



DECLARATION

The person identified below as the 'Business/Company' (**Purchaser**) applies for a trading account with Cummins South Pacific Pty Ltd (ABN 42 006 332 949) (**Cummins**) in respect of the supply of goods and/or services by Cummins to the Purchaser (**Application**) on the terms set out in this Application and fully understands that should a trading account be granted and that account includes supply on credit terms, the settlement terms on which such credit is provided are that all invoices will be paid by the end of the month following the month in which the relevant goods or services were supplied.

By signing this Application the signatory or signatories, for and on behalf of the Purchaser (except in relation to items (h) and (j) below):

- (a) applies for an account with Cummins on the terms contained in this Application and acknowledges and agrees that if an account is approved, the terms and conditions attached to this Application (**Terms and Conditions**) will govern and be applicable to the supply of any goods or services by Cummins to the Purchaser;
- (b) acknowledges and agrees that:
 - (i) completing and submitting this Application does not infer that an account will be granted by Cummins and that Cummins reserves the right to refuse an application for a trading account without explanation;
 - (ii) Cummins may, at its absolute discretion and with immediate effect, suspend, withdraw, vary, terminate or discontinue the account and the supply of goods and/or services which are supplied on credit; and
 - (iii) Cummins retains the right to set limits for payments made by the Purchaser by personal cheque for goods or services supplied by Cummins on cash terms and/or to require validation/clearance of such cheques prior to supplying the goods or services. Cummins also has the right to vary those limits at any time and from time to time, in its absolute discretion;
- (c) even though at any relevant time the Purchaser may be operating a trading account within a particular credit limit set by Cummins, Cummins is entitled in its absolute discretion to refuse to supply goods or services on credit;
- (d) if at any time and, for any reason, the Purchaser's credit limit as set from time to time by Cummins is exceeded, this shall not affect or abrogate Cummins' rights in relation to enforcing the credit limit as set by Cummins;
- (e) acknowledges and agrees that all statements and representations made by or on behalf of the Purchaser in this Application and any other information given in support of this Application are true and complete in every detail at the date of this Application;
- (f) warrants that it is, the Purchaser is and each director/partner/proprietor referred to in this Application is solvent and can each pay their respective debts as and when due and no steps have been taken to place any of them in bankruptcy, voluntary administration, liquidation, receivership or receivership and management and it will promptly notify Cummins of any material changes to the Purchaser or its financial position;
- (g) agrees that the Purchaser will immediately inform Cummins of any changes in ownership, proprietorship, control, or contact details of the Purchaser;
- (h) acknowledges and warrants that it is authorised on behalf of the Purchaser to complete and sign this Application and to bind the Purchaser in contract and each person placing an order with Cummins on behalf of the Purchaser will be duly authorised to act on behalf of the Purchaser and to place the relevant order;
- (i) acknowledges and warrants that it has read and understood this document (including the attached Terms and Conditions); and
- (j) acknowledges and agrees that the signatory or signatories have read and understood Cummins' privacy policy (**Privacy Policy**) which is available at www.cummins.com and:
 - (i) authorises Cummins to make such enquiries, as it deems necessary, about the signatory or signatories and their consumer and/or commercial credit history, for the purpose of assessing or otherwise in connection with this Application from time to time, including (but not limited to) the making of enquiries with bankers, and any (other) credit provider or a credit reporting body (**Information Sources**);
 - (ii) authorises the Information Sources to disclose to Cummins personal information about the signatory or signatories which is within the possession of the Information Sources and which is requested by Cummins;
 - (iii) agrees that the personal information provided in, or otherwise obtained by Cummins in connection with, this Application may be disclosed by Cummins to a credit reporting body or any of the other Information Sources; and
 - (iv) otherwise consents to the collecting, holding, using and disclosing of their personal information as set out in the Privacy Policy and the Privacy Acknowledgement and Consent contained in this Application.

PRIVACY ACKNOWLEDGEMENT AND CONSENT

In providing an account and/or its goods and/or services Cummins may collect, hold, use and disclose personal information in accordance with the Privacy Policy. The Privacy Policy sets out how Cummins will collect, hold, use, disclose and otherwise manage personal information in accordance with the *Privacy Act 1988* (Cth) (**Privacy Act**), the 13 Australian Privacy Principles (**APPs**) in the Privacy Act and the Credit Reporting Code implemented pursuant to the Privacy Act (**CR Code**).

The individual(s) about whom Cummins may need to collect, hold, use and disclose personal information may include the Purchaser or the Purchaser's director(s) or any other individuals relevant to the Purchaser's application including but not limited to signatories of this Application (**Relevant Individuals**). In particular Cummins may require personal information about Relevant Individuals for the purposes set out in the Privacy Policy, including the purposes of assessing this Application or any other applications for an account or whether to accept a Relevant Individual as a guarantor. This may include Cummins collecting a Relevant Individual's personal information from, or disclosing a Relevant Individual's personal information to, a credit reporting body or other Information Source (including information about the failure to make a payment in accordance with the Terms and Conditions). This may result in a credit reporting body or other Information Source including the personal information disclosed to it by Cummins about a Relevant Individual in reports that are then provided to other credit providers for the purposes of those providers assessing the Relevant Individual's credit worthiness.



Cummins may also collect a Relevant Individual's personal information from, or disclose a Relevant Individual's personal information to, another credit provider for the purpose of Cummins or the other credit provider assessing the Purchaser's application for credit, the Relevant Individual's credit worthiness, assisting the Purchaser or Relevant Individual in avoiding defaulting, and/or assessing whether to accept a Relevant Individual as a guarantor.

Cummins may also disclose a Relevant Individual's personal information to the Purchaser or the Purchaser's or Cummins' related bodies corporate, professional advisors, business partners, contractors, suppliers, consultants, insurers or third party service providers that assist Cummins or the Purchaser with the provision or management of goods and/or services and/or administrative requirements, other credit providers, debt collection and recovery service providers, guarantors or prospective guarantors, entities that may have an interest in Cummins, regulatory bodies and any other person or entity set out in the Privacy Policy or otherwise authorised by the Relevant Individual or law.

