

PART C – TERMS AND CONDITIONS FOR SALE OF USED MOTOR CAR

1. Definitions

Unless the context otherwise requires:

ACL means the Australian Consumer Law as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Agreement means the agreement between the Trader and Purchaser consisting of these Terms and Conditions and the Commercial Terms.

Approval Date means the date referred to as such in the Commercial Terms.

Commercial Terms means the terms of sale set out in Parts A and B of this document.

Consequential Loss means any indirect or consequential loss including any loss of profit, loss of revenue, loss of production, loss or denial or opportunity, loss of or damage to goodwill, loss of reputation, loss of use, loss of interest, loss of anticipated savings or any similar kind of loss but excludes any liability that the Trader may incur from third parties due to a breach of clause 6 by the Purchaser.

Consumer Guarantees means any right or statutory guarantee under Division 1 of Part 3-2 of the ACL.

Defective Vehicle means a Purchase Vehicle which is defective in quality or workmanship or which does not otherwise conform with this Agreement.

Delivery Notice means the notice provided to the Purchaser that the Purchase Vehicle is ready to be collected as set out in clause 7.2.

Delivery Period means the 7-day period referred to in clause 7.2 .

Force Majeure Event means any act outside the reasonable control of a party including an act of God, act of terrorism, war, revolution, pandemic, epidemic, government order or restriction, strike or industrial dispute, any unlawful act against public order or authority or any event whether the same or different to the events listed above.

Forfeitable Amount means the amount referred to as such in the Commercial Terms and as set out in clause 17.4(a).

Loss means any losses, liabilities, damages, costs, charges or expenses, fines and penalties.

Net Trade-in Allowance means the amount as set out in the Commercial Terms and as referred to in clause 11.1.

Nominated Registered Owner means the nominated registered owner (if any) named in the Commercial Terms.

Non-Excludable Rights has the meaning given in clause 12.1.

PPSA means the *Personal Properties Security Act 2009* (Cth).

Purchase Vehicle Price means the amount as set out in the Commercial Terms being the price of the Purchase Vehicle without any additional charges and/or government levies.

Price Payable means the amount as set out in the Commercial Terms being the Total Price of the Motor Vehicle minus any Net Trade-in Allowance and minus any deposit already paid by the Purchaser.

Purchaser means the purchaser named in the Commercial Terms.

Purchase Vehicle means the motor vehicle (and any associated accessories, components or parts) listed in the Commercial Terms.

Terms and Conditions means these terms and conditions of sale as set out in Part C of this Agreement.

Total Price of the Motor Vehicle means the amount as set out in the Commercial Terms being the Purchase Vehicle Price and including all additional charges and/or government levies.

Trader means the trader named in the Commercial Terms.

Trade-in Vehicle means the motor vehicle (if any) listed in the Commercial Terms.

2. Interpretation

In these terms and conditions, unless a contrary intention is expressed:

- 2.1 headings and italicised, highlighted or bold type do not affect the interpretation of these terms and conditions;
- 2.2 the singular includes the plural and the plural includes the singular;
- 2.3 a reference to any legislation includes all delegated legislation made under it such as regulations, and includes all amendments, consolidations, replacements or re-enactments of any of them from time to time;

2.4 the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in these terms and conditions do not limit what else is included and must be construed as if they are followed by the words 'without limitation'; and

2.5 a reference to '\$', 'A\$', 'AUD' or 'dollars' is a reference to the lawful currency of the Commonwealth of Australia.

3. Purchase of motor vehicle

The Purchaser agrees to buy, and the Trader agrees to sell, the Purchase Vehicle for the Price Payable on the terms and conditions of this Agreement.

4. Nominated Registered Owner

Where in this Agreement a Nominated Registered Owner is designated as such the Purchaser hereby authorises and directs the Trader to do all things reasonably necessary to effect registration of the Purchase Vehicle in the name of the Nominated Registered Owner in lieu of the Purchaser.

