

Bentley Motors Limited -Standard Terms for the Purchase of Transport Services

1. Definitions

In these Terms and Conditions of Purchase:

1.1 "BIFA" means the 2005 edition of the Standard Trading Conditions of the British International Freight Association a copy of which is attached in Schedule

1.2 "Company" means Bentley Motors Limited.

1.3 "Goods" means any goods, products, materials, cargo or items of whatever nature in respect of which the Supplier provides Services and shall include but not be limited to packaging, pallets, containers, dunnaging, and trailers.

1.4 "Intellectual Property" means any patents, trade marks, service marks, registered designs, utility models, unregistered design rights, copyright (including copyright in drawings, plans specifications, designs and computer software), database rights, rights in inventions, business or trade names (including internet domain names and e-mail address names), rights in confidential information and trade secrets and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for registration and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights.

1.5 "Order" means the contract formed by the acceptance of the Order issued by the Company on these terms and conditions.

1.6 "Services" means the services to be provided by the Supplier under the Order as set out in the Specification.

1.7 "Specification" means the documents detailing the requirements for the Services as identified by the Company in the Order or in the quotation from the Supplier to the extent expressly accepted in writing by the Company.

1.8 "Supplier" means the Supplier named in the Order and any assignee and subcontractor permitted under clause 13.3.

2. Application of Terms

2.1 Subject to any variation under Clause 3.1, these terms are the only terms upon which the Company is prepared to deal with the Supplier and they shall govern the contract to the entire exclusion of all other terms and conditions. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of an Order, specification or similar document shall form part of the contract and the Supplier waives any right which it might have to rely on such terms and conditions. In the event of any conflict between this Agreement and any standard industry terms that may be deemed to apply, this Agreement will prevail.

2.2 Unless any terms discussed or arising from any previous course of business between the Company and the Supplier are specifically incorporated into the Order in writing they shall not form part of the contract.

2.3 Any written acceptance of the Order (unless clearly stated on its face to be a counter offer) or delivery of the Services shall be unconditional acceptance of the Order. Any performance by the Supplier of whatever nature in relation to the matters detailed in the Order will constitute acceptance of such Order and commencement of the agreement.

3. Variation and Withdrawal of the Order

3.1 No variation or waiver of the Order shall be binding on the Company and the Supplier unless agreed to in writing and signed by an authorised person on behalf of the Company.

3.2 The details set out on the Order constitute an offer to contract with the Supplier and may be withdrawn by the Company at any time before the Supplier's written acceptance has been received by the Company.

4. Supply of Services

4.1 The Supplier shall from the date set out in the Order and for the duration of the Order provide the Services to the Company in accordance with these terms and conditions.

4.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Company.

4.3 In providing the Services, the Supplier shall:

4.3.1 perform the Services in accordance with the Specification;

4.3.2 use the high standards of skill and care which is ordinarily exercised by experienced and competent service providers performing services of a similar nature to the Services, using personnel who are suitably skilled to perform tasks assigned to them and in sufficient number;

4.3.3 devote such time, attention and skill and provide all equipment, tools, vehicles and such other items as may be necessary for the proper performance of its obligations under the Order;

4.3.4 conform in all material respects to any quality, performance criteria, description, specification, stipulation or standard reasonably notified by the Company to the Supplier from time to time and with which the Supplier can be reasonably expected to comply having regard to the nature of the Services to be provided under a relevant order;

4.3.5 obtain and maintain all necessary licences, permissions and consents to enter into and perform this Order and provide the Services;

4.3.6 observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises and any delivery addresses;

4.3.7 immediately notify the Company of any information or of any changes in its organisation or method of doing business which might reasonably affect the performance of its duties and obligations under the Order; and

4.3.8 comply with all relevant laws, regulations, orders, rules and codes of practice.

5. Company's Remedies

5.1 If the Supplier fails to perform the Services by the applicable dates, the Company shall, without limiting its other rights or remedies, have one or more of the following rights:

5.1.1 to recover from the Supplier any costs incurred by the Company in obtaining substitute services from a third party;

5.1.2 where the Company has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or

5.1.3 subject to clause 9, to claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to meet such dates.

5.2 These conditions shall extend to any substituted or remedial services provided by the Supplier.

5.3 The Company's rights under this Order are in addition to its rights and remedies implied by statute and common law.

6. Company's Obligations

6.1 The Company:

6.1.1 shall provide the Supplier with reasonable access at reasonable times to the Company's premises for the purpose of providing the Services;

6.1.2 shall provide such information to the Supplier as the Supplier may reasonably request and the Company considers reasonably necessary for the purpose of providing the Services.

