

## Buying Solutions Limited – Terms and Conditions (Sales in New Zealand dollars)

### 1. DEFINITIONS USED IN THESE TERMS

- 1.1 All capitalised terms used are defined in clause 16 at the end of these terms and conditions.

### 2. WHEN THESE TERMS APPLY

- 2.1 **General Applicability:** By accessing or using our Website or giving us instructions to quote a price on a Vehicle, or to purchase or arrange the purchase of a Vehicle for you, or otherwise using our Services, you accept these terms and conditions, despite anything stated to the contrary on your order, terms and conditions of purchase, or any similar document or any communication you make with us.
- 2.2 **Purchase of Vehicle in NZ dollars or Japanese yen:** Where you agree to purchase a Vehicle and the purchase price is denominated in New Zealand dollars, these terms and conditions will apply. Where you purchase a Vehicle and the purchase price is denominated in Japanese yen, our Terms and Conditions (Sales in Japanese yen) will apply.

### 3. METHODS OF VEHICLE PURCHASE

- 3.1 **Vehicle Purchase Methods:** You may buy a Vehicle using our Services in one of the following three ways:

- (a) **Pre-purchased Stock** – These are Vehicles displayed on the Website on the “Pre-purchased Stock” pages and which are available for immediate purchase. For more details see clause 3.2.
- (b) **Auction Stock** – These are the Vehicles displayed on the Website on the “Auction Online” pages, or advised by us via email or telephone to you as being available to purchase at forthcoming auctions. For more details see clause 3.3.
- (c) **Stock Request** – You may request us to locate a specific vehicle for you, using the “Stock Request” facility on the Website or by giving us instructions by telephone or email. For more details see clause 3.4.
- (d) **Email or Phone Stock Offer** - We may email you from time to time to give you details of vehicles which may be available for purchase from time to time. For more details see clause 3.5.

#### 3.2 Pre-purchased Stock:

- (a) **Vehicle Details:** Each Pre-purchased Stock Vehicle is displayed on the Website with a “Checklist” containing basic details about the Vehicle. This will include the auction sheet obtained from the relevant Japanese Auction House if available at the time the Vehicle is listed on the Website.
- (b) **Availability:** While we use our best endeavours to ensure that all Pre-Purchased Stock is actually available for purchase, we do not guarantee that every Vehicle advertised is available.
- (c) **Vehicle Inspection:** The majority of Pre-Purchased Stock has been inspected by us as outlined in clause 10 below, before being listed for sale on the Website. However, some Pre-Purchased Stock is listed on the basis that an inspection is pending and inspection

information will be listed as soon as the inspection is complete. If you wish to check whether a Vehicle has been inspected and/or to obtain any specific information about a Vehicle, you may request this from us by telephone or email to a Buying Solutions account manager or by contacting our Auckland office.

- (d) **Offer to Purchase:** If you wish to purchase a Vehicle displayed on the Website as Pre-purchased Stock, you may make an offer to purchase the Vehicle by telephone or email to a Buying Solutions account manager or by contacting our Auckland office.
- (e) **Sale Contract:** If you make an offer to purchase any Pre-purchased Stock and we accept the offer verbally or in writing, a Sale Contract for the relevant Vehicle will be formed and clause 4 will then apply.

