

## ADESA Remarketing Limited

### Online Auction and Fixed Price Sale Terms and Conditions

#### Purpose of this Agreement

- 1) These terms and conditions (this **Agreement**) set out:
    - a) the terms of the contract of sale between a **Seller** and **Buyer** of motor vehicles via the ADESA Remarketing online vehicle sales software, application and associated online and telephone services (the **Services**) available at [www.adesa.co.uk](http://www.adesa.co.uk) and <https://app.adesaupstream.traderev.co.uk> and <https://www.grs.co.uk> (the **Websites**);
    - b) the terms on which ADESA Remarketing (**ADESA, us or we**) allow both **Sellers** and **Buyers** (collectively, **you**) to make use of the Website and Services, and our role (as auctioneer, or as agent for Fixed Price Sales) in facilitating sale and purchase of motor vehicles using the Website and Services.
  - 2) This Agreement should be read carefully. All sales and purchases of motor vehicles via the Website and Services will be governed by this Agreement. By accessing the Website, making use of the Services and selling and/or purchasing motor vehicles via the Website and Services:
    - a) each **Seller** agrees to be bound by this Agreement both in respect of the Buyer upon conclusion of a Sale and in respect of **ADESA** for use of the Website and Services. For the avoidance of doubt, each Entry for Sale by the Seller constitutes a binding acceptance by the Seller of the terms of this Agreement in respect of the Vehicle so Entered for Sale;
    - b) each Buyer agrees to be bound by this Agreement in respect of the **Seller** upon conclusion of a Sale and in respect of **ADESA** for use of the Website and Services. For the avoidance of doubt, each Offer to Purchase by the Buyer constitutes a binding acceptance by the Buyer of the terms of this Agreement in respect of the Vehicle subject to the Offer to Purchase;
    - c) **ADESA** agrees to be bound by this Agreement in respect of each **Seller** and **Buyer** in respect of the provision of the Website and Services.
- If you do not agree to be bound by this Agreement, you must not use or access the Website or Services or attempt to participate in any Sale in any way.**
- 3) We strongly recommend that you print a copy of this Agreement for future reference as it will apply to all Sales made via the Services, and to your use of the Services and the Website.

#### Clauses of Special Importance

- 4) Your attention is drawn specifically to the following Clauses in this Agreement applying to both **Sellers** and **Buyers**:
  - a) Terms of Sale by Auction and Fixed Price Sales (Clause 7));
  - b) Warranties, Limitations and Exclusions (Clauses 10) and 11));
  - c) Indemnity (Clause 14);
  - d) Termination (Clause 15);
  - e) Rejection and Complaints (Clause 16);
  - f) Terms of Use of the Website (Clause 17); and
  - g) Definitions (Clause 0.
  - h) Vehicle Description Requirements/Disclosures Warranted by Seller (Schedule 1)

### Registration for Use of the Website and Services

#### 5) Terms of registration for both Buyers and Sellers

- a) The use of the Website and Services are limited to business to business sale and purchase of motor vehicles within the United Kingdom. Subject to specific agreement between all parties and the Buyer's payment of all applicable taxes, duties and other fees, ADESA may in its absolute discretion accept Offers to Purchase Vehicles from commercial Buyers in Ireland, Jersey, Guernsey and the Isle of Man.
- b) **In order to buy and/or sell using the Website and Services you must at all times be acting for and on behalf of a business and not in your personal capacity.**
- c) When you register for, and make use of, the Website and Services you provide us with information about yourself and your business, and you hereby warrant that:
  - i) all such information is true, accurate and up to date; and
  - ii) you are acting purely in a business capacity in your use of the Services, Website and sale and/or purchase of motor vehicles.
- d) You will notify us immediately of any changes to your registration information by contacting us by email to [customer.services@adesa.co.uk](mailto:customer.services@adesa.co.uk) and/or other agreed electronic/online means.
- e) For the avoidance of doubt, the same business entity may register with **ADESA** as both a **Seller** and a **Buyer**. In such event, the correct terms applicable to that entity in respect of any particular transaction will be determined by its role in the relevant Sale, (i.e., whether it is acting as a Buyer or a Seller in that Sale).
- f) As further set out in clauses 7 and 13, **ADESA** specifically reserves the right to reject (at its sole discretion), any **Buyer's** or **Seller's** registration to use the Services. **ADESA** also reserves the right to withdraw a **Seller's** right to Enter For Sale, and a **Buyer's** right to Offer to Purchase, at any time.

#### Seller specific terms of registration:

- g) On setting up a new **Seller** account, **ADESA** shall confirm, by means of email notification or other electronic notification, the payment frequency for the **Seller** and the frequency of sales reports and outstanding payments schedules to be sent from **ADESA** to the **Seller**. Please note, payment will only be made by **ADESA** to the Seller after **ADESA** has receipt of cleared funds from the **Buyer** in respect of a Sale (for further details regarding payment refer to clause 8)).

#### 6) ADESA Undertakings to the Buyer and the Seller

- a) **ADESA** shall act with reasonable skill and care in performing its role as auctioneer and/or Fixed Price Sales agent as between the **Seller** and the **Buyer**.
- b) **ADESA** shall not make any representations to the Buyer as to any Vehicle which have not been made in advance by the **Seller**.
- c) **ADESA** shall not misrepresent to the **Seller** the level or quality of any Offer to Purchase which has been made by a **Buyer**.

## Terms of Sale

### 7) The Auction and Sales Process

#### a) Entry For Sale

- i) The **Seller** may make an Entry for Sale of Vehicles via email to **ADESA** or other agreed electronic means (including via the Websites and/or application).
- ii) Each Vehicle Entered for Sale is subject to this Agreement and in particular the **Seller's** warranties and obligations to the **Buyer** set out below. Submitting an Entry for Sale is a further acceptance by the Seller of the terms of this Agreement.
- iii) Each Entry for Sale is subject to acceptance of that Entry by **ADESA**, in its absolute discretion. **ADESA** may refuse to allow any Entry for Sale if it does not consider it meets the requirements set out in this Agreement.
- iv) The **Seller** shall specify in its Entry for Auction the Reserve Price (if any), and in its entry for Fixed Price Sale the Fixed Price, for each Vehicle.
- v) On Entry for Sale of a Vehicle, the **Seller** authorises **ADESA** to advertise and remarket the Vehicle via the Website, Services, email and telephone and to conclude Sale of the Vehicle (**ADESA** acting as auctioneer and/or agent on the **Seller's** behalf) and without further reference to the **Seller** subject to Offer(s) to Purchase in excess of the Reserve Price being achieved. In the case of Fixed Price Sales, **ADESA** is authorised as agent to conclude a Sale of the Vehicle (without further reference to the **Seller**) upon an Offer to Purchase being made at the Fixed Price.
- vi) If the Seller wishes to withdraw any Vehicle Entered for Sale it must notify ADESA immediately and fully remove the Vehicle from the Website/application. Where ADESA in good faith agrees a Sale prior to receipt of any such withdrawal of a Vehicle, the **Seller** shall be required to honour that Sale of that Vehicle in full, otherwise the **Seller** shall be in material breach of this Agreement and shall fully indemnify ADESA in accordance with Clause 14)a)iii).
- vii) Where the Reserve Price/Fixed Price is not offered, whilst the Vehicle is Entered for Sale a sale will not be concluded by **ADESA** on behalf of the **Seller** at less than the Reserve Price/Fixed Price without first consulting the **Seller**. **ADESA** may in its absolute discretion inform the **Seller** of Offers to Purchase which are below the Reserve Price/Fixed Price and the **Seller** may consider such offers and provide a Seller's Reply which may be an Acceptance, refusal or counter offer in respect of such Offers to Purchase below the Reserve Price/Fixed Price. A Sale may then be concluded by **ADESA** in accordance with the instructions contained in the Seller's Reply without further reference to the **Seller**.
- viii) Alternatively, where a **Seller** has not stipulated any Reserve Price or Fixed Price in respect of a Vehicle, **ADESA** will submit any Offers to Purchase received in respect of such Vehicles and the **Seller** may respond with acceptance, refusal or counter offer in its **Seller's** Reply. A Sale may then be concluded by **ADESA** in accordance with the instructions contained in the Seller's Reply without further reference to the **Seller**.
- ix) If a Sale is not achieved, a **Seller** may resubmit a Vehicle under a new Entry for Auction at a reduced Reserve Price, or may make an Entry for Fixed Price Sale at a reduced Fixed Price, or withdraw the Vehicle entirely. If the reduced Reserve Price/Fixed Price is not achieved, the Vehicle may be withdrawn entirely.
- x) The **Seller** shall inform **ADESA** immediately, either by email or other electronic means (including via the application/Website), upon reduction of the Reserve Price/Fixed Price or withdrawal of the Vehicle. Any Sale concluded by **ADESA** prior to the **Seller** informing

