

**VOLKSWAGEN OF SOUTH AFRICA (PTY) LIMITED – (VWSA)  
PURCHASE ORDER TERMS AND CONDITIONS  
ITEMS/SERVICES**

**1. EXPLANATION OF TERMS AND CONDITIONS**

- 1.1 The terms and conditions in this Purchase Order apply to both the purchase of goods and the performance of services unless otherwise specified.
- 1.2 Terms and conditions marked with an asterisk (“\*”) will, in addition to the terms referred to in clause 1.1, apply to the purchase of GOODS only.
- 1.3 Terms and conditions marked with a hash (“#”) will, in addition to the terms referred to in clause 1.1 apply to the provision of SERVICES only.

**2. ORDERS AND ACCEPTANCE**

- 2.1 The SUPPLIER/CONTRACTOR shall accept orders placed by VWSA by delivering the acknowledgment copy of the Purchase Order to VWSA duly signed by the SUPPLIER/CONTRACTOR where indicated within 14 (fourteen) days of the date of the order.
- 2.2 VWSA reserves the right to cancel orders not accepted timeously and to accept that performance in terms of the Purchase Order is a deemed acceptance.

**3. CHANGES**

- 3.1 Changes to VWSA orders shall only be valid when made in writing by amendment to the Purchase Order.
- 3.2 Any deviations in the finished GOODS/SERVICES from the specification or the approved samples (if applicable) require VWSA's prior consent.

**4. DELIVERY/PASSING OF RISK**

- 4.1 The GOODS shall be delivered to and SERVICES shall be performed at the premises of VWSA, or such other premises nominated by VWSA.
- \*4.2 All risk in the GOODS shall pass to VWSA against delivery.
- \*4.3 Where the Request for Quotation, the Purchase Order and the SUPPLIER'S quotation specifies an International Incoterm, the Incoterms ® 2010 version of the Incoterm will apply in the event of a conflict with the provisions of clause 4.1 and 4.2. If the Incoterm reflected on the SUPPLIER'S Quotation conflicts with the VWSA Purchase Order and the Request for Quotation, the VWSA specified Incoterm will apply.
- \*4.4 VWSA reserves the right to specify the method of dispatch and type of transportation to be used. VWSA shall be entitled to alter its requirements on written notice to the SUPPLIER.
- \*4.5 Any carrier used by a local SUPPLIER, whether or not at VWSA's specific request, for the shipping of GOODS of any nature whatsoever to VWSA, shall at all times act as the SUPPLIER'S agent and delivery of the GOODS shall only be deemed to have been made to VWSA when the GOODS are delivered at VWSA's premises.
- \*4.6 Time of delivery shall at all times be of the essence of any contract concluded.
- 4.7 In the event of the SUPPLIER/CONTRACTOR failing:
- (a) To meet the specified delivery dates;
  - (b) Perform the SERVICES timeously due to any direct act or omission or negligence on the part of the SUPPLIER, the SUPPLIER may be held liable to VWSA for payment of any damages (including consequential loss) which VWSA may suffer as a result, and in addition to any other rights available to VWSA as a result of the SUPPLIER'S breach.
- #4.8. The SERVICES shall be performed:
- (a) To the satisfaction of VWSA;
  - (b) To the highest standards, in a proper and professional manner;
  - (c) So as to ensure the daily production activities of VWSA are not affected.

**5. INSPECTION**

- 5.1 VWSA shall be entitled, but not obliged, to conduct an inspection of the GOODS/SERVICES, from time to time.
- \*5.2 Any GOODS rejected at the receiving inspection will be held at the SUPPLIER'S risk.
- \*5.3 VWSA may, at its option:
- (a) Return rejected GOODS to the SUPPLIER, at the cost of the SUPPLIER;
  - (b) Deal with the rejected GOODS in terms of clause 9.3 if such GOODS incorporate VWSA's signs, trademarks or identification data.

