

PURCHASE ORDER GENERAL TERMS AND CONDITIONS

PRECEDENCE. In the event of any inconsistency between the terms of the General Terms and Conditions, the Purchase Order Form (including the Special Terms and Conditions), and any attachments to the Purchase Order, the terms of the Purchase Order Form shall prevail. If the Purchase Order is issued in conjunction with an executed service or supply agreement between CSSSPL and the Vendor, the terms of such agreement shall prevail over all other terms.

1 DEFINITIONS

- 1.1 In this Purchase Order, the following expressions shall have the meanings assigned to them:
- 1.1.1 "**Client**" means, where applicable, the client for whom the Materials are to be purchased under this Purchase Order and its legal successors or assignees.
- 1.1.2 "**CSSSPL**" means Cummins Sales And Service Singapore Pte Ltd and includes its legal successors or assignees.
- 1.1.3 "**General Terms and Conditions**" means the terms and conditions hereinafter set out.
- 1.1.4 "**Jobsite**" means the land and other places upon which the Materials are to be constructed, and such other land or places as may be specified in this Purchase Order as forming part of the Jobsite.
- 1.1.5 "**Materials**" means (a) any materials, machinery, tools, supplies, equipment, articles, or any other items to be supplied to CSSSPL by the Vendor under this Purchase Order and (b) any materials, machinery, tools, supplies, equipment, articles or any other items to be supplied to the Vendor by the Sub-Vendor in connection with this Purchase Order.
- 1.1.6 "**Purchase Order**" means the Purchase Order Form issued to the Vendor, the Special Terms and Conditions, if any, and these General Terms and Conditions together with any specifications, requisitions, drawings, and other related documents that are attached thereto or referred to therein.
- 1.1.7 "**Purchase Order Form**" means the purchase order form issued by CSSSPL to the Vendor.
- 1.1.8 "**Services**" means the inspection, site services, installation of the Materials (if required under the contract) and other services to be performed by the Vendor under the Purchase Order.
- 1.1.9 "**Special Terms and Conditions**" means the terms and conditions specific to this Purchase Order, details of which are attached to the Purchase Order Form.
- 1.1.10 "**Sub-Vendor**" means the person, firm or corporation who supplies the Vendor with materials, machinery, tools, equipment, articles, items, or other work or services that are used by the Vendor in connection with this Purchase Order and includes its legal successors or permitted assignees.
- 1.1.11 "**Vendor**" means the person, firm, or corporation to whom this Purchase Order is issued and includes its legal successors or permitted assignees.

2 ACCEPTANCE AND ENTIRETY OF AGREEMENT

- 2.1 The Purchase Order Form is an offer by CSSSPL to purchase the Materials and/or Services and the Vendor shall acknowledge receipt of the Purchase Order without delay.
- 2.2 Acceptance of the Purchase Order Form (whether made by written or oral acknowledgment or delivery of the Materials and/or performance of the Services, whether in whole or in part) constitutes acceptance by the Vendor of these General Terms and Conditions.
- 2.3 Upon acceptance of the Purchase Order Form, this Purchase Order shall constitute the entire agreement between CSSSPL and the Vendor.
- 2.4 Any prior understandings and agreements written or oral, offer by CSSSPL to the Vendor or quotation from the Vendor which is inconsistent with the terms of the Purchase Order shall either be (a) superseded or (b) expressly made conditional on the Vendor's written acceptance of the terms thereof.
- 2.5 CSSSPL shall not be bound by any statement, representation, promise, inducement, or understanding of any kind which is not stated in this Purchase Order, whether written or oral, express or implied by common law, statute or custom.
- 2.6 Any change, amendment, modification or qualification of any terms and conditions of this Purchase Order shall be made in writing and executed by the parties.
- 2.7 For the avoidance of doubt, CSSSPL is not subject to a minimum term of supply or a minimum volume expressed in any quotation or any other document sent or previously exchanged between CSSSPL and the Vendor.

