



EPA: CAL000389790
Remit to:
Cummins Sales and Service
PO Box 772639
Detroit, MI 48277-2639

SAN LEANDRO CA BRANCH
14775 WICKS BLVD
SAN LEANDRO, CA 94577-
(510)351-6101

INVOICE NO

ESTIMATE

TO PAY ONLINE LOGON TO
customerpayment.cummins.com

BILL TO

CITY OF FOSTER CITY
100 LINCOLN CTR DR
FOSTER CITY, CA 94404-1149

OWNER

CITY OF FOSTER CITY
100 LINCOLN CENTER DR
FOSTER CITY, CA 94404-
GREG BAEZA - 650 286-3264

PAGE 1 OF 3

*** CHARGE ***

| DATE | CUSTOMER ORDER NO. | DATE IN SERVICE | ENGINE MODEL | PUMP NO. | EQUIPMENT MAKE |
|--------------|--------------------|-----------------|-------------------|-----------|-----------------|
| 02-AUG-2024 | PENDING PO# | 14-FEB-2001 | QSK19 CM500 | | IRRIGATION PMP |
| CUSTOMER NO. | SHIP VIA | FAIL DATE | ENGINE SERIAL NO. | CPL NO. | EQUIPMENT MODEL |
| 236315 | | 29-JUL-2024 | 37194202 | CPL255900 | QSK-19 |
| REF. NO. | SALES PERSON | PARTS DISP. | MILEAGE/HOURS | PUMP CODE | UNIT NO. |
| 50425 | | | 1518 / 1518 | | 4 |

| QUANTITY ORDERED | BACK ORDERED | QUANTITY SHIPPED | PART NUMBER | DESCRIPTION | PRODUCT CODE | UNIT PRICE | AMOUNT |
|------------------|--------------|------------------|-------------|-------------|--------------|------------|--------|
|------------------|--------------|------------------|-------------|-------------|--------------|------------|--------|

OSN/MSN/VIN 37194202

COMPLAINT

DURING PM MAINTENANCE IT WAS NOTED THAT THE RADIATOR NEEDS TO BE REBUILT/REFURBISHED. RECOMMENDED TO REPLACE BATTERIES AND AIR FILTERS AND FUEL LINES.

ENGINE 4
ESN:37194202

SCOPE OF REPAIR:

- LOTO UNIT
- LOTO BATTERY CHARGER
- LOTO BLOCK HEATERS
- DRAIN COOLANT INTO CLEAN TOTES TO BE REUSED
- REMOVE ALL RADIATOR SHROUDING AND MOUNTING HARDWARE
- REMOVE RADIATOR AND DELIVER TO PANKEY'S RADIATOR REPAIR TO BE REBUILT.
- INSTALL NEWLY REFURBISH RADIATOR AND INSTALL ALL MOUNTING HARDWARE
- INSTALL ALL SHROUDING
- INSTALL COOLANT
- INSTALL FUEL LINES
- INSTALL NEW AIR FILTERS
- INSTALL NEW BATTERIES
- REMOVE LOTO FOR BLOCK HEATER, BATTERY CHARGERS.
- TEST RUN THE UNIT TO VERIFY NO LEAKS AND TO BURP THE SYSTEM FOR AIR POCKETS.
- TOP OF COOLANT IF NEEDED.

VENDOR TO BE USED FOR REBUILDING/REFURBISHING OF THE RADIATOR:
PANKEY'S RADIATOR REPAIR
3 WEEK TURN AROUND TIME FOR RADIATOR

SITE LOCATION: 100 LINCOLN CTR DR, FOSTER CITY, CA

Completion date : 30-Jul-2024 04:09PM. Estimate expires : 28-Aug-2024 04:09PM.

Billing Inquiries? Call (877)480-6970

APPENDIX A IS ATTACHED AND INCORPORATED HEREIN. IN APPENDIX A THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS, INCLUDING LIMITATION ON WARRANTIES AND LIABILITIES WHICH ARE EXPRESSIVELY INCORPORATED HEREIN AND WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.

