Wholesale Dealer Master Supply Terms and Conditions

Last updated: **13 October 2026**

These Wholesale Dealer Master Supply Terms and Conditions (these **Terms and Conditions**), together with the Credit Application Terms and Confirmation Letter (each term as defined below), form part of the Purchaser's trading agreement with the Seller. These Terms and Conditions may be updated from time to time and such changes will be published on **https://duttonautomotive.com.au/wholesale-dealer-master-supply-terms-and-conditions** and will apply from the date of publishing as set out in clause 16.4 (*Amendment*) hereof. Any material changes will be notified to the Purchaser by email.

TERMS AND CONDITIONS

1. Definitions and interpretation

In these Terms and Conditions, unless the context otherwise requires:

Additional Security means any Security Interest (in addition to the Security Interest described or created under clause 8 (*Title and payment security*) that the Seller may require as a term and condition in connection with the sale and purchase of Purchase Vehicles in accordance with the Agreement.

Additional Security Provider means any person which is the grantor of a Security Interest under an Additional Security.

Agreement means the agreement between the Seller and the Purchaser for the sale and purchase of Purchase Vehicles and comprises each of:

(a) where applicable, the Credit Application Terms;
(b) the Confirmation Letter;
(c) the Sale Invoice; and
(d) these Terms and Conditions, as amended, supplemented, or replaced from time to time.

Agreed Delivery Date has the meaning given to it in clause 5(a) (*Delivery*).

Approved Credit Limit has the meaning given to it in clause 2.2(d) (*Delivery*).

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as applied as a law under that Act and the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

Business Day means any day 8.30am to 5.00pm which is not a Saturday, Sunday or designated public holiday or bank holiday in Victoria.

Claim means a claim, action, proceeding, or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Collateral means each present or future Purchase Vehicle and any proceeds from any dealing with any present or future Purchase Vehicle, including any insurance proceeds in connection with any loss or damage to any present or future Purchase Vehicle.

Commencement Date means the execution date of the Confirmation Letter.

Confidential Information means any written or oral information of a technical, business, or financial nature or that is taken by any provision of the Agreement to be Confidential Information, or that the disclosing party makes the receiving party aware is considered by the disclosing party to be confidential and proprietary, and includes all information that is personal information for the purposes of the *Privacy Act 1988* (Cth), but does not include information which the receiving party can establish:

(a) was in the public domain when it was given to the receiving party;

(b) becomes, after being given to the receiving party, part of the public domain, except through disclosure in a breach of the Agreement;

(c) was in the receiving party's possession when it was given to the receiving party and was not otherwise acquired from the disclosing party directly or indirectly; or

(d) was lawfully received from another person having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality.

Confirmation Letter means the letter agreement between the Seller and the Purchaser confirming approval of the credit trading account, agreed payment terms and acceptance of these Terms and Conditions.

Controller has the same meaning as in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Credit Application Form means the credit request application and on-boarding form (titled 'Dutton Automotive Credit Request and On-boarding Form') completed and submitted by the Purchaser to the Seller.

Credit Application Terms means the terms and conditions set out in the Credit Application Form, if any.

Default Event means:

(a) (a) the occurrence of any event or circumstance set out in clause 11.1 (*Termination by Seller*); and

(b) if at the end of the Term or upon termination of the Agreement, the Purchase Price for all Purchase Vehicles delivered to the Purchaser by the Seller, and any other amounts outstanding under the Agreement and any Sale Invoice, are not immediately paid when due in accordance with clause 11.4(a) (*Obligations on termination*).

Delivery Location means the Seller's Premises, unless otherwise specified in the relevant Sale Invoice or as agreed in writing between the Seller and the Purchaser.

Force Majeure Event has the meaning given to it in clause 13(a) (*Force Majeure*).

Government Agency means a:

(a) government or government department or other body;

(b) governmental, semi-governmental or judicial person; or

(c) person (whether autonomous or not) who is charged with the administration of a law.

GST has that meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth).

Insolvency Event means any of the following occurs in respect of a person or entity (as applicable):

(a) being in liquidation or provisional liquidation or under administration;

(b) having a controller or analogous person appointed to it or any of its property;

(c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

(d) being unable to pay its debts or otherwise bankrupt or insolvent;

(e) dying or ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;

(f) taking any step that could result in the person becoming an insolvent under administration;

(g) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

(h) suspending or ceasing or threatening to suspend or cease to carry on its business; or

(i) any analogous event to any of the above, including in respect of an individual.

Loss means any damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Misdescription has the meaning set out in clause 5(d) (*Delivery*).

Payment Terms means the agreed payment terms set out in the Confirmation Letter as may be amended from time to time in writing between the parties.

Personal Property Securities Register means the national register of security interests registered pursuant to the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Purchase Price means the amount payable by the Purchaser to the Seller for the supply of a Purchase Vehicle as set out in the particulars of the relevant Sale Invoice.

Purchase Vehicle means each motor vehicle (as described in the particulars of the relevant Sale Invoice) that is supplied by the Seller to the Purchaser pursuant to the Agreement.

Purchaser means the party purchasing the Purchase Vehicles from the Seller.

Receiver means a receiver or a receiver and manager.

Resolution Period has the meaning given to it in clause 7(g) (*Payment*).

Review Period has the meaning given to it in clause 2.2(b) (*Approval process*).

Sale Invoice means each invoice in respect of Purchase Vehicles issued by the Seller to the Purchaser pursuant to these Terms and Conditions in substantially the same form as set out in Annexure A.