3 CONFLICTS AND DISCREPANCIES

- 3.1 The Vendor verifies, endorses and represents that all documents and information that the Vendor has received from CSSSPL are sufficient and accurate for its performance of the work under this Purchase Order.
- 3.2 If either the Vendor or CSSSPL shall find any inconsistency, conflict or ambiguity with or between the documents of this Purchase Order, the party shall immediately notify the other party of the same, and the Vendor shall promptly advise CSSSPL in writing of its proposed amendment(s) to remove or clarify the inconsistency, conflict or ambiguity.
- 3.3 CSSSPL shall issue a written notice setting out whether or not it accepts the Vendor's proposal, with or without amendments thereto as it may consider appropriate, deciding between the inconsistent or conflicting items and/or clarifying the ambiguity and the Vendor shall comply with such instruction without any cost to CSSSPL and without change of any obligations of the Vendor under this Purchase Order.

4 PRICE AND PAYMENT

- 4.1 Unless otherwise expressly stated in this Purchase Order, all prices specified in this Purchase Order are fixed and are not subject to any adjustments whether due to price escalation or any other reason whatsoever, unless the prior written authorization by CSSSPL's Purchasing Department has been obtained with respect to such adjustments.
- 4.2 Unless otherwise expressly stated in this Purchase Order, any applicable goods and services, sales, use, or similar taxes levied in the country of manufacture and export and all charges, fees and other expenses (including packaging and delivery charges) are included in the price.

- 4.3 Payment shall be made in accordance with the applicable provisions of this Purchase Order. For the avoidance of doubt, payment shall not be deemed to constitute acceptance by CSSSPL of any damaged or defective or non-complying Materials.
- 4.4 CSSSPL shall have the right to offset from any payment to be made to the Vendor and any monies claim to be due from the Vendor to CSSSPL which have been agreed by the Vendor to be offset, regardless of whether such monies are due under this Purchase Order or not.
- 4.5 CSSSPL shall have the right to retain and/or withhold from any payment to be made to the Vendor any monies which have not been agreed by the Vendor to be retained or withheld but is reasonably considered by CSSSPL to be due from the Vendor to CSSSPL. Such monies may include, where appropriate, any claim that CSSSPL may have for loss, cost, expense, or damage which CSSSPL has suffered or incurred, or which CSSSPL reasonably anticipates that it is likely to suffer or incur, as a result of a breach or non-observance of the terms of this Purchase Order by the Vendor. Upon agreement by the Vendor of the amount due from the Vendor to CSSSPL, CSSSPL shall immediately make settlement of the difference between the amount withheld by CSSSPL and the agreed amount.

5 TERMS OF DELIVERY

- 5.1 The delivery terms of the Materials shall be as stated in this Purchase Order.
- 5.2 The delivery of the Materials shall be completed by the date(s) specified on the Purchase Order Form or as otherwise agreed by CSSSPL in writing. Time is of the essence in the performance of the Vendor's obligations under this Purchase Order.
- 5.3 Without prejudice to Clause 5.2, the Vendor shall only deliver the Materials after confirmation with CSSSPL as to the location(s) and time(s) specified on the Purchase Order Form.
- 5.4 Materials delivered in excess of the amount specified in the Purchase Order may be refused and returned to the Vendor at the Vendor's cost and expense. CSSSPL shall have no obligation to pay for any Materials (including Services) performed in excess of that called for or required by the Purchase Order.
- 5.5 Each package shall be clearly marked with the Vendor's name and CSSSPL's Purchase Order number and reference (if any), delivery address, the Vendor's address and any other details required by CSSSPL.
- 5.6 The Vendor shall be responsible for proper packaging, loading and tie-down of the Materials to be delivered to prevent damage during transportation. All charges, costs and expenses relating to packing, crating, loading, or storage are included in the price stated in the Purchase Order.
- 5.7 All Materials shall be suitably packed having regard to the nature of the Materials, to withstand normal freight handling and to withstand extended periods of storage. If the Materials or any parts thereof are damaged due to faulty or inadequate packing, the damaged Materials or parts thereof shall be repaired or replaced at the Vendor's expense whether or not delivery has been accepted. The risk of loss or damage in transit shall always remain with the Vendor.
- 5.8 The Vendor shall, upon CSSSPL's request, suspend shipment and delivery of Materials until further notification by CSSSPL to the Vendor.

