

# Moto Porium

## New and Used Vehicle Sales/Terms and Conditions

Nothing contained in these Terms and Conditions will affect or restrict the statutory rights of a consumer.

### 1. Definitions and Interpretation

1.1 In these terms unless the context requires otherwise:-

"Accessory" means an extra or accessory detailed in the Order;

b. "Allowance" means the amount specified on the Order as allowed by the Seller against a Part Exchange Vehicle;

"Completion" means the completion of the transaction, comprising the Seller's delivery of the Vehicle, and the Purchaser delivering the Part Exchange Vehicle in accordance with clauses 9.3 and 9.5;

"Contract" means the contract for the sale and purchase of the Vehicle;

e. "Encumbrance" includes (without limitation) any interest or equity of any person, any mortgage, pledge, lien, assignment, hypothecation, security interest, title retention or any other security obligation or any agreement or obligation to create any of the foregoing;

f. "Estimated Delivery Date" means the estimated delivery date (if any) specified on the Order;

g. "Manufacturer" means the manufacturer of the Vehicle;

h. "Order" means the order set out overleaf for the purchase of the Vehicle;

i. "Part Exchange Vehicle" means the used vehicle (if any) offered by the Purchaser in part exchange for the Vehicle, details of which appear on the Order under the heading "Part Exchange Vehicle" or similar;

j. "Purchase Price" means the price for the Vehicle (including, where applicable, Accessories, road fund licence, delivery, warranty, insurance, fuel, car tax and value added tax) current at the date of the Order;

k. "Purchaser" means the person, firm or company placing the Order;

l. "Seller" means the seller named overleaf and includes its successors and assigns; and,

m. "Vehicle" means the motor vehicle and any parts, accessories and extras detailed in the Order (subject to clauses 5.4 and 5.5).

1.2 Headings are for convenience only and do not affect the construction of the Contract; the masculine shall include all genders and the singular shall include the plural; any reference to statutory provisions is a reference to such statutory provisions as amended or re-enacted from time to time.

1.3 These terms together with the terms set out on the Order are the only terms of the Contract. No variation to the Contract is effective unless agreed in writing by an authorised representative of the Seller.

### 2. Formation of Contract

2.1 The Order is the Purchaser's offer to purchase the Vehicle upon these terms. The Contract is formed upon the Seller accepting that offer by an authorised representative of the Seller signing and dating the Order.

2.2 The Contract is personal to the Purchaser, who shall not assign the benefit of the Contract without the prior written consent of an authorised representative of the Seller.

### 3. Cancellation

3.1 Unless entitled to do so under clause 3.2, clause 4.5, clause 5.3 or clause 14, the Purchaser may not cancel the Contract without the prior written agreement of an authorised representative of the Seller. If the Purchaser seeks to cancel the Contract in any other manner, the Seller may (without prejudice to its other rights and remedies) retain from any deposit paid an amount equal to any costs and/or expenses incurred or likely to be incurred by the Seller in connection with the Vehicle, the Contract and/or the cancellation of the Contract. If the Purchaser cancels under clauses 3.2, 4.5, 5.3 or 14 the Seller shall return to the Purchaser any deposit paid and thereafter shall have no further liability to the Purchaser under the Contract.

3.2 If the Vehicle is purchased at a distance within the meaning of The Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013, the Purchaser may within 14 days of delivery cancel the Contract and require the Seller to refund the Purchase Price. In this instance, the Purchaser must keep the Vehicle in a reasonable condition and return the Vehicle or make it available for collection and pay the Seller's reasonable costs of collection and the difference, if any, between the value of the Vehicle when returned and the Purchase Price.

### 4. Delivery

4.1 Unless otherwise specifically agreed in writing 'delivery' means the Seller making the Vehicle available at the Seller's premises for collection by the Purchaser. Risk in the Vehicle shall pass on delivery.

4.2 The Estimated Delivery Date is an estimate only. Time of delivery is not of the essence of the Contract. The Seller shall endeavour to deliver the Vehicle by the Estimated Delivery Date but shall not be liable for any loss, damage or delay occasioned by failure to deliver on the Estimated Delivery Date.

4.3 As soon as the Vehicle is ready for delivery, the Seller shall inform the Purchaser who shall then have seven (7) days in which to pay the Purchase Price (less the Allowance, if any) and take delivery of the Vehicle.

