



Cummins Ghana (Proprietary) Limited

STANDARD TERMS AND CONDITIONS

1. General

- 1.1 Subject to the provisions of the Credit Agreement and the Deed of Surety attached herein, these terms and conditions represent and constitute an integral part of the terms and conditions between the Customer and Cummins Ghana (Proprietary) 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 an 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 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. Notices

- 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 address and 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.



5.2 All quotations are subject to the availability of the goods or services and subject to the revisions/corrections of good faith errors by Cummins and the prices quoted are subject to any increases in the cost price, including but not limited to currency fluctuations, before acceptance of the order and or payment thereof.

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 The Customer agrees to accept any quantity that does not exceed or fall short of the quantity ordered by no more than 5 % as good and complete performance.

7.2 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 or 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 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 24 Hours 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 5(five) 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 provide for by legislation from time to time on any moneys due date 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 six 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 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 Customer scale of an attorney and counsel incurred by Cummins in the event of (a) any default by the Customer or (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.