



# GENERAL TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

Set out below are the General Terms and Conditions of Supply ("the Conditions") of goods and services ("the Goods") by Cummins Ltd. ("Cummins") that shall apply to any order accepted by Cummins from a third party ("the Customer").

## 1. General

- 1.1. The Conditions shall be incorporated into each contract for the supply of the Goods between Cummins and the Customer ("the Contract") to the exclusion of any terms (i) contained, or referred to, in the Customer's purchase order or other documentation; (ii) sought to otherwise be imposed by the Customer; or (iii) implied by trade, custom, practice or course of dealing.
- 1.2. The Contract constitutes the entire agreement between the parties and supersedes all communications (whether written or oral) between Cummins and the Customer prior to acceptance by Cummins of the Customer's order. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Cummins which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by Cummins and any descriptions or illustrations contained in Cummins catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between Cummins and the Customer for the supply of the Goods.

## 2. Acceptance

- 2.1. Any quotation given by Cummins shall not constitute an offer.
- 2.2. The submission of the Customer's order shall constitute an offer to purchase subject to these Conditions. No order placed by the Customer shall be deemed to be accepted by Cummins until a written acknowledgement of order is issued by Cummins, or (if earlier as appropriate) Cummins gives instructions for the manufacture of the Goods or despatches the Goods, at which point the Contract will come into existence.
- 2.3. Any order shall be accepted entirely at the discretion of Cummins. The Customer is entitled to cancel any order only with Cummins' prior written consent.

## 3. Changes

- 3.1. Cummins reserves the right to make any change to the Goods which does not materially affect the nature, quality or price thereof; any such change shall not invalidate any order placed with Cummins or impose any liability on Cummins.
- 3.2. Subject to clause 3.1, if the manufacturer shall cease to manufacture or deliver any Goods ordered by the Customer, Cummins shall give notice of the fact in writing to the Customer (but shall not be liable for any loss or damage to the Customer), and the Customer will have the option, to be exercised within ten (10) days of the date of such notice, either to take equivalent goods (if available from Cummins) or to cancel its order without further liability upon Cummins or the Customer. If the Customer has not exercised either option within such period, the order shall be deemed to be continued, with the equivalent goods.

## 4. Delivery of Goods

- 4.1. Unless Cummins selects a different Incoterm in the written order acknowledgement or other communication, Cummins shall deliver the Goods FCA Darlington, United Kingdom (Incoterms® 2020). Unless otherwise agreed to in writing, Buyer shall be responsible for the freight charges and insurance coverage and charges for all risks relating to the Goods.
- 4.2. Cummins may, at the Customer's request, arrange carriage of the Goods at the Customer's cost and risk.
- 4.3. Any dates quoted for delivery of the Goods are approximate only, and the time for delivery is not of the essence.
- 4.4. Cummins shall not be liable for any delay in delivery, or failure to deliver all or some, of the Goods (i) that is caused by a Force Majeure Event (as defined in clause 19) or the Customer's failure to provide adequate delivery instructions, a letter or credit or advance payment (where required), or any information relevant to the supply of the Goods; or (ii) where the Customer fails to give written notice to Cummins of the delayed or short or non-delivery within a reasonable period.
- 4.5. Subject to clause 4.3, if Cummins fails to deliver some or all of the Goods, its liability shall be limited to:
  - (a) reimbursing the cost of Goods not delivered via a credit note; or
  - (b) replacing the Goods within a reasonable time.
- 4.6. If, for any reason, the Customer does not accept delivery of any of the Goods when they are ready for delivery or Cummins is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, then the Goods will be deemed to have been delivered, risk passing to the Customer, and Cummins may (i) store the Goods until actual delivery, and charge the Customer for all related costs and expenses (including, without limitation, storage, re-delivery and insurance), or (ii) sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the contract price.
- 4.7. Cummins may deliver the Goods by instalments. Any delay in delivery or defect in one instalment shall not entitle the Customer to cancel any other instalments.

