



SUPPLIER TERMS AND CONDITIONS

For the purchase of products and services by Cummins South Pacific Pty Ltd

PRECEDENCE If there is a conflict between these Supplier Terms and Conditions, the information on the face of a PO, or any attachments to the PO, the terms on the face of the PO shall take precedence over the Supplier Terms and Conditions, and these terms shall take precedence over any other attachment. If the PO is issued in conjunction with a detailed contract between the parties, the terms of the detailed contract will take precedence over all other terms.

1. GENERAL

1.1 As used in this document, the term "Purchase Order" or "PO" refers to the hardcopy or electronic form for designating the Supplier, the Supplies and other terms of transaction; Supplier Terms and Conditions means these terms and conditions and any other terms that are attached or incorporated by reference. "Cummins" means Cummins South Pacific Pty Ltd (ACN 006 332 949), its subsidiaries and related corporations; "Supplier" means the supplier or seller identified on the face of the PO and its agents and representatives; "Specifications" means all applicable blueprints, product specifications, the provisions on the face of the PO and any attachments to it; "Supplies" designates raw materials, components, intermediate assemblies, equipment and other supplies including indirect materials, technical data, drawings, or services to be furnished by Supplier to Cummins for the PO.

1.2 The PO and Supplier Terms and Conditions shall be construed as an offer made by Cummins to purchase the Supplies on the terms of the PO and Supplier Terms and Conditions. The contract resulting from the acceptance of this order by Supplier is to be construed according to the laws for the time being in force in the State of Victoria. The Supplier agrees to submit to the non-exclusive jurisdiction of the Courts of that State and any dispute arising out of the interpretation or fulfillment of the PO shall be heard and adjudicated in Melbourne, Victoria.

1.3 Unless expressly set forth below, Cummins is not subject to a minimum term of supply or a minimum volume expressed in any quotation or any other document sent or previously exchanged between Cummins and Supplier.

2. CONTROLLING TERMS

The PO is expressly limited to the Supplier Terms and Conditions and Specifications contained herein. The PO is an offer made by Cummins to purchase the goods and/or services set forth herein and any preceding offer or quotation of Supplier for alternative or modified terms and Specifications is rejected. Supplier accepts the Specifications and Supplier Terms and Conditions by acknowledging or confirming this order in writing, or commencing work on or shipping Supplies covered by the PO.

3. PRICES AND INVOICING

3.1 Prices shown on the face of the PO may not be increased without prior written authorization by Cummins' Purchasing Department and the prices shall include all taxes (excluding GST). Supplier may contact this department using the following details: Regional Purchasing Leader, Cummins South Pacific, 2 Caribbean Drive, Scoresby, Victoria, Tel. 61-3-9765 3222.

3.2 Unless authorized by Cummins, which authorisation will not be unreasonably withheld, Supplier agrees to use its best endeavours to ensure that only one invoice is issued to Cummins to cover all shipments made on any day.

3.3 Payment terms are 45 days from end of month of invoice unless otherwise noted on the face of the PO.

3.4 Cummins is not required to pay for any Supplies until the Supplier submits a valid tax invoice to Cummins for those Supplies.

4. DELIVERY

4.1 Deliveries are to be made by or on behalf of the Supplier in the quantities and at times specified on the face of the PO or, if not so specified, then as set forth on delivery schedules furnished by Cummins. Delivery shall be FIS (as defined in INCOTERMS 2010) and full title to Supplies shall pass to Cummins on delivery. Deliveries must be made to Cummins' point of use, freight pre-paid, unless otherwise stipulated on the face of the P O. Time for delivery shall be of the essence.

4.2 Supplier shall, upon Cummins' request provided with reasonable notice, suspend shipment and delivery of Supplies to be furnished hereunder as Cummins may request.

4.3 Cummins will not be deemed to have accepted the Supplies on delivery and will have up to 10 days to inspect those Supplies following delivery. Goods shipped must be as specified and no substitutes or changes are to be made without Cummins written permission. Any excess deliveries will be subject to return at the Supplier's expense and risk.