6 TITLE

- 6.1 Without limiting the rights of CSSSPL with respect to damaged or defective or non-complying Materials, the legal and beneficial title to the Materials shall pass to CSSSPL upon delivery and unloading of the Materials in accordance with terms of delivery.
- 6.2 The Vendor warrants that neither the Vendor nor anyone claiming under or through the Vendor shall have or shall claim to have any lien, claims, encumbrance or security interest whatsoever against the Materials.
- 6.3 CSSSPL shall be entitled, at any time, to require the Vendor to produce written evidence satisfactory to CSSSPL of the CSSSPL's title in the Materials and absence of any such liens, claims, encumbrances and security interests, and shall be entitled to withhold payment for such Materials pending receipt of such evidence.

7 QUALITY OF SUPPLY

- 7.1 Vendor warrants that (a) all Materials shall meet the requirements of all the specifications, drawings and/or samples furnished in connection with this Purchase Order, and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect, and (b) no Materials delivered shall be of a lesser quality or standard than the corresponding samples or previous samples received by CSSSPL from the Vendor. The Vendor's warranties shall survive CSSSPL acceptance of, inspection of, and payment for the Supplies. Where the Materials include Services, the Vendor warrants that the Services will be provided in a timely, diligent, efficient and skilful manner.
- 7.2 CSSSPL, the Client, and their designated representatives shall have the right to directly access Vendor's and any Sub-Vendor's Jobsites to enable CSSSPL, the Client, and their designated representatives to take necessary actions at such locations for the purpose of and in connection with their verification of the Vendor's and/or the Sub-Vendor's compliance with the quality assurance requirements.
- 7.3 The Vendor shall notify CSSSPL immediately prior to the acceptance of this Purchase Order if the Vendor is unable to meet any of the requirements the Purchase Order, which shall include the specifications, drawings and/or samples, terms or the delivery schedule of this Purchase Order.
- 7.4 With respect to any Materials which do not meet the requirements of this Purchase Order, CSSSPL shall have the right, at its sole option, to (a) return such Materials and require Vendor to repair, replace or re-perform such Materials or Services at its own cost and expense immediately after notification and within a period of time specified by CSSSPL, (b) carry out any necessary rectification works and then charge the Vendor's account for such work or (c) return such Materials to the Vendor and receive a full refund of the price from the Vendor within 30 days of CSSSPL's notice. If such notification is not in writing, it shall be confirmed in writing.
- 7.5 Where the Vendor has the benefit of warranties in relation to components comprised in the Materials, the benefit of such warranties shall be assignable and hereby assigned to CSSSPL. CSSSPL may, where applicable, assign warranties provided by the Vendor to the Clients and the Vendor shall do all things required by CSSSPL to enable such assignment to be effected.
- 7.6 The representations, undertakings and warranties set out in this Clause 7 shall survive acceptance of the Materials provided hereunder or termination of the Purchase Order and are in addition to any rights of CSSSPL under any applicable law (including statute) and undertakings of additional scope given to CSSSPL by the Vendor. No implied representations, undertakings or warranties are excluded.

8 AMENDMENT

- 8.1 CSSSPL may, at any time, by giving written or verbal instructions and confirmed in writing to the Vendor, make changes in the work to be performed or the items to be furnished hereunder in any one or more of the following: (i) specifications, drawings and/or samples; (ii) method of shipment or packing, (iii) date, time and/or place of delivery; and (iv) the quantity of items originally ordered.
- 8.2 The Vendor shall promptly advise CSSSPL (and no later than fourteen days of notification of such changes) of any reasonable proposed change in price, quality or delivery. Such proposed changes shall be subject to approval by CSSSPL.

