



Sime Darby Motor Group (NZ) Limited

TERMS OF PURCHASE

(last updated, July 2023)

1. DEFINITIONS

1.1. The following definitions are used in these terms and conditions of purchase (“Terms”):

- (a) **“Affiliate”** means a related company, as that term is defined in section 2(3) of the Companies Act 1993 (read as if the expression “company” in that subsection included any body corporate of any jurisdiction);
- (b) **“Applicable Laws”** means all applicable laws, legislation, regulations, bylaws, codes, standards and other legal requirements from time to time;
- (c) **“Contract”** means these Terms, the Order and any other documentation agreed in writing by the Parties to form part of this Contract from time to time;
- (d) **“Deliverables”** means any products, documents or other deliverables provided by you to us in connection with the Services;
- (e) **“Delivery Date”** means the date and, if specified, time for delivery of Goods to us, specified in the Order or otherwise notified in writing to you by us;
- (f) **“Delivery Location”** means the delivery location specified in the Order or otherwise notified in writing to you by us where the Goods are to be delivered, and/or Services are to be performed, by you;
- (g) **“Force Majeure”** means any event beyond the control of either Party to this Contract which was not reasonably foreseeable at the time and which prevents or hinders in any material way the carrying out by either Party of its obligations under this Contract, including but not limited to civil disturbance, war, terrorism, hostilities, revolution, act of God, epidemic or by reason of law decree or policy of government, strikes, lockouts or other industrial disputes (except any strikes, lockouts or industrial disputes involving solely a Party’s employees), government acts, pandemics, outbreaks of infectious diseases, natural disasters, fire, explosion, storm, flood, earthquake, tide, lightning, act of war. For the avoidance of doubt, insufficient credit, labour shortages, capital or financing and events of COVID 19 and its variants shall not be deemed as a Force Majeure Event;
- (h) **“Goods”** means all goods supplied by you to us from time to time in accordance with this Contract and described in the Order (including any parts or services supplied by you in connection with the Goods);
- (i) **“GST”** has the meaning given to that term in the Goods and Services Tax Act 1985;
- (j) **“Insolvency Event”** means a party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law or becomes, or is deemed to be insolvent or bankrupt (or the other party considers (acting reasonably) that any such event or similar event has occurred or is likely to occur in any jurisdiction);
- (k) **“Materials”** has the meaning given to that term in clause 14.1 of these Terms;
- (l) **“Order”** means a purchase order form submitted by us to you for the supply of Goods and/or Services, including special terms and/or product specifications from time to time;
- (m) **“Parties”** means SDMG and the Supplier;
- (n) **“Personal Information”** has the meaning given to that term in the Privacy Act 2020;
- (o) **“Price”** has the meaning given to that term in clause 4.1 of these Terms;
- (p) **“Privacy Laws”** means all privacy laws, statutes and regulations applicable to Personal Information, including the Privacy Act 2020 and applicable guidance issued by the Office of the New Zealand Privacy Commissioner from time to time;
- (q) **“PPS Act”** has the meaning given to that term in the Personal Property Securities Act 1999;
- (r) **“PPS Register”** has the meaning defined in the PPS Act;
- (s) **“Representative”** means, in respect of a party, its directors, officers, employees, agents, advisors and sub-contractors;
- (t) **“Services”** means all services supplied by you to us from time to time in accordance with this Contract and described in the Order; **“Supplier”**, **“you”** or **“your”** means the addressee of the Order;
- (u) **“Suspension Event”** has the meaning given to it in clause 16.1 of these Terms;
- (v) **“SDMG”**, **“we”**, **“our”** or **“us”** means the Sime Darby company specified in the Order, being Sime Darby Motor Group (NZ) Limited or any of its Affiliates; and **“Terms”** means these Terms, as amended by us from time to time.

2. APPLICATION OF TERMS

- 2.1. This Contract applies to all Goods and/or Services supplied by you to us. Unless expressly agreed otherwise in writing, this Contract takes precedence over any other terms and conditions.
- 2.2. These Terms should be read together with any other document forming this Contract. If there is any inconsistency between any of the documents making up this Contract, unless expressly agreed otherwise in writing, the document higher in the following list will prevail to the extent of the inconsistency:
 - (a) special terms specified in writing in the Order;
 - (b) these Terms;
 - (c) any product specification specified in the Order; and
 - (d) any other documentation which the Parties agree in writing forms part of this Contract.

3. ORDERS

- 3.1. We may place orders for Goods and/or Services from time to time by submitting an Order to you, or as otherwise agreed in writing between the Parties.
- 3.2. Unless you notify us in writing within one business day of receipt of an Order that you cannot supply the Goods and/or Services specified in that Order, you are deemed to have accepted the Order.



