

# CUMMINS – [ITALY] – PURCHASE ORDER TERMS AND CONDITIONS FOR PRODUCTS AND SERVICES

## 1. INTERPRETATION

### 1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in Italy are open for business.

**Buyer:** the Cummins entity incorporated in the country, registered under the number and the address listed on the Purchase Order.

**Buyer Materials:** has the meaning set out in clause 5.10(c).

**Claims:** has the meaning set out in clause 13.2.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.9.

**Confidential Information:** has the meaning set out in clause 14.1.

**Contract:** the contract between the Buyer and the Supplier for the supply of Products and/or Services in accordance with these Conditions.

**Deliverables:** all Documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Products and/or Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**DPA:** The applicable data protection law in Italy, as amended from time to time.

**Force Majeure Event:** has the meaning set out in clause 17.1.

**Group:** in relation to a company, that company, its subsidiaries, any company of which it is a subsidiary (its holding company) and any other subsidiaries of any such holding company; and each company in a group is a member of the group.

Unless the context otherwise requires, the application of the definition of Group to any company at any time will apply to the company as it is at that time.

**Holding company and subsidiary:** mean a "holding company" and "subsidiary" as defined in the Italian Civil Code.

**Incoterms:** The International Chamber of Commerce Incoterms rules for the interpretation of trade terms 2020 (or such future versions or amendments).

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright (or author rights) and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database

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right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world, which results from or relates to the supply of Products and/or Services and **Intellectual Property** will be construed accordingly.

**MA:** any master agreement entered into between the Buyer and the Supplier in connection with the Purchase Order (whether a master purchase agreement, master supply agreement or otherwise).

**Products:** the products (or any part of them) set out in the Purchase Order, to be provided by the Supplier under the Contract.

**Purchase Order:** a specific purchase order for Products and/or Services, given by the Buyer to the Supplier in accordance with these Conditions (including a material release form where the context permits).

**Services:** the services, including, without limitation, any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

**Specification:** in relation to the Products, any specification for the Products (including relevant plans or drawings) provided by the Buyer to the Supplier and, in relation to the Services, the description or specification for Services produced by the Supplier and agreed in writing by the Buyer.

**Supplier:** the person or firm from whom the Buyer purchases the Products and/or Services.

**Supplier Know-How:** has the meaning set out in clause 12.6.

**TUPE:** the Transfer of Undertakings Protection of Employment rules of the EU Acquired Rights Directive and/or the equivalent provision to the EU Acquired Rights Directive and/or any legislation implementing into the national law the EU Acquired Rights Directive, such as article 2112 of the Italian Civil Code (as amended by article 1 of the Legislative Decree no. 18/2001 and by article 32 of the Legislative Decree no. 276/2003) and case law relating thereto.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms; and

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- (c) a reference to **writing** or **written** includes faxes and e-mails.

### **2. BASIS OF CONTRACT AND OFFER**

- 2.1 The Purchase Order constitutes an offer by the Buyer to purchase Products and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Purchase Order will be deemed to be accepted by the Supplier on the earlier of:
  - (a) the Supplier issuing written acceptance of the Purchase Order; or
  - (b) any act by the Supplier consistent with fulfilling the Purchase Order,

at which point and on which date the Contract will come into existence (**Commencement Date**).

- 2.3 If there is a conflict between these terms, the information on the face of the Purchase Order, or any attachments to the Purchase Order, the terms on the face of the Purchase Order shall take precedence over these terms, and these terms shall take precedence over any other attachment. If the Purchase Order is issued in conjunction with a detailed contract between the parties, the terms of the contract will take precedence over all other terms.
- 2.4 The purchase of goods and services by Buyer is expressly conditioned on assent by Supplier to these terms; any additional or conflicting terms or provisions in other documents provided by Supplier relating to such purchase shall not apply to such purchase, and are hereby rejected by Buyer.

### **3. QUALITY, WARRANTIES AND INSPECTION**

- 3.1 The Supplier warrants that:
  - (a) the Products and/or Services correspond with their description and any applicable Specification;
  - (b) the Products are of satisfactory quality and conform to the quality expected and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgment;
  - (c) the Products, where applicable, are free from defects in design, materials and workmanship and shall be subject to a contractual warranty of at least 24 months after delivery; and
  - (d) the Products and/or Services comply with all applicable statutory and regulatory requirements relating to them.
- 3.2 The Supplier warrants that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Products and/or Services.

