When can the police legally use force?

Whenever police use force it must be legally justified. This applies both (i) to the circumstances in which they use force, and (ii) the amount of force used.

Police can use force in the following circumstances:

**For self-defence**
Police (and other people) may use force to protect themselves or other people against injury, or to prevent damage to property.

**For the purpose of searching a person or premises**
The Criminal Procedure Act (51 of 1977) says that if police reasonably believe a crime has been committed, they are authorised by law to search a specific person or premises. They may use only the force that is ‘reasonably necessary’ to overcome any resistance against the search or entry of the premises. The force used may include the breaking of doors or windows of premises. If they wish to search a premises they must first ‘audibly demand admission to the premises’ and explain the purpose for which they want to enter the premises. But they don’t have to do this if they believe, on reasonable grounds, that this is likely to result in the item that they are searching for being destroyed. They must be able to defend any use of force in court.

**In order to carry out an arrest**
In terms of section 49(2) of the Criminal Procedure Act¹, the police can use force to overcome resistance to arrest or to prevent a person from fleeing. They can only do so if it has been made clear to the person that they intend to arrest him or her, and there is no way of arresting the person without using force. If the police use unnecessary force when making an arrest, they could face disciplinary or criminal sanctions.

**Crowd management**
The Regulation of Gatherings Act (Act 205 of 1993) also makes provision for police to use force in certain circumstances to disperse crowds.

¹Powers of arrest are dealt with in sections 40, 42, 44 and 47 of the Criminal Procedure Act (51 of 1977).
The amount of force used
The SAPS Act (68 of 1995) provides that, in circumstances where they are authorised to use force, police may ‘use only the minimum force which is reasonable in the circumstances.’ These circumstances are described above. However, the police cannot use force for any other purpose such as to intimidate or punish the person that they have arrested or to force them to answer questions. If they do so they may be breaking the law and could face sanctions if it is reported.

Lethal force
Section 49(2) of the Criminal Procedure Act also defines two types of circumstances when an arrest or may use deadly force (e.g. using a firearm):

- The first of these is a situation of self-defence but only when a person ‘poses a threat of serious violence to the arrestor or any other person’.
- The second is if a person ‘is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm’. There must be ‘no other reasonable means of effecting the arrest, whether at that time or later.’

As with any other circumstances where force is used, lethal force can only be used if there are no other reasonable means for the arrestor to prevent the threat of violence or to effect the arrest. This would only apply in situations where, on reasonable grounds, it appears that any lesser degree of force would be ineffective.