5. Payment

5.1 The Purchaser must pay the Price Payable for the Purchase Vehicle on or before the delivery of the Purchase Vehicle under clause 7.

5.2 If the Purchaser does not pay the Price Payable on or before the end of the Delivery Period (as required under clause 7) or by such other time agreed between the parties in writing, the Trader may terminate this Agreement by notice in writing to the Purchaser, except where the Trader was responsible for the Purchaser failing to pay in that time.

5.3 For the avoidance of doubt, the parties acknowledge that this Agreement is intended to be a tax invoice for the purposes of the GST legislation and the Trader is not required to issue a separate tax invoice document to the Purchaser in respect of any supplies made under this Agreement.

6. Use of Purchase Vehicle

6.1 The Trader sells the Purchase Vehicle to the Purchaser on the condition that the Purchaser acquires the Purchase Vehicle for personal use and not for the purposes of export or resale for a commercial or profit-making purpose.

6.2 The Purchaser acknowledges, warrants and agrees that:
(a) it will not sell or dispose of the Purchase Vehicle for a commercial or profit-making purpose (which, for the avoidance of doubt, does not include any genuine personal sale or disposals made in good faith for a non-commercial purpose); and
(b) any breach of the requirement in clause 6.2(a) by the Purchaser may trigger a breach by the Trader of its obligations under its agreement with the supplier of the Purchase Vehicle which may result in severe financial consequences for the Trader.

6.3 The Purchaser must indemnify the Trader from and against any Loss the Trader suffers from or in connection with the event listed in clause 6.2(b) (except to the extent such Loss is caused by the Trader).

6.4 The indemnity in clause 6.3 is a continuing obligation separate and independent from any other obligation and survives the expiry or termination of this Agreement.

7. Delays in delivery

7.1 The Trader must make every reasonable effort to make the Purchase Vehicle available for delivery on or before the delivery date stated in this Agreement. Where delivery is delayed by more than 14 days, the Purchaser may terminate this Agreement by notifying the Trader in writing, unless the delay is caused by the Purchaser.

7.2 The Trader will notify the Purchaser when the Purchase Vehicle is available for collection by the Purchaser (**Delivery Notice**). The Purchaser must take delivery of the Purchase Vehicle within 7 days of receiving the Delivery Notice (**Delivery Period**). If the Purchaser fails to take delivery before the end of the Delivery Period, the Trader may terminate this Agreement by notice in writing.