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- 3.3 The Supplier assigns and warrants that it has the authority to assign to the Buyer all manufacturer's warranties, express or implied, representations, service agreements and other indemnities, if any, applicable to all Products and/or Services sold to the Buyer by the Supplier.
- 3.4 The Buyer will have the right to inspect and test the Products at any time before delivery, including (but not restricted to) undertaking quality surveys and audits. The Supplier (whether directly or through a duly appointed sub-supplier) will, without additional charge to the Buyer, provide all reasonable facilities and assistance required for safe and convenient inspections by the Buyer. The Buyer will not unduly delay any of the Supplier's work while conducting inspections.
- 3.5 The Buyer will not be liable for any reduction in value of samples used in connection with any inspections nor will any rejected Products be delivered to the Buyer.
- 3.6 If following such inspection or testing the Buyer considers that the Products do not conform or are unlikely to comply with the Supplier's warranties at clause 3.1, the Buyer will inform the Supplier and the Supplier will immediately take such remedial action as is necessary to ensure compliance.
- 3.7 Notwithstanding any inspection or testing by the Buyer, the Supplier will remain fully responsible for the Products and any inspection or testing by the Buyer will not reduce or otherwise affect the Supplier's obligations under the Contract. The Buyer will have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions. For the avoidance of doubt, the Buyer's inspection, or lack of inspection, will neither relieve the Supplier of responsibility for Products that do not comply with these Conditions, imply approval or acceptance of the Products by the Buyer or waive the Supplier's liability for latent defects, fraud, mistake or breach of warranty.

### **4. SUPPLIER PERSONNEL**

- 4.1 The Buyer's assignments for which Supplier personnel provide Services will remain under the supervision and control of the Buyer. The Buyer reserves the right to ask for the removal and/or replacement of any and all member(s) of the Supplier's personnel, in the event that the activity provided is not considered satisfactory by the Buyer. If a replacement is requested, the Supplier will immediately replace the identified personnel at no cost to the Buyer. Furthermore, the Supplier will not offer, promise, initiate an offer to or employ personnel of the Buyer during the term of the Contract and for one (1) year thereafter.
- 4.2 The Supplier will remain solely responsible for payment of the compensation, benefits and insurance for its personnel. The Supplier maintains full responsibility for the acts of its personnel in the performance of its obligations under the Contract. Neither the Supplier nor the Supplier's employees are or will be deemed to be employees of the Buyer during the period of delivery of the Services. The Supplier's employees are

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not eligible to, nor will they participate in or earn service under, the Buyer's benefit plans now existing or created in the future for employees of the Buyer.

### 5. DELIVERY OF PRODUCTS

- 5.1 The Supplier acknowledges that time is of the essence regarding delivery of Products, that the Buyer has strict requirements regarding scheduled delivery dates for Products and that these requirements are essential to the Buyer's business. The Buyer is not obliged to accept early deliveries, late deliveries, partial deliveries or excess deliveries.
- 5.2 The Supplier will ensure that:
- (a) the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition and free from damage;
  - (b) each delivery of the Products is accompanied by documentation specified by the Buyer or, in the absence of the Buyer's specification, a packing slip or delivery note which clearly identifies the Products and which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Products (including the bar code number of the Products where applicable), special storage instructions (if any), the invoice number, details of the delivery location (**Delivery Location**), the Buyer's part number and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
  - (c) if the Supplier requires the Buyer to return any packaging material for the Products to the Supplier, that fact is clearly stated on the packing slip or delivery note. Any such packaging material will only be returned to the Supplier at the cost of the Supplier.
- 5.3 The Buyer reserves the right to require the Supplier to submit shipment data to it electronically, whether as an advance shipment notification or otherwise.
- 5.4 The Supplier will deliver the Products:
- (a) on the date specified in the Purchase Order;
  - (b) to the Delivery Location set out in the Purchase Order or as instructed by the Buyer before delivery;
  - (c) during the Buyer's normal hours of business on a Business Day, or as instructed by the Buyer.
- 5.5 The Supplier will not deliver the Products in instalments without the Buyer's prior written consent (to be provided in the Purchase Order or in a specific writing signed by the Buyer). Where it is agreed that the Products are delivered in instalments, the Products may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment will entitle the Buyer to the remedies set out in clause 7.1.

