



Purchasing Terms and Conditions: **Section 3: Temporary Employment Services**

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1. Introduction

- 1.1 BMW requires manpower to render certain services as and when required.
- 1.2 The Temporary Employment Services Provider has agreed to assign to BMW suitably qualified consultants to render services.
- 1.3 These terms and conditions shall at all times exclusively apply to the rendering of services by the Temporary Employment Services Provider to BMW and shall constitute the basis of the agreement between the parties unless otherwise expressly agreed between the parties in writing.
- 1.4 Any special conditions, work specifications, annexures, schedules and letter of acceptance as well as any written records agreed to by BMW and the Temporary Employment Services Provider after the acceptance by the Temporary Employment Services Provider of these terms and conditions shall be regarded as being incorporated in the agreement.
- 1.5 The Temporary Employment Services Provider acknowledges by the signing of the letter of acceptance that it has read, understood and accepted these terms and conditions and shall be bound thereby.
- 1.6 The Temporary Employment Services Provider shall acquaint itself at all times with the content of these Purchasing Terms and Conditions as it appears on BMW's Supplier Net at www.supnet.bmw.co.za, as amended from time to time.

2. Interpretation

- 2.1 Unless the context clearly indicates a contrary intention, expressions which denote:
 - 2.1.1 any gender shall include the other gender;
 - 2.1.2 a natural person shall include a created entity (whether corporate or unincorporated) and vice versa;
 - 2.1.3 the singular shall include the plural and vice versa.
- 2.2 The clause headings in these terms and conditions have been inserted for convenience only and shall not be taken into account in interpreting these terms and conditions.

2.3 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.

3. Definitions

In these terms and conditions the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

3.1 **“agreement”** shall mean the agreement entered into between BMW and the Temporary Employment Services Provider for the assignment of consultants and the rendering of services in terms of these terms and conditions and shall include any Purchase Order and/or Outline Agreement issued in terms hereof as well as any special conditions or records of matters agreed to in writing between the parties.

3.2 **“assignment”** shall mean the provision of consultants by the Temporary Employment Services Provider to BMW as required by BMW in terms of the provisions of these terms and conditions.

3.3 **“BMW”** shall mean **BMW (South Africa) (Proprietary) Limited** (Registration Number: 1960/000196/07), a company with limited liability duly incorporated and existing under the company laws of the Republic of South Africa and having its registered address at 6 Frans du Toit Street, Rosslyn, Akasia, 0200, and its principal place of business at 1 Bavaria Avenue, Randjespark, Extension 17, Midrand, 1685 and shall include its wholly-owned subsidiary **BMW Financial Services (South Africa) (Proprietary) Limited** (Registration Number: 1990/004670/07), a company with limited liability duly incorporated and existing under the company laws of the Republic of South Africa and having its registered address and principal place of business at 1 Bavaria Avenue, Randjespark, Extension 17, Midrand, 1685.

3.4 **“the Compensation Commissioner”** shall mean the Compensation Commissioner appointed under section 2(1)(a) of the COIDA.

3.5 **“confidential information”** shall mean all information that is not readily available in the normal course of business to third parties.

3.6 **“confirmation of assignment”** shall mean a written confirmation of assignment duly signed by the Temporary Employment Services Provider and BMW, an example of which is contained in Annexure “B” of the Purchasing Terms and Conditions.

- 3.7 **“consultant/s”** shall mean those persons who will render services to, and perform work for BMW on assignment, which persons are employed by the Temporary Employment Services Provider and are remunerated by the Temporary Employment Services Provider.
- 3.8 **“goods recipient”** shall mean the duly authorized BMW representative stipulated on the Purchase Order to receive the services rendered by the consultants.
- 3.9 **“HSE Specifications”** shall mean the prescribed Safety, Health and Environmental conditions, policies, principles, training materials, standards and procedures as stipulated and/or utilized by BMW from time to time.
- 3.10 **“letter of acceptance”** shall mean the required written communication signed by the Temporary Employment Services Provider as acceptance of these terms and conditions.
- 3.11 **“Purchase Order”** shall mean the official printed Purchase Order issued by BMW in terms of which BMW requests and the Temporary Employment Services Provider renders services to BMW, which shall be subject to these terms and conditions.
- 3.12 **“Outline Agreement”** shall mean the agreement entered into between BMW and the Temporary Employment Services Provider in terms of these terms and conditions and shall include all Purchase Orders issued in terms of the Outline Agreement.
- 3.13 **“placement conversion fee”** shall mean any amount paid by BMW to any third party in order to secure the placement of any consultant employed by the Temporary Employment Services Provider with BMW.
- 3.14 **“services”** shall mean the services required to be rendered by Temporary Services Provider and/or the consultant/s assigned to BMW in terms of the confirmation of assignment by the Temporary Employment Services Provider.
- 3.15 **“the BCEA”** shall mean the Basic Conditions of Employment Act No. 75 of 1997 (as amended).
- 3.16 **“the COIDA”** shall mean the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (as amended).
- 3.17 **“the Income Tax Act”** shall mean the Income Tax Act No. 58 of 1962 (as amended).