Sime Darby Motor Group (NZ) Limited

- 3.3. You acknowledge that nothing in this Contract:
- (a) requires us to commence Orders or order any minimum or maximum quantity of Goods and/or Services; and
 - (b) restricts us from procuring goods and/or services that are the same or similar to the Goods and/or Services from any other party or supplier.
- 3.4. We may cancel any Order, in whole or in part, at any time, by notifying you in writing.
- 3.5. If an Order is cancelled by either party for any reason, and we have pre-paid any amounts to you under that Order, you must immediately refund to us any prepaid amount(s) that relate to Goods and/or Services that have not been delivered to us as at the date of cancellation.

4. PRICE

- 4.1. We will pay you the price specified in the Order, or otherwise agreed in writing with you (the "Price") for the Goods and/or Services that you supply to us in accordance with this Contract, subject to and in accordance with the payment terms set out in clause 5 of these Terms. Unless expressly otherwise stated in the Order, the Price is:
- (a) in New Zealand Dollars;
 - (b) exclusive of GST; and
 - (c) the total amount payable by us to you for the applicable Goods and/or Services (other than GST), including: (i) all costs, taxes or duties imposed on or in relation to the Goods and/or Services; and (ii) any cost of storage, packing, transportation, insurance, unloading and delivery to us.
- 4.2. Prices specified in the Order are fixed, unless otherwise agreed in writing by the Parties.
- 4.3. We are entitled to any discount for prompt payment or bulk purchase customarily granted by you, whether or not set out in the terms of this Contract.

5. PAYMENT

- 5.1. You must submit valid tax invoices to us on or after delivery of the Goods to the Delivery Location and/or completion of the Services:
- (a) in accordance with the Goods and Services Tax Act 1985;
 - (b) in such format and with such supporting information as we may reasonably require (including, where possible, specifying the relevant Order number, a description of the Goods and/or Services supplied, SDMG contact name, SDMG part number and SDMG cost code as stated on the Order); and
 - (c) to the invoice address set out on the Order
- 5.2. We pay the amount owing under the relevant invoice, in the absence of a genuine dispute, by the end of the calendar month following the receipt date of invoice, provided the Goods and/or Services comply with the terms of this Contract and we receive the relevant invoice in accordance with this clause 5.
- 5.3. We may deduct or withhold any amounts payable by you to us (whether under this Contract or otherwise) against any amounts payable by us to you from time to time.

6. PERSONAL PROPERTY SECURITIES ACT

The Supplier agrees:

- (a) and acknowledges that nothing in this Contract creates a security interest over the Goods and/or Services as defined in the PPS Act.
- (b) that the Goods supplied and/or the Services provided are free of encumbrances as referred to in clause 10.2(a) of these Terms.
- (c) not to register a financing statement in relation to the supply of the Goods and/or the provision of the Services on the PPS Register.

7. DELIVERY

- 7.1. You must
- (a) deliver the Goods in full and in good condition to the Delivery Location by the Delivery Date;
 - (b) perform the Services at the Delivery Location in accordance with any timeframes, service levels and specifications specified in this Contract;
 - (c) ensure all Goods are appropriately packed and labelled so as to avoid damage during transportation and comply with our requirements and the requirements of the carrier.
- 7.2. Where the Delivery Date is not specified in the Order, the Delivery Date will be by agreement between the Parties and within our normal goods inwards hours of 8.30 a.m. to 3.00 p.m. Monday to Friday (excluding public holidays).
- 7.3. Time of delivery of the Goods and/or performance of the Services is of the essence.
- 7.4. We may postpone the Delivery Date or timeframe for the performance of Services by giving written notice to you at least 24 hours prior to the Delivery Date or scheduled performance.
- 7.5. You must immediately notify us in writing of any potential delay in delivery or performance.
- 7.6. All consignments and delivery notes must quote the Order number, the SDMG contact name, SDMG part number and SDMG cost code as stated in the Order, a description of the Goods and/or Services, the net and gross quantity with units, a delivery note number and your contact number.
- 7.7. If the Goods are to be delivered in separate instalments or Services to be performed on more than one occasion, this Contract will be treated as a single contract and not severable.
- 7.8. Delivery of Goods occurs when we confirm that the Goods have been delivered to the Delivery Location and inspected and accepted by us. We will have a reasonable period of time to inspect the Goods.
- 7.9. Signing of any delivery receipt (for Goods) or payment of invoices will not imply our acceptance of the delivered Goods or performed Services (as applicable) or a waiver of any claim by us.