### 3.3 Auction:

- (a) **Auction Online Bidding Facility and Auction Offers:** Our Auction Online service enables you to give us instructions to bid on a Vehicle offered for sale by a Japanese Auction House. Vehicles available at auction are displayed on the "Auction Online" pages of our Website. Alternatively, we may call or email you from time to time to advise you about Vehicles which may become available at auction either on the day of the auction or in advance. We note that we do not conduct Vehicle auctions ourselves. The facility offered on our Website and the provision of details about Vehicles available at auction are simply means by which you can instruct us to bid for a Vehicle.
- (b) **Vehicle Details:** For Vehicles available to be bid on using the Auction Online facility on our Website, the applicable auction number, lot number and auction date, and a "Checklist" containing basic details about the vehicle are displayed on the Website. For Vehicles available at auction which we call or email you the applicable auction number, lot number and auction date and checklist. If you wish to obtain any additional information about a Vehicle, you may request this from us by telephone or email to a Buying Solutions account manager or by contacting our Auckland office.
- (c) **Availability:** The availability of Vehicles displayed on the "Auction Online" pages on our Website or otherwise advised to you is subject to the relevant Japanese auction houses proceeding to offer them for auction, and we have no control over this.
- (d) **Pre-Auction Inspection:** We will ordinarily inspect each Vehicle for which you give us bidding instructions, prior to bidding on it as outlined in clause 10 below. If for any reason we are unable to inspect the Vehicle, we will arrange for a third party to inspect it for us. If you tick the box on the Website "call to confirm vehicle condition and price before bidding" or request us to report the results of the inspection to you by stating this in the "purchase notes" box on the Website or otherwise contact us with a specific request for inspection information, we will provide inspection information to you.
- (e) **Bidding:** If you wish to instruct us to bid on a Vehicle at an auction, you must advise us of the maximum amount you are prepared to bid for the Vehicle. This can be done using the bid instruction facility on the "Auction Online" pages on our Website (if the vehicle is listed on our Auction Online Website pages) or by giving us instructions by phone or email. We are then authorised to bid on the Vehicle up to a maximum amount not exceeding the bid amount entered by you, plus ¥20,000. You may cancel a bid instruction once it has been given to us by telephone or email, but if our representative at the relevant auction has already placed a bid on the Vehicle before your cancellation is communicated to him/her, you will remain bound to purchase the Vehicle if the bid is successful.

- (f) **Competing Bids:** If we receive bid instructions on the same Vehicle from more than one person, we will deal with those instructions as follows:
  - (i) The person who placed their bid first will get priority to purchase the Vehicle up to the maximum bid amount stipulated by them.
  - (ii) After this, the person who placed their bid second will get priority up to the maximum bid amount stipulated by them (assuming their maximum bid amount was greater than that of the first person), and so on if there are several person who have placed bids.
- (g) **Sale Contract:** We will notify you of the result of the auction promptly after completion of the auction. If a Vehicle is purchased at auction as a result of us acting in accordance with your bidding instructions to us, a Sale Contract for the relevant vehicle will be formed and clause 4 will then apply.

#### 3.4 **Stock Request:**

- (a) **Request:** You may request us to locate a specific Vehicle for you, using the “Stock Request” facility on the Website or by giving us instructions by telephone or email (including giving us an outlined “buy list” containing a list of Vehicles you wish to acquire). If you place such a request with us, the request constitutes authorisation by you for us to source a Vehicle which complies with your instructions, for sale to you. If we source such a Vehicle before your authorisation is withdrawn by telephone or email, you will be bound to purchase the Vehicle.
- (b) **Vehicle Inspection:** Each Vehicle sourced for you under a Stock Request is inspected by us as outlined in clause 10 below before being offered to you. If you authorise us to proceed to acquire a Vehicle to meet any Stock Request without reporting inspection details to you, we will only report inspection details to you where we consider that the inspection has revealed that the Vehicle has major mechanical or structural faults. In all other cases, we will call or email you with the inspection results and obtain your approval to proceed to acquire the Vehicle. (If you are making a Stock Request by using the Website, you will have the option to select which of the above alternatives will apply to each Vehicle). If you wish to obtain any additional information about a Vehicle, you may request this from us by telephone or email to a Buying Solutions account manager or by contacting our Auckland office.
- (c) **Offer to Purchase:** If you wish to purchase a Vehicle offered to you as a result of a Stock Request, you make an offer to us by telephone or email to a Buying Solutions account manager or by contacting our Auckland office.
- (d) **Sale Contract:** If we source a Vehicle for you in accordance with an authorisation given by you under clause 3.4(a), a Sale Contract for the relevant Vehicle will be formed at that point and clause 4 will then apply.

#### 3.5 **Email or Phone Stock Offer:**

- (a) **Offer:** We may email or phone you from time to time to invite you to make an offer for Vehicles which may be available for purchase but which are not listed on the Website as Pre-purchased Stock.
- (b) **Vehicle Inspection:** The majority of Vehicles offered by email have been inspected by us as outlined in clause 10 below before being listed for sale on the Website. However, some of the Vehicles are listed on the basis that an inspection is pending and inspection information

will be listed as soon as the inspection is complete. If you wish to check whether a Vehicle has been inspected and/or to obtain any specific information about a Vehicle, you may request this from us by telephone or email to a Buying Solutions account manager or by contacting our Auckland office.

