



**BMW (SOUTH AFRICA) (PTY) LTD
(REGISTRATION NUMBER: 1960/000196/07)**

**BMW (SOUTH AFRICA) (PTY) LTD'S SPECIFIC TERMS AND CONDITIONS
IN REGARD TO THE PURCHASE OF PRODUCTION MATERIALS
AND AUTOMOTIVE COMPONENTS**

Status 16 July 2018

1. INTERPRETATION

- 1.1 In supplying the Goods, the IPC shall apply unless otherwise agreed to in this document.
- 1.2 In these Terms and Conditions, unless the context clearly indicates a contrary intention, expressions which denote:
- 1.2.1 any gender shall include the other gender;
- 1.2.2 a natural person shall include a created entity (whether corporate or) and vice versa;
- 1.2.3 the singular shall include the plural and vice versa.
- 1.3 The clause headings in these Terms and Conditions have been inserted for convenience only and shall not be taken into account in interpreting the Terms and Conditions.
- 1.4 Words and expressions defined in any clause of these Terms and Conditions shall, for the purpose of the clause in question and any clause following, bear the meaning assigned to such words and expressions in that clause.
- 1.5 Any term not defined in terms of the definitions clause of these Terms and Conditions shall be interpreted in terms of the definitions clause of the IPC. If any term has not been defined in either of the two documents, such term shall bear its ordinary meaning.

2. DEFINITIONS

- 2.1 “Affiliate” in relation to a Party means any entity that is controlled by that Party, controls that Party, or is under common control with that Party;
- 2.2 “Agreement” shall bear the meaning ascribed thereto in clause 3.1 below;
- 2.3 “Agreement to Submit Declarations” means the Agreement to Submit Declarations according to Art. 1 R) Prot. No. 1 SADC-EU EPA; Single Parts Suppliers and Intermediary Part Suppliers;
- 2.4 “APDP” refers to the Automotive Production and Development Programme that applies to Suppliers who are located within any member country of SACU and for which Production Incentives are made available in terms of the APDP Regulations.
- 2.5 “APDP Regulations” means the regulations and guidelines issued by ITAC in terms of the ITAC Act in regard to the Production Incentives;
- 2.6 “BMW SA Customs Duty and Invoicing Handbook” means BMW SA’s handbook (as may be amended from time to time by BMW SA) which provides general guidance for all Single Parts and Intermediary Products Suppliers insofar as it relates to the processes, procedures and relevant contact persons within BMW SA pertaining to APDP declarations (i.e. originating transactional declarations, non-originating (pro-rata) transactional declarations, originating long-term supplier declarations, non-originating pro-rata supplier declarations), invoicing and related topics, which document may be accessed at www.supnet.bmw.co.za;

- 2.7 “BEE Act” means the Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended and the regulations promulgated thereunder;
- 2.8 “B-BBEE” means Broad-Based Black Economic Empowerment, as contemplated in the BEE Act and the BEE Codes;
- 2.9 “BEE Codes” means the Codes of Good Practice on Broad Based Black Economic Empowerment published under section 9(1) of the BEE Act in the Republic of South Africa Government Gazette No. 36928 published on 11 October 2013 (as such are amended or revised from time to time);
- 2.10 “B-BBEE Certificate” means the verification certificate recording the B-BBEE contribution summary, score and status level of an enterprise in accordance with the BEE Codes as read with the B-BEE Act;
- 2.11 “BMW Group” means the Affiliates of Bayerische Motoren Werke Aktiengesellschaft, Munich, Germany, (BMW AG) and/or BMW SA;
- 2.12 “BMW SA” means BMW (South Africa) (Proprietary) Limited (registration number 1960/000196/07), a company duly incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 6 Frans du Toit, Rosslyn, Pretoria, Gauteng and principal place of business at 1 Bavaria Avenue, Randjespark Ext. 17, Midrand, Gauteng ;
- 2.13 “CBU” means completely built-up unit(s);
- 2.14 “Cloud computing” shall mean the practice of using remote servers on the internet or internet-enabled devices to process data;
- 2.15 "Customs and Excise Act" means the Customs and Excise Act No. 91 of 1964 as amended and the regulations promulgated thereunder from time to time;
- 2.16 “Dangerous Goods” shall mean “dangerous goods” as defined and/or contemplated in the National Road Traffic Act;
- 2.17 "Deliver/Delivery" shall mean the physical delivery of goods in terms of this agreement and "delivery" by any agent, contractor, Operator or employee on behalf of the Supplier shall be deemed to constitute delivery by the Supplier;
- 2.18 “DTI” means the Department of Trade and Industry of the Republic of South Africa;
- 2.19 “EU-SADC EPA” means the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part;
- 2.20 "Goods" means both materials and products, being your single parts and Intermediary Products supplied by the Suppliers;
- 2.21 “IPC” means the BMW Group International Purchasing Terms and Conditions for the Purchase of Production Materials and Automotive Components as may be amended from time to time which are available on the BMW Partner Portal of BMW Group under the following path: <https://b2b.bmwgroup.net>.
- 2.22 “Intermediary Products Suppliers” means suppliers that supply manufactured parts and/or products ordered for a specific vehicle order using the BMW module release process and are tradable goods;

