk passes to the Customer and the Customer will be liable for all and any damage to or loss of the Merchandise and shall not be absolved from any of its liabilities by reason of such damage or loss.

10. (a) Unless otherwise agreed in writing,
 - (i) payment shall be made to the Seller in the United States Dollar or Philippine Peso currency to a bank account in Philippines designated by the Seller and the Customer shall be responsible for any and all charges and fees in connection with the bank transactions; and
 - (ii) the Customer shall also pay to the Seller in full within thirty (30) days from the date of the Seller's invoice (or such time as otherwise agreed upon in writing by the Seller), failing which interest at the rate of two (2)% per month may be imposed by the Seller on all amounts unpaid and overdue.

(b) The fees for Services supplied shall be computed in accordance with the Seller's rates if not otherwise agreed in writing with the Customer.

(c) There shall not be any deduction, other than for the applicable withholding tax on sale of goods or services, as the case may be, for or on account of Taxes, duties or other levies.

(d) There shall also be no retention, setoff or deferral whatsoever and time shall be of the essence with respect to all payments to the Seller.

(e) All payments due to the Seller under this Agreement, once made by the Customer, shall not be refunded or refundable (whether in whole or in part) to the Customer, whether or not the Merchandise and/or Services have been supplied (in whole or in part) by the Seller. This shall include but not be limited to where (i) the Customer cancels the purchase of the Merchandise and/or Services (in whole or in part); or (ii) this Agreement is terminated by the Customer for any reason whatsoever.

11. All extra costs not already specifically agreed upon by the Parties, such as Taxes, duties, costs for extra work done, or cost for tests, inspections or installation in respect of the Merchandise and/or the Services shall be wholly and solely borne by the Customer who shall also be responsible for the payment of the same in compliance with all applicable laws. The Customer further agrees to reimburse without delay and indemnify the Seller if the Seller first pays for these costs.

12. If for any reason the Customer is unable or unwilling to take delivery of the Merchandise at the address agreed by the Parties or at such other place as may be notified by the Customer in writing, or, where overseas Shipment is necessary, the port of entry and/or country of destination whichever is sooner,



CUMMINS SALES AND SERVICE PHILIPPINES INC.
WHOLLY OWNED SUBSIDIARY OF CUMMINS INC. U.S.A.
CONDITIONS OF SALES FOR MERCHANDISE AND SERVICES

- (i) the Seller reserves the right to sell or deal with or dispose of the Merchandise in such manner as the Seller thinks fit without prejudice to the Seller's right to claim damages; and/or
 - (ii) the Seller may, pending such sale, dealing or disposal or the Customer taking delivery of the Merchandise, store the Merchandise at such premises as the Seller thinks fit and the Customer shall be liable to pay and indemnify the Seller for all costs (including storage and insurance) incurred in this connection; and/or
 - (iii) the Seller may terminate this Agreement without any liability whatsoever and any and all down-payment(s)/deposit(s) made by the Customer shall be forfeited to the Seller.
13. Without prejudice to the Seller's rights as set out in Clause 12 above, in the event that the Customer is unable or unwilling to take delivery of the Merchandise (or any part thereof) at the address as may be notified by the Customer in writing and agreed to by the Seller, or, where overseas Shipment is necessary, the port of entry and/or country of destination whichever is sooner, this Agreement shall automatically terminate after one (1) year (or such other period as agreed by the Seller in writing, whichever period is longer), after the Seller's first written notification to the Customer to take such delivery and any and all down-payment(s)/deposit(s) made by the Customer shall be forfeited to the Seller.
14. The Seller reserves the right at any time to, without incurring any liability whatsoever, (a) discontinue the manufacture of any Merchandise and/or (b) make changes in design and/or (c) to add improvements to any Merchandise without incurring any obligation to install the same on Merchandise previously manufactured or sold by it.
15. The Customer shall provide all relevant information, access and assistance to the Seller as may be necessary for the Seller to provide the Services.
16. The Seller reserves the right at all times to deploy or assign its staff and their replacements, if applicable, to perform the Services in its sole and absolute discretion. The Seller may delegate the performance of the Services (or any part thereof) to any agent or subcontractor, subject to notifying the Customer.
17. (a) The receipt of information from the Customer and the delivery by the Seller of the Merchandise does not in any way imply a warranty or any other obligation or liability on the part of the Seller that the Merchandise will be suitable for a particular purpose.
- (b) The only warranty which the Seller makes in connection with the Merchandise is that which is specifically and expressly agreed in writing by the Parties, if any. There is no other warranty from the Seller and where any warranties implied by law can be negated by contrary express provision, such warranties are hereby excluded.
- (c) All implied warranties with regards to the Seller's performance or provision of the Services are hereby disclaimed and excluded to the fullest extent permitted by law.
18. Delivery of Merchandise is subject always to the availability of stocks.
19. (a) The Seller shall not be liable for delay in performing or for failure to perform its obligations if the delay or failure results from any the following:
- (i) Act of God,
 - (ii) outbreak of hostilities, riot, civil disturbance, act of terrorism,
 - (iii) the act of any government or authority (including refusal or revocation of any license or consent or declaration of martial law),
 - (iv) fire, explosion, flood, fog or bad weather,