**6. WARRANTY**

- 6.1 Notwithstanding inspection by VWSA, the SUPPLIER/CONTRACTOR warrants that the GOODS/SERVICES covered by this order will:
- (a) Conform to the specifications, drawings, samples and other data furnished or specified or agreed to by VWSA;
  - \* (b) Be fit for and sufficient for the purpose intended, merchantable, of good material and workmanship and free from all defects;
  - \* (c) Be non-paint crater inducing if ordered for use by VWSA in its manufacturing process. This condition also applies to the packing and protective materials.
- 6.2 The SUPPLIER/CONTRACTOR undertakes to continuously monitor that the GOODS/SERVICES supplied to VWSA comply with the quality standards of VWSA where applicable.
- \*6.3 Unless otherwise agreed by VWSA, the warranty referred to in clause 6.1 will be effective for a period of 12 months from the date the GOODS are first used by VWSA for the purpose for which such GOODS were purchased.
- \*6.4 Any complaint by VWSA in respect of the GOODS delivered shall be deemed to interrupt the warranty period.
- \*6.5 The SUPPLIER shall assume liability under the terms of the warranty irrespective of whether or not the SUPPLIER is the MANUFACTURER of the GOODS delivered or the provider of the SERVICES.
- \*6.6 VWSA shall be entitled to remedy any defects, or have such defects remedied, if any delay to do so by the SUPPLIER is not acceptable to VWSA.

**7. LIABILITY**

- 7.1 Unless otherwise provided in these terms and conditions, the SUPPLIER/CONTRACTOR shall be liable for damages and/or losses suffered by VWSA as a result of defective supply and/or the failure of the GOODS/SERVICES to comply with the terms of the warranty.
- 7.2 Any claims of VWSA shall be excluded insofar as the damage and/or loss is caused by:
- (a) The failure of VWSA to comply with operating maintenance and installation instructions;
  - \* (b) Unsuitable or inappropriate use, incorrect or negligent fitment, normal wear and tear and incorrect repair by VWSA.
- 7.3 In addition to the above, the SUPPLIER/CONTRACTOR shall be liable for all the costs associated with action taken by VWSA to mitigate any

damages and/or losses.

7.4 If the performance of any order gives rise to or results in the performance of labour on VWSA's behalf by the SUPPLIER/CONTRACTOR the SUPPLIER/CONTRACTOR agrees to indemnify and protect VWSA against all liabilities, claims or demands for injuries or damage to any person or property arising out of such performance.

## **8. QUANTITIES**

\*8.1 The report of the Receiving Department of VWSA shall be binding in respect of the size, weight and/or quantity of any GOODS delivered.

\*8.2 VWSA shall be entitled, at its option, to reject any order incorporating shortages or excesses.

## **9. SIGNS AND MARKS**

\*9.1 Any signs, trademarks, and identification data shall be incorporated by the SUPPLIER on the samples, if specified in the drawings or if requested by VWSA in writing.

\*9.2 GOODS and/or samples marked with such signs and/or trademarks or identification data may not, under any circumstances, be sold, disposed of, or handed to anyone other than VWSA or handled or dealt with in any other manner whatsoever.

\*9.3 (a) Rejected GOODS or samples bearing VWSA's signs, trademarks or identification data, may, at the option of VWSA be rendered permanently unserviceable and unusable by VWSA before return to the SUPPLIER or by the SUPPLIER at VWSA's request.

(b) The SUPPLIER shall not be entitled to any compensation or damages whatsoever as a result of VWSA rendering or requiring the SUPPLIER to render such samples, GOODS unserviceable or unusable.

## **10. PATENTS**

\*10.1 The SUPPLIER shall be liable if the sale, manufacture or use of the GOODS supplied by the SUPPLIER infringes any patents, trademarks, copyright, industrial design, or process of manufacture, or other rights held by a third party other than VWSA or VWSA's principals/associates.

\*10.2 Any claim or legal action for alleged infringement made against VWSA or those selling or using any such GOODS shall be investigated and dealt with by the SUPPLIER at the SUPPLIER'S own expense.

\*10.3 All costs, damages and losses suffered by VWSA and expenses arising from such claims, shall be for the SUPPLIER'S account.

## **11. PACKING**

\*11.1 Unless otherwise agreed in writing, all GOODS delivered by the SUPPLIER to VWSA shall be suitably packed or otherwise prepared for shipment by the SUPPLIER so as to secure the lowest transportation and insurance rates and comply with the carrier's requirements.

\*11.2 VWSA shall be entitled to require the SUPPLIER to apply a non-paintcrater inducing protective coating to the GOODS in order to protect the GOODS during storage.

11.3 No charge shall be made for wrapping packing, cartons, boxing, applying the protective coating crating or carriage, unless authority for such charge is expressly incorporated in this Request for Quotation or in a written order placed by VWSA.

\*11.4 VWSA reserves the right to specify the method and type of packing to be used. VWSA shall be entitled to alter its requirements on written notice to the SUPPLIER.

