

DEALER SOLUTIONS - TERMS AND CONDITIONS

How these terms and conditions work

Not all of these terms will apply to the product or service that you purchase from us.

We indicate below which terms and conditions are relevant to which product or service being supplied.

However, there are some terms and conditions that are common to the sale of all our products and services. Those are set out below under the heading "Common Terms and Conditions"

Common Terms and Conditions

1 DEFINITIONS

1.1 Definitions

In this agreement, unless the context clearly indicates otherwise:

Address for Service means the address of each party appearing in the Purchase Order or any new address notified by any party to all other parties as its new Address for Service;

Agreement Date means the date specified above the parties' names on the Purchase Order, or if not specified in that place, the date of execution or signature (as the case may be) by the last party to execute or sign (as the case may be) the Purchase Order;

Authorised Representative means:

- (a) in respect of a party which is a corporation:
 - (i) a company secretary or director or any officer of the corporation whose title or office includes the words "manager" or "director"; or
 - (ii) a person acting with the title or in the office of manager or director; and
- (b) in respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative;

Business means the business of operating a trading entity by the Customer.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Brisbane, and concludes at 5 pm on that day;

Business Records means all books of account, accounting records, records and data or all kinds and all other documents relating to the Services (in respect of the Supplier) or the Business (in respect of the Customer);

Corporations Act means the Corporations Act 2001 (Cth).

Delivery means the delivery of the Products to the Customer's address.

Fees means the fees payable by the Customer to the Supplier in respect of Services as calculated in accordance with the Purchase Order.

Force Majeure means any delay by a party in carrying out its Obligations under this Agreement or any act necessary for the discharge of or compliance with such obligations (other than lack of funds) which is beyond the reasonable control of the party, directly resulting from:

- (c) any act of God including fire, storm, flood, earthquake and explosion;
- (d) war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or martial law;
- (e) strikes, lock-outs, stoppages and restraints of labour (whether or not involving employees of the party effected); or
- (f) action or inaction of any government, governmental authority or court of competent jurisdiction whether local, state or federal, including expropriation, restraint, prohibition or other frustrating or restraining act or occurrence directed at or affecting a party and prohibiting or restraining the conduct of a party of affected by legislation or legally enforceable order;

GST means any form of goods and services tax payable under the GST Law;

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Intellectual Property means all intellectual and industrial property which relates to or is used in connection with the Business, including, without limitation, any patent, trade mark or service mark, copyright,

design, trade secret or Confidential Information which may exist, either now or at any time in the future;

Licence means the licence of Software granted by the Supplier to the Customer in respect of the Product;

Losses means damages, costs, charges, expenses, penalties, interest, fines and other losses arising as a result of claims, demands, actions, proceedings or suits by any person;

Moral right means:

- (g) a right of attribution of authorship; or
- (h) a right not to have authorship falsely attributed; or
- (i) a right of integrity of authorship; or
- (j) a right of a similar nature;

which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form comprised within this agreement;

Notice means a written notice, consent, approval, direction, order or other communication;

Obligation means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Payment Method means the method of payment prescribed in the Purchase Order.

Permitted Purpose means the Purpose of use of Data for publication in accordance with the technical, formatting and commercial requirements stipulated by the Supplier in writing from time to time (if any).

Price List means the Supplier's list of the prices for its available products and services as changed by the Supplier from time to time.

Products means the products to be supplied or, in the case of Software, licensed by the Supplier to the Customer as specified in the Purchase Order.

Product Fee means the fee payable by the Customer to the Supplier in respect of the fee or license fee (as the case requires) for the product as determined by the supplier.

Purchase Order means the Purchase Order signed between the Customer and the Supplier and includes any variation to a Purchase Order.

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;

Services means the services to be supplied by the Supplier to the Customer set out in the Purchase Order.

Supplier means Dealer Solutions Pty Ltd or such other entity which is nominated to supply products or services by Dealer Solutions Pty Ltd on its behalf.

Software means the Software specified in the Purchase Order.

