

# CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

## 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Background Intellectual Property:** means any and all Intellectual Property Rights owned by or licensed to a party prior to the date on which the Contract comes into existence in accordance with clause 2.2, or created or acquired by or on behalf of a party after such date but independently of the Contract. Buyer's Background Intellectual Property includes but is not limited to any and all Buyer Materials.

**Business Day:** any day other than a Saturday, Sunday or a public holiday in England and Wales.

**Buyer:** Cummins Limited, a company incorporated in England and Wales with company no: 573951 whose registered office is at 3<sup>rd</sup> Floor, 10 Eastbourne Terrace, Paddington, London, W2 6LG

**Buyer Materials:** has the meaning set out in clause 4.10(c).

**Claims:** has the meaning set out in clause 11.4.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.14.

**Confidential Information:** has the meaning set out in clause 12.1.

**Contract:** the contract between the Buyer and the Supplier for the supply of Products in accordance with these Conditions.

**Deliverables:** all Documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Products in any form, including without limitation computer programs, data, reports and specifications (including drafts).

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Force Majeure Event:** has the meaning set out in clause 15.4.

**Foreground Intellectual Property:** means any and all Intellectual Property Rights created by or on behalf of a party, or otherwise arising, pursuant to or in connection with the Contract, including but not limited to any such Intellectual Property Rights subsisting in or related to any Products or Deliverables.

**GDPR:** means, in each case to the extent applicable to the processing activities: (i) Regulation (EU) 2016/679; and (ii) Regulation (EU) 2016/679 as amended by any legislation arising out of the withdrawal of the UK from the European Union.

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

**Group:** in relation to a company, that company, its subsidiaries, any company of which it is a subsidiary (its holding company) and any other subsidiaries of any such holding company; and each company in a group is a member of the group.

Unless the context otherwise requires, the application of the definition of Group to any company at any time will apply to the company as it is at that time.

**holding company** and **subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

**Incoterms:** the International Chamber of Commerce Incoterms rules for the interpretation of trade terms 2020 (or such future versions or amendments).

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and rights in domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in and to use and protect the confidentiality of confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and **Intellectual Property** will be construed accordingly.

**MPA:** any master purchase agreement entered into between the Buyer and the Supplier in connection with the Purchase Order.

**Products:** the products (or any part of them) set out in the Purchase Order, to be provided by the Supplier under the Contract.

**Purchase Order:** a specific purchase order for Products, given by the Buyer to the Supplier in accordance with these Conditions (including a material release form where the context permits).

**Rules:** the LCIA Rules.

**Specification:** any specification for the Products (including relevant plans or drawings) provided by the Buyer to the Supplier.

**Supplier:** the person or firm from whom the Buyer purchases the Products.

**Supplier Know-How:** has the meaning set out in clause 10.6.

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

**VAT:** the value added tax payable in accordance with the Value Added Tax Act 1994.

- 1.2 Construction. In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (b) a references to a party includes its successors or permitted assigns;
  - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms; and
  - (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT AND OFFER

2.1 The Purchase Order constitutes an offer by the Buyer to purchase Products from the Supplier in accordance with these Conditions.

2.2 The Purchase Order will be deemed to be accepted by the Supplier on the earlier of:

- (a) the Supplier issuing written acceptance of the Purchase Order; or
- (b) any act by the Supplier consistent with fulfilling the Purchase Order,

at which point and on which date the Contract will come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 In the event of any conflict:

- (a) between the information on the face of the Purchase Order, these Conditions and any attachments to the Purchase Order, the information on the face of the Purchase Order will prevail; and
- (b) the terms of any MPA will prevail over all other terms.

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

For the avoidance of doubt, any reference by the Buyer to the Supplier's quote will be for information purposes only and will not be construed as acceptance of the Supplier's own terms.

### **3. QUALITY, WARRANTIES AND INSPECTION**

- 3.1 The Supplier warrants that the Products:
- (a) correspond with their description and any applicable Specification;
  - (b) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgment;
  - (c) where applicable, are free from defects in design, materials and workmanship and remain so for 24 months after delivery; and
  - (d) comply with all applicable statutory and regulatory requirements relating to the Products.
- 3.2 The Supplier warrants that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Products.
- 3.3 The Supplier assigns and warrants that it has the authority to assign to the Buyer all manufacturer's warranties, express or implied, representations, service agreements and other indemnities, if any, applicable to all Products sold to the Buyer by the Supplier.
- 3.4 The Buyer will have the right to inspect and test the Products at any time before delivery, including (but not restricted to) undertaking quality surveys and audits. The Supplier (whether directly or through a duly appointed sub-supplier) will, without additional charge to the Buyer, provide all reasonable facilities and assistance required for safe and convenient inspections by the Buyer. The Buyer will not unduly delay any of the Supplier's work while conducting inspections.
- 3.5 The Buyer will not be liable for any reduction in value of samples used in connection with any inspections nor will any rejected Products be delivered to the Buyer.