6.1.3 warrants that it will comply fully with all commodity restrictions, security, information, customs, packaging and labelling requirements for each service, as established by the applicable laws and regulations in force in the relevant territories. The Company recognizes that the provision of late, incomplete or incorrect information may have serious effects, such as delays to flights, denied or

delayed permission to land or unload flights and the imposition of heavy fines by governmental or regulatory authorities (e.g. fines exceeding 10,000 USD are possible under the latest US rules)

6.1.4 makes the following warranties at the date of this agreement, which shall be deemed to be repeated upon the tendering of each shipment:

6.1.4.1 it is either the owner or authorised agent of the owner of the shipment and that it is accepting the terms and conditions of this agreement not only for itself but also as agent for and on behalf of the owner;

6.1.4.2 all information provided by the Company or its representative is complete and accurate;

6.1.4.3 the shipment was prepared in secure premises by the Company's employees or representatives;

6.1.4.4 the Company protected the shipment against unauthorised interference during preparation, storage and transportation to Contractor;

6.1.4.5 the shipment is properly marked and addressed and packed to ensure safe transportation with ordinary care and handling;

6.1.4.6 all applicable customs, import, export and other laws and regulations have been complied with.

6.3 The Company hereby agrees to indemnify, defend and hold harmless the Supplier and its employees and agents against and from any claims, liabilities, judgements, orders, fines, damages, costs (including costs of defence or settlement and reasonable lawyers' fees) and expenses

arising out of a breach of the Company's obligations or warranties under this Agreement (which, for the avoidance of doubt, shall include all obligations and warranties contained in BIFA and UKWA as applicable)

7. Charges

7.1 The Charges for the Services shall be set out in the Order, and shall be valid for a period of 12 months. Unless otherwise agreed in writing by the Company, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

7.2 The Supplier shall invoice the Company on completion of the Services. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

7.3 In consideration of the supply of the Services by the Supplier, the Company shall pay the invoiced amounts, within 30 days of the end of the month in which the Company receives a correctly rendered invoice, to a bank account nominated in writing by the Supplier without reduction or deferment on account of any claim, counterclaim or set-off, except in relation to disputed sums.

7.4 All amounts payable by the Company under the Order are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Order by the Supplier to the Company, the Company shall, on receipt of a

valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.5 If the Company fails to pay any amount properly due and payable by it under the Order, the Supplier shall have the right to charge interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Company disputes in good faith.

7.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Company to inspect such records at all reasonable times on request.

7.7 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to

it by the Supplier against any amount payable by the Company to the Supplier.

8. Intellectual Property

8.1 In respect of any goods that are transferred to the Company under this Order, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Company, it will have full and unrestricted rights to transfer all such items to the Company.

8.2 All materials provided by the Company are the exclusive property of the Company and will be by the Supplier in safe custody at its own risk and will be returned to the Company at the end of the Order or sooner if required by the Company.

9. Liability and Indemnity

9.1 Neither party excludes or limits its liability for:

9.1.1 death or personal injury resulting from its negligence;

9.1.2 fraud (including fraudulent misrepresentation);

9.1.3 any other matter for which it would be unlawful for that party to exclude or limit its liability.

9.2 Subject to clause 9.1, neither party shall be liable to the other for any indirect or consequential loss.

9.3 The Supplier shall keep the Company indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Company or any claim made against the Company by a third party arising directly out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Order by the Supplier, its employees, agents or subcontractors. Subject to Clause 9.1 the Supplier's liability under the Order, whether arising in contract, tort (including negligence), by statute or otherwise shall be limited to £10,000 per shipment;

9.4 For the duration of the Order and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, public liability insurance to cover the liabilities that may arise under or in connection with the Order and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect

of each insurance.

9.5 This clause 9 shall survive termination of the Order.

9.6 Claims for loss and damage must be notified in writing as soon as possible.

10. Confidentiality

10.1 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving

Party's obligations under the Order, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

This clause 10 shall survive termination of the Order.

11. Termination

11.1 Without limiting its other rights or remedies, either party may terminate the Order with immediate effect by giving written notice to the other party if:

11.1.1 the other party commits a material or persistent breach of the Order and (if such a breach is remediable) fails to remedy that breach within 10 days of receipt of notice in writing of the breach;

11.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

11.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of the other party;

11.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of the other party;

11.1.5 the other party (being an individual) is the subject of a bankruptcy petition order;

11.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

11.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

11.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

11.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

11.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause

11.1.2 to clause 11.1.9 (inclusive);

11.1.11 the other party suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or

11.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 Without limiting its other rights or remedies, the Company may terminate the Order by giving the Supplier 3 months' written notice.