9 WARRANTIES AND GUARANTEES

- 9.1 The Vendor hereby warrants and guarantees that all the Materials supplied under this Purchase Order shall conform to all of the requirements of the Purchase Order. It should also conform to requirements of all of the applicable laws, regulations and industry standards, including safety, quality and environment matters.
- 9.2 The Vendor shall provide free repairs to CSSSPL and, where applicable, the Client where any damage, defect, non-conformity or deficiency of the Materials or any part thereof is discovered for a period of Twelve (12) months after commencement of commercial operation of the Goods that the Materials are ultimately incorporated into or Eighteen (18) months from the date of delivery of the completed Materials whichever expires later, unless otherwise expressly stated in the Purchase Order Form. The Vendor shall further guarantee a further Twelve (12) months period for all remedial works carried out under this warranty.
- 9.3 Where a defect arises within the original warranty period but does not become apparent until that period has expired, the Vendor's liability does not cease because CSSSPL has not been able to give notice of the defect.
- 9.4 The Vendor shall reimburse CSSSPL for all costs and expenses incurred by CSSSPL if the Vendor does not repair and/or replace the Materials as provided herein in a timely manner satisfactory to CSSSPL and/or for repair and/or replacement work performed by CSSSPL on behalf of the Vendor.
- 9.5 CSSSPL's rights under this Clause 9 are, where permitted, in addition to any other right or remedy available under statute or at law including with respect to any claim for damages for any defective, non-complying Materials (including services) which CSSSPL becomes aware of, notwithstanding the expiration of the warranty period.

10 INDEMNITY AND LIABILITY; INSURANCE

- 10.1 The Vendor shall indemnify, hold harmless and defend CSSSPL, the Client, and their successors and assigns from and against any and all losses, damages, claims, actions, demands, cost and/or expenses whatsoever arising from or in connection with this Purchase Order, unless directly caused by CSSSPL's sole negligence. The Vendor's liability hereunder shall include but not be limited to liability for death of or injury to any person, loss damage to any property and damages or compensation, whether arising from, based upon, or sounding in contact, tort, negligence, strict liability law or otherwise.
- 10.2 The Vendor further agrees to maintain the following levels of insurance and to furnish to CSSSPL certificates of insurance for General/Product liability insurance (S\$1,000,000) Property Damage Insurance (S\$5,000,000) and Worker Compensation Insurance (as required by statute). The said certificates must set forth the amount of coverage, number of policy, and date of expiration, unless waived in writing. The Vendor further agrees to furnish to CSSSPL certificates from governmental agencies (where applicable) and insurance companies, upon request by CSSSPL, showing that the Vendor has adequate Worker Compensation coverage. Where the Vendor provides Services, the Vendor must provide professional liability insurance (S\$1,000,000 per occurrence).
- 10.3 In no event shall CSSSPL be liable for any indirect, consequential, economic or financial loss or incidental damages however caused and howsoever arising in any way out of this Purchase Order.

11 COMPLIANCE

- 11.1 The Vendor when conducting business with and/or on behalf of CSSSPL, shall comply with all laws, rules, regulations, orders, licenses, consents, and decrees of any national, municipal, local or other government body, and all other requirements having force of law applicable at any time which affect in any manner this Purchase Order or the Vendor's performance hereunder.
- 11.2 Notwithstanding the generality of the aforementioned, the Vendor expressly agrees to, when conducting business with and/or on behalf of CSSSPL, (a) comply with the anti-corruption laws of the countries in which it does business, and not make or authorize any direct or indirect gifts, payments or promises of payments to any government officials or employees, in order to obtain or retain any business, or secure any improper advantage (b) conduct business in full compliance with antitrust and fair competition laws that govern the jurisdictions in which it conducts business and (c) comply with all applicable trade control laws as well as all customs, export, re-export and import laws, regulations and requirements.
- 11.3 If the Vendor, when conducting business with and/or on behalf of CSSSPL, does not comply with any laws, or requirements, then CSSSPL shall have the right to terminate this Agreement forthwith without incurring any liability and the Vendor shall bear any additional costs resulting from such non-compliance, including the cost of any necessary remedial work, penalties or fines.

12 GOVERNING LAW, DISPUTES AND ARBITRATION

- 12.1 Unless otherwise stated in this Purchase Order, the governing law of this Purchase Order shall be the laws of Republic of Singapore and the Vendor agrees to submit to the non-exclusive jurisdiction of the courts of Singapore.
- 12.2 Any disputes of whatever nature arising in connection with this Purchase Order shall be resolved amicably by mutual agreement by the concerned parties as promptly as possible. If any amicable settlement is not reached between the parties in respect of a dispute within a reasonable time, such unresolved disputes shall be referred to and finally settled by arbitration which shall be held in Singapore in accordance with the rules of the Singapore International Arbitration Centre ("SIAC"). The arbitration tribunal shall consist of one (1) independent expert appointed by CSSSPL, such expert having the relevant experience in the subject matter of the dispute. The decision of the expert pursuant to this clause, after receipt of submissions by the parties, shall be binding. Costs of arbitration pursuant to this clause shall be borne by CSSSPL and the Vendor equally. Notwithstanding any dispute that may arise between CSSSPL and the Vendor, the Vendor shall continue its performance as required under this Purchase Order.