1.2 Interpretation

In this agreement, unless the context clearly indicates otherwise:

- (a) a reference to this agreement or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (e) clause headings are inserted for convenience only and do not form part of this agreement;
- (f) the introduction, schedules (if any) and annexures (if any) form part of this agreement;
- (g) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a natural person includes their personal representatives, successors and permitted assigns;

- (i) a reference to a corporation includes its successors and permitted assigns;
- (j) related or subsidiary in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (l) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (m) a reference to a breach of warranty includes that warranty not being complete, true or accurate;
- (n) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (o) including and includes are not words of limitation;
- (p) the words at any time mean at any time and from time to time;
- (q) a reference to a time is to that time in Queensland;
- (r) a word that is derived from a defined word has a corresponding meaning;
- (s) monetary amounts are expressed in Australian dollars;
- (t) the singular includes the plural and vice-versa;
- (u) words importing one gender include all other genders; and
- (v) a reference to a thing includes each part of that thing.

1.3 Construction

Neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

1.4 Inconsistency between documents comprising agreement

Unless the contrary intention is expressed, if there is an inconsistency between one or more of:

- (a) this agreement;
- (b) the Schedule; and
- (c) a document expressly incorporated by reference in:
 - (i) this document; or
 - (ii) the Schedule

the order of precedence between them will be the order listed above.

1.5 Disclaimer

- (a) The Customer agrees and acknowledges that the Supplier is not able to and does not give legal advice on the Personal Property Securities Act 2009 (PPSA).
- (b) The Customer agrees and acknowledges that the Supplier's subscription services are information services only. The Supplier is not able to confirm whether any particular registration is valid or has the priority expected by a secured party. The Supplier does not advise as to the priority rules, including without limitation about competing priorities.
- (c) Where the Customer requests a search and the Services include the provision of that search, the Supplier uses reasonable efforts to perform a search of the kind requested using the requested search terms, on publicly available registers including the PPSR. The results of a search can be no more accurate or complete than the publicly available registers themselves at the relevant time. Whilst every effort is taken to ensure the accuracy of information, the Supplier cannot be responsible if the search does not return required information, including where incorrect information or ambiguous instructions are included in the search request, or because the publicly available registers are not available or hold incorrect information.
- (d) The Supplier is not responsible for the information entered by the Customer on the personal property securities register using the subscription services and the Customer must obtain independent legal advice in connection with the requirements of the PPSA, including in connection with enforcement and attachment of security interests and purchase money security interests (PMSIs). Without limiting its other rights at law and notwithstanding any other provision of these terms and conditions, the Supplier shall not be responsible where a security interest or PMSI is unenforceable against a grantor as a consequence of information supplied by the Customer using the Services.

2 GST

2.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

2.2 Consideration is GST exclusive

Unless otherwise specified, all amounts payable under this agreement are exclusive of GST and must be calculated without regard to GST.

2.3 GST payable on taxable supply

- (a) If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (Recipient) must, in addition to any other consideration, pay to the party making the taxable supply (Supplier) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (c) If there is an adjustment to a taxable supply made under this agreement then the Supplier must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

3 TERM AND TERMINATION

3.1 Purpose

The Customer agrees to engage the Supplier for the specific purpose of supplying each of the Products and each of the Services.

3.2 Commencement

This Agreement commences on the Agreement Date and will continue unless terminated earlier pursuant to the provisions of clause 3 or in other provisions of this agreement.

3.3 Termination by either party

Either party may terminate this Agreement by the giving of Notice to the other upon the occurrence of any of the following:

- (a) If the other party is in substantial breach of any of its Obligations under this Agreement and fails to correct such breach within one (1) month following the delivery of a Notice from the party not in breach requiring it to do so (which Notice must specify the breaches relied upon);
- (b) An application or an order is made (except for the purposes of amalgamation or reconstruction), or an effective resolution is passed, for the winding up of the Supplier or the Customer; or
- (c) the Supplier or the Customer become an externally administered body or a meeting is summonsed or other steps taken for the purpose of placing either the Supplier or the Customer under voluntary administration or official management and appointing an administrator or official manager.

