

PLANNED MAINTENANCE AGREEMENT TERMS AND CONDITIONS (Canada)

These Planned Maintenance Agreement Terms and Conditions, together with the Planned Maintenance Quote and Agreement (the "Quote") attached to these terms and conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified in the Quote and Cummins Canada ULC (hereinafter referred to as "Cummins") and supersedes any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. In the event of any inconsistency between this Agreement and any purchase order, terms and conditions or other document produced or delivered by Customer, the terms and conditions of this Agreement shall take precedence. Either party may terminate this Agreement with or without cause by providing thirty (30) days written notice to the other party.

- 1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES.** Cummins shall perform the planned maintenance services ("Services") on the equipment identified in the Quote ("Equipment") in accordance with the schedule specified in the Quote. The Services shall include those services defined in the "Service Event" section of the Quote. No additional services or materials are included in this Agreement unless agreed upon by the parties in writing. Unless otherwise indicated in the Quote, Cummins will provide the labour and tools necessary to perform the Services and shall keep Customer's property free from accumulation of waste materials caused by Cummins' operations. Cummins has licenses, authorizations, or registrations necessary to perform the Services.
- 2. ON-CALL SERVICES.** Upon Customer's request, Cummins shall provide additional services (including repair and emergency work, which are not included in the Services) on the Equipment ("On-call Services"). Any On-call Services shall be invoiced to the Customer at the Cummins current hour rate (including traveling) and shall be governed by the terms and conditions of this Agreement.
- 3. CUSTOMER OBLIGATIONS.** Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. CUSTOMER IS RESPONSIBLE FOR OPERATING AND MAINTAINING THE EQUIPMENT IN ACCORDANCE WITH THE OWNER'S MANUAL FOR THE EQUIPMENT.
- 4. INVOICING AND PAYMENT.** Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Services. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law, whichever is lesser. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins.
- 5. TAXES; EXEMPTIONS.** Unless otherwise stated, the Quote excludes all applicable local, provincial and/or federal sales and/or use taxes, permits and licensing.
- 6. DELAYS.** Cummins shall not be liable for any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, or labour disputes.
- 7. LIMITED WARRANTY.** Cummins shall perform the Services in a reasonable and workmanlike manner. Parts and components purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for parts or components supplied during Services provided under this Agreement is provided under this Agreement. All Services shall be free from defects in workmanship for a period of ninety (90) days after completion of Services. In the event of a warrantable defect in workmanship of Services supplied under this Agreement ("Warrantable Defect"), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New parts supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such parts. THE REMEDIES PROVIDED IN THIS LIMITED WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS AND CUMMINS INC. TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THIS LIMITED WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS AND CUMMINS INC. EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE OR NON-INFRINGEMENT AND ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE, SUITABILITY, MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, DURABILITY, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.
- 8. INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Cummins and Cummins Inc. from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins and/or Cummins Inc. related to or arising out of this Agreement or the Services, or parts supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity, including any tenders for defense and indemnity by Cummins to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.
- 9. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, CUMMINS INC. AND/OR THEIR DIRECT OR INDIRECT SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY GENERAL, PECUNIARY, NON-PECUNIARY, INDIRECT, ECONOMIC, SPECIAL, COMMERCIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, LOSS OF OPPORTUNITY, AND/OR DAMAGES CAUSED BY DELAYS OR A FAILURE TO REALIZE EXPECTED SAVINGS) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF PARTS OR SERVICES UNDER THIS AGREEMENT. CUSTOMER WAIVES AND RELEASES CUMMINS AND CUMMINS INC. OF AND FROM ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, EXPENSE OR INJURY, INCLUDING DEATH, WHICH CUSTOMER OR ANY THIRD PARTY MAY SUFFER IN ANY WAY RELATED TO OR ARISING FROM SERVICES OR PARTS PERFORMED OR SUPPLIED BY CUMMINS OR CUMMINS INC. UNDER THIS AGREEMENT DUE TO ANY CAUSE WHATSOEVER, INCLUDING ANY ACT, OMISSION, FAULT, NEGLIGENCE, BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE OWED BY CUMMINS OR CUMMINS INC. IN NO EVENT SHALL CUMMINS' OR CUMMINS INC.'S LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY, THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED \$100,000.
- 10. CONFIDENTIALITY.** Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.
- 11. GOVERNING LAW AND JURISDICTION.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the Province of Canada where the Cummins branch supplying the Goods or Services under this Agreement is geographically located. With respect to any dispute, claim or controversy in any way related to or arising from this Agreement, including any dispute, claim or controversy in any way relating to or arising from the Goods or Services supplied under this Agreement, the parties irrevocably attorn to the sole and exclusive jurisdiction of the courts of the Province of Canada where the Cummins branch supplying the Goods or Services under this Agreement is geographically located.
- 12. ENUREMENT AND ASSIGNMENT.** This Agreement shall enure to the benefit of Cummins Inc. and its direct and indirect subsidiaries, affiliates and distributors and their directors, officers and employees. This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.
- 13. INTELLECTUAL PROPERTY.** Any intellectual property rights created by Cummins in the course of the performance of any Agreement or otherwise shall remain Cummins' property. Nothing in these conditions shall be deemed to have given Customer a licence or any other rights to use any of the intellectual property rights of Cummins.
- 14. MISCELLANEOUS.** All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or invoice. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof.
- 15. LANGUAGE.** Les Parties se sont entendues pour que la présente entente soit écrite en anglais. The Parties agree that this Agreement shall be drafted in English.