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- 5.6 Title and risk in the Products will pass to the Buyer on completion of delivery (as defined by reference to the applicable Incoterm which shall be mentioned in the relevant Purchase Order or, failing this, by article 5.8 hereunder) and upon inspection and acceptance of the Products by the Buyer.
- 5.7 Supplier shall deliver the Products FCA Supplier's facility (Incoterms 2020), unless otherwise indicated in the Buyer's Purchase Order or otherwise agreed in the Contract. All delivery terms will be interpreted in accordance with the Incoterms 2020.
- 5.8 The Supplier will adhere to any logistics procedures and warehousing instructions provided by the Buyer (including instructions provided in materials, agreements or transportation routing letters). The Supplier will also document the country of origin details relevant to the Products in the format specified by the Buyer and in compliance with all applicable regulations. It will be the Supplier's responsibility to monitor this information and to immediately notify the Buyer's customs department of any changes.
- 5.9 In supplying the Products, the Supplier will:
- (a) ensure that the Products conform with all descriptions and specifications set out in the Specification, and that the Deliverables will be fit for any purpose expressly or impliedly made known to the Supplier by the Buyer;
  - (b) use the best quality products, materials, standards and techniques, and ensure that the Deliverables, and all Products will be free from defects in workmanship, installation and design;
  - (c) hold all materials, equipment and tools, drawings, specifications, blue prints, media and data supplied by the Buyer to the Supplier (**Buyer Materials**) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose of or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation; and
  - (d) not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

### 6. SUPPLY OF SERVICES

- 6.1 The Supplier will from the Commencement Date and for the duration of the Contract provide the Services to the Buyer in accordance with the terms of the Contract.
- 6.2 The Supplier will meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by the Buyer.
- 6.3 In providing the Services, the Supplier will:

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- (a) co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables will be fit for any purpose expressly or impliedly made known to the Supplier by the Buyer;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality products, materials, standards and techniques, and ensure that the Deliverables, and all products and materials supplied and used in the Services or transferred to the Buyer will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises;
- (i) hold all Buyer Materials in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose of or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation; and
- (j) not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Buyer may rely or act on the Services.

### **7. BUYER REMEDIES**

7.1 If the Supplier fails to deliver the Products and/or perform the Services by the applicable date, the Buyer will, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Products which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute products and/or services from a third party;

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- (d) where the Buyer has paid in advance for Services that have not been provided by the Supplier and/or Products which have not been delivered by the Supplier, to have such sums immediately refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Supplier is in breach of the Contract then, without limiting its other rights or remedies, the Buyer will have one or more of the following rights (and, in the case of Products, whether or not it has accepted the Products):

- (a) to reject the Products (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and cost;
- (b) to terminate the Contract with immediate effect if the Supplier fails to remedy its default within by the term given in the written notice, which cannot be shorter than 15 days,
- (c) to cancel the Purchase Order in whole or in part at the Supplier's own risk and cost;
- (d) to require the Supplier to repair or replace rejected Products at the Supplier's own risk and cost (the cost of any such repair or replacement to be based upon the Buyer's then current hourly rate for comparable work), or to provide a full refund of the price of the rejected Products (if paid);
- (e) to refuse to accept any subsequent delivery of the Products which the Supplier attempts to make;
- (f) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute products from a third party; and
- (g) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Supplier's breach of the Contract.

7.3 Notwithstanding clause 7.2, the Buyer may cancel the Purchase Order in whole or in part at any time having provided prior written notice of cancellation to the Supplier. Such cancellation will be without liability to the Buyer except the Buyer will pay the Supplier for the cost of any work in progress and for any material commitments made within the time period specified on the face of the Purchase Order or, if no time period is specified, within the two week period from the date of the notice of cancellation. For the avoidance of doubt, the amount of any work in progress and material commitments must be verified and confirmed by the Supplier in writing.

7.4 In the event that the Supplier appoints a third party to inspect, sort or repair the rejected Products, that third party will be subject to the Buyer's prior approval.

