

**TERMS AND CONDITIONS OF SALE**  
**Cummins Botswana (Pty) Limited**

STANDARD TERMS AND CONDITIONS

**1. General**

- 1.1 The terms and conditions contained herein represents and constitute the entire terms and conditions between the Customer and Cummins Botswana (Pty) Limited, (hereinafter referred to as Cummins).
- 1.2 No alterations or additions or variations to any term or condition contained herein may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly written authorized representative of Cummins. Such documents shall only be binding upon Cummins if such document is generated by Cummins.
- 1.3 These terms and conditions shall govern all future and existing contractual relationships between the parties, in any form, manner or place.
- 1.4 This agreement consisting of the terms and conditions contained herein are final and binding and are not subject to any suspensive or dissolutive conditions.
- 1.5 Any conflicting terms and/or conditions stipulated by the Customer are expressly excluded and the Customer acknowledges that by entering into a agreement (of any kind whatsoever) with Cummins shall be governed by these terms and conditions and the Customer consents to such terms and conditions freely without any inducement to enter into such agreement with such terms and conditions.
- 1.6 This Agreement and its interpretations are subject to Botswana law and the Customer consents to the jurisdiction of the Botswana Courts.
- 1.7 The invalidity of any part of this Agreement shall not affect the validity of any other part hereof and each clause shall be severable from the other.
- 1.8 No claim from the Customer shall arise unless the Customer has within 5 (Five) days of the alleged breach or defect occurring, given Cummins 30 days written notice by prepaid registered post to rectify any defect or breach of any Agreement.

**2. Domicilium citandi**

- 2.1 The Customer chooses its delivery address or if such goods/services are delivered on the premises of Cummins, its registered physical or last known business address as its domicilium citandi et executandi for any notification or service of legal documents or processes.

**3. Acknowledgements and undertakings by the Customer**

- 3.1 The Customer hereby consents that Cummins may use the information that it has provided to Cummins for purposes of establishing its credit rating and to Cummins disclosing such information to credit control companies, banks and other institutions involved in rating credit in its sole discretion. The Customer agrees that Cummins will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party. The Customer warrants that all such information provided are true and correct.
- 3.2 The Customer accepts and agrees to any increase of any credit facility provided and warrants that it is able to effect payment of any amounts owing to Cummins at all times and that it would, as a result of any credit facility been provided not be over indebted.
- 3.3 The Customer undertakes to notify Cummins immediately in writing of any inability to make payment under an increase of such credit facility or any other agreement between the Customer and Cummins.

**4. Copyrights and intellectual property**

- 4.1 The Customer acknowledges all copyrights as well as any intellectual property rights of Cummins and undertakes not to infringe thereon in any way whatsoever and not to disclose or use any technical or other intellectual property/copy rights in any way whatsoever.
- 4.2 The Customer shall indemnify Cummins against any claims, costs and expenses, of any nature whatsoever, arising out of the infringement of copyright, patent trademark or design supplies by the Customer.

**5. Quotations**

- 5.1 All quotations will remain valid for a period of 14 (Fourteen) days from the date of the quotation or until the date of any price / costs structure taking place by Cummins, whichever occurs first.

**6 Orders**

- 6.1 Any order is subject to cancellation by Cummins due to any event of force majeure, Acts of God from any cause beyond the control of Cummins including (without restricting this clause to these instances) inability to secure labour power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lookout or other labour disputes, fire, flood, drought or legislation. Cummins shall not be held liable for any losses or losses as a result of such conditions
- 6.2 Any order is subject to cancellation by Cummins if the Customer breaches its Agreement or makes any attempt to or any act such as, inter alia, compromise, liquidation, sequestration, termination or judgments is recorded or applied for against the Customer or any of its principals and in such event all any amounts owing by the Customer shall then become due, owing and payable immediately.