## **12. INSURANCE**

12.1 The SUPPLIER/CONTRACTOR undertakes, at the request of VWSA, to furnish a certificate from the SUPPLIER/CONTRACTOR'S Insurance Brokers showing that the SUPPLIER/CONTRACTOR carries adequate cover in respect of:

- (a) Compensation for occupational injuries and diseases;
- (b) Public and Employers Common Law Liability Insurance;
- (c) Damage to property;
- (d) SUPPLIER/CONTRACTORS Product Liability Insurance, where applicable;
- (e) Professional Indemnity cover, where applicable.

## **13. PAYMENT**

13.1 Subject to acceptance and correct delivery of the GOODS by VWSA or performance of the SERVICES, and provided there is no agreement to the contrary, payment will be made as follows:

- (a) On the last working day of the month following the month in which delivery was effected.
- (b) Against receipt of an original Tax Invoice which must reach VWSA immediately after delivery of the GOODS or performance of the SERVICES.

#(c) On approval of the invoice by the authorized VWSA representative.

13.2 VWSA will be entitled to decide on the form of payment.

13.3 Where applicable, separate monthly statements must be rendered promptly by the SUPPLIER/CONTRACTOR.

13.4 The SUPPLIER/CONTRACTOR will not be entitled to cede any claim for payment against VWSA to any third party nor to have such claims collected by third parties without the prior written consent of VWSA.

## **14. CONFIDENTIALITY**

14.1 The SUPPLIER/CONTRACTOR shall treat all information concerning the VWSA Request for Quotation, Orders, details of purchase and technical details as strictly confidential, and shall under no circumstances whatsoever divulge any information to any person.

14.2 When advertising or otherwise marketing, whether verbally, in writing, or otherwise, the SUPPLIER/CONTRACTOR shall not make any reference to the SUPPLIER/CONTRACTOR'S business association with VWSA without VWSA's prior written consent.

## **15. MISCELLANEOUS**

15.1 Any relaxation, indulgences or condonation granted by VWSA in respect of any breach of these conditions shall not be construed by the SUPPLIER/CONTRACTOR as constituting a waiver by VWSA of any of VWSA's rights.

15.2 Any printed conditions on any of the SUPPLIER/CONTRACTOR'S documents submitted to VWSA shall not apply, even if countersigned by

VWSA. The SUPPLIER/CONTRACTOR agrees that the relationship with the SUPPLIER/CONTRACTOR will be solely governed by these conditions and those set out in any order submitted by VWSA. Any deviation from the conditions will only be binding on VWSA if in writing and signed by the SUPPLIER/CONTRACTOR and VWSA.

- 15.3 Each term contained in this Request for Quotation and/or on any Order submitted to the SUPPLIER/CONTRACTOR by VWSA shall be an essential term of the contract between VWSA and the SUPPLIER/CONTRACTOR.
- 15.4 In the event of any condition being a nullity, such condition shall be severable from the other conditions, which latter conditions shall nevertheless be of full force and effect.
- 15.5 The lowest or any quotation will not necessarily be accepted, and VWSA reserves the right to accept the whole or any portion of the quotation, or to apportion the contract to more than one SUPPLIER/CONTRACTOR.
- 15.6 The SUPPLIER/CONTRACTOR undertakes to comply with all Laws, By-Law, regulations or requirements of any competent authority, including the state, relevant to the conduct of the SUPPLIER/CONTRACTOR'S business.
- 15.7 The SUPPLIER/CONTRACTOR indemnifies VWSA in respect of any claim made against VWSA arising from the failure of the SUPPLIER/CONTRACTOR to comply with clause 15.6.
- #15.8 The CONTRACTOR undertakes to ensure that the SERVICES provided in terms of the Request for Quotation, the Order and Contractor's Handbook are supervised at all times by a competent and experienced Supervisor and/or the owner/works director of the CONTRACTOR. Any deviation from the provision must be approved in writing by the authorized representative of VWSA.

## **16. APPLICABLE LAW**

- 16.1 The Request for Quotation and/or any orders submitted by VWSA to the SUPPLIER/CONTRACTOR will be governed by, and interpreted in accordance with the Laws of the Republic of South Africa.
- 16.2 The stipulations of the International Conventions regarding the International Sale of Goods shall not apply.