- 3.18 **“the Temporary Employment Services Provider”** shall mean the party appointed by BMW for the assignment of consultants in terms of these terms and conditions and shall be referred to as “ Supplier” in the Outline Agreement and/or Purchase Order.
- 3.19 **“the LRA”** shall mean the Labour Relations Act No.66 of 1995 (as amended).
- 3.20 **“OHASA”** shall mean the Occupational Health and Safety Act No. 85 of 1993.
- 3.21 **“terms and conditions”** shall mean the terms and conditions set out herein and shall include the annexures attached hereto or incorporated by reference.

4. Nature of Relationship Between the Parties

- 4.1 The Temporary Employment Services Provider shall at all times remain an independent contractor in relation to BMW and nothing herein contained shall constitute the relationship of employer and employee or any partnership between BMW and the Temporary Employment Services Provider. The personnel of the Service Provider shall, notwithstanding the nature of the services or the manner of their provision, not be construed as the personnel of BMW.
- 4.2 Without detracting in any manner to the foregoing, the parties agree that any consultant provided by the Temporary Employment Services Provider shall not be an employee of BMW and shall under no circumstances be deemed to be an employee of BMW, but shall at all times remain an employee of the Temporary Employment Services Provider. The consultant shall be remunerated for his services by the Temporary Employment Services Provider and the Temporary Employment Services Provider hereby undertakes as employer of the consultant to comply with all rights and obligations which may arise out of an employer/employee relationship, whether by statute or common law.
- 4.3 It is recorded that neither the Temporary Employment Services Provider nor its consultants are agents for BMW and will accordingly not in any way whatsoever represent that they act as agents for and on behalf of BMW and have any authority or power to contract in the name of, or to create any liability whatsoever, on behalf of BMW and as such shall not bind BMW in any way.
- 4.4 Without detracting from the generality of clause 18 below, the Service Provider hereby indemnifies BMW and holds BMW harmless against any liability arising out of, or in connection with, any breach of this clause 4.

5. Outline Agreement

- 5.1 BMW shall be entitled to issue an Outline Agreement to the Temporary Employment Services Provider from time to time, an example of which is contained in Annexure “B” of the Purchasing Terms and Conditions.
- 5.2 The Outline Agreement shall be issued in writing and be made out on the official BMW printed Outline Agreement form.
- 5.3 The Outline Agreement shall record any period of validity of the Outline Agreement and the services and rates that are permitted to be requested from and rendered by the consultants assigned by the Temporary Employment Services Provider to BMW and shall remain fixed for the period of validity stipulated therein.
- 5.4 BMW shall be entitled, but not obliged, to request services from the Temporary Employment Services Provider in accordance with the Outline Agreement.
- 5.5 The Temporary Employment Services Provider shall accept and confirm the Outline Agreement in writing and shall deliver its written acceptance to BMW within 10 (ten) days of the Temporary Employment Services Provider’s receipt of the said Outline Agreement. In the event that any Outline Agreement is not accepted by the Temporary Employment Services Provider in accordance with these provisions, such order shall lapse. BMW shall be entitled to cancel the Outline Agreement by notification in writing at any time prior to acceptance thereof by the Temporary Employment Services Provider, without incurring any liability whatsoever to the Temporary Employment Services Provider.
- 5.6 BMW shall be entitled at any time before proper performance by the Temporary Employment Services Provider in terms of an Outline Agreement, to amend or vary the Outline Agreement with regard to the specifications of the services and the date, place and means of execution thereof by means of written notification to the Temporary Employment Services Provider.
- 5.7 The Outline Agreement shall only be binding on BMW if it is signed by the duly authorized representatives of both BMW and the Temporary Employment Services Provider.

6. Purchase Orders

6.1 BMW shall be entitled to issue a Purchase Order to the Temporary Employment Services Provider from time to time, an example of which is contained in Annexure “B” of the Purchasing Terms and Conditions.

6.2 The Purchase Order shall be issued in writing and be made out on the official BMW printed Purchase Order form.

6.3 The Purchase Order shall contain necessary information in regard to the services such as the description of service, service rates, and hours worked based on the relevant invoices, goods recipient, details and terms of payment.

7. Provision of Consultants

7.1 Subject to the provisions of these terms and conditions and upon written request by BMW, the Temporary Employment Services Provider shall assign to BMW consultants suitably qualified and capable of providing services.

7.2 BMW shall not be obliged to accept any assignment of any consultant proposed to it by the Temporary Employment Services Provider.

7.3 A confirmation of assignment shall be signed by the Temporary Employment Services Provider and BMW in respect of the consultant assigned in terms of these terms and conditions, before a consultant is regarded as assigned to BMW in terms hereof.

7.4 The consultant shall render those services required by BMW as identified by BMW at the time of the written request or as identified by BMW in writing.

8. Terms of Assignment

8.1 The Temporary Employment Services Provider warrants that the consultants assigned to BMW in terms of these terms and conditions shall comply with the level of expertise and skill required or described in any particular confirmation of assignment and in accordance with the relevant industry standards.

8.2 BMW will be entitled to terminate any assignment on the giving of thirty (30) day's written notice to this effect to the Temporary Employment Services Provider.