**ADESA** of such withdrawal of a Vehicle shall be honoured in full by the **Seller** as further set out in Clause 7)a)vi) above.

*b) Offer to Purchase by Buyers*

- i) Potential **Buyers** may submit an electronic Offer to Purchase a Vehicle via electronic means, the Services (including via the application/Website) or by telephone to **ADESA**.
- ii) All Offers to Purchase shall be subject to this Agreement, and in particular the payment of the ADESA Invoice as set out below.
- iii) All Offers to Purchase will be binding upon the **Buyer** and cannot be withdrawn by the **Buyer** once submitted, but will be subject to Acceptance by or on behalf of the **Seller** prior to a Sale being concluded.

*c) Acceptance of Offer to Purchase and Sale of Vehicle*

- i) Upon Acceptance of an Offer to Purchase a Vehicle being communicated by **ADESA** to the **Buyer**, a Sale of that Vehicle will be concluded subject to the **Buyer** paying the ADESA Invoice in accordance with Clause 8) below.
- ii) For Vehicles Entered for Auction, the Sale shall be to the **Buyer** who makes the best Offer to Purchase (as determined by **ADESA** in its absolute discretion), subject to the Reserve Price being achieved. Where the Offer to Purchase is less than the Reserve Price, or where the **Seller** has not set a Reserve Price, **ADESA** shall (via telephone, email or other agreed electronic means including via the Services (application/Website)) inform the **Seller** of the Offers to Purchase received in respect of the Vehicle, and a Sale to a **Buyer** will be concluded by **ADESA** after receipt of, and in accordance with, the **Seller's** Reply.
- iii) For Vehicles Entered for Fixed Price Sale, the Sale shall be to the Buyer who makes the first Offer to Purchase at the Fixed Price (as determined by **ADESA** in its absolute discretion).
- iv) For the avoidance of doubt, the Sale is between the **Seller** and **Buyer**, with **ADESA** acting only as auctioneer and/or agent. **ADESA** is not a party to the contract of sale which forms part of this Agreement. All warranties and liabilities in respect of a Vehicle subject to a Sale are between the **Seller** and **Buyer**, as are further set out in this Agreement.
- v) **ADESA** shall send **Buyer** an electronic sales order confirmation via email or the Services (including website or application), confirming the Purchase Price, Delivery details, Delivery Price (if requested) and Buyer's Premium in relation to each Vehicle which is subject to a Sale between that **Seller** and **Buyer**.
- vi) **ADESA** may send the **Seller** a Sales reports confirming details for each Sale concluded for that Seller (Vehicles identified by reference to the Vehicle registration number), Purchase Price achieved, Reserve Price/Fixed Price set and the **Seller's** Premium.
- vii) **ADESA** shall generate the **ADESA** Invoice and the Buyer shall pay the Purchase Price to **ADESA** in accordance with Clause 8) below.

*d) Delivery, Inspection and acceptance of Vehicle Sold*

- i) No later than one (1) Business Day after conclusion of a Sale and confirmation by **ADESA** to the **Seller** that it has received full payment of the **ADESA** Invoice from the **Buyer** in accordance with Clause 8) below.
- ii) Neither **ADESA** nor the **Seller** shall be liable for any delay in Delivery of the Vehicle which is caused by the **Buyer's** failure to provide the **Seller** and **ADESA** with adequate Delivery instructions, including the Delivery Location. Dates for Delivery are estimated dates only, are not guaranteed in any way and time of Delivery shall not be of the essence. **ADESA**

shall not under any circumstances be liable to the **Buyer** for any costs or expenses incurred by the **Buyer** as a result of any delay in Delivery or performance of the Services. The **Seller** is solely responsible in respect of arranging and executing Delivery (at the cost of the Buyer) unless agreed otherwise with **ADESA** (in which event **ADESA** shall arrange for a third party logistics company to execute Delivery, at the cost of the Buyer).

- iii) The **Seller** and **ADESA** reserve the right to deliver Vehicles from multiple Sales to the same **Buyer**, in instalments. If the **Buyer** fails to take delivery of a Vehicle when due, the **Seller** and/or **ADESA** may charge reasonable costs of the aborted delivery, plus storage costs from the date Delivery was due in accordance with this Clause 7)d) until Delivery is completed. The **Buyer** is solely responsible for ensuring the Delivery Location is safe and suitable for Delivery and shall be fully liable to **Seller** and **ADESA** in relation to any loss suffered if the Delivery Location is unsafe or unsuitable in any way.
- iv) Following Delivery, the **Buyer** shall immediately inspect the Vehicle and confirm its acceptance of the Delivery by signature of the Delivery Note. Signature of the Delivery Note by any person acting on behalf of the **Buyer** shall amount to acknowledgement that the **Buyer** has satisfied itself as to the quality and condition of the Vehicle, and that the Vehicle is in accordance with all **Seller's** warranties.
- v) **Any rejection of Delivery or claim by the Buyer against any of the Seller's warranties set out in Clause 10) below must be notified to ADESA and Seller immediately by telephone or email and confirmed in full in writing with a full statement as to the alleged defects and the grounds for refusal of the Vehicle as soon as the defect comes to the attention of the Buyer, and in any event in accordance with the requirements set out in Clause 16) below.**
- vi) Where a Delivery is not in accordance with the Delivery Location or Delivery Dates, if **ADESA** was responsible for arranging Delivery, **ADESA** will provide the **Buyer** with commercially reasonable assistance (at the cost of the Buyer) to pursue the Delivery logistics provider in respect of any losses arising from the Delivery not being in accordance with the **Buyer's** instructions. If the Seller is responsible for arranging Delivery, the Buyer and Seller must resolve between themselves any dispute in relation to failed and/or non-compliant Delivery.

## **Invoicing and Payment Arrangements**

### 8) Invoicing and Payment

- a) All prices are stated in pounds sterling and are inclusive of amounts in respect of VAT, or with VAT stated in the instance of a VAT Qualifying Car or commercial vehicle which the payer shall be liable to pay (in addition to the price) to the payee at the prevailing rate applicable to the Vehicle/service as will be set out in the valid VAT invoice from the payee. All payments shall be made in pounds sterling.