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- 3.6 If following such inspection or testing the Buyer considers that the Products do not conform or are unlikely to comply with the Supplier's warranties at clause 3.1, the Buyer will inform the Supplier and the Buyer may, at its sole discretion: (a) reject such Products and require Supplier, at Supplier's expense, including transportation cost, to inspect, sort out the non-conforming Products, rework or repair (or cause to be reworked or repaired) the non-conforming Products to render such Products conforming, or scrap the non-conforming Products and replace such Products in a timely manner; (b) rework or repair any such Product at Supplier's expense basing charges on the Buyer's then hourly rate; or (c) cancel the PO, in whole or in part, without charge to the Buyer. In the event that a third party is brought in to inspect, sort, rework or repair the non-conforming Products by Supplier, the third party shall be subject to the reasonable approval by the Buyer. Supplier shall be responsible for any additional charges that may be incurred by the Buyer in connection with nonconforming Products, including but not limited to scrap, rework, repair, engine damage, tear down/re-test expenses, premium freight, assembly disruptions/work stoppage, administrative expenses.
- 3.7 Notwithstanding any inspection or testing by the Buyer, the Supplier will remain fully responsible for the Products and any inspection or testing by the Buyer will not reduce or otherwise affect the Supplier's obligations under the Contract. The Buyer will have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions. For the avoidance of doubt, the Buyer's inspection, or lack of inspection, will neither relieve the Supplier of responsibility for Products that do not comply with these Conditions, imply approval or acceptance of the Products by the Buyer or waive the Supplier's liability for latent defects, fraud, mistake or breach of warranty.

### **4. DELIVERY OF PRODUCTS**

- 4.1 The Supplier acknowledges that time is of the essence regarding delivery of Products, that the Buyer has strict requirements regarding scheduled delivery dates for Products and that these requirements are essential to the Buyer's business. The Buyer is not obliged to accept early deliveries, late deliveries, partial deliveries or excess deliveries.
- 4.2 The Supplier will ensure that:
- (a) the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition and free from damage;

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

- (b) each delivery of the Products is accompanied by documentation specified by the Buyer or, in the absence of the Buyer's specification, a packing slip or delivery note which clearly identifies the Products and which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Products (including the bar code number of the Products where applicable), special storage instructions (if any), the invoice number, details of the delivery location (**Delivery Location**), the Buyer's part number and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
  - (c) if the Supplier requires the Buyer to return any packaging material for the Products to the Supplier, that fact is clearly stated on the packing slip or delivery note. Any such packaging material will only be returned to the Supplier at the cost of the Supplier.
- 4.3 The Buyer reserves the right to require the Supplier to submit shipment data to it electronically, whether as an advance shipment notification or otherwise.
- 4.4 The Supplier will deliver the Products:
  - (a) on the date specified in the Purchase Order;
  - (b) to the Delivery Location set out in the Purchase Order or as instructed by the Buyer before delivery;
  - (c) during the Buyer's normal hours of business on a Business Day, or as instructed by the Buyer.
- 4.5 The Supplier will not deliver the Products in instalments without the Buyer's prior written consent. Where it is agreed that the Products are delivered in instalments, the Products may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment will entitle the Buyer to the remedies set out in clause 5.1.
- 4.6 Title and risk in the Products will pass to the Buyer on completion of delivery and upon inspection and acceptance of the Products by the Buyer.
- 4.7 Unless otherwise specified in the Purchase Order, all Products will be sold FCA Supplier's Facility Incoterms 2020 and all delivery terms will be interpreted in accordance with the most recently published Incoterms. Any shipment details will be as set out in the Purchase Order.

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- 4.8 The Supplier will adhere to any logistics procedures and warehousing instructions provided by the Buyer (including instructions provided in Supply Chain Agreement or transportation routing letters). The Supplier will also document the country of origin details relevant to the Products in the format specified by the Buyer and in compliance with all applicable regulations. It will be the Supplier's responsibility to monitor this information and to immediately notify the Buyer's customs department of any changes.
- 4.9 In supplying the Products, the Supplier will:
- (a) ensure that the Products conform with all descriptions and specifications set out in the Specification, and that the Deliverables will be fit for any purpose expressly or impliedly made known to the Supplier by the Buyer;
  - (b) use the best quality products, materials, standards and techniques, and ensure that the Deliverables, and all Products will be free from defects in workmanship, installation and design;
  - (c) hold all materials, equipment and tools, drawings, specifications, blue prints, media and data supplied by the Buyer to the Supplier (**Buyer Materials**) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose of or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation; and
  - (d) not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