- 2.23 "In writing or written" includes electronic forms of communication i.e., via fax, email or EDI, unless a physical written form is specifically required
- 2.24 "Parties" means collectively, the parties to the Agreement and "Party" shall mean any one of them, as the context may require;
- 2.25 "Part Number" means the unique number allocated to production materials and automotive components in order to identify such Goods in terms of their technical content and specifications;
- 2.26 "Personal Information" shall mean any information relating to BMW SA, BMW SA's Affiliates, directors, officers, employees, agents, contractors and customers, including (without limitation) information of the nature contemplated in the definition of "personal information" in POPI and information processed by the Supplier pursuant to or as a result of these Terms and Conditions;
- 2.27 "POPI" shall mean the Protection of Personal Information Act, 2013 as may be amended and the regulations that may be promulgated thereunder from time to time;
- 2.28 "Process" shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 2.28.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consolidation or use
- 2.28.2 dissemination by means of transmission, distribution or making available in any other form; or
- 2.28.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 2.29 "Production Incentive(s)" means the Production Incentives that are made available in terms of the APDP;
- 2.30 "Purchase Order" means any order for the order or purchase of the Goods to be supplied (or supplied) by the Supplier to BMW SA;
- 2.31 "SACU" means the Southern African Customs Union, which consists of the following member countries: South Africa, Botswana, Namibia, Lesotho and Swaziland including any other member states who may assent to the SACU from time to time;
- 2.32 "SADC EPA State" means South Africa, Botswana, Lesotho, Namibia, Mozambique and Swaziland including any other member states who may assent to the SADC EPA from time to time;
- 2.33 "Supply" shall mean the making available for purchase and/or transportation of Goods in terms of this Agreement.
- 2.34 "SHE Conditions" means the applicable Safety, Health and Environmental conditions, policies, principles, training materials, standards and procedures as stipulated and/or utilised by BMW (SA) from time to time;
- 2.35 "Supplier" means the organisation or business entity that supplies Goods to BMW SA;

- 2.36 “Terms and Conditions” means the BMW SA specific terms and conditions as contained in this document and as may be amended from time to time.

3. INTRODUCTION

- 3.1 All Purchase Orders shall be regulated and governed by these Terms and Conditions (as read together with the IPC) which shall constitute the sole and agreed terms and conditions between BMW SA and the Supplier in regard to the ordering, or purchasing, of the Goods by BMW SA from the Supplier (the “Agreement”). For the avoidance of doubt and without detracting from the generality of the foregoing, by supplying any services and/or Goods (including any components thereof) to BMW SA pursuant to a Purchase Order the Supplier acknowledges that it has read, understood and agrees to be bound by the terms of this Agreement.

4. COMPLIANCE WITH APPLICABLE RULES, REGULATIONS AND LEGISLATION

- 4.1 In the event that the Supplier has to supply the Goods at BMW SA’s premises, it shall at all times comply with BMW SA’s applicable rules and regulations which includes but is not limited to the security rules and SHE Conditions.
- 4.2 The Supplier shall at all times comply with and adhere to the provisions of any applicable legislation insofar as the supply of the Goods under a Purchase Order is concerned.