#### Buyer's Obligations on conclusion of the Sale

- b) Within one (1) Business Day of issue of an Acceptance of an Offer to Purchase, **ADESA** shall submit to the **Buyer** by electronic means an invoice for the full Purchase Price, Delivery Price (if **ADESA** is arranging Delivery) and the Buyer's Premium, plus all VAT applicable, (the **ADESA Invoice**) to be paid by the **Buyer** to **ADESA** for purchase of the Vehicle.
  - i) The **Buyer** shall within one (1) Business Day of receipt of the ADESA Invoice make payment to **ADESA** in full of the ADESA Invoice;

- ii) The Buyer (or the Buyer's automotive finance company) shall make payment by BACS, telegraphic transfer or faster payment to **ADESA** at the **ADESA** bank account number set out in the ADESA Invoice.
- iii) If the **Buyer** fails to make payment in full of the ADESA Invoice, **ADESA** and/or the **Seller** may (in each party's sole discretion) bring an action against the **Buyer** for payment of the ADESA Invoice or, at **ADESA's** sole discretion, cancel the Sale. In any event, the **Seller** shall be under no obligation to Deliver any Vehicle not yet paid for by the **Buyer**.
- iv) Time for payment of the **ADESA** Invoice shall be of the essence and payment will only be effected following receipt by **ADESA** of payment in full of the **ADESA** Invoice in cleared funds from the **Buyer**.

#### Seller's Obligations on conclusion of the Sale

- c) Following the payment of the ADESA Invoice by the **Buyer** to **ADESA**, the **Seller** shall deliver the Vehicle to the **Buyer** or, if Delivery is to be arranged by **ADESA**, release the Vehicle to **ADESA** and/or its chosen third party Delivery company. If the **Seller** fails to release the Vehicle, and it is clear that no Delivery of the Vehicle shall take place, **ADESA** shall return the Purchase Price, Delivery Price and Buyer's Premium to the **Buyer** subject to any set-off **ADESA** may be entitled to make against the **Buyer** in respect of any other monies owed by the **Buyer** to **ADESA**. In the case of such Sale cancellation and/or failure to Deliver, the **Seller** shall fully indemnify and hold **ADESA** harmless for and against any and all losses incurred by **ADESA** arising from the Seller's failure to Deliver the Vehicle in accordance with Clause 14).
- d) The Seller agrees that ADESA shall undertake self-billing (under the VAT Regulations) for each Sale. As set out above, and specifically in respect of self-billing, every Entry for Sale by the Seller constitutes a new agreement between the Seller and ADESA under the terms set out herein for the duration of the Sale transaction and the Seller agrees:
  - i) to accept invoices raised by **ADESA** on their behalf in respect of the Sale;
  - ii) not to raise its own sales invoice in respect of the Sale;
  - iii) to notify **ADESA** immediately if the Seller at any time:
    - (1) changes its VAT registration number;
    - (2) ceases to be VAT registered; or
    - (3) sells its business, or part of its business;
  - iv) in no event shall any self-billing arrangement be deemed to survive for more than twelve (12) months (or the maximum period of time stipulated in the then applicable VAT Regulations).

#### ADESA's Obligations on conclusion of the Sale

- e) ADESA shall:
  - i) issue a self-billed invoice for the Sale;
  - ii) include in that invoice the **Seller's** name, address and VAT registration number, together with all the other details required to constitute a full VAT invoice for the Sale;
  - iii) promptly inform the Seller if ADESA's VAT registration number changes, and enter into a new self-billing agreement with .

- iv) inform the Seller if the issue of the self-billed invoice will be outsourced to a third party
- f) Following receipt by ADESA of cleared funds in full payment of the ADESA Invoice from the Buyer, **ADESA** shall pay to the **Seller** the Purchase Price in accordance with the self-billed invoice for the Sale. Such payment shall be subject to deduction of the Seller's Premium, plus all applicable VAT and any right to set off or withhold any monies from the **Seller**, in respect of any liabilities it has to **ADESA** arising under this Agreement or otherwise. If a credit limit has been agreed between the **Seller** and **ADESA**, payment shall not be due or made to the **Seller** until such time as that credit limit is exceeded by Purchase Price monies received by **ADESA** in respect of Sales of that Seller's Vehicles.

Post-Sale Obligations relating to all parties

- g) In the event of any disagreement whatsoever between **Seller** and **Buyer** as to whether Delivery of a Vehicle has taken place (in full or at all) or where there is a dispute over the warranties or other terms of the Sale of a Vehicle as set out in this Agreement, to the extent the same have not yet been paid to the **Seller**, **ADESA** shall hold the Purchase Price and all the Buyer's monies in respect of the disputed Vehicle until the dispute has been resolved in accordance with the dispute resolution procedure set out below at Clause 16).
- h) If a party fails to make any payment due to another party under this Agreement by the proper due date for payment as set out in this Clause 8), then the defaulting party shall pay to the party due for payment, interest on the overdue amount at the rate of four per cent (4%) per annum above the then current London Interbank Offered Rate on sterling applicable at the time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. For the avoidance of doubt, payment to the **Seller** by **ADESA** shall only fall due once **ADESA** has (i) received Purchase Price monies for that **Seller** which exceed the agreed credit limit for that **Seller's** account, (ii) the Buyer has paid the relevant ADESA Invoices in full, and (iii) **ADESA** does not have any other grounds or right to set-off or withhold from the Seller any monies.

**Risk, Title And Insurance Of Vehicles Sold**

9) Risk, Title and Insurance

- a) Title in a Vehicle shall remain with the **Seller** until payment in full of the **ADESA** Invoice is received by **ADESA** in cleared funds.
- b) Delivery is completed upon unloading of the Vehicle at the **Buyer's** Delivery Location (and Vehicle **Delivered** shall be interpreted accordingly).
- c) Risk in a Vehicle shall pass from the **Seller** to the **Buyer** upon completion of Delivery.
- d) If, contrary to the intended normal practice of requiring receipt by **ADESA** of cleared funds from the **Buyer**, the Vehicle has been Delivered prior to full payment of the ADESA Invoice, the **Buyer** shall hold the Vehicle as bailee and on trust for the Seller pending the **Buyer's** payment of the outstanding amounts under the relevant ADESA Invoice. Until title to the Vehicle has passed to the **Buyer**, the **Buyer** shall store the Vehicle separately from all other items held by the **Buyer** so that the Vehicle remains readily identifiable as the **Seller's** property. The **Buyer** shall not sell or otherwise deal in any way with any Vehicle for which the **Buyer** has not yet paid the corresponding Purchase Price. The **Seller** and/or ADESA shall be entitled to enter the **Buyer's** premises and recover all Vehicles in relation to which the **Buyer** has not paid all monies owing.
- e) The **Seller** shall have in place adequate and appropriate insurance to cover damage and/or loss of the Vehicle up to and including the time the Vehicle is Delivered.

- f) The Buyer is advised to have in place adequate and appropriate insurance to cover damage and/or loss of the Vehicle from the time of payment of the **ADESA** Invoice, whether payment (and consequent passing of title from **Seller** to **Buyer**) takes place before or after Delivery. In any event, the **Buyer** undertakes to the **Seller** and **ADESA** that the **Buyer** shall have and maintain in place adequate and appropriate insurance to cover damage and/or loss of the Vehicle from the moment the Vehicle is Delivered to the **Buyer**.
- g) The **Buyer** and **Seller** both acknowledge that **ADESA** does not at any time take physical possession of any Vehicle and does not have any opportunity to inspect any Vehicle, and **ADESA** makes no warranties whatsoever in relation to any Vehicle or any Sale.