8. TITLE AND RISK

- 8.1. Legal and beneficial ownership of the Goods and any Deliverables will immediately pass to us upon the earlier of:
- (a) delivery of the Goods and/or Deliverables to us; or
 - (b) if we pay for any Goods and/or Deliverables before they are delivered, payment by us.
- 8.2. Without affecting our right to reject any Goods under clause 8 of these Terms, responsibility for any loss or damage to the Goods and any Deliverables will remain with you until you have delivered the Goods and/or Deliverables to us at the Delivery Location, except for loss or damage:



Sime Darby Motor Group (NZ) Limited

- (a) caused by the manufacturing, processing, packaging or quality of any Goods and/or Deliverables; or
- (b) arising out of a breach of any of the warranties set out in these Terms, in which case you will solely bear the risk of such loss or damage in accordance with clause 19 of these Terms.

9. REJECTION

- 9.1. Without limiting any other rights or remedies we may have under this Contract or otherwise, if you do not comply with clause 10 of these Terms or you deliver any Goods and/or perform any Services that are otherwise not in accordance with this Contract, we may, on notice to you, reject all or part of the relevant Goods and/or Services.
- 9.2. If we reject all or part of any Goods which are delivered, you must promptly:
 - (a) collect the rejected Goods from the Delivery Location at your own expense; and
 - (b) at our sole discretion (i) refund to us the Price paid for the relevant Goods; or (ii) replace the relevant Goods, at no cost to us and by such date as we reasonably require.
- 9.3. If we reject all or part of any Services which are performed, you must promptly, at our sole discretion either:
 - (a) re-perform the relevant Services at no cost to us and by such date as we reasonably require; or
 - (b) refund the Price paid for the relevant Services.
- 9.4. You will assume all costs of storage, transportation, handling both ways and disposal of any rejected Goods and/or Services (as applicable).
- 9.5. You will remove any trademarks, trade names and any other marks owned by, or identifying, us from any rejected Goods before disposing of such Goods.

10. WARRANTIES

10.1. General

You warrant and present that:

- (a) the performance your obligations under this Contract will not breach or conflict with any Applicable Laws or agreement, mortgage or other security interest to which you are a party or to which any of your processing or storage sites (or any equipment or personal property in any such site) is subject;
- (b) you hold all consents, approvals, permits, licences and accreditations necessary to manufacture (if applicable), store and/or supply the Goods and/or perform the Services in accordance with this Contract;
- (c) your financial condition is stable and sufficient to enable you to perform your obligations under this Contract;
- (d) you have adequate resources available to enable you to meet our requirements under this Contract;
- (e) you have the capabilities, skills, facilities and experience to supply the Goods and/or Services in accordance with best industry practice and this Contract;
- (f) all your employees, agents and contractors involved in the supply of the Goods and/or Services have the knowledge, qualifications, skills and experience appropriate to supply the Goods and/or Services in accordance with best industry practice and this Contract;
- (g) you will comply with all Applicable Laws and the requirements of any regulatory body that relate to the Goods and/or Services or your obligations under this Contract;
- (h) the Goods and/or Services comply with all other implied conditions, warranties and statutory guarantees, including those contained in the Fair Trading Act 1986 and the Consumer Guarantees Act 1993;
- (i) you will not do any act, or omit to do any act, that may cause or is likely to cause damage to, adversely affect, or otherwise bring into disrepute the good name, reputation or image of SDMG; and
- (j) you are duly authorised to enter into this Contract and your obligations under this Contract are valid, binding and enforceable in accordance with its terms.

10.2. Goods

With respect to each of the Goods (including all applicable Goods packaging) supplied to us under this Contract, you warrant and represent that:

- (a) ownership in the Goods, free from all liens, charges, encumbrances or other security interests, will vest in us on the earlier of payment or delivery of the Goods in accordance with clause 8 of these Terms;
- (b) the Goods comply with all Applicable Laws and do not infringe the intellectual property rights, or other proprietary rights, of any third party;
- (c) the Goods comply with the Order and the Contract (including any description, specification(s), quantity, quality, condition and packaging stated or referred to therein), including any sample, pattern, drawing or design approved or supplied by us; the Goods are of merchantable and good quality;
- (d) the Goods are fit and safe for their usual purpose and for any purposes expressly or impliedly made known by us to you;
- (e) the Goods are free from defects, including latent or inherent defects, defaults in design, material and manufacturing and are of the highest quality attainable within any specifications set out in the Order or as otherwise notified by us to you; and
- (f) you will obtain all usual and customary trade warranties from manufacturers and suppliers of Goods (if applicable, including raw materials used to manufacture the Goods) or in relation to goods acquired for supply under the Contract and ensure we have the benefit of those warranties.

