

TERMS AND CONDITIONS

DEFINITIONS

"Account" means the credit facility provided by the Company to the Applicant.

"Agreement" means this Trading Terms Application & Agreement as amended from time to time.

"Applicant" means the natural person or company specified in Section A of this Agreement.

"Company" means Automotive Holdings Group Limited (ACN 111 470 038) and any of its wholly owned or controlled subsidiaries that may be in existence from time to time (both now and in the future).

"Default" means any one of the following events:

- (a) breach of the Terms and Conditions of this Agreement;
- (b) upon change in the direct or indirect ownership or control of the Applicant; or
- (c) if the Applicant:
 - (i) becomes insolvent;
 - (ii) is declared bankrupt;
 - (iii) dies;
 - (iv) is placed into receivership or if a Receiver and Manager is appointed;
 - (v) is placed into liquidation;
 - (vi) is wound up or an application to wind up the Applicant is brought; and
 - (vii) attempts to assign its rights under this Agreement.

"Guarantee" refers to the Guarantee contained in Section I of this Agreement.

"Guarantor(s)" means the person(s) specified in Section J of this Agreement.

"National Credit Code" means Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth) as amended from time to time.

"Notice" means notice from the Company in accordance with condition 2 of this Agreement.

"PPS Act" refers to the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

"Privacy Act" refers to the *Privacy Act 1988* (Cth) as amended from time to time.

OPERATIVE PROVISIONS

1. All accounts are due and payable within (30) days of the end of the month in which the invoice is issued or as arranged and confirmed in writing by the Company. No Account shall be deemed to be paid unless paid by cash or until the Applicant's cheque or bank cheque has been paid by the Applicant's bank. Where the Applicant pays the Account, or any part thereof by a cheque, payment of the Account shall not have been effected until the Applicant's cheque has been honoured. Disputes and/or claims do not constitute grounds for non-payment of amounts other than those in dispute.
2. The Applicant agrees that the Applicant is not entitled to use the credit facility until it received notice in writing from the Company stating that the facility has been granted. Until the Applicant receives Notice, any goods or services that are supplied by the Company to the Applicant shall be on a cash basis. Any failure or refusal of the Applicant(s) or Guarantor(s) to provide the consents, authorizations, references or information requested in this application may result in the application being declined or withdrawn by the Company.
3. (a) Unless the Company agrees in writing to the postponement of payment of any monies owing to the Company by the Applicant, interest shall be payable by the Applicant on the highest debit balance of each calendar month on monies owing by the Applicant to the Company, calculated daily from the date the monies become due until the actual date of payment at a rate of 14% per annum provided that, notwithstanding anything herein before contained, the Company may, at any time after the date hereof serve on the Applicant a notice varying as from the future date specified therein the interest rate, and the interest rate shall be varied as therein provided from the date therein specified, being a date not less than 7 days after the date of service of such notice.
(b) Payments received by the Company will be applied as follows:
 - (i) first in reduction of interest payable and accruing from month to month; and
 - (ii) secondly in reduction of all other monies owing to the Company until such time as all monies owing to the Company have been paid in full.
(c) If at any time monies are overdue and owing upon any account then outstanding, the whole of the amount of all accounts then outstanding may, at the option of the Company, become immediately payable.
4. The Company may, at its absolute discretion, withdraw the facility at any time without notice or the Company may, from time to time or at any time, increase or decrease the limit (if any) of the facility provided without notice to the Applicant or Guarantor (if any). The Company shall not be liable for damages to the Applicant for the non-supply of goods or the non-provision of service as a result of the facility being withdrawn or the limit being altered.