7.3 The Purchaser is to take delivery by collecting the Purchase Vehicle from the Trader.

7.4 The parties may agree in writing to a longer Delivery Period rather than 7 days as set out in clause 7.2

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- 8. Risk**
The Purchaser shall accept delivery of the Purchase Vehicle at the address of the Trader as set out in the Commercial Terms, and all risk in the Purchase Vehicle shall pass to the Purchaser on delivery.
- 9. Odometer Reading**
The Trader being unable to satisfy itself absolutely as to the accuracy of the odometer reading as being the distance travelled by the Purchase Vehicle, cannot and therefore does not, believe the odometer reading accurately records such distance.
- 10. Retention of Title and PPSA**
- 10.1 It is expressly agreed between the Purchaser and the Trader that title to the Purchase Vehicle in no circumstances passes to the Purchaser until the Trader has received full and cleared payment for the Purchase Vehicle as provided in this Agreement.
- 10.2 Until the Trader receives full payment in cleared funds, the Purchaser holds the Purchase Vehicle as fiduciary bailee and agent for the Trader.
- 10.3 If the Purchaser sells the Purchase Vehicle before the Trader receives full payment in cleared funds the Purchaser must hold the proceeds of any sale of the Purchase Vehicle on trust for the Trader in a separate account with a bank to whom the Purchaser has not given security however failure to do so will not affect the Purchaser's obligations as trustee.
- 10.4 Until the Trader receives full payment in cleared funds, if the Purchaser defaults on any of its payment obligations under this Agreement, the Trader is entitled to take immediate possession of the Purchase Vehicle, and the Purchaser hereby authorises the Trader to enter into any premises owned or controlled by the Purchaser for the purpose of repossessing the Purchase Vehicle.
- 10.5 Notwithstanding anything to the contrary contained in this Agreement, the PPSA applies to this Agreement.
- 10.6 For the purposes of the PPSA:
- (a) terms used in clause 10 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) this Agreement is a security agreement and the Trader has a Purchase Money Security Interest in the Purchase Vehicle and in the proceeds of its sale;
 - (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time; and
 - (d) the Purchaser must do whatever is necessary in order to give a valid security interest over the Purchase Vehicle which is able to be registered by the Trader on the Personal Property Securities Register.
- 10.7 The security interest arising under this clause 10 attaches to the Purchase Vehicle when the Purchase Vehicle is collected from the Trader's premises.
- 10.8 Where permitted by the PPSA:
- (a) the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA; and
 - (b) the Trader and Purchaser agree to contract out of sections 96, 125, 129, 142 and 143 of the PPSA and nothing in these sections will apply to this Agreement.
- 10.9 To the extent permitted by the PPSA, the Purchaser agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which place obligations on the Trader will apply only to the extent that they are mandatory or the Trader agrees to their application in writing; and
 - (b) where the Trader has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 10.10 The Purchaser must immediately upon the Trader's reasonable request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by the Trader to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Trader may at any time require.
- 10.11 The Trader may allocate amounts received from the Purchaser in any manner the Trader determines, including in any manner required to preserve any Purchase Money Security Interest it has in the Purchase Vehicle.
- 11. Trade in Conditions**
- 11.1 Where the purchase involves a Trade-in Vehicle then the amount allowed for the trade-in (**Net Trade-in Allowance**) must be deducted from the Total Price of the Motor Vehicle. The Net Trade-in Allowance will be the amount allowed on the Trade-in Vehicle less any amount to be paid by the Trader to discharge the interest of any other person in the Trade-in Vehicle.
- 11.2 The Trade-in Vehicle must be delivered to the Trader no later than the date of delivery of the Purchase Vehicle. If the Trade-in Vehicle is delivered after this date or is not in substantially the same condition as at the date of this Agreement then the Net Trade-in Allowance may be adjusted by an amount equal to the change in the fair market value of the Trade-in Vehicle between the date of this Agreement and the date of delivery to the Trader.
- 11.3 The Purchaser's interest in the Trade-in Vehicle shall pass to the Trader:
- (a) when the Purchaser accepts delivery of the Purchase Vehicle; or
 - (b) when the Purchaser has delivered the Trade-in Vehicle to the Trader and the Trader has paid the Net Trade-in Allowance to the Purchaser or acknowledged in writing that this amount has been credited towards the Price Payable.
- whichever occurs first.
- 11.4 The Trader must not, without the prior written consent of the Purchaser, sell or agree to sell the Trade-in Vehicle before delivery of the Purchase Vehicle to the Purchaser.
- 11.5 For the avoidance of doubt, if the Trader validly terminates the Agreement under clauses 7.2 or 5.2, the Trader is entitled to dispose of the Trade-in Vehicle as set out in clause 17.4(c).
- 11.6 Where the Net Trade-in Allowance has been reduced by an amount to be paid by the Trader to discharge the interest of any other person in the Purchase Vehicle, the Trader will pay this amount to the other person within 28 days of delivery of the Trade-in Vehicle to the Trader.
- 12. Limitation of Liability**
- 12.1 Nothing in this Agreement is intended to have the effect of excluding any Consumer Guarantees or any other applicable law that cannot be excluded, restricted or modified by agreement of the parties (**Non-Excludable Rights**).
- 12.2 Subject to any Non-Excludable Rights, and to the maximum extent permitted by law:
- (a) any term, condition, warranty, representation, guarantee or undertaking that may otherwise be implied into this Agreement by legislation, common law, equity, trade, custom or usage is excluded;
 - (b) each party excludes its liability to the other party for any Consequential Loss however arising (including under any indemnity);
 - (c) the liability of the Trader in respect of any Defective Vehicle, breach of or failure to comply with any Non-Excludable Rights (which cannot be excluded but can be limited) or for any other Loss however arising is limited to:
 - (i) the replacement of the Purchase Vehicle or the supply of equivalent goods;
 - (ii) the repair of the Purchase Vehicle;
 - (iii) the payment of the cost of replacing the Purchase Vehicle or acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Purchase Vehicle repaired.