Security Interest means:

(a) a security interest that is subject to the PPSA;

(b) any other mortgage, charge, pledge, lien, hypothecation, power of attorney or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, a notice under section 255 of the *Income Tax Assessment Act 1936*(Cth), subdivision 260-A in schedule 1 to the *Taxation Administration Act 1953* (Cth) or any similar legislation; or

(c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Seller means the party supplying the Purchase Vehicles to the Purchaser (and named on the relevant Sale Invoice as the 'Seller') which may be either of Dutton Garage Wholesale Australia Pty Ltd ABN 94 615 833 031 or SellYourCarFast Australia Pty Ltd ABN 86 615 833 059 (as applicable).

Seller's Premises means the address of the Seller set out in the relevant Sale Invoice or any other address the Seller notifies to the Purchaser in writing.

Term has the meaning given to it in clause 3 (*Term*).

Terms and Conditions means this document dated 1 November 2024 (as amended from time to time) and published on https://duttongroup.com.au/wholesale-dealer-master-supply-terms-and-conditions.

Transport Provider means the Purchaser's nominated transport, shipping or other freight provider (including any such transport or freight provider arranged by the Seller on the Purchaser's behalf at the Purchaser's request).

Unacceptable Quality has the meaning set out in clause 5(d) (*Delivery*).

1.2 Interpretation

In these Terms and Conditions, except where the context otherwise requires:

(a) the singular includes the plural and vice versa, and a gender includes other genders;

(b) another grammatical form of a defined word or expression has a corresponding meaning;

(c) a reference to:

i. a clause, paragraph, Part, Schedule, Annexure or attachment is a reference to a clause, paragraph, Part, Schedule, Annexure or attachment of or to these Terms and Conditions, and a reference to these Terms and Conditions includes any Part, Schedule or attachment;

ii. a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

iii. A$, $A, dollar, AUD or $ is to Australian dollar currency;

iv. time is to the time in Victoria, Australia, Australian Eastern Standard Time or Australian Eastern Daylight Time (as the case may be);

v. a party is to a party to the Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

vi. a party includes a natural party, partnership, body corporate, association, governmental or local authority or agency or other entity; and

vii. a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(d) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;

(e) headings are for ease of reference only and do not affect interpretation;

(f) if a party consists of more than one party, the Agreement binds each of them separately and any two or more of them jointly;

(g) an obligation, representation, warranty or indemnity in favour of more than one party is for the benefit of them jointly and severally;

(h) an obligation, representation, warranty or indemnity on the part of more than one party binds them jointly and severally;

(i) words defined in the GST Law have the same meaning when used in clauses concerning GST;

(j) if a person is a member of a GST group, references to GST which the person must pay and to Input Tax Credits to which the party is entitled include GST which the representative member of the GST group must pay and Input Tax Credits to which the representative member is entitled;

(k) references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an Input Tax Credit extend to any notional input tax credit to which any person is entitled;

(l) the words **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act; and

(m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 The rule about "contra proferentem"

The Agreement is not to be interpreted against the interests of a party merely because that party:

(a) was responsible for the preparation of the Agreement (or any part of it);

(b) proposed the Agreement or some provision of it; or

(c) relies on a provision of the Agreement to protect itself.

2. Supply of Purchase Vehicles

2.1 Agreement to supply Purchase Vehicles

2.2 Approval process

(a) If a Purchaser wishes to procure Purchase Vehicles from the Seller on credit, the Purchaser will complete, sign and submit a Credit Application Form to the Seller.
(b) Within three (3) Business Days of receipt of a completed Credit Application Form, the Seller must review and verify the Credit Application Form (which may involve the engagement of third party credit and identity verification checks) (Review Period). During the Review Period, the Seller may contact the Purchaser for further information and documents as may be reasonably required to assess the Credit Application Form.
(c) Within five (5) Business Days of the completion of the Review Period, the Seller must inform the Purchaser in writing whether the Credit Application Form has been approved or refused (with rationale for outcome).
(d) Pursuant to clause 2.2(c), if the Credit Application Form has been approved, the Seller will issue a Confirmation Letter to the Purchaser setting out details of the credit trading account to be issued in the Purchaser's legal name, the credit limit approved for the relevant credit trading account (Approved Credit Limit), the Payment Terms and any further terms and conditions (including the grant of any Additional Security).
(e) The Purchaser must countersign and return the Confirmation Letter to the Seller prior to being able to use the credit trading account to purchase any Purchase Vehicles. Within two (2) Business Days of receipt of a signed Confirmation Letter from the Purchaser and subject to clause 8.2 (Security interest) and the satisfaction of any further terms and conditions that may be set out in the Agreement (including the grant of any Additional Security), the Seller will commence the operation of the credit trading account subject to, and in accordance with, these Terms and Conditions.
(f) Notwithstanding anything to the contrary in these Terms and Conditions or Credit Application Terms:

i. despite submission of a Credit Application Form, the Purchaser is not obliged to sign the Confirmation Letter; and

ii. the Seller is not obliged to offer a credit trading account or supply Purchase Vehicles without receipt of a signed Confirmation Letter and grant of security pursuant to clause 8.2 (Security interest) from the Purchaser and the satisfaction of any further terms and conditions that may be set out in the Agreement (including the grant of any Additional Security); and

iii. the Seller may, in its discretion, establish a credit trading account and issue a Confirmation Letter to a Purchaser without requiring the submission, review or approval of a Credit Application Form, provided the Seller is satisfied with the Purchaser's creditworthiness and any other requirements determined by the Seller.

(g) The Approved Credit Limit may be varied:

i. by the Seller with written notice to the Purchaser where the Seller has reasonable grounds to believe that the Purchaser cannot meet the Payment Terms of the Approved Credit Limit or does not require the Approved Credit Limit;

ii. by the Seller with written notice where the Purchaser has failed to pay any amounts owed under any Sale Invoice on 2 or more consecutive occurrences in a quarterly period; or

iii. by agreement between the parties in writing.