### **Warranties and Limitations Between the Parties**

#### **10) Seller's Warranties to the Buyer**

- a) In respect of each and every Vehicle Entered for Sale by the **Seller**, the **Seller** hereby represents, undertakes and warrants to the **Buyer** and **ADESA** that:
  - i) the **Seller** has included with the Entry for Sale all disclosures as may reasonably be expected to be disclosed by a **Seller** in relation to the Vehicle and/or which are otherwise required by **ADESA** from time to time;
  - ii) the **Seller** is the legal and beneficial owner of the Vehicle and has the full and unencumbered right to sell each Vehicle;
  - iii) the Vehicle Description shall contain each and every detail set out in Schedule 1 and each such detail shall be true and accurate in all material respects (subject to any Defect Notification included with the Entry for Sale);
  - iv) any documentation required to be provided by Schedule 1 in relation to the Vehicle Description is true, accurate and complete in each and every particular;
  - v) the Vehicle shall be in accordance with the Vehicle Description in all material respects subject to any Defect Notification included with the Entry for Sale;
  - vi) the Vehicle is Roadworthy or as described as otherwise at the time of Entry for Sale, the **Seller** to inform **ADESA** immediately if a Vehicle is known by the Seller not to be Roadworthy; and
  - vii) the Vehicle has not been subject at any time to any of the following (subject to any Defect Notification included with the Entry for Sale):
    - (1) Insurance Total Loss;
    - (2) Stolen Recovery;
    - (3) registration outside of the United Kingdom;
    - (4) an Outstanding Safety Recall;

#### **11) Warranties in favour of ADESA (from Buyer and Seller)**

- a) **Seller** hereby warrants, represents and undertakes to **ADESA**: (i) that it shall make use of the Software and Services in accordance with the Terms of Use set out in Clause 17) below; and (ii) that it shall abide by the terms of this Agreement in respect of all Sales. In particular, but without prejudice to the generality of the foregoing, the **Seller** hereby and on a continuing basis for each and every Sale, warrants, represents and undertakes to **ADESA** that it shall not make an Entry for Sale of any Vehicle which:
  - i) it cannot Deliver in accordance with the terms of this Agreement;



- ii) does not accord with the **Seller's** warranties, representations and undertakings set out in Clause 10); or
  - iii) infringes the intellectual property or other rights of any third party.
- b) **Buyer** hereby warrants, represents and undertakes to **ADESA** that it shall make use of the Software and Services only in accordance with the Terms of Use set out in Clause 17) and that it shall abide by the terms of this Agreement in respect of all Sales. In particular, but without prejudice to the generality of the foregoing, the **Buyer** hereby and on a continuing basis warrants, represents and undertakes that it shall not make any Offer to Purchase if it cannot make payment of the offered Purchase Price in full in accordance with the terms of this Agreement.

#### 12) Seller's Exclusions and Limitations on Sales

- a) All Vehicles are sold subject to their current condition, as may be further set out in the Vehicle Description and any Defect Notification, and as may be expected having regard to the Age and mileage of each motor vehicle. It is for the **Buyer** to make any enquiries with relevant third parties about the Vehicle and the Vehicle Description in order to satisfy itself of the suitability of the Vehicle for the **Buyer's** purposes prior to committing to an Offer to Purchase.
- b) For the avoidance of doubt, **no warranty whatsoever is given to the extent of:**
  - i) Defects set out in a Defect Notification;
  - ii) the Age of a motor vehicle where the Age is stated as unknown in the Vehicle Description in respect of that motor vehicle;
  - iii) defects of which the **Buyer** ought to have been aware immediately following Delivery and inspection of the Vehicle where the **Buyer** has failed to comply with its notification obligations set out in Clauses 7)d)v) and 16).
- c) The **Seller** shall only be liable to the **Buyer** in respect of any negative difference between the Market Value of the Vehicle on the date of Acceptance, and the actual price paid for the Vehicle by the **Buyer**, arising from a discrepancy between any mileage warranted in relation to the Vehicle at the time of Acceptance, and the actual mileage of the Vehicle if:
  - i) the discrepancy is at least 1,000 (one thousand) miles or 10% (ten per cent) more than the warranted mileage of the Vehicle (whichever is greater); and
  - ii) the **Buyer** gives notice in writing to **ADESA** (as agent of the **Seller**) of said discrepancy within 5 (five) Business Days of the date of Acceptance (failing which the **Seller** will have no further liability in relation to the warranty and required disclosures regarding the Mileage or the Odometer as are specified in Schedule 1).
- d) All other warranties from the **Seller** to the **Buyer** in respect of the Vehicle, and any terms which may be implied in this Agreement whether by statute, common law, custom or practice, are hereby excluded to the fullest extent permitted by law.

#### 13) Exclusions and limitations for all parties

- a) Subject to Clause 13)d) below and the indemnities set out herein, no party shall be liable to any other party to this Agreement for any of the following types of loss, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise:
  - i) special loss;
  - ii) consequential loss;

- iii) indirect loss;
  - iv) loss of profit;
  - v) loss of contract;
  - vi) loss of revenue;
  - vii) loss of opportunity;
  - viii) loss of chance;
  - ix) loss of goodwill.
- b) Subject to all indemnities, exclusions and limitations as set out in this agreement, the liability of each **Seller** to each **Buyer** and of each **Buyer** to each **Seller** in respect of all other types of loss and for each claim in respect of a particular Vehicle, shall be limited to the sum equal to one hundred fifty per cent (150%) of the Purchase Price for each Vehicle.
- c) The liability of **ADESA** to every other party to this Agreement, and in particular to each **Seller** and each **Buyer**, in respect of all types of loss and claim in respect of a particular Vehicle shall be limited to the sum equal to one hundred fifty per cent (150%) of the Premium paid by the claiming party for the relevant Vehicle which gives rise to the claim.
- d) Nothing in this Agreement shall exclude or limit the liability of any party for:
- i) death or personal injury caused by the negligence of that party, or the negligence of its employees, agents or subcontractors;
  - ii) fraud or fraudulent misrepresentation by that party;
  - iii) any matter in respect of which it would be unlawful for a party to exclude or restrict its liability.
- e) Nothing in this Agreement shall exclude or limit the **Seller's** liability for breach of the terms implied by Section 12 of the Sale of Goods Act 1979.
- f) Each of the parties hereto acknowledge and agree that **ADESA** has no access to, knowledge of or control over the Vehicles.

#### **Indemnities between the Parties**

##### **14) Indemnities in favour of ADESA from Buyer and Seller**

- a) The **Seller** hereby indemnifies and shall keep indemnified **ADESA** (its affiliates, group companies, employees and officers) against all liabilities, costs, expenses (including legal fees on a full indemnity basis), damages and losses suffered or incurred by **ADESA** as a result of:
- i) any breach of the warranties from the **Seller** to **ADESA**;
  - ii) any claim made against **ADESA** in respect of any actual or alleged breach of the **Seller's** warranties; and
  - iii) any actual or alleged breach by the **Seller** of this Agreement.
- b) The **Buyer** hereby indemnifies and shall keep indemnified **ADESA** (its affiliates, group companies, employees and officers) against all liabilities, costs, expenses (including legal fees on a full indemnity basis), damages and losses suffered or incurred by **ADESA** as a result of:
- i) any breach of the warranties from the **Buyer** to **ADESA**; and
  - ii) any claim made against **ADESA** in respect of any actual or alleged breach by the **Buyer** of this Agreement.