### **5. BUYER REMEDIES**

- 5.1 If the Supplier fails to deliver the Products by the delivery date, the Buyer will, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - (b) to refuse to accept any subsequent delivery of the Products which the Supplier attempts to make;
  - (c) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute products from a third party;
  - (d) where the Buyer has paid in advance for Products which have not been delivered by the Supplier, to have such sums immediately refunded by the Supplier; and

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

- (e) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Supplier's failure to deliver the Products by the delivery date; and
- (f) recover additional freight costs (including for premium freight) that are directly caused by Supplier (including, but not limited to, delayed delivery of parts, early/unscheduled delivery of parts that are returned to the Supplier, non-conforming parts, returns, damage of parts due to Supplier incorrectly loading a vehicle or wrong packaging, in addition to other conditions which are attributed to Supplier's failure to perform as contractually agreed). To determine the cause of additional freight costs, the Supplier shall meet with the Buyer upon reasonable notice to discuss such costs. Where such costs are agreed to be directly caused by Supplier, the Buyer will determine to what extent (on a range between 0% and 100%) these extra freight costs shall be borne by the Buyer and by the Supplier and will notify the Supplier of the resulting percentage and the resulting amount of the allocated costs. The Buyer is entitled to set off the resulting amounts owing from Supplier to the Buyer against any amounts owed to Supplier from the Buyer (debits issued to the Supplier) following agreement with Supplier. If the Buyer and the Supplier do not agree on the costs to be borne by the Supplier, the decision will be escalated internally by the Buyer. If the parties cannot reach agreement following such escalation, each party has the right to use the dispute resolution mechanism mentioned in this Contract.

5.2 If the Supplier is in breach of the Contract then, without limiting its other rights or remedies, the Buyer will have one or more of the following rights, whether or not it has accepted the Products:

- (a) to reject the Products (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and cost;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to cancel the Purchase Order in whole or in part at the Supplier's own risk and cost;
- (d) to require the Supplier to repair or replace rejected Products at the Supplier's own risk and cost (the cost of any such repair or replacement to be based upon the Buyer's then current hourly rate for comparable work), or to provide a full refund of the price of the rejected Products (if paid);

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- (e) to refuse to accept any subsequent delivery of the Products which the Supplier attempts to make;
- (f) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute products from a third party; and
- (g) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Supplier's breach of the Contract.

5.3 Notwithstanding clause 5.2, the Buyer may cancel the Purchase Order in whole or in part at any time having provided prior written notice of cancellation to the Supplier. Such cancellation will be without liability to the Buyer except the Buyer will pay the Supplier for the cost of any work in progress and for any material commitments made within the time period specified on the face of the Purchase Order or, if no time period is specified, within the two week period from the date of the notice of cancellation. For the avoidance of doubt, the amount of any work in progress and material commitments must be verified and confirmed by the Supplier in writing.

5.4 In the event that the Supplier appoints a third party to inspect, sort or repair the rejected Products, that third party will be subject to the Buyer's prior approval.

5.5 The Supplier will ensure that all data provided on paper and electronically is accurate, complete and complies with the Buyer's specifications. The Buyer reserves the right to recover from the Supplier any costs it incurs in correcting data or manually entering electronic data, whether by way of a cost recovery debit or otherwise.

5.6 Notwithstanding the foregoing clauses, the Supplier grants the Buyer a licence to repair, rebuild and relocate Products itself.

5.7 These Conditions will extend to any repaired or replacement Products supplied by the Supplier.

5.8 The Buyer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

### **6. BUYER'S OBLIGATIONS**

The Buyer will:

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- (a) provide the Supplier with access to the Buyer's premises for the purpose of supplying the Products during the Buyer's normal business hours or as instructed by the Buyer; and
- (b) provide such information as the Supplier may reasonably request for the supply of the Products and the Buyer considers reasonably necessary for the purpose of supplying the Products.

### **7. PLACING PURCHASE ORDERS, PRICING, INVOICING AND PAYMENT**

- 7.1 The Buyer may place Purchase Orders electronically and may also provide other information to the Supplier electronically.
- 7.2 The price for the Products:
  - (a) will be the price set out in the Purchase Order; and
  - (b) will be inclusive of the costs of packaging, and insurance and carriage of the Products up to the point of delivery, unless otherwise agreed in writing by the Buyer. No extra charges will be effective unless agreed in writing and signed by an authorised representative of the Buyer.
- 7.3 All prices are stated in pounds sterling unless otherwise specified. The Supplier warrants that the prices stated in the Purchase Order are not higher than prices currently charged to other buyers of similar products at similar volumes. If the Supplier's prices for similar products are reduced (whether by way of a price reduction, close-out, rebate, allowances or additional discounts offered at any time prior to shipment), the Supplier will reduce the price for the Products and will invoice the Buyer at the reduced prices. Any price differences resulting from these changes will be adjusted by the Buyer and, notwithstanding this, the Supplier will proceed with its performance of the terms of the Contract.
- 7.4 The Supplier will invoice the Buyer on or at any time after completion of delivery. Each invoice will include supporting information required by the Buyer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number and must reflect the prices stated in the Purchase Order. The Supplier will, if requested by the Buyer, receive Purchase Order(s) and send invoices (together with supporting information) electronically and, in the absence of such request, will send invoices to the address specified by the Buyer in the Purchase Order. For the avoidance of doubt, multiple invoices may be issued by the Supplier in respect of a single