10.3. Services

With respect to each of the Services provided to us under this Contract, you warrant and represent that:

- (a) the Services comply with all Applicable Laws and do not infringe the intellectual property rights, or other proprietary rights, of any third party;
- (b) the Services comply with the Order and this Contract;
- (c) the Services are fit for their usual purpose and for any purposes expressly or impliedly made known by us to you;
- (d) the Services will be performed promptly and properly by competent and appropriately qualified personnel and be completed by the date(s) specified in the Order, or if no timeframe is specified, within a reasonable timeframe;
- (e) the Services will be performed using due skill, care and diligence, having regard to the nature of the Services to be performed;
- (f) you will follow all reasonable instructions issued by us and our Representatives;



Sime Darby Motor Group (NZ) Limited

- (g) you will maintain in good order all materials and facilities owned or controlled by us that are utilised by you; and
- (h) you will procure that your Representatives observe the provisions of this Contract as if they were party to it.

11. HEALTH AND SAFETY

11.1. Each party will comply with:

- (a) the Health and Safety at Work Act 2015, including all applicable regulations under that Act, as well as all applicable standards and codes of practices and Sime Darby Environmental Health and Safety policies available at <https://www.simedarby.co.nz/legal> relating to health and safety ("**Health and Safety Laws**"); and
- (b) the other party's pre-notified and reasonable health and safety policies when on the other party's premises.

11.2. Where you supply us with Goods under this Contract:

- (a) you must, so far as reasonably practicable, ensure that the Goods are safe and without risks to the health and safety of persons who:
 - i. will use, handle, store, inspect, clean, maintain or repair those Goods at a workplace; and
 - ii. are at, or in, the vicinity of a workplace and who are exposed to the Goods at the workplace or whose health and safety may be affected by the Goods; and
- (b) you must provide us with adequate information concerning the purpose for which the Goods were designed or manufactured, the results of any testing or examination of the Goods, and any conditions necessary to ensure the Goods are without risks when used for a purpose for which the Goods were designed or manufactured.

11.3. Where you provide us with Services under this Contract, you:

- (a) must ensure that your personnel, employees, contractors and agents:
 - i. are suitably qualified and trained, and have the requisite skills, expertise, qualifications and experience in health, safety and environmental matters;
 - ii. will carry out their respective duties with due care, skill and diligence;
 - iii. are provided with appropriate personal protective and safety equipment when performing the Services and that such equipment is regularly inspected and maintained in a safe working condition; and
 - iv. comply with all relevant Health and Safety Laws;
- (b) must exercise all reasonable care when visiting our premises and follow all of our reasonable instructions in relation to the use of such premises;
- (c) must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Services, including us where relevant;
- (d) will, to the maximum extent permitted by law, indemnify and keep us indemnified from all costs, damages, liabilities, losses and expenses incurred or suffered by us in respect of any breach of relevant Health and Safety Laws; and
- (e) upon completion of the Services being provided at the site, will remove from the site at your cost all of your tools, plant and equipment, rubbish and surplus materials, and leave the site in a condition acceptable to us.

12. HIRED OR LEASED GOODS

If we hire or lease Goods from you:

- (a) We will not be liable for any depreciation in the value of the Goods due to fair wear and tear;
- (b) we will not be responsible for maintaining or repairing the Goods;
- (c) in addition to your obligations under clause 10 of these Terms, you will provide us with adequate information regarding any health and safety issues relating to the operation or use of the Goods; and
- (d) we will not be liable for any loss or damage to the Goods other than that which is covered under our ordinary "all risks" property insurance policy.

13. PACKAGING

We undertake no responsibility to care for or return packaging materials. If you request in writing before or on delivery that we return packaging materials, we will at your sole risk and expense return such materials as are in a usable condition after the unpacking of the Goods.

14. MATERIALS AND INTELLECTUAL PROPERTY

- 14.1. You will bear all risk of loss or damage to any materials supplied by us in connection with this Contract and/or for incorporation in the Goods or use in connection with the Services (the "**Materials**").
- 14.2. Without prejudice to any other right or remedy we may have, whether under this Contract, under statute or otherwise, you will at your own cost replace or reinstate lost or damaged Materials within a reasonable time.
- 14.3. Each party will remain the owner of all intellectual property rights owned by it prior to the date of this Contract or created outside the scope of this Contract.
- 14.4. Property and all intellectual property rights in the Materials will at all times remain with us.
- 14.5. In the case of Services, you hereby assign to us all rights, title and interest in and to any intellectual property developed or created by or on behalf of you under or in connection with the Contract (including any Deliverables). To the extent that any such intellectual property (including in any Deliverables) does not vest in us, you will grant to us a perpetual, irrevocable, royalty-free, world-wide, transferrable and sub-licensable licence to use, develop, modify and exploit the intellectual property so as to allow us to obtain the full benefit of that intellectual property (including any Deliverables). You will do all things and execute all documents or instruments necessary to enable us to obtain, defend and enforce our intellectual property rights set out in this clause 14.

