



PURCHASE ORDER TERMS AND CONDITIONS
For the purchase of indirect products and services by Cummins Inc., its subsidiaries, and affiliates
(South Pacific specific Addendum located after 19.5)

PRECEDENCE If there is a conflict between these terms, the information on the face of this PO, or any attachments to the PO, the terms on the face of the PO shall take precedence over these terms, and these terms shall take precedence over any other attachment. If the PO is issued in conjunction with a detailed contract between the parties, the terms of the contract will take precedence over all other terms.

1. GENERAL

1.1 As used in this document, the term "Purchase Order" or "PO" refers to the hardcopy or electronic form for designating the Supplier, the Supplies and other terms of transaction plus these Terms and Conditions and any other terms that are attached or incorporated by reference. "Cummins" means Cummins Inc., its subsidiaries and affiliates; "Supplier" means the supplier or seller identified on the face of this PO and its agents and representatives; "Specifications" means all applicable blueprints, product specifications, the provisions on the face of this PO and any attachments to it; "Supplies" designates raw materials, components, intermediate assemblies, equipment and other supplies including indirect materials, technical data, drawings, or services to be furnished by Supplier to Cummins for this PO.

1.2 This PO shall be construed as an offer to purchase the Supplies on the terms contained herein. The contract resulting from the acceptance of this order is to be construed according to the laws of the State of Indiana. This PO is not assignable by Supplier in whole or in part. Any dispute shall be adjudicated in the state courts of Bartholomew County, Indiana.

1.3 Unless expressly set forth below, Cummins 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 Cummins and Supplier.

2. CONTROLLING TERMS

This PO is expressly limited to the terms and Specifications contained herein. This PO is an offer to purchase the goods and/or services set forth herein and any preceding offer or quotation of Supplier for alternative or modified terms and Specifications is (a) rejected and (b) expressly made conditional on Supplier's acceptance of the Specification and terms hereof. Supplier accepts the Specifications and terms by acknowledging or confirming this order, or commencing work on or shipping Supplies covered by this PO.

3. PRICES AND INVOICING

3.1 Prices shown on the face of this PO may not be increased without written authorization by Cummins' Purchasing Department.

3.2 Unless authorized by Cummins, Supplier agrees to issue no more than one invoice to cover all shipments made on any day.

3.3 Payment terms are Net 60 unless otherwise noted on the face of the PO.

4. DELIVERY

4.1 Deliveries are to be made in quantities and at times specified on the face hereof or, if not so specified, then as set forth on delivery schedules furnished by Cummins. Delivery shall be made FOB Cummins location that is delivered to Cummins point of use, freight pre-paid, unless otherwise stipulated on the face of the Purchase Order. Time for delivery shall be of the essence of the contract period.

4.2 Supplier shall, upon Cummins' request, suspend shipment and delivery of Supplies to be furnished hereunder as Cummins may request.

5. QUALITY OF SUPPLIES

5.1 Supplier warrants that all Supplies will conform to the Specifications and/or samples furnished in connection with this PO, and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Supplier's warranties shall survive Cummins acceptance of, inspection of, and payment for the Supplies. Where the Supplies include services, the Supplier warrants that the services will be provided in a timely, diligent, efficient and skilful manner.

5.2 Supplier shall notify Cummins immediately prior to the acceptance of this PO if Supplier cannot satisfy the Specifications, terms or the delivery schedule of this PO.

6. DISPOSITION OF REJECTED MATERIAL

With respect to any Supplies not in conformity with the requirements of this PO, Cummins shall have the right, at its option, to reject such Supplies and require Supplier to repair, replace or re-perform such Supplies or services immediately after notification. If such notification is not in writing, it shall be confirmed in writing.

7. PACKING, SHIPPING, AND STORAGE

Supplier shall, at his expense, package and preserve the Supplies in such a manner that they will arrive at the designated delivery point free from damage and in such a condition as to permit reasonable handling and six months' storage under normal environmental conditions without detrimental effects on the Supplies.

