



# Cummins Zimbabwe (Proprietary) Limited

## STANDARD TERMS AND CONDITIONS

### 1. General

- 1.1 This Agreement contains all the terms and conditions between the Customer and Cummins Zimbabwe Private Limited ("**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 This Agreement will govern all future and existing contractual relationships between the parties, in any form, manner or place, unless otherwise agreed by the parties in writing.
- 1.4 This Agreement (and its interpretation) is subject to the laws of Zimbabwe and the Customer consents to the jurisdiction of the Courts of Zimbabwe.
- 1.5 If part of this Agreement is invalid for any reason then it will not affect the validity of the remainder of the Agreement. Each clause is severable from the other.
- 1.6 The Customer must, within (10) ten business days from the date of delivery of the goods notify Cummins of a defect or breach of this Agreement occurring and give Cummins 30 (thirty) days' written notice by prepaid registered post or by email addressed to its point of contact at Cummins to rectify any defect or breach of this Agreement.
- 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 Address for service of notices

- 2.1 The delivery address provided by the Customer will be regarded as its chosen address for all purposes including the serving of any court process, or legal notices.
- 2.2 If the Customer has chosen to have goods /services delivered on the premises of Cummins, the Customer's registered physical or last known business address will be its address for service of documents.

### 3 Protection of personal information

- 3.1 Cummins will, in accordance with all applicable laws, collect, use, transmit, store and otherwise process personal information it has collected from or about the Customer (the data) for the purposes of managing the Customer's account and exercising Cummins' rights and obligations under this Agreement.
- 3.2 All data provided by the Customer to Cummins is given voluntarily. However, if the data requested is withheld, Cummins may be unable to open an account for the Customer.
- 3.3 By concluding this Agreement, the Customer agrees that:



- (1) Cummins may process the data for purposes of establishing the Customer's credit rating.
  - (2) Cummins may collect the data from, and disclose the data to, credit control companies, banks and other institutions involved in rating credit.
  - (3) Cummins may carry out reference checks with third parties to determine the customer's creditworthiness and may collect the data from, and disclose the data to, those third parties for this purpose.
  - (4) Cummins will not be responsible for any loss resulting from the good faith disclosure of any of the data to such third parties
- 3.4 The Customer must be authorised to provide any personal information of third parties to Cummins. In doing so, the Customer indemnifies Cummins against any losses by or claims made against it as a result of the Customer not having the required authorisation.
- 3.5 The Customer must ensure that all information provided to Cummins is correct and updated from time to time and when necessary.

#### **4. Acknowledgements and undertakings by the Customer**

- 4.1 The Customer accepts and agrees to any increase of any credit facility provided by Cummins to the Customer, and guarantees that it is able to make payment to Cummins of any amounts owing to Cummins at all times. The Customer warrants that it will not become over-indebted because of any credit facility being provided to it by Cummins.
- 4.2 The Customer must notify Cummins immediately, in writing, if it is unable to pay Cummins in terms of an increased credit facility or any other agreement between the Customer and Cummins.

#### **5. Intellectual property**

- 5.1 **Intellectual Property** means know-how, copyright, patents, trademarks, service marks, design rights, rights relating to the protection of trade secrets and confidential information including rights in unpatented know-how, trade or business names and all other intellectual property and proprietary rights, whether registered and in whatever form embodied, including all documentation and materials describing or representing the above.
- 5.2 The Customer acknowledges that in purchasing and using goods and services supplied by Cummins it may have access to Cummins' Intellectual Property. The Customer therefore undertakes not to infringe Cummins' Intellectual Property rights in any way and not to disclose or use Intellectual Property in any way unless authorised by Cummins in writing.
- 5.3 The Customer agrees to indemnify Cummins against any claims, costs and expenses incurred by Cummins or any third party, of any nature whatsoever, arising out of the infringement of Intellectual Property rights in Cummins' goods or services by the Customer.
- 5.4 The Customer undertakes not to import Cummins's goods into the country that the goods were purchased in, from a source other than Cummins or to purchase or sell any goods which infringe Cummins' Intellectual Property rights. Breach of this clause will entitle Cummins to withdraw the Customer's credit facility and to pursue (in its discretion) any other legal remedies that are available to it.