3. Term

The rights and obligations under the Agreement are effective on and from the Commencement Date and remain in force unless terminated earlier in accordance with these Terms and Conditions

4. Sale Invoices

(a) Provided the Purchaser has complied with the terms of the Agreement, at the request of the Purchaser to purchase a Purchase Vehicle and subject to the parties reaching an agreement on a mutually acceptable price, the Seller will issue a Sale Invoice in relation to the sale by the Seller of the Purchase Vehicle to the Purchaser in accordance with these Terms and Conditions.
(b) The terms of the Agreement will apply to each Sale Invoice, and if the Agreement is inconsistent with any Sale Invoice, the Agreement prevails to the extent of the inconsistency.
(c) Notwithstanding anything to the contrary in these Terms and Conditions, the Seller:

i. is not obliged to issue a Sale Invoice to the Purchaser despite any request to do so by the Purchaser where the Purchaser is in breach of this Agreement at the time of the request; and

ii. may cancel or revoke an issued Sale Invoice if the Purchaser is in breach of any of its obligations under the Agreement or if fulfilling the supply of the vehicle for the issued Sale Invoice will result in the Purchaser surpassing its Approved Credit Limit.

(d) Notwithstanding any cancellation or revocation of a Sale Invoice by the Seller pursuant to clause 4(c)(ii), the terms and conditions of the Agreement continues in full force and effect.

5. Delivery

(a) The Purchaser (or its Transport Provider) must take delivery of the relevant Purchase Vehicle at the Delivery Location within seven (7) days of the Seller notifying the Purchaser or the Purchaser's Transport Provider that the Purchase Vehicle is available for delivery (or other later delivery date agreed to by the Seller in writing) (**Agreed Delivery Date**).
(b) If the Purchaser or its Transport Provider fails to take delivery of a Purchase Vehicle on the Agreed Delivery Date or fails to provide adequate delivery instructions for delivery to occur on the Agreed Delivery Date, then, subject to clause 11(*Termination*), the Seller will be entitled to charge and recover from the Purchaser a reasonable fee for the storage of the Purchase Vehicles between the Agreed Delivery Date to the date (inclusive) on which delivery is accepted. In such case, unless the Seller has acted negligently in the storage of the Purchase Vehicles, the Purchase Vehicles are at the Purchaser's risk.
(c) Delivery is deemed to have occurred.
if transport or shipping is arranged by the Seller: when the Purchase vehicle arrives at the Purchaser's premises; or
In all other cases, when the Purchase Vehicle leaves the Delivery Location. The Purchaser retains the right to return and not accept delivery of any Purchase Vehicle:

i. within 14 calendar days of the relevant Purchase Vehicle's arrival at the Purchaser's premises, if the Purchase Vehicle has a genuine and major operational fault or manufacturer defect excluding any fault or defect caused or contributed to by the Purchaser or its employees, agents or contractors (**Unacceptable Quality**); or

ii. within 5 calendar days of the relevant Purchase Vehicle's arrival at the Purchaser's premises, if the Purchase Vehicle is not in accordance with the description contained in the relevant Sale Invoice for that Purchase Vehicle (**Misdescription**),
each by written notice to the Seller and in the case of Unacceptable Quality, the Purchaser must provide reasonably suitable evidence of the major defect or fault (such as diagnostic assessments or mechanic invoices).

(e) Any Purchase Vehicle not rejected by the Purchaser by written notice in accordance with clause 5(d) will be deemed to have been accepted by the Purchaser.
(f) Where the Seller has received a notice under clauses 5(d)(i) or d(d)(ii) from the Purchaser:
(i) if the Sale Invoice for the Purchase Vehicle has been paid for in accordance with clause 7(a) (Payment), the

Seller will at the Purchaser's election:
(A) refund to the Purchaser any monies paid in respect of the relevant Purchase Vehicle; or

(B) have the defect repaired or affected parts replaced at the Seller's cost; or

if the Sale Invoice for the relevant Purchase Vehicle has not yet been paid for by the Purchaser, the Seller at its election may:
(A) set-off the Purchase Price for the Relevant Vehicle against one or more other Sale Invoices issued to the Purchaser; or

(B) offer a suitable discount or credit note in respect of the Purchase Price for the Relevant Vehicle as a remedy.

(g) If a Purchaser notifies the Seller of a minor defect relating to the Purchase Vehicle (excluding any fault or defect caused or contributed to by the Purchaser or its employees, agents or contractors) (Minor Defect) within 14 calendar days of the relevant Purchase Vehicle's arrival at the Purchaser's premises, the Seller will reimburse any reasonable costs incurred by the Purchaser for the repair of, or replacement of parts relating to, the Minor Defect, provided the Purchaser provides suitable evidence of the Minor Defect (such as diagnostic assessments or mechanic invoices). If requested by the Seller, the Purchaser must also provide evidence of any reasonable costs incurred by the Purchaser for the repair of, or for replacement parts relating to, the Minor Defect.

6. Risk

A Purchase Vehicle is at the Purchaser's risk from the first to occur:

(a) the Purchaser (or its Transport Provider) collecting the Purchase Vehicle from the Seller's Premises;
(b) the relevant Purchase Vehicle leaving the Delivery Location; or
(c) on and from the date the relevant Purchase Vehicle is stored in accordance with clause 5(b) (Delivery).

7. Payment

(a) The Purchaser must pay the Purchase Price to the Seller in full and in cleared funds within the Payment Terms for each Purchase Vehicle delivered to the Purchaser.
(b) All amounts due under the Agreement and each Sale Invoice must be paid by the Purchaser to the Seller without any deduction or withholding (other than any deduction or withholding of tax if required by law), and the Purchaser will not be entitled to claim set-off or to counterclaim against the Seller in relation to the payment of the whole or any part of any such amount.
(c) Without prejudice to any other right or remedy that the Seller may have, if the Purchaser fails to pay the Purchase Price to the Seller on the relevant due date for payment, the Seller may, in respect of the legitimate loss incurred or likely to be incurred by the Seller consequent to the delay in payment, charge either:

i. interest on such sum at a rate of interest at the maximum overdraft rate charged by the Seller's Bank Bill Discount Rate (BBSY/BBSW Rate, as applicable) plus an additional four percent (4.00%) per annum, calculated from the due date for payment until the date of actual payment,; or

ii. a late payment penalty of $500 per individual Purchase Vehicle for which the payment is delayed,

(each a **Default Charge**) and the Purchaser will pay the Default Charge immediately on demand.