7.5 Notwithstanding the foregoing, Buyer has the right to recover additional freight costs (including for premium freight) that are directly caused by Supplier (including, but not limited to, delayed delivery of parts, early/unscheduled delivery of parts that are



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returned to the Supplier, non-conforming parts, returns, damage of parts due to Supplier incorrectly loading a vehicle or wrong packaging, in addition to other conditions which are attributed to Supplier's failure to perform as contractually agreed). To determine the cause of additional freight costs, the Supplier shall meet with the Buyer upon reasonable notice to discuss such costs. Where such costs are agreed to be directly caused by Supplier, Buyer will determine to what extent (on a range between 0% and 100%) these extra freight costs shall be borne by Buyer and by the Supplier and will notify the Supplier of the resulting percentage and the resulting amount of the allocated costs. Buyer is entitled to set off the resulting amounts owing from Supplier to Buyer against any amounts owed to Supplier from Buyer (debits issued to the Supplier) following agreement with Supplier. If Buyer and the Supplier do not agree on the costs to be borne by the Supplier, the decision will be escalated internally by Buyer. If the parties cannot reach agreement following such escalation, each party has the right to use the dispute resolution mechanism set forth in these Conditions or as agreed in the Contract.

- 7.6 The Supplier will ensure that all data provided on paper and electronically is accurate, complete and complies with the Buyer's specifications. The Buyer reserves the right to recover from the Supplier any costs it incurs in correcting data or manually entering electronic data, whether by way of a cost recovery debit or otherwise.
- 7.7 Notwithstanding the foregoing clauses, the Supplier grants the Buyer a licence to repair, rebuild and relocate Products itself.
- 7.8 These Conditions will extend to any repaired or replacement Products and/or to any substituted or remedial Services supplied by the Supplier.
- 7.9 The Buyer's rights under the Contract are in addition to its rights and remedies implied by Italian law.

### **8. BUYER'S OBLIGATIONS**

The Buyer will:

- (a) provide the Supplier with access to the Buyer's premises for the purpose of supplying the Products and/or Services during the Buyer's normal business hours or as instructed by the Buyer; and
- (b) provide such information as the Supplier may reasonably request for the supply of the Products and/or Services and the Buyer considers reasonably necessary for the purpose of supplying the Products and/or Services.

### **9. PLACING PURCHASE ORDERS, PRICING, INVOICING AND PAYMENT**

- 9.1 The Buyer may place Purchase Orders electronically and may also provide other information to the Supplier electronically.

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- 9.2 The price for the Products and/or Services:
- (a) will be the price set out in the Purchase Order; and
  - (b) will be inclusive of the costs of packaging, insurance and carriage of the Products, unless otherwise agreed in writing by the Buyer. No extra charges will be effective unless agreed in writing and signed by an authorised representative of the Buyer.
- 9.3 All prices are stated in Euros unless otherwise specified. To the extent permitted by the applicable law, the Supplier warrants that the prices stated in the Purchase Order are not higher than prices currently charged to other buyers at similar volumes, as the case may be. If the Supplier's prices for similar products or services are reduced (whether by way of a price reduction, close-out, rebate, allowances or additional discounts offered at any time prior to shipment), the Supplier will reduce the price for the Products and/or Services and will invoice the Buyer at the reduced prices. Any price differences resulting from these changes will be adjusted by the Buyer and, notwithstanding this, the Supplier will proceed with its performance of the terms of the Contract.
- 9.4 The Supplier will invoice the Buyer on delivery or immediately after completion of the services. Each invoice will include supporting information required by the Buyer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number and must reflect the prices stated in the Purchase Order. The Supplier will, if requested by the Buyer, receive Purchase Order(s) and send invoices (together with supporting information) electronically and, in the absence of such request, will send invoices to the address specified by the Buyer in the Purchase Order. For the avoidance of doubt, multiple invoices may be issued by the Supplier in respect of a single Purchase Order provided that there is no duplication of invoices by the Supplier. The Buyer will determine any discrepancies regarding invoices.
- 9.5 In consideration of the supply of Products and/or Services by the Supplier, the Buyer will pay the invoiced amounts within 60 days of the date of issuance of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 9.6 All amounts payable by the Buyer under the Contract are exclusive of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer will, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Products and/or Services at the same time as payment is due for the supply of the Products and/or Services.
- 9.7 The Supplier will not be entitled to assert any credit, set-off or counterclaim against the Buyer in order to justify withholding payment of any amount in whole or in part. The Buyer may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier (or owed to it by any companies within the Supplier's Group) against any amount payable by the Buyer to the Supplier.