8. CANCELLATION

8.1 Cummins may cancel this PO or any part thereof at any time upon written notice to Supplier without liability except for payment to Supplier of the cost of work in process and material commitments made within the time specified on the face hereof or, if no time is specified, then within two weeks of the date of cancellation.

8.2 Notwithstanding the foregoing, Cummins may cancel this PO 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 or demands of any governmental authority.

9. CHANGES

Cummins may at any time, by written instructions or verbal instructions confirmed in writing to Supplier, 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; (ii) method of shipment or packing, (iii) time and/or place of delivery; and (iv) the quantity of items ordered. Supplier shall notify Cummins within fourteen days of notification of such changes of any proposed differences in price, quality or delivery. Such proposed changes shall be subject to approval by Cummins.

10. INTELLECTUAL PROPERTY

10.1 Supplier warrants that the Supplies specified herein (and their sale or use, alone or as a significant element of a combination) will not infringe any United States or foreign patents, copyrights, trade names, trade secrets or other intellectual property; and agrees to indemnify and hold harmless Cummins and anyone selling or using any of Cummins' products against all judgments, decrees, costs, and expenses resulting from any alleged infringement, and agrees that Supplier shall, upon request of Cummins and at Supplier's own expense, defend or assist if the defence of any action which may be brought against Cummins or those selling or using any of Cummins' products by reason of any such alleged infringement.



PURCHASE ORDER TERMS AND CONDITIONS
For the purchase of indirect products and services by Cummins Inc., its subsidiaries, and affiliates
(South Pacific specific Addendum located after 19.5)

10.2 Any inventions, discoveries, patents, copyrights, trade names, trade secrets, mask works or other intellectual property created in the performance of this PO shall be the sole property of Cummins and Supplier shall do all things requested by Cummins to transfer the ownership thereof and to perfect the same.

11. DESIGN AND INFORMATION

It is understood that any article made according to a design specified by Cummins (not previously a standard commercial design of Supplier) will not be furnished by Supplier to any other person, firm, or corporation. It is recognized that Supplier will have access to certain confidential information of Cummins and, therefore, Supplier agrees not to divulge to anyone the confidential information of Cummins, nor use for its own benefit, any such information including drawings or other documentary information of a confidential nature.

12. REMEDIES

The remedies herein reserved shall be cumulative and in addition to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this PO shall constitute a waiver of any other breach, or of such provision on the future occasion.

13. INDEMNITY: INSURANCE

Supplier agrees to indemnify and protect Cummins against all liabilities, claims, or demands for injuries or damages to any person or property growing out of the Supplies or performance of this PO by Supplier, its servants, employees, agents or representatives. Supplier further agrees to maintain the following levels of insurance and to furnish to Cummins Risk Management Department certificates of insurance for General/Product Liability insurance (\$1,000,000), Property Damage Insurance (\$5,000,000) and Worker Compensation Insurance (as required by statute). Said certificates must set forth the amount of coverage, number of policy, and date of expiration, unless waived in writing. Supplier also agrees to furnish Cummins certificates from appropriate governmental agencies and insurance companies, upon request by Cummins, showing that Supplier has adequate Worker's Compensation coverage.

If Supplies involve accounting, legal, medical or other professional services, Supplier must also provide: Professional Liability Insurance (\$1,000,000 per occurrence). If Supplies involve transporting Cummins assets via motor vehicle, the Supplier must also provide: Motor Truck Cargo Insurance (\$300,000 Single Limit). If Supplies involve performing environmentally related activities such as (but not limited to) waste disposal and environmental cleanup upon Cummins property, the Supplier must also provide: Environmental Impairment Liability Insurance (\$5,000,000 Single Limit).

In no event shall Cummins be liable for any indirect, consequential, economic or financial losses or incidental damages, however caused and howsoever arising in any way out of this agreement.

14. ADVERTISING OR USE OF NAME "CUMMINS"

Supplier shall not use or permit the use of the word "Cummins" or any similar word or any trademarks of Cummins in description of or in the marketing of products produced by Supplier, or in any manner advertise or publish the fact that Supplier has contracted to furnish Supplies pursuant to this PO or any PO with Cummins.