## **7. Delivery**

- 7.1 Delivery of the goods or services to the Customer shall take place at the place of business of Cummins unless agreed to otherwise.
- 7.3 Cummins reserves the right at its sole discretion to provide alternative goods and or services of the same quality and quantity at the prevailing prices to those ordered by the Customer should such goods and or services be superseded, replaced or influenced in any way whatsoever with effect that Cummins could not perform in accordance with the order placed by the Customer.
- 7.4 Each order for goods or services by the Customer from Cummins shall be deemed to be an offer by the Customer to purchase Goods / or request for services to be rendered, subject and in accordance with these terms and conditions.
- 7.5 Cummins shall be entitled in its sole discretion to split the delivery / performance of the goods or services ordered in the quantities and on the dates it decides in its sole discretion.
- 7.6 Cummins shall be entitled to invoice each delivery / performance actually made separately.
- 7.7 Any delivery note or waybill or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Cummins, shall be prima facie proof that delivery was made to the Customer and accepted in good order and in accordance with the order or other agreement.
- 7.8 Delivery, installation and performance times quoted are merely estimates and are not binding on Cummins and any time-period for performance is not of essence to any agreement.
- 7.9 If Cummins agrees to engage a third party to transport the goods, or for any other services incidental to any agreement between the Customer and Cummins, Cummins is hereby authorized to engage a third party on the Customers behalf and on the terms deemed fit by Cummins and the Customer shall make payment of such costs immediately upon demand or invoice, whichever occurs first.
- 7.10 Any item handed in for repair may be sold by Cummins to defray the cost of such repairs if the item remains uncollected for 30 days from the date when repairs have been completed or invoiced for, whichever occurs first.

## **8. Warranties**

- 8.1 Goods are guaranteed according to the Manufacturer's product specific warranties only and in the event of such warranties being provided to the Customer in writing to such goods/product and all other guarantees including common law guarantees are hereby specifically excluded. Services carry no guarantee unless specifically stipulated and agreed to otherwise in writing by a duly written authorized representative of Cummins.
- 8.2 Liability under any warranty is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of Cummins.
- 8.3 To be valid, claims must be supported by the original Tax Invoice/s and delivery notes and orders.
- 8.4 The Customer shall return any defective moveable goods to the premises of Cummins at the Customer's own cost and packed in the original or suitable packaging and all risks for the duration of repair remain with the Customer and the Customer shall carry the risk of such goods at all material times subject to a 10% handling fee for any return.
- 8.5 All guarantees are immediately null and void should any goods be tampered with or should the goods be used or stored outside the Manufacture's specifications or purpose, or used in any manner which might be construed as misuse, abuse or neglect.

## **9. Customer obligations**

- 9.1 The Customer shall be responsible for complying with all and any legislation or regulations governing the importation, use or sale of the Goods in the country of destination, the payment of any duties or taxes on them, the transportation and storage of Goods including without limitation any obligation to translate any instructions, labeling or packaging into any other language.
- 9.2 The risk of damage or destruction or theft of goods shall pass to the Customer on delivery, or tender thereof and the Customer undertakes to comprehensively insure the goods until paid for in full and Cummins shall remain the lawful owner of such goods and hold a lien over any material thing to which services was rendered upon (which lien shall automatically revive if possession was lost at any time if possession is obtained once again by Cummins) until payment has taken place by the Customer in full, without any set of taking place of any kind whatsoever. Cummins may recover insurance premiums from the Customer for such delivered and uninsured goods. Cummins shall be entitled to retain possession of all and any goods, of any kind whatsoever, of the Customer until all and any amount owing by the Customer have been paid in full, without any set off taking place as aforesaid. The risk to any goods to which the Customer are the lawful owner of shall at all times vest with the Customer.
- 9.3 Notwithstanding the provisions of this Agreement, all orders or agreed variations to orders, whether oral or in writing (in the event of being binding), shall be subject to these standard conditions of agreement and may not be cancelled after Cummins has accepted such agreement or order. In the event of any cancellation, or attempted cancellation, the full amount owing in accordance with such order shall immediately become due owing and payable and Cummins may refuse to process any order or to perform in accordance with any agreement until payment has been effected by the Customer in full.
- 9.4 The Customer agrees to the standard rates and charges prevailing at any given time, of Cummins for any goods or services rendered.
- 9.5 The Customer agrees to inform Cummins as to the whereabouts of any goods to which Cummins might still be owner of, or have a right to in any way whatsoever.
- 9.6 The Customer undertakes to inform Cummins in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address 14 days prior to selling or alienating the Customer's business and

failure to do so will constitute a material breach of this agreement. Upon receipt of such written notification, Cummins reserves the right at its sole discretion, to withdraw any credit facility advanced to the Customer.

