

**SUBJECT
TO
FINANCE**

5. Where this Contract is expressed to be subject to the Purchaser obtaining finance to complete the purchase, the Contract is conditional upon the Purchaser obtaining finance approval—
- within the time stated in Clause 4;
 - of an amount specified in Clause 4;
 - from the credit provider named in Clause 4 (or from a similar type of credit provider) in respect of an application to obtain the type of finance stated in Clause 4; and
 - upon such terms and conditions as are reasonable in the circumstances.

The Purchaser agrees to take all reasonable steps towards obtaining such finance approval. In the event that, despite the Purchaser taking such reasonable steps, such finance approval is not obtained within the time specified in Clause 4, or within such further period as may be agreed, either party shall be entitled to terminate this Contract by giving notice to the other party. In the event of such termination Clause 14(2) shall apply.

**TRANSFER
OR CHARGE
TO CREDIT
PROVIDER**

6. If required by the Purchaser, the Seller shall transfer or charge title to the purchase vehicle to the Purchaser's credit provider upon payment to the Seller of the Total Purchase Price and fulfilment by the Purchaser of all of his obligations under this Contract.

**DELAYS
IN
DELIVERY**

7. The Seller estimates the delivery date of the purchase vehicle to be the date stated in Clause 2, and undertakes to make every reasonable effort to make the purchase vehicle available for delivery on or before that date.

Where delivery is delayed through no fault on the Purchaser's part for a period in excess of 14 days from the estimated delivery date, the Purchaser shall be entitled to terminate this Contract by notifying the Seller in writing of his election to terminate. In the event of such termination, Clause 14(2) shall apply.

The Purchaser agrees to take delivery within 7 days of being notified by the Seller that the purchase vehicle is ready for delivery. Should the Purchaser fail to take delivery within this time, the Seller shall be entitled to terminate this Contract by notifying the Purchaser in writing of his election to terminate. In the event of such termination, Clause 14(1) shall apply.

**TRADE-IN
CONDITIONS**

8. (a) Where the Seller agrees to allow part of the Total Purchase Price to be accounted for by the Purchaser delivering to him a trade-in vehicle, Schedule A of this Contract is to be completed. The Purchaser warrants that to the best of his knowledge and belief the information recorded in Schedule A is accurate.
- (b) (i) The Seller agrees to allow that part of the Total Purchase Price shown as the Net Trade-in Allowance in Clause 3 to be accounted for by the Purchaser delivering the trade-in vehicle to the Seller, subject to conditions (c), (d) and (e) below.
- (ii) If the amount required to be paid by the Seller to discharge any encumbrances on the trade-in vehicle is different from the Trade-in Payout shown in Clause 3, the Net Trade-in Allowance shall be adjusted accordingly.
- (c) The trade-in vehicle shall be delivered to the Seller no later than the date of delivery of the purchase vehicle.
- (d) In the event that the trade-in vehicle is delivered to the Seller more than 30 days after the date of this Contract (or such longer period as may be agreed upon), or if the trade-in vehicle is not at the time of delivery to the Seller in substantially the same condition as at the date of this Contract as recorded in Schedule A, fair wear and tear excepted, then the trade-in allowance shown in Clause 3 may be adjusted by an amount equal to the amount, if any, by which the fair market value of the trade-in vehicle to the Seller differs from the fair market value of the vehicle as at the date of this Contract.
- (e) The Purchaser's interest in the trade-in vehicle shall, unless otherwise agreed, pass to the Seller—
- upon payment or credit by the Seller to the Purchaser of the Net Trade-in Allowance; or
 - when the Purchaser accepts delivery of the purchase vehicle, whichever first occurs, subject to any encumbrance over the vehicle.
- (f) The Seller shall not without the prior consent of the Purchaser sell or agree to sell the trade-in vehicle prior to delivery of the purchase vehicle to the Purchaser.

