



GENERAL TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

Set out below are the general terms and conditions of supply of goods and services ("the Conditions") of Cummins Italia S.p.A. (trading as Cummins Italia) ("Cummins") that shall apply to any order accepted by Cummins from a third party ("the Customer").

In the event of any conflict or inconsistency between the English version and the Italian version of the Conditions then the English language version shall prevail.

1. General

- 1.1. The Conditions shall be incorporated into each contract for the supply of goods and/or services ("the Goods and Services") 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; or (ii) sought to otherwise be imposed by the Customer.
- 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 and/or Services 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 and/or Services.

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, despatches the Goods to the Customer or commences performance of the Services, 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 not entitled to cancel any order, once accepted by Cummins pursuant to this clause.

3. Changes

- 3.1. Cummins reserves the right to make any change to the Goods or Services 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 otherwise agreed, Cummins shall deliver the Goods Ex-Works, Cummins premises in Via Liguria 3/2, Peschiera Borromeo (MI), 20068, Italy (as defined by Incoterms 2010).
- 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 (ii) that is caused by the Customer's failure to provide adequate delivery instructions, a letter of credit or advance payment (where required), or any information, or to obtain any license, permit or authorisation, relevant to the supply of the Goods; or (iii) where the Customer fails to give written notice to Cummins of the delayed or short or non-delivery within a reasonable period and, in any event, within 10 (ten) days of the date quoted for the delivery or the date of receipt of the Goods.
- 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 due to any of the reasons under (ii) or (iii) of clause 4.4 above, 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. Under no circumstances may Goods supplied against a firm order be returned without the written consent of Cummins, which shall be at Cummins' absolute discretion and, in respect of aftermarket part returns, shall be subject to the conditions set out in clause 5.5.
- 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 shall be subject to the following conditions:
 - (a) returns must be requested within 60 days of receipt,
 - (b) a minimum charge of Euro 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' 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 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. 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 in connection with the sale and/or delivery of the Goods and/or Products.
- 7.3. The Goods are at the Customer's risk from the occurrence of the first in time of any of the following events: a) the passing of the property to the Customer; b) the physical delivery of the Goods to the Customer pursuant to clause 4.1 above.

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 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 Cummins' personnel in the event of sickness or injury, including arranging for repatriation where necessary.

9. Quality and warranty

- 9.1. The Customer may reject Goods that are damaged, defective or non-conforming or Services that are not provided in accordance with clause 9.2 provided that:
 - (a) notice of rejection is given to Cummins in writing within eight (8) 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).
- 9.2. Cummins shall provide the Services with reasonable skill and care.
- 9.3. If the Customer rejects the Goods or Services under clause 9.1 then Cummins 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.



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- 9.4. If the Customer fails to give notice of rejection in accordance with clause 9.1, or the Goods, or equipment that was subject to the Services, are placed in service, the Customer shall be deemed to have accepted the Goods or Services.
- 9.5. Cummins' sole liability for Goods or Services accepted under clause 9.4 shall be as set out in Cummins' standard warranty, details of which are attached hereto ("Standard Warranty") and are made integral part of these Conditions.
- 9.6. 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 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.
- 10. Price**
- 10.1. All prices are in Euro and are exclusive of all taxes unless otherwise stated.
- 10.2. Prices for Goods:
- (a) 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.
- (b) Extra charges will be made for all applicable taxes, carriage and freight (including insurance, packing and engine boxing) and special tests or inspections.
- 10.3. Prices for Services:
- (a) The price shall be calculated on a time basis for the service work performed during normal working hours.
- (b) 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).
- (c) 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 and, in any event, within eight (8) days of receipt of the relevant sheets and visit reports, Cummins shall be entitled to invoice the Customer on the basis of the work evidenced by such time sheets and visit reports.
- (d) 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 Net Monthly, unless otherwise stated.
- 12.2. For despatches to, or performance of services, outside the territory of Italy, 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 ECB rate plus 8% spread per year on the amount outstanding and/or (ii) by giving notice in writing to the Customer, suspend any future deliveries and/or services 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 and/or Services remain to be 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 or its services 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 for ten (10) years after 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, Services 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 loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, loss or corruption of data or information, or any indirect, special or consequential loss or damage suffered by the Customer arising under or in connection with the Contract. 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 such Services or the unit price of such Goods or parts thereof involved in the claim, except as otherwise provided in the Standard Warranty and/ or in the manufacturer's Warranty.
- 17.2. Nothing in these Conditions shall in anyway exclude or limit Cummins's liability for wilful misconduct (*dolo*) or gross negligence (*colpa grave*), death or personal injury caused by Cummins's negligence, 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 or Services 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, 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 Cummins ("Force Majeure Event").
- 19.2. If the Force Majeure Event prevents Cummins from providing any of Services and/or 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.
- 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 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 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,



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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 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 arbitration

- 21.1. 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 Italy.
- 21.2. Any dispute arising out of or in connection with the Contract and/or its subject matter or formation (including non contractual disputes or claims) - with the exclusion of those regarding the collection of the price of the Goods and Services by means of injunction proceedings pursuant to articles 633 *et seq.* of the Italian Civil Procedure Code and of interim proceedings pursuant to article 669-*bis et seq.* and 700 of the Italian Civil Procedure Code - shall be settled by arbitration under the Rules of the Milan Chamber of Arbitration ("Rules"), by a three arbitrators, appointed in accordance with the Rules. The Arbitral Tribunal shall decide in accordance with the rules of law of the Republic of Italy. The seat of the arbitration shall be Milan (Italy) and the language of the arbitration 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. Except as otherwise provided herein, 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.