8.3 BMW shall not be obliged to disclose the reason as to why the consultant concerned is unacceptable to it.

- 8.4 The Temporary Employment Services Provider shall remain responsible for all consultants provided to BMW in terms of these terms and conditions and shall ensure that the consultants comply with BMW's guidelines, practices and procedures. Without derogating from the generality of the foregoing, the Temporary Employment Services Provider undertakes to ensure that all consultants will comply with the requirements of BMW concerning:
- 8.4.1 The normal working hours applicable to the operation of BMW at which the consultant is deployed;
 - 8.4.2 The working of hours beyond normal working hours in order to meet the requirements of BMW from time to time;
- 8.5 The Temporary Employment Services Provider shall instruct the consultant to obey all lawful instructions given to it by BMW. However, the Temporary Employment Services Provider shall remain responsible to ensure that the consultants obey all instructions so given.
- 8.6 The Temporary Employment Services Provider will ensure that the consultant does not engage in any business or undertaking in competition with BMW during the consultant's deployment with BMW. The Temporary Employment Services Provider shall throughout the duration of the agreement be under an obligation to disclose and require each consultant to disclose, any other work or interest of the consultant. In the event of any breach of this provision, BMW shall be entitled to terminate the agreement, alternatively the particular assignment, on 24 hours written notice to the Temporary Employment Services Provider.
- 8.7 The Temporary Employment Services Provider shall at all times comply, and ensure that consultants comply with the provisions of any legislation referred to in these terms and conditions and/or relevant to the subject matter of these terms and conditions and with all the necessary employment conditions and wage regulating measures concerning all consultants it assigns to BMW. Without derogating from the generality of the foregoing the Temporary Employment Services Provider specifically undertakes to:
- 8.7.1 Register all consultants assigned to BMW, on the Temporary Employment Services Provider's payroll as employees of the Temporary Employment

- Services Provider (where applicable), prior to assigning the said consultants to BMW.
- 8.7.2 Complete and sign a consultant assignment form together with the consultant and furnish BMW with a copy thereof, attached to the confirmation of assignment.
 - 8.7.3 Comply with all administrative and employer obligations arising by operation of all applicable statutes, including specifically (but not limited to) the BCEA, the LRA, OHASA, COIDA and the Income Tax Act, and in particular ensure good standing in terms of the aforesaid Acts and ensure that all contributions (in particular in regard to PAYE, UIF and Workmen's Compensation) are made and timeously paid for and on behalf of the consultants directly to the applicable authority or fund.
 - 8.7.4 Keep, maintain and retain records of all remuneration and benefits paid to consultants assigned to BMW, including records relating to all annual leave accrued, all sick leave accrued and administered, all payments in respect of overtime paid (where applicable), all hours worked, all payments in respect of work on Sundays and public holidays (where applicable), and all maternity leave granted (where applicable) in respect of each and every consultant assigned to BMW in terms of these terms and conditions.
 - 8.7.5 Retain all records kept by it in respect of those instances referred to above for a period of three years following the termination of the agreement.
 - 8.7.6 Allow BMW to inspect and request copies of all records of the Temporary Employment Services Provider kept by the latter in terms of these terms and conditions and/or any statutory record keeping obligation upon the Temporary Employment Services Provider in respect of consultants assigned to BMW.
- 8.8 In the event of any breach or failure by the Temporary Employment Services Provider to comply with its record keeping obligations as set out in these terms and conditions or by operation of any statute, BMW shall be entitled to summarily terminate the agreement and the Temporary Employment Services Provider shall have no claim or action against BMW for any damages whatsoever nor any action arising from breach of these terms and conditions nor on any other basis in law.

- 8.9 The Temporary Employment Services Provider shall comply with all South African legislation and guidelines aimed at eradicating discrimination in the workplace. Without limiting the generality of the foregoing, this includes discrimination applicable to advertising and recruitment practices, the interviewing, selection and elimination processes utilized by the Temporary Employment Services Provider pertaining to the procurement of consultants, who may be assigned to BMW.
- 8.10 In the event that the Temporary Employment Services Provider is required (in respect of a consultant assigned to BMW), by virtue of an agreement entered into by the Temporary Employment Services Provider with the consultant or by a ruling or decision of statutory body or other similar body, to reinstate or re-employ a consultant whose services it has terminated, then the Temporary Employment Services Provider shall not again re-assign such consultant to BMW without BMW's prior written consent thereto.
- 8.11 The Temporary Employment Services Provider shall at all times be under an express obligation to do full reference checks on all consultants proposed or assigned to BMW.
- 8.12 The Temporary Employment Services Provider acknowledges and agrees that BMW shall, notwithstanding the provisions of these terms and conditions, be entitled to use alternative sources for the rendering of services.
- 8.13 Any consultant assigned to BMW to render services in terms of these terms and conditions shall not be removed by the Temporary Employment Services Provider from the rendering of services in a particular assignment for re-assignment on any other project without the prior written consent of BMW.
- 8.14 In the event that a dispute arises between the parties in regard to the services and/or charges of any consultant, the Temporary Employment Services Provider shall not be entitled to withhold its services pending the resolution of such dispute and shall continue to perform its obligations in terms of these terms and conditions.

9. Compliance with Rules, Regulations and Legislation

- 9.1 In order to ensure that BMW complies with all applicable legal, regulatory, compliance and corporate governance requirements and for the sake of expediency and to avoid duplication, all such policies, rules and regulations of BMW, insofar as the content thereof may be relevant and as may be determined and/or amended by BMW from time to time, shall apply mutatis mutandis to the Temporary Employment Services Provider

and its employees. This shall include, but not be limited to policies, rules and procedures relating to security, health and safety, information technology, data privacy, corruption prevention and compliance.