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**10. CHANGES**

- 10.1 The Buyer may, at any time and by way of written or verbal instructions confirmed in writing, make changes in respect of the Products and/or Services including, but not restricted to, any one or more of the following ways:
- (a) Drawings;
  - (b) Designs;
  - (c) Specifications;
  - (d) Method of shipment;
  - (e) Packing;
  - (f) Time of delivery;
  - (g) Place of delivery; and
  - (h) Quantity of items ordered.
- 10.2 Under no circumstances will the Buyer be liable for incidental or consequential damages resulting from any changes. The exclusion of liability provided in this paragraph is not applicable in case of gross negligence or wilful misconduct of the Buyer.

**11. TOOLING AND SUPPLIER RESTRICTIONS**

- 11.1 Unless otherwise agreed in writing by the parties, all tooling, gauging and facilities necessary for the manufacture of the Products (whether standard or customised) and/or provision of the Services will be provided at the cost of the Supplier. The Supplier will provide the Buyer with detailed descriptions of tooling and related information confirming that the tooling complies with the required standard.
- 11.2 The Supplier will, at its own cost, maintain, repair and replace all Supplier-owned tooling, gauging and facilities necessary for the manufacture of the Products and/or provision of the Services will maintain all tooling and gauging in its possession. The Supplier will also keep all tooling, gauging and facilities in good working order and condition and free from all liens and other encumbrances.
- 11.3 The Supplier agrees to reimburse the Buyer for all losses resulting from the premature failure of any Buyer-owned tooling or gauging in the Supplier's possession to the extent that such failure arises from the Supplier's failure to properly maintain tooling or gauging.
- 11.4 The Supplier will not make any changes to the specifications, physical composition, materials, location, tooling, material suppliers or processes used to manufacture or produce the Products and/or provide the Services without the prior written consent of the Buyer. At all times, the Supplier will ensure that any changes do not affect the Products' and/or Services' compliance with these Conditions. Unless otherwise

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approved by the Buyer in writing, the Supplier will not use any tooling customised for the Buyer's use or tooling otherwise paid for in whole or in part by the Buyer, to manufacture products and/or provide services other than products for sale to the Buyer or a third party approved by the Buyer and/or services provided to the Buyer.

### **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 In respect of the Products and any products that are transferred to the Buyer as part of the Services under the Contract, including, without limitation, the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Buyer, it will have full and unrestricted rights to sell and transfer all such items to the Buyer.
- 12.2 To the fullest extent permitted under Italian law, the Supplier assigns to the Buyer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Products and/or the Services including for the avoidance of doubt the Deliverables. If and to the extent that any Deliverable or any part thereof are not assignable by virtue of applicable law, the Supplier hereby grants to the Buyer any unlimited, exclusive, worldwide, royalty free, fully paid up, transferrable, sub-licensable right and license to the Deliverable, and every part thereof for the full term of protection therein and to the fullest extent permitted under applicable law. The Supplier hereby expressly confirms that such license is royalty-free and that it waives its right to remuneration.
- 12.3 The Supplier agrees to promptly take all actions reasonably necessary to make effective the provisions of this section and to protect and vest in the Buyer all rights in the Deliverables as set forth herein, including, without limitation, executing documents of assignment or license, and obtaining and retaining signed agreements from each of its Personnel, which agreements shall: (i) provide for the Supplier Personnel to disclose and assign or license as applicable to the Supplier every and all materials it creates, conceives and/or develops during his or her employment with the Supplier; (ii) establish that all the work product/efforts of its Personnel are developed for the benefit of the Supplier, or otherwise provide for appropriate transfers of ownership or license if applicable in work product/efforts to the Supplier or the Buyer; (iii) require protection of Confidential Information to at least the same degree as provided for herein, as well as require the same level of protection for all work product such Personnel develops while in his or her employment with the Supplier; (iv) impose an affirmative obligation on Personnel to maintain and deliver relevant business records to the Supplier, and to execute documents and provide proper assistance in order to vest, or establish, the Buyer's rights as set forth herein.
- 12.4 To the extent permitted by the applicable laws, the Supplier will obtain waivers of all rights in the Products and/or Services, including for the avoidance of doubt the Deliverables or the Services, to which any individual is now or may be at any future time entitled under the applicable intellectual property laws. The Supplier will, promptly at the Buyer's request, do (or procure to be done) all further acts and things

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and the execution of all other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with clause 12.2.

