

**DEALER TRADE TERMS OF USE AND LICENCE (United Kingdom)**  
Effective 1 July 2019

**A. GENERAL TERMS**

**1. Access to and Use of the Dealer Trade App**

- i) These Terms of Use (**Terms**) govern Your access to and use of:
  - (1) This software application (**App**);
  - (2) The product (**Product**) provided by Dealer Trade (**We, Us or Our**) to you (**You or User**) through the Site (**Service**) in relation to the supply of the Product by You to customers; and
  - (3) Our software in accordance with the Licence below.
- ii) These Terms form a binding contractual agreement between You and Us. Please read these Terms carefully and let Us know if You have any questions, before using the App.
- iii) We may use de-identified information obtained through Your use of the App in accordance with these Terms.
- iv) By using the App You acknowledge that You have had a sufficient chance to read and understand these Terms and that You agree to be bound by them. If You do not agree to be bound by the Terms, You should exit from and immediately cease to access or otherwise use the App.
- v) You will be responsible for all costs and charges (including from Your internet service provider) in accessing the Site and the Service.

**2. Access and Use of the Product**

- i) The Product provides a service to assist in the efficient sale or transfer of motor vehicles between motor dealers (**Product**).
- ii) In order to use the Product, You will be asked to create a profile and to access Your saved profile through a username and password. You must not disclose Your username and password to any other person or allow others access to Your profile and must retain those details securely. If You elect not to create a profile, Your ability to access and use the Product may be restricted.
- iii) In Our sole discretion, We may grant to You the right to access the App and to use the Product, subject to these Terms.
- iv) You will be allowed to:
  - (1) view, download and/or print from the App, for Your personal and authorised business use;

- (2) insert information to enable Your registration.
- v) Other than as set out in the Specific Terms below, You agree that You will not, without Our express prior written permission:
  - (1) modify or edit any content, including without limitation all text, graphics, images, software, information and any other materials on this App (**Content**);
  - (2) publish or sell the Content including but not limited to making the Content available on any other website;
  - (3) add any Content to the App, including (but not limited to) any content which We consider to be inappropriate;
  - (4) alter or remove any copyright, trade mark or other proprietary notice appearing on this App;
  - (5) reverse engineer, translate, adapt or modify any software used in connection with this App; or
  - (6) create any links from any other website to this App.
- vi) On acceptance of these Terms and upon Us allowing You to access the App or use the Product, We will grant to You a non-exclusive, worldwide, non-transferrable licence to use the App (and the Software identified in clause 4) in accordance with these Terms.

### **3. Intellectual Property rights**

#### **i) Our Intellectual Property**

- (1) We are either the legal or beneficial owner (including under licence) of all rights in the Product and all Content of the App. That includes having copyright in the Content and its arrangement, copyright in the source code of any software, the legal or beneficial ownership of all trademarks and a registered patent in relation to the Product.
- (2) You acknowledge and agree that we own all intellectual property rights in the App and the Product and that You are entitled to access and utilise those intellectual property rights only for the purposes set out herein.
- (3) Nothing contained in the App is intended to or will be construed as granting any other right to You in the nature of intellectual property rights and You must not exploit any intellectual property which forms part of the Content or which otherwise appears on the App.

#### **ii) Your Intellectual Property**

You grant to us Your irrevocable, royalty-free licence to use your name, logos and trademarks for the purpose of promotion of the Product and the App, which licence shall continue beyond the expiration of these Terms.

### iii) Indemnity

You agree to indemnify Us in relation to any breach of these Terms.

### iv) Our use of Data

- (1) You acknowledge that We may use all information collected and data obtained through Your use of the Product, in any way We may require.
- (2) You also permit us to authorise any other person to do the same thing.
- (3) You acknowledge that We own (exclusively) all rights in relation to the data which We collect or obtain as a result of Your use of the Product or App. To the extent required, You assign to Us all rights which You may have (if any) in relation to the ownership and use of the data.
- (4) Even though We own and may use the data in any way We require, such data will generally be aggregated and We will not use or disclose Your personal information, which will only be used and maintained in accordance with Our privacy policy.

## 4. Software License

Your access to and use of any Software comprised in the Product will be governed by the following terms (if Licence is subject to a specific Licence Agreement, the terms of the Licence Agreement shall take precedence):

### i) Interpretation

The definitions below shall apply to the following clauses of these Terms:

- (1) **Intellectual Property Rights** means any rights that We have or may have in relation to the software, or otherwise, including, without limitation, various patents, copyright, designs, logos, business methods, confidential information and trade secrets.
- (2) **Software** means the software comprised in the Product, which is owned by Us and made available to You in the provision of the App, pursuant to these Terms.