13 LATE DELIVERY AND LIQUIDATED DAMAGES FOR DELAY

- 13.1 CSSSPL reserves the right to claim from the Vendor by way of liquidated damages being a sum equivalent to 1% of the price for each week of delay up to a maximum of 10% of the price if the Vendor fails to deliver the whole or any part of the materials, drawings and/or shipping documents within the delivery date or dates set forth herein.
- 13.2 CSSSPL reserves the right to demand that the Vendor accelerate the late delivery (by transporting the delayed Materials by air at the Vendor's sole cost) and to claim for all damages suffered or incurred by CSSSPL in connection with the late delivery.

14 CONTRACT TERMINATION

- 14.1 CSSSPL reserves the right to terminate, at its sole discretion, the Purchase Order with immediate effect if the Vendor displays a lack of reasonable evidence of commencement of work, or proves unable to perform the work with reasonable promptness and due diligence necessary to ensure timely delivery as specified in this Purchase Order and this continues for more than seven (7) days following CSSSPL's enquiry on work status.
- 14.2 CSSSPL reserves the right to terminate, at any time and at its sole discretion, the Purchase Order, in whole or in part, by giving fourteen (14) days advance notice in writing to the Vendor. Any settlement of payment (which shall be the full and final settlement of all claims which the Vendor may have against CSSSPL as a result of termination) shall be made through mutual negotiation between CSSSPL and the Vendor, and shall be based on that portion of the work satisfactorily performed up to the date of termination. In no event shall CSSSPL be required to reimburse the Vendor for indirect, consequential, incidental or special damages, including prospective profit or overheads arising out of or in connection with termination of the Purchase Order.

- 14.3 CSSSPL reserves the right to terminate, at its sole discretion, the Purchase Order with immediate effect if the Vendor ceases to conduct operations in the normal course of business or becomes unable to meet its obligations as they mature, if any bankruptcy or insolvency proceeding is brought by or against the Vendor, if a receiver, administrative receiver, liquidator or similar is appointed or applied for, or if the Vendor makes an assignment for the benefit of its creditors.

- 14.4 The Vendor acknowledges its obligation to take all reasonable steps to mitigate liabilities arising from such termination.

- 14.5 Termination shall not relieve either party of liability with respect to any prior breach or with respect to rights and obligations based upon any matter which occurred prior to termination.

- 14.6 Notwithstanding the above, CSSSPL may terminate the Purchase Order without liability or cancellation charges in the event of any causes beyond its control, such as, but not limited to, flood, drought, fire, war, riot, acts of terrorism, acts of God or acts of demands of any governmental authority.

15 SUSPENSION

- 15.1 CSSSPL reserves the right to suspend at any time the execution of all or any portion of the work, by notice in writing to the Vendor. The Vendor shall then immediately discontinue the work from the date of CSSSPL's notice thereof and up to the extended date specified in such notice.

- 15.2 CSSSPL shall not be liable for any costs and damages, loss of foreign exchange or loss of the anticipated profits whatsoever resulting from such suspension.

16 RETENTION

CSSSPL shall reserve the right to withhold the corresponding percentage of the total amount of this Purchase Order as retention for uncompleted work and incomplete certification/identification/documents. The Vendor is to notify CSSSPL of the fulfillment of the requirements, and CSSSPL shall release the retention within ninety (90) calendar days or as may be specified in the Purchase Order after CSSSPL's confirmation of acceptance.

17 DESIGN AND INFORMATION

- 17.1 Any specification, drawing or other document supplied by CSSSPL to the Vendor, or specifically produced by the Vendor for CSSSPL, in connection with CSSSPL's Purchase Order, together with the copyright, design rights or any other intellectual property rights in the specification, drawing or other document or anything made, delivered or performed by the Vendor in which intellectual property rights may subsist, shall be CSSSPL's exclusive property, and the Vendor shall not disclose to any third party any such specification, drawing, other document or other proprietary information except to the extent that:

- (a) it is or becomes public knowledge through no fault of the Vendor,
(b) as required by law, provided that the Vendor gives CSSSPL immediate notice of such legal requirement and cooperate with CSSSPL's attempts to acquire an injunctive or protective order, or
(c) for the purpose of fulfilling the Purchase Order provided that the third party is under an obligation of confidentiality no less stringent than stated herein.