## **10. Indemnification**

- 10.1 Under no circumstances shall Cummins be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever.
- 10.2 Under no circumstances shall Cummins be liable for any damage arising from any misuse, abuse or neglect of the goods or services.
- 10.3 The Customer acknowledges that it does not rely on any representations made by Cummins in regard to the goods and services or any of its qualities leading up to this agreement other than those contained in this terms and conditions. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Cummins in respect of the goods or services orally or in writing will not form part of the Agreement and the standard terms and conditions governing same, in any way whatsoever, unless agreed to by a duly authorized representative of Cummins in writing as aforesaid.
- 10.4 The Customer agrees that neither Cummins nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer of any kind whatsoever.
- 10.5 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use and according to the order placed with Cummins and the Customer warrants that all specifications of whatsoever nature are correct. The Customer accepts all goods/services to be in order and in accordance with any agreement with Cummins, unless written notification is delivered by the Customer to Cummins within 14 days of such service/goods delivered/rendered.
- 10.6 The Customer agrees to pay all additional costs, howsoever arising, resulting from any acts or omissions by the Customer including suspension of work, modification of requirements, failure or delay in giving particular requisite to enable work to proceed on schedule or requirements that work be completed earlier than agreed.

## **11. Payment**

- 11.1 The Customer hereby confirms that the goods or services on any Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery/performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects. All goods delivered and or services rendered shall be deemed to be in order as aforesaid unless the Customer has given Cummins written notification of such specific quality, quantity and or other defects within 14 days of such delivery of goods and or rendering of services has taken place or invoice has been dispatched to the Customer, whichever occurs first.
- 11.2 In the event of any payment not taking place on the due date, all discounts shall be forfeited and all and any amounts owing by the Customer shall immediately become due owing and payable without further notice.
- 11.3 Any item delivered to Cummins shall serve as a pledge in favor of Cummins for present and past debts and Cummins shall be entitled to retain or realize such pledges as it deems expedient at the value as determined by any independent valuator the sworn or realized value of pledged goods will be offset against the Customer's debts and any excess balance will be paid to the Customer.
- 11.4 The Customer agrees that the amount contained in a Tax Invoice issued by Cummins shall be due and payable unconditionally (a) cash on order, or (b) if the Customer is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice has been issued by Cummins or any goods/product/service delivered, or in the event of delivery been tendered.
- 11.5 The Customer agrees to pay the amount on the Tax Invoice at the offices of Cummins or at such other place Cummins may designate in writing.
- 11.6 The risk of payment by cheque through the post rest with the Customer.
- 11.7 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Cummins, reduced to writing and signed by the Customer and a duly authorized representative of Cummins.
- 11.8 The Customer is not entitled to set off any amount due to the Customer by Cummins against any debt whatsoever.
- 11.9 The Customer agrees that the amount due and payable to Cummins may be determined and proven by a certificate issued and signed by any director or manager or member or partner of Cummins, whose authority need not be proven or by any independent auditor. Such certificate shall be binding and shall be prime facie proof of the indebtedness of the Customer.
- 11.10 The Customer agrees that interest may be levied at the maximum permissible interest provided for by legislation from time to time on any moneys due to Cummins and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order, in the event of the Customer having breached any condition contained herein or if otherwise provided.
- 11.11 The Customer expressly agrees that no debt owed to Cummins by the Customer shall become prescribed before the passing of a period of three years from the date the debt falls due.
- 11.12 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed above in the case of a Credit Approved Customer, Cummins is (i) entitled to immediately institute action against the Customer at the sole expense of the Customer, or (ii) to cancel the agreement and take possession of any goods delivered to the Customer and claim damages, or (iii) to enforce and exercise any

lien over any item or goods of the Customer on which behalf goods were delivered and or services were rendered and or other goods of the Customer as stated herein until all amount owing by the Customer have been paid in full. These remedies are without prejudice to any other right Cummins may be entitled to in terms of this agreement or in law. Cummins reserves its right to stop supply immediately on cancellation or in the event of non-payment.