- 12.5 All Buyer Materials are the exclusive property of the Buyer and any Intellectual Property created in the performance of the Contract will be the sole property of the Buyer. The Supplier will do all things requested by the Buyer to transfer the ownership of that Intellectual Property to the Buyer and to perfect ownership of that Intellectual Property.
- 12.6 All ideas, concepts, processes, methods and technologies contained in inventions and developments created by the Supplier completely independent of the Contract (**Supplier Know-How**) will remain exclusively the property of the Supplier. To the extent that the Supplier discloses or uses Supplier Know-How in providing the Products and/or Services to the Buyer under the Contract, the Supplier grants the Buyer a perpetual, paid-up, worldwide, non-exclusive licence to use Supplier Know-How in the Buyer's services, products and processes.

### 13. INDEMNITY

- 13.1 The Supplier will keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and costs awarded against or incurred or paid by the Buyer as a result of or in connection with:
- (a) any claim made against the Buyer by a third party for damage to property arising out of, or in connection with, defects in the Products and/or Services, to the extent that the defect in the Products and/or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - (b) any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Products and/ or Services, to the extent that the claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
  - (c) any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Products or receipt, use or supply of the Services.
- 13.2 Each party will notify the other of any claim, recall or lawsuit relating to the Products and/or Services (collectively Claims). In the event of any Claims, the Buyer will accept no liability on behalf of the Supplier and the Supplier will, at its own discretion, be responsible for the defence of Claims. If the Supplier fails to defend Claims, the Buyer reserves the right (subject to having first given the Supplier thirty (30) days written

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notice to assume the defence and the Supplier not having acted thereon by defending the Claim) to assume the defence, and the Supplier will remain obliged to indemnify the Buyer provided that the Buyer must act reasonably and mitigate its loss. The Supplier is not authorised to settle or compromise any Claims without the prior written consent of the Buyer except where the Supplier is indemnifying the Buyer in respect of the Claim. In any event, the Buyer will not unreasonably withhold its consent.

- 13.3 The Supplier will be solely responsible for, and its indemnification obligation under this clause 13 will extend to, all acts and omissions of any members of its Group, its affiliates, successors, and permitted assigns, and its or their respective officers, directors, employees, agents, or contractors in the performance of its obligations under the Contract.
- 13.4 In the extent permitted by law and not in case of fault, gross negligence or wilful misconduct of the Buyer, the Buyer shall not be liable for anticipated losses or loss of profits, business interruption, incidental or consequential damages or for damage, loss, theft or injury to the Supplier's property at the Buyer's premises. Notwithstanding the exclusions above, the Buyer's liability for any claim arising out of or in relation to the Contract will be capped at the price of the Products and/or Services giving rise to the claim.
- 13.5 For the duration of the Contract, the Supplier will maintain in force, with a reputable insurance company professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and will, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

### 14. BUSINESS RELATIONSHIP

- 14.1 The Supplier will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature (**Confidential Information**) and have been disclosed to the Supplier by the Buyer, its employees, agents or subcontractors, and any other confidential information concerning the Buyer's business or its products or its services which the Supplier may obtain. The Supplier will 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 Supplier's obligations under the Contract, and will ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Supplier.
- 14.2 The Supplier will not disclose the existence of the Contract to another party and will not release any advertising material naming the Buyer nor quote the opinion of any of the Buyer's employees, use the name or trademark of the Buyer or make any public announcement or disclosure relating to the Contract or the Products or Services without the prior written consent of the Buyer'.

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- 14.3 All Products manufactured by the Supplier in accordance with the Buyer's drawings or in the manufacture of which the Buyer's tools, dies, patterns, jigs or special tooling are used, will not be sold by the Supplier to any party other than the Buyer.
- 14.4 The Supplier acknowledges that it may, during the course of supplying the Products and/or Services, be required to process or otherwise have access to personal data (as defined by the DPA) in respect of which the Buyer is the data controller. The Supplier acknowledges that it will be the Buyer's data processor in respect of that personal data and warrants and undertakes that it will:
- (a) only process personal data on behalf of the Buyer in accordance with instructions received from the Buyer from time to time;
  - (b) take all appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data, and against accidental loss or destruction of, or damage to, the personal data;
  - (c) inform the Buyer at any time on written request what measures it is taking to comply with sub-clause 14.4(b) and will take any additional measures necessary to comply with the requirements of that sub-clause; and
  - (d) not, by any act, default or omission, put the Buyer in breach of the DPA.