5. APDP REQUIREMENTS

A SACU Supplier that provides parts and/or components to BMW SA for which Production Incentives are available to BMW SA in terms of the APDP shall be subject to and comply with the processes and procedures that are fully set out in the BMW SA Customs Duty and Invoicing Handbook.

6. CERTIFICATE OF ORIGIN AND/OR TOTAL IMPORTED CONTENT IN TERMS OF EU-SADC EPA

The SADC EPA State Supplier shall comply with the EU-SADC EPA as the EU-SADC EPA is of material importance to BMW SA’s business operations and, in addition, agrees to timeously and meticulously comply with the requirements of the applicable legislation as well as BMW SA’s processes and requirements which are outlined in the BMW SA Customs and Invoicing Handbook and shall comply with the requirements relating to in terms of the Agreement to Submit Declarations.

7. ACCOUNTING SEGREGATION

Suppliers may use accounting segregation principle provided that such Supplier comply with requirements of BMW SA Customs Duty and Invoicing Handbook.

8. DELIVERY NOTES AND TAX INVOICES

The Supplier shall deliver notes and tax invoices in accordance with the terms of the BMW SA Customs Duty and Invoicing Handbook.

9. SUB-CONTRACTING

- 9.1 The Supplier shall not sub-contract the work, or any portion of the work in terms of the Purchase Order/s unless the prior written approval of BMW SA has been obtained. The Supplier shall remain fully responsible to BMW SA for any obligation arising out of this agreement, notwithstanding the fact that the supply of Goods has been sub-contracted.

10. PACKAGING AND SHIPPING

The Supplier shall ensure that packaging and/or shipping is undertaken in accordance with the relevant terms contained in the IPCs as read with BMW SA Customs Duty and Invoicing Handbook.

11. PROTECTION OF PERSONAL INFORMATION

The Supplier shall comply with the terms contained in BMW General Compliance Handbook.

12. ELECTRONIC SIGNATURES

Supplier's electronic signature(s) shall be done in accordance with the terms of the BMW SA Customs Duty and Invoicing Handbook.

13. SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, NO. 85 OF 1993

The Supplier shall comply with the terms contained in BMW General Compliance Handbook.

14. SUPPLY AND DELIVERY OF DANGEROUS GOODS

14.1 Liability for sub-contractors

The Supplier shall at all times remain fully responsible to BMW SA for any obligation arising out of this Agreement, notwithstanding the fact that the Delivery of Dangerous Goods has been sub-contracted.

15. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

15.1 The legislative framework of B-BBEE is a concept established by the BEE Act in terms of which the South African government aims to promote the constitutional right to equality, to increase and stimulate broad-based and effective participation of black people in the economy, to promote and achieve a higher growth rate for the country, to increase employment and to ensure a more equitable income distribution.

15.2 BMW SA fully supports the concept and the government programmes issued in this regard and requires all its suppliers and/or business partners and/or dealers to participate in achieving the goals of this legislation.

15.3 The Supplier is therefore required to deliver, on an annual basis, a copy of its current B-BBEE certificate, verified by an accredited agency, as well as an action plan to maintain its B-BBEE rating, to the Purchasing & Supplier Network Department of BMW SA.

15.4 In the event that the Supplier is non-compliant with the requirements of the BEE Act at the time of supplier nomination, the Supplier must submit an action plan to the Purchasing & Supplier Network Department of BMW SA, which plan shall stipulate the measures which the Supplier will take in order to become compliant and maintain and /or improve its B-BBEE compliance level.

15.5 The provisions of clause 15 applies only in respect of Suppliers who are South African entities.

16. EXPORT CONTROL

- 16.1 The Supplier represents and warrants that it is familiar with any and all applicable import and/or export legal requirements ("Export Control Requirements") as they relate to the supply of the Goods or any other products/components to BMW SA and that the Supplier shall fully comply with these requirements at all times as well as the relevant terms contained in the BMW SA General Compliance Handbook.
- 16.2 The Supplier agrees to indemnify, defend and hold harmless BMW SA from and against any and all losses, damages, claims, liabilities, judgments, suits, proceedings, costs and expenses, including but not limited to, reasonable attorneys' fees, civil fines and/or other penalties which may be issued against BMW SA as a result of, or arising out of the Supplier's failure to comply with the Export Control Requirements and/or the requirements of this clause. The Supplier shall promptly and fully notify BMW SA in the event that it receives an inquiry or any other notice from any other governmental agency regarding BMW SA's compliance with any and all Export Control Requirements as they relate to the Goods and/or any component part thereof.