3.4 Consequences of termination

On the expiry or earlier termination of this Agreement:

- (a) the Supplier will:
 - (i) cease providing the Services; and
 - (ii) in no way be liable to refund Fees to the Customer; and
- (b) the Customer will pay to the Supplier all Fees outstanding to the date of termination;
- (c) If the agreement is terminated by the customer earlier than the minimum term specified on the Purchase Order, the Customer will pay to the Supplier:
 - (i) Any fees or penalties incurred by the supplier up to and including the cancellation date; plus
 - (ii) A cancellation fee defined as the rest of the money that the Customer would have paid to the Supplier from the cancellation date up to and including the date of the minimum term of the agreement.
- (d) the Customer will not be entitled to any pro rata refund of any monies already paid to the Supplier, even if the agreement is terminated or expires before all the Products or Services are supplied.

4 PAYMENT

4.1 Time for Payment

Payment will be made by the Customer as required by the invoice sent by the Supplier or as otherwise agreed between the parties in writing.

4.2 Late Payments

Where the Customer fails to pay any amount owing to the Supplier in accordance with this agreement or if the Payment Method is by direct debit payment or credit card payment and the direct debit payment or credit card payment is denied or not processed for any reason, the Supplier may:

- (a) delay the delivery of any Products to the Customer;
- (b) suspend the provision of any Services to the Customer;
- (c) charge interest at the rate of 12% per annum, accruing daily, on all outstanding amounts owing by the Customer to the Supplier;
- (d) require the Customer to pay to the Supplier any other costs incurred by the Supplier as a result of the denial of the direct debit payment; or
- (e) terminate this agreement.

4.3 Invoice Admin Fee

Unless otherwise agreed with the Customer the invoice sent to the Customer by the Supplier will be delivered by email. The Customer will pay to the Supplier an administration fee, currently \$3.00, for invoices delivered via Australia Post.

4.4 Credit Card Surcharge

Unless otherwise agreed with the Customer, for payments made by Credit Card, the Customer will pay to the Supplier a credit card surcharge equal to a percentage of the total of the invoice sent by the Supplier. Currently;

MasterCard	1.5%
Visa	1.5%
American Express	3.0%
Diners Club	3.0%

5 CONSENT

The Customer may not assign the rights or benefits of this agreement to any person except with the written consent of the Supplier, which may be refused in its absolute discretion.

6 FORCE MAJEURE

- (a) If either party (the "Delayed Party") is prevented from carrying out the whole or any part of its Obligations under this Agreement in any capacity by reason of a Force Majeure delay, then it must give to the other party notice of the occurrence and particulars of the Force Majeure delay. The obligations of the Delayed Party so far as they are affected by that Force Majeure delay will be suspended during, but no longer than the continuation of that Force Majeure delay. No event of default entitling any other party to determine the rights, obligations and privileges conferred by, or agreements contained in this agreement will be held to have occurred.
- (b) The obligations of the other party are also suspended during the continuation of the Force Majeure delay to the extent that they are dependent on the performance of the suspended obligations.
- (c) The other party may terminate this Agreement without being liable for any damages in the event the Force Majeure delay extends for more than 60 days from the date the Force Majeure delay commences.

7 LICENCE

The Customer grants a non-exclusive perpetual licence to use any data that is provided by it to the Supplier.

8 GENERAL PROVISIONS

8.1 Entire agreement

This agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

8.2 Variation

This agreement must not be varied except by a later written document executed by all parties.

8.3 Waiver

A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

8.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this agreement.

8.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or

- (ii) a notice period specified in this agreement, expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

8.6 Governing law and jurisdiction

The laws applicable in Queensland govern this agreement.

The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts competent to hear appeals from those courts.

8.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

8.8 Preservation of existing rights

The expiration or termination of this agreement does not affect any right that has accrued to a party before the expiration or termination date.

8.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

8.10 Relationship of parties

Unless otherwise stated nothing in this agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties and no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

8.11 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

8.12 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this agreement must be in writing and must be given to the recipient at its Address for Service by being: hand delivered; sent by facsimile transmission; or sent by prepaid ordinary mail within Australia

A notice is given if: hand delivered, on the date of delivery; sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

Specific Terms and Conditions

9 LICENSE OF PRODUCTS

9.1 Definitions

In this clause, unless the context clearly indicates otherwise:

Designated Computer Equipment means the equipment on which the Software is installed by the Customer;

Licence means the licence of Software granted pursuant to this agreement;

Licence Fee means the amount as specified in the Purchase Order;

Media means the media on which the Software is recorded or printed;

Software means the computer program and related documentation as provided by the Supplier;

9.2 Duration of Licence

- (a) The Licence commences on the date of installation of the Software.