5. QUALITY OF SUPPLIES

5.1 Supplier warrants that all Supplies will conform to the Specifications and/or samples furnished in connection with the PO, and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Supplier's warranties shall survive Cummins acceptance of, inspection of, and payment for the Supplies. Where the Supplies include services, the Supplier warrants that the services will be provided in a timely, diligent, efficient and skilful manner.

5.2 Supplier shall notify Cummins immediately and prior to the acceptance of the PO, if it cannot satisfy the Specifications, Supplier Terms and Conditions or the delivery schedule of the PO.

6. DISPOSITION OF REJECTED MATERIAL

6.1 With respect to any Supplies not in conformity with the requirements of the PO or not in conformity with the specifications of any such Supplies as provided to Cummins, Cummins shall have the right, at its option, to reject such Supplies and require Supplier to repair, replace or re-perform such Supplies or services immediately after notification (such notice to be provided within 3 days of completion of the inspection contemplated in clause 4.3) at the Supplier's sole cost and expense. Cummins shall confirm any verbal notification in writing.

6.2 At Cummins' election, the Supplier is required to repair, replace or re-perform non-conforming Supplies or services even if written notification is not provided by Cummins as contemplated by clause 6.1.

7. PACKING, SHIPPING, AND STORAGE

Supplier shall, at its, his or her expense, package and preserve the Supplies in such a manner that they will arrive at the designated delivery point free from damage and in such a condition as to permit reasonable handling and six months' storage under normal environmental conditions without detrimental effects on the Supplies.

8. CANCELLATION

8.1 Subject to clause 8.2, Cummins may at any time, with reasonable written notice to the Supplier, cancel the PO or any part of the PO without liability except for payment to the Supplier of the cost of work provided up until the date of termination, work in process and material commitments made within the time specified in the PO or, if no time is specified, then within two weeks of the date of cancellation. Cummins shall make payment to the Supplier for any such costs within 14 days of receipt of invoice or within such other time period as may be agreed between the parties.



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8.2 Notwithstanding the foregoing, Cummins may cancel the PO without liability or cancellation charges, unless the parties otherwise agree, in the event of any causes beyond its control, such as, but not limited to, flood, drought, fire, war, riot, acts of terrorism, strikes, industrial action, acts of God or acts or demands of any governmental authority.

9. CHANGES

Cummins may, with reasonable notice, by written instructions or verbal instructions confirmed in writing to Supplier, make changes in the work to be performed or the items to be furnished hereunder in any one or more of the following: (i) Specifications; (ii) method of shipment or packing, (iii) time and/or place of delivery; and (iv) the quantity of items ordered. Supplier shall notify Cummins within fourteen days of notification of such changes of any proposed differences in price, quality or delivery time. Such proposed changes shall be subject to prior written approval by Cummins which approval will not be unreasonably withheld.

10. INTELLECTUAL PROPERTY

10.1 Supplier warrants that the Supplies specified herein (and their sale or use, alone or as a significant element of a combination) will not infringe any patents, copyrights, trade names, trade marks, trade secrets or other intellectual property rights; and agrees to indemnify and hold harmless Cummins and anyone selling or using any of Cummins' products against all judgments, decrees, damages, claims, costs, and expenses resulting from any alleged infringement, and agrees that Supplier shall, upon request of Cummins and at Supplier's own expense, defend or assist if the defence of any action which may be brought against Cummins or those selling or using any of Cummins' products by reason of any such alleged infringement.

10.2 Any inventions, discoveries, patents, copyrights, trade names, trade secrets, mask works or other intellectual property created in the performance of the PO shall be the sole property of Cummins and Supplier shall do all things requested by Cummins, at Cummins' expense, to transfer the ownership thereof and to perfect the same.