4.4 The Purchaser shall not be entitled to take delivery of the Vehicle unless the Purchase Price has been paid in full in cleared funds, and if he fails to pay, the Seller shall be entitled to treat the Contract as repudiated by the Purchaser. Until the Contract is so terminated the Seller may, at its option, either store the Vehicle itself or have it stored by third parties on such terms as the Seller in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and form part of the Purchase Price. If the Seller treats the Contract as repudiated by the Purchaser, the Seller may (without prejudice to its other rights and remedies under the Contract) retain any deposit paid by the Purchaser and sell the Vehicle and retain the proceeds of the sale. Release of the Vehicle by the Seller to the Purchaser is not confirmation by the Seller that the Purchase Price has been paid in full.

4.5 If the Seller fails to deliver the Vehicle within thirty (30) days after the Estimated Delivery Date the Purchaser may give seven (7) days' notice to the Seller requiring delivery. Failing such delivery, the Purchaser may cancel the Contract. If the Vehicle is a new vehicle, the Seller may at any time cancel the Contract if the Manufacturer ceases to make that type of vehicle.

## 5. Price and Price Variation

5.1 The Seller reserves the right to vary the Purchase Price by any amount attributable to a variation in the cost or rate of road fund licence, car tax or value added tax between the date of the Order and the date of delivery and the Purchaser shall be bound to pay the price as so varied.

5.2 If before the date of delivery, a change occurs in the Manufacturer's (or relevant concessionaire's) price for the Vehicle or any Accessory, the Seller shall notify the Purchaser:

- a) if a price increase, of the amount of any such increase the Seller intends to pass on to the Purchaser by increasing the Purchase Price; or
- b) if a price reduction, the amount by which the Seller intends to reduce the Purchase Price (or that no reduction is intended).

5.3 The Purchaser may cancel the Contract:

- a) within fourteen (14) days after the date of a notice under clause 5.2(a); or
- b) within fourteen (14) days after the date of a notice under clause 5.2(b) if the amount by which the Seller intends to reduce the Purchase Price, as stated in such notice, is less than the amount of the reduction in the Manufacturer's price.

5.4 If the Seller is unable to supply any Accessory (of whatever nature) the Seller may at its option either:

- a) substitute a reasonable equivalent; or
- b) delete the Accessory from the Order and reduce the Purchase Price by an amount equal to the price of the Accessory in question.

5.5 The Seller's inability to supply an Accessory shall not constitute a breach of contract or entitle the Purchaser to repudiate the Contract or reject the Vehicle.

## 6. Method of Payment

6.1 Unless otherwise agreed by the Seller (and in all cases other than a sale via a finance company pursuant to clause 8) the Purchaser shall pay the Purchase Price in cleared funds by bank transfer. Credit and debit card payments are not acceptable unless specifically agreed in writing signed by an authorised representative of the Seller and may incur additional charges.

6.2 The Seller accepts payment by cheque only if the Seller receives the cheque at least five (5) clear banking days before the date on which delivery of the Vehicle is intended to take place. Payment shall not be deemed to have been made until cleared funds are received at the Seller's bank.

6.3 An agreement to accept payment on credit terms shall be effective only if in writing and signed by an authorised representative of the Seller. Any agreed credit period shall commence from date of delivery of the Vehicle and unless otherwise specified shall be seven (7) days.

6.4 The Seller reserves the right at any time prior to payment to request banker's or any other references as to the Purchaser's financial status. Failing receipt of satisfactory references, the Seller may withdraw any agreement to receive payment otherwise than in cash on delivery.

6.5 Interest will be charged to the Purchaser on all amounts remaining outstanding and unpaid after the due date for payment and/or on all sums due by way of damages for breach of the Contract at the rate of 2% per annum above the base rate of Lloyds TSB Bank plc from time to time in force and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment in full has been received by the Seller (whether made before or after judgement has been obtained). If no specific date for payment is set out in the Contract and credit terms have not been agreed the due date for payment shall be deemed to be the earlier of:-

- a) the date of delivery of the Vehicle; and,
- b) the date which is ten (10) days after notice from the Seller to the Purchaser that the Vehicle is ready for delivery.

6.6 Normally, amounts received from the Purchaser shall be applied in payment of the oldest debt but the Seller may at any time in its absolute discretion appropriate any payment it receives to such outstanding debt as the Seller thinks fit, notwithstanding any purported appropriation to the contrary by the Purchaser.