#### **6 Quotations**

- 6.1 All quotations will remain valid for 14 (fourteen) days from the date of the quotation or until the date of any price/costs change by Cummins, whichever happens first.
- 6.2 All quotations are subject to the availability of the goods or services. Where unintentional errors in quotations have been signed and corrected by Cummins, the prices quoted may be increased by the cost price, including currency fluctuations, at any time before acceptance and payment of the order by the Customer

#### **7. Orders**



- 7.1 The Customer agrees to the standard rates and charges prevailing at any given time, of Cummins for any goods or services rendered.
- 7.2 Any order may be cancelled by Cummins due to any event out of Cummins' control including but not limited to Acts of God, inability to secure labour power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout or other labour disputes, fire, flood, drought or legislation. Cummins will not be held liable by the Customer for any losses or losses as a result of such events.
- 7.3 Cummins may cancel any order of the Customer if the Customer does not comply with its obligations under this Agreement or does anything that will compromise its ability to pay Cummins including compromise, liquidation, and sequestration or having judgments against the Customer which remain unpaid for more than 30 (thirty) days. If any of these events occur then all amounts owing by the Customer will then become due and payable immediately.

## **8. Delivery**

- 8.1 Delivery of the goods or services to the Customer will take place at the place of business of Cummins unless agreed to otherwise.
- 8.2 Cummins may provide alternative goods and or services of the same quality and quantity, at the same prices to those ordered by the Customer in the event that such goods and/or services are superseded, replaced or influenced, in any way whatsoever, causing Cummins to be unable to perform in accordance with the Customer's order
- 8.3 Each order for goods or services by the Customer from Cummins will be considered as an offer by the Customer to purchase goods or services according to this Agreement.
- 8.4 Cummins may split the delivery/performance of the goods or services ordered in the quantities and on the dates it reasonably decides.
- 8.5 Cummins may invoice each delivery/performance it makes separately.
- 8.6 Any delivery note or waybill or job card (copy or original):
  - (1) signed by the Customer or a third party the Customer hires to transport the goods; and
  - (2) held by Cummins, will be proof that delivery was made to the Customer and accepted in good order and in accordance with the Customer's order or any other agreement.
- 8.8 If Cummins agrees to hire a third party to transport the goods, or for any other services incidental to any agreement between Cummins and the Customer, Cummins is authorised to engage the third party on the Customer's behalf and on terms seen fit by Cummins. The Customer agrees to make payment of these costs immediately at Cummins' request or on receipt of the invoice, whichever occurs first.
- 8.7 Delivery, installation and performance times quoted are estimates only and are not binding on Cummins. Actual time periods for performance do not affect this Agreement.
- 8.8 If Cummins agrees to hire a third party to transport the goods, or for any other services incidental to any agreement between Cummins and the Customer, Cummins is authorised to engage the third party on the Customer's behalf and on terms seen fit by Cummins. The Customer agrees to make payment of these costs immediately at Cummins' request or on receipt of the invoice, whichever occurs first.
- 8.9 Any item handed in for repair by the Customer may be sold by Cummins to recover the cost of such repairs if the item is not collected within 30 (thirty) days from the date when repairs have been completed and notified to the Customer or invoiced, whichever occurs first.

## **9 Warranties**



- 9.1 Goods are warranted according to the Manufacturer's product specific warranties only and in the event of these warranties being provided to the Customer in writing to such goods/products, all other warranties including any implied or common law warranties are excluded. Services are not warranted unless specifically stated and agreed to otherwise in writing by an authorised representative of Cummins.
- 9.2 Cummins will only be liable under any warranty for the repair of faulty goods or services or granting of a credit by Cummins, or replacement with equivalent goods. Claims must be supported by the original Tax Invoice/s and delivery notes and orders.
- 9.3 The Customer must return any defective moveable goods packed in the original or suitable packaging. All risk in the goods remains with the Customer for the duration of any repairs. All warranties are immediately void if any goods are tampered with, used or stored outside the Manufacturer's specifications or purpose, or used in any abusive, neglectful or misusing manner.