- (b) Subject to the terms of this agreement, the Licence shall continue until terminated in accordance with this agreement.

9.3 Licence fee

- (a) In consideration of the Licence, the Customer shall pay the Licence Fee to the Supplier in accordance with this agreement.
- (b) The Licence Fee is exclusive of all taxes, duties and surcharges payable in respect of the Software and in respect of this agreement.
- (c) Where payment of any Licence Fee payable by the Customer to the Supplier under this agreement is outstanding, the Supplier shall be entitled to suspend its remaining obligations under this agreement in relation to the licensing of the use of the Software and to re-possess the Software; and block the Software from accessing the Supplier's Web Page or Servers.

9.4 Conditions of licence

- (a) The Supplier warrants that it has the authority to grant the Licence.
- (b) The Licence shall be non-transferable and non-exclusive to the Customer.
- (c) Use of the Software is limited to the Designated Computer Equipment, unless the consent of the Supplier is obtained to use the Software on alternative equipment.

9.5 Delivery

- (a) The Supplier shall procure that the Software is delivered to the Customer on such date as is mutually agreed between the parties.
- (b) The Supplier may delay the delivery due to any reason outside its control.
- (c) The Products are deemed to be accepted in their present state and condition.

9.6 Installation

The Supplier is not liable to install the Software or to provide any services or support in respect of installation of the Software under this agreement, unless specified in the Purchase Order.

9.7 Acceptance

Upon installation of the Software, the Customer shall be responsible for ensuring that the Software is used in accordance with the specifications.

9.8 Compliance with Specifications

- (a) The Customer acknowledges and agrees that the Customer will use and install the Software at its own risk.
- (b) The Customer acknowledges that the Supplier has no responsibility to the Customer regarding any use of the Software not in accordance with the Suppliers instructions.
- (c) The Customer must comply with the Suppliers instructions when installing the Software.
- (d) The Customer acknowledges that the Supplier has not made any assessments or checked the computers on which the Customer intends to install the Software to ensure the Software can be installed or the purpose of the installation.
- (e) The Customer is responsible for ensuring that the specifications of the Software are suitable for the proposed computer on which the Software will be installed.

9.9 Ownership

- (a) The Supplier retains ownership of the Software whether in its original form or as modified by the Customer during the term of the Licence.
- (b) All intellectual property rights in the Software are retained by the Supplier.
- (c) Nothing in this agreement affects the ownership of Moral Rights in the Software.

9.10 Copies

- (a) Subject to the following sub-clauses of this clause, and without seeking to exclude or limit the application of sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth) the Customer shall not copy the Software, in whole or in part without the prior consent in writing of the Supplier.
- (b) The Customer shall notify the Supplier immediately on becoming aware of any unauthorised use or copying of the whole or any part of the Software.
- (c) Immediately upon termination of this agreement, the Customer shall deliver up to the Supplier the Software (including all copies, authorised or otherwise), the Media, whether in their original form or as modified by the Customer.

9.11 Modifications

- (a) The Customer shall not modify the whole or any part of the Software or combine or incorporate the whole or any part of the Software in any other program or system without the prior consent in writing of the Supplier.
- (b) The Customer shall fully indemnify and hold harmless the Supplier against any liability incurred if any modifications by of the Software by the Customer infringe the intellectual property rights of a third person.
- (c) The Software as modified remains the property of the Supplier.
- (d) This agreement shall continue to apply to the Software as modified.
- (e) This clause is subject to any right of modification arising pursuant to sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth).

9.12 Reverse engineering

Except as expressly permitted by sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth), the Customer shall not reverse assemble or reverse compile the Software or any part of the Software.

9.13 Security

The Customer shall be responsible for protecting the Software at all times from unauthorised access, use or damage.

9.14 Risk

Risk of loss or damage to the Software, the Media shall pass to the Customer upon delivery of the Software to the Location.