AUTHORIZED BY (print name) _____ SIGNATURE _____ DATE _____

These terms and conditions ("Terms and Conditions"), together with the estimate/quote (the "Quote") and/or invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions represented by his signing of this Agreement that the signer represents that he or she is duly authorized to enter into this Agreement. Further, Customer authorizes, if applicable, the performance of services and labor on Customer's vehicle and/or equipment as provided. This shall become a binding agreement between the parties on the date of signature of the party representing Customer. The undersigned hereby agrees to indemnify and hold Cummins harmless from all claims, damages, losses, costs and expenses, including reasonable attorneys' fees, incurred by Cummins as a result of: (i) Customer's negligence; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement.

SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins shall supply parts and/or component(s) and/or engine(s) and/or generator set(s) ("Goods") and/or perform the maintenance, troubleshooting, diagnostic testing, and/or repair ("Services") on the equipment identified in the Quote and/or Invoice ("Equipment"). If applicable, in accordance with the specifications in the Quote and/or Invoice. Unless otherwise agreed by the Parties in writing: (i) no additional services or goods are included in this Agreement; and (ii) this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote (Quote Validation Period). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

3. **INVOICING AND PAYMENT.** Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services.

4. **TAXES; EXEMPTIONS.** The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate or direct payment certificate prior to shipment of the Goods or performance of the Services, or such taxes will be included in the Invoice.

In the event Customer fails to pick-up Equipment, Customer-owned motor vehicle, or any other personal property, or fails to take any or all shipments of Goods ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall invoice the Customer and, upon Cummins' sole discretion, Cummins may either: (i) deliver the Goods or Equipment to the location indicated on Customer's purchase order (regardless of whether Customer elected to pick up the Goods, or Equipment at Cummins' facility or otherwise indicated an alternate delivery method), and Customer shall assume all associated delivery costs incurred by Cummins, or (ii) charge storage fees for the additional inventory holding period, the additional inventory holding period not to exceed sixty (60) days from the agreed upon delivery date or the date of completion of Services, unless otherwise agreed by Cummins in writing or required by law. A storage fee of twenty-five dollars (\$25.00) per day or one and one-half percent (1.5%) per month of the Invoiced amount, whichever is greater, shall be assessed for any Goods, Equipment, Customer-owned motor vehicle, or any other personal property, whose delivery or pick-up is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

6. DELAYS. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery limits is subject to confirmation at time of order. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery by Cummins'.

7. LIMITED WARRANTIES.
New Goods: New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement.

General Service Work: All Services shall be free from defects in workmanship (I) for power generation equipment (including engines in such equipment), for a period of ninety (90) days after completion of Services or 500 hours of operation, whichever occurs first; or (II) for engines, for a period of ninety (90) days after completion of Services, 25,000 miles or 800 hours of operation, whichever occurs first. In the event of a warrantable defect in workmanship of Services supplied under this Agreement ("Warrantable Defect"), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall not be liable for the cost of the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.

8. **INDEMNIFICATION.** Customer shall Indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this Indemnity, including any tenders for defense and indemnity by Cummins to its Insurance carrier unless Cummins directs that the defense will be handled by Cummins legal counsel at Customer's expense.

10. **GOVERNING LAW AND JURISDICTION.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the court of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

breach is not cured within fifteen (15) days after written notice to Customer, or such longer time that Cummins may specify in its notice. Cummins may, at any time, terminate this Agreement for convenience upon thirty (30) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement, upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Goods or Services supplied under this Agreement, in accordance with the payment terms detailed in the Customer's order.

14. **INTELLECTUAL PROPERTY.** Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property.

16. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agent) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales projections and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

18. MISCELLANEOUS. All notices, including but not limited to disputes of invoices or otherwise, under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or Invoice. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any obligation hereunder shall be an acknowledgment of the liability to require such performance of such obligation and shall constitute a binding contract.

19. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 28 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.



Sales and Service

EPA: CAL000389790
Remit to:
Cummins Sales and Service
PO Box 772639
Detroit, MI 48277-2639

SAN LEANDRO CA BRANCH
14775 WICKS BLVD
SAN LEANDRO, CA 94577-
(510)351-6101

INVOICE NO

ESTIMATE

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BILL TO

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100 LINCOLN CTR DR
FOSTER CITY, CA 94404-1149

