



## TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

Set out below are the Conditions of Sale ("Conditions") of Cummins Romania S.R.L. (the "Company"). These Conditions replace any previous conditions and will be deemed to be incorporated into every contract arising on acceptance by the Company of an order from a third party ("Purchaser").

### 1. General

The Conditions shall be incorporated into each contract for the supply of goods and/or services between the Company and the Purchaser or the exclusion of any terms (i) contained, or referred to, in the Purchaser's purchase order or other documentation; (ii) sought to otherwise be imposed by the Purchaser; or (iii) implied by trade, custom, practice or course of dealing.

These Conditions and any other terms and conditions subsequently accepted by the Company in writing shall form the entire contract between the Company and the Purchaser and shall supersede all communications (whether written or oral) between the Company and the Purchaser prior to the Company's final acceptance of the Purchaser's order.

If any Condition is held to be invalid for any reason, such invalidity will not affect the rest of the Conditions which will remain valid and enforceable in all respects.

No person has authority to modify these Conditions orally and no modification of these Conditions shall be binding on the Company unless such modification is duly agreed to by the Company in writing.

### 2. Acceptance

Any quotation given by the Company shall not constitute an offer. The submission of the Purchaser's order shall constitute an offer to purchase subject to these Conditions. No order placed by the Purchaser shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier as appropriate) the Company gives instructions for the manufacture of the goods, despatches the goods to the Purchaser or commences performance of the services. Any order shall be accepted entirely at the discretion of the Company. The Purchaser is not entitled to cancel any order, once accepted by the Company pursuant to this Condition.

### 3. Pricing

- (i) Unless otherwise stated, all prices are Ex-Works the Company's principal premises in Romania (as defined by Incoterms 2010) unless otherwise notified. All prices are in RONs unless otherwise stated and are inclusive of VAT and customs taxes.
- (ii) Prices for goods: Prices payable are those currently in effect. The Company reserve the right to invoice at prices prevailing at the time of despatch. Extra charges will be made for all applicable taxes (excluding VAT and customs taxes), carriage and freight including insurance, packing, engine boxing and special tests or inspections. In the event of a variation to an order placed by the Purchaser, the prices already stated shall be adjusted accordingly.
- (iii) Prices for services: The price shall be calculated on a time basis for the service work performed during normal working hours. The Company is also entitled to charge the Purchaser (i) overtime rates for any work performed outside normal working hours; (ii) a daily allowance for each of the Company's personnel based on the number of working days from the date of departure of such personnel from the Company's headquarters or their usual working place until their return; (iii) any waiting time for which the Company is not responsible; (iv) time spent by the Company's personnel travelling to and from the Purchaser's premises, the work site and the Purchaser provided lodging; and (v) any expenses reasonably incurred by the personnel whom the Company 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 the Company 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 the Company to the Purchaser. Unless disputed by the Purchaser within a reasonable period, the Company shall be entitled to invoice the Purchaser on the basis of the work evidenced by such time sheets and visit reports.
- (iv) In the event of a variation to an order placed by the Purchaser, the prices already stated shall be adjusted accordingly.

### 4. Returnable Engine Skids

The Company 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 the Company. Credit may be allowed, at the discretion of the Company, 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.

### 5. Terms of payment

- (i) Terms of payment are in advance, of the delivery date unless otherwise stated
- (ii) For despatches to or performance of services outside Romania the terms of payment will be irrevocable letter of credit confirmed by a local bank in favour of the Company, unless otherwise stated.
- (iii) In case of late payment interest shall be charged on the outstanding amount in accordance with the applicable base interest rate of the National Bank of Romania calculated on a monthly basis and the Company by giving notice in writing to the Purchaser shall have the right to suspend any future deliveries and / or services under any contract with the Purchaser until the default be made good or to cancel such contracts as far as any further goods remain to be delivered and / or services remain to be performed and to recover any expenses involved in such suspensions or cancellations.
- (iv) Time of payment shall be of the essence.
- (v) In addition to any other remedies the Company may have if the Purchaser fails to accept any goods on the notified dates the Company shall have the option to charge the Purchaser for insurance delivery and warehousing costs associated with such unaccepted deliveries.

### 6. Changes

- (i) The Company reserves the right to make any change in the specification of the goods and / or the description of the services which does not materially affect the installation, performance or price thereof; any such change shall not invalidate any order placed with the Company or impose any liability on the Company.
- (ii) Subject to Condition 6(i) if the manufacturer shall cease to manufacture or deliver any goods ordered by the Purchaser, the Company shall give notice of the fact in writing to the Purchaser, (but shall not be liable for any loss or damage occasioned thereby to the Purchaser) whereupon the Purchaser will have the option, to be exercised within ten (10) days of the date of the said notice, either to take equivalent goods (if available from the Company) or to cancel its order without further liability upon the Company or the Purchaser. If the Purchaser has not exercised such option within such period, the order shall be deemed to be continued, with the equivalent goods.