- (c) **Offer to Purchase:** If you wish to purchase a Vehicle offered by email or phone, you may make an offer to purchase the Vehicle by telephone or email to a Buying Solutions account manager or by contacting our Auckland office.
- (d) **Sale Contract:** If you make an offer to purchase any Vehicle offered by email or phone and we accept the offer verbally or in writing, a Sale Contract for the relevant Vehicle will be formed and clause 4 will then apply.

3.6 **Instructions Binding:** For the avoidance of doubt, any instruction given to us by any of your directors, partners, shareholders or officers will be binding on you unless you give us a written direction to the contrary before the instruction is given.

3.7 **Conversion of CIF Vehicle Price:** Please note the provisions of clause 7.2 regarding the conversion of the CIF Vehicle Price into New Zealand dollars.

#### 4. **VEHICLE SALE CONTRACT - BUYING SOLUTIONS' OBLIGATIONS**

4.1 **Vendor of Vehicle/Sale Contract:** Where you enter into a Sale Contract to purchase a Vehicle using one of the methods referred to in clause 3 and the purchase price for the Vehicle is payable in New Zealand dollars, Buying Solutions is the vendor (seller) of the Vehicle and your Sale Contract is with us.

4.2 **Buying Solutions' Obligations on formation of Sale Contract:** Where you enter into a Sale Contract to purchase a Vehicle, we will:

- (a) make delivery of the Vehicle in accordance with clause 5;
- (b) arrange export and other clearance documentation to allow export of the Vehicle from Japan;
- (c) arrange the MAF/LTSA inspection in Japan and any MAF fumigation required in Japan or New Zealand;
- (d) pay the GST payable on the Vehicle in New Zealand;
- (e) subject to clause 4.3(b), arrange Vehicle Compliance in accordance with clause 6.

4.3 **Your obligations:** Where you enter into a Sale Contract to purchase a Vehicle, you will be responsible for the following:

- (a) any matter not listed in clause 4.2.
- (b) Vehicle Compliance, if we have agreed with you before the Sale Contract for the Vehicle was formed that you will be responsible for Vehicle Compliance.

#### 5. **DELIVERY**

5.1 **Place of Delivery:** If we are responsible for Vehicle Compliance, we will deliver the Vehicle to the your dealership location as agreed with you. If we are not responsible for Vehicle Compliance, we will deliver the Vehicle to either your dealership location or a compliance shop as agreed with you.

5.2 **Delivery Surcharge:**

- (a) If you are responsible for Vehicle Compliance, a delivery surcharge for delivery from the port to the dealership location or compliance shop may be payable in addition to the CIF Vehicle Price.
- (b) If we are responsible for Vehicle Compliance, no delivery surcharge is payable in addition to the CIF Vehicle Price and Vehicle Compliance Fee for Vehicles supplied to premises in the regions of Auckland, Wellington and Christchurch (as defined by us). If you are located outside these areas, additional transport charges will apply (and we can provide you with these on request).

5.3 **Delivery Date for Vehicle:** Dates given by us for delivery of Vehicles are estimated dates of delivery only, and we will not be liable for any delay in delivery.

5.4 **Provision of Documents:** Vehicle documents (including export, import, entry certification (if applicable), vehicle title and delivery documentation) for each Vehicle we be provided to you on payment in full for all Vehicles included in the same shipment. We may withhold documents for any/all Vehicles in the same shipment if any amount due to us under these terms and conditions is not paid on the due date.

6. **VEHICLE COMPLIANCE**

6.1 **Compliance steps:** Where we are required to carry out Vehicle Compliance for a Vehicle under clause 4.2(e), we will:

- (a) pay any port clearance fees in New Zealand;
- (b) arrange customs clearance in New Zealand; and
- (c) arrange for the Vehicle to undergo used motor vehicle entry certification compliance in New Zealand.

6.2 **Exclusions:** We do not give any guarantee or assurance that Vehicles of the following type will pass the compliance tests (and you will be responsible for any costs required to undertake repairs or modifications to the Vehicle and taking any other steps to enable the Vehicle to comply which arise because the Vehicle is one of the types listed below):

- (a) Low volume certificate Vehicles;
- (b) Left-hand drive Vehicles;
- (c) Old and classic Vehicles (being vehicles which are 20 years old or more (calculated from the date of manufacture));
- (d) Vehicles which require a statement of compliance;
- (e) Vehicles graded as auction grade 3 or lower (as shown on the auction sheet for the Vehicle provided by the applicable auction house or the Pre-purchased Stock checklist on the Website (if applicable)) which require a repair certification;
- (f) Vehicles which require a repair certification for work which was brought to your attention before you made an offer to purchase;
- (g) Vehicles with a tyre size of greater than 18 inches;

- (h) Vehicles for which a TDN (Type Designation Number) is not shown on the Vehicle documentation from Japan (e.g. de-registration certificate or export certificate).

