

- 1. Definitions**
- 1.1 "Seller" shall mean Autofinder NZ (2009) Ltd its successors and assigns or any person acting on behalf of and with the authority of Autofinder NZ (2009) Ltd.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Services" shall mean all Services supplied by the Seller to the Buyer and includes any advice or recommendations and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
- 1.5 "Price" shall mean the cost of the Services as agreed between the Seller and the Buyer subject to clause 3 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by the Seller from the Buyer for the supply of Services and/or the Buyer's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be amended with the written consent of the Seller.
- 2.4 The Buyer undertakes to give the Seller at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.
- 3. Price And Payment**
- 3.1 At the Seller's sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Services supplied; or
 - (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 At the Seller's sole discretion a deposit may be required.
- 3.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.5 At the Seller's sole discretion;
 - (a) payment shall be due on delivery of the Services, or
 - (b) payment shall be due before delivery of the Services, or
 - (c) payment for approved Buyers shall be made by instalments in accordance with the Seller's payment schedule, or
 - (d) payment for approved Buyer's shall be due on twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Services**
- 4.1 Delivery of the Services to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 4.2 The Seller may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.3 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.4 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Services (or any of them) promptly or at all.
- 5. Risk**
- 5.1 If the Seller retains ownership of the Services nonetheless, all risk for the Services passes to the Buyer on delivery.
- 6. Buyer's Disclaimer**
- 6.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Services are bought relying solely upon the Buyer's skill and judgement.
- 7. Defects**
- 7.1 The Buyer shall inspect the Services on delivery and shall within seven (7) days notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Services within a reasonable time following delivery if the Buyer believes the Services are defective in any way. If the Buyer shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Services or repairing the Services.
- 8. Contractual Remedies Act 1979**
- 8.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 9. Consumer Guarantees Act 1993**
- 9.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 10. Intellectual Property**
- 10.1 Where the Seller has designed, drawn or written Services for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 10.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.
- 11. Default & Consequences Of Default**
- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 11.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 11.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 11.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 12. Cancellation**
- 12.1 The Seller may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Buyer cancels delivery of Services the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13. Privacy Act 1993**
- 13.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
 - (a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services to the Buyer; and
 - (b) to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- 13.2 Where the Buyer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 13.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.
- 14. Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 - (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
- 15. General**
- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 15.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services.
- 15.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
- 15.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 15.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.