## 7. Title

7.1 Notwithstanding delivery, until the Seller has received, in cleared funds, from the Purchaser payment of all sums (whether by way of Purchase Price or otherwise) payable to the Seller, whether under the Contract or any other contract, both beneficial and legal title to the Vehicle remain in the Seller.

7.2 Whilst title in the Vehicle remains in the Seller, the Purchaser:-

- a) shall be in possession of the Vehicle as bailee of the Seller and entitled to use the Vehicle (and 'use' includes use in the ordinary course of the Purchaser's business, as notified to the Seller at the time of Order, of letting out vehicles on hire terms) until the occurrence of the first of the events or dates specified in clause 7.3;
- b) shall keep the Vehicle safe and in good condition and insure it for its full replacement value against all usual risks and shall forthwith upon receipt account to the Seller for any proceeds of such insurance, without deduction;
- c) shall not without the Seller's prior written consent use the Vehicle for self-drive hire, hackney carriage or taxi work, racing or off-road or green laneing or any other form of use not reasonably considered as normal domestic use, but the Seller shall be deemed to have given consent to self-drive hire where the Contract is on credit terms under clause 6.3 and the Seller had actual notice at the time of receiving the Order that the Purchaser intended to let the Vehicle out on self-drive hire in the ordinary course of its business;

d) shall not create any Encumbrance over the Vehicle nor do anything inconsistent with the Seller's title to the Vehicle;

e) irrevocably authorises the Seller's representatives to enter any premises at which the Vehicle is situated for the purposes of inspecting the Vehicle and identifying it as the Seller's property.

7.3 The Purchaser's power of possession and use of the Vehicle shall terminate: -

a) on the date on which notice is given by the Seller under clause 7.4; and/or

b) if any of the following happens to the Purchaser:-

i) being an individual, he is unable to pay his debts within the meaning of Section 268 of the Insolvency Act 1986 or a petition is presented or order made for his bankruptcy or an interim order is made or, in Scotland, he is declared not our bankrupt;

ii) being a company, it is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or a petition is presented or a resolution proposed or passed for its winding up or dissolution or an application or order is made for the appointment of a liquidator or administrator or an encumbrancer takes possession of or a receiver is appointed over all or any part of its assets or undertaking;

iii) a distress, execution or other process is levied on his undertaking or any part of his assets and is not discharged within seven (7) days;

iv) he calls a meeting of or proposes or makes any arrangement or composition with all or any part of his creditors;

v) any event or process of like nature to those set out in paragraphs b (i) to (iv) above in any jurisdiction.

7.4 The Seller may by notice to the Purchaser revoke the Purchaser's power of possession and use of the Vehicle:-

a) if the Seller has any doubt as to the ability or willingness of the Purchaser to pay to the Seller any sum on the due date; and/or,

b) if the Seller has reason to believe the Purchaser is in breach of any term of this or any other contract with the Seller.

7.5 Upon revocation or determination of the Purchaser's power of possession and use of the Vehicle the Purchaser shall yield up the Vehicle in good condition to the Seller and (if so required by the Seller) at its own expense deliver the Vehicle to an address in the United Kingdom specified by the Seller and shall be deemed irrevocably to authorise the Seller to enter upon any of its premises with or without vehicles for the purposes of removing the Vehicle.

7.6 The repossession of the Vehicle by the Seller in accordance with this clause shall be without prejudice to all or any of the Seller's rights or remedies against the Purchaser.

## 8. Finance Arrangements

8.1 Notwithstanding the following provisions of this Contract, the Purchaser may, within seven (7) days after receiving notification that the Vehicle is ready for delivery, arrange for a finance company to purchase the Vehicle from the Seller for the Purchase Price upon the same terms (other than the identity of the Purchaser) as this Contract. Upon payment of the Purchase Price the finance company so introduced shall be deemed to be the purchaser of the Vehicle (and all references to the Purchaser shall be construed accordingly) and the Seller will deliver the Vehicle to the order of such finance company (and all references to delivery of the Vehicle shall be construed accordingly, delivery to the Purchaser first named in the Order being deemed to be effective delivery to the order of the finance company).

8.2 If the Purchaser introduces the sale of the Vehicle to a finance company, as specified in clause 8.1, the provisions of this Contract as regards the Purchaser originally named in the Order shall then cease to have effect with the exception of the terms relating to the Part Exchange Vehicle (if any) which shall continue to have effect, with one variation; the Seller shall, on behalf of the Purchaser, account for the Allowance and any deposit paid under this Contract to the order of such finance company. The finance company shall thus be substituted as the Purchaser of the Vehicle hereunder.