6.3 **Unavailability of Compliance Service:** We reserve the right to cancel the service of complying any Vehicle at any time if for any reasons the compliance shop contracted to provide the service for us cancels or refuses to perform its obligations to us. If this occurs, we will refund the Compliance Fee referred to in clause 8.2.

## 7. **PAYMENT OF CIF VEHICLE PRICE**

7.1 **CIF Vehicle Price:** The amount payable for each Vehicle is the CIF Vehicle Price, being:

- (a) for Pre-purchased Vehicles and Vehicles purchased from an Email Stock Offer – the price advertised or advised by us.
- (b) for Auction Stock – the price advised by us following completion of the auction.
- (c) for Vehicles purchased following a Stock Request - the price advised by us following sourcing of the Vehicle.

### 7.2 **Price in New Zealand dollars:**

- (a) Where we give a CIF Vehicle Price for a Vehicle which is Pre-purchased Stock or in response to a Stock Request or as part of an Email Stock Offer, this is a NZ dollar price based on the conversion of the various components of the CIF Vehicle Price from Japanese yen (where applicable) to NZ dollars using an appropriate exchange rate determined by us as at the day on which CIF Vehicle price is given to you. If we form a Sale Contract for the Vehicle on that date, the CIF Vehicle Price is locked in at that amount. However, if we form a Sale Contract for the Vehicle on a later date, the conversion will be re-calculated at the exchange rate prevailing on that date and you will be bound to purchase the Vehicle at the re-calculated CIF Vehicle Price.
- (b) For all Vehicles purchased at auction following receipt of bid instructions from you, the CIF Vehicle Price will be the NZ dollar price calculated at the exchange rate (on the same basis as in paragraph (a) of this clause) on date on which Vehicle is purchased at auction.

7.3 **Matters included in CIF Vehicle Price:** The components of the CIF Vehicle Price are:

- (a) the total Vehicle cost, being the purchase price of the Vehicle in Japan and any auction fees payable if the Vehicle was purchased at auction; and
- (b) the cost of us performing the obligations referred to in clause 4.2 (excluding Vehicle Compliance).

A breakdown of the CIF price is available from us on request.

### 7.4 **Payment:**

- (a) We will usually notify you separately in writing (by way of introductory letter or otherwise) regarding the payment terms applicable to your Vehicle purchases (and we reserve the right to change the payment terms by written notice to you). However, in the event that we have not so notified you, then subject to paragraph (b) of this clause, the CIF Vehicle Price is payable to us as follows:

- (i) a deposit of 25% of the CIF Vehicle Price must be paid within 1 week of the date on which we send you an invoice for the CIF Vehicle Price; and
  - (ii) the balance of the CIF Vehicle Price must be paid on or before completion of delivery of the Vehicle pursuant to clause 5.
- (b) We reserve the right to require payment of the CIF Vehicle Price in full at any time prior to delivery of the Vehicle, by written notice to you. In particular:
  - (i) Where:
    - the CIF Vehicle Price is up to NZ\$69,999 we normally require a 25% deposit with payment of the balance on or before delivery;
    - the CIF Vehicle Price is NZ\$70,000 to NZ\$100,000, we normally require a deposit of 50% with payment of the balance on or before delivery;
    - the CIF Vehicle Price is over NZ\$100,000, 100% of the CIF Vehicle Price is payable up front.

7.5 **Manner of Payment:** All payments must be made in cleared funds on the due date by telegraphic transfer to a bank account advised by us from time to time.

## 8. PAYMENT OF BUYING SOLUTIONS' FEES

8.1 **Our General and Administration Fee:** We charge a standard general/administration fee for our Services for each Vehicle purchased by you (in addition to the CIF Vehicle Price). The fee will be advised to you in writing when you first deal with us and may be revised by us from time to time by notice to you and/or by posting on our Website or by otherwise notifying you in writing.