10 LIABILITY

10.1 Performance

To the extent permitted by law, the Supplier does not warrant that Services will be free of interruption or delays or that the Products or Services will be free of faults of any kind.

10.2 Terms implied by law

- (a) The Supplier agrees to provide Products and Services to the Customer subject only to the terms, conditions and warranties contained in this agreement and those which are implied by law and cannot be excluded.
- (b) In the event that the Supplier breaches a term, condition or warranty that is implied by law and cannot be excluded then, subject to the Supplier's right to limit its liability for that breach in clause 10.3 and the indemnity given by the Customer under clause 10.5, the Supplier will be liable for that breach in accordance with the law applied in the courts having jurisdiction over this agreement.

10.3 Limitation of liability

Where the Supplier is not permitted to exclude its liability for any loss or damage in connection with a breach of a term, condition or warranty, but is permitted to limit the Supplier's liability for such a breach, the Supplier's liability to the Customer is limited:

- (a) if the breach relates to the supply of Products, the repair or replacement of the Products, the supply of equivalent products or the payment of the cost of repairing or replacing the Products or supplying equivalent products; or
- (b) if the breach relates to the supply of a Service, resupplying the Service or payment of the cost of having the Service resupplied. All conditions, terms and warranties which would otherwise be implied into this agreement are expressly excluded except to the extent such exclusion is prohibited by law.

10.4 Exclusion of liability

To the extent permitted by law, the Supplier has no liability to the Customer or to any other person for:

- (a) any Claim by the Customer or any other person for loss of profits, economic loss, loss of data or any indirect or consequential loss or damage arising from or in connection with any breach of contract, any tort (including negligence) or any other basis;
- (b) faults or defects in any Products the Supplier provides to the Customer or the Services which are caused by or contributed to by the Customer's conduct or misuse;
- (c) any failure on the Supplier's behalf to perform the Supplier's obligations under this agreement where that failure is due to an

event occurring outside the Supplier's reasonable control, including explosions, natural disasters, war or an act of God; and

(d) acts, omissions or defaults of any supplier or any person who provides goods or services directly to the Customer for use in connection with a Service.

However, the Supplier must use reasonable endeavours to ensure that the Products and Services are delivered in a timely manner and are provided and maintained in a responsible fashion and that any faults in relation to any Products or Services are rectified in a timely manner.

10.5 Indemnity

The Customer indemnifies and must keep indemnified the Supplier and each of its directors, officers, employees, agents and contractors (**Indemnified Personnel**) against

- (a) all Losses incurred by the Supplier and the Indemnified Personnel;
- (b) all liabilities incurred by the Supplier and the Indemnified Personnel;
- (c) all costs actually payable by the Supplier or and the Indemnified Personnel to each of their legal representatives (whether or not under a costs agreement) and other expenses incurred by the Supplier and the Indemnified Personnel in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal: arising directly or indirectly as a result or in connection with any negligent or deliberate act, error or omission of, or breach of contract by, the Customer or any of the Customer's directors, officers, employees, agents or contractors.

10.6 Cancellation of a Service

Cancellation of a Service does not affect the provisions of this agreement concerning limitation of liability and indemnity.

11 PROVISION OF DATA DISTRIBUTION SERVICES

11.1 Access to information and authority

- (a) The Customer agrees to provide to the Supplier access to the Customer's vehicle inventory by means of an electronic or paper file.
- (b) The Customer authorises the Supplier to send details of the Customer's vehicle inventory by means of electronic or paper file to third party recipients licensed by the supplier to receive the data for a Permitted Purpose.

11.2 Security

- (a) The Customer acknowledges that the use of the Supplier's Web Site is restricted to current accounts, and the Supplier will provide to the Customer passwords (which includes a username) for the customer and the customer's authorised representatives to access to the Web Site.
- (b) The Customer shall be responsible for ensuring that the passwords are kept secure, and must not disclose this information to any other person.
- (c) Where the Customer believes that any other person knows the Customer's password or access key, the Customer must notify the Supplier immediately.
- (d) The Supplier shall not be liable for any Services used or Fees incurred by the Customer as a result of other persons using the Customer's access key or password.