### **15. TERMINATION**

- 15.1 Without limiting its other rights or remedies (whether arising from these Conditions or under general Italian law), the Buyer may terminate the Contract with immediate effect by giving written notice to the Supplier, to the extent of the applicable law, if:
- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 days of receipt of notice in writing of the breach;
  - (b) immediately if the Supplier or its shareholder(s) approve a merger or transaction with, or a takeover by, a third party which results in a change of Control as "Control" is defined under article 2359 of the Italian Civil Code; or
  - (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of the EU Regulation relating to insolvency proceedings dated 29 May 2000 (and the national law implementing it) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, or (being a partnership) has any partner to whom any of the foregoing apply;

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- (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (h) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(d) to clause 15.1(h) (inclusive); or
- (j) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

15.2 In any of the circumstances in these Conditions in which the Buyer may terminate the Contract, where both Products and Services are supplied, the Buyer may instead terminate part of the Contract in respect of the Products, or in respect of the Services, and the Contract will continue in respect of the remaining supply.

### **16. CONSEQUENCES OF TERMINATION**

On termination of the Contract or any part of it for any reason:

- (a) the Supplier will immediately return or destroy all the Deliverables (whether or not then complete), Buyer Materials, the Buyer's unique tooling, fixtures, drawings and gauging relating to the Products and/or Services. All tooling and gauging will be returned in working condition and will be packaged to minimise any potential damage during transit;
- (b) the accrued rights and remedies of the parties as at termination will not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and



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- (c) clauses which expressly or by implication have effect after termination will continue in full force and effect including (but not restricted to) clauses 3 (Quality, Warranties and Inspection), 12 (Intellectual Property Rights), 13 (Indemnity), 14 (Business Relationship), 15 (Termination) and 17 (General).

**17. GENERAL**

17.1 Force majeure: Neither party will be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party, exterior to that party, which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable (a **Force Majeure Event**). If the Supplier is unable to supply Products and/or Services as a result of the Force Majeure Event, the Buyer may procure the supply of Products and/or Services from other suppliers but reserves the right to either (i) revert to the Supplier once the Force Majeure Event has ceased or (ii) if the Force Majeure Event prevents the Supplier from supplying the Products and/or Services for more than 4 weeks, the Buyer may (without limiting its other rights or remedies) terminate the Contract with immediate effect by giving written notice to the Supplier.

17.2 Assignment and subcontracting:

- (a) The Supplier will not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.
- (b) The Buyer may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

17.3 Compliance:

In carrying out its responsibilities under this Agreement, the Supplier shall not pay, offer or promise to pay, or authorize the payment directly or indirectly of any monies or anything of value to any government official or employee or any political party or candidate for political office, for the purpose of inducing or rewarding any favourable action in any commercial transaction or in any governmental matter, and it has and will maintain and enforce its own company policy requiring adherence to ethical business practices, including a prohibition on bribery of government officials. The Supplier hereby commits to comply with any applicable laws including the Italian Criminal Code provisions, the US Foreign Corrupt Practices Act and the UK Anti-bribery Act 2010 (whenever they shall be applicable).

17.4 Notices:

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- (a) Any notice or other communication required to be given to a party under or in connection with the Contract will be in writing and will be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or communication will be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery on the date of the receipt (which shall be deemed to be received at 9.00 am on the second Business Day after posting if no acknowledgment of receipt is available), or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 17.4 will not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" will not include e-mails and for the avoidance of doubt notice given under the Contract will not be validly served if sent by e-mail.

17.5 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and will not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law will constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy will preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17.6 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract will not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision will apply with the minimum modification necessary to make it legal, valid and enforceable.

17.7 No partnership: Nothing in the Contract is intended to, or will be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute

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any party the agent of another party for any purpose. No party will have authority to act as agent for, or to bind, the other party in any way.