### ii) Intellectual Property Rights

- (1) You acknowledge that We own all Intellectual Property Rights in the Software comprised in the App.
- (2) Nothing in these Terms constitutes a transfer of any Intellectual Property Rights to You.
- (3) You may not make copies of the Software, or any part of the Software, except as expressly permitted in this Licence.

### iii) Grant of License

- (1) We grant You a License to use the Software subject to and in accordance with these Terms.

- (2) You must not:
- (a) Use the Software for any purpose or in any manner other than as set out in these Terms;
  - (b) Use the Software in any way that could damage Our Intellectual Property Rights, reputation or the goodwill associated with the Software;
  - (c) Reproduce, make error corrections to or otherwise modify or adapt the Software or create any derivative works based upon the Software;
  - (d) De-compile, disassemble or otherwise reverse engineer the Software or permit any third-party to do so;
  - (e) Modify or remove any copyright proprietary notices on the Software.

**iv) Duration of Licence**

- (1) This Licence commences immediately upon You accessing the App or (if applicable) downloading the Software and continues whilst you are a subscriber.
- (2) We may terminate the Licence immediately by notice in writing to You, in the event of Your breach of these Terms. In all other circumstances, We may terminate by giving reasonable notice to You.
- (3) Notwithstanding this clause if your Licence is subject to a specific Licence Agreement, the terms outlining the duration of the Licence in the Licence Agreement will take precedence.
- (4) On termination:
  - (a) Your right to use the Software immediately ceases and the Licence granted under this Agreement terminates;
  - (b) Where relevant, You must immediately remove the Software from Your computer and/or other electronic device/s;
  - (c) Each party retains the claims it has against the other.

**v) Disclaimer and Liability**

- (1) We do not accept liability for any decisions made or actions taken as a consequence of the information provided (including by third parties) in your use of the Product and end users, customers and buyers should make their own determination as to the suitability of the Product and about any goods or vehicles listed for sale and should undertake their own enquiries in relation to all information posted to the App by Us or by any third party, for their circumstances.
- (2) To the full extent permitted by law:
  - (a) We exclude all liability in relation to the provision of the App including in respect of loss of data, interruption of business or any consequential or incidental

damages.

**(b)** We exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in these Terms.

**(3)** These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, We limit Our liability in respect of any claim to, at Our option:

**(a)** In the case of goods:

(i) The replacement of the goods;

(ii) The replacement of the goods or the supply of equivalent goods;

(iii) The repair of the goods;

(iv) The repayment of the cost of replacing the goods or of acquiring equivalent goods; or

**(b)** In the case of services:

(i) The supply of the services again; or

(ii) The payment of costs of having the services supplied again.

## **5. Disclaimers and Limitation of Liability**

**i)** While all care is taken by Us in the compilation and provision of the App (and the material therein), You agree that You use this App at Your own risk.

**ii)** To the extent permitted by law, the App is provided without any representations or endorsements made and without warranty of any kind whether express or implied, including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy. You acknowledge that You have made Your own determination as to the suitability of the App and of any goods or vehicles listed for sale for Your purposes and have not relied on any statements or representations by Us in making that decision.

**iii)** You further acknowledge that where any material is posted to the App by third parties, (including the seller) in the promotion or listing for sale of goods or vehicles, We do not endorse and have not taken any steps to verify the accuracy of that material. We provide that material to you as a mere conduit in the provision of the App and not as agent or representative of the third party. You must undertake your own enquiries in relation to the accuracy (or otherwise) of the information posted by any third parties and You acknowledge that neither You nor any third party to whom You may republish the information shall have any claim against Us. To the extent permitted by law, You agree to indemnify Us in relation to any such claims.