17. TAX AND CUSTOMS LIABILITIES

- 17.1 Each Party shall have sole responsibility to comply with its own taxation and/or customs obligations and liabilities arising from this Agreement ("Taxation") as well as the relevant terms contained in the BMW SA Customs Duty and Invoicing Handbook.
- 17.2 A Party breaching any of its obligations and/or responsibilities under this Agreement shall indemnify the other Party against and hold the other Party harmless from any loss, damage and/or liability resulting from such breach of obligations and/or responsibilities. Each Party shall use its best efforts to fulfil all applicable Taxation laws (including valid invoicing), foreign trade legislation and trade statistics for goods imported or exported on its own behalf and at its own expense.
- 17.3 All amounts payable to the Supplier or its Affiliates ("Tax Payer") in respect of this Agreement will be paid after deduction of withholding taxes, levies, duties, interest or administrative fees ("Withholding Taxes"), if any, that must be withheld at source by BMW SA and/or its Affiliates ("Withholding Agent") and paid to the responsible tax authority on behalf of Tax Payer in accordance with applicable law and regulations.
- 17.4 If the relevant double tax treaty or any other regime provides for a reduction or exemption of Withholding Tax, Withholding Agent shall withhold the reduced amount or apply the exemption, respectively, only if and when Tax Payer has presented a valid tax exemption certificate to the Withholding Agent at least 30 (thirty) business days prior to the payment date. Otherwise the Withholding Agent shall withhold taxes of the total amount payable to the Tax Payer in accordance with the applicable law and regulations.
- 17.5 The Tax Payer agrees to comply with any certification, information, documentation and other requirements necessary to obtain reduced rates or exemptions under the applicable double tax treaty or any other regime.

18. DOMICILIUM CITANDI ET EXECUTANDI AND NOTICES

- 18.1 The Parties choose as their domicilium citandi et executandi for all purposes under this Agreement the following addresses:
- 18.1.1 BMW SA:

Physical address 1 Bavaria Avenue, Randjespark Ext. 17, Midrand.

For the Attention of: The Legal Services Department.

E-mail: legalservices@bmw.co.za

and BMW SA further chooses its postal address for the service of notices in terms of this Agreement, as stated below:

P O Box 2955, Pretoria, 0001

- 18.1.2 The Supplier chooses the physical address reflected in the Purchase Order as its domicilium citandi et executandi for the service of legal process in terms of this Agreement.
- 18.2 Either party shall be entitled from time to time, by written notice to the other, to change its domicilium to any other address which is not a post office box or poste restante, provided that the change shall become effective only ten (10) days after the service of the notice in question.
- 18.3 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if given in writing.
- 18.4 All notices required to be given by either Party to the other shall be deemed to have been validly given on the date upon which such notice is delivered to the addressee's domicilium citandi et executandi or ten (10) days after the date upon which such notice is posted to the addressee by prepaid registered post, addressed to the addressee at its chosen postal address.

19. RELATIONSHIP

It is specifically recorded that the business operated by each Party is separate from that operated by the other and the only relationship between the Parties will be that of supplier and customer. No agency, employment, partnership, or joint venture will be deemed to exist between the Parties by virtue of this Agreement and neither Party will have the authority to act for or by the other, unless otherwise provided for by this Agreement (and if so provided, to the extent provided for in these Terms and Conditions).

20. GENERAL

- 20.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter of the Purchase Order and supersedes any other discussions, agreements, undertakings and/or understandings regarding the subject matter.
- 20.2 No part of this Agreement shall constitute a contract in favour of any person who is not a Party to the Agreement (stipulatio alteri) unless the provision in question expressly provides that it does constitute a stipulatio alteri.
- 20.3 For the purposes of clause 22.6 of the IPC, the term "assign" shall include cession (i.e. to cede), delegation (i.e. to delegate) or transfer.