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

Purchase Order provided that there is no duplication of invoices by the Supplier. The Buyer will determine any discrepancies regarding invoices.

- 7.5 In consideration of the supply of Products by the Supplier, the Buyer will pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 7.6 If the Buyer fails to make payment in accordance with this clause 7, then the Supplier may charge interest on the overdue amount at a rate of 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%. Such interest shall accrue on a daily basis from the date on which such overdue amount fell due until payment, whether before or after judgment. If there is any dispute about whether any amount is payable to the Supplier, this clause 7.6 will not apply to such amount until the dispute is resolved.
- 7.7 All amounts payable by the Buyer under the Contract are exclusive of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer will, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Products at the same time as payment is due for the supply of the Products.
- 7.8 The Supplier will not be entitled to assert any credit, set-off or counterclaim against the Buyer in order to justify withholding payment of any amount in whole or in part. The Buyer may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier (or owed to it by any companies within the Supplier's Group) against any amount payable by the Buyer to the Supplier.

### **8. CHANGES**

- 8.1 The Buyer may, at any time and by way of written or verbal instructions confirmed in writing, make changes in respect of the Products including, but not restricted to, any one or more of the following ways:
- (a) Drawings;
  - (b) Designs;
  - (c) Specifications;
  - (d) Method of shipment;
  - (e) Packing;

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- (f) Time of delivery;
- (g) Place of delivery; and
- (h) Quantity of items ordered.

8.2 Under no circumstances will the Buyer be liable for incidental or consequential damages resulting from any changes and no changes will affect the Buyer's ability to enforce the Contract.

### **9. TOOLING AND SUPPLIER RESTRICTIONS**

9.1 Unless otherwise agreed in writing by the parties, all tooling, gauging and facilities necessary for the manufacture of the Products (whether standard or customised) will be provided at the cost of the Supplier. The Supplier will provide the Buyer with detailed descriptions of tooling and related information confirming that the tooling complies with the required standard.

9.2 The Supplier will, at its own cost, maintain, repair and replace all Supplier owned tooling, gauging and facilities necessary for the manufacture of the Products and will maintain all tooling and gauging in its possession. The Supplier will also keep all tooling, gauging and facilities in good working order and condition and free from all liens and other encumbrances.

9.3 The Supplier agrees to reimburse the Buyer for all losses resulting from the premature failure of any Buyer-owned tooling or gauging in the Supplier's possession to the extent that such failure arises from the Supplier's failure to properly maintain tooling or gauging.

9.4 The Supplier will not make any changes to the specifications, physical composition, materials, location, tooling, material suppliers or processes used to manufacture or produce the Products without the prior written consent of the Buyer. At all times, the Supplier will ensure that any changes do not affect the Products' compliance with these Conditions. Unless otherwise approved by the Buyer in writing, the Supplier will not use any tooling customised for the Buyer's use or tooling otherwise paid for in whole or in part by the Buyer, to manufacture products other than products for sale to the Buyer or a third party approved by the Buyer.

### **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 In respect of the Products, the Supplier warrants that it has full clear and unencumbered title to the Products, and that at the date of delivery of the

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

Products to the Buyer, it will have full and unrestricted rights to sell and transfer the Products to the Buyer.

- 10.2 Each party acknowledges and agrees that other than the licences granted herein nothing in these Conditions or the Contract transfers any right, title, or interest in or to the other's Background Intellectual Property and each party (or, where applicable, the third party from whom its right to use the relevant Background Intellectual Property has derived) shall retain ownership of all its Background Intellectual Property.
- 10.3 The Supplier hereby assigns to the Buyer, absolutely with full title guarantee and free from all third party rights, all right, title and interest in and to all Foreground Intellectual Property.
- 10.4 The Supplier hereby grants to the Buyer a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable, transferable, worldwide licence to use any of its Background Intellectual Property for the sole purpose and only to the extent required to use and fully exploit any Foreground Intellectual Property.
- 10.5 The Supplier will obtain waivers of all moral rights in relation to any copyright works comprised in the Products, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 10.6 The Supplier will, promptly at the Buyer's request, do (or procure to be done) all further acts and things and the execution of all other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with clause 10.3.
- 10.7 For the avoidance of doubt, all Buyer Materials are the exclusive property of the Buyer and any Intellectual Property created in the performance of the Contract will be the sole property of the Buyer. The Supplier will do all things requested by the Buyer to transfer the ownership of that Intellectual Property to the Buyer and to perfect ownership of that Intellectual Property.
- 10.7 All ideas, concepts, processes, methods and technologies contained in inventions and developments created by the Supplier completely independent of the Contract (**Supplier Know-How**) will remain exclusively the property of the Supplier. To the extent that the Supplier discloses or uses Supplier Know-How in providing the Products to the Buyer under the