CUMMINS SALES AND SERVICE PHILIPPINES INC.
WHOLLY OWNED SUBSIDIARY OF CUMMINS INC. U.S.A.
CONDITIONS OF SALES FOR MERCHANDISE AND SERVICES

- (v) power failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles,
- (vi) default of manufacturers, suppliers or subcontractors,
- (vii) theft, malicious damage, strike, lockout or industrial action of any kind; and/or
- (viii) any cause or circumstance beyond the Seller's reasonable control.

(b) In the event of any delay arising from any reason mentioned in Clause 19(a), the date of delivery shall be extended for a period equal to the time lost by the reason of the delay provided that in the event the delay continues for a period in excess of thirty (30) consecutive days, either party shall have the right to treat the contract as discharged.

20. No failure or delay by any party in exercising any right or remedy provided by law under or pursuant to the contract shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy. The rights and remedies of any party under or pursuant to the contract are cumulative, may be exercised as often as such party considers appropriate and are in addition to its rights and remedies under general law.

21. The Seller is entitled to terminate the contract if:-

- (i) there are monies due and owing by the Customer to the Seller whether under the contract as evidenced or constituted or Document or any other contract of otherwise; or
- (ii) the Customer commits any breach of any of the provisions of the contract and, in the case of a breach capable of remedy, fails to remedy the same within 14 days after receipt of a written notice from the Seller requiring it to be remedied; or
- (iii) there is any unsatisfied judgement against the Customer; or
- (iv) any bankruptcy or winding up proceeding has been instituted against the Customer or a Receiver; or
- (v) a Receiver and Manager has been appointed over any asset of the Customer; or
- (vi) the Seller is of the reasonable view that circumstances exist which puts the Customer's ability to pay the Seller in doubt; or
- (vii) The Customer ceases, or threatens to cease, to carry on business; or
- (viii) The Customer or any person employed or engaged by the Customer or any person purporting to act on the Customer's behalf has done any act or omission which contravenes any law for the suppression of corrupt practices.

22. Clause 21 is without prejudice to any other rights and remedies available to the Parties under the contract, at law or equity.

23. In the event of termination of the contract, the Seller shall be entitled to be paid for all work performed and material purchased prior to the date of termination, all works in progress, as well as and for any commitments already entered into by the Seller on customer request prior to the date of such termination.

24. Important Notice: Limitation of damages and limitation of liability

Subject to Clause 25, the Parties agree that:-

- 24.1 The Seller's total liability for all losses, costs, expenses and damages arising out of or in connection with the sale, supply, delivery or installation of the Merchandise and/or the performance and/or provision of the Service, regardless of the form of action that imposes liability, whether in contract, equity, negligence, tort or otherwise, shall be limited to and shall not exceed a maximum aggregate amount of the amount paid to the Seller for all demands,



CUMMINS SALES AND SERVICE PHILIPPINES INC.
WHOLLY OWNED SUBSIDIARY OF CUMMINS INC. U.S.A.
CONDITIONS OF SALES FOR MERCHANDISE AND SERVICES

claims, actions and cause of action which may be brought against the Seller, its officers, employees, agents and sub-contractors.

- 24.2 To the extent permissible under applicable laws, in no event shall the Seller be liable for special, indirect, incidental or consequential damages including, without limitation, any losses or damages for death, personal injury or resulting from loss of use or loss of profit arising out of or in connection with the sale, supply, delivery or installation of any Merchandise and/or the performance and/or provision of Services, even if the Seller has been advised of the possibility of such losses or damages. The Customer should accordingly consider insuring for such potential losses and expenses referred to in this sub-clause;
- 24.3 Further and in conjunction with Clause 24.1 above, the Customer shall indemnify and hold harmless the Seller from any claim by any third party against the Seller in relation to the Merchandise or Services unless such loss or damage were caused by the wilful deliberate act calculated to cause damage or gross negligence on the part of the Seller; and
- 24.4 Any claim against the Seller shall be made in writing by the Customer to the Seller within a period of **one year** from such time that such Merchandise is delivered or when the Services are provided to the Customer and further provided that such claim is made within **30 days** from discovery of the reason giving rise to the claim. Where a claim is not made within the time frame specified in this sub-clause, the Customer shall unconditionally waive its rights to make any claim against the Seller.
25. If the Customer takes delivery of the Merchandise without written protest or reservation of the Customer's right, then the Customer is deemed to waive all claims for damages or otherwise by reason of any delay.
26. The rights and obligations of this contract are not transferable without prior consent of the Seller.
27. The terms specified herein form the entire agreement and understanding between the Parties in connection with the provision of the Merchandise and/or Services unless expressly revoked or terminated in writing by the Parties, and take precedence over and supersede any conflicting or special terms set forth in any document from or on behalf of the Customer. Any quotation, purchase order, discussion, communication or correspondence on the sale or supply of Merchandise is subject to confirmation and agreement by the Seller which shall be by way of a confirmation order from the Seller and there shall be no other term except as stated in or specifically referred to in the confirmation order from to the Seller.
28. No cancellation or revocation by the Customer in respect of the Merchandise and/or Services (or any part thereof) shall be permitted, accepted or deemed to be binding unless with the express written consent of the Seller and subject always to such conditions as the Seller shall in its sole discretion deem fit.
29. No variation of any of these terms shall be binding on either the Customer or the Seller unless such variation is agreed to in writing.
30. The contra proferentum rule shall not apply to this Agreement.
31. If the Contract or any of its provisions is or is held to be illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the Contract or such provision in any other jurisdiction or the legality, validity or enforceability of any other provision of the Contract in this or any other jurisdiction.