- 9.2 It is the responsibility of the Temporary Employment Services Provider and its employees to ensure that it has familiarized itself with all such relevant policies, rules and regulations pertaining to BMW and its business operations and with the amendments which may from time to time be communicated in relation thereto.
- 9.3 Notwithstanding the generality of the aforesaid, the Temporary Employment Services Provider shall at all times comply with BMW's security and traffic requirements, rules and regulations as well as the Health, Safety and Environmental (HSE) Specifications.
- 9.4 The Temporary Employment Services Provider shall at all times comply with the provisions of any legislation relating to the subject matter of these terms and conditions, including but not limited to OHASA and COIDA, and shall ensure good standing in terms of the latter legislation, and in particular ensure that all contributions are paid timeously to the Compensation Commissioner.
- 9.5 The Temporary Employment Services Provider –
- 9.5.1 confirms that the operation of its business is undertaken, at all times, in an environmentally compatible manner to minimize the ecological effect thereof on human beings and the environment;
- 9.5.2 in the event of goods being manufactured, undertakes to utilise a manufacturing process that is based on environmentally compatible production and recycling processes, thereby optimising the use of natural resources and an effective environmental management system. In this regard the Temporary Employment Services Provider undertakes to reduce and/or phase out the use of hazardous chemical substances as defined in Tables 1 and 2 of the South African Regulations relating to hazardous chemical substances. Where this is not reasonably practical, the Temporary Employment Services Provider will implement and maintain processes to effectively reduce exposure, control and monitor the impact that exposure may have on its employees and other parties.

9.5.3 shall, when called upon by BMW to do so, provide BMW with risk assessment reports, legal compliance reports and other key performance data (such as injury statistics) which reports will contain information not older than 24 months.

9.5.4 confirms that it shall at all times during the operation of its business take cognisance of the duty of social responsibility towards its employees, which duty shall include, but shall not be limited to the preservation of human dignity, the principle of non-discrimination, the ban on bribery and blackmail and the maintenance of adequate working conditions.

9.6 This clause shall in no manner be construed or interpreted to constitute and/or create an employment relationship between BMW and the Temporary Employment Services Provider employees or an agency relationship between BMW and the Temporary Employment Services Provider.

10. Absence of Consultants

10.1 The Temporary Employment Services Provider acknowledges and accepts that high productivity and the timeous completion of work are of crucial importance to BMW.

10.2 Where the consultant is absent, the Temporary Employment Services Provider shall provide an alternative consultant to render services if requested to do so by BMW or where necessary, provided that any consultant so provided by the Temporary Employment Services Provider will be subject to the approval of BMW in its discretion.

10.3 The Temporary Employment Services Provider shall ensure that any absence requirements of the consultant shall be agreed upon, as far as possible, by prior arrangement with BMW.

10.4 The Temporary Employment Services Provider will ensure that the consultant will avoid being absent from service when such absence would have a prejudicial impact on BMW.

11. Invoicing, Charges and Payment

11.1 The Temporary Employment Services Provider shall be solely responsible for the payment of all fees and other benefits to the consultants assigned to BMW.

- 11.2 Save as otherwise provided hereunder, the Temporary Employment Services Provider shall be paid only for time worked by the consultants in rendering the prescribed services in terms of the written confirmation of assignment and at the rate prescribed in the said written confirmation of assignment, provided that the consultant indeed devoted his time to providing the said services and provided that BMW receives the invoices and necessary documentation as prescribed in terms of these terms and conditions.
- 11.3 The Temporary Employment Services Provider shall on or before 10th of each calendar month during the currency of these terms and conditions, invoice BMW for the services rendered during the preceding calendar month.
- 11.4 The Temporary Employment Services Provider shall attach to such invoice a schedule indicating the dates upon which the services were rendered during such calendar month, the number of hours worked and the details of services which were rendered. All amounts payable will be exclusive of VAT.
- 11.5 BMW will make payment directly to the Temporary Employment Services Provider within 30 days (or within such other time period as agreed between the parties) of receipt of the relevant invoice and schedule and in accordance with the relevant Purchase Order provided that the amounts so claimed are acceptable to BMW in its absolute discretion.
- 11.6 BMW will reimburse the Temporary Employment Services Provider for the approved expenses incurred in regard to the training of consultants within 30 (thirty) days of the receipt of the invoice and documentary proof of such expenses.
- 11.7 BMW will not be liable to the Temporary Employment Services Provider for any incidental expenses incurred by the Temporary Employment Services Provider or its consultants and will only reimburse the Temporary Employment Services Provider for special or unusual expenses incurred at BMW's specific instance and request and with BMW's prior written approval.
- 11.8 The Temporary Employment Services Provider shall credit BMW with all discounts received from its sub-contractors, including but not, limited to cash discounts, bonuses, commissions and rebates.

12. Income Tax

The Temporary Employment Services Provider shall make all of the necessary disclosures to the South African Revenue Services in regard to its conduct of business and the provision of consultants to BMW as envisaged in these terms and conditions and shall submit to BMW upon signature hereof and thereafter on an annual basis at the beginning of the Temporary Employment Services Provider's financial year, a valid and current exemption certificate from the South African Revenue Services, failing which BMW shall, on a monthly basis, deduct from the consideration payable to the Temporary Employment Services Provider in respect of each consultant, income tax as specified for employees in the Income Tax Act.