If a Relevant Individual does not provide the personal information as requested, Cummins may not be able to consider the application for an account, provide an account to the Purchaser or otherwise provide goods or services to the Purchaser. Relevant Individuals who have any concerns about Cummins' handling of their personal information can direct those concerns to dataprivacy@cummins.com or ethicsandcompliance@cummins.com, in accordance with the Privacy Policy. The Privacy Policy contain details of how Relevant Individuals can request access to, or correction of, personal information held about them by Cummins, or otherwise make complaints or inquiries with respect to the handling of their personal information by Cummins, and the ways in which such complaints will be dealt with by Cummins.

The Relevant Individuals acknowledge and give consent to:

- (a) Cummins making enquiries with the Information Sources, and collecting their personal information for the purposes of assessing this Application;
- (b) Cummins using and/or disclosing their personal information obtained as a result of or in connection with enquiries made for the purposes of assessing this Application; and
- (c) Cummins collecting, holding, using and/or disclosing personal information otherwise in accordance with the Privacy Policy, the Privacy Act, the APPs, CR Code or other applicable law.

PLEASE COMPLETE THIS SECTION

I am authorised to sign this application on behalf of

Your Business /Company Name DATE

And the information to the best of my knowledge is true and correct

Name Signature





DEED OF GUARANTEE AND INDEMNITY AND CHARGE BY:

The person or persons identified as the guarantor(s) below ("Guarantor"); in favour of Cummins South Pacific Pty Ltd (ABN 42 006 332 949) of 2 Caribbean Drive, Scoresby, Victoria, 3179 ("Cummins").

RECITALS

- A** Cummins is willing to supply Goods and Services to the customer on the terms and conditions set out in the attached Commercial Trading Supply Application ("the Agreement").
- B** The Guarantor acknowledges that Cummins is entering into the Agreement because of the granting of, and the Guarantor expects to derive a commercial benefit from, this Deed.

CLAUSES

1. In consideration of Cummins at the request of the Guarantor entering into the Agreement, the Guarantor unconditionally guarantees the customer's obligations under the terms and conditions of the Agreement and grants to Cummins the charge set out in Clause 8 below.
2. This guarantee:
 - (a) is a continuing guarantee for the whole of the customer's obligations and is irrevocable and will remain in force and in effect until discharged;
 - (b) will not be considered as wholly or partially discharged by the performance at any time of any of the customer's obligations or by any settlement of account or by any other matter or thing;
 - (c) is a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising; and
 - (d) may be enforced against the Guarantor without Cummins first being required to exhaust any remedy it may have against the customer.
3. Where this guarantee is given by more than one person, the obligations on the part of the Guarantor contained in this guarantee take effect as joint and several obligations and references to the Guarantor take effect as references to those persons or any of them. None of them will be released from liability under this guarantee by reason of any other Guarantor not executing this guarantee or this guarantee ceasing to be binding as a continuing security on any other Guarantor and the release by Cummins of any Guarantor from this guarantee will not affect the liability of any other Guarantor.
4. The liability of the Guarantor is absolute and will not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantor from obligations in whole or in part including, without limitation:
 - (a) a grant to the customer or any other person of any other time, waiver or other indulgence or concession, or the discharge or release of any other security or guarantee held by Cummins;
 - (b) the insolvency of the customer; or
 - (c) the change in constitution of customer.
5. The Guarantor shall on demand pay interest on any part of the customer's obligations which is a monetary amount from time to time owing under this guarantee but unpaid from the due date at the same rate and in the same manner as the customer is required to pay interest in respect of the customer's obligations under the agreement both before and (as a separate, independent, obligation) after any judgment.
6. The Guarantor shall reimburse Cummins' expenses in connection with the enforcement of, or the preservation of the rights under, this guarantee including legal costs and expenses on a full indemnity basis.
7. The Guarantor indemnifies and agrees to keep indemnified Cummins against all loss and damage, suffered or incurred by Cummins as a result of any default by the customer in any payment under the agreement, the observance or performance by the customer of the covenants and conditions of the agreement or breach by the Guarantor of the terms of this deed.
8. As security for performance of all of the Guarantor's and customer's obligations under or in relation to the agreement, the Guarantor hereby charges in favour of Cummins all of the Guarantor's right, title and interest now or in the future in any real property or real estate. The Guarantor agrees and acknowledges that this charge entitles Cummins to a caveatable interest now or in the future in such real property or real estate and the right of Cummins to lodge and/or register a caveat over the document of title relevant to such real property or real estate.
9. The Guarantor will undertake all actions required by Cummins to perfect the security granted under Clause 8. The obligations under this guarantee and indemnity and charge are undertaken by the Guarantor in its personal capacity and as the trustee of any trust.
10. The Guarantor warrants to Cummins that it has required all powers and authorisations to enter into this guarantee and indemnity and charge and its obligations do not breach any laws or documents binding on it.
11. The Guarantor agrees not to take any action or step against the customer (including relating to any insolvency of the customer) until Cummins has notified it that all the obligations of the Guarantor and the customer to Cummins have been satisfied.