## 5. Returns

- 5.1. With the exception of aftermarket parts returns referred to in clause 5.2, under no circumstances may Goods supplied against a firm order be returned without the written consent of Cummins, which consent shall be subject to the conditions set out in clause 5.5 and shall be at Cummins' absolute discretion. Any Goods returned to Cummins for any reason whatsoever shall be at the sole risk of the Customer and Cummins shall be entitled to store the same otherwise than at

Cummins's premises. Goods returned without consent must be collected by the Customer within seven (7) days or Cummins may dispose of such Goods at the Customer's cost.

- 5.2. Any Goods returned to Cummins without consent shall be at the sole risk of the Customer. Goods returned without consent shall be collected by the Customer within seven (7) days of Cummins giving notice for their removal. Goods not collected may be disposed of by Cummins at the Customer's cost.
- 5.3. Any Goods returned to Cummins with its consent shall be at the sole risk of the Customer until Cummins acknowledges receipt of those Goods.
- 5.4. Any Goods returned to Cummins may be stored at any location Cummins considers appropriate.
- 5.5. Cummins consent to the return of aftermarket parts supplied by Cummins in UK & Ireland shall be subject to the following conditions:
  - (a) returns must be requested within 60 days of receipt,
  - (b) a minimum charge of £50 or 10% of the value of the goods returned, whichever is the greater, shall be applicable, together with any applicable delivery costs;
  - (c) returns must be in the same condition as sold; and
  - (d) returns must be standard Cummins stock items at the time of return.

## 6. Installation

- 6.1. It is the duty of the Customer to ensure that all Goods purchased hereunder are applied, installed, commissioned and/or used in accordance with Cummins's application and installation recommendations and any other safety or operating instructions, and the Customer agrees to indemnify Cummins in respect of all claims, losses, damages and expenses arising in connection with the breach of this duty.

## 7. Risk and title

- 7.1. Notwithstanding delivery of the Goods or any part thereof, the property in the Goods shall remain in Cummins until the Customer has paid the purchase price in full. Until such a time the Customer shall store or retain the Goods in such a way that they are clearly identifiable as property of Cummins.
- 7.2. If the Goods are added to or incorporated with other goods not supplied by Cummins so as to form new or composite products (the "Products") the property in the Products but not the risk of damage thereto or destruction thereof shall automatically pass to Cummins as security for payment of all monies due from the Customer to Cummins for which purpose the transfer of the property in the Products whether finished or not shall be deemed to have taken place through and at the moment of the single operation or event by which the Goods are incorporated with or added to other goods in order to form the products. Until the time such payment has been made the Customer shall hold the Products on behalf of Cummins and shall if required by Cummins, store and retain the Products in such a way that they are clearly identifiable as the property of Cummins.
- 7.3. Notwithstanding the foregoing provisions, the Customer shall have the power to sell Goods and the Products to third parties in the normal course of its business and to deliver them in pursuance of such sales on the condition that the Customer shall until such time as all such liabilities to Cummins as are referred to in clause 7.1 hereof are fully satisfied and pay to Cummins all monies received in respect of such sales up to the extent of such liabilities and assign to Cummins the benefit of any claim which the Customer may have against any such third party arising out of or in connection with the sale and/or delivery of the Goods and/or Products.
- 7.4. Risk shall pass to the customer from the point of delivery.
- 7.5. Cummins shall be under no obligation to give the Customer the notice referred to in Section 32(3) of the Sale of Goods Act 1979.