OWNER

CITY OF FOSTER CITY
100 LINCOLN CENTER DR
FOSTER CITY, CA 94404-
GREG BAEZA - 650 286-3264

PAGE 2 OF 3

*** CHARGE ***

| DATE | CUSTOMER ORDER NO. | DATE IN SERVICE | ENGINE MODEL | PUMP NO. | EQUIPMENT MAKE |
|--------------|--------------------|-----------------|-------------------|-----------|-----------------|
| 02-AUG-2024 | PENDING PO# | 14-FEB-2001 | QSK19 CM500 | | IRRIGATION PMP |
| CUSTOMER NO. | SHIP VIA | FAIL DATE | ENGINE SERIAL NO. | CPL NO. | EQUIPMENT MODEL |
| 236315 | | 29-JUL-2024 | 37194202 | CPL255900 | QSK-19 |
| REF. NO. | SALESPERSON | PARTS DISP. | MILEAGE/HOURS | PUMP CODE | UNIT NO. |
| 50425 | | | 1518 / 1518 | | 4 |

| QUANTITY ORDERED | BACK ORDERED | QUANTITY SHIPPED | PART NUMBER | DESCRIPTION | PRODUCT CODE | UNIT PRICE | AMOUNT |
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|------------------|--------------|------------------|-------------|-------------|--------------|------------|--------|

OSN/MSN/VIN

37194202

**QUOTED WORK TO BE COMPLETED DURING NORMAL BUSINESS HOURS
MONDAY - FRIDAY**

CAUSE
CORRECTION
COVERAGE

RADIATOR AND FUEL LINES DEGRADING
PROVIDE TO CUSTOMER FOR APPROVAL
CUSTOMER BILLABLE

| | | | | | | |
|-------------------------|---|------------|-----------------------|--------------|-----------|-----------|
| 2 | 0 | CMF8DXH | PG8D,MF,CCA1300,RC440 | NABS | 269.54 | 539.08 |
| 2 | 0 | E-CORE-D | CORE | CLEAN | 52.50 | 105.00 |
| -2 | 0 | E-CORE-D | CORE | DIRTY | 52.50 | 105.00 |
| 9 | 0 | CC2835 | ES COMP PG | FLG | 32.28 | 290.52 |
| 1 | 0 | PANKEY'S | RADIATOR REPAIRS | P2-NSPART4 | 14,630.00 | 14,630.00 |
| 2 | 0 | AF891 | RPAF4090A | FLG | 201.21 | 402.42 |
| 1 | 0 | MISC PARTS | MISC PARTS/FUEL LINES | C1-NSPART4PG | 1,662.50 | 1,662.50 |
| PARTS: | | | | | | 17,524.52 |
| PARTS COVERAGE CREDIT: | | | | | | 0.00CR |
| TOTAL PARTS: | | | | | | 17,524.52 |
| SURCHARGE TOTAL: | | | | | | 0.00 |
| LABOR: | | | | | | 14,292.00 |
| LABOR COVERAGE CREDIT: | | | | | | 0.00CR |
| TOTAL LABOR: | | | | | | 14,292.00 |
| TRAVEL: | | | | | | 2,880.00 |
| TRAVEL COVERAGE CREDIT: | | | | | | 0.00CR |
| TOTAL TRAVEL: | | | | | | 2,880.00 |
| MISC.: | | | | | | 864.00 |

Completion date : 30-Jul-2024 04:09PM. Estimate expires : 28-Aug-2024 04:09PM.

Billing Inquiries? Call (877)480-6970

APPENDIX A IS ATTACHED AND INCORPORATED HEREIN. IN APPENDIX A THERE ARE
ADDITIONAL CONTRACT TERMS AND CONDITIONS, INCLUDING LIMITATION ON
WARRANTIES AND LIABILITIES WHICH ARE EXPRESSIVELY INCORPORATED HEREIN AND
WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ, FULLY UNDERSTOOD AND
ACCEPTED.

AUTHORIZED BY (print name) _____ SIGNATURE _____ DATE _____

these terms and conditions ("Terms and Conditions"), together with the estimate/quote (the "Quote") and/or invoices ("Invoices") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions by its signing of this Agreement that the signer represents the party or parties authorized to enter into this Agreement. Further, Customer authorizes, if applicable, the performance of services and labor on Customer's vehicle and/or equipment as provided. This shall become a binding agreement between the parties on the earliest of the following to occur: (i) Customer's receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral, written or electronic approval; or (iv) the date of delivery of the Goods and/or Services under this Agreement. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to constitute a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement.

Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website, vendor portal, or other internet site will be null and void of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, vendor portal login, specifications, agreement, whether upstream or otherwise, or any terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) ("Goods") and/or perform the maintenance, troubleshooting, diagnostic testing, and/or repair ("Service(s)") on the equipment identified in the Quote and/or Invoice ("Equipment"), if applicable, in accordance with the specifications in the Quote and/or Invoice. Unless otherwise agreed by the Parties in writing; (i) no additional services or goods outside of those specified in the Equipment; and (ii) this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ("Quote Validation Period"). At the end of the Quote Validation Period, this Quote will automatically expire unless renewed prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. CUSTOMER OBLIGATIONS. If necessary, Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to liability facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.

3. INVOICING AND PAYMENT. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of invoice. If Customer does not have approved credit with Cummins, as payment is required by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services.

If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins costs and expenses (including reasonable attorney's fees) incurred by Cummins to enforce enforcement of unpaid invoices, or any other enforcement of this Agreement by Cummins. If Customer fails to make any payments to Cummins on or before the date when due, when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins shall be entitled to suspend or terminate the Services, without notice, until payment is received, and either (i) terminate this Agreement; or (ii) suspend its Services and/or suspend delivery of any undelivered Goods or parts in Cummins' possession until payment for unpaid invoices is received. In the event that Cummins suspends or terminates the Services due to Customer's breach or non-payment, then Cummins shall be entitled to an equitable extension of its delivery dates and/or schedule of Services for a period of time equal to the suspension period, plus a reasonable ramp up period and all costs (including default interest) caused by such suspension shall be assumed by Customer. Any dispute or claim Customer may have with or against Cummins' Invoice, regarding the scope, quality or amount charged for any parts or services provided to Customer, must be asserted in writing and noticed pursuant to these Terms and Conditions within thirty (30) days of the date of the Invoice, or shall be waived by the Customer.

4. TAXES; EXEMPTIONS. The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate to Cummins to receive a refund of the taxes collected. Cummins will not accept a refund of taxes collected from Customer without a valid exemption certificate.

5. DELIVERY, TITLE AND RISK OF LOSS. Unless otherwise agreed in writing by the parties, any Goods shipped by Cummins shall be delivered FOB Origin, freight prepaid to the first destination. If agreed, any charges for third party freight or insurance shall be paid by Customer. Title and risk of loss shall pass to Customer upon delivery of the Goods to the carrier or to the location designated by the Customer. All shipments are made within normal business hours, Monday through Friday. Unless otherwise agreed in writing by the parties, title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by Cummins to freight carrier or to Customer at pickup at Cummins' facility. The purchase of Goods or the performance of Services on Equipment, Customer-owned motor vehicle, or any other personal property, is a "take or pay" obligation on the part of the Customer, such that Customer is absolutely and irrevocably required to accept and pay for the Goods, or any Services performed on Equipment, Customer-owned motor vehicle, or any other personal property. If delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services,

In the event Customer fails to pick-up Equipment, Customer-owned motor vehicle, or any other personal property, or fails to take or any all shipments of Goods ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall invoice the Customer upon delivery of the Goods and/or Services to the location indicated on the Customer's purchase order (regardless of whether Customer elected to pick up the Goods or Equipment at Cummins' facility or otherwise indicated an alternate delivery method), and Customer shall assume all associated delivery costs. In the event Customer delays or refuses to pick-up the Goods or Equipment, Cummins' delivery obligations shall extend for a period not to exceed sixty (60) days from the agreed upon delivery date or the date of completion of Services, unless otherwise agreed by Cummins in writing or required by law. A storage fee of twenty-five dollars (\$25.00) per day or one and one-half percent (1.5%) per month of the invoiced amount, whichever is greater, shall be assessed for any Goods, Equipment, Customer-owned motor vehicle, or any other personal property, whose delivery or pick-up is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

Unless otherwise agreed by Cummins in writing, in the event delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, are delayed, deferred, or refused by Customer beyond sixty (60) days from the agreed upon delivery or pick-up date, or date of completion of Services, then Cummins has the right, in its sole discretion, to: (i) low, remove, or otherwise dispose of the undelivered Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (ii) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, available for auction or sale to other customers or to the public, or (iii) otherwise use, destroy, or recycle the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (iv) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (v) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (vi) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (vii) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (viii) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (ix) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (x) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xi) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xii) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or 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motor vehicle, or any other personal property, without notice, and/or (xxix) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xxx) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xxxi) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xxxii) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xxxiii) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xxxiv) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xxxv) make a sale of the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, without notice, and/or (xxxvi) make a sale of 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Sales and Service