SIGNED, SEALED AND DELIVERED as a Deed poll by the guarantor(s) in the presence of:

Signature of Witness

DATE _____

Name of Witness (Print)

Signature of Guarantor

DATE _____

Name of Guarantor (Print)

Signature of Witness

DATE _____

Name of Witness (Print)

Signature of Guarantor

DATE _____

Name of Guarantor (Print)



TERMS AND CONDITIONS APPLYING TO THE SUPPLY OF GOODS AND SERVICES BY CUMMINS SOUTH PACIFIC PTY LTD (ABN 42 006 332 949)

1. DEFINITIONS

In these terms and conditions, the following terms shall have the following meaning unless the context otherwise requires:

- (a) "Agreement" means each Offer which is accepted under clause 2.3.
- (b) "Australian Consumer Law" means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.
- (c) "Business Day" means any day except a Saturday, Sunday or public holiday in Victoria.
- (d) "Change of Control" means:
 - (i) where the person who Controls the Purchaser at the date of formation of a contract under these terms between Cummins and the Purchaser subsequently ceases to have Control of the Purchaser;
 - (ii) where a person who does not Control the Purchaser at the date of formation of a contract under these terms between Cummins and the Purchaser subsequently obtains Control the Purchaser; or
 - (iii) if the Purchaser is Controlled by a group or consortium of persons, or if the group or consortium could Control the Purchaser were they to act collectively, any material change in the composition of that group or consortium.
- (e) "Claim" means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with an Agreement or its subject matter, whether arising under contract (including under any warranty or indemnity), negligence or any other tort, in equity, in restitution, under statute or otherwise at all.
- (f) "Confidential Information" means all information and other content disclosed by Cummins to the Purchaser and includes these terms and the prices of the Goods or Services but excludes information that:
 - (i) is public knowledge or becomes available to the Purchaser from a source other than Cummins (otherwise than as a result of a breach of confidentiality); or
 - (ii) is rightfully known to, or in the possession or control of the Purchaser and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.
- (g) "Consequential Loss" means:
 - (i) any form of indirect, special, economic, incidental or consequential loss, including loss of goodwill or reputation, loss of profits or anticipated profits, loss or revenue, loss of income, loss of data, loss of use, loss of production, loss of future business, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
 - (ii) any loss beyond the normal measure of damages.
- (h) "Consumer" has the meaning provided to it in section 3 of the Australian Consumer Law.
- (i) "Consumer Guarantees" means the consumer guarantees contained in Division 1 of Part 3-2 of the Australian Consumer Law.
- (j) "Control" has the meaning given in section 50AA of the Corporations Act.
- (k) "Cummins" means Cummins South Pacific Pty Ltd (ABN 42 006 332 949).
- (l) "Debt" means all monies owing to Cummins from the Purchaser, including any amounts due in accordance with an Agreement.
- (m) "Force Majeure Event" means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party.
- (n) "Goods" means all goods, chattels, plant, equipment, machinery, stores, parts or components to be supplied by Cummins to the Purchaser under an Agreement but does not include any Purchaser Goods.
- (o) "Insolvency Event" means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.
- (p) "Intellectual Property Rights" means any and all intellectual and industrial property rights anywhere in the world.
- (q) "Loss" means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.
- (r) "Manufacturer" means the manufacturer of Goods (or any part or component of the Goods).
- (s) "Modern Slavery" has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).
- (t) "Non PDH Goods or Services" means goods or services which, for the purposes of section 3 of the Australian Consumer Law, are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (u) "Offer" has the meaning provided to it in clause 2.2.
- (v) "Order" means any order or other request by or for the Purchaser to Cummins for it to supply to the Purchaser any Goods and/or provide it with any Services, whether such order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.
- (w) "Personnel" means any employee, agent, or contractor of Cummins who assists Cummins in the delivery of Goods and/or provision of Services under an Agreement.



- (x) "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- (y) "Premises" means the premises of the Purchaser where, from time to time, Goods are delivered, and/or Services are provided, by the Personnel.
- (z) "Purchase Price" means the purchase price payable for the Goods and/or Services as specified in the Quote or, if there is no Quote, in the Order or as otherwise agreed by Cummins and the Purchaser.
- (aa) "Purchaser" means the person, firm or corporation who has requested that the Goods and/or Services be supplied to it by Cummins.
- (bb) "Purchaser Goods" means any good owned by the Purchaser and which was manufactured by Cummins or supplied to the Purchaser by Cummins.
- (cc) "Quote" means a quote or proposal provided by Cummins to the Purchaser in respect of the Goods and/or Services.
- (dd) "Repair Services" includes work, services and things reasonably necessary to:
 - (i) maintain Purchaser Goods in good working order and condition (including any servicing of the Purchaser Goods);
 - (ii) identify any Defect in a Purchaser Good;
 - (iii) repair or otherwise rectify any Defect in a Purchaser Good; and
 - (iv) provide advice or consultancy services in respect of a Purchaser Good (including the identification of the source of, or remedy for, any Defect).
- (ee) "Services" means all services, labour, work to be supplied by Cummins to the Purchaser under an Agreement and may include Repair Services.
- (ff) "Specifications" means any physical, qualitative, technical or descriptive specifications, plans, prototype, drawings, dimensions, weights or other particulars of the Goods or Services which are supplied by Cummins or which may be available on the internet, including as provided in any Quote, price list, catalogue, brochure or other document which describes the Goods or Services.
- (gg) "Terms" means these Terms and Conditions.
- (hh) "User Manual" means manuals, instructions and other documents which provide information on usage and operation which are supplied to the Purchaser in relation to Goods and/or Services.

2. APPLICATION AND FORMATION OF AGREEMENT

- 2.1. These Terms apply to and govern the supply by Cummins of Goods and provision of Services to the Purchaser from time to time and, more specifically, apply to and govern the supply by Cummins of Goods and/or Services to the Purchaser which are to be provided under an Offer accepted by Cummins.
- 2.2. The Purchaser acknowledges and agrees that by submitting an Order the Purchaser makes an irrevocable offer to Cummins for Cummins to supply it with the Goods and/or provide it with the Services on the terms of these Terms and the Order ("Offer").
- 2.3. A contract will be formed between Cummins and the Purchaser in respect of each Offer upon the earlier of Cummins:
 - (a) notifying the Purchaser in writing that it accepts the Purchaser's Offer;

- (b) accepting, in full or part, payment from the Purchaser for any Goods or Services the subject of the Offer;
- (c) making delivery of the Goods the subject of the Offer to the Purchaser; or
- (d) performing the Services, the subject of the Offer.