- iv)** The App may be unavailable from time to time (including for maintenance purposes). We make no warranty that the functionality of the Site or Service will be uninterrupted or error free, that defects will be corrected or that the App or the server that makes it available and any third party sites which are referred to or linked are free of viruses or anything else which may be harmful or destructive.
- v)** In Our sole discretion, We may change, alter, modify, update or upgrade the Product, App, Content or Software. We may also change the design or functionality of the App as We may require. Where we intend to make such changes, We will endeavour to give You reasonable notice, although You acknowledge that it may not be possible for Us to do so and We are not obliged to provide any prior notice.
- vi)** We do not warrant or represent that the App will be or will remain compatible with any software or operating system which You may elect to use and We are not liable for any loss or additional cost which You may incur as a result of incompatibility between Your operating system or Software and the App.
- vii)** To the extent permitted by law, We will not be liable for any loss sustained as a result of the use of the App, any liability in tort or under contract or any indirect or consequential loss or damage whatever (including, without limitation, loss of business, opportunity, data or profits) arising out of, incidental to, or in connection with the use of the App.
- viii)** We are not liable for any damage to Your computer equipment or other property or the property of any third parties caused by any viruses that may be transmitted from the App or by any linked third party site.
- ix)** It is Your responsibility to install and maintain, at Your own expense, any security measures including, but not limited, to the use of anti-virus mechanisms, firewalls and the like.
- x)** To the extent permitted by law, Our liability for a breach of these Terms, including a breach of a condition or warranty implied by United Kingdom consumer law, shall be limited to:
  - (1)** In the case of goods:
    - (a)** the replacement of the goods or the supply of equivalent goods;
    - (b)** the repair of the goods;
    - (c)** the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - (d)** the payment of the cost of having the goods repaired; or
  - (2)** in the case of services:
    - (a)** the supplying of the services again; or
    - (b)** the payment of the cost of having the services supplied again, whichever is the lesser, at Our sole discretion.

## **6. Termination**

- i) Subject to any provision which is expressed to survive the termination of these Terms, these Terms will terminate automatically if, for any reason, We cease to operate or provide the App. We may terminate Your access to all or any part of the App immediately if You commit a breach of any of these Terms or otherwise upon reasonable notice.

## **7. Modification to Terms**

- i) At any time and in Our absolute discretion We may amend these Terms and any other of our policies relating to the App and We reserve the right to do so without prior notice. Such amendments will be effective upon their posting on the App or as otherwise notified. You are responsible for regularly reviewing these Terms. Continued use of the App after any such amendment shall constitute Your consent to such amendment.

## **8. Severability**

- i) If any provision or part of these Terms is for any reason declared invalid or unenforceable, the validity of the remaining portion is not to be affected and the remaining portion is to remain in full effect as if these Terms had been drafted with the invalid or unenforceable portion deleted.

## **9. Miscellaneous**

- i) Each party must, at its own expense, do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.
- ii) These Terms are governed by the laws of the England and Wales. You submit to the non- exclusive jurisdiction of the courts of England.
- iii) Subject to the Agency Agreement entered into by the parties, these Terms record the entire agreement between You and Us and supersede all previous negotiations, understandings, representations and agreements in relation to the subject matter of the Terms.
- iv) Our Privacy Policy is set out on the App and you acknowledge and agree to the terms of Our privacy policy through Your continuing use of the App.
- v) You must not assign, sublicense or otherwise deal in any other way with any of Your rights under these Terms without Our prior written consent.
- vi) Nothing contained in these Terms creates any relationship of partnership or agency between the parties.
- vii) Failure or delay by Us in enforcing any provision of these Terms does not mean that We no longer regard that provision as binding nor shall it amount to a waiver. A waiver by Us of a provision shall not constitute a waiver of any other breach of these Terms.

## **B. SPECIFIC TERMS**

### **Auction**

9. The App provides an auction service and all parties must register their details before proceeding to use the App.
10. By registering or logging onto the Site or App, You irrevocably warrant that You:
  - (i) Have read, understood and will comply with these Terms;
  - (ii) Agree to be bound by these Terms;
  - (iii) Acknowledge the risks, contingencies and other circumstances relating to the use of the Product.
11. You agree not to provide any other person with Your registration or login details and to maintain the confidentiality of that information. By registering, You warrant that:
  - (iv) You have authority to bid;
  - (v) You will be liable for all costs, fees, chares and other amounts which may become payable to any person as a result of the use of the App.
12. Bids will only be accepted from verified users or their authorised agents. You must confirm you are a motor dealer or salesperson and hold all necessary licences and registrations as required in your jurisdiction when registering as buyer.
13. You acknowledge that We may from time to time in Our sole discretion alter these Terms, including as to the conduct or method of conducting Auctions or other sale process undertaken through use of the App. Should We make any changes to these Terms, You acknowledge and agree that the modified, changed or altered Terms shall apply from the date on which You next access or use the App following Us having made such changes.
14. The seller has right to choose, in their sole discretion, the winner (if any) of the auction from the top 5 bids placed.
15. The winning bidder is notified when chosen by the seller.
16. A sale may be declared to be null and void and of no effect in circumstances where there is an obvious error in the listing including as a result of a technical or other failure in performance of the App or Product.
17. We reserve the right to refuse to allow or withdraw You as a seller or any of Your vehicles at any time without assigning any reason in Our absolute discretion.
18. Vehicles sold using the App are not subject to a cooling off period and do not have a statutory warranty.