11. DESIGN AND INFORMATION

It is understood that any article made according to a design specified by Cummins (not previously a standard commercial design of Supplier) will not be furnished or disclosed by Supplier to any other person, firm, or corporation. It is recognized that Supplier will have access to certain confidential information of Cummins and, therefore, Supplier agrees not to divulge or permit disclosure to anyone the confidential information of Cummins, nor use for its own benefit, any such information including drawings or other documentary information of a confidential nature.

12. REMEDIES

The remedies herein reserved shall be cumulative and in addition to any other or further remedies provided in law or equity. No waiver of a breach of any provision of the PO shall constitute a waiver of any other breach, or of such provision on the future occasion.

13. INDEMNITY AND INSURANCE

The Supplier agrees to indemnify and protect Cummins, its servants, employees, directors, agents and representatives against all liabilities, claims, or demands for injuries or damages to any person or property arising out of or in connection with the delivery of the Supplies or performance of the PO by Supplier, its servants, employees, agents or representatives. The Supplier agrees to maintain the following levels of insurance and to furnish to Cummins with certificates of insurance for: Public Liability Insurance (\$20,000,000 single limit), Product Liability insurance (\$20,000,000 single limit), and Worker Compensation Insurance (as required by statute). Said certificates must set forth the amount of coverage, number of policy, and date of expiration, unless waived in writing. The Supplier also agrees to furnish Cummins certificates from appropriate governmental agencies and insurance companies, upon request by Cummins, showing that Supplier has adequate Worker's Compensation coverage.

If the Supplies involve accounting, legal, medical or other professional services, the Supplier must also provide: Professional Liability Insurance (\$10,000,000 each incident). If the Supplies involve transporting Cummins assets via motor vehicle, the Supplier must also provide: Motor Truck Cargo Insurance (\$1,000,000 single limit). If the Supplies involve performing environmentally related activities such as (but not limited to) waste disposal and environmental clean-up upon Cummins property, the Supplier must also provide: Environmental Impairment Liability Insurance (\$5,000,000 single limit). In no event shall Cummins be liable for any indirect, consequential, economic or financial losses or incidental damages, however caused and howsoever arising out of or in connection with this agreement.

14. ADVERTISING OR USE OF NAME "CUMMINS"

The Supplier shall not use or permit the use of the word "Cummins" or any similar word or any trademarks of Cummins in any manner (including but not limited to any in any description of or in the marketing of products produced by the Supplier), or in any manner advertise or publish the fact that the Supplier has contracted to furnish the Supplies pursuant to the PO.

15. SUPPLIER'S INSOLVENCY

If the Supplier ceases to conduct operations in the normal course of business or is likely to or be unable to meet its obligations when they arise, if any bankruptcy or insolvency proceeding is brought by or against the Supplier, if a receiver, administrative receiver, liquidator or similar is appointed or applied for in relation to the Supplier, if the Supplier makes an assignment for the benefit of creditors, or if Cummins reasonably believes the Supplier may be unable to complete the PO, Cummins may demand adequate written assurance of performance or, at its option, terminate this PO, in whole or in part, without liability except for Supplies previously delivered to and accepted by Cummins. If the Supplier fails to provide written assurance of performance, within 10 days of Cummins' demand for such assurance, Cummins may terminate this agreement.

16. COMPLIANCE WITH LAWS

The Supplier agrees to comply with Cummins' Supplier Code of Conduct and to comply with all applicable governmental laws, regulations and rules applicable to the Supplies (including the *Competition and Consumer Act 2010* (Cth), *Criminal Code Act 1995* (Cth), *Australian Security Intelligence Organisation Act 1979* (Cth) and *Export Control Act 1982* (Cth)) furnished under this PO. The Supplier shall at all times comply with any legislation, regulations or by-laws, common law, requirements, consents or guidelines relating to occupational health and safety of persons and environmental protection. The Supplier agrees to indemnify, defend and hold Cummins harmless from and against any liability arising from a breach of the same and agrees to defend at its expense any action brought against Cummins, except to the extent that such action arises directly from any default, fraud or non-compliance with the above laws or negligence on the part of Cummins.

