

## PURCHASE ORDER TERMS AND CONDITIONS

For the purchase of indirect products and services by Cummins South Africa (Pty) Ltd. its subsidiaries, and affiliates

### 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 South Africa (Pty) Ltd, its subsidiaries and affiliates; "**Supplier**" means the supplier or seller identified on the face of this PO and its agents and representatives; "**Specifications**" means all applicable blueprints, product specifications, the provisions on the face of this 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 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 the Republic of South Africa. This PO is not assignable by Supplier in whole or in part. Any dispute shall be adjudicated in accordance with Cummins' standard terms and conditions of trade's arbitration procedures.

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 Save where otherwise provided, 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 the 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 Prices shown on the face of this PO may not be increased without written authorization by Cummins' Purchasing Department.

3.2 Unless authorized by Cummins, Supplier agrees to issue no more than one invoice to cover all shipments made on any day.

3.3 Payment terms are Net 60 days.

### 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 made FOB Cummins location that is delivered to Cummins point of use, freight pre-paid, unless otherwise stipulated on the face of the Purchase Order. Time for delivery shall be of the essence of 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 Ownership of all supplies/services shall transfer to Cummins immediately upon delivery.

### 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 any 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. DISPOSITION OF REJECTED MATERIAL

With respect to any Supplies not in conformity with the requirements of this PO, 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. 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

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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, power interruptions, any adverse circumstances 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.

## **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; and agrees to indemnify and hold harmless Cummins and anyone selling or using any of Cummins' products against all judgments, decrees, 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: INSURANCE**

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. Supplier further agrees to maintain the following levels of insurance and to furnish to Cummins Risk Management Department certificates of insurance for General/Product Liability insurance (R1,000,000), Property Damage Insurance (R5,000,000) 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. 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 Supplies involve accounting, legal, medical or other professional services, Supplier must also provide: Professional Liability Insurance (R1,000,000 per occurrence). If Supplies involve transporting Cummins assets via motor vehicle, the Supplier must also provide: Motor Truck Cargo Insurance (R300,000 Single Limit). If Supplies involve performing environmentally related activities such as (but not limited to) waste disposal and environmental cleanup upon Cummins property, the Supplier must also provide: Environmental Impairment Liability Insurance (R5,000,000 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 in any way out of this agreement.

## **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 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 applicable to Supplies furnished under this PO. 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/Municipalities. 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., 13 Eastern Service Road, Kelvin View, Gauteng, for the attention of the head of Indirect Purchasing, 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 United States Generally Accepted Accounting Principles, 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 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.

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 Cummins 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

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