

**PURCHASE ORDER TERMS AND CONDITIONS**  
**For the purchase of indirect products and services by Cummins New Zealand Limited**

**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 plus these Terms and Conditions and any other terms that are attached or incorporated by reference. “Cummins” means Cummins New Zealand Limited; “Supplier” means the supplier or seller identified on the face of this PO and its agents and representatives; “Specifications” means the provisions on the face of this PO and any applicable blueprints, product or service specifications, scopes of work or other documents attached to, or referred to in, the PO; “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 this PO.

1.2 This PO shall be construed as an offer to purchase the Supplies on the terms contained herein. The contract resulting from the acceptance of this order is to be construed according to the laws of New Zealand. This PO is not assignable by Supplier in whole or in part. Any dispute shall be adjudicated in the New Zealand courts.

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**

2.1 This PO is expressly limited to the terms and Specifications contained herein. This PO is an offer 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 (a) rejected and (b) expressly made conditional on Supplier's acceptance of the Specification and terms hereof. Supplier accepts the Specifications and terms by acknowledging or confirming this order, or commencing work on or shipping Supplies covered by this PO.

2.2 If there is a conflict between these terms, the information on the face of this PO, or any attachments to the PO, the terms on the face of the PO shall take precedence over these terms, 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 contract will take precedence over all other terms.

2.3 The purchase of goods and services by Cummins 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 Cummins.

**3. PRICES AND INVOICING**

3.1 The price of the Supplies shall be the price set out in the PO.

3.2 The price of the Supplies excludes GST but includes the cost of packaging, insurance and delivery. No extra charges or increase to the price shall be effective without prior written authorization by Cummins' Purchasing Department.

3.3 Cummins shall, on receipt of a valid GST invoice from the Supplier, pay to the Supplier such additional amounts in respect of GST as are chargeable for the Supplies.

3.3 Payment terms are Net 60 days unless otherwise noted on the face of the PO.

**4. DELIVERY**

4.1 Deliveries are to be made in quantities and at times specified on the face hereof or, if not so specified, then as set forth on delivery schedules furnished by Cummins. Delivery shall be FIS (as defined in Incoterms 2000) and title to Supplies shall pass to Cummins on delivery, unless otherwise stipulated on the face of the Purchase Order. Time for delivery shall be of the essence for the contract period.

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

4.3 Supplies 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.

**5. QUALITY OF SUPPLIES**

5.1 Supplier warrants that all Supplies will conform to the Specifications and/or samples furnished in connection with this 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 prior to the acceptance of this PO if Supplier cannot satisfy the Specifications, terms or the delivery schedule of this PO.

**6. REJECTION OF SUPPLIES**

With respect to any Supplies not in conformity with the requirements of this PO, Cummins shall have the right, without prejudice to any other rights it may have, to reject such Supplies and require Supplier to repair, replace or re-perform such Supplies immediately after notification at Supplier's cost. If such notification is not in writing, it shall be confirmed in writing.

**7. PACKING, SHIPPING, AND STORAGE**

Supplier shall, at his 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 Cummins may cancel this PO or any part thereof at any time upon written notice to Supplier without liability except for payment to Supplier of the cost of work in process and material commitments made within the time specified on the face hereof or, if no time is specified, then within two weeks of the date of cancellation.

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

**9. CHANGES**

Cummins may at any time, 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. Such proposed changes shall be subject to approval by Cummins.

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**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 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 defense 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 this PO shall be the sole property of Cummins and Supplier shall do all things requested by Cummins 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 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 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 this PO shall constitute a waiver of any other breach, or of such provision on the future occasion.

**13. INDEMNITY AND INSURANCE**

13.1 Supplier agrees to indemnify and protect Cummins against all liabilities, claims, or demands for injuries or damages to any person or property growing out of the Supplies or performance of this PO by Supplier, its servants, employees, agents or representatives.