12 PROVISION OF AUTOMOTIVE PHOTOGRAPHY SERVICES

12.1 Access to Inventory

- (a) The Customer agrees to provide access to its vehicle inventory to the Supplier.
- (b) The Customer agrees that the Supplier may disclose this information to third parties where necessary to provide the Service.

12.2 Photography Management System

The Supplier may make the Photography Management Software available to the Customer available for download from its Web Site.

12.3 Copyright

- (a) Unless otherwise provided, all copyright and trade marks in all photographs taken by the Supplier shall remain with the Supplier;
- (b) Except as permitted by the Copyright Act 1968 (Cth), the Customer must not modify or reproduce any photograph taken by

the Supplier without the Supplier's specific written permission to do so.

- (c) In particular, the Customer must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any photographs taken by the Supplier.

12.4 Rescheduling of photography

Where weather or public holidays or an event, which in the opinion of the Supplier acting reasonably, prevent photography on a particular day, the Supplier may reschedule photography.

12.5 Termination of Automotive Photography Services

- (a) Without limiting the parties rights under this agreement, the provision of the Automotive Photography Services Agreement by the Supplier to the Customer may be terminated by either party giving the other 30 days written notice of termination.
- (b) Notwithstanding that the provision of Automotive Photography Services has been terminated, the Supplier will still be entitled to recover any amounts owing to the Supplier prior to the termination.

13 PROVISION OF PHOTOGRAPHY UPLOAD SERVICES

13.1 Access to information and authority

- (a) The Customer agrees to provide to the Supplier access to the Customer's photographs of vehicles from its vehicle inventory by means of electronic file.
- (b) The Customer authorises the Supplier to send photographs of vehicles from its vehicle inventory by means of electronic file to third party recipients as nominated by the Customer from time to time.

14 PROVISION OF WEB DEVELOPMENT SERVICES

14.1 Definitions

In this clause 14.1, unless the context otherwise requires:

Acceptance Tests means a demonstration by the Supplier to the reasonable satisfaction of the Customer that the Web Site complies in all respects with the function specifications;

Charges means the charges payable by the Customer to the Supplier for the services, as specified in the Purchase Order;

Development Services means the development and testing of the Web Site pursuant to this agreement;

Development specifications means the specifications set out in the Purchase Order or if no specifications are set out, the specifications that are developed as part of the Development Services provided under this agreement;

Development Stages means the stages specified in the Development Specifications for the interim and final completion of the Web Site;

Documentation means manuals and other printed materials which are designed to assist the Customer using the Web Site;

Functional specifications means the specifications agreed between the Customer and the Supplier;

Internet means the world wide connection of computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol;

Link means a hypertext link connecting the Web Site to other Web Sites;

Maintenance services means all services relevant, amongst other things, to:

- (a) updating the content of the Web Site as directed by the Customer;
- (b) maintaining and updating links;

Third party materials means textual, graphical, audio or like materials, together with any software, which is incorporated into the Web Site;

User means a person other than the parties who seeks access to the Web Site over the Internet;

Web site means the location accessible on the internet through the World Wide Web and which provides multimedia content via a graphical user interface;

14.2 Development services

- (a) The Supplier shall provide the Development Services in the manner prescribed in this agreement.

- (b) The Supplier shall use reasonable endeavours to adhere to the timeframe comprised within the development stages.
- (c) The Supplier shall not be responsible for installing the Web Site on the internet, unless agreed between the Customer and the Supplier.

14.3 Acceptance Tests

- (a) Upon completion of installation, the Supplier must conduct the Acceptance Tests. The Customer must be provided with a reasonable opportunity to be present at and to participate in the Acceptance Tests.
- (b) The Acceptance Tests shall be completed as soon as practicable.
- (c) Upon completion of the Acceptance Tests, the Supplier must provide a Customer with certification that the Web Site operates in accordance with and otherwise complies with the functional specifications.

14.4 Customer's obligations

- (a) Unless otherwise agreed between the Customer and the Supplier, the Customer shall have the following responsibilities:
 - (i) provision of all content to be incorporated into the Web Site;
 - (ii) provision of all logos, designs, graphic and related materials to be incorporated into the Web Site;
 - (iii) provision of any other information, ideas or suggestions which are to be expressly considered by the Supplier in creating the Web Site.