### Grounds for Termination by Parties

#### 15) Termination

##### Termination by ADESA

- a) Without limiting any of its other rights or remedies, **ADESA** may terminate this Agreement and prevent the other party's further access to or use of the Website and/or Services without incurring any liability as a result of such termination to the other party where:
  - i) **ADESA** gives thirty (30) days written notice of termination to the other party, whether such termination is with or without cause;
  - ii) **ADESA** gives notice with immediate effect where that other party commits a material breach of this Agreement and (if such breach is remediable) that party fails to remedy that breach within three (3) Business Days of being notified in writing to do so;
  - iii) **ADESA** gives notice with immediate effect where the other party suffers an Insolvency Event;
  - iv) **ADESA** gives notice with immediate effect where the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - v) **ADESA** gives notice with immediate effect where the other party's financial position deteriorates to such an extent that in **ADESA's** opinion the other party's capability to fulfil its obligations under this Agreement has been placed at serious risk.
- b) Any such termination by **ADESA** shall not effect:
  - i) Sales already agreed prior to the effective date of the termination by **ADESA**, and all parties shall honour their obligations set out in this Agreement in respect of such already agreed Sales;
  - ii) Vehicles Entered for Sale by a **Seller** who **ADESA** has terminated in accordance with the above but which have not yet been the subject of a Sale nor withdrawn by the **Seller**. Such Vehicles may at **ADESA's** sole discretion continue to appear on the Website as open to Offer to Purchase, and may at **ADESA's** sole discretion be subject to a Sale in accordance with the terms of this Agreement.
- c) In relation to a **Seller** so terminated:
  - i) It shall not be entitled to submit any new Entries for Sale following receipt of **ADESA's** notice of termination;
  - ii) All Vehicles that Seller has Entered for Sale which have not been subject to a Sale shall be immediately withdrawn (subject to ADESA's discretion in clause 15)b)ii) ) as at the effective date of **ADESA's** termination of this Agreement;
  - iii) It shall honour in full all Sales completed prior to the effective date for termination of this Agreement;
  - iv) It shall cease all further use of the Website, application and Services on the effective date of termination of this Agreement;
  - v) **ADESA** shall settle all **Seller's** accounts in relation to all Vehicles subject to a Sale and which have been Delivered in accordance with the terms agreed separately between the **Seller** and **ADESA** for final settlement of the **Seller's** account (subject to any right of ADESA to set-off, withhold or reserve any sum).

- d) In relation to a Buyer so terminated by **ADESA**:
  - i) It shall not submit any further Offers to Purchase after notice to terminate has been given;
  - ii) It shall cease all further use of the Website and Services on the effective date of termination of this Agreement;
  - iii) It shall make payment forthwith of all outstanding **ADESA** Invoices in respect of all agreed Sales and/or Vehicles Delivered.

Termination by Seller

- e) The **Seller** may terminate this Agreement by giving thirty (30) days notice to **ADESA** of such termination and by ceasing all further use of the Website, application and Services. **Seller** shall be required to honour in respect of each of the other parties to this Agreement all Sales already concluded and all Sales made subsequently in respect of Vehicles already Entered for Sale by that **Seller** in full accordance with the terms of this Agreement.
- f) The **Seller** may only terminate its contract for Sale with a **Buyer** following full consultation with **ADESA**, such termination taking immediate effect upon notice only if the **Buyer**:
  - i) commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within three (3) Business Days of being notified in writing to do so;
  - ii) suffers an Insolvency Event;
  - iii) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - iv) financial position deteriorates to such an extent that in the **Seller's** and **ADESA's** opinion the **Buyer's** ability to fulfil its obligations under this Agreement has been placed at serious risk.

In any such event, the **Seller** shall make Delivery forthwith of all Vehicles for which the **ADESA** Invoices have already been paid by the **Buyer** so terminated, subject to the rights of the **Seller** and **ADESA** to set-off any liabilities owed by such **Buyer** to the **Seller** and/or **Buyer**.

Termination by Buyer

- g) The **Buyer** may terminate this Agreement by giving thirty (30) days notice to **ADESA** of such termination and by ceasing all further use of the Website, application and Services. **Buyer** shall be required to honour in respect of each of the other parties to this Agreement all Sales already concluded and all Sales made subsequently in respect of Offers to Purchase already made by that **Buyer** prior to the date of termination.
- h) The **Buyer** may only terminate its contract for Sale with a **Seller** following full consultation with **ADESA**, such termination taking immediate effect upon notice only if the **Seller**:
  - i) commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within three (3) Business Days of being notified in writing to do so;
  - ii) suffers an Insolvency Event;
  - iii) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - iv) financial position deteriorates to such an extent that in the **Buyer's** and **ADESA's** opinion the **Seller's** capability to fulfil its obligations under this Agreement has been placed at serious risk.

In any such event, the **Buyer** shall make full payment forthwith of all **ADESA** Invoices in respect of Vehicles Delivered by the **Seller** so terminated.

Consequences Applicable to All Valid Terminations

- i) Termination of this Agreement, howsoever arising, shall not affect any of the parties' rights and remedies that have accrued prior to termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.
- j) Any provision of this Agreement including indemnities, exclusions and confidentiality clauses that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

**Rejection of Vehicles and Complaints**

**16) Rejection and Complaints**

- a) **Buyers** are responsible for ensuring that each Vehicle satisfies its own requirements. Any fittings, enhancements, alterations or other modifications made by the **Buyer** shall be at the entire risk and responsibility of the **Buyer**, and the warranties under this Agreement shall not apply in respect of any such **Buyer's** modifications to the relevant motor vehicle.
- b) Without prejudice to the other limitations and exclusions set out in this Agreement, the **Buyer** shall only be entitled to reject the motor vehicle and/or claim against the **Seller's** warranties in respect of:
  - i) defects and discrepancies which were not included in the Defect Notification and are or should be apparent on visual inspection at the time of Delivery, but only if the **Buyer** undertakes testing of each motor vehicle within 1 (one) Business Day of Delivery of the Vehicle and notifies **ADESA** and the **Seller** in writing of the alleged defect no later than 3 (three) Business Days after Delivery and further, provided that the **Seller** is given a reasonable opportunity to inspect the motor vehicle and fully investigate any complaint;
  - ii) defects and discrepancies which were not included in the Defect Notification and are not apparent and cannot be identified on visual inspection at the time of Delivery, but only if **ADESA** and the **Seller** are notified in writing within 1 (one) calendar day of the **Buyer** discovering the defect or discrepancy, and in any event only within the Warranty Period;and only in respect of motor vehicles which neither the **Buyer** nor any other person has made use of following discovery of the defect or discrepancy; and that no alteration or interference with the motor vehicle once the alleged defect is discovered has been made.
- c) The only liability of the **Seller** to the **Buyer** for breach of the **Seller's** warranties in relation to any motor vehicle shall be limited to, at the **Seller's** absolute discretion, one of the following:
  - i) the repair or rectification of the defect or discrepancy; or
  - ii) replacement of the motor vehicle with a suitable alternative; or
  - iii) payment of the difference between the Purchase Price and the Market Value for the relevant motor vehicle.

In all cases, the limitations and exclusions of liability set out in Clause 10) shall also apply.

- d) If the **Buyer** does not notify **ADESA** of any defect or discrepancy in accordance with this Clause 16), then the Vehicle shall be deemed to be in all respects in accordance with this Agreement and the **Buyer** shall not be entitled to any remedy or restitution in respect of the same and shall be liable to pay the full Purchase Price and accept the Delivery of the Vehicle in full.

- e) For the avoidance of doubt, the **Buyer** shall not be entitled to claim against any warranties in respect of motor vehicles which have been stored, transported, driven or otherwise treated in any manner which is not in accordance with a reasonable level of skill and care as might be expected from a competent and reasonably prudent business man in relation to his own equipment and property.

