



TERMS AND CONDITIONS:

These Terms and Conditions, together with the Quote, Sales Order and/or Credit Application on the front side, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified in this Agreement and Cummins and supersede any previous agreement or understanding (oral or written) between the parties with respect to the equipment ("Equipment") identified in this Agreement.

QUOTE TERM; SCOPE. The Quote is valid for 60 days. The price is firm provided drawings are approved and returned within 60 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. The Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated.

SHIPPING; DELIVERY. Equipment is quoted FOB origin, freight prepaid to first destination, unless otherwise stated. For consumer and mobile products, freight will be charged to Customer. A reasonable storage fee, as determined by Cummins, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included in proposal, unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use best efforts to meet estimated dates, but shall not be liable for any delay in delivery, shipping, installation, or performance, however occasioned. Cummins may deliver in installments. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate.

PAYMENT TERMS; CREDIT; RETAINAGE. If Customer has approved credit, as determined by Cummins, payment terms are net thirty (30) days from the date of invoice unless otherwise specified in the Quote, without deduction or setoff. If payment is not received when due, in addition to any rights Cummins has under the law and charges that Cummins may levy against Customer under statute (including attorney fees and costs of collection), Cummins may charge Customer eighteen percent (18%) interest annually, or the maximum amount allowed by law, on late payments. Payment shall be due in advance if Customer does not have approved credit. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment.

TAXES; EXEMPTIONS. Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a



valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

TITLE; RISK OF LOSS. Title and risk of loss for the Equipment shall pass to Customer with delivery made in accordance with the delivery terms set forth above.

INSPECTION AND ACCEPTANCE. Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

LIEN; SECURITY AGREEMENT. Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

CANCELLATION; CHARGES. If Customer cancels all or a portion of this Agreement after its release to Cummins, Customer may incur 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. Written cancellation notice is required.

SUBMITTALS AND MANUALS. Unless otherwise stated, electronic submittals and STANDARD electronic O & M manuals will be provided, and print copies may be available upon Customer's request at an additional cost.



TRAINING; START UP SERVICES; INSTALLATION. Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

WARRANTY. New and remanufactured Equipment purchased hereunder is accompanied by an express written manufacturer's warranty and is the only warranty offered on the Equipment. A copy of the express manufacturer's warranty is available upon request. Cummins' obligations under this warranty are limited to repair or replacement, at Cummins' option, of any defective component.

WARRANTY PROCEDURE. Prior to the expiration of the applicable warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

LIMITATIONS ON WARRANTIES

Cummins expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability and warranty for fitness of a particular purpose, to the extent permitted by law. The warranties set forth herein are the sole warranties made by

Cummins. Some states do not allow limitation on warranties, so these limitations may not apply to you. The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

INDEMNITY. Each party shall indemnify and hold harmless the other party, its affiliates, subsidiaries, officers, directors, agents and employees from and against any and all third party losses, costs, liabilities, damages and expense, including reasonable attorney and expert fees (collectively, "Losses"), subject to the Limitation of Remedies set forth below, attributable to bodily injury or property damage to the extent it is conclusively determined that such Losses were directly caused by the gross negligence or willful misconduct of such party. The party seeking indemnification shall give written notice to the other party promptly upon learning of the events giving rise to such claim; provided, however, that failure to provide such notice promptly shall only relieve an indemnifying party of its obligations hereunder to the extent it is prejudiced by such delay. The indemnifying party shall select counsel to control and manage the defense of a claim and the settlement thereof and shall keep the indemnified party apprised of all material developments with respect to such claim. The indemnified party may, at its expense, select additional co-counsel. The indemnifying party shall have no obligation to indemnify or hold harmless the indemnified party for any Losses conclusively determined to be caused by the negligence or willful misconduct of the indemnified party.

LIMITATIONS ON REMEDIES

THE MAXIMUM LIABILITY, IF ANY, OF CUMMINS FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, AGREEMENT DAMAGES AND DAMAGES FOR PROPERTY, WHETHER ARISING FROM CUMMINS' BREACH OF AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE EQUIPMENT PAID BY CUSTOMER UNDER THIS AGREEMENT WHICH SHALL BE THE SOLE REMEDY UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, PROPERTY DAMAGE, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, DAMAGE TO GOODWILL) HOWSOEVER



CAUSED ARISING FROM THIS AGREEMENT OR THE BREACH OF THIS AGREEMENT, WHETHER IN INDEMNITY, TORT, CONTRACT, OR OTHERWISE. NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY CUMMINS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED UNDER THIS ENTIRE AGREEMENT.