**PAYMENT
OF
BALANCE
OF
PURCHASE
PRICE**

9. The balance of the Total Purchase Price as shown in Clause 3 shall be paid by the Purchaser on delivery of the purchase vehicle, unless the parties have agreed in writing that part or all of that balance may be paid at a later date. Where the Seller agrees to accept final payment by cheque, that payment shall be deemed not to have been made until the cheque has been cleared.

**TITLE TO
PURCHASE
VEHICLE**

10. The Seller will have the right to pass title at the time when the title to the purchase vehicle is to pass, which shall be when the Purchaser has paid to the Seller the total amount payable as set out in Clauses 3 and 9 and the Seller has received clear title to any trade-in vehicle. The Purchaser agrees that if he takes delivery of the purchase vehicle before payment has been made and title to any trade-in has passed to the Seller, he takes possession of the purchase vehicle as bailee only.

**SELLER'S
WARRANTY**

11. Details of any warranty provided by the Seller are set out in Schedule B.

**NON
EXCLUSION
OF
STATUTORY
WARRANTIES
AND OTHER
RIGHTS**

12. THE BENEFITS CONFERRED BY THIS CONTRACT AND BY THE SELLER'S WARRANTY, IF ANY, ARE IN ADDITION TO ALL OTHER RIGHTS AND REMEDIES IN RESPECT OF THE PURCHASE VEHICLE WHICH THE PURCHASER HAS UNDER THE TRADE PRACTICES ACT AND OTHER COMMONWEALTH, STATE AND TERRITORY LAWS.

**PURCHASER'S
COPY OF
CONTRACT**

13. The Seller agrees to provide the Purchaser with a true copy of this Contract as signed by both parties.

TERMINATION

14. (1) Where this Contract is lawfully terminated by the Seller (whether in reliance upon Clause 7 or in reliance upon a default by the Purchaser in the observance or performance of any obligation under or arising out of this Contract which entitles the Seller to terminate) the Seller, at his option and without prejudice to any other rights or remedies he may have and after notifying the Purchaser of his election to terminate this Contract, may elect that the amount, if any, stated in the space provided in Clause 3 to be forfeitable in the event of the Purchaser's default shall be forfeited to the Seller, PROVIDED HOWEVER that such amount shall not exceed 5% of the Total Purchase Price, and the following provisions where relevant shall apply:
- The Seller shall refund to the Purchaser the amount, if any, by which the deposit and any other amount paid or credited towards the purchase price exceeds the forfeitable amount.
 - Where the amount provided by way of cash deposit and/or part payment is sufficient to provide the Seller with the forfeitable amount, any trade-in vehicle which may have been delivered to the Seller shall be returned to the Purchaser unless the Seller has, with the prior consent of the Purchaser, sold or agreed to sell the trade-in vehicle in which event Clause 14(3) shall apply. Where the Seller returns the trade-in vehicle to the Purchaser, the Seller shall be entitled to retain, in addition to the forfeitable amount, an amount equal to the reasonable cost of any reasonable repairs that have actually been carried out by the Seller with the consent of the Purchaser on the trade-in vehicle.
 - Where the amount, if any, provided by way of cash deposit and/or part payment is insufficient to provide the Seller with the forfeitable amount and a trade-in vehicle has been delivered to the Seller as part of the forfeitable amount, the Seller may elect that the trade-in vehicle shall be forfeited to the Seller unless the Seller has sold or agreed to sell the trade-in vehicle in which event Clause 14(3) shall apply and the Seller may elect to retain an amount equal to the unsatisfied part of the forfeitable amount from the amount payable to the Purchaser under Clause 14(3).

Where the trade-in vehicle is forfeited to the Seller, the Seller shall pay to the Purchaser the balance of the amount payable under Clause 14(3) after deducting therefrom the unsatisfied part of the forfeitable amount.