- 2.4. An Agreement formed under clause 2.3 will comprise these Terms, the Quote (if any) and the Order.
- 2.5. The Purchaser may place an Order based on a Quote within the time specified in the Quote or within such further time as Cummins may specify or agree in writing.
- 2.6. Notwithstanding clause 2.5, Cummins is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the sole discretion of Cummins.
- 2.7. Subject to clause 15.2, neither an Agreement nor any Offer that has been submitted can be cancelled by the Purchaser except with the prior written consent of Cummins and without prejudice to any other rights Cummins may have, the Purchaser indemnifies Cummins for any Loss incurred by Cummins in connection with any cancellation.

3. SUPPLY OF GOODS AND/OR SERVICES

- 3.1. Cummins agrees to sell, and the Purchaser agrees to purchase the Goods and/or Services specified in an Order which are the subject of an Offer accepted by Cummins for the Purchase Price on the terms and conditions contained in the Agreement.
- 3.2. Unless otherwise agreed in writing, Goods and/or Services are supplied by Cummins only on the terms of the Agreement to the exclusion of any terms or conditions contained in any written order (including any purchase order) or confirmation provided or issued by the Purchaser unless otherwise agreed by the parties in writing.

4. DELIVERY

- 4.1. Cummins will deliver the Goods to the Purchaser in the manner determined by Cummins or as otherwise agreed between Cummins and the Purchaser (including collection by the Purchaser).
- 4.2. All reasonable efforts will be made by Cummins to complete and deliver the Goods within seven (7) days of:
 - (a) in respect of Goods, Cummins notifying the Purchaser that the Goods are ready for delivery; and
 - (b) in respect of Services, the date estimated by Cummins in the Quote or, if there is no Quote, set out in the Order as the date the Services will be completed,

however, such dates are estimates only and Cummins will not, in any circumstances or for any reason be liable for late or part delivery of the Goods or provision of the Services and later delivery of Goods or provision of the Services does not entitle the Purchaser to cancel any order for the Goods or Services.

- 4.3. If the Purchaser is required to collect the Goods or the parties have agreed that the Purchaser will collect the Goods, then the Purchaser must collect those Goods within 3 Business Days of being notified by Cummins that the Goods are ready to be collected.
- 4.4. There must be a representative of the Purchaser present at the delivery location at the time delivery is made of the Goods and, if no such representative is present, a redelivery fee may be charged by Cummins.
- 4.5. The Purchaser must, prior to taking possession of the Goods, inspect the Goods and immediately notify Cummins in writing if the Goods are not fit for any purpose for which



the Purchaser intends to use the Goods, have any defect or otherwise do not meet any Specifications.

4.6. In the event that the Purchaser fails to accept delivery of Goods (including failure to collect the Goods), Cummins shall be entitled to:

- (a) payment for those Goods and to treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Purchaser; and
- (b) store the Goods at the risk and the cost of the Purchaser, who shall pay Cummins upon demand for reasonable costs incurred by Cummins in relation to the storage of the Goods provided that Cummins is under no obligation to store, insure or care for the Goods.

4.7. The Purchaser acknowledges and agrees that:

- (a) Cummins may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
- (b) it will not request proof of delivery or other similar documentation from Cummins; and
- (c) it will not dispute any invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by Cummins.

5. TITLE

5.1. Title to, and property in:

- (a) the Goods shall not pass to the Purchaser until the Purchaser has paid in full to Cummins, by way of cleared funds, the Debt; and
- (b) any Purchaser Goods provided to Cummins under an Agreement remain with the Purchaser.

5.2. Until full title, property and ownership of the Goods passes to the Purchaser in accordance with clause 5.1:

- (a) the Purchaser will hold the Goods as fiduciary for Cummins and must insure the Goods for their full replacement value and store and maintain them with all proper care. The Purchaser hereby indemnifies Cummins against any loss or damage to the Goods howsoever arising;
- (b) the Purchaser must store the Goods separately from other property in the possession of the Purchaser and in a way that enables the Goods to be easily identifiable as Goods sold by Cummins and referable to a particular invoice;
- (c) subject to clause 5.3, the Purchaser must not sell, lease, dispose of or otherwise deal with the Goods in any way without Cummins' prior written consent;
- (d) Cummins may enter the premises of the Purchaser or any third party where the Goods are stored during the hours of 9.00am to 5.00pm to inspect the Goods;
- (e) Cummins may at any time after payment is overdue require the Purchaser to deliver up the Goods to Cummins and, if the Purchaser fails to deliver up the Goods immediately, Cummins may enter the premises of the Purchaser or any third party where the Goods are stored and repossess them;
- (f) the Purchaser must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of Cummins. If the Purchaser does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Purchaser, the Purchaser must remove the pledge, charge or security interest immediately and all moneys owing by

the Purchaser to Cummins will (without prejudice to any other right or remedy of Cummins) immediately become due and payable to Cummins; and

- (g) the Purchaser must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.

5.3. Subject to clause 5.4, the Purchaser may sell the Goods that have not passed to the Purchaser under clause 5.1 by way of bona fide sale at full market value and in the ordinary course of the Purchaser's business but only as agent for Cummins and on terms which will not prejudice Cummins' ability to obtain the sale proceeds thereof and:

- (a) the proceeds of such sale will be held on trust for Cummins in a separate account, or otherwise clearly identified in the books and records of the Purchaser and shall be forwarded as soon as possible to Cummins in satisfaction of any amount owed by the Purchaser in respect of the Goods; and
- (b) any rights against the Purchaser's customers arising as a consequence of the sale of Goods will be held on trust for Cummins, payable immediately on demand.