(d) The Purchaser will indemnify the Seller for any costs and expenses of the Seller incurred in recovering any amounts which are overdue under the Agreement or any Sale Invoice (including any recovery agent costs, repossession costs, location search costs, process server costs and solicitor costs on a solicitor/client basis, debt collection commission & associated legal fees).
(e)Payment must be made to the bank account nominated in writing by the Seller from time to time (which will be set out in the Sale Invoice issued by the Seller in respect of the relevant Purchase Vehicle).
(f) In the event the Purchaser fails to pay all amounts owing for a Purchase Vehicle within seven (7) Business Days of the last day of the Payment Terms, the Seller may appoint a credit collections agency to collect any amounts owing under the Agreement or any Sale Invoice.

(g) If there is a bona fide disagreement regarding any Sale Invoice, the Purchaser must notify the Seller in writing within seven (7) calendar days of receipt of such Sale Invoice and the Purchaser will not be liable for and will be under no obligation to pay the amount which is disputed for period of seven (7) calendar days (Resolution Period). The Purchaser must make payment for any undisputed Sale Invoice (and any undisputed amounts on any disputed Sale Invoice) on the original due date. If any such disagreement regarding an amount on a Sale Invoice is not resolved within the Resolution Period, the amount in the original Sale Invoice issued by the Seller will apply and the Purchaser must pay
the amount in the Sale Invoice within five (5) Business Days after the end of the Resolution Period.

8. Title and payment security

8.1 Retention of Title
(a) The Seller retains legal and beneficial title to any Purchase Vehicle supplied to the Purchaser, and title to a Purchase Vehicle does not pass from the Seller to the Purchaser until the Purchaser pays in full the Purchase Price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Purchaser to the Seller for that Purchase Vehicle.
(b) In respect of each Purchase Vehicle, until the Purchaser pays in full the Purchase Price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Purchaser to the Seller for that Purchase Vehicle, the Purchaser: must store the Purchase Vehicle separately from its own vehicles or those of any other person so it is clearly identifiable as the property of the Seller; must properly look after the Purchase Vehicle and store the Purchase Vehicle properly (including safe from heat, moisture, compression, impact damage and odours); may, and is authorised by the Seller to, sell the Purchase Vehicle in the ordinary course of the Purchaser's business, on arms' length terms and for market value; assigns to the Seller the right to receive any proceeds of any insurance policy for loss of or damage to that Purchase Vehicle and the Seller will apply any insurance proceeds received by it:
(A) first, in payment of the outstanding balance (if any) of the Purchase Price of that Purchase Vehicle which is lost or damaged;

(B) second, in payment of any other amount overdue to the Seller under the Agreement or any Sale Invoice; and

(C) third, in payment of the balance (if any) to the Purchaser; and

must not, and must not agree to, do any of the following without the Seller's prior written consent:
(A) lease or licence the Purchase Vehicle;

(B) waive any of the Purchaser's rights or release any person from its obligations in connection with the Purchase Vehicle;

(C) create or allow to exist a Security Interest over the Purchase Vehicle or any accessories and attachments to the Purchase Vehicle;

(D) enter into any floorplan financing arrangements in respect of the Purchase Vehicle; or

(E) other than as expressly permitted by the Agreement (including under clause 1(b)(iii) above), deal in any other way with the Purchase Vehicle or any interest in it or the Agreement, or allow any interest in the Purchase Vehicle or the Agreement to arise or be varied.

In respect of a Purchase Vehicle, until the Purchaser pays the Purchase Price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Purchaser to the Seller for that Purchase Vehicle to the Seller in accordance with clause 7 (Payment), the Purchaser must hold on trust for the Seller all proceeds it receives from the sale of that Purchase Vehicle. The Purchaser must place all such proceeds in an ADI Account (as that term is defined in the PPSA) separate from the Purchaser's own monies and the Purchaser must not allow any person to have control of, or grant a Security Interest over the proceeds or the accounts in which the proceeds are held. The Purchaser must notify in writing to the Seller the details (name and branch of financial institution and account name and number) of the relevant ADI Account.

8.2 Security Interest

(a) The Purchaser grants a Security Interest in favour of the Seller in the Collateral to secure the Purchaser's punctual payment of all moneys and other amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Purchaser to the Seller on any account at any time under or in connection with the Agreement and any Sale Invoice, including the Purchase Price for each Purchase Vehicle.

(b) The Purchaser acknowledges that the Seller may register a financing statement (including a purchase money security interest) in relation to its Security Interest in the Collateral.

(c) The Purchaser must give the Seller: at least thirty (30) Business Days' notice before anything happens in respect of the Purchaser or any Collateral that would cause any information in a financing statement registered by the Seller in relation to any Security Interest provided for by the Agreement or any Sale Invoice to be different if it were re-registered; and all information that the Seller needs in order to ensure that any registration of any Security Interest provided for by the Agreement or any Sale Invoice on the Personal Property Securities Register or any other register that the Seller chooses is, and remains, fully effective or perfected (or both), and that those Security Interests have the priority required by the Seller.

8.3 Proceeds

The Purchaser undertakes, if it disposes of any Collateral, that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other Security Interest to exist over those proceeds if that Security Interest could rank ahead of the Seller's Security Interest. If such a Security Interest does arise despite the previous sentence, the Purchaser must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the Collateral, and must immediately pay those proceeds to the Seller in reduction of the amount owing.