13. Placement Conversion Fee

- 13.1 In the event that BMW has secured the placement of any consultant employed by the Temporary Employment Services Provider and has paid a placement conversion fee to a third party in regard to such placement, and the consultant's services with BMW are terminated for whatever reason at any time during the period of assignment, the Temporary Employment Services Provider and the consultant shall be liable to BMW jointly and severally, the one paying the other to be absolved for the full placement conversion fee in one lump sum within 30 (thirty) days of such termination of services.
- 13.2 In the event that the agreement between the parties is terminated for whatever reason and any consultant rendering services to BMW at the time of such termination is placed with an alternative Temporary Employment Services Provider and continues to render services to BMW, BMW shall not be obliged to pay to the Temporary Employment Services Provider any amount in regard to a placement conversion fee.
- 13.3 In the event that a consultant employed by the Temporary Employment Services Provider and placed on assignment with BMW takes up employment with BMW during a particular period of assignment, a placement conversion fee shall, at the sole discretion of BMW, only be applicable upon prior agreement between the parties in writing. The fee shall not exceed 10% of the consultant's pensionable salary.

14. Training and Travel of Consultants

- 14.1 Where it appears, at BMW's sole discretion, that any consultant may require further training in order to properly provide the services required by BMW, then BMW may request the consultant to attend specified training courses. The terms and conditions

upon which this will be done, will be recorded in writing between the Temporary Employment Services Provider and BMW.

- 14.2 In the event that a Consultant is required to travel within the scope of the assignment to BMW, the terms and conditions contained in the BMW SA Indirect Purchasing Information: Traveling Expenses for Temporary Employment Services Providers / Labour Brokers/ Temporary Staff shall apply and BMW may reimburse the Temporary Employment Services Provider for such travel and related costs in the manner and the amounts as stipulated therein.

15. Termination

- 15.1 The agreement between the parties shall remain in force and effect until it is terminated by the one party giving the other party not less than 30 (thirty) days prior written notice of termination.
- 15.2 In the event that the agreement is terminated by the Temporary Employment Services Provider, it shall ensure that any services are completed by the consultant if so required by BMW in writing, notwithstanding such termination.

16. Breach

- 16.1 In the event that the Temporary Employment Services Provider and/or the consultant acting within the course and scope of its duties to the Temporary Employment Services Provider, commits a material breach of these terms and conditions, BMW shall be entitled to terminate the agreement between the parties forthwith and avail itself of all remedies available to it at law.
- 16.2 In the event of the Temporary Employment Services Provider
- 16.2.1 being provisionally or finally sequestrated or liquidated or committing any act of insolvency in terms of the Insolvency Act No. 24 of 1936; or
 - 16.2.2 being placed under provisional or final business rescue proceedings as envisaged in the Companies Act 71 of 2008 (as amended) or having judgement and/or execution levied against its assets; or
 - 16.2.3 having assigned, ceded or delegated the agreement without the prior written consent of BMW having been obtained; or
 - 16.2.4 having entered into a compromise with its creditors; or

- 16.2.5 having breached the provisions in regard to confidentiality and non-disclosure hereof; or
 - 16.2.6 being prevented from performing its duties hereunder for a continuous period of two weeks for whatever reason; or
 - 16.2.7 being guilty of any conduct which, in the opinion of BMW, is prejudicial to the interests of BMW, then BMW shall be entitled to terminate the agreement with immediate effect by giving written notice to the effect and claim such damages (including consequential damages) as it may have suffered.
- 16.3 In the event of BMW breaching any provision in terms of these terms and conditions and fails to remedy such breach within ten (10) days of the date of written notice by the Temporary Employment Services Provider requiring BMW to do so, then the Temporary Employment Services Provider shall be entitled to cancel the agreement, and claim damages.

17. Insurance and Liability

- 17.1 The Insurance and Liability Provisions are contained in Annexure "A2" of the Purchasing Terms and Conditions.
- 17.2 The Temporary Employment Services Provider shall effect the appropriate insurance covering its liability in terms of clause 3 of Annexure "A2" of the Purchasing Terms and Conditions.

18. Indemnity

- 18.1 The Temporary Employment Services Provider hereby indemnifies and holds BMW and any of its employees harmless against any claim, damage or loss of whatsoever nature and howsoever caused which BMW may sustain arising out of the provision by the Temporary Employment Services Provider of consultants, and the provision of services by consultants, in terms of the provisions of these terms and conditions and/or any action, negligence and/or omission by the Temporary Employment Services Provider, its employees and/or consultants assigned to BMW in terms hereof.
- 18.2 Without limiting the generality of the foregoing, the Temporary Employment Services Provider specifically indemnifies BMW against any claim, demand, cause of action, liability, loss or expense arising by reason of claims of government authorities or others of any actual or asserted failure of the Temporary Employment Services Provider,

and/or consultants assigned to BMW, to comply with any law, regulation, rule, order or guideline of any governmental or statutory authority or body.