- 17.2 Any article made according to a design specified by CSSSPL (not previously a standard commercial design of the Vendor) shall not be furnished by the Vendor to any other person, firm, or corporation.

- 17.3 The Vendor shall not use any specification, drawing or proprietary information except to the extent that it is required for the purpose of fulfilling CSSSPL's Purchase Order.

- 17.4 Where CSSSPL commissions the Vendor to produce a design in accordance with the Purchase Order, the design supplied by the Vendor shall be capable of being implemented to achieve the purpose(s) specified in CSSSPL's Purchase Order. Copyright, design rights or any other intellectual property rights in the design shall be CSSSPL's exclusive property.

- 17.5 All copyright or other intellectual property rights in the work produced by the Vendor (other than design rights under Clause 17.4) shall be assigned to CSSSPL and the Vendor undertakes to execute all documents and take all steps necessary to secure to CSSSPL all rights assigned by this clause. Moral rights must vest in accordance with Clause 17.1.

- 17.6 The Vendor warrants that the Vendor's performance under the Purchase Order will not infringe the rights of any third party and will not have been previously assigned, licensed or otherwise encumbered.

18 CONFIDENTIALITY

If CSSSPL discloses or grants the Vendor access to any research, development, technical, manufacturing, financial, or other commercial information or "know-how" of a confidential nature, including but not limited to CSSSPL's products, technology, equipment, manufacturing processes, inventions, patent applications, designs, design applications, computer hardware and software or any other technical or commercial information which is personal to CSSSPL and is not common knowledge among competitors to whom it may be useful and which may give CSSSPL an advantage over its existing and prospective competitors, whether reduced to writing or not, the Vendor shall not use or disclose any such information to any other person or company at any time, and shall not use for its own benefit, any such information including drawings or other documentary information of a confidential nature. The Vendor further agrees and undertakes to keep confidential and not to disclose to any other person or company at any time any information in respect of, arising from or in connection with this Purchase Order, unless such disclosure is required by law or made with the prior written authorization of CSSSPL.

19 SUB-CONTRACTING

CSSSPL's Purchase Order is placed subject to the work being carried out by the Vendor and no assignment, sub-contracting or transfer to any Sub-Vendor is permissible without specific prior arrangement with CSSSPL in writing which may be subject to any conditions CSSSPL deems necessary. No assignment or subcontract (even with CSSSPL's consent) shall relieve the Vendor of any obligations under the Purchase Order. Any purported assignment, transfer or subcontract without such written consent shall be void and ineffective.

20 WAIVER, SEVERABILITY AND OTHER

- 20.1 No waiver or forbearance by CSSSPL of any of its rights under the Purchase Order or any provision(s) of these terms and conditions shall preclude CSSSPL from enforcing any of its legal rights whatsoever. The remedies herein reserved shall be cumulative and in addition to any other or further remedies provided in law or equity.

- 20.2 If anything in these terms or conditions or Purchase Order is unenforceable, illegal or void, then it is severed and the rest of the terms and conditions or Purchase Order remains in force.

- 20.3 No rule of construction shall apply to the disadvantage of any party on the basis that the terms and conditions or Purchase Order was drafted by that party.

- 20.4 Any notice required to be made hereunder to CSSSPL shall be made to the Purchasing Manager, 8 Tanjong Penjuru, Singapore, 609019, unless a different address is specified on the Purchase Order Form. Any such notice to the Vendor shall be to the address as shown on the Purchase Order Form.

21 SURVIVAL

All provisions of these terms and conditions and the Purchase Order setting out representations, warranties, indemnification obligations, confidentiality, non-solicitation and non-competition obligations by either party, all obligations which occurred prior to termination of the Purchase Order and the general provisions herein shall survive the termination, cancellation and expiration of the Purchase Order.

22 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

A person who is not a party to these terms and conditions shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of its terms.