8.4 Application of amounts received

Subject to clause 8.1(b)(iv) (*Retention of Title*), the Seller can apply amounts it receives from the Purchaser, including under clause 8.3 (*Proceeds*), towards amounts owing to it in such order as the Seller chooses.

8.5 Confidentiality

The Seller and the Purchaser agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Purchaser agrees not to exercise its rights to make any request of the Seller under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section (but this does not limit the Purchaser's rights to request information other than under section 275).

8.6 Repossession and enforcement

(a) If:

i. a Default Event occurs; or

ii. the Agreement is terminated by the relevant Seller in accordance with clause 11.1 (*Termination by the Seller*),

the Seller may immediately without notice:

iii. repossess the Collateral and retain or dispose of it on whatever terms the Seller thinks fit, or otherwise enforce its Security Interest in the Collateral (by appointing a Controller, exercising any of the powers that might be exercised by a Receiver even if a Receiver has not been appointed, or otherwise). The Seller, for that purpose, may enter any premises occupied by the Purchaser and remove the Collateral; and

iv. take any steps it deems it in its sole discretion to be necessary or desirable to recover any outstanding amount from the Purchaser, including to call on any guarantee or enforce any Security Interest (including any Additional Security) granted in support of the obligations owed under the Agreement,

even if the Seller accepts a payment of interest or other amount after the occurrence of any Default Event.

(b) Where the Seller is entitled to reclaim possession of the Purchase Vehicles under the Agreement, the Purchaser authorises the Seller, its servants and agents to lawfully enter the Purchaser's property for the purposes of retaking possession.

(c) For the avoidance of doubt, if the Agreement terminates in accordance with clause 11.1(b) (*Termination by the Seller*), all amounts outstanding under the Agreement are paid on the date of termination of the Agreement in

accordance with clause 11.4(a) (*Obligations on Termination*) and no Default Event is otherwise outstanding, the Seller is not entitled to exercise its rights under this clause 8.6.

8.7 Enforcement under the PPSA
To the extent the law permits:

(a) for the purposes of sections 115(1) and 115(7) of the PPSA:
i. the Seller need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
ii. sections 142 and 143 are excluded;
(b) for the purposes of section 115(7) of the PPSA, the Seller need not comply with sections 132 and 137(3); and
(c) if the PPSA is amended after the date of the Agreement to permit the Purchaser and the Seller to agree to exclude other provisions of the PPSA, the Seller may notify the Purchaser that the Seller need not comply with any of those provisions as notified to the Purchaser by the Seller.

8.8 No notice required unless mandatory
(a) To the extent the law permits, the Purchaser waives:
i. its rights to receive any notice that is required by:
a. any provision of the PPSA (including a notice of a verification statement); or

b. any other law,

before the Seller exercises a power, right, discretion or remedy; and

ii. any time period that must otherwise lapse under any law before the Seller exercises a power, right, discretion or remedy.
(b) If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).
(c) However, nothing in this clause 8 prohibits the Seller from giving a notice under the PPSA or any other law.

8.9 Exercise of rights
If the Seller exercises a power, right, discretion or remedy in connection with the Agreement, that exercise is taken not to be an exercise of a power, right, discretion or remedy under the PPSA unless the Seller states otherwise at the time of exercise. However, this clause does not apply to a power, right, discretion or remedy which can only be exercised under the PPSA.

8.10 Further assurances
The Purchaser must promptly do anything the Seller requires to ensure that the Seller's Security Interest in the Collateral is a perfected Security Interest and has priority over all other Security Interests.

8.11 Inspection
The Purchaser must allow access to the Seller (or any of its authorised representatives) with reasonable notice (or without notice if a Default Event has occurred) at any time on any land or building occupied by the Purchaser or in which any goods that form part of the Collateral are located to inspect their state and condition and inspect and take copies of extracts from any books and records that in any way relate to the Collateral.

8.12 No limitation
Nothing in this clause 8 is limited by any other provision of the Agreement, any Sale Invoice or any other agreement between the Seller and the Purchaser. Nothing in this clause 8 limits the Seller's rights or the Purchaser's obligations apart from under this clause 8.

8.13 Survival on termination
Clause 8 (Title and payment security) will survive the termination of any agreement for the sale of Purchase Vehicles incorporating the Agreement (including any Sale Invoice).

9. GST

9.1 GST payable in addition to Purchase Price
In addition to paying the Purchase Price supplied pursuant to the Agreement or any Sale Invoice, the Purchaser must:

(a) pay to the Seller an amount equal to any GST for which the Seller is liable on any supply by the Seller under or in connection with the Agreement and each Sale Invoice, without deduction or set off of any other amount;
(b) make that payment:
i. if the Seller becomes liable for GST on or after receiving the price for any Purchase Vehicles or other consideration or any part of it – as and when the Purchaser must pay or provide the price for the Purchase Vehicles or other consideration or that part of it;
ii. if the Seller becomes liable for GST on issuing an invoice under the Agreement or any Sale Invoice – on the earlier of the due date for payment of that invoice, or ten (10) Business Days from the end of the month in which the Seller issued that invoice; and
iii. if the Seller becomes liable for GST upon the occurrence of some other event within five (5) Business Days of a written request by the Seller for payment for the GST, which may be in the form of a tax invoice (or an adjustment note).
(c) indemnify the Seller against, and pay the Seller on demand the amount of:
i. all GST for which the Seller is liable in connection with the transaction contemplated by the Agreement or any Sale Invoice; and
ii. any Loss directly or indirectly reasonably incurred in connection with or arising from or caused by any failure by the Purchaser to pay any amount as and when required by this clause, for example, any additional tax, penalty tax, fine, interest or other charge under a GST Law.

