

LICENSE AGREEMENT

BINDING AGREEMENT: SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS LICENSE AGREEMENT, BUYER EXPRESSLY AGREES THAT THE INSTALLATION OF THE PRODUCT (I.E., SOFTWARE/CODE) SHALL CONSTITUTE AN IRREVOCABLE ACCEPTANCE OF THE PRODUCT AND ALL THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT.

BUYER agrees to operate the vehicle under the conditions set forth in this Agreement **and BUYER further agrees** fully indemnify (including reasonable attorney's fees) and to hold Bimmer Tuning Tools, LLC. (Hereinafter BTT) harmless by reason of any allegation(s), claim(s), damages, accident, or injuries resulting from the use of the vehicle with the installed Product **OR** improper installation of the Product, including, but not limited to, the fact that such installation may void the manufacturer's original warranty.

Buyer expressly agrees and accepts that BTT Products have been and are intended for off-highway applications **only**. Federal and many state laws prohibit the removal, modification, or rendering inoperable of any device or element of design affecting vehicle emission or safety in a vehicle used on public highways. Violation of such laws may subject the owner or user to a fine and/or penalty. Furthermore, installation of these Products may void the warranty coverage, if any, on your vehicle. **BTT products are not legal for sale or use in the state of California on any pollution-controlled motor vehicles. These performance products are legal in California only for racing vehicles, which may never be used upon a public highway.**

ALL CALIFORNIA RESIDENTS **MUST** ALSO AGREE WITH AND COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THE BLOCKED SECTION BELOW BEFORE USING BTT products.

By purchasing the Product, Buyer hereby releases and discharges *BTT* and all other persons and associations connected therewith from any and all claims arising out of, or relating to, the Products purchased. Buyer further waives and disclaims the provisions of California Civil Code Section 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor."

Buyer has read and understands these conditions of sale set forth above and in this Agreement. Buyer further understands that any Products purchased from *BTT* are to be used on Buyers off-highway-racing vehicle in compliance with California State Health and Safety Code Sections 39048 and 43001(a).

LIMITED LICENSE: BTT grants to Buyer a non-exclusive, non-transferable, non-sublicensable, royalty free, world-wide and perpetual, (unless terminated as provided herein) license to use, in object code format the Product (i.e., software/code) subject to the terms, conditions and restrictions set forth in this License Agreement.

Buyer acknowledges that BTT owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Product and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications (derivatives), to the Product. Any references to "sale" or "purchase" of the Product shall be deemed to mean "license" in accordance with the terms contained in this Agreement. Buyer agrees not to remove from view any copyright legend, trademark or confidentiality notice appearing on the Product or Product output. BTT reserves all rights not expressly granted to Buyer in this Agreement.

Buyer expressly agrees not to duplicate, adapt, translate, reverse engineer, decompile or otherwise derive the source code for the Product or any of the related features of the Product or to allow any third-parties to do so.

GOVERNING LAW AND CHOICE OF FORUM: This agreement shall be construed and governed in accordance with the laws of the State of New York, regardless of the place or places of its physical execution and performance, and without regard to its conflicts of law rules. The Parties hereto expressly and irrevocably consent that the federal and/or state courts within the state of New York in New York County shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. The Parties expressly consent to personal jurisdiction in the state of New York, which shall be self-operative.

EXCLUSIONS OF IMPLIED WARRANTIES: This sale is made on the express understanding that there is **NO IMPLIED WARRANTY THAT THE GOODS SHALL BE MERCHANTABLE OR AN IMPLIED WARRANTY THAT THE GOODS SHALL BE FIT FOR ANY PARTICULAR PURPOSE.** The Buyer acknowledges that he is not relying on the seller's skill or judgment to select or furnish goods suitable for any particular purpose and that there are no warranties which extend beyond the express limited warranty described below.

EXPRESS LIMITED WARRANTY: BTT warrants to the original purchaser that the product is free from defects in material and workmanship, when installed properly and under normal use, for thirty (30) days from the date of purchase.

LIMITED REMEDY: During the warranty period, the parties further agree that Buyer's exclusive remedy shall be limited to repair or replacement, at the seller's sole and exclusive discretion, and that no other remedy (including, but not limited to, incidental or consequential damages for lost profits, lost sales, injury to property, or any other incidental or consequential loss) shall be available and Buyer expressly acknowledges this limitation. Additionally, this limited remedy shall expressly exclude labor and ancillary charges such as collection, fitting, inconvenience, purchasing of other manufacturers products and is valid for a period of thirty (30) days from date of purchase. This Warranty is invalid if product is used for racing, track day experience driving, or any other form of competition. There is absolutely no warranty on any BTT product for race use. Buyer must assess the performance and durability of BTT's Products themselves if any BTT product is to be used in racing.

SEVERABILITY: If any provision of this Conditions of Sale Agreement is prohibited by law or held to be invalid, illegal or unenforceable, the parties hereto agree to the fullest extent permitted by law that the validity, legality and enforceability of the other provisions shall not be affected or impaired thereby.