8.3 The purchase of the Vehicle by the finance company at the request of the Purchaser shall not release the Purchaser from his obligations under clauses 10 and 12 to inspect the Vehicle and satisfy himself that the Vehicle is suitable for his purposes.

## 9. Part Exchange Vehicle

9.1 The provisions of this clause 9 shall apply if the Purchaser has proffered a Part Exchange Vehicle. Where the Seller agrees to allow part of the Purchase Price to be discharged by the Purchaser's delivering to the Seller the Part Exchange Vehicle, the Allowance is given and received and the Part Exchange Vehicle is delivered and accepted as part of the Contract (and not as a separate contract between the Purchaser and the Seller) on the conditions set out in clauses 9.2 to 9.7 (both inclusive).

9.2 The Purchaser passes to the Seller good title to the Part Exchange Vehicle either:

a) free from Encumbrances; or

b) if there are Encumbrances on the Part Exchange Vehicle but all are capable of cash settlement by payment of an amount not exceeding the Allowance, instead of applying the whole of the Allowance towards payment of the Purchase Price, the Seller will apply the Allowance or part of it as applicable towards settlement of any obligations to third parties in respect of the Part Exchange Vehicle which are capable of cash settlement, payment to any such interested third parties to be made after the Seller has received the Part Exchange Vehicle and made delivery of the Vehicle to the Purchaser.

9.3 The Seller has had the opportunity to examine the Part Exchange Vehicle for the purpose of calculating the Allowance and such examination has taken place; and the condition of the Part Exchange Vehicle as delivered to the Seller before or at the time of delivery of the Vehicle to the Purchaser is substantially the same as that existing at the time of the Seller's most recent examination (fair wear and tear excepted).

9.4 Risk in and title to the Part Exchange Vehicle shall pass to the Seller on delivery.

9.5 Without prejudice to clause 9.3 the Purchaser shall deliver the Part Exchange Vehicle to the Seller within seven (7) days of notice to the Purchaser that the Vehicle is ready for collection.

9.6 If Completion takes place on a date which is more than thirty (30) days after the date of the Order, except when the delay is a direct result of the Seller's act or default, the Seller reserves the right to reduce the Allowance by an amount equal to 2.5% of the Valuation for each completed period of thirty (30) days between the date of the Order and Completion.

9.7 If any of clauses 9.2 to 9.6 (both inclusive) are not fulfilled the Seller shall be discharged from any obligation to purchase the Part Exchange Vehicle or to make the Allowance and the Purchaser shall discharge the Purchase Price in full in cash.

## 10. Used Vehicles

10.1 If the Vehicle is a used vehicle, the Vehicle is sold:

- a) subject to any defects which the Seller has drawn to the Purchaser's attention prior to the Purchaser placing the Order; and,
- b) subject to any defects which the Purchaser discovered or ought to have discovered upon examining the Vehicle prior to placing the Order (irrespective of whether the Purchaser has carried out such examination) and in that regard the Purchaser acknowledges that he has been afforded the opportunity to examine the Vehicle.

## 11. Warranty and Producer Details

11.1 If it is a new vehicle, the Vehicle is sold with the benefit of the Manufacturer's warranty, the terms of which are specified in the service record and warranty booklet or other similar documentation issued from time to time by the Manufacturer, copies of which are available for inspection at the Seller's premises. The benefit of such warranty is in addition to any statutorily implied warranty on the part of the Seller. Except where the Vehicle is delivered to the order of a finance company pursuant to clause 8, the Seller shall supply to the Purchaser a copy of the warranty terms on delivery of the Vehicle.

11.2 Unless otherwise specified by notice to the Purchaser, the producer of the Vehicle (for the purposes of Section 2 of the Consumer Protection Act 1987) is the Manufacturer.

11.3 We supply warranty on used cars through Warranty First. Details of which will be emailed to client directly from them. We will also provide you the warranty booklet which explain the coverage in detail. The coverage is based on level of warranty taken on purchased vehicle. Moto Porium will take bare minimum a dynamic coverage (details of which is explained in warranty booklet) provided by warranty First if your vehicle falls under the criteria.

11.4 Please contact us immediately if you have a problem. We cannot be responsible for any work you have undertaken on your vehicle elsewhere. Unless otherwise agreed in writing via email or a letter.

