

CONTRACT OF SALE - TERMS AND CONDITIONS



Company Name

Address

135 Stawell Rd HORSHAM VIC 3400

Phone Number

(03) 5381-1385

Fax Number

Email Address

admin@tractionag.com.au

Privacy Officer / Access and correction to your personal information:

We aim to ensure your personal details are up-to-date. If you have queries, concerns or would like to access or revise your personal information, please contact: admin@tractionag.com.au

LMCT: 11375

PRIVACY STATEMENT

Purposes of collection and use of personal information

This Agreement of Sale and other transfer documentation that you sign when you purchase a vehicle contain personal information about you, including your name, telephone number, address, drivers licence number, email address, details of any trade in vehicle you own. The Trader holds your personal information and is stored on file. The Trader collects and holds this personal information to facilitate your purchase of a vehicle and to meet the requirements of the legislation associated with the supply of a motor vehicle, and related services and goods. Associated services and goods include the provision of warranty, insurance and registration. The Trader will only collect personal information that you provide to it.

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

Disclosure of Personal Information

The trader will only disclose your personal information in accordance with the Australian Privacy Principles as set out in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*. The Trader will disclose your personal information to VicRoads, and any other organisation that requires your details in order to carry out the transfer of registration of your vehicle. If you apply for finance in connection with the purchase of a vehicle, the Trader will provide your personal information to the financier for the purposes of the financing arrangements. Your personal information may also be disclosed to the Trader's contracted suppliers, service providers and other entities that are associated with the supply of motor vehicles and related goods. Finally, the Trader may disclose your personal information if it determines that disclosure of such information is required by law and reasonably necessary to protect the rights, property or safety of the Trader. Your personal information may be disclosed to overseas recipients. As the internet is a global environment, where we use the internet to collect and process personal information this will necessarily involve the transmission of that information worldwide. We may also share your personal information with our associates and suppliers overseas. Where we do so, we will take reasonable steps to ensure such recipients comply with the Australian Privacy Principles set out in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*.

Access and correction of your personal information

You have a right to access your personal information. The Trader will generally provide it to you but in some cases where and to the extent permitted by law, the Trader may refuse access to some or all of that information. In those circumstances the Trader will provide reasons. To make a request for access to your personal information, you will need to obtain and complete an application form verifying your identity and specifying what information you require. You should contact the Trader's Privacy Officer via the contact details on Agreement of Sale to make a request.

The Trader will take reasonable steps to ensure your personal information is accurate, complete and up to date. If you believe that any personal information the Trader holds about you is not accurate, complete or up to date, then please contact the Trader's Privacy Officer via the details on the Agreement of Sale.

Complaints

You can contact the Trader's Privacy Officer (details as set out above) if you believe that the Trader is in breach of the Australian Privacy Principles set out in the Privacy Amendment (Enhancing Privacy Protection) Act 2012. The Trader will endeavour to respond to any complaints it has received within 30 days. If the Trader is unable to resolve your complaint you may take your complaint to the Office of the Australian Information Commissioner.

Security

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

Your consent

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

TERMS AND CONDITIONS FOR SALE OF NEW MOTOR VEHICLE

1. Definitions

Unless the context otherwise requires:-

"Purchase Vehicle" means the Motor Vehicle described in the front of this Agreement under the panel headed 'Description of Motor Vehicle'

'Trade in Vehicle" means the Motor Vehicle described in the front of this Agreement under the panel headed Trade-in Motor Vehicle Particulars",

"Purchaser" means the Purchaser described in the front of this Agreement and shall include the heirs, executors and assignees of the Purchaser.

"The Seller" means the Trader described in the front of this Agreement.

"Agreement" means this Agreement which is comprised of the front page hereof and this page.

2. Purchase Price of Motor Vehicle

- (a) There may be an increase in the recommended retail price of the motor vehicle as published by the manufacturer or distributor as at the date of this Agreement ("the current recommended retail price") and the recommended retail price as published by the manufacturer or distributor as at the date of the delivery of the motor vehicle ("the new recommended retail price"). The price increase is the amount of the new recommended retail price minus the amount of the current recommended retail price (the price increase"). As well as or instead of such an increase in the recommended retail price there may be an increase in the amount of stamp duty or other tax payable in respect of the motor vehicle between the date of this Agreement and the date of the delivery of the motor vehicle ("the additional date").
- (b) By signing this Agreement, the Purchaser is obliged to pay to the Trader the price increase (if any) as well as the additional duty (if any) in addition to the purchase price shown on the front of this Agreement upon delivery of the motor vehicle or when the Purchaser is notified that the motor vehicle is available for delivery (whichever is first) UNLESS prior to accepting delivery and not more than three days after the Purchaser is notified of the price increase the Purchaser notifies the Trader in writing that the Purchaser no longer wishes to be bound by this Agreement.
- (c) If the Purchaser so notifies the Trader that the Purchaser no longer wishes to be bound by this Agreement the Purchaser will no longer be bound by this Agreement UNLESS not more than three days after such notification the Trader notifies the Purchaser that the Trader requires the Purchaser to purchase the motor vehicle for the total price shown on the front page of this Agreement exclusive of the price increase and the additional duty
- (d) If the Trader so notifies the Purchaser the Purchaser is immediately obliged to purchase the motor vehicle for the total price shown on the front page of this Agreement.
- (e) The abbreviation GST means the Goods and Services Tax. Prices shown and all references to price, amounts, allowance, refund, cost, pay-out, value and other like words made within this Agreement are inclusive of the Goods and Services Tax, unless amounts are specifically exempted by legislation. A separate tax invoice will be issued in accordance with the Goods and Services Tax legislation.