15. SUPPLIER'S INSOLVENCY

If Supplier 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 Supplier, if a receiver, administrative receiver, liquidator or similar is appointed or applied for, if Supplier makes an assignment for the benefit of creditors, or if Cummins reasonably believes Supplier may be unable to complete this PO, Cummins may demand adequate written assurance of performance or, at its option, terminate this PO, in whole or in part, without liability except for Supplies previously delivered to and accepted by Cummins. If Supplier fails to provide written assurance of performance, Cummins may terminate this agreement.

16. COMPLIANCE WITH LAWS

The Supplier agrees to comply with all applicable governmental laws, regulations and rules (including any relevant requirement under any EU Directive) applicable to Supplies furnished under this PO, including without limitation the US Foreign Corrupt Practices Act the U.K. Anti-terrorism, Crime and Security Act 2001 or any similar anti-corruption legislation and all US Export Regulations (and any national, EU or United Nations embargoes or restrictions). In this connection, the Supplier further agrees to indemnify, defend and hold Cummins harmless from and against any liability arising from a breach of the same and agrees to defend at its expense any action brought against Cummins.

17. MISCELLANEOUS

17.1 Force Majeure. Neither party shall be liable to the other for failure to perform its obligation under this PO when performance is prevented by flood, drought, fire, war, riot, acts of terrorism, acts of God or Governments. During the Supplier's inability to supply the Supplies, Cummins may, its option, procure such Supplies from other suppliers but will revert to the PO once the element of Force Majeure has been overcome.

17.2 Cummins may set off any amounts due to Supplier under this PO against amounts owed by Supplier to Cummins for any reason.

17.3 If requested by Cummins, Supplier agrees to give Cummins or its authorized representative's access to all pertinent documents, data and other information relating to the Supplies, and to view any facility or process relating to the Supplies.

17.4 Notice. Any notice required to be made hereunder to Cummins shall be made to: Cummins Inc., General Counsel, 500 Jackson Street, Columbus, IN 47202-3005, unless a different address is specified on the face of the PO. Any such notice to the Supplier shall be to the address shown on the face of the PO.

17.5 Buyer expects Supplier to actively pursue sourcing of materials and services from minority owned and small disadvantaged businesses. Buyer reserves the right to periodically meet with Supplier's purchasing department to review minority sourcing programs and results.

17.6 Supplier agrees to comply with the International Financial Reporting Standards (IFRS), and if requested to by Buyer, Supplier will comply with and assist Buyer as reasonably necessary in its compliance with the requirements of the Sarbanes-Oxley statute and related regulations.

18. ENVIRONMENTAL

The Supplier agrees to conform to the Cummins Environmental Policy and to the procedural requirements associated with the Cummins Environmental Management System. The Supplier shall ensure it has an understanding of its obligations under the Cummins Environmental Management System and assumes responsibility for the consequences of departing from specified procedures. To obtain further information, contact the site Environmental Manager.



PURCHASE ORDER TERMS AND CONDITIONS
For the purchase of indirect products and services by Cummins Inc., its subsidiaries, and affiliates
(South Pacific specific Addendum located after 19.5)

19. ADMINISTRATIVE

19.1 Original packing slip must accompany material. PO number, department number, and receiving location code must appear on all invoices, shipping notices, bills of lading, express receipts, packing and packing slips.

19.2 All invoices covering material listed below must refer to this PO number, including the suffix. Only one PO number is to be referenced on the invoice.

19.3 Material shipped from other than Supplier's stock must plainly show Cummins PO number and Supplier's name on packing slips and shipping tags.

19.4 Mexican and Canadian suppliers of goods who provide greater than \$100,000 per year to Cummins, must provide a NAFTA certificate to Cummins Inc. Manager International Materials and Logistics, Mail code 60216, Box 3005, Columbus IN 47202-3005

19.5 This PO is deemed closed upon receipt of the Supplies or services described herein or one (1) calendar year from the date placed, whichever occurs first, unless otherwise stipulated on the face of this order. The foregoing notwithstanding, those terms which by their nature are intended to survive the delivery of the Supplies under the PO shall survive.