14.5 Maintenance

- (a) If requested by the Customer, and subject to prior payment of the relevant charges, the Supplier shall provide the maintenance services.
- (b) Maintenance services will be available during normal business hours.

14.6 Intellectual property rights

- (a) Subject to clause 14.6(b), Intellectual Property rights in the Web Site shall vest in the Customer.
- (b) Notwithstanding clause 14.6(a), the Customer acknowledges that there is no assignment of Intellectual Property rights in:
 - (i) any pre-existing material (including but not limited to the Supplier's software, documentation, templates and data) which is incorporated into or which has been used in the course of developing the Web Site; or
 - (ii) the user interface of the Web Site; or
 - (iii) any Web Site or Development Services before the full charges payable by the Customer to the Supplier for the Web Site and/or Development Services, as specified in the Purchase Order, are paid and cleared to the account of the supplier.
- (c) Except to the extent so notified by the Supplier to the Customer during the term of this agreement, the Customer shall be responsible for:
 - (i) obtaining all necessary permission, authorisations, licences and consents in relation to the use and incorporation of third party materials into the Web Site; and
 - (ii) payment of all royalties or licence fees associated with the use of a third party's Intellectual Property rights in connection with the Web Site.
- (d) The Customer shall fully indemnify the Supplier against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against the Supplier alleging that the Customer's use of the Web Site infringes any such Intellectual Property rights of any person.
- (e) To the extent permitted by applicable law, the Customer consents, and will obtain all other necessary written consents, to any act or omission that would otherwise infringe any moral rights in the developed materials comprised within the Web Site, and further the Customer waives and will obtain all other necessary written waivers, or all moral rights in such developed materials, for the benefit of the Supplier, its licensees, successors in title and anyone authorised by any of them to do acts comprised in the copyright.

14.7 Termination

- (a) For the purpose of the Services where the Customer discontinues use of the Web Site, the agreement for provision of Web Development and Maintenance may be terminated immediately at the option of the Supplier.

14.8 Security Interest

- a. The Customer:
 - i. Grants to the Supplier a purchase money security interest (PMSI) as defined in the *Personal Property Securities Act 2009* (Cth) (PPSA) in the Intellectual Property rights created in the course of developing the Web Site or Development Services specified in the Purchase Order and in any proceeds of those rights before the full charges payable by the Customer to the Supplier, as specified in the Purchase Order, are paid and cleared to the account of the Supplier to secure the payment for Web Site and/or Development Services;
 - ii. Grants to the Supplier a security interest in the Intellectual Property rights specified and any proceeds of sale of the Intellectual Property rights specified to the extent necessary to secure any other obligations of the Customer to pay to the Supplier any monies owing to the Supplier which do not constitute all or part of the purchase price for the Intellectual Property rights specified;
- b. The Supplier reserves the right, and the Customer authorises the Supplier, to register on the Personal Property Securities Register a financing statement under the PPSA to register a PMSI in respect of the Intellectual Property rights specified and/or any proceeds of those rights and/or to register a financing statement to register a security interest in the Intellectual Property rights specified and/or any proceeds of those rights. The Customer agrees it will do all things reasonably necessary to allow and assist the Supplier in registering or lodging any financing statement or financing change statement. To the maximum extent permitted by law, all costs incurred by the Supplier in registering or lodging a financing statement or a financing change statement must be paid by the Customer to the Supplier on demand.
- a. Without limiting the rights of the Supplier under this Purchase Order or the PPSA or otherwise and to the maximum extent permitted by law, if the Customer has not paid any monies owing to the Supplier when due or complied with any of its obligations under this agreement, the Supplier may seize and dispose of or retain the Intellectual Property rights specified (or seize any proceeds of those rights) in order to satisfy any outstanding liability owed by the Customer to the Supplier even if the Supplier does not have priority over any other persons having a security interest in the Intellectual Property rights specified and/or the proceeds of those rights.
- (d) Without limiting the rights of the Supplier under this agreement or the PPSA or otherwise and to the maximum extent permitted by law, the Customer irrevocably grants to the Supplier and its employees, agents and contractors the right to enter any premises or property (without notice) and without being in any way liable to the Customer or any other person if the Supplier has cause to exercise any of its rights under the PPSA or under this agreement in respect of the Intellectual Property rights specified.
- a. The Customer, to the maximum extent permitted by law, waives its rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 135, 142 and 143 of the PPSA and waives any right to receive a copy of any financing statement or verification statement that is or may be registered, issued or received at any time.