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

Contract, the Supplier hereby grants the Buyer a perpetual, irrevocable, paidup, worldwide, non-exclusive licence to use Supplier Know-How in relation to the Buyer's business, including its services, products and processes.

### 11. LIABILITY, INDEMNITY AND INSURANCE

11.1 Nothing in this Contract will operate so as to exclude or limit the liability of either party to the other for fraud, death or personal injury arising out of negligence or any other liability that cannot be excluded or limited by law.

11.1 In no event shall Buyer be liable to the Supplier for:

- (a) any loss of profits, revenue, business opportunities or damage to goodwill; or
- (b) any indirect or consequential losses or damage,

arising under or in relation to these Conditions, even if Buyer was aware of the possibility that such loss or damage might be incurred by the Supplier.

11.2 The Supplier will keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and costs awarded against or incurred or paid by the Buyer as a result of or in connection with:

- (a) any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Products, to the extent that the defect in the Products is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Products, to the extent that the claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Products.

11.3 Each party will notify the other of any claim, recall or lawsuit relating to the Products (collectively **Claims**). In the event of any Claims, the Buyer will accept no liability on behalf of the Supplier and the Supplier will, at its own discretion, be responsible for the defence of Claims. If the Supplier fails to defend Claims, the Buyer reserves the right (subject to having first given

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

the Supplier thirty (30) days written notice to assume the defence and the Supplier not having acted thereon by defending the Claim) to assume the defence, and the Supplier will remain obliged to indemnify the Buyer provided that the Buyer must act reasonably and mitigate its loss. The Supplier is not authorised to settle or compromise any Claims without the prior written consent of the Buyer except where the Supplier is indemnifying the Buyer in respect of the Claim. In any event, the Buyer will not unreasonably withhold its consent.

- 11.4 The Supplier will be solely responsible for, and its indemnification obligation under this clause 11 will extend to, all acts and omissions of any members of its Group, its affiliates, successors, and permitted assigns, and its or their respective officers, directors, employees, agents, or contractors in the performance of its obligations under the Contract.
- 11.5 In no circumstances will the Buyer be liable for anticipated losses or loss of profits, business interruption, incidental or consequential damages or for damage, loss, theft or injury to the Supplier's property at the Buyer's premises. The Buyer's liability for any claim arising out of or in relation to the Contract will be capped at the price of the Products giving rise to the claim. Any action by the Supplier arising out of or in relation to the Contract must be commenced by the Supplier within one (1) year after the cause of action has occurred.
- 11.6 For the duration of the Contract, the Supplier will maintain in force or cause to be maintained, with a reputable insurance company authorised to operate in the jurisdiction, certificates of insurance for the following types and specifications that will support the indemnities of this Contract in addition to insurance required by statute: (a) public/product liability covering bodily injury, property damage and personal injury with a limit of no less than £5,000,000, each and every occurrence; (b) employers' liability insurance with a limit of no less than £1,000,000 each Accident, Disease-Each Employee, Disease-Policy Limit; and (c) if the Supplier or its employees will operate a motor vehicle in performance of the work, automobile/motor liability insurance covering bodily injury and property damage with limits as required by law. These policies must be primary and non-contributory with any other insurance available to the Buyer (to the extent of Supplier's negligence) and contain a waiver of subrogation in favour of the Buyer and its affiliated companies and their employees, officers and directors (except to the extent of gross negligence of the Buyer). Insurance required by (a) and (c) above shall schedule the Buyer and its affiliates companies as an additional insured or on an indemnity to principals clause (NOT a co-insured) to the extent of Supplier's negligence. Supplier shall also carry

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

umbrella/excess liability insurance that schedules the insurance required by (a), (b) and (c) above as underlying insurance with limits as follows:

- For contracts with an annual value up to £2M – no less than £2,000,000;
- Contracts with an annual value from £2M-5M – no less than £5,000,000;
- Contracts with an annual value from £5M-10M – no less than £10,000,000; or
- Contracts with an annual value over £10M – with limits of not less than £25,000,000.