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12.3 Except in relation to any Non-Excludable Rights, the Purchaser acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Trader in relation to the Purchase Vehicle or its use; and
- (b) it has not made known, either expressly or by implication, to the Trader any purpose for which it requires the Purchase Vehicle and it has the sole responsibility of satisfying itself that the Purchase Vehicle is suitable for the Purchaser's use.

13. Defective Goods

Subject to this Agreement and any Non-Excludable Rights:

- 13.1 the Trader will not be liable for any Defective Vehicle unless the Purchaser gives the Trader full written details and a description of the relevant defect, within the time that it would be reasonable to expect the relevant defect to become apparent (Defect Notice). If no Defect Notice is provided, the Purchaser is deemed to have accepted the Purchase Vehicle;
- 13.2 if the Purchaser gives a Defect Notice to the Trader within the required time, the Purchaser must preserve the Purchase Vehicle in the state in which it was at the time the defect became apparent and allow the Trader to access the Purchaser's premises to inspect the Purchase Vehicle;
- 13.3 if the Trader determines, acting reasonably, that the Purchase Vehicle is a Defective Vehicle, the Trader may, at its option:
 - (a) replace the Purchase Vehicle;
 - (b) repair the Purchase Vehicle; or
 - (c) refund the Purchase Vehicle Price; and
- 13.4 the Trader will not offer a return for a Purchase Vehicle that:
 - (a) has been specifically produced, imported or acquired to fulfill this Agreement;
 - (b) is a discontinued Purchase Vehicle or is a vehicle no longer stocked by the Trader; or
 - (c) has been altered in any way.
- 13.5 In the event that the manufacturer, distributor or importer that made the original supply of the Purchase Vehicle goes into liquidation or administration or ceases to trade, or where a receiver is appointed in respect of that person, it is acknowledged that:
 - (a) the Trader's responsibility to provide repairs under any express warranty provided by the manufacturer, distributor or importer will cease; and
 - (b) the Purchaser must deal directly with the representative acting on behalf of the manufacturer, distributor or importer in relation to a claim made under any express warranty,

except that, nothing in this clause will affect any obligations the Trader may have to the Purchaser under the Australian Consumer Law in its capacity as a supplier or deemed manufacturer (if applicable).

14. Subject to Finance

- 14.1 Where this Agreement is subject to the Purchaser obtaining finance, the Agreement is conditional upon the Purchaser obtaining finance approval:
 - (a) within the time stated in this Agreement;
 - (b) of the amount stated in the Commercial Terms of this Agreement;
 - (c) from the credit provider named in this Agreement (or from a similar type of credit provider);
 - (d) for the type of finance stated in this Agreement; and
 - (e) on reasonable terms and conditions in the circumstances.
- 14.2 The Purchaser agrees to take all reasonable steps towards obtaining finance approval.
- 14.3 The Purchase must notify the Trader on or before the Approval Date of the outcome of the Purchaser's finance application.
- 14.4 If the Purchaser does not obtain finance approval then either the Purchaser or the Trader may terminate this Agreement by giving notice to the other party.

15. Transfer to Credit Provider

Where requested by the Purchaser, the Trader shall transfer title of the Purchase Vehicle to the Purchaser's credit provider on payment of the Price Payable to the Trader.

16. Force Majeure

If the Trader is unable to deliver or provide the Purchase Vehicle as a result of a Force Majeure Event, then it may terminate this Agreement by written notice to the Purchaser.