3. Nominated Registered Owner

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

4. Payment

- (1) Where in this Agreement a receipt is not provided in the panel headed 'Terms of Settlement' on the front of this Agreement then this Agreement shall be deemed to constitute a duly given receipt for the amount stated.
- (2) If the Purchaser fails to make any payment as provided for in this Agreement on the due date for such payment then the Purchaser shall pay to the Trader interest on such amount until payment of such amount at a rate equal to the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 plus 5% providing the total amount of such interest shall not exceed an amount equal to 5% of the purchase price of the Purchase Vehicle.

(3) Upon the Trader giving notice to the Purchaser that the Purchase vehicle is available for delivery the Purchaser shall:-

(a) forthwith deliver the Trade in Vehicle (if any) to the Trader; and

(b) immediately pay the whole of the balance of the purchase price of the Purchase Vehicle

5. Authorised Sales

Notwithstanding anything herein otherwise contained this Agreement shall be voidable by the Trader at any time prior to delivery of the Purchase Vehicle. If the Agreement is not executed by a person duly authorised by the Trader to execute this Agreement and if this Agreement is so voided by the Trader then the Agreement shall be at an end and all monies paid hereunder shall be refunded to the Purchaser in full

6. Retention of Title

(1) It is expressly agreed between the Purchaser and the Trader that the title to the Purchase Vehicle shall in no circumstances pass to the Purchaser until the Trader has received full and cleared payment for the Purchase Vehicle as herein provided. Until the Trader has received such payment for the Purchase Vehicle the Trader shall be entitled to the immediate possession of the Purchase Vehicle without notice to the Purchaser and the Purchaser hereby authorises the Trader to enter into any premises owned or controlled by the Purchaser for the purpose of repossessing the Purchase Vehicle

(2) If the Purchaser is in default under this Agreement the Trader may at his option notwithstanding that property in the Motor Vehicle has not passed to the Purchaser and insofar as is possible by law sue for and recover the balance of any monies outstanding under this Agreement and any expenses and costs and interest incurred as a consequence of the Purchaser's default as aforesaid

7. Delivery

The Purchaser shall accept delivery of the Purchase Vehicle at the address of the Trader set out on the front of this Agreement and all risk in the Purchase Vehicle shall pass to the Purchaser upon delivery.

8. Trade In Conditions

(1) Where the purchase involves a trade-in vehicle then the amount allowed for the trade-in (net trade-in allowance) shall be deducted from the total purchase price. The net trade-in allowance will be the amount allowed on the trade-in vehicle less any amount to be paid by the seller to discharge the interest of any other person in the vehicle.

(2) The trade-in vehicle must be delivered to the seller no later than the date of delivery of the purchase vehicle. If the trade-in vehicle is delivered after this date or is not in substantially the same condition as at the date of this Agreement then the net trade-in allowance may be adjusted by an amount equal to the change in the fair market value of the trade-in vehicle between the date of this Agreement and the date of delivery to the seller.

(3) The purchaser's interest in the trade-in vehicle shall pass to the seller

(a) when the purchaser accepts delivery of the purchase vehicle; or

(b) when the purchaser has delivered the trade-in vehicle to the seller and the seller has paid the net trade-in allowance to the purchaser or acknowledged in writing that this amount has been credited towards the total purchase price - whichever first occurs.

(4) The seller shall not, without the prior written consent of the purchaser, sell or agree to sell the trade-in vehicle before delivery of the purchase vehicle to the purchaser.

(5) The Purchaser warrants that save for the encumbrances set out on the front of this Agreement the Trade in Vehicle including all extras and accessories now on or attached thereto are his or her sole and absolute property and are free from all or any other encumbrances whatsoever and the amount set out as payment on the front of this Agreement includes all monies owing or payable to any person firm, or corporation in respect of the Trade in Vehicle and all extras and accessories.

(6) If the amount required to pay out the encumbrances in respect of the Trade-in Vehicle exceeds the amount provided on the front of this Agreement then the Trader may at its option pay such amount as may be necessary to obtain an unencumbered title to the Trade in Vehicle which the Purchaser hereby authorises and the Purchaser shall immediately pay such amount to the Trader forthwith.