13.2 Supplier further agrees to maintain the following levels of insurance and to furnish to Cummins Risk Management Department certificates of insurance for Workers Compensation Insurance, Public/Product Liability Insurance (\$5,000,000 single limit) and Professional Indemnity Insurance (\$1,000,000 each incident).

**14. ADVERTISING OR USE OF NAME "CUMMINS"**

Supplier shall not use or permit the use of the word "Cummins" or any similar word or any trademark of Cummins in description of or in the marketing of products produced by Supplier, or in any manner advertise or publish the fact that Supplier has contracted to furnish Supplies pursuant to this PO or any PO with Cummins.

**15. SUPPLIER'S INSOLVENCY**

If Supplier ceases to conduct operations in the normal course of business or becomes unable to meet its obligations as they mature, if any bankruptcy or insolvency proceeding is brought by or against Supplier, if a receiver, administrative receiver, liquidator or similar is appointed or applied for, if Supplier makes an assignment for the benefit of creditors, or if Cummins reasonably believes Supplier may be unable to complete this 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 Supplier fails to provide written assurance of performance, Cummins may terminate this agreement.

**16. COMPLIANCE WITH LAWS**

The Supplier agrees to comply with all applicable governmental laws, regulations and rules, and any reasonable instructions from Cummins, applicable to Supplies furnished under this PO, including without limitation any requirements relating to occupational health and safety of persons and environmental protection, the US Foreign Corrupt Practices Act or any similar anti-corruption legislation and any export control or trade sanction laws and regulations. In this connection, the Supplier further 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.

**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, its option, procure such Supplies from other suppliers but will revert to the PO once the element of Force Majeure has been overcome.

17.2 Cummins may set off any amounts due to Supplier under this PO against amounts owed by Supplier to Cummins for any reason.

17.3 If requested by Cummins, Supplier agrees to give Cummins or its authorized representatives 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 hereunder to Cummins shall be made to: Cummins New Zealand Limited, 9 Langley Road, Manukau City, Auckland, 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 Buyer expects Supplier to actively pursue sourcing of materials and services from minority owned and small disadvantaged businesses. Buyer reserves the right to periodically meet with Supplier's purchasing department to review minority sourcing programs and results.

17.6 Supplier agrees to comply with the International Financial Reporting Standards (IFRS), and if requested to by Buyer, Supplier will comply with and assist Buyer as reasonably necessary in its compliance with the requirements of the Sarbanes-Oxley statute and related regulations.

**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, contact the site Environmental Manager.

**19. ADMINISTRATIVE**

19.1. A full set of documents are to be rendered for each shipment and forwarded only to Cummins on the day of shipment. Original packing slip must accompany material. Bills of lading must be forwarded under separate registered mail. All invoices and shipping documents must show the Purchase Order number as set out herein. 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 this Purchase Order and not enclosed with the Supplies. For

Effect date: Jan 2019

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foreign shipments, custom invoices, bills of lading and shipping specifications (in quadruplicate) are required, the whole properly completed and certified in accordance with New Zealand Customs Regulations. Any loss of profits, bonding or wharf charges or consequential damages arising from not adhering to this clause shall be payable by the Supplier

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 Supplier's stock must plainly show Cummins PO number and Supplier's name on packing slips and shipping tags.

19.4 This PO is deemed closed 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 shall survive.

**20. CUMMINS POLICIES**

20.1 Purchaser requires Supplier comply with the following policies which are incorporated by reference:

- (i) Cummins Supplier Code of Conduct
- (ii) Cummins Corporate Environmental Policy and Environmental Standards
- (iii) Cummins Supplier Handbook
- (iv) Cummins Green Supply Chain Principles
- (v) Restriction of Prohibited Materials

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

**Supplier Representative: Printed Name:** \_\_\_\_\_ :

**Supplier Representative: Signature:** \_\_\_\_\_ :

**Supplier Representative: Title:** \_\_\_\_\_ :

**Date:** \_\_\_\_\_ :