- (2) Where this Contract is lawfully terminated either:

- by the Purchaser (whether in reliance upon Clause 5 or Clause 7 or upon a default by the Seller in the observance or performance of any obligation under or arising out of this Contract which entitles the Purchaser to terminate)—the Purchaser, at his option and without prejudice to any other rights or remedies he may have and after notifying the Seller of his election to terminate this Contract, shall be entitled to a refund by the Seller of all money paid by or on behalf of the Purchaser to the Seller and be entitled to the return of the trade-in vehicle (if any) unless the Seller has, with the prior consent of the Purchaser, sold or agreed to sell the trade-in vehicle in which event Clause 14(3) shall apply; or
- by either party for reasons other than a default or breach on the part of the other party or by the Seller in reliance upon Clause 5—the Seller shall refund to the Purchaser all money paid by or on behalf of the Seller to the Seller and return the trade-in vehicle (if any) unless the Seller has, with the prior consent of the Purchaser, sold or agreed to sell the trade-in vehicle in which event Clause 14(3) shall apply.

In either case, where the Seller returns the trade-in vehicle to the Purchaser the Seller shall be entitled to retain an amount equal to the reasonable cost of any reasonable repairs that have actually been carried out by the Seller with the consent of the Purchaser on the trade-in vehicle.

- (3) Where any provision herein provides for this sub-clause to apply, the Seller shall pay to the Purchaser an amount equal to the Net Trade-in Allowance (if any) unless the parties herein have agreed for the purposes of this clause on a particular amount as the fair market value of the trade-in vehicle (not including the value of any such repairs referred to above), in which event the Seller shall pay to the Purchaser an amount equal to such agreed market value (less any trade-in payout made or to be made by the Seller to discharge any encumbrance on the trade-in vehicle).

NOTES FOR GUIDANCE OF USERS OF THIS CONTRACT

(These notes are not part of the Contract)

The following notes have been provided to assist users of this contract and to explain the intent and effect of some clauses of the contract. For complete understanding of the contract, however, it is necessary to study all the clauses.

GENERAL. This is a legal document—please check to ensure that its provisions are consistent with the negotiated agreement. It should be noted that contract documents for motor vehicle sales are also commonly known by other names including 'agreement of sale' and 'buyer's order form'.

CLAUSE 8 TRADE-IN CONDITIONS. For the conditions relating to the trade-in to be properly observed it is necessary that a record be kept of the condition of the trade-in vehicle at the time of its valuation. The Record of Condition form provided in Schedule A should be used for this.

If the parties are unable to agree on the amount of adjustment to be made under Clause 8(d) it is open to them to agree to submit the question for determination by an independent arbitrator. It has not been thought necessary to include express provision for arbitration in the contract itself.

Clause 8(e)(i) would usually become relevant if the situation arises where the dealer wishes to sell the trade-in vehicle prior to delivery of the purchase vehicle to the Purchaser. It envisaged that the dealer would either actually make payment to the Purchaser or credit the amount then agreed upon against the purchase price of the purchase vehicle as if the amount had been paid in cash.

CLAUSE 14 TERMINATION. The contract provides for the right of termination under specified subclauses of this clause where certain specified events occur, but recognizes that it is not practicable to list all other possible breaches that could occur or to attempt to define in advance whether a particular breach should in all circumstances allow this right. The approach of the contract in relation to such other breaches is to leave it up to the common law or statute to determine whether a party can terminate or is limited to some other remedy, such as damages.

Clause 14 envisages that where the dealer wishes to sell the trade-in vehicle to a third party prior to the Purchaser obtaining delivery of the purchase vehicle, they may agree on a particular amount as the fair market value of the trade-in vehicle. This amount will sometimes be different from the trade-in allowance, which may be more than the market value of the trade-in but which the dealer is prepared to allow on the condition that the sale of the purchase vehicle will be completed. No provision is made in the Contract form for this value to be inserted because the situation where the parties may wish to make such an agreement will arise relatively rarely.

CLAUSE 15 ADDITIONAL CONDITIONS. This clause is provided as a means by which the parties can adapt the standard form of contract to reflect their negotiated agreement, or to insert additional provisions not covered by the standard form. For example, a possible use for this provision would be to state an agreed market value for the trade-in vehicle for the purpose of Clause 14.