9.2 Adjustments
The Seller will refund to the Purchaser any overpayment by the Purchaser for GST, but the Seller need not refund to the Purchaser any amount for GST paid to the Commissioner unless the Purchaser is entitled to a refund or credit of that amount.

10. Confidentiality

10.1 Each party shall maintain as confidential at all times the Confidential Information of the disclosing party, must not use any of the Confidential Information of the disclosing party except to the extent necessary to exercise its rights and perform its obligations under the Agreement, and will not disclose the Confidential Information of the disclosing party to any person except:
(a) as required by law or by any Government Agency, stock exchange or other regulatory body;
(b) to any person who grants a Security Interest (including any mortgage) or guarantee to support the Purchaser's obligations under the Agreement;
(c) as authorised in writing by the disclosing party; or
(d) to its related bodies corporates and its and its related bodies corporates' officers, employees, affiliates, agents, contractors, or legal, financial or other professional advisers.

10.2 On termination of the Agreement, each party must immediately:
(a) deliver to the other party or destroy all documents and other materials containing, recording or referring to Confidential Information of the other party; and
(b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information, which are in the possession, power or control of such party or of any person to whom the such party has given access, excluding any Confidential Information that may be:
(c) stored on electronic backup archives which cannot be accessed by that party;
(d) required to be held by that party by law or for the purpose of any defence of any litigation proceedings;
(e) required to comply with any audit or insurance requirement; or
(f) required to be held by that party's legal advisor to advise on its compliance requirements under this Agreement,; although any such materials will remain subject to the obligations of this clause 10.

10.3 The obligations in this clause 10 survive any termination or expiry of the Agreement in whole or in part for two (2) years.

11. Termination

11.1 Termination by the Seller
The Seller may terminate the Agreement immediately by written notice to the Purchaser if any of the following occur:

(a) the Purchaser fails to pay any amounts for Purchase Vehicles in accordance with the Agreement or any Sale Invoice and fails to remedy such breach within five (5) Business Days after the Seller has provided the Purchaser with written notice of such default and any Default Charges;
(b) the Purchaser or Additional Security Provider is in material breach of its obligations under the Agreement or the Additional Security and fails to remedy that breach (to the extent that it can be remedied) within ten (10) Business Days of receiving written notice from the Seller to remedy the breach;
(c) the Purchaser or Additional Security Provider is the subject of an Insolvency Event;
(d) the Purchaser or Additional Security Provider engages in any fraudulent or other illegal act;
(e) an event of default under, or termination of, the Additional Security or any other agreement between the Seller or the Seller's related bodies corporate and the Purchaser or Additional Security Provider has occurred;
(f) the Purchaser or Additional Security Provider or, in either case, its related bodies corporate, or its or its related bodies corporate's shareholders, officers, directors or employees is or becomes subject to any sanctions, embargoes or trade restrictions;
(g) if, without the Seller's prior written consent, which must not be unreasonably withheld, the Purchaser is merged into or consolidated with any third party, or the ownership, management or control of the Purchaser is substantially changed;
(h) the Seller has reasonable grounds to believe that the Purchaser or Additional Security Provider is unable to perform its obligations under the Agreement or Additional Security; or
(i) any Government Agency in any way restricts or limits the performance of the Agreement or Additional Security.

11.2 Termination by the Purchaser
The Purchaser may terminate the Agreement by written notice to the Seller:

(a) immediately, if the Seller commits a material breach of any term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of ten (10) Business Days after being notified in writing to do so;
(b) immediately, if the Seller is the subject of an Insolvency Event; or
(c) in accordance with clause 14(c) (*Force Majeure*) or 16.4(b) (*Amendment*).

11.3 Termination for convenience
Either party may terminate the Agreement with sixty (60) days' prior written notice to the other party.

11.4 Obligations on termination
(a) At the end of the Term or upon termination of the Agreement, the Purchase Price for all Purchase Vehicles delivered to the Purchaser by the Seller, and any other amounts outstanding under the Agreement and any Sale Invoice, becomes immediately due and payable, despite any payment terms.
(b) On the expiry or termination of the Agreement for any reason, all rights and obligations under the Agreement terminate, except:
i. rights and obligations that accrued before or upon termination; and
ii. clauses 1 (*Definitions and interpretation*), 6 (*Risk*), 7 (*Payment*), 8 (*Title and payment security*), 9 (*GST*), 10(*Confidentiality*), 11.4 (*Obligations on termination*), 12 (*Limitation of liability*) and 16 (*General*).

11.5 Cumulative remedies
None of the remedies of the Seller provided in the Agreement are intended to be exclusive, but each will be cumulative and in addition to any other remedy referred to herein or otherwise available.

12. Limitation of liability

12.1 Seller's limitation of liability

(a) To the fullest extent permitted by law, the liability of the Seller to the Purchaser for any Loss or Claim arising under or connected with the Agreement is limited to the greater of:

i. the cost of replacing or repairing the Purchase Vehicles the subject of the Loss or Claim; or

ii. the price of the Purchase Vehicles the subject of the Loss or Claim.

(b) The Seller is not liable to the Purchaser for any exemplary, punitive, special, indirect, incidental or consequential loss or damage (including any or actual prospective lost revenue or profits).

(c) Except for the warranties expressly made in the Agreement, all conditions, warranties, guarantees, undertakings or representations express or implied, arising by statute, general law or otherwise, are expressly excluded to the extent permitted by law.

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

(e) No Loss occurring in respect of the Purchase Vehicles after the risk of loss is transferred to the Purchaser in accordance with clause 6 (*Risk*) will entitle the Purchaser to rescind the Agreement or any Sale Invoice or make any Claim against the Seller and otherwise, and the Seller is not liable for any Loss or deterioration of any Purchase Vehicles after the risk of loss is transferred to the Purchaser in accordance with clause 6 (*Risk*).