## **17. CANCELLATION**

- 17.1 In event of the SUPPLIER/CONTRACTOR breaching any of these conditions VWSA shall have the right, without prejudice to any other remedies, upon written notice to the SUPPLIER/CONTRACTOR to forthwith cancel any order or any part thereof and/or suspend any shipment and delivery of any GOODS and/or work/SERVICES performed.
- 17.2 In the event of such cancellation or suspension being exercised by VWSA the only liability of VWSA shall be to pay the SUPPLIER/CONTRACTOR for any GOODS/SERVICES ordered by VWSA which have been delivered to VWSA timeously and which fully comply with all the terms thereof.

## **18. FACILITIES REGULATIONS**

- 18.1 If any GOODS purchase or SERVICES performed requires the SUPPLIER/CONTRACTOR to have access to the premises of VWSA, the SUPPLIER/CONTRACTOR shall obtain a copy of VWSA's FACILITIES REGULATIONS for Contractors on Site (the "FACILITIES REGULATIONS").
- 18.2 The SUPPLIER/CONTRACTOR will be bound by the contents of the FACILITIES REGULATIONS.
- 18.3 In the event of a conflict between the FACILITIES REGULATIONS and the terms contained in this Order, this Order will apply.

## **19. INTELLECTUAL PROPERTY**

- 19.1 The SUPPLIER/CONTRACTOR acknowledges that all rights, title and interest in any intellectual property developed in terms of and/or arising from this Agreement, shall vest in VWSA, unless VWSA waives such rights in writing.
- 19.2 In this regard, intellectual property shall include the following, if applicable:
- (a) patents;
  - (b) designs;
  - (c) knowhow;
  - (d) copyright;
  - (e) trademarks;
  - (f) software codes;
  - (g) processes and procedures; and
  - (h) specifications and/or drawings provided by the SUPPLIER/CONTRACTOR arising from
  - (i) the Agreement
- (collectively referred to as "the INTELLECTUAL PROPERTY.")
- 19.3 The value of this Purchase Order shall be deemed to include adequate compensation to the SUPPLIER/CONTRACTOR for its contribution in developing the INTELLECTUAL PROPERTY.

## **20. ACCESS TO INFORMATION**

- 20.1 The SUPPLIER/CONTRACTOR undertakes to:
- (a) Keep proper records relating to the provision of the GOODS/SERVICES. VWSA shall be entitled but not obligated to specify the records required from time to time;
  - (b) Permit Auditors nominated by VWSA and any authorized employees of VWSA, full access at mutually agreed and pre-arranged times, to any information or records in relation to the obligations of the SUPPLIER/CONTRACTOR in terms of this order.

## **21. SUSTAINABILITY**

The SUPPLIER/CONTRACTOR undertakes to comply with the Volkswagen Group requirements regarding sustainability in its relationships with business partners (Code of Conduct for Business Partners), available at <http://www.vwgroupsupply.com>

## **22. PROTECTION OF PERSONAL INFORMATION ACT ("POPIA") WARRANTY**

The SUPPLIER/CONTRACTOR:

- 22.1 Warrants that when processing any Personal Information made available by or otherwise arising from interactions with VWSA it shall:

- (a) Process such Personal Information only with the knowledge and authorisation of VWSA;
- (b) Not disclose Personal Information to any third parties without the written consent of VWSA unless required by law or in the course of the proper performance of the SUPPLIER/CONTRACTOR's obligations to VWSA;
- (c) Have due regard to information security practices and procedures which may apply to the SUPPLIER/CONTRACTOR generally or be required in terms of specific industry or professional rules and regulations.
- (c) Notify VWSA immediately where there are reasonable grounds to believe that Personal Information has been accessed or acquired by any unauthorised Person.
- (d) Establish and maintain security measures to secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of Personal Information and unlawful access to, or processing of, Personal Information and shall take reasonable measures to:
  - (i) identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control.
  - (ii) establish and maintain appropriate safeguards against the risks identified;
  - (iii) regularly verify that the safeguards are effectively implemented; and
  - (iv) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- (e) Fully comply with the statutory obligations contained in POPIA and other applicable data protection legislation, with which the SUPPLIER/CONTRACTOR warrants that it is fully conversant, when processing Personal Information obtained by the SUPPLIER/CONTRACTOR from VWSA. Without limiting the generality of the aforesaid the SUPPLIER/CONTRACTOR shall ensure that the privacy and data protection conditions are strictly adhered to when processing the Data Subject's Personal Information.

22.2 Releases and indemnifies VWSA from and against liability for any claim, loss or damage arising from the SUPPLIER/CONTRACTOR's failure to comply with the warranties contained in sub clause 1 and its obligations provided for in POPIA and other applicable data protection legislation.