5.4. In addition to any other rights or remedies which Cummins may have, if:

- (a) the Purchaser fails to pay any amount due to Cummins;
- (b) the Purchaser breaches any terms of an Agreement;
- (c) the Purchaser is the subject of any Insolvency Event; or
- (d) Cummins receives notice of or reasonably believes that a third person may attempt to levy execution against the Goods or any Purchaser Goods in respect of which Cummins is providing Repair Services,

then the Purchaser's right to sell the Goods terminates immediately and Cummins may elect to do any one or more of the following:

- (e) terminate any Agreement in respect of any Goods or Services not yet supplied or provided to the Purchaser in whole or in part by Cummins;
- (f) enter the property of the Purchaser to claim and retake possession of, and to sell, the Goods and any Purchaser Goods in respect of which Cummins is providing Repair Services in satisfaction in whole or in part of all money owing by the Purchaser to Cummins;
- (g) dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from such goods;
- (h) charge the Purchaser interest (both before and after any judgement) on the unpaid amount at the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic), which interest will accrue and be chargeable from the first day on which such amount becomes overdue until Cummins receives payment of all such amounts (including all interest) by way of cleared funds;
- (i) exercise any rights which Cummins may have under law, including the PPSA.

5.5. For the purposes of Cummins exercising its rights under clauses 5.2(d), 5.2(e) and 5.4(f), the Purchaser:

- (a) expressly authorises and grants Cummins and its agents an express, irrevocable licence to enter the premises of the Purchaser or relevant third party to inspect the Goods or to remove or arrange for the removal of the Goods or Purchaser Goods; and



- (b) the Purchaser indemnifies Cummins against any Loss that may be incurred or sustained by Cummins, its employees or agents, as a result of the entry of those premises where the Goods or Purchaser Goods are stored.
- 5.6. The Purchaser must, on request, disclose to Cummins all relevant information regarding the Goods and any sale of the Goods by the Purchaser.
- 5.7. The Purchaser must inform Cummins immediately of any levy of execution or attempt to levy execution by any third party against the Goods, the title to which is reserved to Cummins in accordance with these Terms.
- 5.8. If an Insolvency Event occurs in respect of the Purchaser then, without the need for notice or demand by Cummins, the Purchaser acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Purchaser's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Purchaser to Cummins, be held on trust for Cummins by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Purchaser.
- 5.9. If any of the Goods are installed in, or affixed to, or become an accession to any other products, any security interest in respect of that Good continues in the accession in accordance with the PPSA.
- 5.10. If the Purchaser processes, incorporates, transforms, installs or mixes the Goods (or any part of them) with any other goods or items to create new goods or products (the "Products") such that the Goods are not a readily identifiable and removable part of the Products, then until the Debt has been paid in full:
- (a) the Purchaser must keep and maintain records in relation to the Goods which have been processed, incorporated, transformed or installed and the Products;
 - (b) the Purchaser shall store the Products separately so as to be readily identifiable;
 - (c) Cummins shall have title to the Products; and
 - (d) this clause 5 shall apply as if references to "Goods" were references to "Products".
- 5.11. If Cummins sells the Goods in satisfaction in whole or in part of all money owing by the Purchaser to Cummins, then the Purchaser agrees to pay to Cummins an amount equal to:
- (a) the costs incurred by Cummins in respect of the storage and handling of the Goods until their delivery under the sale;
 - (b) the amount, if any, by which the purchase price on sale of the Goods by Cummins is less than the Purchase Price which was due to be paid by the Purchaser to Cummins; and
 - (c) the costs incurred by Cummins in making delivery under sale of the Goods.
- 6. PPSA**
- 6.1. The Purchaser:
- (a) grants a first ranking security interest and purchase money security interest ("PMSI") in all Goods, and all proceeds from the sale of the Goods, for the purposes of the PPSA (and all regulations made pursuant to it) ;
 - (b) will do all things necessary (including executing all documents Cummins requires) and provide all relevant information to enable Cummins to register a financing statement or financing change statement in relation to the Goods on the Personal Property Securities Register or otherwise perfecting Cummins's interest in the Goods at the Purchaser's cost;
- (c) must not change its name, address or contact details without providing prior written notice to Cummins;
 - (d) must not register a financing change statement or a change demand without Cummins's prior written consent;
 - (e) except as specifically permitted, not without Cummins's prior written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in the Goods (or purport or attempt to purport to do any of those things) or permit any lien over the Goods;
 - (f) must not remove, or permit to be removed, any of the goods to any place outside Australia without Cummins's prior written consent; and
 - (g) waives the right to receive any verification statement.
- 6.2. The Purchaser agrees to waive its rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132(3) (d), 132(4), 134, 135, 136(3), (4) and (6), 137, 142 and 143 of the PPSA.
- 7. RISK**
- 7.1. The risk in, and of any loss or damage to, or deterioration in the Goods from whatever cause shall pass to the Purchaser immediately upon the earlier of:
- (a) delivery of the Goods into the hands of the Purchaser, its agents or employees or deemed delivery pursuant to Clause 4; and
 - (b) if the Goods are to be collected by the Purchaser, the Goods being made available for collection by Cummins.
- and:
- (c) the Purchaser is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Purchaser under this clause; and
 - (d) the Purchaser indemnifies Cummins against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left Cummins' premises (or the premises of Cummins' supplier or agent).
- 7.2. Risk in any Purchaser Good delivered to Cummins passes to Cummins upon confirmation of receipt of the Purchaser Good by Cummins and passes back the Purchaser upon the loading of the Purchaser Good on any truck or other vehicle at Cummins' premises for delivery back to the Purchaser.
- 8. ACKNOWLEDGEMENTS AND REPRESENTATIONS**
- 8.1. The Purchaser agrees that:
- (a) it has not relied on any inducement, representations or statements made by or on behalf of Cummins regarding the supply of the Goods and/or Services;
 - (b) Cummins' employees, contractors, officers and agents are not authorised to make any representations or warranties concerning the Goods or Services; and
 - (c) any Specifications are approximate only and subject to change by Cummins and any Manufacturer and Cummins makes no representation or warranty as to



the completeness or accuracy of the Specifications and the Purchaser is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.