## 8. Supply of Services

- 8.1. Any dates quoted for performance or completion of the services are approximate only, and the time for performance is not of the essence.
- 8.2. Cummins shall not be liable for any delay in performance, or failure to perform all or some, of the services that is caused by a Force Majeure Event (as defined in clause 19) or by any act or omission by the Customer or failure by the Customer to perform any relevant obligation.
- 8.3. The Customer shall:
  - (a) co-operate with Cummins in all matters relating to the services;
  - (b) provide Cummins with such information, equipment and materials as Cummins may reasonably require to carry out the services;
  - (c) obtain and maintain all necessary licences, permissions and consents which may be required for the services before the date on which the services are to start; and
  - (d) if the services are not carried out at Cummins's premises, ensure (i) reasonable access to the service location and any necessary facilities; (ii) that the work can be carried out in a space that is sufficiently protected from the influence of the weather, which is clean and where there is sufficient light and the necessary facilities and utilities present; (iii) all laws and regulations with regard to workplace health and safety have been complied with; (iv) all materials, equipment, documents and other property of Cummins left at the service location are maintained in safe custody at the Customer's own risk; and (v) appropriate medical facilities are available to Company personnel in the event of sickness or injury, including arranging for repatriation where necessary.

## 9. Quality and warranty



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- 9.1. The Customer may reject Goods that are damaged, defective or non-conforming or are not provided in accordance with clause 9.2 provided that:
- notice of rejection is given to Cummins in writing within seven (7) days of receipt of the Goods or completion of the services; and
  - for Goods, the damage was not caused in transit (unless specifically agreed in writing otherwise).
- 9.2. Cummins shall provide the services with reasonable skill and care.
- 9.3. If the Customer rejects the Goods under clause 9.1 then Cummins shall, at its option:
- repair or replace the rejected Goods or;
  - repay the price of the rejected Goods in full.
- 9.4. If the Customer fails to give notice of rejection in accordance with clause 9.1, the Customer shall be deemed to have accepted the Goods
- 9.5. Cummins' sole liability for Goods accepted under clause 9.4 shall be as set out in Cummins' standard warranty, details of which are available on request ("Standard Warranty").
- 9.6. The only warranty which relates to the Goods supplied is the Standard Warranty. Save as provided in the Standard Warranty, all representations, conditions, warranties and terms, whether express or implied by common law, statute or otherwise as to the quality, condition or fitness for any purpose of the Goods are excluded to the maximum extent permissible by law.
- 10. Price**
- 10.1. All prices are in pounds sterling and are exclusive of all taxes unless otherwise stated. Subject to any applicable local laws and regulations of the jurisdiction where the Goods are to be delivered or as otherwise agreed in writing, Customer shall be responsible for paying any and all duties, taxes and tariffs levied on the Goods including without limitation by the government of the country of the ultimate destination of the Goods.
- 10.2. Prices for Goods:
- The price payable is that currently in effect. Cummins reserves the right to invoice at prices prevailing at the time of despatch of the Goods.
  - Without prejudice to the obligation of Buyer to pay any and all duties, taxes and tariffs levied on Goods under section 10.1, additional charges will be applied to the invoice for any applicable duties, taxes and tariffs and all costs of carriage and freight (including insurance), packing, boxing and special tests or inspections incurred by Cummins.
- 10.3. Prices for services:
- The price shall be calculated on a time basis for the service work performed during normal working hours.
  - Cummins is also entitled to charge the Customer (i) overtime rates for any work performed outside normal working hours; (ii) a daily allowance for each of Cummins's personnel based on the number of working days from the date of departure of such personnel until their return; (iii) any waiting time for which Cummins is not responsible; (iv) time spent by Cummins's personnel travelling to and from Cummins's premises, the work site and Customer provided lodging; and (v) any expenses reasonably incurred by the personnel whom Cummins engages in connection with the services including, but not limited to, travelling expenses, hotel costs, insurance, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Cummins for the performance of the Services, and for the cost of any materials, instruments or tools (and any associated freight costs).
  - Time sheets and visit reports for the work performed shall be provided by Cummins to the Customer. Unless disputed by the Customer within a reasonable period, Cummins shall be entitled to invoice the Customer on the basis of the work evidenced by such time sheets and visit reports.
  - Hourly rates, overtime rates and daily allowances shall be as specified in Cummins's standard rates then in effect, which are available on request. Such rates are subject to change from time to time.
- 10.4. In the event of a variation to an order placed by the Customer, the prices already stated shall be adjusted accordingly.
- 11. Returnable engine skids**