PURCHASE ORDER TERMS AND CONDITIONS
For the purchase of indirect products and services by Cummins Inc., its subsidiaries, and affiliates
(South Pacific specific Addendum located after 19.5)

South Pacific specific:
Addendum to Purchase Order Terms and Conditions

Where the PO is issued by a South Pacific subsidiary or affiliate of Cummins to a Supplier located outside the U.S, the Purchase Order Terms and Conditions shall be amended as follows.

A. Clause 1

- 1.1 "Cummins" shall mean Cummins South Pacific Pty Ltd its subsidiaries and related corporations.
- 1.2 is governed by and is to be construed in accordance with the laws for the time being in force with the State of Victoria. The supplier agrees to submit to the non-exclusive jurisdiction of the Courts of that State

shall replace the laws of the State of Indiana, and any dispute arising out of the interpretation of fulfilment of this shall be heard and settled in Melbourne, Victoria.

B. Clause 3

- 3.1 insert the word "prior" before the words "written authorization by Cummins..,"
- 3.2 after "shown on the face of this PO" add "shall include taxes (excluding GST) and"
- 3.3 Payment terms" are 30 days from end of month of invoice shall replace net 60 unless".

C. Clause 4.

- 4.1 Delivery shall be FIS (as defined in INCOTERMS 2010) and title to Supplies shall pass to Cummins on delivery.
- 4.3 Goods shipped must be as specified and no substitutes or changes are to be made without Cummins written permission. Any excess deliveries will be subject to return at the supplier's expense:

D. Clause 6: add the following "at the Supplier's sole cost and expense" at the end of the sentence.... immediately after notification.

E. Clause 8: add "subject to clause 8.2" at the beginning of Clause 8.1

F. Clause 10: delete "United States of foreign". Also add "rights" after "or" other intellectual property". Also, add "damages, claims" before "costs and expenses".

G. Clause 11: add "or permit to disclosure to anyone" after the words "not to divulge to anyone".

H. Clause 13: the requirements for the Supplier to maintain insurance shall be replaced by the following:

Supplier agrees to maintain the following levels of insurance and to furnish Cummins Risk Management Department with certificates of insurance for:

Workers Compensation Insurance, Public Liability Insurance (\$10,000,000 single limit). Professional Indemnity Insurance (\$10,000,000 each incident)

I. Clause 16: Amend to:

The Supplier agrees to comply with all applicable governmental laws, regulations and rules applicable to Supplies (including the *Competition and Consumer Act 2010 (cth)*) furnished under this PO. In this connection, the Supplier further agrees to indemnify, defend and hold Cummins harmless from and against any liability arising from a breach of the same and agrees to defend at its expense any action brought against Cummins.

J. Clause 17:

17.4 the address for delivery of any notice shall be the Company Secretary, Cummins South Pacific Pty Ltd at 2 Caribbean Drive, Scoresby, Victoria 3179, Australia.

K. Clause 19.

19.1 Add a provision "General": A full set of documents are to be rendered for each shipment and forwarded only to the Purchaser on the day of shipment. Bills of Lading must be forwarded under separate registered mail. All invoices and shipping documents must show the Purchase Order number as set out herein. Any loss of profits, bonding or wharf charges or consequential damages arising from not adhering to these and the following shall be payable by the Supplier. For Domestic Shipments or Deliveries, invoices (Original only), delivery dockets and/or shipping specifications (in triplicate) are required. Invoices are to be mailed to the invoicing address shown on this Purchase Order and not enclosed with goods supplied. For Foreign Shipments, Custom Invoices, Bills of Lading and Shipping specifications in quadruplicate, the whole properly completed and certified in accordance with Australian Customs Regulations".

19.6: Add a provision re Occupational Health and Safety Act and guidelines- "The Supplier shall at all times comply with any legislation, regulations or by-laws, common law, requirements, consents or guidelines relating to occupational health and safety of persons and environmental protection".