EPA: CAL000389790
Remit to:
Cummins Sales and Service
PO Box 772639
Detroit, MI 48277-2639

SAN LEANDRO CA BRANCH
14775 WICKS BLVD
SAN LEANDRO, CA 94577-
(510)351-6101

INVOICE NO

ESTIMATE

TO PAY ONLINE LOGON TO
customerpayment.cummins.com

BILL TO

CITY OF FOSTER CITY
100 LINCOLN CTR DR
FOSTER CITY, CA 94404-1149

OWNER

CITY OF FOSTER CITY
100 LINCOLN CENTER DR
FOSTER CITY, CA 94404-
GREG BAEZA - 650 286-3264

PAGE 3 OF 3

*** CHARGE ***

| DATE | CUSTOMER ORDER NO. | DATE IN SERVICE | ENGINE MODEL | PUMP NO. | EQUIPMENT MAKE |
|--------------|--------------------|-----------------|-------------------|-----------|-----------------|
| 02-AUG-2024 | PENDING PO# | 14-FEB-2001 | QSK19 CM500 | | IRRIGATION PMP |
| CUSTOMER NO. | SHIP VIA | FAIL DATE | ENGINE SERIAL NO. | CPL NO. | EQUIPMENT MODEL |
| 236315 | | 29-JUL-2024 | 37194202 | CPL255900 | QSK-19 |
| REF. NO. | SALESPERSON | PARTS DISP. | MILEAGE/HOURS | PUMP CODE | UNIT NO. |
| 50425 | | | 1518 / 1518 | | 4 |

| QUANTITY ORDERED | BACK ORDERED | QUANTITY SHIPPED | PART NUMBER | DESCRIPTION | PRODUCT CODE | UNIT PRICE | AMOUNT |
|------------------|--------------|------------------|-------------|-------------|--------------|------------|--------|
|------------------|--------------|------------------|-------------|-------------|--------------|------------|--------|

OSN/MSN/VIN 37194202

MISC. COVERAGE CREDIT:

TOTAL MISC.:

ROAD MILEAGE

SIGN UP FOR AUTO EMAIL OF
INVOICES AND CREDITS AT
[HTTP://CUSTOMERPAYMENT.CU
MMINS.COM](http://customerpayment.cummins.com)

864.00 0.00 CR

864.00

LOCAL STATE 679.08
1,051.47

Completion date : 30-Jul-2024 04:09PM. Estimate expires : 28-Aug-2024 04:09PM.

Billing Inquiries? Call (877)480-6970

APPENDIX A IS ATTACHED AND INCORPORATED HEREIN. IN APPENDIX A THERE ARE
ADDITIONAL CONTRACT TERMS AND CONDITIONS, INCLUDING LIMITATION ON
WARRANTIES AND LIABILITIES WHICH ARE EXPRESSIVELY INCORPORATED HEREIN AND
WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ, FULLY UNDERSTOOD AND
ACCEPTED.

SUB TOTAL: 35,560.52

TOTAL TAX: 1,730.55

TOTAL AMOUNT: US \$ 37,291.07

AUTHORIZED BY (print name) _____ SIGNATURE _____ DATE _____

TERMS AND CONDITIONS

These terms and conditions ("Terms and Conditions"), together with the estimate/quote (the "Quote") and/or Invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions represents that by its signing of this Agreement that the signer represents that he or she is duly authorized to enter into this Agreement. Further, Customer authorizes, if applicable, the performance of services and labor on Customer's vehicle and/or equipment as provided. This shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement.

Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website, vendor portal, or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, vendor portal terms, specifications, agreement (whether upstream or otherwise), or any terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. **SCOPE OF SERVICES; PERFORMANCE OF SERVICES.** Cummins shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) ("Goods") and/or perform the maintenance, troubleshooting, diagnostic testing, and/or repair ("Services") on the equipment identified in the Quote and/or Invoice ("Equipment"), if applicable, in accordance with the specifications in the Quote and/or Invoice. Unless otherwise agreed by the Parties in writing: (i) no additional services or goods are included in this Agreement; and (ii) this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ("Quote Validation Period"). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. **CUSTOMER OBLIGATIONS.** If necessary, Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to liability to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.