### **Selling**

19. All auctions are live/instant or scheduled to a particular time in accordance with the Seller's location, as the App allows.

20. All vehicles listed may have the following pre-populated details:

- VIN
- Make
- Model
- Year
- Body Shape/Style
- Badge/Derivative

21. You must also list the following additional information for all vehicles listed:

- VIN
- Make
- Model
- Year
- Body Shape/Style
- State
- Postcode
- Badge/Derivative
- Reserve Price
- Odometer
- No. of Doors
- Transmission
- Engine Size
- Drive Type
- Transmission
- Fuel Type
- Service History
- Log Book
- Exterior Colour
- Interior Colour

- Features
- Keys
- All Headrests
- Tyre Condition
- Repair Costs
- Description
- Minimum of number of images of vehicle as specified in the App

22. The following information is optional and may also be completed by You:

- i) Registration Plate
- ii) Registration Expiry Date
- iii) Video of Vehicle

23. All sellers must upload images as per the indicated description in the image upload field.

24. All sellers warrant that all details provided in relation to a vehicle are true and correct, and that there are no errors or mis-descriptions or any other matters which have been omitted from the listing.

25. The sellers will indemnify Us against any claim which we may receive as a result of or incidental to the listing of their vehicle/s on the App and any breach of these Terms.

26. Sellers are not permitted to bid on any vehicle which they have listed for sale and are not permitted to have others place bids on their behalf on any vehicle which they have listed for sale, irrespective of whether or not that has the effect of increasing the price of the vehicle.

27. Sellers acknowledge that the buyer is solely responsible for making all payments in relation to the vehicle and that We shall have no responsibility whatsoever in relation to the buyer's obligation to pay.

## **Buying**

28. All motor dealers who subscribe by preference to receive a push notification are able to bid.

29. A person may not participate in a sale unless the person has registered as a buyer.

30. By registering as a buyer, You represent and warrant to Us that all information provided by You to Us is complete and accurate.

31. Buyers have access to the App for the purpose of participating in a Sale provided they comply with these Terms at all times.

32. All motor dealers subscribed by preference will receive the following information of the vehicle for auction prior to being able to make a bid:

All items as described in 20 and 21 and optional information as per 22.

33. Each bid will constitute an irrevocable offer to purchase the vehicle or item listed for sale at the price disclosed in the bid.
34. The Buyer acknowledges that each bid, whether entered manually or via the use of the 'Quick Bid' function, is made after having read and with full knowledge of the vehicle details as entered by the Seller.
35. A Buyer submitting a bid above the Seller's reserve for a vehicle will automatically win the auction.
36. The Seller will be notified of the 5 highest bids at the end of the auction and has the sole discretion which bid, if any, he/she decides to accept, if no bid received is above the Seller's reserve.
37. The Seller may engage the top bid with a 'Counter Offer' if the reserve is not met, which may be accepted or countered again by the Buyer. The 'Counter Offer' process will end once there is no response by either the Buyer or Seller to the latest offer within 15 minutes.
38. In the event that the seller does not receive a satisfactory bid, the vehicle will automatically relist in the 'Make Offer' section which may provide for a reserve price and the ability for buyers to 'make an offer' for the purchase of the vehicle, along with such other terms as the seller may require. The seller, in their sole discretion, may remove the vehicle from the App should they not wish the vehicle to remain in 'Make Offer'.
39. The successful buyer of an auction will be notified promptly after the end of the auction.
40. All vehicles must be made available for inspection when listed and it will be deemed that the vehicles have been inspected by the buyer.
41. All vehicles are sold in their current state of repair and condition at the time of auction with all defects and faults (if any).
42. A buyer will not be able to retract a bid or terminate a sale on the basis of a defect or any representation which could have been ascertained or independently verified by the buyer, except if not disclosed or by virtue of misleading and/or deceptive conduct by the seller.
43. We make no representation in relation to a vehicle (including as to year models or odometers). All representations are made by and remain the responsibility of the seller.
44. You acknowledge that any information provided in relation to any vehicle is provided by the Seller, and, We have not independently verified its completeness or accuracy. We do not warrant the completeness or accuracy of any information provided. You agree to independently verify any information which is important to Your decision whether or not to bid on or purchase any vehicle.
45. We are not responsible or liable for failure of, performance of the seller, including for any delay or failure due to circumstances beyond their reasonable control.