17. Termination

- 17.1 Either party (**Non-Defaulting Party**) may terminate this Agreement by written notice to the other party (**Defaulting Party**) if the Defaulting Party commits any of the following breaches:
 - (a) where the Defaulting Party is a natural person, the Defaulting Party becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally; or
 - (b) where the Defaulting Party is a body corporate, the Defaulting Party enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Defaulting Party.
- 17.2 The Trader may terminate this Agreement where the Agreement expressly provides the Trader with a termination right or where the Purchaser otherwise breaches a material term of this Agreement, promise or warranty, which cannot be remedied, or can be remedied but is not remedied by the Purchaser within 10 days after the Trader gives notice of the breach to the Purchaser.
- 17.3 The Purchaser may terminate this agreement where the Agreement expressly provides the Purchaser with a termination right or where the Trader otherwise breaches a material term of this Agreement, promise or warranty, which cannot be remedied, or can be remedied but is not remedied by the Trader within 10 days after the Purchaser gives notice of the breach to the Trader.
- 17.4 Where this Agreement is lawfully terminated by the Trader (other than under clause 14 or 16) due to a breach of this Agreement by the Purchaser (including breaches of clauses 5 and 7.2) then:
 - (a) the Purchaser must forfeit the amount stated in this Agreement to the Trader provided that amount does not exceed 5% of the Purchase Vehicle Price (**the Forfeitable Amount**); and
 - (b) where an amount has been paid towards the Price Payable and that amount exceeds the Forfeitable Amount then the Trader must:
 - (i) refund to the Purchaser so much of the amount paid that exceeds the Forfeitable Amount; and
 - (ii) return any Trade-in Vehicle to the Purchaser; and
 - (c) where an amount has been paid towards the Price Payable and that amount does not provide the Trader with the Forfeitable Amount and a Trade-in Vehicle has been delivered to the Trader then the Trade-in Vehicle may be forfeited to the Trader and the Purchaser credited with the Net Trade-in Allowance. If this amount and any other amount paid by the Purchaser exceeds the Forfeitable Amount, then the excess must be refunded to the Purchaser.
- 17.5 Where this Agreement is lawfully terminated by the Purchaser due to a breach of this Agreement by the Trader then the Trader shall:
 - (a) refund to the Purchaser all money paid by or on behalf of the Purchaser; and
 - (b) return any Trade-in Vehicle to the Purchaser.
- 17.6 Where this Agreement is lawfully terminated by either the Purchaser or the Trader (as applicable) under clauses 7.1, 14 or 16 or for any reason other than a breach of this Agreement then the Trader shall:
 - (a) refund to the Purchaser all money paid by or on behalf of the Purchaser; and
 - (b) return any Trade-in Vehicle to the Purchaser.

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- 17.7 Where this Agreement provides for the Trader to return any Trade-in Vehicle to the Purchaser but the Trader has, with the prior written consent of the Purchaser, sold or agreed to sell the Trade-in Vehicle, then this Agreement will be complied with if the Trader pays to the Purchaser:
- (a) an amount equal to the Net Trade-in Allowance; or
 - (b) where the Purchaser or Trader have agreed on a value as the fair market value of the Trade-in Vehicle, that agreed value less any trade-in payout made or to be made by the Trader.
- 17.8 Where the Trader returns any Trade-in Vehicle to the Purchaser and the Trader has carried out repairs on the vehicle with the consent of the Purchaser then the Trader shall be entitled to an amount equal to the reasonable cost of those repairs.
- 17.9 Where either the Purchaser or Trader wishes to terminate this Agreement in accordance with this clause they must give written notice to the other party of the decision to terminate.
- 17.10 Nothing in this clause affects the rights and duties conferred by section 43 of the *Motor Car Traders Act 1986* (Vic).