12.2 Purchaser acknowledgements

(a) Unless the Purchaser returns a Purchase Vehicle in accordance with clause 5(d) (*Delivery*), to the fullest extent permitted by law, the Purchaser acknowledges and agrees that:

i. at the time of taking delivery of any Purchase Vehicles, the Purchase Vehicles are in all respects in accordance with the description contained in the relevant Sale Invoice;

ii. by taking delivery of any Purchase Vehicles:

(A) the Purchaser acknowledges that it has completed a pre-purchase inspection of the relevant Purchase Vehicle(which will include any pre-purchase inspection undertaken through virtual means or by the Purchaser's review of photographic evidence of the Purchase Vehicle); or

(B) if no pre-purchase inspection of the relevant Purchase Vehicle has occurred, the Purchaser acknowledges that it waives any rights or remedies it would or might otherwise have had by reason of not undertaking a pre-purchase inspection,

and in each case, the Purchaser has no right to return any Purchase Vehicle that is of Unacceptable Quality or Misdescription other than in accordance with this Agreement.

(b) The Purchaser agrees that if there is a difference between the build date and the compliance date of any Purchase Vehicles, that the compliance date will apply for all relevant materials and discussions where the age of the relevant Purchase Vehicles needs to be determined.

(c) The Purchaser must fully insure the Purchase Vehicles from the time of delivery against loss or damage, and promptly give the Seller upon request a copy of the policy and evidence of its currency. The Purchaser must not do any act or thing which might in any way invalidate or prejudice any insurance or the Seller's interest in such insurance.

13. Purchaser Representation and Warranties

The Purchaser represents and warrants to the Seller that:

(a) (in case the Purchaser is a corporate entity) it is a company limited by shares incorporated under the Corporations Act and it has taken all corporate action that is necessary or desirable to authorise its entry into the Agreement and to carry out the transactions contemplated;

(b) (in case the Purchaser is an individual) it has full legal capacity and power to carry on its business and to enter into and perform its obligations under the Agreement;

(c) the Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;

(d) no Insolvency Event has occurred, is continuing, or might reasonably expect to result from the entering into and performance of the Agreement; and
(e) any information provided by the Purchaser for the purposes of the Agreement, including without limitation information contained in the relevant Credit Application Form is true and accurate in all material respects as at the date the information is given or expressed to be given.

14. Force Majeure

(a) The Seller will not be in breach of the Agreement, nor be liable for any delay or failure in performance of any of its obligations under the Agreement (other than an obligation to pay) or destruction or deterioration of any or all of the Purchase Vehicles, arising from or attributable, directly or indirectly, to events, acts, omissions or accidents beyond its control, including, but not limited to
(i) acts of God; (ii) fire, explosion, accidents; (iii) armed conflict or threat thereof, civil commotion, terrorist attack, epidemic, other outbreak of state emergency; (iv) labour disputes, strikes, riots, significant shortages of labour; (v) unavailability of transport facilities or loading or discharging facilities, port congestion; or (vi) embargo, boycott, imposition of sanctions, import ban,
refusal to issue import licenses, other restrictions imposed by laws, regulations, orders or acts of any Government Agency (each a **Force Majeure Event**).
(b) If affected by a Force Majeure Event, the Seller will:
i. notify the Purchaser as soon as practicable in writing of the obligation it cannot perform and the Force Majeure Event which is preventing the Seller from performing that obligation;
ii. continue to perform all unaffected obligations under this Agreement;
iii. use reasonable endeavours to continue to perform the affected obligations;
iv. if possible, use reasonable endeavours to overcome the effects of the Force Majeure Event; and
v. notify the Purchaser as soon as the Force Majeure Event has ended.
(c) If a Force Majeure Event subsists for more than thirty (30) calendar days, either party may terminate this Agreement.

15. Compliance

15.1 Anti-Bribery and Corruption
The Purchaser must, and must procure that its agents, employees, officers, directors, shareholders, partners and representatives shall, not, directly or indirectly through a third-party intermediary, in connection with the Agreement, offer, pay, promise, or authorise the giving of money or anything of value to any person for the purpose of inducing such person to act improperly or otherwise to use his or her influence or position with any entity to affect or influence any act or decision of that entity, in order to obtain or retain business for, direct business to, or secure an improper advantage for itself or the Seller.

15.2 Sanctions and Compliance
The Purchaser represents and warrants to the Seller that it and, in so far as they are
related to the Seller's performance under the Agreement, its affiliates, related companies, subsidiaries, officers, directors, employees, customers, end-users, and Transport Provider are (i) in compliance with the Laws and Regulations and (ii) not Sanctioned Persons or subject to trade restrictions. Furthermore, the Purchaser covenants that (iii) it will not enter into any contract, transaction, agreement, arrangement or otherwise engage in any conduct that would violate the Laws and Regulations and (iv) no Sanctioned Person has any beneficial or other property interest in the Agreement nor will have any participation in or derive any other financial or economic benefit from the Agreement.

In this clause 15.2:

Laws and Regulations means the applicable laws, rules, regulations,
treaties, and other requirements imposed by any relevant body, agency, regulatory authority or equivalent organisation in Australia, Japan, the United States, the United Kingdom, the European Union, or any other relevant jurisdiction (where applicable); and

Sanctioned Person means any person, organisation, or entity (including aircraft and ocean vessels): (i) designated on any list of targeted persons issued under the Laws and Regulations; (ii) located within, operated from, or part of the government of a country that is subject to sanctions under the Laws and Regulations; (iii) is owned 50% or more in the aggregate or individually by, or acting on behalf of, any of the foregoing; or (iv) otherwise targeted by applicable sanctions under the Laws and Regulations.