- 17.8 Third parties: For the purposes of these general terms and conditions, and pursuant to the privity of contract principle and the related caselaw, a person who is not a party to the Contract will not have any rights under or in connection with it.
- 17.9 Variation: Any variation, including any additional terms and conditions, to the Contract will only be binding when agreed in writing and signed by an authorised representative of the Buyer.
- 17.10 Liens: The Supplier waives its rights to any lien for work done or material furnished further to the Contract and agrees not to assert any such lien. The Supplier will, before final payment by the Buyer to the Supplier and on the Buyer's behalf, obtain similar waivers or releases of lien rights from every party supplying products and/or services to the Supplier in so far as the supply relates to the Contract. The Supplier will hold the Buyer harmless from and promptly satisfy any and all such liens and claims resulting therefrom.
- 17.11 Health and Safety: The Supplier will, at all times, remain under a duty to ensure that the Products do not present a health and safety risk when properly used and agrees to indemnify and hold harmless the Buyer in respect of all claims arising in connection with the breach of this duty. The Supplier will facilitate safe handling and use of the Products by ensuring that all packaging containing Products is clearly labelled to identify its contents and any hazards they present, including marking and accompanying such Products with sufficient literature and information to enable their safe handling, use and disposal.
- 17.12 Cummins Policies: Cummins requires Supplier comply with the following policies which are incorporated by reference:
- (a) Cummins treatment of others policy
  - (b) Any applicable TUPE undertakings
  - (c) Cummins supplier code of conduct
  - (d) Cummins corporate environmental policy and environmental standards
  - (e) Cummins supplier handbook
  - (f) Cummins standard supplier chargeback policy (called Supplier Accountability for Material Non-Conformance (MNC) Disruptions)
  - (g) Cummins green supply chain principles
  - (h) Cummins restriction of prohibited materials
  - (i) Cummins packaging policies (as set out at <http://scm.Cummins.com/scmintra/displayLevel2.jsp?deptId=Packaging&path=/content/Packaging/Level2/Operations/pkstds.html>); and

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- (j) The organizational model pursuant to Legislative Decree 231/2001 (the "231 Model").

17.12.1 Link to access these policies: <https://supplier.cummins.com>

17.13 The Supplier hereby warrants and represents that it has printed each one of them, read them and accepted them in full.

17.14 Entire agreement: The Contract constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence and negotiations between them relating to its subject matter. Each party agrees that it will have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Contract (whether made innocently or negligently) will be for breach of contract.

17.15 Governing law, jurisdiction, legal compliance and dispute resolution:

- (a) All disputes arising out of or in connection with the Contract shall be exclusively subject to Italian jurisdiction and, in particular, to the exclusive competence of the Court of Rome, Italy, even in the case of incidental claims, guarantee claims or multiple defendants.
- (b) The Contract and the transactions contemplated in the Contract will be governed by and construed and enforced in accordance with the laws of Italy, regardless of conflict of laws principles. The parties agree to exclude the applicability of the Convention on Contracts for the International Sale of Goods dated April 11<sup>th</sup> 1980 (Vienna Sales Convention).
- (c) The Supplier agrees that all activities and work performed directly or indirectly, by or on behalf of Supplier under the Contract will be carried out in accordance with all applicable laws, regulations and policies of Italy, the location where the Supplier is performing, directly or indirectly, such activities and work, and any other governmental authority to which the Supplier, the Products and/or Services are subject, and all relevant policies, procedures and reasonable instructions of the Buyer. The Supplier is solely responsible for such compliance and obtaining all permits and licences required to perform its obligations under the Contract.
- (d) The Supplier certifies that none of the Products and/or Services are or will be manufactured (in the case of Products) or provided (in the case of Services) with child, indentured, forced or prison labour.
- (e) The Supplier agrees to comply with the Italian accepted accounting practices, and, if requested by the Buyer, the Supplier will provide the Buyer with access to the Supplier's financial records in respect of the Products and/or Services as may be reasonably necessary to assist the Buyer in discharging its financial reporting obligations.

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- (f) In case of any discrepancy between the English and the Italian versions of the Conditions, the parties agree that the English version shall prevail.

Done accordingly at [insert place] on [insert date] in a number of identical copies equal to the number of parties.

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The Supplier

Pursuant to articles 1341 and 1342 of the Italian Civil Code, the Supplier hereby acknowledges and specifically accepts the following clauses: 4.1 limitation in relationships with third parties, 7.1 right of suspension of the performance, 10.2 and 13.4 limitations of liability, 15.1 immediate termination and 17.15 (b) exclusive jurisdiction.

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The Supplier