If Supplier's work involves transporting or storing the Buyer's product, the Supplier shall also carry cargo/transit liability insurance or warehouseman's legal liability insurance with limits no less than £1,000,000. Any of the Supplier's standard shipping documents (such as, but not limited to, bills of lading, warehouse receipts, etc.) containing limitations of liability or limitations of time to file suit are invalid as to the Buyer and its affiliated companies. Should damage result to the Buyer's product, the Buyer will have complete discretion as to how salvage is managed. If Supplier's work involves waste, hazardous materials or construction, Supplier shall carry environmental impairment liability/contractor's pollution liability insurance with limits no less than £5,000,000. The Buyer and its affiliated companies shall be additional insured on these policies. The Supplier will, prior to contract inception, work commencement and/or entry upon Buyer's premises, deliver Certificates of Insurance confirming the above listed minimum insurance requirements to: [contractor\\_prequalification@cummins.com](mailto:contractor_prequalification@cummins.com). Certificates of Insurance must be sent electronically – do not mail by post. Supplier shall require any of its sub-contractors to carry commercially reasonable types and levels of insurance with the same provisions for Indemnity to Principals and waiver of subrogation in accordance with the requirements set out herein. Supplier shall be responsible for any damage or loss suffered by Buyer as a result of non-compliance by Supplier or any sub-contractor with this Section. Supplier shall waive and cause its insurers under the above policies to waive for the benefit of Cummins any right of recovery or subrogation which the insurer may have or acquire against Buyer or any of its affiliates, or its or their employees, officers or directors for payments made or to be made under such policies.

### 12. BUSINESS RELATIONSHIP

- 12.1 The Supplier will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature (**Confidential Information**) and have been disclosed

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

to the Supplier by the Buyer, its employees, agents or subcontractors, and any other confidential information concerning the Buyer's business or its products or its services which the Supplier may obtain. The Supplier will restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Supplier's obligations under the Contract, and will ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Supplier.

- 12.2 The Supplier will not disclose the existence of the Contract to another party and will not release any advertising material naming the Buyer nor quote the opinion of any of the Buyer's employees, use the name or trademark of the Buyer or make any public announcement or disclosure relating to the Contract or the Products without the prior written consent of the Buyer'.
- 12.3 All Products manufactured by the Supplier in accordance with the Buyer's drawings or in the manufacture of which the Buyer's tools, dies, patterns, jigs or special tooling are used, will not be sold by the Supplier to any party other than the Buyer.
- 12.4 The Supplier acknowledges that it may, during the course of supplying the Products, be required to process or otherwise have access to personal data in respect of which the Buyer is the data controller. The Supplier acknowledges that it will be the Buyer's data processor in respect of that personal data and warrants and undertakes that it will comply with the terms of the Data Protection Processor Agreement ("**DPA**") into which the parties have entered separately and which forms part of these Terms and Conditions. The terms used in this clause 12.4 shall be interpreted in accordance with the GDPR.

### **13. TERMINATION**

- 13.1 The Buyer may terminate these Conditions for convenience at any time by giving prior written notice to the Supplier, with no further liability to the Supplier other than payment to the Supplier of the documented cost of work in process and material commitments made within the time specified in the Purchase Order or, if no time is specified, then within two (2) weeks prior to the date of notice of termination.
- 13.2 Without limiting its other rights or remedies (whether arising from these Conditions or under general law), the Buyer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (h) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(i) (inclusive); or
- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

### **14. CONSEQUENCES OF TERMINATION**

On termination of the Contract or any part of it for any reason:

- (a) the Supplier will immediately return or destroy all the Buyer's unique tooling, fixtures, drawings and gauging relating to the Products. All tooling and gauging will be returned in working condition and will be packaged to minimise any potential damage during transit;
- (b) the accrued rights and remedies of the parties as at termination will not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination will continue in full force and effect including (but not restricted to) clauses 3 (Quality, Warranties and Inspection), 10 (Intellectual Property Rights), 11 (Indemnity), 12 (Business Relationship), 13 (Termination) and 15 (General).

### **15. GENERAL**

15.1 Dispute Resolution: If a dispute under the Contract arises:

- (a) the party claiming that a dispute has arisen must give notice to the other party indicating the nature of the dispute ("Notice of Dispute");
- (b) within 10 days of receipt of the Notice of Dispute, the Sourcing Team Manager and an equivalent authorised representative from the Supplier must meet and attempt to resolve the dispute within 30 days of receipt of the Notice of Dispute;
- (c) if the parties fail to resolve the dispute in accordance with clause 15.1(b), the EMEA Purchasing Leader of the Supplier and the equivalent authorised representative of the Buyer must meet and

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

attempt to resolve the dispute within 60 days of receipt of the Notice of Dispute; and

- (d) if the parties fail to resolve the dispute in accordance with clause 15.1(c), the provisions of clause 15.19 will apply.

