

ChooseMyFinance Non-FCA Dealer Terms & Conditions

These Terms and Conditions apply to all transactions between Caerus Capital Ltd T/A ChooseMyFinance, (“us”) and the Dealer (“you”) from the agreement date unless or until superseded by further agreement.

1. Payment in respect of the vehicle and Settlement of prior finance

- 1.1 The amount to be paid by a third-party lender or by us (as the case may be) in respect of a vehicle, will be the cash price of the vehicle less the finance deposit or any initial rental payment paid to you (the “PurchasePrice”).
- 1.2 It is an express term of this agreement and represented by you, the Dealer, that you have clear and unencumbered title to the vehicle prior to payment being made by the lender or us (as the case may be). Provided that you will settle any existing finance on part exchange vehicles that are associated with these terms.
- 1.3 You agree to submit an invoice for the purchase price of the vehicle to us within 24 hours of our request. Details of your bank account must be shown on the invoice.
- 1.4 On payment of the Purchase Price title to the vehicle will pass to the lender (in the case of a hire purchase agreement or a conditional sale agreement) or the customer (in the case of a loan agreement). In the event that we expressly state that we will purchase the vehicle from you, title shall pass to us, rather than the lender. The date upon which we or the lender pays the Purchase Price in respect of a vehicle, is called the “Purchase Date”.

2. Supply of Vehicle

- 2.1 On payment of the Purchase Price to you, we will instruct the customer to collect the vehicle from your premises. You must ensure that the vehicle is only delivered to the customer as named on the invoice and carry out reasonable checks (as specified to you by us from time to time) and act with due diligence to ensure that the customer is the person collecting the vehicle from your premises. If the person collecting/taking delivery of the vehicle is not that named party on the invoice then additional proof of delivery/collection will need to be supplied.
If, within 15 days after the Purchase Date the customer has not collected the vehicle from you or once ChooseMyFinance advise you that the customer is no longer proceeding with the purchase (whichever is the earlier), you will within 5 days, repay the Purchase Price to us or the lender (as applicable) (the “Unwind Sum”) and repay any deposit directly to the customer. Title to the vehicle will only return to the Dealer once payment has been made.
- 2.2

3. Dealer Obligations/Co-operation

You acknowledge and agree:

- that each vehicle is of satisfactory quality and that it is fit for purpose, based on the price paid, type and model of vehicle and how the relevant vehicle was advertised.
- that each vehicle will be supplied in at least CAP clean condition with a current and valid MOT certificate with at least six months left to run.
- to pay us the Unwind Sum in respect of the relevant vehicle (and to pay to the customer, a sum equal to any deposit paid by the customer) in the case of any failure on your part to make any pre-delivery and delivery checks which results in the fraudulent obtaining of the vehicle by anyone other than the customer;
- to promptly provide us with the information we reasonably require to carry out our duties to third parties (including lenders);

- to co-operate fully and promptly with us in settling any dispute that may arise in connection with a vehicle or any representation regarding the vehicle made by you;
- to co-operate fully and promptly with us in relation to any applicant or customer complaints and/or investigations by any statutory, or other, authorities, including, without limitation, by the Financial Ombudsman Service and the Financial Conduct Authority;
- not to receive any fee or commission of any sort from any applicant or customer, with the exception of a nominal administration fee that is systematically charged to a customer regardless of whether the vehicle is obtained through finance or is a cash sale - details of such fee must be clearly advertised to applicants and disclosed to us before we transact any business under these terms.

4. Consumer Rights Act 2015 (the “CRA”) and other Remedies

- a. In the event of a breach of the obligation to provide a vehicle that is of satisfactory quality and/or fit for its purpose and a customer exercises its right to reject the vehicle or require a replacement of the vehicle, in accordance with the CRA, you shall promptly (and in any event within 7 days) pay to us the Unwind Sum in respect of the relevant vehicle (and shall pay to the customer a sum equal to any deposit paid by the customer) and you will take steps to recover the vehicle from the customer; and cover any reasonable costs in doing so.
- b. If a customer exercises its right to require the repair of the vehicle in accordance with the CRA, you will promptly repair the vehicle in accordance with clause 5 below, at your own cost;
- c. For the avoidance of doubt, a vehicle will not be deemed satisfactory quality if any repair required to be undertaken to the Vehicle is estimated to take longer than 6hrs of labour, or any issue or mechanical defect otherwise renders the Vehicle unsafe to drive or has such effect that means the Vehicle does not perform in accordance with its advertised specification and/or condition. Both parties agree that should the Vehicle fail to meet the definition of satisfactory quality under this paragraph 4 c. then it shall be presumed that such issue was present at point of sale, unless you can conclusively evidence that it was the customer’s fault through instructing a reputable third party independent consulting
- d. engineer.
Without prejudice to our rights to be indemnified by you under the indemnity provisions contained in these terms, you shall promptly reimburse us and/or the customer for any costs that we or the customer may incur in connection with any failure by you to comply with your obligations under this section or in connection with any Vehicle Condition
- e. Breach.
If a repair undertaken under this clause 5 fails to render the Vehicle of
- f. satisfactory quality in accordance with clause 4
above, and the customer exercises their right to reject under the CRA, then you agree to comply with clause 4 a. above in repaying the Unwind Sum. Should you breach clause 4 a. and not repay the Unwind Sum within the period specified then you agree that we may collect the Vehicle and sell the Vehicle to mitigate our losses for such value as we can reasonably achieve.

- g. In the event that the customer successfully claims the vehicle is not of satisfactory quality with the Financial Ombudsman Service, you agree that such decision shall be binding in relation to whether there has been a Vehicle Condition Breach.

