

## EXTENDED WARRANTY PROPOSAL TERMS AND CONDITIONS

These extended warranty proposal terms and conditions ("Terms and Conditions"), together with the Extended Warranty Proposal on the front side, and the Warranty Statement, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the Extended Warranty Proposal ("Customer") and Cummins Inc. ("Cummins") and supersede any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Customer's payment of any amounts due to Cummins; or (iv) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver or serves to explain or interpret this Agreement. Electronic transactions between Customer and Cummins will be solely governed by this Agreement, and any terms and conditions on Customer's website, vendor portal, or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, vendor portal terms, specifications, agreement (whether upstream or otherwise), or any other terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

**1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES.** Cummins shall provide the extended warranty coverage ("Warranty Coverage") on the equipment identified in the Extended Warranty Proposal ("Equipment") in accordance with the details specified in the Extended Warranty Proposal. The Warranty Coverage is limited to the coverage, responsibilities, and obligations detailed in the Warranty Statement. No additional services, obligations, or materials are included in this Agreement unless agreed upon by the parties in writing. Unless otherwise indicated in the Extended Warranty Proposal, Cummins will provide the labor and tools necessary to perform warrantable repairs pursuant to the Warranty Statement and shall keep Customer's property free from accumulation of waste materials caused by Cummins' operations. Either party may terminate this Agreement with or without cause by providing thirty (30) days' written notice to the other. Unless otherwise agreed by Cummins in writing, this Extended Warranty Proposal is valid for a maximum period of sixty (60) days from the date appearing on the first page of this Extended Warranty Proposal ("Proposal Validation Period"). At the end of the Proposal Validation Period, this Extended Warranty Proposal will automatically expire unless accepted by Customer prior to the end of the Proposal Validation Period. The foregoing notwithstanding, in no event shall this Proposal Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Extended Warranty Proposal at any time prior to Customer's acceptance.

**2. CUSTOMER OBLIGATIONS.** Customer shall provide Cummins safe access to Customer's site and arrange for all services and utilities necessary for Cummins to perform in accordance with the Warranty Coverage. During the performance of any 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 facility occupants, customers, invitees, or any third party and or property damage or work interruption arising out of any services Cummins may perform hereunder. Customer shall make all necessary arrangement to address and mitigate the consequences of any electrical service interruption which might occur during execution of this Agreement. **CUSTOMER IS RESPONSIBLE FOR OPERATING AND MAINTAINING THE EQUIPMENT IN ACCORDANCE WITH THE OWNER'S MANUAL FOR THE EQUIPMENT.**

**3. PAYMENT TERMS.** 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. 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. 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. Unless otherwise stated, the Quote excludes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer and shall be stated on the invoice. If Customer fails to make any payments, in whole or in part, to Cummins when due and payable, and such failure continues for more than thirty (30) calendar days, or less if required by applicable law, then Cummins may, at its sole discretion and without prejudice to any other rights or remedies, suspend its services hereunder upon providing forty-eight (48) hours' written notice to Customer, in which case, the applicable schedule shall be extended for a period of time equal to the suspension period, plus a reasonable ramp up period, and all costs (including default interest) caused by such suspension shall be assumed by Customer.

**4. DELAYS.** Any performance dates indicated in this Agreement are estimated and not guaranteed. Cummins shall not be liable for any delays in performance however occasioned, including any 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, civil strife, riots, natural disasters, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery of parts by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment, or manufacturing facilities. In the event of a natural disaster or other national or state emergency, and subject to prioritization duties Cummins may owe to governmental entities or other emergency response service providers, Cummins will make commercially reasonable efforts to give the Customer equal priority to those of any similarly situated customer, based on the prevailing circumstances.

**5. WARRANTY.** Cummins shall perform warranty services in a reasonable and workmanlike manner. Parts, labor, and components supplied under this Agreement are governed by the Warranty Statement. In the event any provision of these Terms and Conditions conflicts with the Warranty Statement, the Warranty Statement shall govern and control. Customer hereby acknowledges that it has read and understands the Warranty Statement, including all responsibilities, obligations, and limitations contained therein. No other warranty for parts, labor, Equipment, or components is provided under this Agreement. In the event of a warrantable defect in the Equipment or in the workmanship of warranty services supplied under this Agreement (collectively, "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 any Warrantable Defect within thirty (30) days following discovery by Customer, noting that any repairs for progressive damage resulting from Customer's delay in notifying Cummins of the warrantable defect shall be borne by the Customer; and (iii) Cummins has determined in its sole discretion 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 Equipment. 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 the Equipment. The remedies set forth in this Section 5 shall not be deemed to have failed of their essential purpose so long as Cummins is willing to correct the Warrantable Defect or refund the purchase price thereof when repair is not possible.

**6. LIMITATIONS OF WARRANTIES AND LIABILITY. THE REMEDIES PROVIDED IN THE LIMITED WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.**

**NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, AND DAMAGES CAUSED BY DELAYS), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF PARTS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF PARTS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.**

**7. INDEMNITY.** Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

**8. TERMINATION FOR DEFAULT.** If the Customer defaults by (i) breaching Section 3 of this Agreement via non-payment of an invoice, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any parts or services supplied under this Agreement, in accordance with the payment terms detailed in Section 3. If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience in accordance with Section 1.

**9. 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.

**10. GOVERNING LAW.** This Agreement and all matters arising hereunder shall be governed by, interpreted, and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the federal and state courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement or any related matter, and hereby waive any right to claim such forum would be inappropriate, including concepts of forum non conveniens.

**11. INSURANCE.** Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

**12. MISCELLANEOUS.** Cummins shall be an independent contractor with respect to the Services performed under this Agreement. 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 Extended Warranty Proposal. No amendment of this Agreement shall be valid unless it is writing and signed by an authorized representative of 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, 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. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof. The Parties' rights, remedies, and obligations under this Agreement which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the limitation of liability provision set forth in Section 6, shall survive the expiration, termination, or cancellation of this Agreement.

**13. ON-CALL SERVICES.** Upon Customer's request, Cummins shall provide on-call services (repair, emergency work or other) on the Equipment ("On-call Services"). Any On-call Services shall be invoiced to the Customer at Cummins' current hourly rate (including traveling) and shall be governed by the terms and conditions of this Agreement.

**14. PRICING.** To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date Services are performed ("Performance Date") due to economic and market conditions on the Performance Date. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and other unforeseen circumstances beyond Cummins' control.

**15. TARIFF AND DUTY SURCHARGES.** In addition to any adjustments otherwise provided for in this Agreement, in the event of any increase in the cost of purchased materials due to the impact of any tariffs, duties, levies, or similar government charges ("Tariffs") in effect during the term of this Agreement, the parties agree that such increases shall be passed through directly to the Customer effective immediately upon Cummins' notice to the Customer of such increases. The Customer shall pay Tariff-related increases within thirty (30) days of receipt of invoice.

**16. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.**