- 8.2. Any price list, goods lists or other similar documents or catalogues issued by or on behalf of Cummins do not constitute an offer by Cummins to supply Goods appearing in those lists or catalogues or an offer by Cummins to supply Goods at the prices set out in those lists or catalogues. Cummins' price lists and catalogues may be changed by Cummins at any time without notice.
- 8.3. If an Offer has been accepted by Cummins, the Purchaser acknowledges that the Offer was accepted by Cummins on the basis of, and in reliance upon, any information (including information regarding the servicing history of any Purchaser Good and any current or prior defects), specifications, data, representations, statements and documents provided by the Purchaser.
- 8.4. Where any instructions, information or material in whatever form (including documents, specifications, designs, logos, plans, processes, servicing history of any Purchaser Good, information regarding current or prior defects, and data) are required to be provided by the Purchaser to Cummins before Cummins can proceed with or complete the provision of the Goods or Services such instructions, information or materials must be supplied by the Purchaser to Cummins within a reasonable time (as determined by Cummins) so as to enable Cummins to deliver the Goods or Services within any agreed time frame.

9. PURCHASER SUPPLIED EQUIPMENT, PREMISES AND SAFETY

- 9.1. From time to time in the course of assisting Cummins to deliver the Goods and/or provide the Services, the Personnel will attend the Premises and may use tools, materials, machinery or equipment which are supplied by Purchaser ("Purchaser Supplied Equipment").
- 9.2. The Purchaser is responsible for conducting health and safety risk assessments of the Premises and for all aspects of health and safety at the Premises, including use of the Purchaser Supplied Equipment, and must:
- (a) comply with all applicable laws, regulations, codes of practice and guidelines concerning the health, safety and welfare of people at work ("H&S Laws") including ensuring appropriate consultation with other duty holders under H&S Laws in relation to any work occurring at the Premises;
 - (b) do all things necessary to ensure that its agents, officers, employees and contractors comply with all H&S Laws and reasonable directions provided by the Purchaser about managing risks to health and safety;
 - (c) provide Cummins with access to such documentation as may be necessary to establish the Purchaser's compliance with H&S Laws and the requirements of these Terms; and
 - (d) provide Cummins with reasonable access to the Premises to allow Cummins to monitor the Purchaser's compliance with the health and safety requirements of these Terms and H&S Laws.

9.3. Without limiting clause 9.2, the Purchaser must eliminate risks to health and safety at the Premises and in respect of the use of the Purchaser Supplied Equipment so far as is reasonably practicable, and, if it is not reasonably practicable to eliminate risks to health and safety, reduce those risks as is reasonably practicable.

9.4. The Purchaser will verbally notify Cummins immediately in the event of:

- (a) any incident or injury that occurs involving Personnel and provide Cummins with copies of any

documentation that is created or produced as a result of or relating to such incident or injury, including but not limited to incident reports; and

- (b) any notices issued by a regulatory authority about the Purchaser Supplied Equipment, systems of work and/or plant at the Premises relevant to the attendance of the Personnel at the Premises and use of the Purchaser Supplied Equipment.

9.5. The Purchaser must at its own expense:

- (a) clean the Purchaser Supplied Equipment and keep it in good order and condition at all times;
- (b) ensure that Cummins is provided access, free of charge, to all utilities required at the Premises to provide the Services (including access to water and power);
- (c) supervise the use of any Purchaser Supplied Equipment by the Personnel;
- (d) ensure the Personnel are provided with written procedures and instructions for safe systems of work and are given any necessary training to operate the Purchaser Supplied Equipment;
- (e) if any fault or potential fault with the Purchaser Supplied Equipment is identified:
 - (i) ensure the Purchaser Supplied Equipment is not operated by the Personnel;
 - (ii) ensure the Purchaser Supplied Equipment is withdrawn from use until the fault or potential fault has been assessed and controlled/repared so that there is no longer a safety hazard with the Purchaser Supplied Equipment; and
 - (iii) ensure all necessary steps are taken to prevent injury to any persons or damage to any property as a result of the fault or potential fault identified; and
 - (iv) maintain and make available on request by Cummins records of any safety hazards and safety incidents associated with the Purchaser Supplied Equipment and any maintenance, servicing or repair of the Purchaser Supplied Equipment.
- (f) The Purchaser indemnifies Cummins for any claim, including in relation to any injury, illness or death, arising out of or in connection with a breach by the Purchaser of the H&S Laws or this clause 9.

10. LIABILITY

10.1. Subject to clause 10.2, where the Purchaser acquires Goods and/or Services as a Consumer, Cummins acknowledges that the Purchaser may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify either the exercise by the Purchaser of such rights or remedies in respect of the Consumer Guarantees or any other rights or remedies conferred by the Australian Consumer Law or the application of the Consumer Guarantees or any other provision of the Australian Consumer Law.

10.2. If the Purchaser acquires Goods and/or Services as a Consumer and the Goods and/or Services supplied are Non PDH Goods or Services, then Cummins' liability to the Purchaser for any Claim in respect of a breach or alleged breach by Cummins of the Consumer Guarantees in respect of those Non PDH Goods or Services is limited, at Cummins' option to:



- (a) in the case of Goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the services supplied again.

10.3. Where the Purchaser makes a Claim against Cummins which includes a cause of action other than for a breach of a Consumer Guarantee, then to the extent the Claim, or part of the Claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Cummins excludes all liability in respect of the Goods and/or Services supplied by Cummins to the Purchaser.

10.4. In relation to the supply of Goods which are Non PDH Goods or Services, if Cummins is liable to indemnify the Purchaser under section 274 of the Australian Consumer Law, Cummins' liability to the Purchaser is limited to an amount equal to the lower of:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent Goods; or
- (c) the cost of having the Goods repaired.