- 11.1. Where applicable, Cummins may, at its option, make an advance charge for all returnable skids, which charge will be refunded when the skids are returned or, if an advance charge is not made, then the skids will be charged for, if not returned, carriage paid, in good condition, within three (3) calendar months from the date of despatch unless otherwise agreed in writing by Cummins. Credit may be allowed, at the discretion of Cummins, for late returns previously charged out. Engine skids, pallets and shipping containers are designed for shipment purposes and should not be used for storage purposes.
- 12. Payment**
- 12.1. Terms of payment are thirty (30) days from the date of invoice, unless otherwise stated.
- 12.2. For despatches to, or performance of services, outside the United Kingdom, the terms of payment will be irrevocable letter of credit confirmed by an international bank in favour of Cummins unless otherwise stated.
- 12.3. If any payment is in arrears, Cummins shall be entitled to (i) charge the Customer interest at the rate of two per cent (2%) per month on the amount outstanding and/or (ii) by giving notice in writing to the Customer, suspend any future deliveries under any contract with the Customer until the default be made good or to cancel such contracts as far as any further Goods remain to be delivered or performed and to recover any expenses involved in such suspensions or cancellations.
- 12.4. Time for payment shall be of the essence.
- 13. Invoice error**
- 13.1. Cummins reserves the right to correct any clerical or typographical errors in relation to its invoices.
- 14. Inward Processing Relief**
- 14.1. If so required by Cummins, the Customer shall obtain such authorisation from the relevant customs authorities, and furnish Cummins with such information and take all such other steps as may be necessary, in order for Cummins to obtain the appropriate inward processing relief (or any similar relief) in relation to any Goods sold by Cummins to the Customer. Unless otherwise agreed in writing all such relief obtained shall be refunded to Cummins.
- 15. Confidentiality**
- 15.1. A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 15 shall survive termination of the Contract
- 16. Intellectual Property**
- 16.1. The Customer agrees that Cummins and/or the Cummins Inc. group of companies exclusively own all rights, title, and interest in and to all patentable inventions, patents, patent applications, trademarks, service marks, trade names, industrial models and designs, copyrights, and trade secrets and any other intellectual property of any form recognised anywhere in the world ("Intellectual Property") which (i) relates to the Goods, or other material (including specifications, designs, drawings, tooling or samples) supplied by Cummins; or (ii) is generated in the course of the performance of the Contract.
- 16.2. Any modification, reproduction or publication by the Customer of any documents (including but not limited to, drawings, specifications, and computer software) ("Documents") supplied by Cummins, or use of the Documents for any purpose other than for which they were specifically supplied, requires Cummins's prior written approval. Such use without Cummins's consent will be at the Customer's sole risk and without liability to Cummins, and the Customer shall indemnify Cummins against all claims, losses, damages and expenses arising out of or resulting from such unauthorised use.
- 17. Limit of liability**
- 17.1. Whether advised or not of the possibility of such loss, Cummins shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any downtime, property damage, loss of profit (whether direct or indirect), loss of revenue, damage to goodwill, enhanced damages, and/or monetary requests relating to recall expenses and repair to property, nor for any indirect, special, incidental, punitive or consequential loss or damage of any kind suffered by the Customer arising under or in connection with the Contract or the use of the Goods. Without prejudice to any of the foregoing, the liability of Cummins under the Contract or arising from the performance of any services or any order or the sale, delivery, resale or use of any Goods, whether arising in contract, tort, statutory duty or otherwise, shall not exceed one third (1/3) of the price paid for the unit price of such Goods or parts thereof involved in the claim, except as provided in the Manufacturer's Warranty.
- 17.2. Nothing in these Conditions shall in anyway exclude or limit Cummins' liability for death or personal injury caused by Cummins' negligence, for fraudulent misrepresentation, or for any other matter in respect of which it would be unlawful for Cummins to exclude or limit liability.
- 18. Insolvency**
- 18.1. If the Customer is unable to pay its debts as they become due, or if an order is made or a resolution is passed for the winding up, bankruptcy or liquidation of the Customer, or if an administrator, administrative receiver or receiver is appointed in respect to the whole or any part of the Customer's assets or business, or if the Customer makes any composition with its creditors, or takes or suffers any similar or analogous action in consequence of debt, Cummins or its authorised representatives shall be entitled to entering the premises of the Customer where the Goods are stored and take in its possession all the Goods which have not been paid for. Cummins also reserves the right to, on notice to the Customer, and without prejudice to any other rights it may have, to immediately terminate any contract with the Customer and all outstanding sums in respect of Goods supplied shall become immediately due.
- 19. Force Majeure**
- 19.1. Cummins shall not be liable to the Customer for any delay or failure to perform its obligations under the Contract as a result of war, act of terrorism, riot or civil commotion, strikes, lockouts or other industrial disputes, disease, epidemic, accidents, fire, flood, storms, governmental restrictions and actions, embargo, delay or non-delivery of materials, failure of supplies of power, fuel, transport,