- 18.3 Neither BMW nor its employees shall be liable for any loss and/or damage of whatsoever nature or howsoever caused suffered by the Temporary Employment Services Provider, its employees, agents and/or consultants assigned to BMW in terms hereof, arising out of the provision of consultants by the Temporary Employment Services Provider and/or by the consultants rendering services to BMW and/or by the Temporary Employment Services Provider and/or the consultants being on the premises of BMW.

19. Confidentiality and Non-Disclosure

19.1 The Temporary Employment Services Provider acknowledges that in order to equip it appropriately for the fulfillment of its obligations hereunder, it may be necessary for BMW to disclose to it, or the consultant assigned by it, certain confidential information, trade secrets, technical data and other information relating to BMW or its methods of carrying on business. In this regard it is recorded that:

19.1.1 Confidential information includes all information proprietary to BMW, whether or not reduced to writing or tangible medium of expression.

19.1.2 Confidential, specifically but without limitation includes information relating to the intellectual property and business practices of BMW.

19.1.3 Intellectual property includes, but shall not be limited to, information relating to the research and development, inventions, discoveries, developments, improvements, methods and processes, know-how, drawings, blueprints, specifications, product briefs, algorithms, computer programmes and software, compositions, works, concepts, ideas, prototypes, models, samples, screens, moulds, lasts, dies, formulae, writings, notes, patents, copyrights, trade mark, trade names, trade secrets and patent, trade mark and copyright applications.

19.1.4 Business practices includes, inter alia, information relating to intellectual property, business plans, financial information, products, services, manufacturing processes and methods, costs, sources of supply, advertising and marketing plans, customer information and lists, sales, profits, pricing methods, personnel and business relationships.

19.1.5 Confidential information also includes comparable information that BMW may receive or has received from others who do business with BMW.

19.2 The Temporary Employment Services Provider undertakes to protect confidential information of BMW, and not to use, disclose, copy, divulge or allow access to any information relating to BMW's affairs, business, operating methods, trade secrets, customers, technical data, data bases and any other information received from BMW in connection with or ancillary to these terms and conditions.

- 19.3 The Temporary Employment Services Provider acknowledges that this undertaking shall continue after the termination of the agreement and shall survive as long as the confidential nature of the information is maintained.
- 19.4 The Temporary Employment Services Provider undertakes not to disclose to any third party any information concerning any project, assignment or task undertaken for BMW and furthermore undertakes not to disclose to use on behalf of BMW any confidential information belonging to a third party, unless written authorization from the third party is obtained to the satisfaction of BMW.
- 19.5 The Temporary Employment Services Provider represents and warrants that its obligations as provided for hereunder are not in conflict with any prior obligations to third parties.
- 19.6 Any and all undertakings given by the Temporary Employment Services Provider in terms of these terms and conditions shall be deemed to have been given by and shall be binding upon its consultants, members and/or assigns and/or employees and/or sub-contractors, whether they were members and/or assigns and/or employees at the same time of signature of these terms and conditions or whether they subsequently became members and/or assigns and/or employees.
- 19.7 The Temporary Employment Services Provider acknowledges that it is aware of the provisions of this clause and undertakes to make the provisions of this clause known to all other members and/or assigns and/or employees and consultants and shall ensure that all consultants assigned to BMW in terms of these terms and conditions shall acknowledge in writing that they are equally bound hereby and shall comply with all provisions relating to confidentiality and non-disclosure
- 19.8 The parties hereto agree that the Temporary Employment Services Provider shall not acquire, by implication or otherwise, any right in or title to or license in respect of confidential information disclosed pursuant to these terms and conditions.

20. Intellectual Property Rights

- 20.1 All intellectual property rights including copyrights, patent rights and any other intellectual property rights in any works or systems created and/or procured as a result of the performance of the Temporary Employment Services Provider and/or its consultants and/or any sub-contractor in terms of these terms and conditions, shall vest

in and are hereby transferred to BMW, unless specifically agreed otherwise in writing. For this purpose works created in terms of this contract shall be deemed to have been created under the control and direction of BMW.

- 20.2 The ownership and intellectual property rights of all plans, drawings, designs, specifications, business practices and all other documents provided by BMW to the Temporary Employment Services Provider, and/or to any consultant, shall remain the property of BMW and such item shall be returned to BMW on termination of this contract or on demand.
- 20.3 The Temporary Employment Services Provider, and/or consultants who sign a confirmation of assignment, acknowledge that nothing contained in these terms and conditions, shall be construed as conferring on the Temporary Employment Services Provider and/or any consultant, any right or interest in any of the trade marks, registrations thereof, designs, copyrights, brands, emblems, insignia, symbols, slogans or any other intellectual property of BMW.
- 20.4 The Temporary Employment Services Provider and any consultant undertake not to use any intellectual property of BMW in any publication, advertisement, signage, media, circular or in any manner whatsoever without the prior written approval of BMW.