15. INSURANCE

- 15.1. You will maintain in full force and effect during the term of this Contract comprehensive insurance cover, including but not limited to public liability, motor vehicle and general liability cover, with responsible and reputable insurers on an occurrence basis. Such insurance will include cover for the



Sime Darby Motor Group (NZ) Limited

matters and at least the minimum amounts notified by us to you, or if we do not notify any matters and/or minimum amounts to you, such insurance as is required by law and that a reasonable and prudent supplier would maintain in connection with the activities contemplated by this Contract.

15.2. If we request, you will provide us with a certificate of insurance evidencing the insurance cover referred to in clause 15.1 above.

16. SUSPENSION

16.1. In the event of any unforeseen circumstance beyond our control, which operates or may operate to temporarily prevent, hinder or render unnecessary our contemplated use of the Goods and/or Services or any part of them, we may by notice in writing to you suspend the delivery of such Goods and/or performance of such Services or part of them ("**Suspension Event**"). Such Suspension Event will continue until we, at our sole discretion, provide written notice to you that our contemplated use of the Goods or Services is no longer affected.

16.2. The Parties agree that the time(s) for delivery of the Goods and/or performance of the Services will be extended by a period equal to the duration of the Suspension Event.

16.3. If a Suspension Event continues for a period of one month or more, either party may give written notice to the other cancelling this Contract in regard to all undelivered Goods and unperformed Services without liability to the other party.

17. TERMINATION

17.1. Without prejudice to any other right or remedy we may have, whether under this Contract, statute or otherwise, we may terminate any Order and/or this Contract immediately by written notice to you and without incurring any liability if:

(a) you materially or persistently breach this Contract and:

- i. due to the nature of the breach, it is not possible for you to remedy the breach; or
- ii. within 30 days of notice of the breach in writing from us to you, you have not remedied the breach to our reasonable satisfaction (or, in the case of persistent breaches, if you have failed to reasonably satisfy us that the breach has been rectified and will not occur again);

(b) you do not comply with your obligations under clause 15 (*Insurance*), clause 21 (*Anti-bribery and Anti-corruption*), clause 22 (*Privacy*), clause 24.4 (*Assignment*) and clause 24.14 (*Supplier change of ownership*); or

(c) an Insolvency Event occurs in relation to you.

17.2. Upon termination of this Contract:

(a) any existing Orders (that have been submitted but not fulfilled prior to the effective date of termination) will automatically terminate, unless otherwise specified by us (and this Contract will continue in force so far as it relates to the fulfilment of that Order(s)); and

(b) if you have supplied Goods and/or performed Services in accordance with this Contract, on receipt of a valid invoice in accordance with clause 5 of these Terms, we will promptly pay you for the Goods and/or Services properly supplied by you up to the date of termination.

17.3. For the purposes of these Terms, a breach of clause 22 of these Terms by you will be deemed to be an irremediable breach of these Terms.

18. FORCE MAJEURE

18.1. If either Party is affected by a Force Majeure event, it shall notify the other party of the nature and the extent thereof.

18.2. Neither Party shall be deemed to be in breach of this Contract, or otherwise be liable to the other, by reason of any delay in the performance, or non-performance, of any of its obligations under this Contract to the extent that such delay or non-performance is due to any Force Majeure event of which it has notified the other Party and the time for performance of that obligation shall be extended accordingly.

18.3. If the Force Majeure event in question prevails for a continuous period in excess of ninety (90) days, SDMG shall have the right to terminate this Contract immediately without any liability under this Contract, save for the Price accrued and unpaid prior to such Force Majeure event.

19. INDEMNITY

You agree to indemnify us for any loss (including consequential loss and loss of profit), damage, cost, expense and/or liability suffered or incurred by us as a direct or indirect result of:

- (a) any act or omission by you or your Representatives in breach of this Contract or any Applicable Laws; or
- (b) any other act or omission by you or your Representatives or you or your Representatives negligence or recklessness in supplying and delivering the Goods and/or performing the Services.

20. LIMITATION OF LIABILITY

20.1. To the maximum extent permitted by law, our maximum aggregate liability in contract, tort (including negligence) or otherwise is limited to our obligation to pay the Price for Goods and/or Services under this Contract.

20.2. For clarity, we are not liable for the acts or omissions of any of our Affiliates that may order Goods and/or Services from you from time to time (and *vice versa*).