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equipment or other goods or services, or any other circumstances not within the control of Cummins ("Force Majeure Event").

- 19.2. If the Force Majeure Event prevents Cummins from providing any of the Goods under the Contract for more than three (3) months, Cummins shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.
- 19.3. As a result of the outbreak of the pandemic Covid-19 arising from the novel coronavirus, temporary delays in delivery, labour or services from Cummins and its sub-suppliers or subcontractors may occur. Among other factors, Cummins's delivery obligations are subject to correct and punctual supply from our sub-suppliers or subcontractors, and Cummins reserves the right to make partial deliveries or modify its labour or service. While Cummins shall make every commercially reasonable effort to meet the agreed delivery, service or completion obligations, such dates are subject to change.

### 20. Export Compliance and Anti-Bribery Obligations

- 20.1. The Customer acknowledges the Goods may be subject to export controls, sanctions, laws and regulations (including, without limit, those of the U.S, E.U and the United Kingdom) and Company 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 Cummins or its affiliates to be in breach of any Export Restrictions. In particular, the Customer agrees not, unless written consent is obtained from Cummins in advance, to: (i) use the Goods, or supply the Goods 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, Belarus, Cuba, Iran, North Korea, Russia, Syria or the following regions of Ukraine: Crimea, Donetsk People's Republic (DNR), Luhansk People's Republic (LNR), or Sevastopol) subject to a specific Export Restriction; or (iii) sell, export or make available the Goods to any party restricted by the Export Restrictions. Where fulfilling an order from the Customer may violate any Export Restrictions, Cummins shall be entitled to cancel that order at any stage without any liability. In its contracts with any third party involving the Goods, the Customer agrees to impose on such third party the same obligations and requirements imposed on it by Cummins in this clause. The Customer also agrees not to violate, and not to cause Cummins to violate, any provision of the U.S. Foreign Corrupt Practices Act and any equivalent applicable laws or regulations. The Customer shall indemnify Cummins against any and all claims, losses, damages and expenses arising from or related to such failure by the Customer to fulfil its obligations under this clause 20.1.

### 21. Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). Notwithstanding the foregoing, where the Buyer has its registered office outside the U.K. any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Section. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England and the language to be used in the arbitral proceedings shall be English.

### 22. Miscellaneous

- 22.1. Cummins may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22.2. Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Cummins.
- 22.3. If any part of the Contract is held to be invalid, illegal or unenforceable, that part shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 22.4. No failure or delay by Cummins in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.