PURCHASE ORDER TERMS AND CONDITIONS
For the purchase of indirect products and services by Cummins Inc., its subsidiaries, and affiliates
(South Pacific specific Addendum located after 19.5)

L. New Clause 20 WARRANTIES

- 20.1 In the event the goods are defective while under warranty, the Supplier will replace or repair the defective goods at Cummins' option. Warranties against defects are provided by the Supplier as detailed below.
- 20.2 Warranty claims should be directed to the address specified below.
- 20.3 The Suppliers goods come with guarantees that cannot be excluded under the Australian Consumer Law. Cummins is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Cummins is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. This warranty is in addition to other rights and remedies available to Cummins under the law.

M. New Clause 21. TEST CERTIFICATES

If so stated on the face of this Purchase Order or any Attachments thereto Test Certificates for material and equipment supplied under this Purchase Order must be forwarded to the Purchaser upon completion of testing or upon request of such certificates from Suppliers.

N. New Clause 22. SITE WORK AND SERVICES

- 22.1 Invoices for site work and service must be accompanied by a schedule of 'work completed on site' certified by Cummins engineer or authorized representative'.
- 22.2 Progress payments will not be made unless specified in the Purchase Order.
- 22.3 Evidence of the Supplier's current Workers Compensation insurance policy covering personnel involved in site work and service and an adequate Public Liability insurance policy issued by a reputable insurer must be supplied with the acceptance of the Purchase Order and the Supplier shall indemnify and keep indemnified the Purchaser and hold it harmless against all actions, suits, claims, proceedings, costs and expenses whatsoever arising there from. Any Supplier that enters Cummins' site must comply with its OH & S Requirements as well as complying with State & Federal Safety Standards.

O. New Clause 23. GST

23.1 Definitions

For the purpose of this Purchase Order unless the context otherwise requires:

- "Act" means A New Tax System (Goods and Services Tax) act 1999 as amended.
- "GST" has the meaning given in Section 195-1 of the Act
- Where any other term is used in this clause which is defined in the Act it shall have the same meaning which it bears in the Act.

23.2 GST Exclusive

Any amounts payable under this Purchase Order are calculated or expressed exclusive of GST.

23.3 Taxable Supply

If GST is or becomes payable by a party under this Purchase Order or any transaction contemplated by this Purchase Order, the recipient of the supply must pay to that party an amount equal to the GST payable of the supply, provided that the party at the same time provides to the recipient of the supply a valid tax invoice referable to that supply.

23.4 Adjustment

If there is an adjustment relation to a supply under this Purchase Order which results in the amount of GST or a supply being different from the amount in respect of GST recovered by a party, as appropriate, that party:

- (a) may recover from the recipient of the supply the amount by which the amount of GST on the supply exceeds the amount recovered; or
- (b) must refund to the recipient of the supply the amount by which the amount recovered exceeds the amount of GST on the supply.

23.5 Further Assurance

Each party must do all things necessary so that it is registered for GST purposes by the date GST is first imposed.

Supplier Name in Full: _____ **Phone Number:** _____ :

Registered Address of Supplier: _____ :

Supplier Representative: Printed Name: _____ **Job Title:** _____ :

Supplier Representative: Signature: _____ **Date:** _____ :

Address and Contact Details for Warranty Claims (as per clause 20.2): _____ :

_____ :

Filename: CUMMINS_INC_TandCs_South
Pacific_Indirect_15March2013.docx
Directory: D:\Users\as206\Desktop\Susan\South Pacific _Australia
Template: D:\Users\as206\AppData\Roaming\Microsoft\Templates\Normal.d
otm
Title: TERMS AND CONDITIONS
Subject:
Author: fa179
Keywords:
Comments:
Creation Date: 4/4/2013 10:22:00 AM
Change Number: 2
Last Saved On: 4/4/2013 10:22:00 AM
Last Saved By: as206
Total Editing Time: 1 Minute
Last Printed On: 4/4/2013 10:22:00 AM
As of Last Complete Printing
Number of Pages: 5
Number of Words: 3,581 (approx.)
Number of Characters: 20,412 (approx.)