21. Protection of Personal Information

- 21.1 In this clause, the following expressions shall have the meanings set out opposite them:
- 21.1.1 **“Cloud computing”** shall mean the practice of using remote servers on the internet or internet-enabled devices to process data;
- 21.1.2 **“Personal Information”** shall mean any information relating to BMW, its holding company, subsidiaries, associated and affiliated companies, 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 Temporary Employment Services Provider pursuant to or as a result of this Agreement;
- 21.1.3 **“POPI”** shall mean the Protection of Personal Information Act, 2013, including any regulations and amendments thereto from time to time;

- 21.1.4 **“Process”** shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 21.1.4.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consolation or use;
 - 21.1.4.2 dissemination by means of transmission, distribution or making available in any other form; or
 - 21.1.4.3 merging, linking, as well as restriction, degradation, erasure or destruction of information.
- 21.2 The Temporary Employment Services Provider shall strictly comply with all provisions of POPI relating to the Processing of Personal Information. Failure by the Temporary Employment Services Provider’s to comply with POPI or any of the provisions of this clause shall be deemed to constitute a material breach of these terms and conditions and shall entitle BMW, in its sole discretion, to immediately terminate this Agreement.
- 21.3 The Temporary Employment Services Provider shall Process Personal Information only for purposes relating directly to these terms and conditions and the rendering of the services in terms hereof. Unless provided for in terms of the provisions of these terms and conditions or otherwise as may be agreed to by BMW in writing, the Temporary Employment Services Provider shall not modify, merge with other data, commercially exploit or engage in any other practice or activity that may in any manner adversely affect the integrity, security or confidentiality of the Personal Information.
- 21.4 All Personal Information shared by BMW with the Temporary Employment Services Provider during the subsistence of these terms and conditions shall constitute confidential information and as such, the Temporary Employment Services Provider shall comply with all the confidentiality and/or non-disclosure provisions contained in these terms and conditions, and as such the Temporary Employment Services Provider shall not disclose any Personal Information to any third party without BMW’s prior written consent.
- 21.5 The Temporary Employment Services Provider shall implement and maintain adequate technical and organizational security and safety measures to protect the integrity of

Personal Information Processed by it under these terms and conditions and to avoid any damage or unauthorised access to or loss of any such Personal Information.

- 21.6 The Temporary Employment Services Provider shall immediately notify BMW if Personal Information has been lost or damaged, or accessed or acquired by an unauthorised person, and the Temporary Employment Services Provider shall comply with any instructions and/or directives which BMW may issue in the event of any such circumstances.
- 21.7 BMW shall be entitled to verify compliance of the technical and organizational security and safety measures implemented by the Temporary Employment Services Provider, or appoint auditors to do so, upon reasonable prior notice to the Temporary Employment Services Provider. BMW shall respect the operational sequences of the business of the Temporary Employment Services Provider and the Temporary Employment Services Provider shall assist BMW in the execution of the inspections in the best possible way.
- 21.8 The Temporary Employment Services Provider shall provide BMW upon request with any information required to meet BMW's obligations in law relating to the processing of Personal Information and make the necessary documentation available within a reasonable time.
- 21.9 The Temporary Employment Services Provider shall ensure that its personnel and /or any other authorised person or entity which processes Personal Information on its behalf receives adequate and appropriate training in the care and handling of Personal Information in terms of POPI and any other applicable data privacy legislation.
- 21.10 The Temporary Employment Services Provider shall maintain adequate records of all processing of Personal Information, including the training of the Temporary Employment Services Provider's personnel with regard to the Protection of Personal Information and any applicable data privacy legislation.
- 21.11 The Temporary Employment Services Provider shall not transfer any of the Personal Information across the borders of the Republic of South Africa or use any Cloud computing solutions without BMW's prior written approval.
- 21.12 In the event that the Temporary Employment Services Provider sub-contacts any of its obligations in terms of these terms and conditions, it shall do so only by way of a written

agreement with the sub-contractor which imposes the same obligations relating to the protection of Personal Information on the sub-contractor as are imposed on the Temporary Employment Services Provider under these terms and conditions. Where the sub-contractor fails to fulfil its data protection obligations under such written agreement, the Temporary Employment Services Provider shall remain fully liable to BMW for the performance of the sub-contractor's obligations under such agreement.

- 21.13 The Temporary Employment Services Provider confirms that it has met all requirements for registration, if any, in terms of the laws applicable to these terms and conditions.
- 21.14 Upon this Agreement coming to an end for whatever reason, the Temporary Employment Services Provider shall return to BMW or destroy, if instructed by BMW to do so, all such Personal Information in its possession, or in the possession of its agents, sub-contractors or any third party who may have had access and/or possession of the Personal Information, in accordance with such procedures which BMW may prescribe from time to time.
- 21.15 The Temporary Employment Services Provider shall indemnify and hold BMW harmless against any claim, loss, damage, cost and expense (including legal fees) relating to or arising from the Temporary Employment Services Provider breaching any of the provisions of this clause.
- 21.16 Insofar as BMW processes any personal information of the Temporary Employment Services Provider and/or its consultants, BMW shall conduct such processing within the ambit of prevailing data privacy legislation and shall adhere to such provisions to the fullest extent. For the sake of clarity, such processing shall include, but not be limited to the sharing of personal information with BMW's legal and tax advisors or consultants, service providers, agents, affiliate companies and governmental authorities as well as the trans-border flow of such personal information to such entities abroad.

22. Environment

- 22.1 The Temporary Employment Services Provider shall, during the performance of its obligations in terms of this Agreement, use the necessary resources (including, but not limited to materials, energy and water) efficiently and shall reduce the environmental impact thereof (in particular in relation to waste, waste water, air pollution and noise) to a

minimum. The Temporary Employment Services Provider shall also apply these measures to the operations and cost of transportation and logistics.