15 PROVISION OF WEB HOSTING SERVICES

15.1 Definitions

In this clause 15, unless the context otherwise requires:

Acceptable use policy means the conditions of use applicable to the service as published by the Supplier from time to time;

Content means all text, picture, sound, graphics, video and other data comprising the Software supplied by the Customer to the Supplier for the purpose of providing Hosting Services.

Domain Name means the domain name specified for the Web Site by the Customer from time to time;

Web Hosting Fee means the fee payable by the Customer to the Supplier pursuant to this agreement;

Hosting Services means the act of running the Customer's Web Site on the Supplier's server on behalf of the Customer;

Server means the physical machine or machines on which the Customer's Web Site will be installed.

Software in the context of this clause means the software comprising the Customer's Web Site provided by the Customer to the Supplier for the purposes of providing Hosting Services;

Web Hosting Services Agreement means the agreement between the Supplier and Customer in respect of the Web Hosting Services;

15.2 Provision of Hosting Services

- (a) The Supplier shall provide the Customer with Hosting Services on a continuous basis during the term set out in the Purchase Order. The Supplier will inform the Customer if the Hosting Service is unavailable at any time for access by the Customer due to maintenance or any other foreseeable factor or cause.
- (b) The Customer shall comply with all reasonable directions by the Supplier as to the access and use of the Server.
- (c) The Customer acknowledges that the Supplier does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the Web Site and the Supplier shall not be held responsible in any way for any content or information accessed via the Web Site.
- (d) The Customer shall refrain from disruptive activities which may include, but are not limited to, the circulation of any unsolicited publicity or advertising material, propagation of computer worms and viruses, use of the Server to gain unauthorised access to any other computer system, the sending of harassing, obscene, offensive or threatening electronic mail, forgery of electronic mail and the placement or transmission or storage of any defamatory material on the Internet.
- (e) The Customer will not access, nor permit any other party to access, the Server for any purpose or activity of an illegal or fraudulent nature.
- (f) Any backup copy made by the Supplier shall only be used in the event of maintenance, down-time, and service interruptions.
- (g) By using the Hosting Services, the Customer agrees to comply with the acceptable use policy, if any, of the Supplier;
- (h) The Supplier does not guarantee as to the continuous availability of the Hosting Service.

15.3 Customer's obligations

- (a) The Customer is responsible for maintaining the secrecy and confidentiality of all identification and log-in information required by the Customer to access the Server.
- (b) The Customer agrees not to disclose to any other person, corporation, entity or organisation any identification or log-in information, whether in use or not, nor any other Confidential Information relating to the Supplier or the provision of Hosting Services.

15.4 Security

- (a) The Parties expressly recognise that it is impossible to maintain flawless security. Each Party shall use best endeavours to ensure that the Software, Server and each Party's data and Confidential Information is protected at all times during this Agreement from unauthorised access or use by third parties and from physical misuse, damage or destruction by any person.
- (b) The Customer shall be solely responsible for the use, supervision, management and control of the Software and the Customer shall be responsible for protecting its passwords and files and shall be responsible for any damage caused by unauthorised access to the Software and/or Server.
- (c) If either Party becomes aware of unauthorised access or use by third parties, physical misuse, damage or destruction of the Software, Content or Server by any person then that Party will immediately notify the other Party and will take all reasonable measures to ensure such unauthorised access immediately ceases.

15.5 Ownership

Any Software and Content given to the Supplier by the Customer under this Agreement or otherwise shall remain the property of the Customer or its licensor.

15.6 Termination

- (a) Either Party may terminate the provision of Web Hosting Services by giving 1 month notice to the other party in writing. In the event of termination of the provision of the Web Hosting Services or this agreement, the Supplier shall download all hosted materials belonging to the customer, to a medium of the Supplier's choosing, and deliver such materials to the Customer in due course.