18. Survival

- 18.1 The termination or expiry of this Agreement for any reason will not extinguish or otherwise affect any rights of either party which accrued prior to the termination or expiry of the Agreement.
- 18.2 Any provision of this Agreement which is expressly stated to, or which by its nature must, will survive the termination or expiry of this Agreement.

19. Non-exclusion of Statutory Warranties and Other Rights

The benefits conferred by this Agreement and by the Trader's warranty, if any, are in addition to all other rights and remedies in respect of the Purchase Vehicle which the Purchaser has under the Australian Consumer Law (Victoria) and any other Commonwealth, State and Territory laws.

Note: The parties to this Agreement may include other conditions if those conditions do not reduce the rights given to either party by or under the Motor Car Traders Act 1986.

VACC is not a party to this Agreement, and makes no representation relating to the Trader or the performance of the Trader's obligations under this Agreement.

PRIVACY STATEMENT

Purposes of collection and use of personal information

This Agreement of Sale and other transfer documentation that you sign when you purchase a vehicle contain personal information about you, including your name, telephone number, address, drivers licence number, email address, details of any Trade-in Vehicle you own. The Trader holds your personal information and is stored on file. The Trader collects and holds this personal information to facilitate your purchase of a vehicle and to meet the requirements of the legislation associated with the supply of a motor vehicle, and related services and goods.

Associated services and goods include the provision of warranty, insurance and registration. Unless otherwise required or permitted by law, the Trader will generally only collect personal information that you provide to it directly.

Where you do not wish to provide the Trader with your personal information, the Trader may not be able to sell the vehicle to you.

Disclosure of Personal Information

The Trader will only disclose your personal information in accordance with the Australian Privacy Principles (APPs) as set out in the Privacy Act 1988 (Cth) (Privacy Act). The Trader will disclose your personal information to VicRoads, and any other organisation that requires your details in order to carry out the transfer of registration of your vehicle. If you apply for finance in connection with the purchase of a vehicle, the Trader will provide your personal information to the financier for the purposes of the financing arrangements. Your personal information may also be disclosed to the

Trader's contracted suppliers, service providers and other entities that are associated with the supply of motor vehicles and related goods. Finally, the Trader may disclose your personal information if it determines that disclosure of such information is required or permitted by law.

Your personal information may be disclosed to overseas recipients. As the internet is a global environment, where we use the internet to collect and process personal information this will necessarily involve the transmission of that information worldwide. We may also share your personal information with our associates and suppliers overseas. If we transfer your personal information overseas, we will only do so in compliance with the APPs.

Access and correction of your personal information

The Trader's privacy policy states how you can seek to access or correct any personal information we hold about you, how to complain about a privacy breach and how we will deal with a privacy complaint. For a copy of the Trader's privacy policy, or to access, correct or make a privacy complaint, contact the Trader using the details in Part A of this Agreement. You have a right to access your personal information. The Trader will generally provide it to you but in some cases where and to the extent permitted by law, the Trader may refuse access to some or all of that information. In those circumstances the Trader will provide reasons. To make a request for access to your personal information, you will need to obtain and complete an application form verifying your identity and specifying what information you require. You should contact the Trader's Privacy Officer via the contact details in Part A of this Agreement to make a request. The Trader will take reasonable steps to ensure your personal information is accurate, complete and up to date. If you believe that any personal information the Trader holds about you is not accurate, complete or up to date, then please contact the Trader's Privacy Officer via the details in Part A of this Agreement.

Complaints

You can contact the Trader's Privacy Officer (details as set out above) if you believe that the Trader is in breach of the APPs set out in the Privacy Act. The Trader will endeavour to respond to any complaints it has received within 30 days. If the Trader is unable to resolve your complaint you may take your complaint to the Office of the Australian Information Commissioner. The Trader's Privacy Policy also contains further information about how you may complain about a breach of the APPs.

Security

The Trader will take all reasonable steps to ensure your personal information is kept secure. The Trader only permits its authorised personnel to access your personal information.

Your consent

By signing this Agreement, I consent to the use and disclosure of my personal information as set out above.