CUMMINS SALES AND SERVICE PHILIPPINES INC.
WHOLLY OWNED SUBSIDIARY OF CUMMINS INC. U.S.A.
CONDITIONS OF SALES FOR MERCHANDISE AND SERVICES

32. The Customer acknowledges that any Merchandise the Customer receives from the Seller may be subject to export control, sanctions, laws and regulations (including without limit, those of the U.S, E.U, United Kingdom and Singapore) and Cummins policies that control or restrict the export of goods ("Export Restrictions"). The Customer shall comply with all Export Restrictions as they apply to the Customer, and shall not cause the Seller or its affiliates to be in breach of any Export Restrictions. In particular, the Customer agrees not, unless written consent is obtained from CSSPI in advance, to (i) use the Merchandise or supply the Merchandise for use, in the production, operation, maintenance or related use of any chemical, biological or nuclear weapon or explosive device, or their delivery systems, or for any military purpose (ii) use, sell, export, make available or otherwise deal with the goods in any country (including but not limited to Cuba, Iran, North Korea, Myanmar, Sudan or Syria) subject to a specific Export Restriction or (iii) sell, export or make available the goods to any part restricted by the Export Restrictions. Where fulfilling any order from the Customer may violate any Export Restrictions, the Seller shall be entitled to cancel that order at any stage without any liability. In its contracts with any third party involving the Merchandise, the Customer agrees to impose on such third party, the same obligations and requirements imposed on it by the Seller in this clause. The Customer shall indemnify the Seller for all claims, losses, expenses or damages arising from or related to such failure by the Customer to fulfill its obligations under this Clause 33.
33. The Customer agrees not to violate and not to cause the Seller to violate any provisions of the U.S. Foreign Corrupt Practices Act and any equivalent laws or regulations. The Customer further agrees to take best efforts to ensure that any person employed or engaged by the Customer or any person purporting to act in the Customer's behalf does not engage in any act or omission which contravenes any law for the suppression of corrupt practices. The Customer shall indemnify the Seller for all claims, losses or damages arising from or related to such failure by the Customer to fulfill its obligations under this Clause 34.
34. This contract shall be governed by and construed in all respects in accordance with the laws of the Republic of the Philippines.
36. Any dispute, controversy or claim (the "**Dispute**") which may arise out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be resolved by negotiation and consultation by the Parties in good faith, which shall be deemed to commence on the date that a Party sends to the other Party a written notice of a Dispute.

37. Arbitration

- (a) Any Dispute not resolved within a period of sixty (60) days from the date of the sending of the written notice of such Dispute, or in the event that a Dispute arises from, or in connection with, this Clause 37, such Dispute shall be exclusively resolved by arbitration in accordance with the provisions stated in the succeeding provisions.

Any Dispute not resolved through the procedure set forth in Clause 36 shall be referred to, and finally settled by, binding arbitration in accordance with the Arbitration Rules of the Philippine Dispute Resolution Center, Inc. ("**PDRCI**") then in effect, and the details in respect of the conduct of such arbitration shall be as follows:

- (i) The number of arbitrators shall be three (3);
(ii) The Parties shall each appoint one (1) arbitrator and the two (2) appointed arbitrators shall appoint the third (3rd) arbitrator, who shall be the Chairperson;
(iii) The place of arbitration shall be Metro Manila, Philippines; and
(iv) The language to be used in the arbitration proceedings shall be English.



CUMMINS SALES AND SERVICE PHILIPPINES INC.
WHOLLY OWNED SUBSIDIARY OF CUMMINS INC. U.S.A.
CONDITIONS OF SALES FOR MERCHANDISE AND SERVICES

Any award of the arbitrator(s) shall be final and binding and not subject to appeal.

(b) The arbitral tribunal shall have the authority to award any remedy or relief proposed by the claimant(s) or respondent(s) pursuant to this Contract, including without limitation, a declaratory judgment, specific performance of any obligation created under this Contract or the issuance of an injunction.