17. MISCELLANEOUS

17.1 Force Majeure. Neither party shall be liable to the other for failure to perform its obligation under this PO when performance is prevented by flood, drought, fire, war, riot, acts of terrorism, acts of God or Governments. During the Supplier's inability to supply the Supplies, Cummins may, at its option, procure such the Supplies from other suppliers but will revert to the PO once the element of Force Majeure has been overcome.



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- 17.2 Cummins may set off any amounts due to the Supplier under this PO against amounts owed by the Supplier to Cummins for any reason.
- 17.3 If requested by Cummins, the Supplier agrees to give Cummins or its authorized representative's access to all pertinent documents, data and other information relating to the Supplies, and to view any facility or process relating to the Supplies.
- 17.4 Notice. Any notice required to be made under this PO to Cummins shall be made to: Cummins South Pacific Pty Ltd., Company Secretary, 15-17 Prospect Street, Box Hill, Victoria, 3128, unless a different address is specified on the face of the PO. Any such notice to the Supplier shall be to the address shown on the face of the PO.
- 17.5 The Supplier will use its best endeavours to actively pursue sourcing of materials and services from minority owned and small disadvantaged businesses. Cummins reserves the right to periodically meet with the Supplier's purchasing department to review minority sourcing programs and results.
- 17.6 The Supplier agrees to comply with the International Financial Reporting Standards (IFRS), and if requested to by Cummins, the Supplier will comply with and assist Cummins as reasonably necessary in its compliance with the requirements of the Sarbanes-Oxley statute and related regulations.
- 17.7 The Supplier must not subcontract performance of the delivery or performance of the Supplies without Cummins' prior written consent.
- 17.8 The Supplier cannot assign the rights and benefits of these Supplier Terms and Conditions without Cummins' prior written consent.
- 17.9 Cummins may terminate the PO or these Supplier Terms and Conditions at any time for any reason upon thirty (30) days written notice to the Supplier. In the event of such termination, Cummins shall pay the Supplier for any products or services supplied up until the date of termination.
- 17.10 Cummins may terminate the PO or these Supplier Terms and Conditions immediately upon written notice to the Supplier if the Supplier breaches any provision of the PO or these Supplier Terms and Conditions and the breach is incapable of remedy, or where the breach is capable of remedy, fails to remedy that breach within ten (10) business days of notice from Cummins requesting that the Supplier do so.
- 17.11 The Supplier must comply with any special conditions as may be specified in Schedule 1 of these Supplier Terms and Conditions.

18. ENVIRONMENTAL

The Supplier agrees to conform to the Cummins Environmental Policy and to the procedural requirements associated with the Cummins Environmental Management System. The Supplier shall ensure it has an understanding of its obligations under the Cummins Environmental Management System and assumes responsibility for the consequences of departing from specified procedures. To obtain further information and a copy of Cummins' Environmental Policy, contact the site Environmental Manager on Tel. 61-3-9765 3222.

19. ADMINISTRATIVE

- 19.1 Original packing slip must accompany material. PO number, department number, and receiving location code must appear on all invoices, shipping notices, bills of lading, express receipts, packing and packing slips. A full set of documents are to be rendered for each shipment and forwarded only to Cummins on the day of shipment. Bills of Lading must be forwarded under separate registered mail. All invoices and shipping documents must show the Purchase Order number as set out under this PO. Any loss of profits, bonding or wharf charges or consequential damages arising from not adhering to these and the following shall be payable by the Supplier. For Domestic Shipments or Deliveries, invoices (Original only), delivery dockets and/or shipping specifications (in triplicate) are required. Invoices are to be mailed to the invoicing address shown on the PO and not enclosed with these Supplier Terms and Conditions and not enclosed with goods supplied. For Foreign Shipments, Custom Invoices, Bills of Lading and Shipping specifications in quadruplicate are required, with the whole properly completed and certified in accordance with Australian Customs Regulations.
- 19.2 All invoices covering material listed below must refer to this PO number, including the suffix. Only one PO number is to be referenced on the invoice.
- 19.3 Material shipped from other than the Supplier's stock must plainly show Cummins PO number and the Supplier's name on packing slips and shipping tags.
- 19.5 This PO and the Supplier Terms and Conditions shall expire upon receipt of the Supplies or services described herein or one (1) calendar year from the date placed, whichever occurs first, unless otherwise stipulated on the face of this order. The foregoing notwithstanding, those terms which by their nature are intended to survive the delivery of the Supplies under the PO and these Supplier Terms and Conditions shall survive.