FORCE MAJEURE. Cummins is not responsible for the occurrence of any unforeseen event, circumstance, or condition beyond its reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, 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. If any such cause results in delayed performance, the date of performance shall be extended for a period equal to time lost and shall be Customer's exclusive remedy.

DEFAULT; REMEDIES. Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins.

Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under the Uniform Commercial Code, whether or not this Agreement is subject thereto; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

CUSTOMER REPRESENTATIONS; RELIANCE. Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine



maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer receives technical information, drawings, or advice, Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

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.

GOVERNING LAW. 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 courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

INSURANCE. During the period in which any services are to be performed, Cummins shall maintain in full force and effect the following insurance coverages set forth below, at its sole cost and expense:

- **Commercial General Liability.** Commercial General Liability Insurance of not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate limit.
- **Automobile Liability.** Business Auto Coverage with limits of \$1,000,000 each accident for bodily injury and property damage combined single limit per occurrence, extending to all owned, hired, and non-owned vehicles.
- **Worker's Compensation.** Workers' compensation, occupational diseases, and disability benefits required by statute.
- **Employer's Liability.** Employer's Liability with limits of at least \$1,000,000 per accident per employee; \$1,000,000 per disease per employee; and \$1,000,000 per disease policy limit.
- **Umbrella Liability.** Such insurance shall follow form on concurrent terms with and provide coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.



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

Intellectual Property. Any intellectual property rights created by Cummins in the course of the performance of this Agreement or otherwise shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a licence or any other rights to use any of the intellectual property rights of Cummins. Customer's rights in and to the Cummins' intellectual property are limited to those rights as expressly set forth in this Agreement. All rights not expressly granted to Customer under this Agreement are expressly reserved by Cummins.

MISCELLANEOUS. Cummins shall be an independent contractor under this Agreement. All notices 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 this Agreement.

No amendment of this Agreement shall be valid unless it is writing 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, 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.

These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Equipment 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. In the event of a conflict in the terms of this Agreement with any Customer terms or conditions or agreement (whether referenced in an order submitted by Customer as the terms that govern the purchase of the Equipment or otherwise) or any terms set forth in any other documentation of Customer with respect to the Equipment, the terms of this Agreement shall govern.

MISCELLANEOUS CHARGES. Cummins may incur additional charges which will be passed on to the Customer, as applicable.

COMPLIANCE. Customer acknowledges that the Equipment, 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 Equipment 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 all 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 act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those 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.



We thank you for giving us the opportunity to quote this equipment. If you need any further assistance or clarification, please do not hesitate to contact us.

Sincerely,

Rock Reddy

Sr. Sales Representative
East Region
Cummins Sales and Service
435 Bergen Avenue
Building 2
Kearny, NJ 07032
(973) 690-3634/Direct
(973) 491-5477/Fax
(201) 923-3062/ Cell
Rock.p.reddy@cummins.com

Leonard Lepore

From: Anne DeSantis
Sent: Tuesday, April 14, 2020 10:41 AM
To: Leonard Lepore
Subject: Generators
Attachments: Public Notice of Intent 04102020.html

Hi Len

The notice was advertised and I'll do resolution for next meeting.

Be well,
Anne



Anne DeSantis, RPPO, QPA
Purchasing Agent
West Orange Purchasing Department
Township of West Orange
66 Main Street
West Orange, NJ 07052
Phone (973) 325-4056
Fax (973) 736-8380
adesantis@westorange.org
www.westorange.org

 Please consider the environment before you print this email
America, Land of the Free, Because of the Brave!

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Friday, April 10, 2020

Notice Content

Notice of Intent to Award Contract under a National Cooperative Purchasing Agreement The Township of West Orange, County of Essex, State of New Jersey, intends to participate in the Sourcewell national cooperative, formerly National Joint Powers Alliance ("NJPA") Contract # 120617-CMM for the purpose of purchasing and installing emergency generator sets at the Cherry Lane Pumping Station and Northfield Pumping Station. Information regarding the Sourcewell Cooperative Purchasing Agreement and proposed Goods and Services Agreement between the Cummins Sales and Service Company and the Township of West Orange as a local government unit can be reviewed online at the Sourcewell-mn.gov/cooperative-purchasing/contracts website. The Sourcewell contract term with Cummins is from 01/29/2018 to 01/29/2022. The Township of West Orange is a member of the Sourcewell formerly NJPA since July 2015 and is permitted to award contracts to vendor pursuant thereto under the authority of N.J.S.A. 52:34-6.2b(3) and LFN 2012-10. Any comments must be in writing to the Purchasing Agent at adesantis@westorange.org no later than 4:00 p.m. on April 15, 2020. Anne DeSantis Purchasing Agent 4/10/2020 \$62.00