### 7. Delivery of goods

- (i) Unless otherwise agreed, the Company shall deliver the goods Ex-Works, the Company's principal premises in Romania (as defined by Incoterms 2010). The Company may, at the Purchaser's request, arrange carriage of the goods at the Purchaser's cost and risk.
- (ii) Any dates quoted for delivery of the goods are approximate only, and the time for delivery is not of the essence. The Company 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 9) or the Purchaser'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 Purchaser fails to give written notice to the Company of the delayed or short or non-delivery within a reasonable period. If the Company 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.
- (iii) Delivery to or collection by any carrier for carriage to the destination indicated by the Purchaser shall be deemed to be delivery of the goods and due performance of the Company's duties.
- (iv) If for any reason the Purchaser does not accept delivery of any of the goods when they are ready for delivery or the Company is unable to deliver the goods on time because the Purchaser has not provided appropriate instructions, documents, licences or authorisations then the goods will be deemed to have been delivered, risk passing to the Purchaser

(including for loss or damage caused by the Company's negligence) and the Company may store the goods until actual delivery whereupon the Purchaser will be liable for all related costs and expenses (including without limitation storage, re-delivery and insurance), or sell the goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Purchaser for any shortfall below the contract price.

- (v) The Company may deliver the goods by instalments. Any delay in delivery or defect in one instalment shall not entitle the Purchaser to cancel any other instalments.

### 8. Supply of services

- (i) Any dates quoted for performance or completion of the services are approximate only, and the time for performance is not of the essence. The Company 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 or by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation.
- (ii) The Purchaser shall:
  - (a) co-operate with the Company in all matters relating to the services;
  - (b) provide the Company with such information, equipment and materials as the Company 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 the Company'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 the Company left at the service location are maintained in safe custody at the Purchaser'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. Force majeure

The Company shall not be liable to the Purchaser for any delay or failure to perform its obligations under these Conditions as a result of war, act of terrorism, riot or civil commotion, strikes, lockouts or other industrial disputes, epidemics, accidents, fire, flood, storms, governmental restrictions and actions, embargo, delay or non-delivery of materials, failure of supplies of power, fuel, transport, equipment or other goods or services, or any other circumstances not within the control of the Company ("Force Majeure Event"). If the Force Majeure Event prevents the Company from providing any of services and/or goods under these Conditions for more than three (3) months, the Company shall, without limiting its other rights or remedies, have the right to terminate any contract with the Purchaser immediately by giving written notice to the Purchaser.

### 10. Invoice Error

The right is reserved by the Company to correct any clerical or typographical errors.

### 11. Defects in Goods

- The Purchaser may reject goods that are damaged, defective or non-conforming or services that are not provided in accordance with reasonable skill and care provided that:
- (a) notice of rejection is given to the Company in writing within seven (7) days of receipt of the goods or completion of the services; and
  - (b) for goods, the damage was not caused in transit (unless specifically agreed in writing otherwise).

If the Purchaser rejects the goods or services the Company shall, at its option: (a) repair or replace the rejected goods or services; or (b) repay the price of the rejected goods or services in full. If the Purchaser fails to give notice of rejection or the goods, or equipment that was subject to the services are placed in service, the Purchaser shall be deemed to have accepted the goods or services.

### 12. Limit of Liability

Whether advised or not of the possibility of such loss, the Company shall not be liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profit (loss of business opportunity, loss of revenue, loss of anticipated savings, loss of business, loss of goodwill, loss or corruption of data or information, loss or diminution in value of any components consequent upon or resulting from the products sold or services supplied, or any indirect, special or consequential loss or damage suffered by the Purchaser arising under or in connection with any contract with the Purchaser. Without prejudice to any of the foregoing, the liability of the Company arising out of or connected with the performance of the 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 the price paid for such services or the unit price of such goods or parts thereof involved in the claim, except as provided in the standard published warranty of the manufacturer applicable to the goods or parts in their particular application, details of which are available on the Company's website or on request.

Nothing in these Conditions shall in anyway exclude or limit the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation or for any other matter in respect of which it would be unlawful for the Company to exclude or limit liability.

### 13. Risk and Property

- (i) **RISK:** All goods supplied shall be at the Purchaser's risk from the moment of despatch from the Company's premises or the respective supplying works.
- (ii) **PROPERTY:** Property in each item supplied shall not pass to the Purchaser until the full purchase price thereof has been received by the Company. Until such a time, the Purchaser shall store or retain the goods in such a way that they are clearly identifiable as property of the Company.