11.5 If you would like a repair, replacement, price reduction or refund, you will need to provide evidence of the alleged fault and personally bring the vehicle back to our premises which will normally be at your cost, unless otherwise agreed. We will use our best endeavours to minimise any inconvenience to you.

## 12. Limits of Liability

12.1 The Vehicle is sold strictly on the condition that the Purchaser has inspected the Vehicle and has satisfied himself of its suitability for his purposes and of its satisfactory quality. The Purchaser acknowledges that specifications and details in any catalogue, and forecasts of performance, are approximate only, and that such specifications and details and forecasts and representations made by the Seller to the Purchaser do not form part of this Contract and in respect of such specifications, details, forecasts and representations the Seller shall be under no liability nor shall the Purchaser be entitled to any remedy under the provisions of the Misrepresentation Act 1967.

12.2 The Seller's total liability for the aggregate claims of the Purchaser arising out of a single act or default of the Seller (whether due to the Seller's negligence or otherwise) shall not exceed the Purchase Price.

12.3 Nothing in this Contract shall be construed as limiting or excluding any liability of the Seller which may not by law be excluded.

## 13. Termination

13.1 Without prejudice to any of its other rights and remedies the Seller shall be entitled (without penalty) to postpone delivery of the Vehicle and suspend performance of the Contract and may by notice in writing to the Purchaser terminate the Contract at any time:

- a) following the occurrence of any of the events specified in clause 7.3; and/or
- b) if the Seller reasonably believes that the Purchaser is in breach in whole or in part of any warranty and/or representation made to the Seller including but not limited to that confirming that the Purchaser does not intend to resell the Vehicle for commercial purposes.

## 14. Force Majeure

14.1 The Seller shall not be liable to the Purchaser if unable to carry out any provision of the Contract for any reason beyond its control including (without limitation) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock-out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to the inability to procure parts or any vehicle required for the performance of the Contract. Failure to deliver the Vehicle by reason of any of the aforementioned contingencies shall entitle the Purchaser to cancel the Contract and the provisions of clause 3.1 shall apply.

## 15. Notices and General Provisions

15.1 No waiver of any of the Seller's rights under the Contract shall be effective unless in writing signed by an authorised person on behalf of the Seller. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Seller's rights in relation to different circumstances or the recurrence of similar circumstances.

15.2 Any notice under these terms and conditions shall be properly given in writing and sent by first class post or facsimile to the address of the intended recipient as stated in the Contract or to such address as the Seller and the Purchaser from time to time notify to each other as their respective addresses for service and shall be deemed served, in the case of postal notice on the expiry of 48 hours from the time of posting, and in the case of facsimile upon completion of the transmission by the sender.

15.3 Each of these terms and conditions and each paragraph hereof shall be construed as separate conditions; should any provision be found to be invalid or unenforceable or an unreasonable restriction of the Seller's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.

15.4 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any remedy or right of a third party which exists or is available apart from that Act.

15.5 This contract is subject to the law of England and Wales. The parties submit to the exclusive jurisdiction of the courts of England and Wales.

## 16. Customer Services

It's always our aim to make sure no one needs to use this page. But if you do have an issue, our job now is to listen carefully to your comments and do what we can to make it right.

### I need to raise an issue

The easiest and quickest way to resolve an issue would be to get in touch with the **Sales person** you have been dealing with by phone 01274265800 and email us at [aftercare@motoporium.com](mailto:aftercare@motoporium.com). Our Associates will do their absolute best to assist you.

### I need to make a complaint

If you have been unable to resolve your concerns or issues directly with the sales person you've been dealing with, we will help you log a complaint with us to help track and get you to the best possible resolution.

You can send your complain at [aftercare@motoporium.com](mailto:aftercare@motoporium.com). We will send the acknowledgement within 72 hours and try to resolve the issue within reasonable timeframe.

You can read our complaint procedure available online and follow the process to amicably resolve any concerns.

### Alternative Dispute Resolution (ADR)

If you don't agree with the resolution we've proposed for your complaint, we will refer you to our ADR service, provided by the National Conciliation Service. The ADR service provides an independent look at your complaint and may choose to change or uphold the resolution we've given you.

You can raise a case with the National Conciliation Service by visiting their website at [nationconciationservices.co.uk](http://nationconciationservices.co.uk) or by calling 01788538318