12. Effect of Termination

12.1 On termination of the Order for any reason:

12.1.1 the Supplier shall immediately deliver to the Company all Deliverables whether or not then complete, and return all Company property. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected

with this Order;

12.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Order which existed at or before the date of termination; and

12.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. Audit

13.1 The Supplier shall maintain complete and accurate records relating to all matters relevant to the relationship between the parties described in the Order including the calculation of Charges and the provision of Services. Subject always to the confidentiality provisions of this Order, the Company and/or its appointed auditors (whether internal or external to the Company) shall have the right, exercisable by fourteen (14) days' prior written notice given to the Supplier, to audit and take copies of such records.

13.2 Any such audit shall take place during normal business hours, with minimal disruption to the Supplier, and the Supplier shall provide to the Company and/or its appointed auditors such reasonable co-operation, assistance and access as the Company may require. The Supplier may, at its own expense, involve a person from its own auditors (whether internal or external to the Supplier) in such audit. Any such

audit shall be conducted at the cost of the Company.

13.3 The Company may exercise its audit right under this clause no more than once in any period of twelve (12) months unless the Company has reasonable grounds on which to suspect that the Supplier has knowingly over-charged the Company or failed to provide Services in accordance with the Order, in which case the Company may exercise its rights under this clause at any time without notice.

13.4 The Supplier shall establish the same right of audit in favour of the Company in its contracts with third parties to whom it has subcontracted the performance of any obligations under this Order with the Company's consent.

14. Anti-Corruption

14.1 Both parties shall:

14.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

14.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and

14.1.3 have and shall maintain in place throughout the term of this Order its own policies and procedures in relation to the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010 and will enforce them where appropriate.

14.2 Breach of this clause shall entitle the party who is not in breach to terminate this Order forthwith upon written notice to the other.

15. Sustainable Development

15.1 The Company is a member of the Volkswagen Group which has set requirements for sustainable development to be met by its business partners. These requirements can be found on the portal vwgroupsupply.com under the section Cooperation and sub-section Sustainability.

15.2 The Supplier will at all times during the term of this Order ensure that it is aware of these requirements and will comply with them.

16. General

16.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Order if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable, including, without limitation, acts of God, compliance with any law, order, rule or regulation of any governmental or other authority, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, acts of terrorism, hijacking and similar criminal acts, fire, explosion and flood. If such event or circumstances prevent the Supplier from providing any of the Services for more

than 4 weeks, the Company shall have the right, without limiting its other rights or remedies, to terminate this Order with immediate effect by giving written notice to the Supplier.

16.2 Assignment and subcontracting: The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Order without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed.

16.2.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Order and may subcontract or delegate in any manner any or all of its obligations under the Order to any third party or agent.

16.3 Notices:

16.3.1 Any notice or other communication required to be given to a party under or in connection with this Order shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

16.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

16.3.3 This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Order shall not be validly served if sent by e-mail.

16.4 Waiver and cumulative remedies:

16.5.1 A waiver of any right under the Order is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Order or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy

shall preclude or restrict the further exercise of that or any other right or remedy.

16.5.2 Unless specifically provided otherwise, rights arising under the Order are cumulative and do not exclude rights provided by law.

16.6 Severance:

16.6.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Order is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Order shall not be affected.

16.6.2 If any invalid, unenforceable or illegal provision of the Order would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.7 No partnership: Nothing in the Order is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.8 Third parties: A person who is not a party to the Order shall not have any rights under or in connection with it.

16.9 Variation: Any variation, including any additional terms and conditions, to the Order shall only be binding when agreed in writing and signed by Company.

16.10 Entire Agreement: These terms and conditions (including any terms and conditions expressly referred to in the same) and the Order constitute the entire agreement and understanding between the parties in relation to its subject matter, and supersede any prior written or oral agreements, statements, warranties or representations. Each party warrants that it has not been induced to enter into an Order or these terms and conditions by an agreement, statement, warranty or representation which is not contained therein, and whether or not made innocently or negligently. To the extent that any such agreement, statement, warranty or representation is shown to have been made, each party unconditionally waives any claims, rights or remedies which it might otherwise have had in relation to them.

16.11 Governing law and jurisdiction: The Order, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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