21. ANTI-BRIBERY AND ANTI-CORRUPTION

21.1. You represent and warrant to us that:

- (a) you have, and your Affiliates have, complied with, and will in the course of performing your obligations under this Contract comply with:
 - i. all Applicable Laws prohibiting the bribery of public officials and private persons, including, as applicable and without limitation, the Malaysian Anti-Corruption Commission Act 2009, the Crimes Act 1961 and the Secret Commissions Act 1910 ("**Anti-Bribery Laws**");
 - ii. all Applicable Laws prohibiting money laundering or the financing of terrorism, including, as applicable and without limitation, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and associated regulations in New Zealand ("**Anti-Money Laundering Laws**"); and
 - iii. Sime Darby's Vendor Code of Business Conduct (as updated from time to time) available at <https://www.simedarby.co.nz/legal> ("**Business Code of Conduct**");



Sime Darby Motor Group (NZ) Limited

- (b) no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator and no regulatory investigation involving you and/or any of your Affiliates with respect to any Anti-Bribery Laws, Anti- Money Laundering Laws and/or Privacy Laws and/or the Business Code of Conduct is current, pending or threatened;
- (c) to your knowledge, neither you nor any of your Affiliates, Representatives, or any other person acting on behalf of you or any of your Affiliates has acted in a manner that has resulted in, or may give rise to, an investigation, action or proceeding for violation of any Anti-Bribery Laws, Anti-Money Laundering Laws and/or Privacy Laws and/or the Business Code of Conduct; and
- (d) you have instituted, maintained and will comply with your policies and procedures designed to ensure compliance with the Anti-Bribery Laws by you, your Affiliates, Representatives, and any other person acting on behalf of you or any of your Affiliates and any person providing services for you or on your behalf, and you acknowledge that we have entered into the Contract in reliance on your representations and warranties set out in this clause 21.

21.2. You will when performing your obligations under this Contract:

- (a) comply with all Anti-Bribery Laws;
- (b) comply with the Business Code of Conduct;
- (c) make and keep books, records and accounts that accurately and fairly reflect the Goods and/or Services provided;
- (d) maintain and comply with policies and procedures designed to ensure compliance with the Anti-Bribery Laws by you, your Affiliates, Representatives, and any other person acting on behalf of you or any of your Affiliates and any person providing services for you or on your behalf; and
- (e) promptly and without delay report to us any suspicion or knowledge of non- compliance with Anti-Bribery Laws and/or the Business Code of Conduct in connection with the performance of your obligations under this Contract.

22. PRIVACY

- 22.1.** You acknowledge that you may receive or access Personal Information on our behalf under or in connection with this Contract. You undertake that you will comply with the terms set out in the privacy schedule attached to these Terms.
- 22.2.** To the extent you provide us with any Personal Information about your Representatives, you confirm that you have the authority of the individuals concerned and that you have informed them of their rights to access and request correction of any Personal Information about them that is held by us.

23. GOVERNING LAW

- 23.1.** This Contract will be governed by and construed in accordance with the laws of New Zealand (to the exclusion of any conflicts of law rules), and, subject to clause 23.2 of these Terms, the Parties submit to the exclusive jurisdiction of the New Zealand courts.
- 23.2.** The Parties agree to seek to resolve any differences by direct negotiation for not less than 14 days before resorting to legal action.

24. GENERAL

- 24.1.** Each party agrees to keep the terms of this Contract and any information acquired by it pursuant to this Contract confidential, except:
- i. as agreed in writing between the Parties and, in such case, strictly limited to the terms agreed and any conditions attached to such agreement;
 - ii. to its Representatives to the extent necessary to obtain the benefit of, or to properly perform their obligations under, this Contract; or
 - iii. as required by an Applicable Law, after first consulting with the other party to the extent practicable about the form and content of the disclosure.
- 24.2.** You must not make any public or press announcement or issue any public statement relating to this Contract without our prior written consent.
- 24.3.** All notices or other communications given by one party to the other in connection with this Contract must be in writing and sent to the other party at the address in New Zealand that the other party specifies from time to time. Any notice or other communication is deemed to be received and sufficiently served: (i) if personally delivered, on receipt; (ii) if posted by pre-paid official postal service, on the third business day after posting (or seven business days after posting if sent from one country to another); and (iii) if sent by email, when it passes the point in the sender's computer system that the communication could not be stopped by the sender from being transmitted (unless the sender receives an automated message that delivery failed) or, if that occurs after 5.00pm, on the next business day.
- 24.4.** You may not assign, transfer or sub-contract all or any part of your rights or obligations under this Contract without our prior written consent. Any permitted assignment, transfer or sub-contracting by you will not relieve you of your responsibility for due performance of this Contract in accordance with its terms.
- 24.5.** This Contract sets out the entire agreement between the Parties concerning the subject matter of this Contract and supersedes and cancels any previous discussions, representations, agreements, understandings, negotiations or arrangements (whether written or oral) between the Parties.
- 24.6.** We may amend this Contract at any time on notice to you in writing, and such amendments will take effect or be binding from the date of such notice. No amendment or variation to this Contract is effective unless it is in writing and signed by us.
- 24.7.** The rights, powers and remedies provided for in this Contract are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to us by law.
- 24.8.** The relationship between the Parties is that of an independent supplier to its customer. Except as expressly provided in this Contract, nothing in this Contract is intended to constitute a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the Parties. No party has authority to bind or incur debts on behalf of the other party.
- 24.9.** If any provision of this Contract is illegal, invalid or unenforceable:
- i. where that provision can be modified to give it a valid and enforceable operation of a partial nature, it must be modified to the minimum extent necessary to achieve that result; and
 - ii. in any other case, the provision must be severed from the Contract, without affecting the enforceability of the other provisions of this Contract.
- 24.10.** Termination or expiry of this Contract will not affect any provisions of this Contract which are expressed to, or by implication are intended to, survive termination or expiry.