3. **INVOICING AND PAYMENT.** Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of Invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services.

If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the Invoice, or last if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) suspend its Services and/or suspend delivery of any undelivered Goods or parts in Cummins' possession until payment for unpaid invoices is received. In the event that Cummins suspends its performance of Services due to Customer's breach or non-payment, then Cummins shall be entitled to an equitable extension of its delivery dates and/or schedule of Services for a period of time equal to the suspension period, plus a reasonable ramp up period and all costs (including default interest) caused by such suspension shall be assumed by Customer. Any dispute or claim Customer may have with or against Cummins' Invoice, regarding the scope, quality or amount charged for any parts or services provided to Customer, must be asserted in writing and noticed pursuant to these Terms and Conditions within thirty (30) days of the date of the Invoice, or shall be waived by the Customer.

4. **TAXES; EXEMPTIONS.** The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate or direct payment certificate prior to shipment of the Goods, or performance of the Services, or such taxes will be included in the Invoice.

5. **DELIVERY; TITLE AND RISK OF LOSS.** Unless otherwise agreed in writing by the parties, any Goods supplied under this Agreement shall be delivered FOB Origin, freight prepaid to the first destination. If agreed, any charges for third party freight are subject to adjustment to reflect any change in price at time of shipment. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. All shipments are made within normal business hours, Monday through Friday. Unless otherwise agreed in writing by the parties, title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by Cummins to freight carrier or to Customer at pickup at Cummins' facility. The purchase of Goods or the performance of Services on Equipment, Customer-owned motor vehicle, or any other personal property, is a "take or pay" obligation on the part of the Customer, such that Customer is absolutely and irrevocably required to accept and pay for the Goods, or any Services performed on Equipment, Customer-owned motor vehicle, or any other personal property. If delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

In the event Customer fails to pick-up Equipment, Customer-owned motor vehicle, or any other personal property, or fails to take any or all shipments of Goods ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall invoice the Customer and, upon Customer's sole discretion, Cummins may either: (i) deliver the Goods or Equipment to the location indicated on Customer's purchase order (regardless of whether Customer elected to pick up the Goods or Equipment at Cummins' facility or otherwise indicated an alternate delivery method); and Customer shall assume all associated delivery costs incurred by Cummins; or (ii) charge storage fees for the additional inventory holding period, the additional inventory holding period not to exceed sixty (60) days from the agreed upon delivery date or the date of completion of Services, unless otherwise agreed by Cummins in writing or required by law. A storage fee of twenty-five dollars (\$25.00) per day or one and one-half percent (1.5%) per month of the Invoiced amount, whichever is greater, shall be assessed for any Goods, Equipment, Customer-owned motor vehicle, or any other personal property, whose delivery or pick-up is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

Unless otherwise agreed by Cummins in writing, in the event delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, are delayed, deferred, or refused by Customer beyond sixty (60) days from the agreed upon delivery or pick-up date, or date of completion of Services, then Cummins has the right, in its sole discretion, to: (i) tow, remove, or otherwise dispose of the unclaimed Goods, Equipment, Customer-owned motor vehicle, or any other personal property in accordance with applicable abandonment laws; and/or (ii) make the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, available for auction or sale to other customers or to the public, or (iii) otherwise use, destroy, or recycle the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, and Cummins reserves the right to make partial deliveries or modify its labor or service, while Cummins shall make every commercially reasonable effort to meet the delivery, service or completion obligations set forth herein. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or any third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO UNPREDICTABLE AND UNCONTROLLABLE FACTORS OUTSIDE OF CUMMINS' CONTROL, INCLUDING BUT NOT LIMITED TO: SUPPLY CHAIN DISRUPTIONS, LABOR SHORTAGES, AND OTHER FACTORS BEYOND CUMMINS' CONTROL. CUMMINS SHALL MAKE EVERY COMMERCIAL REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN. NOTWITHSTANDING THE FOREGOING, CUMMINS SHALL NOT BE RESPONSIBLE FOR ANY DELAYS IN DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IF SUCH DELAYS ARE CAUSED BY FACTORS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE GOODS OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