## **10 Customer obligations**

- 10.1 The Customer will 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.
- 10.2 The risk of damage or destruction or theft of goods will pass to the Customer on delivery, or when Cummins tenders delivery.
- 10.3 The Customer agrees to comprehensively insure the goods until fully paid and Cummins will remain the owner of the goods, and hold a lien over any material thing to which repairs were made or in respect of which other services carried out (this lien will automatically revive, if possession was lost at any time, when possession is obtained once again by Cummins) until payment has taken place by the Customer in full, without any set-off in any amounts.
- 10.4 Cummins may recover insurance premiums from the Customer for delivered and uninsured goods.
- 10.5 Cummins may retain possession of all goods of the Customer until all amounts owing by the Customer have been fully paid, without any set-off.
- 10.6 The Customer agrees to inform Cummins of the whereabouts of any goods still owned by Cummins, or to which Cummins still has any right.
- 10.7 If the Customer resells the goods purchased from Cummins at a time when the goods are not yet paid for in full, the Customer is required to disclose to its customer in writing the fact that the goods still belong to Cummins.
- 10.8 Should the Customer be purchasing Cummins goods to resell to other customers, the Customer undertakes to comply with all the responsibilities and obligations of a supplier under the Consumer Protection Act, 2008. The Customer must be aware of these responsibilities and undertakes to comply with all Cummins processes and procedures.
- 11.6 The Customer will be responsible to pay for any and all harm caused to third parties to whom the Customer sells Cummins goods, if the harm is caused because of the Customer's failure to comply with its legal obligations; this Agreement or any Cummins procedures or processes.
- 10.9 All binding orders or agreed variations to orders, whether oral or in writing, will be subject to this Agreement.
- 10.10 Once accepted by Cummins, orders must not be cancelled. If, however, in Cummins sole discretion it accepts a cancellation, a cancellation penalty of 10 % of the value of the order will payable by the Customer.
- 10.11 The Customer agrees to inform Cummins in writing within 5 (five) business days of any change of director, member, shareholder, owner or partner or address; or 10 (ten) business days prior to selling or alienating the Customer's business. Failure to do so will constitute breach of this agreement by the Customer. On receipt of such written notification, Cummins may withdraw any credit facility advanced to the Customer if it so decides.



## **11 Indemnification**

- 11.1 Cummins will not be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever.
- 11.2 Cummins will not be liable for any damage caused by misuse, abuse or neglect of the goods or services.
- 11.3 The Customer accepts that it does not rely on any representations made by Cummins about the goods and services or their qualities to conclude this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data given by Cummins about the goods or services orally or in writing are not part of the Agreement, its standard terms and its conditions, unless agreed to in writing by an authorised representative of Cummins.
- 11.4 The Customer agrees that that neither Cummins nor its employees will be liable for any misrepresentations made to the Customer.
- 11.5 It is the Customer's sole responsibility to determine that the goods or services ordered are suitable for the intended use and are according to the order placed with Cummins and that the specifications are correct. The Customer accepts all goods/services to be in order and in accordance with any agreement with Cummins, unless the Customer gives Cummins written notification within 10 (ten) business days of delivery or rendering of goods/services.
- 11.6 The Customer agrees to pay all additional costs, resulting from any conduct by the Customer including suspension of work, modification of requirements, failure or delay in giving specifications necessary to enable work to proceed on schedule or requiring that work be completed earlier than agreed.