- 11.13 Credit Approved Customer will forthwith lose this approval if payment is not made according to these conditions and all amounts then outstanding shall immediately become due, owing and payable.
  - 11.14 Cummins shall be entitled to withdraw credit facilities at any time within its sole discretion.
  - 11.15 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.
  - 11.16 The Customer irrevocably authorizes Cummins to enter its premises to repossess any goods delivered and indemnifies Cummins completely against any damage whatsoever relating to the removal of repossessed goods, which might be caused by its agents or representatives.
  - 11.17 All goods supplied by Cummins remain the property of Cummins until such goods have been fully paid for whether such goods are attached to other property or not. Upon the delivery or tender thereof, any risk to any goods shall pass to the Customer.
  - 11.18 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of Cummins. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Cummins in the goods.
  - 11.19 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (confusio/commextio) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to Cummins.
  - 11.20 The Customer shall be liable to Cummins for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by Cummins in the event of (a) any default by the Customer of (b) any litigation in regard to the validity and enforceability of this agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Cummins may demand.
12. **Confidentiality.** The Customer undertakes to keep confidential all information (written or oral) concerning the business and affairs of Cummins which it has obtained or received as a result of discussions leading up to entry into a contract, or which it has obtained during the course of a contract with Cummins, except any information that is (i) subject to an obligation to disclose under law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise; or (ii) already in its possession other than as a result of a breach of this contract; or (iii) in the public domain.
13. **Modern Slavery.** Cummins will take reasonable steps to ensure that it and its subcontractors identify, assess and address risks of modern slavery practices in the operations and supply chains used in the provision of the Goods and/or Services. If at any time Cummins becomes aware of modern slavery practices in the operations and supply chains used in the performance of this agreement, Cummins will, as soon as reasonably practicable, take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
14. **Export Controls.** The Customer acknowledges that any goods the Customer receives from Cummins may be subject to export control, sanctions, laws, and regulations (including without limit, those of the U.S, E.U, United Kingdom and Singapore) and Cummins' policies that control or restrict the export of goods ("Export Restrictions"). The Customer shall comply with all Export Restrictions as they apply to the Purchaser and shall not cause Cummins or its affiliates to be in breach of any Export Restrictions. In particular, the Customer agrees not, unless written consent is obtained from Cummins in advance, to:
- (a) use the goods or supply the goods for use, in the production, operation, maintenance or related use of any chemical, biological or nuclear weapon or explosive device, or their delivery systems, or for any military purpose;
  - (b) use, sell, export, make available or otherwise deal with the goods in any country (including but not limited to Cuba, Iran, North Korea, Syria or the following regions of the Ukraine: Crimea, Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR)) subject to a specific Export Restriction; or
  - (c) sell, export or make available the goods to any part restricted by the Export Restrictions.
15. **Anti-bribery.**
- a. The Customer hereby warrants that, for the duration of the purchase order, it will comply (and will procure that all its employees, directors, officers or agents comply) with all laws, regulations or policies relating to economic sanctions, trade sanctions and/or export controls and the prevention or combating of bribery, corruption and money laundering to which it is subject.
  - b. The Customer further warrants that it has and will for the duration of the purchase order have, an adequate anticorruption programme in place to enable compliance with the provisions of this clause.

- c. The Customer undertakes not to, and will procure that all its employees, directors, officers or agents do not:
  - i. Pay, promise to pay or offer to pay, or authorise the payment of any commission, success fee, bribe, pay off or kickback related to the Purchase Order or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or kickback may or will at any time be paid; or
  - ii. Offer, promise or give any undue pecuniary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in performance of his/her official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.
- d. The Customer shall prohibit his employees, agents, and sub-contractors who are involved in the purchase order from offering, soliciting or accepting any advantage as defined in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 when conducting business in connection with the purchase order.
- e. The Customer shall require his employees, agents and sub-contractors who are involved in the purchase order to declare in writing to the Customer any conflict or potential conflict between their personal/financial interests and their duties in connection with the purchase order. In the event that such conflict or potential conflict is disclosed in a declaration, the Customer shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.
- f. The Customer shall prohibit his employees who are involved in the purchase order from engaging in any work or employment other than in the performance of the purchase order, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with the purchase order. The Customer shall also require their sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.
- g. The Customer shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that his employees, agents and sub-contractors are aware of the prohibitions in this clause.

## 16 Privacy

### 16.1 General

- a. For the purposes of this clause, the words “data subject”, “Information Regulator”, “personal information”, “process” and “responsible party” have the meaning given to equivalent terms under the Relevant Laws dealing with data protection or privacy.
- b. The Customer must comply with its obligations under the Relevant Laws dealing with data protection or privacy in relation to personal information in respect of which it is the responsible party.
- c. The provisions of this entire clause apply only to the extent that the Customer processes personal information for or on behalf of the Company in performing its obligations under this Agreement.