#### **Seller's and Buyer's Obligations to ADESA in Use of the Website and Services**

##### **17) Terms of Use of Website and Services**

- a) The following clauses set out the additional terms on which **Sellers** and **Buyers** may use the Website and Services whether as a guest or a registered user. Use of the Website and Services includes accessing, browsing, or registering to use the Website and Services, and any such use amounts to your full agreement and undertaking to **ADESA** that you will abide by these terms and this Agreement.
- b) We may revise the terms of on which you may use the Website and Services at any time by amending this page. Please check this page from time to time to take notice of any changes made, as they are binding on you.
- c) We may update the Website and Services from time to time, and may change the content at any time. However, please note that any of the content on the Website and/or Services may be out of date at any given time, and we are under no obligation to update it. We do not guarantee that the Website, or any content on it, will be free from errors or omissions.
- d) We do not guarantee that the Website or Services, or any content on it, will always be available or be uninterrupted. Access to the Website and/or Services is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of the Website or Services without notice but subject to any ongoing obligations which are expressly set out in this Agreement. We will not be liable to you if for any reason the Website or Services are unavailable at any time or for any period.
- e) You are responsible for making all arrangements necessary for you to have access to the Website. You are also responsible for ensuring that all persons who access the Website through your internet connection are aware of these terms of use and other applicable terms and conditions, and that they comply with them.
- f) The Website is directed to people doing business in the United Kingdom. We do not represent that content available on or through the Website is appropriate or available in other locations or for non-business users. We may limit the availability of the Website or any Service or product described on the Website to any person or geographic area at any time. If you choose to access the Website from outside the United Kingdom, you do so entirely at your own risk. No Deliveries shall be made outside the United Kingdom unless specifically agreed in writing by all parties to this Agreement.
- g) **Your account and password**
  - i) If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential. You must not disclose it to any third party.
  - ii) We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of these terms of use.

- iii) If you know or suspect that anyone other than you knows your user identification code or password, you must promptly notify us at [customer.services@adesa.co.uk](mailto:customer.services@adesa.co.uk).
- h) **Intellectual property rights**
- i) We are the owner or the licensee of all intellectual property rights in the Website and Services, and in the material published on it. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.
  - ii) You may print off one copy, and may download extracts, of any page(s) from the Website for your internal business use and you may draw the attention of others within your organisation to content posted on the Website.
  - iii) You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
  - iv) Our status (and that of any identified contributors) as the authors of content on the Website must always be acknowledged.
  - v) You must not use any part of the content on the Website or the Services for commercial purposes without obtaining a licence to do so from us or our licensors, and you must not attempt to reverse engineer, decompile or gain any unauthorised access to any aspect of the Website or Services.
  - vi) If you print off, copy or download any part of the Website in breach of these terms of use, your right to use the Website and Services will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.
- i) **No reliance on information provided by ADESA**
- i) The content on the Website and Services is provided for general information only. It is not intended to amount to advice from **ADESA** on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on the Website and Services. Any representations and warranties as to Vehicles, and the Vehicle Description are provided by the **Seller** alone. **ADESA** shall not have any liability to a **Buyer** in respect of any inaccuracies in Vehicle Descriptions or any breach of warranties by the **Seller**.
  - ii) Although we make reasonable efforts to update the information on the Website and Services, we make no representations, warranties or guarantees, whether express or implied, that the content on the Website or Services is accurate, complete or up-to-date. This does not affect your rights as a **Buyer** as against a **Seller** and as is further set out above.
- j) **Limitation of our liability in respect of use of the Website and Services**
- i) In addition to the limitations and exclusions of **ADESA's** liability as set out above, we will not be liable to any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with: use of, or inability to use, the Website and/or Services; or use of or reliance on any content displayed on the Website or through the Services.
  - ii) You agree only to use the Website for commercial or business purposes, not for any personal purpose and the provisions of the Consumer Rights Act 2015 and all other applicable legislation and the terms implied by such consumer protection legislation is excluded to the fullest extent permitted by law. We have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

- iii) We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Website or the Services or to your downloading of any content on it, or on any website linked to it.
  
- iv) We assume no responsibility for the content of websites linked on the Website or Services. Such links should not be interpreted as endorsement by us of those linked websites. We will not be liable for any loss or damage that may arise from your use of them, including loss arising from your use of our third party payment processor.
  
- k) **Uploading content to the Website**
  - i) Whenever you make use of a feature that allows you to upload content to the Website, or to make contact with other users of the Website and Services, you must comply with the content standards set out in our Acceptable Use Policy <https://adesa.co.uk/terms-and-conditions/>
  - ii) You warrant that any such contribution does comply with those standards, and you will be liable to us and indemnify us for any breach of that warranty.
  - iii) If the Website permits you to upload content, any content you upload to the Website will be considered non-confidential and non-proprietary. You retain all of your ownership rights in your content, but you are required to grant us and other users of the Website and Services a limited licence to use, store and copy that content and to distribute and make it available to third parties. The rights you license to us are described in the next paragraph (Rights You Licence).
  - iv) We also have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to the Website constitutes a violation of their intellectual property rights, or of their right to privacy.
  - v) We will not be responsible, or liable to any third party, for the content or accuracy of any content posted by you or any other user of the Website or Services.
  - vi) We have the right to remove any posting you make on the Website or Services if, in our opinion, your post does not comply with the content standards set out in our Acceptable Use Policy <https://adesa.co.uk/terms-and-conditions/>
  - vii) The views expressed by other users on the Website or Services do not represent our views or values.
  - viii) You are solely responsible for securing and backing up your content.
- l) **Rights you licence** When you upload or post content to the Website, you grant the following licences: (i) a licence to publish, reproduce and otherwise display content which you have indicated should be displayed on public areas of the Website and Services; (ii) a licence to make use of your details in order to process and supply any Sale in which you are a party; (iii) a limited licence for other users to reproduce the content and if relevant contact you.
- m) **Viruses**
  - i) We do not guarantee that the Website will be secure or free from bugs or viruses.



- ii) You are responsible for configuring your information technology, computer programmes and platform in order to access the Website and Services. You should use your own virus protection software.
- iii) You must not misuse the Website or Services by introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful and you must use your best endeavours to ensure that the same are not introduced. You must not attempt to gain unauthorised access to the Website or Services, the server on which the Website is stored or any server, computer or database connected to the Website or Services. You must not attack the Website via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you will commit a criminal offence under the Computer Misuse Act 1990 or other applicable legislation. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Website and Services will cease immediately and you will indemnify us against all losses arising as a result of your breach.
- n) **Linking to the Website** You may link to our home page, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it. You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists. You must not establish a link to the Website or Services in any website that is not owned by you. The Website and Services must not be framed on any other site, nor may you create a link to any part of the Website or Services other than the home page. We reserve the right to withdraw linking permission without notice. The website in which you are linking must comply in all respects with the content standards set out in our Acceptable Use Policy <https://adesa.co.uk/terms-and-conditions/>.
- o) **Third party links and resources in the Website** Where the Website contains links to other sites and resources provided by third parties, these links are provided for your information only. We have no control over the contents of those sites or resources.