10.5. Subject to 10.1 and the rest of this clause 10:

- (a) Cummins' total and cumulative liability for all Loss for all Claims made by the Purchaser shall be limited to the Purchase Price;
- (b) Cummins shall not be liable to the Purchaser in respect of any Claim for any Consequential Loss; and
- (c) the amount of Cummins' liability in respect of any Claim made by the Purchaser will be reduced by the extent, if any, to which the Purchaser contributed to the Loss arising from the Claim.

11. EXPRESS WARRANTIES

Nothing in these Terms should be interpreted as derogating, excluding, restricting or modifying any express written warranty which Cummins may separately provide to the Purchaser in respect of any Goods acquired under these Terms.

12. NOTIFICATION OF CLAIMS

12.1. The Purchaser shall notify Cummins immediately if it becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness,

in respect of, or caused by, the Goods or Purchaser Goods or other goods of which the Goods or Purchaser Goods are a component or mixed with and the Purchaser will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

12.2. If Goods or Purchaser Goods are sold or supplied by the Purchaser to a third party for commercial use by that third party, the Purchaser must impose on the third party an

obligation to notify the Purchaser immediately if the third party becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness,

in respect of the Goods or Purchaser Goods or other goods of which the Goods or Purchaser Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.

13. REQUIREMENTS FOR SUPPLY TO CONSUMERS

The Purchaser must, and must impose on any third party to whom it sells or supplies the Goods or Purchaser Goods an obligation to:

- (a) not, without Cummins' express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Goods or Purchaser Goods, which is in breach of the Australian Consumer Law;
- (b) take all steps and do all things necessary to promptly pass on to Cummins any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Purchaser's expense, assist Cummins to comply with its obligations under the Australian Consumer Law;
- (c) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of Cummins any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and
- (d) not agree to settle any claim made by a Consumer without the prior written consent of Cummins.

14. DEFECTIVE GOODS AND SERVICES

14.1. The terms of this clause 14 are subject to clause 10 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Purchaser may have rights under the Australian Consumer Law which are not affected by this clause 14.

14.2. Subject always to any applicable provisions of the Australian Consumer Law:

- (a) any claim for defective Goods or Services must be made in writing to Cummins within seventy-two (72) hours after delivery of the Goods or completion of the Services;
- (b) the Goods in respect of which any such claim is made must be preserved intact as delivered for a period of fourteen (14) days after such notice is given within which time Cummins shall have the right to attend the premises of the Purchaser and inspect the same;
- (c) the provision to the Purchaser of any remedy in respect of any Goods or Services which the Purchaser claims are defective and determined by Cummins to be defective will be at Cummins' sole discretion.

If no notice is given in accordance with this clause, the Goods shall be deemed to have been supplied in accordance with the Agreement and the Purchaser shall be bound to accept and pay for the Goods accordingly.

15. PRICE

15.1. The Purchaser shall pay to Cummins in addition to the Purchase Price:



- (a) all taxes, duties and charges whatsoever imposed by any government or other authority and payable in respect or by reason of the sale or delivery of the Goods and/or Services or any part thereof whether or not the same were payable at the date of the Quote or Order and including (without prejudice to the generality of the foregoing) charges for import, export or currency licenses, sales, consumption, turnover or purchase taxes and duties of customs and excise;
 - (b) the amount of:
 - (i) any increase in the cost of Cummins of supplying or delivering the Goods and/or Services or any part thereof occurring after the date of the Quote or Order for any reason whatsoever including (without prejudice to the generality of the foregoing) changes in Manufacturer's prices, rates of exchange, landing charges and port dues and the cost of carriage, insurance and handling;
 - (ii) any excess over the amount reasonably allowed by Cummins in any Quote for the costs of freight and insurance or port dues or handling charges at any port to which the Goods are to be shipped which is not regularly served without trans-shipment by a line of steamers; and
 - (iii) any excess over the amount allowed by Cummins in any Quote for supplying or delivering the Goods and/or Services where such excess results from any error or omission on the part of the Purchaser, its servants or agents affecting the price or its calculation.
 - (c) any increase in the cost to Cummins arising from delivery of the Goods and/or Services to a place at a time or in a manner other than that specified in the Quote or Order;
 - (d) merchant's fees, including merchant's fees charged to Cummins in respect of payments received by credit card or other form of credit facility.
- 15.2. The Purchaser may cancel any Order and terminate any relevant Agreement if, as a result of any of the circumstances in clause 15.1(b), the Purchaser is required to pay an amount which is greater than 5% of the Purchase Price (plus any GST which may be payable under clause 16).
- 15.3. Subject to clause 15.4, the Purchase Price shall be paid by the Purchaser to Cummins in full within thirty (30) days of the end of the month in which the relevant Goods or Services are supplied and the Purchaser shall not be entitled to withhold payment or make any deduction from the Purchase Price in respect of any set-off or counter-claim.
- 15.4. If the Purchaser has previously failed to make any payment to Cummins by the due date for that payment (whether under these Terms or otherwise) Cummins may require payment of the Purchase Price in full prior to Cummins delivering the relevant Goods or providing the Services.

16. GST

Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Purchaser in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by Cummins under these Terms, the Purchaser must pay to Cummins, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Purchaser is required by these Terms to reimburse or indemnify Cummins for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that

Cummins will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Cummins in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning given to them by that Act.