5. The Company and the Applicant agree that:
 - (a) The legal interest, equitable interest and title in any goods supplied to the Applicant by the Company shall not pass until all monies owing to the Company by the Applicant have been paid in full. Risk in the goods shall pass to the Applicant from the time the goods are loaded or delivered by the Company to a courier or carrier consigned to the Applicant.
 - (b) The Applicant is a bailee of the goods until such time as property in them passes to the Applicant and bailment continues in relation to each of the goods until the price of each of the goods has been paid to the Company.
 - (c) Pending payment in full for the goods, the Applicant:
 - (i) must not supply any of the goods to any person outside of its ordinary or usual course of business;
 - (ii) must not allow any person to have or acquire any security interest in the goods;
 - (iii) must insure the goods for their full insurable or replacement value (whichever is higher) with an insurer licensed to carry on the business of the insurance.
 - (iv) must not remove, deface or obliterate any identifying plate, mark or number on any of the goods.
 - (d) Despite clause 5 (a), (b) and (c) above, if the Applicant supplies any of the goods to any person before all monies payable by the Applicant have been paid to the Company, the Applicant agrees that it holds the proceeds of re-supply of the goods on trust for and as agent of the Company immediately when they are receivable or are received.
 - (e) The Applicant agrees that the Company has an equitable interest in the proceeds from goods or services supplied. The Company reserves its right to seek any equitable remedy to which it is entitled, including but not limited to tracing.
 - (f) This Agreement constitutes a Security Agreement as defined under the PPS Act. The Applicant agrees that the Company may register its security interest in any goods supplied and the proceeds thereof, and proceeds of any services supplied by the Company on the Personal Properties Security Register in accordance with the PPS Act. In accordance with section 157 of the PPS Act, the Applicant waives the right to receive a Notice Verification Statement. In the event the Company is a subsidiary of Automotive Holdings Group Ltd, the Applicant(s) and Guarantor(s) expressly authorize and consent to the assignment of any security interest in the goods supplied and the proceeds thereof being assigned to Automotive Holdings Group Ltd, and expressly waive any requirement that notice of the same be given.
6. Any legal costs, duties or any other expenses whatsoever incurred by the Company in respect of the Application, agreements, guarantees, securities or other documentation required by the Company or other costs reasonably incurred by the Company as a consequence of this Application and other expenses incurred in respect of opening and maintaining any Account in the name of the Applicant together with any collection costs, dishonoured cheques, fees, legal costs, whether charges on scale or any other basis incurred, shall be paid by the Applicant to the Company on demand.
7. (a) The Company has a general lien on the goods or any other goods of the Applicant that the Company or its sub-contractors has in its possession for any monies due or which become due on any account under this Agreement, whether for the repair, storage or transportation of the goods or any other goods or any other service the Company may provide; and
(b) The Company may deduct or set off any monies due to the Applicant under any contract or agreement against any debt and monies due from the Applicant under this Agreement or any other agreement.
8. If there is a Default by the Applicant, then the Company, without prejudice to any rights or remedies open to it, may:
 - (a) treat as discharged all or any obligation arising from any agreement with the Applicant;
 - (b) retain any security given or monies paid by the Applicant or available through the enforcement of any guarantee, security or bond and apply this in reduction of any sum which may be lawfully recovered by the Applicant;