8.2 **Compliance Fee:** If we have carried out Vehicle Compliance for a Vehicle, you must pay our standard Vehicle Compliance fee. The fee will be advised to you in writing when you first deal with us and may be revised by us from time to time by notice to you and/or by posting on our Website or by otherwise notifying you in writing. The fee may differ depending on whether the Vehicle is a Japanese or European brand Vehicle, and whether the Vehicle is delivered to a major port in New Zealand (Auckland, Wellington or Lyttleton) or another port.

8.3 **Invoicing:** We will normally send you a single invoice for both the CIF Vehicle Price and the fees due to us. However, we reserve the right to send separate invoices for components of both the CIF Vehicle Price and our fees.

8.4 **Payment:** Payment of all of our fees in respect of each Vehicle must be made in full in one sum in cleared funds on or before delivery of the Vehicle.

## 9. VEHICLE DESCRIPTIONS/DATA

9.1 **Accuracy of Descriptions:** We use our best endeavours to ensure that all Vehicle details contained in the Website or sent to you in writing by any other means (such as email or fax) or communicated to you by phone (including the results of any vehicle inspection carried out pursuant to clause 10) are accurate in all material respects. However, we cannot be certain about all details, and in particular we are reliant on information provided to us by third parties such as Japanese auction houses and Japanese Agents. Accordingly, our liability for mis-descriptions is as described in clause 11.

## 10. **VEHICLE INSPECTIONS**

10.1 **When Inspections are carried out:** We carry out Vehicle inspections as specified in clause 3.

10.2 **Nature of Inspections:** For each Vehicle inspection, we carry out, or arrange to be carried out, a visual, non-invasive inspection to a level which we consider would be carried out by a reasonable motor vehicle dealer purchasing a used Japanese motor vehicle at auction, having regard to the manner and duration of inspection possible prior to such an auction (including there being no opportunity to drive the Vehicle or put it on a hoist). Where possible, the inspection comprises the following matters:

- (a) inspection of paint and panel condition;
- (b) inspection of underside to check for obvious rust;
- (c) inspection of general tyre condition;
- (d) inspection of general interior condition (without removing any trim, carpets, mats, or other items);
- (e) starting the Vehicle's engine to listen for any obvious defects or noises in the engine and transmission (at a standstill). This includes operating the clutch pedal in manual Vehicles;
- (f) other matters which you have expressly requested us in writing to inspect (and which we have agreed to inspect), and which are capable of visual inspection.

10.3 **Reporting of Inspection results:** The results of a Vehicle inspection are available to you on the basis set out in clause 3. Otherwise, we will report inspection results to you by phone or email only if (and to the extent) that we have identified a material defect in an aspect of the Vehicle which is covered by the inspection.

10.4 **Matters for which any assurance is specifically excluded:** Without limiting or affecting clause 10.2, you acknowledge that we are unable to properly check or inspect, and take no responsibility for, the following matters:

- (a) airconditioning systems;
- (b) clutches and automatic transmissions;
- (c) vehicle soft tops - operation;
- (d) stereos, televisions and navigational devices;
- (e) after-market accessories;
- (f) electrical components that cannot be tested at a pre-auction inspection;
- (g) checking Vehicle statements of compliance, TDN numbers and related documentation;
- (h) identifying factory faults or matters for which a vehicle has been known to require a recall.

## 11. **WARRANTIES/OUR LIABILITY**

11.1 **Vehicle Warranties:** We warrant in respect of each Vehicle, that the Vehicle will comply in all material respects with the Vehicle description and inspection results displayed on the Website (if



applicable) or otherwise given by us to you by phone or email (if applicable) prior to a Sale Contract for the Vehicle being formed (**Warranty**).

11.2 **Claims:** If you wish to make a claim for breach of the Warranty, you must:

- (a) lodge the claim with us in writing within 7 days of the date of delivery of the Vehicle to your yard or delivery of the Vehicle into your control or the control or custody of any person nominated by you (whichever is the sooner). We will have no liability under clause 11.1 or otherwise for any claim lodged outside this time frame;
- (b) include with your claim:
  - (i) sufficient details to enable us to fully understand the claim (including digital photographs and any other information reasonably requested by us);
  - (ii) two separate quotes for the cost of any repairs which you claim are required to the Vehicle to bring it back to the condition it should have been in to meet the Warranty. (You may lodge your claim on the basis that the quotes are still pending);
  - (iii) a copy of the Vehicle delivery docket signed by you.