### 16.2 Processing by Customer

The Customer shall

- a. only process personal information for the purposes of performing its obligations under this Agreement or as otherwise authorised by the Company in writing;
- b. comply with the Relevant Laws dealing with data protection or privacy and from time to time in relation to the processing of personal information;
- c. not do or omit to do anything that would cause the Company to breach its obligations under the Relevant Laws dealing with data protection or privacy;
- d. take all reasonable steps to ensure that personal information is stored or recorded accurately and not altered or amended except as directed by the Company; and
- e. not disclose personal information except:
  - i. to the Customer’s Personnel to the minimum extent necessary to perform its obligations under this Agreement, provided that the Supplier ensures that they process the personal information in accordance with this clause;
  - ii. as required by law, provided that the Customer gives the Company notice immediately on becoming aware that disclosure may be required; or
  - iii. with the Company’s prior written consent.

### 16.3 Notice requirements

- a. When collecting personal information for or on behalf of the Company from data subjects (if applicable), the Customer must, in the manner and form directed by the Company:
  - i. inform the data subject that their personal information is being collected for or on behalf of the Company; and
  - ii. direct the data subject to the Company’s privacy policy.
- b. The Customer must comply with the Company’s reasonable instructions in relation to any additional notifications, consents or other requirements for the collection of personal information from data subjects or third parties.

## **16.4 Subcontracting**

The Customer must not subcontract the processing of personal information to a third party without Cummins prior written authorisation, which may be given or withheld in Cummins sole discretion and given subject to conditions. The Customer must impose the same contractual obligations on any authorised subcontractor as those imposed on the Customer in this clause 16.4.

## **16.5 Cross-border transfers**

- a. The Customer must not transfer personal information to, or allow access or retrieval of personal information by, any recipient located outside of Botswana (including Customer personnel) without the Cummins prior written authorisation, which may be given or withheld in Cummins sole discretion and given subject to conditions.
- b. When requesting authorisation, the Customer must give Cummins all relevant information relating to the proposed transfer, including the destination country, a description of the personal information and the purpose of the transfer and details of the arrangements to ensure that the transfer is in accordance with the Relevant Laws dealing with data protection or privacy.

## **16.6 Security of personal information**

- a. The Customer must take appropriate and reasonable technical and organisational measures to protect personal information against loss, damage, unauthorised destruction and unlawful access or processing. To do so, the Customer must:
  - i. identify all reasonably foreseeable internal and external risks to personal information in the Supplier's possession or under its control;
  - ii. establish and maintain appropriate safeguards against the risks identified;
  - iii. regularly verify that the safeguards are effectively implemented; and
  - iv. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards,

having due regard to generally accepted information security practices and procedures which may apply generally or are required in terms of industry or professional rules or regulations (including those applicable to Cummins).

- b. The Supplier must, at its cost, comply with any specified steps required by Cummins to ensure the confidentiality and integrity of personal information.
- c. Where there are reasonable grounds to believe that personal information has been lost, damaged, accessed or acquired by any unauthorised person or that there has been a compromise of the Customer's security measures ('Data Breach'), the Customer must:
  - i. immediately notify Cummins and promptly provide full details of the Data Breach;
  - ii. co-operate with the Cummins in investigating the Data Breach;
  - iii. comply with any direction from Cummins to remedy the Data Breach and prevent its reoccurrence; and
  - iv. assist Cummins with any notice to the Information Regulator or data subjects that Cummins may make or any direction by the Information Regulator to publicise the Data Breach.

## **16.7 Cooperation and assistance**

The Customer must, at its cost, provide all assistance required by the Cummins to comply with the Relevant Laws dealing with data protection or privacy, including:

- i. assisting Cummins with responding to any requests received from data subjects for access to, or correction or deletion of, their personal information which is being processed by the Customer. If the Supplier receives such a request from a data subject, it must immediately notify the Cummins in writing and deal with the request only as instructed by Cummins;
- ii. assisting Cummins with any investigation or assessment conducted, or direction given by, the Information Regulator in relation to personal information processed by the Customer; and
- iii. making available to Cummins or its auditors on request all relevant documents and information and providing access to its premises on reasonable notice, for the purpose of verifying the Customers compliance with this clause 16.7.

## **16.8 Retention and destruction**

- a. If directed by Cummins, the Customer must implement retention and destruction policies and procedures for personal information that are required under the applicable data protection laws or any Company policy.
- b. Except as required by law or agreement between the Parties, the Customer must return or destroy (at the Company's direction) all personal information:

- i. when it is no longer required for purposes of this Agreement;
- ii. on termination of this Agreement for any reason;
- iii. if required by law; or
- iv. at Cummins request at any time.

#### **16.9 Indemnity**

The Supplier indemnifies Cummins against any Losses arising out of or in connection with the Customers breach of the Relevant Laws dealing with data protection or privacy or this 16.