## **12 Payment**

- 12.1 The Customer confirms that the goods or services on any Tax Invoice issued represent the goods or services ordered by the Customer at the agreed prices and, where delivery/performance has already taken place, that the goods or services were inspected and that the Customer is satisfied with the quality and quantity ordered and are without defect.
- 12.2 All goods delivered and or services rendered will be considered to be in order unless the Customer has given Cummins written notification of such specific quality, quantity and/or other defects within ten (10) business days of delivery and/or rendering of goods/services or invoice has been sent to the Customer, whichever occurs first.
- 12.3 In the event of non-payment on the due date, all discounts will be forfeited and all amounts owing by the Customer to Cummins will immediately become due without further notice to the Customer.
- 12.4 Any item delivered to Cummins for repair or other services will act as a pledge in favor of Cummins by the Customer for present and past debts and Cummins may retain or sell such pledges as it chooses at the value determined by an independent valuator. The determined value of pledged goods will be offset against the Customer's debts and any excess balance will be paid to the Customer.
- 12.5 The Customer agrees that the amount contained in a Tax Invoice issued by Cummins will be due and payable unconditionally within 30 (thirty) days from the end of the month in which a Tax Invoice has been issued by Cummins or any goods/product/service has been delivered, or in the event of delivery being tendered to the Customer by Cummins.
- 12.6 Cummins may, without prejudice to any other rights it may have, require the Customer to pay cash on delivery for any order if the Customer has not paid all amounts due to Cummins.
- 12.7 The Customer agrees to pay the amount on the Tax Invoice at the offices of Cummins or at any other place Cummins may choose in writing.
- 12.8 Payment made, other than by cash, will only be considered as received when it reflects in Cummins' bank account.



- 12.9 The Customer has no right to withhold payment and agrees that no extension for payment will be extended to the Customer by Cummins and any such extension will not be valid unless agreed to in writing by Cummins, and signed by the Customer and a duly authorised representative of Cummins.
- 12.10 The Customer may not set off any amount due to the Customer by Cummins against any debt.
- 12.11 The Customer agrees that the amount due and payable to Cummins may be determined and proven by a signed certificate issued by any director or manager or member or partner of Cummins. This certificate will be proof of the indebtedness of the Customer.
- 12.12 The Customer agrees that no debt owed to Cummins by the Customer will fall out of time before the passing of a period of six years from the date the debt falls due.
- 12.13 The Customer agrees that if an account is not settled in full against the order; or within the 30 (thirty) days period as set out in clause 12.5, then Cummins is entitled to:
- i) immediately institute proceedings against the Customer at the Customer's expense; or
  - ii) cancel the Agreement and re-take possession of any goods delivered to the Customer and also claim damages; or
  - iii) enforce and exercise any lien over any item or goods belonging to the Customer as stated in clause 10.3 of this Agreement until all amounts owing by the Customer have been fully paid.
- These remedies do not limit any other right Cummins may be entitled to in terms of this Agreement or in law. Cummins may stop supply immediately on cancellation or in the event of non-payment.
- 12.14 A credit approved Customer will lose this approval if payment is not made according to these conditions and all amounts outstanding at that time will become immediately due, owing and payable.
- 12.15 In the event of cancellation by Cummins referred to in clause 12.13(2), the Customer will be liable to pay:
- i) the difference between the selling price and the value of the goods at the time of repossession; and
  - ii) all other costs of the repossession of the goods.
- The proved value of repossessed or retained pledged goods will be the value determined by any sworn valuator after the repossession.
- 12.16 The Customer authorises Cummins to enter its premises to repossess any goods delivered and will be liable for any damage relating to the removal of repossessed goods, which might be caused by Cummins' agents or representatives.
- 12.17 The Customer will not allow the goods to become encumbered in any way before the goods are paid for in full.
- 12.18 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 will be obliged on notice of cancellation of the agreement to retransfer the ownership of the same quantity of goods to Cummins.
- 12.19 The Customer will be liable to Cummins for all legal expenses incurred by Cummins on the attorney-and-own client scale of an attorney and counsel in the event of any default by the Customer. The



Customer will also be liable for any tracing, collection or valuation fees as well as for any costs for any form of security demanded by Cummins.

### **13 Confidentiality**

- 13 The Customer agrees 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 contractual discussions, or which it has obtained during a contractual relationship with Cummins, except any information that is:
- i) subject to an obligation to disclose in terms of the law, or that is required to be disclosed by any regulatory authority, by notice or otherwise; or
  - ii) already in its possession other than as a result of a breach of this Agreement; or
  - iii) publically available.