11.3 **Remedies:** On receipt of a valid Warranty claim, we will consider the claim having regard to the age and distance traveled of the Vehicle and other matters we consider relevant. If we accept your Warranty claim, we may (at our election) satisfy the claim by either:

- (a) giving you a credit against payment of our fee (or part) for the Vehicle or any other fees payable to us in respect of any other Vehicle purchased from or through us, or negotiate other monetary compensation with you; or
- (b) paying for, or contributing to, repair or reinstatement work on the Vehicle to ensure that it complies with the Warranty; or
- (c) purchasing the Vehicle back from you at the CIF Vehicle Price.

11.4 **Exception to Warranty:** We will not accept any claim for breach of the Warranty unless/until you have paid for the Vehicle and Buying Solutions' fees in respect of the Vehicle, in full. In addition, we may at our discretion refuse any claim for breach of the Warranty (and will have no liability to you under clause 11.1) for the following matters:

- (a) to the extent that the Warranty claim arises due to any of the following matters:
  - (i) any of the matters referred to in clause 10.4; or
  - (ii) any matter which was specifically drawn to your attention prior to your offer to purchase the Vehicle being accepted by us; or
  - (iii) any panel and paint defects which will cost under NZ\$500 to repair; or
  - (iv) matters which could not be detected unless the Vehicle was driven; or
  - (v) items which have no compliance standard marks (e.g. tyres, lights or glass); or
  - (vi) damage to the Vehicle or theft of components or parts of the Vehicle, occurring during transit/shipping of the Vehicle; or

- (vii) mechanical defect or damage, or structural defect or damage, in any Vehicle for which the CIF Vehicle Price is \$70,000 or more; or
- (viii) damage or defects in electrical components; or
- (ix) the addition of new parts or completion of repairs to the Vehicle arranged by us on your behalf in accordance with your instructions, prior to delivery of the Vehicle to you.

(b) any Warranty claim made in relation to any Vehicle which:

- (i) is 10 or more years old and/or has travelled 100,000 kilometres or more (as indicated on the odometer); or
- (ii) is graded as auction grade 3 or below (as shown on the auction sheet for the Vehicle provided by the applicable auction house or the Pre-purchased Stock checklist on the Website (if applicable)); or
- (iii) has undergone modifications from its factory configuration.

11.5 **Exclusion of other Warranties:** With the exception of the warranty given in clause 11.1, no warranty, guarantee, condition or representation in respect of or in relation to any Vehicle or our Services will bind us or be implied against us by statute or otherwise unless:

- (a) it is given by us in writing and expressed to be a binding warranty and is signed on our behalf; or
- (b) it is a warranty implied by statute and cannot be contracted out of.

11.6 **Limitation of Liability:** Notwithstanding any other provision of these terms and conditions, our liability to you in relation to the supply of any particular Vehicle and our Services in respect of that Vehicle (including, without limitation the carrying out of a Vehicle inspection and provision of inspection information to you) is limited to amount of the fee payable to us in respect of that Vehicle pursuant to clause 8.1. We have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage of any kind (including loss or revenue or profits) however arising (whether in contract, tort, at equity or otherwise).

**Consumer Guarantees Act:** Where the supply of the Services and/or any Vehicle would otherwise be subject to the Consumer Guarantees Act 1993, you agree that you are acquiring the Services and/or Vehicle for business purposes and that the Act does not apply to the supply of to you.

## 12. SECURITY INTEREST

12.1 **Grant:** You hereby grant us a security interest in each Vehicle purchased by you, to secure payment of the purchase price of all Vehicles purchased by you at any time, all fees and all other amounts you owe us under these terms and conditions at any time, and performance of your other obligations under these terms and conditions.

12.2 **Sale of Vehicles:** You will not sell, dispose of or otherwise part with possession of Vehicle except in the ordinary course of your business. Where you do sell or otherwise dispose of a Vehicle prior to payment of in full for the Vehicle and payment in full of our fees, you will be deemed to hold the proceeds of sale of the Vehicle on trust for us.

12.3 **Registrable Security Interest:** You acknowledge that the security interest is registrable under the Personal Property Securities Act 1999 (**PPSA**). On the request from us to do so you must promptly sign any documents and do anything else reasonably required by us to ensure that the security interest created by these terms and conditions constitutes a registered purchase money security

interest over the goods supplied, including providing information which we reasonably require to complete a financing statement. You waive any right to receive a copy of any verification statement under the PPSA.