(7) The Trader agrees to allow part of the total purchase price for the motor vehicle to be discharged by the Purchaser delivering to the Trader the undermentioned trade-in vehicle including all extras and

accessories now on or attached thereto. free of all encumbrances, or as otherwise arranged hereinafter called 'the trade-in motor vehicle", at the time and on the terms and conditions contained herein

9. Delays in delivery

- (1) The seller shall make every reasonable effort to make the purchase vehicle available for delivery on or before the delivery date stated in this Agreement where delivery is delayed more than 14 days the purchaser may terminate this Agreement by notifying the seller in writing, unless the delay is caused by the purchaser.
- (2) The purchaser shall take delivery of the purchase vehicle within 7 days of being notified by the seller that the vehicle is ready for delivery. If the purchaser fails to take delivery within this time the seller may terminate the Agreement by notice in writing

10. Limitation of Liability

At the time of delivery of the Purchase Vehicle the Purchaser acknowledges that the Purchase Vehicle is in all respects in accordance with the description contained in the Agreement and insofar as is possible by law by taking delivery of the Purchase Vehicle the Purchaser

- (a) waives any rights or remedies he would or might otherwise have had by reason of any misdescription of the Purchase Vehicle in this Agreement and
- (b) the Parties hereto shall be deemed to have thereupon agreed to have varied this Agreement by changing the description of the Purchase Vehicle so it describes the Purchase Vehicle actually delivered

11. Subject to finance

- (1) this Agreement is subject to the purchaser obtaining finance the Agreement is conditional upon the purchaser obtaining finance approval:
 - (a) within the time stated in this Agreement;
 - (b) of the amount stated in this Agreement;
 - (c) from the credit provider named in this Agreement (or from a similar type of credit provider);
 - (d) for the, type of finance stated in this Agreement
 - (e) upon reasonable terms and conditions in the circumstances
- (2) The purchaser agrees to take all reasonable steps towards obtaining finance approval
- (3) If the purchaser does not obtain finance approval then either the purchaser or the seller may terminate this Agreement by giving notice to the other party

12. Transfer to credit provider

Where requested by the purchaser, the seller shall transfer title to the Purchase Vehicle to the purchaser's credit provider upon payment of the total purchase price to the seller.

13. Termination

- (1) Where this Agreement is lawfully terminated by the seller due to a breach of this Agreement by the purchaser then
 - (a) The purchaser shall forfeit the amount stated in this Agreement to the seller provided that amount does not exceed 5 per cent of the total purchase price
 - (b) where an amount has been paid towards the purchase price and that amount exceeds the forfeitable amount then the seller shall-
 - (i) refund to the purchaser so much of the amount paid that exceeds the forfeitable amount and
 - (ii) return any trade-in vehicle to the purchaser; and
 - (c) where an amount has been paid towards the purchase price and that amount does not provide the seller with the forfeitable amount and a trade-in vehicle has been delivered to the seller then the trade-in vehicle may be forfeited to the seller and the purchaser credited with the net trade-in allowance. If this amount and any other amount paid by the purchaser exceeds the forfeitable amount then the excess shall be refunded to the purchaser.
- (2) Where this Agreement is lawfully terminated by the purchaser due to a breach of this Agreement by the seller then the seller shall-
 - (a) refund to the purchaser all money paid by or on behalf of the purchaser, and
 - (b) return any trade-in vehicle to the purchaser
- (3) Where this Agreement is lawfully terminated by either the purchaser or the seller due to clause 13 or for

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- any reason other than a breach of this Agreement then the seller shall-
- (a) refund to the purchaser all money paid by or on behalf of the purchaser; and
 - (b) return any vehicle to the purchaser
- (4) Where this Agreement provides for the seller to return any trade-in vehicle to the purchaser but the seller has with the prior written consent of the purchaser. sold or agreed to sell the trade-in vehicle then this Agreement will be complied with if the seller pays to the purchaser
- (a) an amount equal to the hot trade-in allowance or
 - (b) where the purchaser or seller have agreed on a value as the fair market value of the trade-in vehicle that agreed value less any trade-in payout made or to be made by the
- (5) Where the seller returns any trade-in vehicle to the purchaser and the seller has carried out repairs on the vehicle with the consent of the purchaser then the seller shall be entitled to an amount equal to the reasonable cost of those repairs.
- (6) Where either the purchaser or the seller wishes to terminate this Agreement in accordance with this clause they must give written notice to the other party of the decision to terminate
- (7) Nothing in this clause affects the rights and duties conferred by section 43 of the Motor Car Traders Act 1986 or regulation 10 of the Motor Car Traders Regulations 1998

14. Non exclusion of statutory warranties and other rights

The benefits conferred by this Agreement and by the seller's warranty, if any are in addition to all rights and remedies in respect of the purchase vehicle which the purchaser has under the Trade Practices Act 1974 and any other Commonwealth, State and Territory laws

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