- (c) if the Applicant fails to pay for the goods within the period of the credit specified in condition 1, recover possession of the goods at any site owned, possessed or controlled by the Applicant and the Applicant agrees that the Company (or any agent or representative of the Company) has an irrevocable licence to do so; and
- (d) take such steps as it may deem necessary to mitigate the damages suffered including the putting to use, hiring out, sale or disposal of any goods supplied or to be supplied under the contract and in its possession.
9. Should there be any variation to any of the information supplied by the Applicant in this Application or in the structure of the Applicant (such as a conversation to or from a company or trust) the Company shall forthwith be notified in writing by the Applicant. Unless notification of such variation or charge is given and accepted in writing by the Company, the original Applicant and the Guarantors shall remain liable to the Company as though any goods or service supplied by the Company were supplied to the original Applicant.
10. The Company shall not be deemed to have waived any of the terms or conditions of the Application or agreed to any variation thereof unless it has done so expressly in writing and is signed by the Company. Failure by the Company to insist upon strict performance of any term or condition herein shall not be deemed a waiver of any rights the Company may have and shall not be deemed a waiver of any subsequent breach of any term or condition.
11. Where there is any inconsistency between the terms and conditions of this Application and any subsequent agreement for the supply of goods or services by the Company, any such subsequent agreement shall be read down to the extent necessary to give force and effect to the terms and conditions of this Application.
13. In this Application words in singular shall be construed so as to include the plural and words in the masculine gender shall be construed so as to include every other gender.
14. Where the Applicant is a trustee:
- (a) the Applicant agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Company;
- (b) the Applicant warrants that it has full power and authority for the benefit, purpose and objects of the trust to make this Application on behalf of the trust and that it shall be bound by the terms of this Application both personally and as a trustee; and
- (c) the Applicant confirms that the trustees shall be liable for the Account and that in addition the assets of the trust shall be available to meet payment of the account.
15. The Applicant hereby agrees that the facility hereby applied for does not extend to any transaction and the Applicant will not use the facility for any transaction which is or may be a "credit contract" as defined in the National Credit Code.
16. The Applicant and Guarantor(s) (if any) do hereby agree that for the purposes of securing the liability and obligations hereunder of each of them, they do hereby charge with due and punctual payment and the due and punctual and complete performance by each item of all their liabilities, and obligations hereunder all their real property both present and future and each of the Applicant and the Guarantor do hereby consent to the Company lodging a caveat or caveats noting its interest hereunder. The continuing guarantee created herein shall remain in full force and effect and shall not be discharged until the expiry of not less than 7 months from the date of receipt of the last payment by the Company from the Applicant in satisfaction of monies due by the Applicant made by or on behalf of the Applicant.
17. As a separate independent agreement each Guarantor shall fully indemnify the Company against all loss and/or damages suffered by the Company as a result of the whole or part of any monies due by the Applicant to the Company not being recoverable from the Applicant or the Guarantor(s) as Guarantor(s) whether by reason of any legal limitation or any other fact or circumstances which are known to the Company or otherwise.
18. The Applicant and the Guarantor(s) (if any) agree that the certificate of the Company or any person authorised by the Company shall be conclusive evidence as to the amount owing to the Company by the Applicant and Guarantor.
19. Personal information of the Applicant(s), partner(s) of the Applicant, director(s) of the Applicant and/or Guarantor(s) will be used for credit assessment and marketing purposes only and may be divulged to credit reporting agencies, and in the event of Default to the Company debt collectors and or solicitors. Failure to provide any or all of the personal information requested on this application may result in the application being declared invalid.
20. Privacy Act
- (a) The Applicant(s) and or the Guarantor(s) authorise and consent to the Company obtaining from a credit reporting agency a report containing personal credit information about the Applicant(s) and or the Guarantor(s) pursuant to section 18K(1)(h) of the Privacy Act, and acknowledge that any such credit reports or personal information can be used by the Company for the purpose of collecting overdue payments.
- (b) The Applicant(s) and or the Guarantor(s) authorise and consent to the Company obtaining a report containing information about the Applicant(s) and or the Guarantor(s) commercial activities, consumer activities or commercial or consumer credit worthiness from a business that provides information in relation to the credit worthiness of a person or corporation pursuant to section 18L(4) of the Privacy Act.
- (b) The Applicant(s) and the Guarantor(s) agree that the Company may exchange information about the Applicant(s) and the Guarantor(s) with any credit provider named in this credit application, with other credit providers that may be named in a credit report obtained under clause 19(a) above, or with any other credit provider of whom the Company becomes aware by any means, which information can include any information about the Applicant(s) and the Guarantor(s) credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.
- (c) The Company has informed the Applicant(s) and or the Guarantor(s) and the Applicant(s) and or the Guarantor(s) agree that the Company may give certain personal information (which is set out in the Privacy Act) about the Applicant(s) and or the Guarantor(s) to a credit reporting agency, which information may include but is not limited to:
- (i) personal particulars of the Applicant(s) and or the Guarantor(s) (name, sex, date of birth, current address, previous addresses, current and last known employer, drivers licence);
- (ii) information regarding this application for credit, including the amount requested, and the fact that the Company is a current credit provider;
- (iii) advice of any overdue accounts, loan repayments and/or outstanding monies which have become overdue for more than 60 days and for which collection action has commenced, and subsequent advice that any listed default is no longer overdue;
- (iv) cheques drawn by the Applicant(s) and or the Guarantor(s) which have been dishonoured more than once;
- (v) that in the opinion of the Company a serious credit infringement has been committed by the Applicant(s) and or the Guarantor(s); and
- (vi) that credit provided to the Applicant(s) and or the Guarantor(s) has been paid or otherwise discharged.
- (d) The Applicant(s) and the Guarantor(s) agree that trade insurers or their agents may obtain a credit report from a credit reporting agency to assess whether to insure or the risk of insuring the Company or to assess the risk of default by them in relation to their application for commercial credit with the Company.
- (e) The names and contact details of credit providers who the Company is likely to disclose personal information about the Applicant(s) or the Guarantor(s) are detailed in the Company's Privacy Policy.
- (f) A copy of the Company's Privacy Policy can be accessed at: <http://www.ahg.com.au/privacy-policy>
21. The Applicant(s) and the Guarantor(s) agree that this Application is governed by the laws of Western Australia. Each party to this Application submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Application.
22. The Applicant(s) and/or Guarantor(s) hereby acknowledge that the Company recommends that independent legal advice be obtained regarding their rights and obligations under this Agreement prior to signing thereof.