15.2 Communications between the parties during the process set out in clause 15.1, whether oral or in writing, will not be admissible as evidence in any legal process unless in writing and signed by both parties.

15.3 Nothing in this clause 15.1 prevents either party from issuing proceedings where the only relief sought is injunctive or declaratory relief.

15.4 Force majeure: Neither party will be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable (a "**Force Majeure Event**"). If the Supplier is unable to supply Products as a result of the Force Majeure Event, the Buyer may procure the supply of Products from other suppliers but reserves the right to either (i) revert to the Supplier once the Force Majeure Event has ceased or (ii) if the Force Majeure Event prevents the Supplier from supplying the Products for more than 4 weeks, the Buyer may (without limiting its other rights or remedies) terminate the Contract with immediate effect by giving written notice to the Supplier.

15.5 Assignment and subcontracting:

- (a) The Supplier will not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.
- (b) The Buyer may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

15.6 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with the Contract will be in writing and will be delivered to the other party personally or sent by prepaid firstclass post, recorded delivery or by commercial courier, at its

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

- (b) Any notice or communication will be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time

that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

- (c) This clause 15.6 will not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" will not include e-mails and for the avoidance of doubt notice given under the Contract will not be validly served if sent by e-mail.

15.7 Each party must at its own cost and expense execute, or use all reasonable endeavours to ensure the execution of, whatever further documents or deeds the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

15.8 Each party must (except as expressly provided) bear its own costs and expenses in connection with the preparation, negotiation, and execution of the Contract.

15.9 The Contract may be entered into by the parties in any number of counterparts. Each counterpart will, when executed and delivered, be regarded as an original, and all the counterparts will together constitute one and the same instrument. The Contract will not take effect until it has been executed by both parties.

15.10 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and will not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law will constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy will preclude or restrict the further exercise of that or any other right or remedy.

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

### 15.11 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract will not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision will apply with the minimum modification necessary to make it legal, valid and enforceable.

15.12 No partnership: Nothing in the Contract is intended to, or will be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party will have authority to act as agent for, or to bind, the other party in any way.

### 15.13 Third parties:

- (a) The Supplier's obligations under this Contract (including the representations, warranties and undertakings) are given for the benefit of each member of the Buyer's Group.
- (b) It is intended that a member of the Buyer's Group may enforce the benefits conferred on it under this Contract in accordance with the terms of the Contracts (Rights of Third Parties) Act 1999.
- (c) The consent of the Buyer's Group members is not necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Contract or any one or more clauses of it.
- (d) Except as set out in clause 15.13(b), a person who is not a party to this Contract may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

15.14 Variation: Any variation, including any additional terms and conditions, to the Contract will only be binding when agreed in writing and signed by an authorised representative of the Buyer.

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

- 15.15 Liens: The Supplier waives its rights to any lien for work done or material furnished further to the Contract and agrees not to assert any such lien. The Supplier will, before final payment by the Buyer to the Supplier and on the Buyer's behalf, obtain similar waivers or releases of lien rights from every party supplying products to the Supplier in so far as the supply relates to the Contract. The Supplier will hold the Buyer harmless from and promptly satisfy any and all such liens and claims resulting therefrom.
- 15.16 Health and Safety: The Supplier will, at all times, remain under a duty to ensure that the Products do not present a health and safety risk when properly used and agrees to indemnify and hold harmless the Buyer in respect of all claims arising in connection with the breach of this duty. The Supplier will facilitate safe handling and use of the Products by ensuring that all packaging containing Products is clearly labelled to identify its contents and any hazards they present, including marking and accompanying such Products with sufficient literature and information to enable their safe handling, use and disposal.
- 15.17 The Buyer's policies: The Supplier will, at all times, comply with the following:
- (a) the Buyer's supplier code of conduct (as set out at <http://supplier.cummins.com>);
  - (b) the Buyer's corporate environmental policy and environmental standards (as set out at <http://supplier.cummins.com>);
  - (c) the Buyer's supplier handbook (as set out at <http://supplier.cummins.com>);
  - (d) the Buyer's green supply chain principles (as set out at <http://supplier.cummins.com>);
  - (e) the Buyer's restriction of prohibited materials;
  - (f) the Buyer's packaging policies (as set out at <http://scm.Cummins.com/scmintra/displayLevel2.jsp?deptId=Packaging&path=/content/Packaging/Level2/Operations/pkstds.html>); and
  - (g) the Buyer's standard supplier chargeback policy (Supplier Accountability for Material Non-Conformance (MNC) Disruptions) (as set out at <http://supplier.cummins.com> or <https://ecollaborate.cummins.com/sites/CSP/Pages/Supplier-Accountability-for-Material-Non-conformance-Disruptions.aspx>)