## Data Protection

### 18) Privacy

- a) We are committed to protecting and respecting your privacy. This policy (together with any other documents referred to in it) sets out the basis on which any personal data we collect from you, or that you provide to us, will be processed by us. Please read the following carefully to understand our views and practices regarding your personal data and how we will treat it. By visiting the Website and using the Services you are accepting and consenting to the practices described in relation to your personal data.
- b) For the purpose of the Data Protection Act 1998 (the **Act**), or succeeding legislation to the extent applicable, the data controller is **ADESA**. To the extent we collect any personal data from you, we will treat all such personal data in accordance with the Act and only for the purposes of providing you with the Services, performing our obligations pursuant to this Agreement and for limited marketing purposes in relation to related products and services we offer.
- c) **Cookies** Our website does not currently use cookies to distinguish you from other users of our website. In the event our Website does start to make use of cookies we will post information and a Cookie policy on this webpage. Please check back regularly to keep up to date with any changes to our terms and conditions which we may make from time to time.
- d) **Disclosure of your information** We may share your personal information with any member of our group, which means our subsidiaries, our ultimate holding company and its

subsidiaries, as defined in section 1159 of the UK Companies Act 2006 and with our third party service and software providers by reason of your use of the Services. We may share your information with selected third parties including business partners, suppliers and sub-contractors for the performance of any contract we enter into with them or you, including analytics and search engine providers that assist us in the improvement and optimisation of the Website. We may also disclose your personal information to third parties in the event that we sell or buy any business or assets, in which case we may disclose your personal data to the prospective seller or buyer of such business or assets, if **ADESA** or substantially all of its assets are acquired by a third party, in which case personal data held by it about its customers will be one of the transferred assets, or we are under a duty to disclose or share your personal data in order to comply with any legal obligation, or in order to enforce or apply any of the terms of this Agreements; or to protect the rights, property, or safety of **ADESA**, our customers, or others. This includes exchanging information with other companies and organisations for the purposes of fraud protection and credit risk reduction.

e) **Where we store your personal data**

- i) The data that we collect from you will not be transferred or stored outside the UK or the European Economic Area ("EEA"). It will only be processed by staff operating inside the UK or the EEA who work for us or for one of our suppliers. Such staff maybe engaged in, among other things, the fulfilment of your order, the processing of your payment details and the provision of support services. By submitting your personal data, you agree to this transfer, storing or processing within the UK and the EEA (if relevant). We will take all steps reasonably necessary to ensure that your data is treated securely and in accordance with this privacy policy.
  - ii) All information you provide to us is stored on our secure servers. **Where we have given you (or where you have chosen) a password which enables you to access certain parts of the Website, you are responsible for keeping this password confidential. We ask you not to share a password with anyone.**
  - iii) The transmission of information via the internet is not completely secure. Although we will do our best to protect your personal data, we cannot guarantee the security of your data transmitted to the Website; any transmission is at your own risk. Once we have received your information, we will use strict procedures and security features to try to prevent unauthorised access.
- f) **Your rights** You have the right to ask us not to process your personal data for marketing purposes. We will usually inform you (before collecting your data) if we intend to use your data for such purposes or if we intend to disclose your information to any third party for such purposes. You can exercise your right to prevent such processing by checking certain boxes on the forms we use to collect your data. You can also exercise the right at any time by contacting us at [customer.services@adesa.co.uk](mailto:customer.services@adesa.co.uk). The Website may, from time to time, contain links to and from the websites of our partner networks, advertisers and affiliates. If you follow a link to any of these websites, please note that these websites have their own privacy policies and that we do not accept any responsibility or liability for these policies. Please check these policies before you submit any personal data to these websites.
- g) **Access to information** The Act gives you the right to access information held about you. Your right of access can be exercised in accordance with the Act. Any access request may be subject to a fee of £10 to meet our costs in providing you with details of the information we hold about you, unless the applicable legislation then in force states that we must comply with your data access request free of charge.

- h) **Changes to our privacy policy** Any changes we may make to our privacy policy in the future will be posted on this page and, where appropriate, may in some cases be notified to you by e-mail. Please check back frequently to see any updates or changes to our privacy policy.
- i) **Contact** Questions, comments and requests regarding this privacy policy are welcomed and should be addressed to [customer.services@adesa.co.uk](mailto:customer.services@adesa.co.uk).

### Other Important Terms Applicable to All Parties

#### 19) Other Important Terms

- a) **Force majeure** A party to this Agreement shall not be in breach of nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond that party's reasonable control. If the period of delay or non-performance continues for four (4) weeks, either of the parties not affected may terminate this Agreement by giving seven (7) days' written notice to the affected party and the other party.
- b) **Confidentiality**
  - i) Each party undertakes for the benefit of every other party that it shall not at any time during this Agreement, and for a period of five (5) years after termination of this Agreement disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 19)b)ii).
  - ii) A party may disclose another party's confidential information:
    - (1) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses another party's confidential information comply with this Clause 19)b); and
    - (2) as may be required by properly applicable law, a court of competent jurisdiction or any governmental or regulatory authority with proper jurisdiction.
  - iii) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.
- c) **Entire agreement**
  - i) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- d) **Variation** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- e) **Waiver** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: i) waive that or any other right or remedy; or ii) prevent or restrict the further exercise of that or any other right or remedy.

- f) **Severance** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- g) **Further assurance** Each party shall, and shall use all reasonable endeavours to procure that itself and any necessary third party over which it has control or influence shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- h) **Notices** Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to both of the other parties at each of their registered offices (or such other address as that party may have specified to the other party in writing in accordance with this clause), and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in 19)h) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission. The provisions of this Notice clause shall not apply to the service of any proceedings or other documents in any legal action.
- i) **Third party rights** No one other than a party to this Agreement shall have any right to enforce any of its terms. For the avoidance of doubt, each of ADESA, the Seller and the Buyer may be entitled to enforce the relevant operative terms of this Agreement as against the relevant other party to this Agreement.
- j) **Governing law and Jurisdiction** This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation .

### Definitions

20) The following words have the following meanings in this Agreement unless stated otherwise in the terms:

**Acceptance** means the acceptance of an Offer to Purchase communicated to the **Buyer** by **ADESA** (on behalf of the **Seller**) leading to Sale of the relevant Vehicle;

**Age** means the year a motor vehicle was first registered in the United Kingdom as stated in the vehicle registration document;

**Business Day** means a day other than a Saturday, Sunday or bank holiday in England;

**Buyer** means the United Kingdom company making use of the Website and Services to Offer to Purchase and to purchase Vehicles from **Sellers** using the online auction Services (note **Buyers** can also be **Sellers** and visa versa);

**Buyer's Premium** means the fee payable by the **Buyer** to **ADESA** in respect of the Services provided by **ADESA** in respect of the purchased Vehicle, which fees shall be as stated upon the **Buyer** starting an account for the Website and Services (and such **Buyer's Premium** may be subject to change on 30 days advance notice to the **Buyer**);

**Defect Notification** means a notification included with the Vehicle Description and Reserve Price on the Website and which sets out any defect(s) in a Vehicle (**Defects**), such Defects set out in a Defect Notification are specifically excluded from all warranties in relation to the Vehicle;

**Delivery** means delivery of a Vehicle to the Delivery Location, following the Sale and payment by the **Buyer** to **ADESA** of the **ADESA Invoice**;

**Delivery Location** means the **Buyer's** nominated or usual place of business in the United Kingdom or such other location as is agreed in advance in writing between **ADESA**, the **Seller** and the **Buyer**;

**Delivery Note** means the note to be provided to the **Buyer** by the **Seller** (or the Delivery company) for signature upon acceptance by the **Buyer** of Delivery of the Vehicle, such Delivery Note shall provide a detailed description of the Vehicle, the Purchase Price, the Delivery Price and the date the Sale was made but will not include any terms and conditions other than those set out in this Agreement. Any terms and conditions included in a Delivery Note which are not in accordance with this Agreement will not apply;