Notwithstanding anything to the contrary in the Agreement and without prejudice to any other rights, the Seller may, in its sole discretion, suspend its performance under, or terminate the Agreement, without penalty or liability to the Purchaser if any of the following events occur during the term of the Agreement:

(a) performing or engaging in any transactions pursuant to the Agreement becomes prohibited or commercially impractical for the Seller because, under the Laws and Regulations, (a) such transactions or performance becomes targeted by sanctions or otherwise restricted or (b) third parties upstream or downstream from the transactions under the Agreement i.e., participating in the supply chain contemplated by one or both of the parties such as suppliers, customers, or end-users (each a Supply Chain Contract) become subject to sanctions or other restrictions; or (b) financial institutions or other third parties necessary to perform or carry out the transactions under the Agreement or a Supply Chain Contract refuse to provide services or otherwise facilitate the transactions under the Agreement or the Supply Chain Contract for reasons related to the Laws and Regulations.

15.3 Modern slavery

The Purchaser must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of Purchase Vehicles under this Agreement.

If at any time the Purchaser becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Agreement, the Purchaser must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chain.

In this clause 15.3, Modern Slavery has the same meaning as defined under the *Modern Slavery Act 2018* (Cth).

16. General

16.1 Notices

(a) All notices to be given under the Agreement must be in writing and sent to the relevant party at its postal or email address, per the details set out in the Credit Application Form.
(b) Notices served by post under the Agreement will be considered to have been received seven (7) Business Days after posting. Notices sent by email will be deemed to have been received on the date shown on the sender's transmission record (unless the party sending the email knows or reasonably ought to suspect that the email was not delivered to the addressee's email address specified in the Credit Application Form.

16.2 Severability

If any part of the Agreement is held to be invalid or unenforceable in any way, the remaining provisions will not be affected and remain in full force for the Term.

16.3 Assignment

(a) The Purchaser may only assign, encumber, declare a trust over or otherwise create an interest in its rights under the Agreement with the prior written consent of the Seller, which must not be unreasonably withheld.
(b) The Seller may assign, encumber, declare a trust over or otherwise create an interest in its rights under the Agreement without the consent of the Purchaser, and may disclose to any potential holder of the right or interest any information relating to the Agreement or any party to it.

16.4 Amendment

(a) Each Confirmation Letter can only be amended, supplemented, replaced or novated by another document executed by the parties.
(b) The Seller Purchaser may vary these Terms and Conditions from time to time. Any material changes to these Terms and Conditions will must be notified to the Purchaser by email in accordance with clause 15.1 and any changes will come into effect within twenty (20) calendar days of such notice. Where the Purchaser views

reasonably considers any notified changes as materially adverse to the Purchaser,
the Purchaser may terminate this Agreement with thirty (30) calendar days' written notice.

16.5 Liability for expenses
Each party must pay its own expenses incurred in negotiating, executing, stamping and registering the Agreement.

16.6 Giving effect to the Agreement
Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to the Agreement.

16.7 Operation of indemnities
(a) Each indemnity in the Agreement survives the expiry or termination of the Agreement.
(b) A party may recover a payment under an indemnity in the Agreement before it makes the payment.

16.8 Relationship
(a) The Purchaser is not an agent of the Seller and has no authority to do business in the name of the Seller or to bind the Seller in any way.
(b) The Agreement or any Sale Invoice is not intended to create a relationship of employer and employee, principal and agent, partnership or joint venture. Neither party is authorised to commit the other party.

16.9 Waiver of rights
(a) A right may only be waived in writing, signed by the party giving the waiver. No other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
(b) A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.
(c) The exercise of a right does not prevent any further exercise of that right or of any other right.

16.10 Set-off
To the extent permitted under relevant laws, the Seller may at any time or times, with notice to the Purchaser, set off any liability of the Purchaser to the Seller against any liability of the Seller to the Purchaser, in either case, whether under the Agreement or otherwise and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination. Any exercise by the Seller of its rights under this clause 16.10 will be without prejudice to any other rights or remedies available to it under the Agreement or otherwise.

16.11 Governing Law
The Agreement will be governed by the laws of the State of Victoria, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts in that State, and any court that may hear appeals from any of those courts, for any proceedings in connection with the Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

16.12 Entire Agreement
This Agreement constitute the entire agreement between the parties in respect of the supply of Purchase Vehicles and supersedes all prior agreements, representations, negotiations and correspondence correspondence (but, to avoid doubt, this is subject to each party's rights under the Australian Consumer Law, including for misleading or deceptive conduct).

16.13 Counterparts
The Confirmation Letter may be executed in counterparts.

Annexure A - Form of Sale Invoice

DUTTON Garage Wholesale

Dutton Garage Wholesale Australia Pty Ltd
41 Madden Grove, RICHMOND VIC 3121
(SELLER)

Phone (0400) 849-796
Fax (03) 9419-8070

ABN 94 615 833 031 ACN 615 833 031

Tax Invoice

INVOICE NO: [*insert*]

INVOICE DATE: [*insert*]
SALESPERSON: [*insert*]

INVOICE TO: [*insert Purchaser entity and ABN*]
(PURCHASER)
[*insert Purchaser contact details*]

CLIENT NO: [*insert*]
DUE DATE: [*insert*]

VEHICLE: [*insert Vehicle description including make and model*]

STOCK NO: [*insert*]

Rego # / Expiry:

VIN: [*insert*]
Engine #: [*insert*]
Compl Date: [*insert*]
Colour: [*insert*]
Transmission: [*insert*]
Fuel Type: [*insert*]

Build Date: [*insert*]
Cylinders: [*insert*]
Odometer: [*insert*]

	TOTAL	GST
SALE PRICE	**$[*insert*]**	**$[*insert*]**
TOTAL PRICE	**$[*insert*]**	**$[*insert*]**

Banking Details

Dutton Garage Wholesale Australia Pty Ltd
BSB: [*insert*] ACC: [*insert*]

This invoice is issued in accordance with and also subject to the Dutton Garage Wholesale Dealer Master Supply Terms and Conditions.