Sime Darby Motor Group (NZ) Limited

- 24.11.** The warranties set out in this Contract are continuing warranties that apply throughout the term of this Contract.
- 24.12.** All advice and information provided by us to you, in whatever form, is given gratuitously and without liability. Illustrations are not binding as to detail.
- 24.13.** No delay or failure by us to exercise any of our rights or remedies will be a waiver of any of our rights or remedies under this Contract. A waiver by us of any breach of this Contract or any right, power or remedy under, or in connection with, this Contract (including a right of termination) is not effective unless that waiver is in writing and signed by us.
- 24.14.** You may not permit or undertake any change of ownership without our prior written consent, which must not be unreasonably withheld. You will provide not less than fourteen (14) days prior written notice of any proposed change of ownership and/or any other change in your details (including but not limited to, changes in your name, directors, address, contact phone or email, or business practice). You will be liable for any loss incurred by us as a result of your failure to comply with this clause.
- 24.15.** In these Terms:
- (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to a statute is a reference to a New Zealand statute and includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
 - (c) a word importing the singular includes the plural and vice versa;
 - (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust or government agency, in each case, whether or not having a separate legal personality;
 - (e) a reference to a party to these Terms or another document includes that party's successors and permitted assigns and substitutes;
 - (f) references to "including" shall be construed as "including, without limitation"; and
 - (g) these Terms must not be construed adversely to a party just because that party prepared them or caused them to be prepared.



Sime Darby Motor Group (NZ) Limited

PRIVACY SCHEDULE

(last updated July 2023)

This Privacy Schedule will apply to any SDMG Data Used by the Supplier.

1. Definitions and Interpretations

1.1. Defined Terms

For the purpose of this Schedule:

- (a) **"SDMG Data"** means all Personal Information about SDMG's and/or any Affiliate's customers and/or employees:
 - i. Provided to or accessed by the Supplier by or on behalf of SDMG or any Affiliate; and/or
 - ii. Used by the Supplier in the course of providing any goods and/or services to SDMG.
- (b) **"Privacy Breach"** means a privacy breach (as defined in the Privacy Act 2020) that relates to SDMG Data held by or on behalf of the Supplier and Notifiable Privacy Breach has a corresponding meaning.
- (c) **"Purpose(s)"** means for the purpose of performing its obligations under the Contract, and any other purposes set out in the Contract.
- (d) **"Use"** means, in relation to SDMG Data, any and all uses of and/or operations performed on the SDMG Data, including collecting, copying, creating, hosting, recording, organising, storing, adapting or altering, retrieving, using, analysing, disclosing, making available, combining, blocking, anonymising, erasing and destroying Our Data.

1.2. Construction

- (a) Capitalised terms used but not defined in this Schedule have the meaning given to those terms in the Terms of Purchase to which this Schedule is attached.
- (b) In this Schedule, references to: "related company" will have the meaning given to that term in the Companies Act 1993 provided that, for this purpose, references to "company" in that section will extend to anybody corporate wherever incorporated or registered.
- (c) If there is any conflict between the terms of this Schedule and the remaining terms of the Contract, unless expressly and specifically stated otherwise, the terms of this Schedule prevail.
- (d) To the extent that any SDMG Data is owned by an Affiliate, the rights under this Schedule are intended to be for the benefit of that related company and enforceable by the related company for the purposes of Part 2, Subpart 1 (Contractual Privity) of the Contract and Commercial Law Act 2017.

2. Supplier Obligations

2.1. Use of SDMG Data

The Supplier undertakes that it will:

- (a) only use SDMG Data strictly to the extent necessary for the Purpose(s);
- (b) only retain SDMG Data for as long as reasonably necessary to achieve the Purpose(s) and in any event, ensure that all SDMG Data is destroyed or returned to SDMG (at SDMG's election) at the end of the term of the Contract or upon request from SDMG at any time;
- (c) comply with Privacy Laws in respect of all matters relating to SDMG Data (even if the Supplier is located outside New Zealand);
- (d) not do or refrain from doing anything that would cause SDMG to breach any Privacy Laws;
- (e) inform SDMG of any subcontractors that will access the SDMG Data prior to such access and allow SDMG reasonable opportunity to object to such access, in such case, the Supplier will comply with any reasonable request made by SDMG;
- (f) inform SDMG of the location that any SDMG Data will be stored prior to storing the SDMG Data and allow SDMG reasonable opportunity to object to such location, in such case, the Supplier will comply with any reasonable request made by SDMG;
- (g) take all reasonable steps to ensure that it does not do or allow anything to be done which may identify or facilitate the identification of any individual whose identity has not been directly disclosed by SDMG as part of the SDMG Data (including through any form of re-identification of anonymised information); and
- (h) not derive and/or use any anonymised or aggregated data from SDMG Data (except for the purpose of providing services to SDMG in accordance with this Contract).