### 14. Returns

Under no circumstances may goods supplied against a firm order be returned without the Purchaser having obtained the written consent of the Company. Any goods supplied to the Purchaser which are returned to the Company for any reason whatsoever shall be at the sole risk of the Purchaser and the Company shall be entitled to store the same otherwise than at the Company's premises.

The Company consent to the return of aftermarket parts shall be subject to the following conditions:

- (a) returns must be requested within 60 days of receipt;
- (b) a minimum charge of 250 RON (excluding VAT) 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 Company stock items at the time of return.

### 15. Warranties

If the Purchaser rejects the goods or services the Company shall, at its option: (a) repair or replace the rejected goods or services; or (b) repay the price of the rejected goods or services in full. If the Purchaser fails to give notice of rejection or the goods, or equipment that was subject to the services, are placed in service, the Purchaser shall be deemed to have accepted the goods or services.

The Company's sole liability for the goods or services shall be as set out in the Company's standard warranty, details of which are available on request ("Standard Warranty"). The only warranty which relates to the goods or services 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 or services, are excluded to the maximum extent permissible by law.

### 16. Insolvency and Non Payment

If the Purchaser 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 Purchaser, or if an administrator, administrative receiver or receiver is appointed in respect to the whole or any part of the Purchaser's assets or business, or if the Purchaser makes any composition with its creditors, or takes or suffers any similar or analogous action in consequence of debt, the Company or its authorised representatives shall be entitled to enter the premises of the Purchaser where the goods are stored and take in its possession all the goods which have not been paid for. The Company also reserves the right, on notice to the Purchaser, and without prejudice to any other rights it may have, to immediately terminate any contract with the Purchaser and all outstanding sums in respect of goods or services supplied shall become immediately due.

### 17. Inward Processing Relief

If so required by the Company, the Purchaser shall obtain such authorisation from the relevant customs authorities, and furnish the Company with such information and take all such other steps as may be necessary, in order to obtain the appropriate inward processing relief (or any similar relief) in relation to



any goods sold by the Company to the Purchaser. Unless otherwise agreed in writing all such relief obtained shall be refunded to the Company.

18. **Proper Law**

Save in respect of the manufacturer's warranties referred to in section 12, these Conditions and any resulting contract shall be construed in accordance with the laws of Romania and the competent courts from the registered office of the Company shall have sole jurisdiction to decide any differences or disputes arising between the Company and the Purchaser.

19. **Export Compliance and anti-bribery**

The Purchaser 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 Purchaser shall comply with all Export Restrictions as they apply to the Purchaser, and shall not cause the Company or its affiliates to be in breach of any Export Restrictions. In particular, the Purchaser agrees not, unless written consent is obtained from the Company 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, 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 party restricted by the Export Restrictions. Where fulfilling an order from the Purchaser may violate any Export Restrictions, the Company shall be entitled to cancel that order at any stage without any liability. In its contracts with any third party involving the goods, the Purchaser agrees to impose on such third party the same obligations and requirements imposed on it by the Company in this Condition. The Purchaser also agrees not to violate, and not to cause the Company to violate, any provision of the U.S. Foreign Corrupt Practices Act and any equivalent applicable laws or regulations. If at any time the Purchaser is no longer in compliance with any national, state or local law or regulation, the contract shall be appropriately amended by the parties so as to be in compliance with those laws or regulations, or terminated by either party. The Purchaser shall indemnify and hold the Company harmless against any and all claims, losses, damages or expenses arising from or related to such failure by the Purchaser to fulfil its obligations under this Section 19.

20. **Health and Safety and installation**

It is the duty of the Purchaser to ensure that all goods purchased hereunder are applied and installed in accordance with the Company's application and installation recommendations and the Purchaser agrees to indemnify the Company in respect of all claims arising in connection with the breach of this duty.

21. **Sub - Contracting and Assignment**

Neither party may assign or otherwise transfer any contract without the prior written approval of the other party not to be unreasonably withheld.

22. **Intellectual Property**

Any intellectual property rights created by the Company in the course of the performance of the Conditions or otherwise in the goods or services shall remain the Company's property. Nothing in these Conditions shall be deemed to have given the Purchaser a licence or any other right to use any of the intellectual property rights of the Company.

23. In particular, the Purchaser expressly accepts the provisions under points 5 alin.(iii), 6 alin.(ii), 11 alin.(ii) 12, 14, 15, 16, 18, 19 of these Conditions in full awareness of their content.