17. INTELLECTUAL PROPERTY

- 17.1. If the Purchaser provides to Cummins specifications, designs, plans, descriptions, prototypes, samples, tooling, components, material, documentation, data or information for or in relation to the Goods and/or Services or their manufacture or delivery ("Purchaser Supplier Materials"), the Purchaser represents and warrants to Cummins that:
- (a) the Purchaser is the legal and beneficial owner of, or is entitled to use, any Intellectual Property Rights in such Purchaser Supplied Materials;
 - (b) grants to Cummins a non-exclusive, royalty free licence during the term of each Agreement to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Purchaser Supplied Materials which are required to enable Cummins to supply the Goods or perform the Services; and
 - (c) shall indemnify Cummins and hold Cummins harmless from and against all any Claims and Losses arising from or incurred by reason of any infringement or alleged infringement of the Intellectual Property Rights owned by a third party in respect to or contained within any Purchaser Supplied Materials or any confidential information or other protected or proprietary rights arising from the supply or use of such Purchaser Supplied Materials.
- 17.2. The Intellectual Property Rights in respect to or contained within the Goods and/or Services or in any Specification in relation to the Goods and/or Services or their manufacture which have been developed by or on behalf of Cummins shall remain the property of Cummins and no transfer to the Purchaser of any such rights is included in the price paid or agreed to be paid whether or not such price includes an amount for designing or producing the Goods and/or Services.
- 17.3. The Purchaser acknowledges and agrees that the provision of Repair Services under an Agreement may result in the loss of any user-generated data or other data stored in or by the relevant Purchaser Goods and it is the Purchaser's responsibility to ensure it has made a copy of any data saved on or stored on Purchaser Goods submitted to Cummins for the provision of Repair Services and Cummins is not responsible for any Loss arising from or relating to such loss of data.

18. CONFIDENTIALITY

- 18.1. The Purchaser:
- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
 - (b) must keep confidential all Confidential Information; and
 - (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by Cummins; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of Cummins.



18.2. The Purchaser must notify Cummins immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

19. LICENSES

If it is necessary for the lawful fulfilment of an Agreement:

- (a) for the Purchaser to hold or obtain any import, export, currency or other license, consent or authority ("license"), the Purchaser shall be obliged to obtain the license at its cost; or
- (b) for Cummins to hold or obtain any license, Cummins shall apply for such license but if it is refused, the Agreement shall immediately terminate and neither Cummins nor the Purchaser shall be under any liability to each other in respect of such termination.

20. TERMINATION

20.1. Without limiting a party's other rights under these Terms, a party ("Non-Defaulting Party") may terminate any and all Agreements with immediate effect by written notice to the other party ("Defaulting Party") if:

- (a) the Defaulting Party is the subject of an Insolvency Event;
- (b) the Defaulting Party has breached any term of the relevant Agreement (including these Terms) and, if the breach is capable of remedy, has not remedied the breach within 10 Business Days or receiving notice requiring the breach to be remedied; or
- (c) in accordance with clause 23.2.

20.2. On termination of an Agreement:

- (a) the Purchaser must not sell or part with possession (other than as required under clause 20.2(b)) any Goods the subject of the Agreement (other than any Goods which have been paid for);
- (b) the Purchaser must, at its cost immediately return to Cummins all Goods the subject of the Agreement (other than any Goods which have been paid for) and any displays and other promotional and advertising materials in relation to the Goods;
- (c) Cummins may enter the premises of the Purchaser or any third party to repossess any Goods not returned as required under clause 20.2(b) and the Purchaser expressly authorises and grants Cummins and its agents an express, irrevocable licence to enter the premises of the Purchaser or relevant third party to remove or arrange for the removal of such Goods; and
- (d) all monies owed by the Purchaser to Cummins shall become immediately due and payable.

20.3. Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

21. INDEMNITY

The Purchaser indemnifies Cummins and holds Cummins harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which Cummins incurs as a direct or indirect result of:

- (a) recovering any amounts the Purchaser owes to Cummins (including any fees paid to a debt collector, mercantile agent or similar);
- (b) any breach of an Agreement by the Purchaser; and

- (c) any negligent or wilful act or omission by the Purchaser, the Purchaser's employees, agents, servants, contractors or others for whom the Purchaser is legally responsible.

22. MODERN SLAVERY

22.1. Cummins will take reasonable steps to ensure that it and its subcontractors identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.

22.2. If at any time Cummins becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of an Agreement, Cummins will, as soon as reasonably practicable, take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

23. FORCE MAJEURE

23.1. Cummins will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.

23.2. If a Force Majeure Event under clause 23.1 exceeds 20 Business Days, Cummins may immediately terminate the Agreement by written notice to the Purchaser.

24. GENERAL

24.1. In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (e) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
- (g) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

24.2. These terms and conditions and any contract formed under them shall be construed in accordance with and be governed by the laws of the State of Victoria and the parties agree to submit all disputes arising between them to the courts of such state and any court competent to hear appeals therefrom.

24.3. Nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by statute, regulation or common law which cannot be lawfully excluded, restricted or modified, which may include the *Competition and Consumer Act 2010* (Cth) (including the Australian Consumer Law) and corresponding provisions and relevant laws of State or Territory legislation.

24.4. No failure to exercise and no delay in exercising any right, power or remedy under these terms will operate as a



waiver. Nor will any single or partial exercise of any other right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

- 24.5. If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.
- 24.6. The Purchaser must maintain and keep current and complete records of the Goods which Cummins has supplied to the Purchaser and or Purchaser Goods for which Cummins has provided Repair Services, including any Goods or Purchaser Goods which are sold by the Purchaser to a third party and must, immediately upon written request from Cummins, provide Cummins with access to, or copies of, those records.
- 24.7. The Purchaser must not assign or otherwise deal with any of its rights or obligations under these Terms without Cummins' prior written consent. Any Change of Control of the Purchaser is a dealing that requires Cummins' prior written consent. Cummins may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time in circumstances where, in the opinion of Cummins acting reasonably, the assignment will not adversely affect the rights of the Purchaser.
- 24.8. Cummins may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as Cummins provides the Purchaser notice of the variation ("Variation Date"). Any variation to these Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Purchaser to make any further Offers after the Variation Date.
- 24.9. The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 4.6, 5, 6, 7, 8, 10, 12, 16, 17, 18, 20, 21 and 24.
- 24.10. The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
- 24.11. Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the relevant Agreement or otherwise provided in writing by the party to the receiving party. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending and by email one hour after the email (unless the sender knows that email has failed to send).