3. Supplier's obligations

The Supplier undertakes that it will:

- (a) provide appropriate training to personnel, which shall be provided no less than once per calendar year, with respect to the correct handling of SDMG Data so as to ensure the Supplier's compliance with its obligations under this Schedule;



Sime Darby Motor Group (NZ) Limited

- (b) ensure that SDMG Data is protected by adequate security safeguards against a Privacy Breach (and, upon request from SDMG at any time, provide SDMG with written details of such security safeguards);
- (c) ensure that all SDMG Data is segregated from the Supplier's own data or that of the Supplier's other customers;
- (d) if requested by SDMG, restore SDMG Data, if any SDMG Data is lost, destroyed, corrupted or altered while in the Supplier's or any subcontractor's possession or control;
- (e) not disclose any SDMG Data to, or permit SDMG Data to be Used by any third party, other than the subcontractors in accordance with clause 2.1(e); and
- (f) not permit SDMG Data to be transferred outside New Zealand, without SDMG's prior written consent, except in accordance with clause 2.1(f).

4. Assistance and audit requests

- 4.1. The Supplier undertakes that it will co-operate with SDMG in relation to:
 - 4.1.1. the resolution of any request or complaint relating to SDMG Data, including any such request or complaint under the laws or policies referred to in this Schedule; and
 - 4.1.2. any audit that SDMG may wish to undertake at any time in respect of SDMG Data held by the Supplier (including by providing access to Supplier premises, personnel, processes and systems).
- 4.2. The Supplier must provide SDMG with any information reasonably requested by SDMG from time to time in order for SDMG to confirm that the Supplier is complying with this schedule.

5. Delete or return SDMG Data

- 5.1. Where the Supplier accesses Personal Information on SDMG's systems, the Supplier must not take copies unless expressly authorised in writing by SDMG.
- 5.2. The Supplier undertakes that it will delete, or return any SDMG Data in the Supplier's possession or control to SDMG:
 - 5.2.1. once such SDMG Data is no longer reasonably required by the Supplier to achieve the Purpose(s); or
 - 5.2.2. at SDMG's written direction, at any time during or after termination of this Contract.

6. Privacy Breach

- 6.1. The Supplier acknowledges that a best practice approach to any Privacy Breach is of paramount importance to SDMG.
- 6.2. The Supplier undertakes that, if the Supplier is aware, or has reasonable grounds to suspect, that a Privacy Breach has occurred, the Supplier will:
 - 6.2.1. notify SDMG as soon as practicable, and in any event within 24 hours, after becoming aware that a Privacy Breach (or suspected Privacy Breach) has occurred (even if all relevant information is not yet available);
 - 6.2.2. keep SDMG updated in a timely manner as further information relating to the Privacy Breach (or suspected Privacy Breach) is obtained;
 - 6.2.3. provide all assistance and co-operation required by SDMG in connection with the Privacy Breach (or suspected Privacy Breach);
 - 6.2.4. provide support to SDMG to allow SDMG to meet its obligations (if any) to notify the Privacy Breach to regulators or individuals (SDMG will determine in its absolute discretion whether or not such notification is required); and
 - 6.2.5. not notify any third party of the Privacy Breach (or suspected Privacy Breach) in a manner that directly or indirectly identified SDMG unless it is required to do so by law, in which case the Supplier will consult with SDMG prior to making any notification including as to the form and content of such notification (to the extent it is permitted to do so by law).
- 6.3. The notification of (or, if applicable, the updates) referred to above must include details of the type of data affected, number of affected individuals and a description of the likely consequences of the breach and any other information set out in the Privacy Act 2020 (section 117(1) and (2)) or otherwise requested by the Company (to the extent known).
- 6.4. Notwithstanding any other term of the Contract, SDMG may refer to the Supplier and/or the Contract in order to respond to and manage a Privacy Breach that involves the Supplier.

7. Termination

If the Supplier breaches any of the obligations in this Schedule, the Company will have the right to terminate this Agreement with immediate effect by written notice and without incurring any liability.

8. Indemnity

If the Supplier breaches any of the obligations in this Schedule, it will indemnify SDMG against any losses suffered or incurred by SDMG as a result of the breach.