## **Payment**

- 46.** Dealer Trade may charge the seller and/or the buyer for the use of the App. A notice period of no less than 21 days will be given to You from the first date from which a new charge will apply or when an existing charge is amended. The nature of the charge to be paid by the seller and buyer will be set out on Our website and be subject to variation at Our sole discretion.
- 47.** The User's card details are to be stored securely with a third-party payment gateway provider and will be charged automatically for every fee incurred on an individual and singular basis with an invoice being generated and sent to you. You will receive another email generated and sent to you showing your payment was successful.
- 48.** Notwithstanding clause 47, We may at Our sole discretion, allow a user to be invoiced periodically with payment terms, on the condition that the User agrees to authorise a direct debit mandate for payment of all Dealer Trade invoices.
- 49.** In the event of default of payment, you acknowledge that We may pass on to You any additional costs which We may incur, including by way of bank fee, charge or interest. You authorise Us to take payment of such fees and charges from Your account within 48 hours of You receiving notice of same.
- 50.** Whereby the transaction for a vehicle listed on Dealer Trade is aborted between the buyer and seller, refunds of any fees and charges paid to Us shall be at our sole discretion, to the extent permitted by law.

## **Bids and Payment for Vehicles**

- 51.** All bids are inclusive of GST/VAT and other applicable sales taxes and charges in the User's jurisdiction.
- 52.** All auctions are COD and payment must be made in full within 48 hours of the winning bidder receiving notification that they were the successful bidder.
- 53.** The buyer is responsible for payment of all other fees and charges relating to the purchase of the vehicle, including (without limitation) stamp duty and Government transfer fees, registration fees and any other taxes and delivery costs, save to the extent where the buyer is exempt.
- 54.** In the event of an aborted transaction between the buyer and seller, the seller must refund the purchase price of the vehicle to the buyer within 24 hours of the vehicle being bounced and in a manner which ensures cleared funds are received by the buyer within 48 hours of payment being made.

## **Delivery/Transport**

- 55.** The winning bidder must arrange for the collection (or transportation) of the vehicle so that it is removed from the seller's premises within 7 days of notification of their winning bid, unless the seller has explicitly arranged for the transport of the vehicle to the buyer.
- 56.** Title and risk in the vehicle shall, unless otherwise provided, pass to the buyer on the receipt of cleared funds by the seller of the vehicle (including by a transport provider).

57. Upon receipt of cleared funds from the buyer, the seller must provide to the buyer, its agents and its representatives, including transport providers, timely access to the vehicle at all times within the seller's business hours.
58. The seller shall be responsible for any additional costs incurred by the buyer in collecting or transporting the vehicle where timely access is not given.

#### **Default and Suspension**

59. We reserve the right to terminate or suspend your use of the App, including in the following circumstances:
  - i) In the event of any breach or anticipated breach by You of these Terms.
  - ii) If You do not pay for your purchase You are automatically suspended for 1 month, in addition to any other remedy which may be available. Without limitation, failure to pay for a purchase will be regarded as a fundamental breach of these Terms.
  - iii) If You are suspended a second time, it will be for a period of three months.
  - iv) If You default on these terms a third time, you will be permanently excluded from further use of the App.
  - v) Despite any other provision of these Terms, We may terminate or suspend Your use of the App at any time in our discretion on the provision of notice to You.
  - vi) In Our discretion on the provision of reasonable notice.
60. Upon termination or suspension of these Terms, We may exercise the legal rights and remedies which are available to Us and:
  - (1) You must immediately cease to use the App.
  - (2) Any amounts owed become immediately due and payable; and
  - (3) On termination you must destroy or delete the App from any system You have in Your possession or control.

#### **Availability**

61. We expressly disclaim any representation that the App will be available at any particular time or for the duration of any Sale.
62. You acknowledge that to the extent permitted by law, we will not be liable for any loss (including consequential loss) sustained as a result of the App not being available or due to any failure to list a vehicle or to receive a bid, or as a result of any failure of the system, Product or App.
63. By registering, You warrant that You have the authority to bid on or sell the vehicle listed.
64. You will be liable for all costs, fees, charges and other amounts which may become payable to any person as a result of the use of the App.