22.2 In the event that the performance of the Temporary Employment Services Provider's obligations in terms of this Agreement may or will have any environmental impact, it will establish and maintain a certified environmental management system in accordance with the requirements of "ISO 14001" or an acknowledged and certified environmental management system derived from "ISO 14001" no later than two years following the commencement of this Agreement, and provide evidence thereof to BMW by submission of a corresponding certificate.

22.3 The Temporary Employment Services Provider shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Provision 22 ("Environment").

23. Social Responsibility

23.1 It is of paramount importance to BMW that corporate activities take account of the social responsibility to employees and society as a whole. This applies both to BMW itself and to its Temporary Employment Services Providers and Suppliers. BMW and the Temporary Employment Services Provider acknowledge their compliance with the principles and rights set by the International Labour Organisation (ILO) in its "Declaration on fundamental principles and rights at work" (Geneva 06/98), the Directives of the UN Initiative Global Compact (Davos, 01/99) and the UN Guiding Principles on Business and Human Rights (2011) as well as the applicable South African legislation. The following principles are of particular importance:

- Preservation of human rights,
- Elimination of forced, compulsory, and child labour,
- Positive and negative freedom of association,
- Elimination of discrimination on the basis of gender, origin, religion or belief, membership of a trade union or the like, handicap, age, sexual identity, nationality, marital status, political affiliation, veteran status, or other characteristics protected by local law,
- Compliance with occupational health and safety standards,
- Protection from individual arbitrary personnel measures,
- Maintenance of employability by basic and advanced training,

- Maintenance of adequate social working conditions,
- Provision of conditions that enable employees to enjoy a reasonable standard of living,
- Remuneration, which permits employees to secure their livelihoods including their social and cultural participation (living wage),
- Implementation of equal opportunities and family-friendly policies,
- The protection of indigenous rights,
- Ban on bribery, corruption and blackmail,
- Compliance with current laws and regulations.

In view thereof, the Temporary Employment Services Provider shall take adequate measures in order to prevent corruption offences within its company.

23.2 It shall be the Temporary Employment Services Provider's responsibility to cause all and any of its sub-contractors to act according to the regulations of this Provision 23 (Social Responsibility).

24. Cession, Assignment and Delegation of Rights

The Temporary Employment Services Provider undertakes to ensure that neither it nor any consultant assigned to BMW in terms of these terms and conditions shall be entitled to sell, delegate, cede, assign or in any other way alienate or dispose of the whole or any part of the rights and obligations created in terms of these terms and conditions without the prior written consent of BMW.

25. Domicile and Notices

25.1 BMW hereby chooses as its domicilium citandi et executandi for the service of legal process in terms of these terms and conditions the following address:

1 Bavaria Avenue, Randjespark Ext. 17, Midrand

(For Attention Legal Services & Compliance Department).

25.2 BMW hereby chooses as its postal address for the service of notices in terms of these terms and conditions the following address:

P O Box 2955, Pretoria, 0001

25.3 The Temporary Employment Services Provider shall indicate in the letter of acceptance an address in Republic of South Africa as its domicilium citandi et executandi for the

service of legal process in terms of these terms and conditions and a postal address in the Republic of South Africa for the service of notices in terms of these terms and conditions.

- 25.4 Either party shall be entitled from time to time, by written notice to the other, to change its domicilium to any other address within the Republic of South Africa 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.
- 25.5 Any notice or communication required or permitted to be given in terms of these terms and conditions shall be valid and effective only if given in writing.
- 25.6 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 postal address.
- 25.7 Either party shall be entitled from time to time, by written notice to the other, to change its postal address to any other address within the Republic of South Africa, provided that the change shall become effective only ten (10) days after service of the notice in question.

26. Jurisdiction

The parties hereto consent to the jurisdiction of the Magistrate's Court for any dispute or claim arising from these terms and conditions. Notwithstanding the aforementioned, nothing herein contained shall be interpreted so as to preclude a party from instituting proceedings in the relevant High Court.

27. Applicable law

These terms and conditions (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the parties in terms of and arising out of the conclusion, breach and termination of the provisions of these terms and conditions) shall be interpreted and governed in all respects by the laws of the Republic of South Africa.

28. Severability

If any provision of these terms and conditions are or become invalid or unenforceable, such provision shall be divisible and the remainder of these terms and conditions shall nevertheless, be valid and binding.

29. Non Variation

No amendment, consensual cancellation or other modification of these terms and conditions, including the provisions of this clause, shall be valid or binding on a party hereto unless reduced to writing and executed by both parties hereto.

30. Non-Waiver

No latitude, extension or other indulgence which may have been given or allowed by either party (“the grantor”) to the other in respect of any obligation hereunder shall under any circumstances operate as a waiver or novation of, or otherwise affect, any of the grantor’s rights in terms hereof or arising herefrom, or preclude the grantor from enforcing at any time and without notice, strict and punctual compliance with each and every provision hereof.

31. Entire Agreement

These terms and conditions contain the entire agreement between the parties and no conditions, warranties or representations made by any party prior to the date of these terms and conditions, shall be of any force or effect nor shall any agent or representative have any authority to make representations, statements, warranties or agreements that are not herein expressed unless the same are made in writing and signed by duly authorized representative of each party.

32. Costs

Each party shall bear their own costs in regard to the negotiation, preparation and conclusion of the agreement between the parties.