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

### 15.18 Entire agreement:

- (a) The Contract constitutes the whole agreement between the parties in relation to its subject matter and replaces and extinguishes all previous agreements, draft agreements, arrangements, undertaking or collateral contracts of any nature made by the parties, whether oral or written, relating to its subject matter.
- (b) Each party acknowledges that in entering into this Contract it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings, misrepresentations or representations that were made by or on behalf of the other party in relation to the subject matter of this Agreement at any time before its signature (together, "Pre-Contractual Statements"), other than those that are set out expressly in this Agreement.
- (c) Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements but for clause 15.18(b).
- (d) Nothing in this clause 15.18 will exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

### 15.19 Governing law, jurisdiction, legal compliance and dispute resolution:

- (a) All disputes arising out of or in connection with the Contract will be finally settled under the Rules by one or more arbitrators appointed in accordance with the Rules. Any arbitration proceedings under this Contract will be conducted in English and will take place in London, England.
- (b) The Contract and the transactions contemplated in the Contract will be governed by and construed and enforced in accordance with the laws of England and Wales.
- (c) The Supplier agrees that all activities and work performed directly or indirectly, by or on behalf of Supplier under the Contract will be carried out in accordance with all applicable laws, regulations and policies of England and Wales, the location where the Supplier is performing, directly or indirectly, such activities and work, and any other governmental authority to which Supplier, the Products are subject, and all relevant policies, procedures and reasonable instructions of the Buyer. The Supplier is solely responsible for such

## CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)

compliance and obtaining all permits and licences required to perform its obligations under the Contract.

- (d) The Supplier represents and warrants to Cummins that it shall comply with laws and regulations applicable to modern slavery and human trafficking and not authorise, approve, facilitate or engage in conduct constituting modern slavery and human trafficking, and will take all reasonable measures to identify and mitigate these risks in its supply chain, including but not limited to cascading similar covenants to its own suppliers and verifying its own suppliers' adherence to such covenants.
- (e) The Supplier agrees to comply with the United Kingdom Generally Accepted Accounting Practices, and, if requested by the Buyer, the Supplier will provide the Buyer with access to the Supplier's financial records in respect of the Products as may be reasonably necessary to assist the Buyer in discharging its financial reporting obligations.
- (f) The Supplier undertakes to comply with all rules and provide all information reasonably necessary to allow the Buyer to comply with its obligations in respect of the UK Plastics Packaging Tax imposed by the Finance Act 2021 in the UK.

### 15.20 Cyber Security

"Buyer Data" means any data or information and associated records, in any form or medium, (i) of the Buyer, its affiliates or their respective suppliers, customers, or other business partners that is provided to or obtained by Supplier in connection with the Contract, (ii) that is created, generated, collected, processed, maintained, stored, archived, or received in connection with the Contract, or (iii) that is derived or compiled from the foregoing.

Supplier agrees not to divulge Buyer Data to anyone (other than its personnel who have a need to know such Buyer Data in order for Supplier to perform its obligations hereunder and who are bound by confidentiality obligations no less stringent than those set forth herein), nor use Buyer Data for its own benefit or for any purpose other than performing its obligations under the Contract.

Supplier shall maintain and comply with a comprehensive cybersecurity and privacy program, which shall include reasonable, appropriate, and adequate technical, organizational, physical, administrative and security measures and safeguards and that prevent the unauthorized destruction, loss, use, disclosure, access or alteration of Buyer Data and the cybersecurity of the Products.

## **CUMMINS [UK] PURCHASE ORDER TERMS AND CONDITIONS (DIRECT)**

Supplier is responsible for monitoring cyber intelligence feeds customary in the industry using qualified and experienced personnel with appropriate expertise in cybersecurity for threats or vulnerabilities that may impact the cybersecurity of the Products.

In the event Supplier becomes aware of any actual or reasonably suspected unauthorized (i) access, control or use of, or loss of access to any Buyer Data ("Security Incident"), or (ii) access, control or use of, loss of access to or other interference with the Products (or any vehicle or any an electronic component or product in which the Products are embedded) ("Cybersecurity Incident"), Supplier shall notify the Buyer without undue delay upon discovering the Security Incident or the Cybersecurity Incident and in no case later than forty-eight (48) hours after Supplier becomes aware of such Security or Cybersecurity Incident.

Supplier acknowledges and agrees that the Buyer may disclose information (including confidential information of Supplier) that constitutes, in the Buyer's reasonable discretion, cybersecurity threat or vulnerability intelligence information, having the potential to impact the cybersecurity of the automotive industry, to the Auto-ISAC, Inc., the automotive industry's information sharing and analysis center.