20. WARRANTIES

In the event the goods are defective while under warranty, the Supplier will replace or repair the defectives goods. The Supplier agrees to have regard to any reasonable request from Cummins regarding repair or replacement. Warranties against defects are provided by the Supplier and warranty claims will be directed to the Supplier's address on the PO. The Supplier acknowledges that the Supplies are provided with guarantees that cannot be excluded under Australian Consumer Law. Cummins is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Cummins is also entitled to have the Supplies repaired or replaced if the goods fail to be of acceptable quality and the failures does not amount to a major failure. This warranty is in addition to other rights and remedies available to Cummins under the law.

21. TEST CERTIFICATES

If so stated on the face of this Purchase Order or any attachments, test certificates for material and equipment supplied under this Purchase Order must be forwarded to Cummins upon completion of testing or upon request by Cummins of such certificates from the Supplier.

22. SITE WORK AND SERVICES

- 22.1 Invoices for site work and services must be accompanied by a schedule of "work completed on site" certified by Cummins' engineer or authorised representative.
- 22.2 Progress payments will not be made unless specified in the Purchase Order.
- 22.3 Evidence of the Supplier's current Workers Compensation insurance policy covering personnel involved in site work and service and an adequate Public Liability insurance policy issued by a reputable insurer must be supplied with the acceptable of the Purchase Order and the Supplier shall indemnify and keep indemnified Cummins, its servants, employees, directors, agents and representatives and hold it and them harmless against all actions, suits, claims, proceedings, costs and expenses whatsoever arising there from. Any Supplier that enters Cummins' site must comply with Cummins' OH&S Requirements as well as complying with Australian State and Federal Safety Standards.

22.1 GST

For the purpose of this Purchase Order unless the context otherwise requires:

"**Act**" means A New Tax System (Goods and Services Tax) act 1999 as amended.

"**GST**" has the meaning given in Section 195-1 of the Act

Where any other term is used in this clause which is defined in the Act it shall have the same meaning which it bears in the Act.

22.2 GST Exclusive

Any amounts payable under this Purchase Order are calculated or expressed exclusive of GST.

22.3 Taxable Supply



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If GST is or becomes payable by a party under this Purchase Order or any transaction contemplated by this Purchase Order, the recipient of the supply must pay to that party an amount equal to the GST payable of the supply, provided that the party at the same time provides to the recipient of the supply a valid tax invoice referable to that supply.

22.4 Adjustment

If there is an adjustment relation to a supply under this Purchase Order which results in the amount of GST or a supply being different from the amount in respect of GST recovered by a party, as appropriate, that party:

- (a) may recover from the recipient of the supply the amount by which the amount of GST on the supply exceeds the amount recovered; or
- (b) must refund to the recipient of the supply the amount by which the amount recovered exceeds the amount of GST on the supply.

22.5 Further Assurance

Each party must do all things necessary so that it is registered for GST purposes by the date GST is first imposed.

Supplier Name in Full: _____ **Phone Number:** _____ :

Registered Address of Supplier: _____ :

Supplier Representative: Printed Name: _____ **Job Title:** _____ :

Supplier Representative: Signature: _____ **Date:** _____ :