6. **DELAYS.** Any delivery, shipping, installation, or performance delays indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or any third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO UNPREDICTABLE AND UNCONTROLLABLE FACTORS OUTSIDE OF CUMMINS' CONTROL, INCLUDING BUT NOT LIMITED TO: SUPPLY CHAIN DISRUPTIONS, LABOR SHORTAGES, AND OTHER FACTORS BEYOND CUMMINS' CONTROL. CUMMINS SHALL MAKE EVERY COMMERCIAL REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN. NOTWITHSTANDING THE FOREGOING, CUMMINS SHALL NOT BE RESPONSIBLE FOR ANY DELAYS IN DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IF SUCH DELAYS ARE CAUSED BY FACTORS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE GOODS OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

7. **LIMITED WARRANTIES.** New Goods: New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement. Cummins Exchange Components, Other Exchange Components, and Recon: Cummins will administer the Cummins exchange component warranty and the warranties of other manufacturers' exchange components or Recon Components which are sold by Cummins. In the event of a defect in such item, Cummins' warranty will apply. HHP Exchange Engine: HHP Exchange Engines remanufactured by Cummins under this Agreement are governed by the express Cummins' written warranty. No other warranty for HHP exchange Engines supplied under this Agreement is provided under this Agreement.

General Service Work: All Services shall be free from defects in workmanship (i) for power generation equipment (including engines in such equipment), for a period of ninety (90) days after completion of Services or 500 hours of operation, whichever occurs first; or (ii) for engines, for a period of ninety (90) days after completion of Services, 25,000 miles or 900 hours of operation, whichever occurs first. In the event of a warrantable defect in workmanship of Services supplied under this Agreement ("Warrantable Defect"), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.

Used Goods: Used Goods are sold "as is, where is" unless exception is made in writing between Cummins and Customer. Customer agrees to inspect all used Goods before completing the purchase. THE REMEDIES PROVIDED IN THIS LIMITED WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

8. **INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this Indemnity, including any tenders for defense and indemnity by Cummins to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

9. **LIMITATION OF LIABILITY, NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT.** IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO REGAL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF, EXCEED THE TOTAL COST OF GOODS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

10. **GOVERNING LAW AND JURISDICTION.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the court of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

11. **ASSIGNMENT.** This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

12. **CANCELLATION; TERMINATION.** Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. Cummins may charge Customer a cancellation charge in accordance with current Cummins policy which is available upon request. In addition to the actual, non-recoverable costs incurred by Cummins, Cummins may terminate this Agreement, in whole or in part, for cause if the Customer breaches its obligations under this Agreement, and such breach is not cured within fifteen (15) days after written notice to Customer, or such longer time that Cummins may specify in its notice. Cummins may, at any time, terminate this Agreement for convenience upon thirty (30) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Goods or Services supplied under this Agreement. In accordance with the payment terms detailed in this Agreement.

If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

13. **REFUNDS; CREDITS.** Goods ordered and delivered by Cummins under this Agreement are not returnable unless agreed to by Cummins. Cummins may, at its sole discretion, agree to accept Goods for return and provide credit where Goods are in new and saleable condition and presented with a copy of the original Invoice. Credits for returns will be subject to up to a 15% handling/resocking charge and are limited to eligible items purchased from Cummins.

14. **INTELLECTUAL PROPERTY.** Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest in such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

15. **COMPLIANCE WITH LAWS.** Customer shall comply with all laws applicable to its activities under this Agreement, including without limitation, all applicable national, provincial, and local export, anti-bribery, environmental, health, and safety laws and regulations in effect. Customer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of these laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

16. **CONFIDENTIALITY.** Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

17. **PRICING.** To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment ("Shipment Date") or, in the case of Services, the date of performance ("Performance Date"), due to economic and market conditions on the Shipment Date or Performance Date, whichever is applicable. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input cost (including without limitation, raw materials, fabrication components, direct or indirect materials, packaging materials, overhead, etc.) and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

18. **MISCELLANEOUS.** All notices, including but not limited to disputes of Invoices or otherwise, under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or Invoice. No amendment of this Agreement shall be valid unless it is written and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. The Parties' rights, remedies, and obligations under this Agreement, which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 8. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase the Goods and/or Services pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof.

19. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 80.1-1(a), 80-300.5(a) and 80-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.