- 12.4 **Exceptions:** You agree that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA will apply as between you and us.

### 13. **DEFAULT BY YOU**

- 13.1 If you:

- (a) fail to make any payment due under these terms and conditions on the due date; or
- (b) breach any other of these terms and conditions; or
- (c) become insolvent or bankrupt (or, in our view are likely to become so in the near future),

then we may exercise all or any of the following rights (without limiting or affecting any other rights or remedies we may have):

- (d) if you have failed to make any payment due on the due date, charge you default interest on the overdue amount from the date due until it is paid. The interest rate will be a registered bank overdraft interest rate in New Zealand nominated by us from time to time plus 4%;
- (e) cancel any/all orders or contracts for the supply of Vehicles or Services made by you;
- (f) demand payment of all amounts payable for Services which have already been supplied but not paid for (even though the date for payment may not have otherwise arrived);
- (g) withhold delivery of any Services ordered by you but not yet supplied;
- (h) recover and/or resell any Vehicles held by you and enter any premises where we believe the Vehicles are stored and you grant us an irrevocable right and authority to do so. We may only recover and resell for our own account sufficient Vehicles to satisfy all unpaid liability by you to us under these terms and conditions, the cost of recovery and resale of the Vehicles and the costs referred to below in this clause 13.1. If we recover any excess, we will not be liable in damages to you but must account to you for the excess.

recover from you all costs and expenses (including debt collection and legal costs on a solicitor/client basis) incurred by us in enforcing or attempting to enforce our rights under these terms and conditions.

### 14. **USE OF WEBSITE**

- 14.1 **Member Number and Password:** We will give you a user name and password to give you access to the Website to utilise our Services. It is your responsibility to keep these secure so that no other person can use them. You will be responsible for all obligations arising out of use of your user name and password.
- 14.2 **Website Policies/Rules:** You must comply with any website policies, rules or other instructions advised by us on the Website or otherwise in writing to you from time to time.
- 14.3 **System Integrity:** We will use all reasonable efforts to ensure the general availability of the Website and to prevent the corruption or loss of data supplied by you held by us and the transmission of viruses. However, we take no responsibility for and have no liability in relation to unavailability of the

Website, corruption or loss of data or transmission of viruses or losses relating to these events. In particular, we take no responsibility or liability for any events which are outside our reasonable control including communications and hardware failures.

15. **GENERAL**

- 15.1 **Variation of Terms:** We may vary these terms and conditions at any time by notification on the Website or by written notice to you. If you use the Website or our Services after the earlier of the date of notification on the Website and notice to you (if given separately), you will be deemed to have accepted the variation.
- 15.2 **Force Majeure:** We will not be in breach of these terms and conditions because of any failure to supply Services which is directly or indirectly due to any cause beyond our reasonable control.
- 15.3 **Waiver:** No waiver by us or any term or condition will constitute a waiver of any other term or condition, and we will not be deemed to have waived any term or condition unless we give the waiver in writing.
- 15.4 **Governing Law:** These terms and conditions are governed by and will be construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 15.5 **No Set-off:** You must make payment of all amounts owing to us without set-off or deduction of any kind.

16. **DEFINITIONS**

- 16.1 In these terms and conditions:

**Auction Online** means the “Today’s Auction Online” facility operated on the Website.

**Auction Stock** means Vehicles listed on the “Today’s Auction Online” pages on the Website, or otherwise notified by us as being available at auction.

**CIF Vehicle Price** has the meaning given to it in clause 7.1.

**Japanese Agent** a business in Japan which sells used motor vehicles and provides ancillary services in relation to used motor vehicles such as arranging freight and related matters.

**Pre-Purchased Stock** means Vehicles listed on the “Pre-Purchased Stock” page on the Website from time to time.

**Sale Contract** means a contract for the sale and purchase of a Vehicle, entered into by you and Buying Solutions as a result of using our Services.

**Services** means the services provided by us to source Vehicles for you and otherwise carry out our obligations under these terms and conditions in relation to any Vehicle purchased by you, as outlined in these terms and conditions.

**Vehicle** means a motor vehicle available for purchase by you, or purchased by you (as the context requires) from us using one of the Vehicle purchase methods outlined in clause 3.

**Website** means our website operated at [www.buyingsolutions.co.nz](http://www.buyingsolutions.co.nz)