5. Vehicle Condition Breaches

- a. If, at any time, the customer informs you or us that it considers that the vehicle does not comply with the vehicle conditions (i.e. the vehicle is not of satisfactory quality within the meaning of paragraph 4 b. and c. above or was not supplied in CAP clean condition or with a valid MOT with at least 6 months left to run; a "Vehicle Condition Breach"), you shall use your best endeavours to resolve the relevant issue as soon as possible.
- b. If you fail to resolve a Vehicle Condition Breach with the customer within 7 business days of being informed of that Vehicle Condition Breach, we shall take active steps to have the Vehicle Condition Breach resolved, at your cost and expense (most commonly by procuring the repair of the vehicle), and you agree to indemnify us in respect of such costs.
- c. For the purposes of this clause 5, both parties expressly agree that a report procured by us whether through our selected independent repairs supplier or otherwise, shall be conclusive as to whether a Vehicle Condition Breach has occurred.
- d. Without prejudice to our rights to be indemnified by you under the indemnity provisions contained in these terms, you shall promptly reimburse us and/or the customer for any costs that we or the customer may incur in connection with any failure by you to comply with your obligations under this section or in connection with any Vehicle Condition Breach.
- e. If a repair undertaken under this clause 5 fails to render the Vehicle of satisfactory quality in accordance with clause 4c. above, and the customer exercises their right to reject under the CRA, then you agree to comply with clause 4 a. above in repaying the Unwind Sum. Should you breach clause 4 a. and not repay the Unwind Sum within the period specified then you agree that we may collect the Vehicle and sell the Vehicle to mitigate our losses for such value as we can reasonably achieve.
- f. In the event that the customer successfully claims the vehicle is not of satisfactory quality with the Financial Ombudsman Service, you agree that such decision shall be binding in relation to whether there has been a Vehicle Condition Breach.

6. Cancellation by Customer under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the "CCRs")

- a. Where a customer cancels the supply of a vehicle under the CCRs, you shall (as well as complying with all of your obligations to the customer in connection with that cancellation) promptly pay to us the Unwind Sum in respect of the relevant vehicle. Title to the vehicle will only return to you once payment has been made.

7. Indemnity

- a. You agree to indemnify us and keep us fully indemnified on demand against all and any loss, costs or claims (including legal costs) arising out of or in connection with:
- your breach of any of these terms;
 - any misrepresentation or statement made by you; or
 - any other act or omission by you further to these terms
 - any costs associated with a Vehicle Condition Breach in particular under paragraph 5 e as above.

8. Liability

- 8.1 Subject to clause 8.2, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) storage or other costs associated with a vehicle subject to this agreement, being stored on your premises;
 - (e) loss of damage to goodwill;
 - (f) loss of unforeseen damage or loss; and
 - (g) any indirect or consequential loss.
- 8.2 Subject to clause 9.1, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to £500.
- 8.3 Unless otherwise agreed or notified to you by us, you agree that we are acting solely as a broker for credit and any advance or payment is paid to you by us acting in the capacity of agent for the lender only. Nothing in this agreement shall create the relationship of trade dealer, lender or otherwise with you and we accept no liability or responsibility for the vehicle or finance.
- 8.4 This clause 9 shall survive termination of this agreement.

9. Compliance with Law

- 9.1 In performing your obligations under these terms you agree to comply with all applicable law, regulation and official guidance including, without limitation, The Money Laundering Regulations 2007; The Data Protection Act 1998; The Consumer Credit Act 1974; The Financial Services and Markets Act 2000; The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- 9.2 If you hold no FCA permission for consumer credit related activities, then, notwithstanding anything to the contrary in these terms, you must not carry out any such activities (including not carrying out any of the activities of Credit Broking; Debt Counselling or Debt Adjusting).
- 9.3 You must notify us immediately in writing of any material changes to your business.

10. General Provisions

- 10.1 This agreement contains all the terms which the parties have agreed in relation to the transactions provided for by the Agreement. No variation of this agreement shall be effective unless it is in writing and signed by both parties.
- 10.2 Where the Purchaser is a Lender, the Lender may provide its own terms of purchase. In the case of any conflict between these terms and any Lender Purchase Terms, then the Lender Purchase terms shall, as between the Dealer and the Lender, prevail.
- 10.3 In all other circumstances, these Terms and Conditions shall prevail. Any failure or delay in exercising any right or remedy available under
- 10.4 this Agreement, or waiver of a breach of, or default under, any of the terms of this Agreement shall not be deemed to be waiver of any subsequent breach or default.
- 10.5 This Agreement and any dispute of claim arising out of or in connection with it shall be governed and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim regarding this Agreement.

11. Dealer Commission (where applicable)

- 11.1 Where commission is paid to a dealer in respect of a sale presented to us for which we provide funding, such commission will be subject to clawback, that is, full or partial refund by the date to us, under the following conditions:-
- a) Where the customer defaults on repayments under the finance agreement reached with him/her;
 - b) Where the customer exercises the short term rights to reject;
 - c) Where the customer seeks to unwind the deal for any reason accepted by us;
 - d) Where the dealer, having been given the opportunity to repair to a satisfactory standard, fails to do so.
- 11.2 In the event of any open and ongoing complaints we hold the right to withhold any commission payments due to the supplying dealer until the complaints are resolved or a suitable resolution has been agreed in writing by all parties
- 11.3 Should ChooseMyCar incur any costs as a result of a complaint resolution we hold the right to make reasonable deductions to any commission payments owed to the dealer.

NOTE:- Where a dispute between the dealer and us arises in relation to the legitimacy of the customer's complaint, our decision shall be final and binding upon the parties.