**Delivery Price** means the fees to be charged to the **Buyer** for the Delivery of Vehicles which are the subject of a Sale and shall cover all reasonable transportation, insurance and associated costs incurred by the **Seller** and/or **ADESA** for Delivery;

**Entered for Auction** means the electronic submission by the **Seller** of Vehicles for auction on the Website using the Services, and the **Seller's** consequent authorisation of **ADESA** to conclude Sales and receive the Purchase Price subject to Offers to Purchase attaining the Reserve Price for each Vehicle, and **Entry for Auction** will be read accordingly;

**Entered for Fixed Price Sale** means the electronic submission by the **Seller** of Vehicles for a sale by Fixed Price on the Website using the Services, and the **Seller's** consequent authorisation of **ADESA** to conclude Sales and receive the Purchase Price subject to an Offer to Purchase attaining the Fixed Price for each Vehicle, **Entry for Fixed Price Sale** will be read accordingly;

**Entered for Sale** means any entry for sale of any Vehicle, whether such Vehicle is Entered for Auction or Entered for Fixed Price Sale, and 'Entry For Sale and 'Enter for Sale' shall be understood accordingly;

**Fixed Price** means the fixed price set by the **Seller** for Sale of a Vehicle which has been Entered for Fixed Price Sale, and such reference shall be read where appropriate to mean any revised Fixed Price set by the **Seller** in respect of that Vehicle;

**Insolvency Event** means in relation to a party any step or action taken in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

**Insurance Total Loss** means the Vehicle has been categorised by an insurer as any of a Category A (scrap metal only), Category B (break for spare parts only), Category C (repairable vehicle where repair costs exceeded the Vehicle's pre-accident value), Category D (repairable vehicle where repair costs are significant compared to the vehicle's pre-accident value), and Category F (fire damage) write off;

**Market Value** means the expected selling price of a motor vehicle of the same make, model and substantially the same condition and mileage as the motor vehicle forming the Vehicle as estimated by reference to the relevant car valuation market guide/estimator available at [www.cap.co.uk](http://www.cap.co.uk);

**motor vehicle** means any car, light commercial van, motorcycle, commercial vehicles and such other vehicles as **ADESA** may allow from time to time;

**Offer to Purchase** means a binding offer (regardless of whether it is a bid above Reserve Price or an offer at the Fixed Price) submitted electronically to **ADESA** by a potential **Buyer** to purchase at a stated price a Vehicle Entered for Sale, and consequent authorisation to **ADESA** to conclude the Sale at the offered purchase price, such offer shall include details for Delivery to the **Buyer**;

**Outstanding Safety Recall** means a recall issued by a motor vehicle manufacturer regarding defects, which have the potential to cause serious injury, including actions required for remedying the defect where such defects have not yet been remedied by the motor vehicle manufacturer;

**Purchase Price** means the price agreed for Sale of a Vehicle and payable by the **Buyer** to **ADESA**, who will then pay the Purchase Price (subject to deduction of the **Seller's** Premium) to the **Seller** subject to clause 8) **Error! Reference source not found.** of these Terms and Conditions;

**Reserve Price** means the minimum price set by the **Seller** for Sale of a Vehicle Entered for Auction, and such reference shall be read where appropriate to mean any revised Reserve Price set by the **Seller** in respect of Vehicles which have not sold following first being Entered for Auction;

**Roadworthy** means that a Vehicle complies with all legislation in force from time to time in England to ensure that motor vehicles are not a danger on the public roads and highways, and that the Vehicle either currently holds a valid M.O.T Certificate or is capable of passing an M.O.T. without more than minor repairs or alterations;

**Sale(s)** means the acceptance by **ADESA** (on behalf of the Seller) of a **Buyer's** Offer to Purchase and subsequent payment of the Purchase Price, **Buyer's** Premium and **Seller's** Premium and Delivery of the relevant Vehicle;

**Seller** means the company instructing us to offer for sale on **Seller's** behalf as part of the online auction motor vehicles or motor vehicle fleet via the Website and Services, the relevant **Seller** is identified on the listings page of the Website (note **Sellers** can also be **Buyers** and visa versa);

**Seller's Premium** means the commission on the Purchase Price payable by the **Seller** to **ADESA** in respect of the Services provided by **ADESA** in respect of the purchased Vehicle, the amount of the **Seller's** Premium shall be as agreed between the **Seller** and **ADESA** at the time of creation of the **Seller's** account;

**Seller's Reply** means the **Seller's** response to an Offer to Purchase below the Reserve Price, which will be communicated electronically to **ADESA** and which authorises **ADESA** to conclude a Sale at less than the Reserve Price;

**Stolen Recovery** means a vehicle that has been stolen and recovered;

**software** means the cloud based software and application as a service online sales channel which sits behind the Services and enables the **ADESA** Website and Services;

**Us** or **We** or **Our** or **ADESA** means ADESA Remarketing Limited a company incorporated in England and Wales with Company Number 09960906 and registered address Deva House The Office Village, Sandpiper Court, Chester Business Park, Chester, England, CH4 9QZ, being the company making available the Website and Services and who acts as the remarketing agent and auctioneer for Sales (being agent for both the **Seller** and **Buyer** in the Sale transaction);

**VAT Regulations** means the Value Added Tax Regulations 1995 (SI 1995/2518) as may be amended, and any successor or replacement legislation in force from time to time;

**VAT Qualifying Car** means a Vehicle which is not a commercial vehicle where the seller is eligible to reclaim all of the VAT on its purchase and is therefore required to account for VAT on the Purchase Price, or such other basis for falling within the category of VAT Qualifying Car as may be applicable from time to time in England;

**Vehicle Description** means the description of the Vehicle submitted by the **Seller** when a Vehicle is Entered for Auction and setting out the disclosures required by Schedule 1;

**Vehicle(s)** means the second hand motor vehicle(s) or motor vehicle fleets Entered for Sale by a **Seller** subject to the Reserve Price/Fixed Price and Sale Period stipulated for each such motor vehicle; and

**Warranty Period** means the period of three (3) calendar months following Delivery during which time the **Seller's** warranties shall be valid.

## SCHEDULE 1– VEHICLE DESCRIPTION REQUIREMENTS

**THE VEHICLE DESCRIPTION MUST CONTAIN THE FOLLOWING DETAILS ABOUT THE VEHICLE BEING ENTERED FOR AUCTION OR FIXED PRICE SALE:**

Disclosure	Interpretation
Year _____ Make _____ Model _____ Colour _____ Engine Size and Type _____ Derivative _____	<ul style="list-style-type: none"> <li>The Seller must disclose the year, make, model, colour, engine size and type and derivative (i.e. trim level) of the Vehicle as indicated by means of Registration Look Up.</li> </ul>
<i>The Age of the Vehicle</i>	<ul style="list-style-type: none"> <li>The Seller must disclose the age of the Vehicle including the year of manufacture or the year it was registered whichever is earlier, unless the age is stated as unknown.</li> </ul>
<i>Number of previous owners</i>	<ul style="list-style-type: none"> <li>The Seller must disclose the number of previous owners to the best of their knowledge.</li> </ul>
<i>Documents</i>	<ul style="list-style-type: none"> <li>V5C</li> <li>MOT</li> <li>Plus MOT due date</li> </ul>
<i>VAT Status</i>	<ul style="list-style-type: none"> <li>Q / M / Commercial</li> <li>The VAT status of a Vehicle as notified to <b>ADESA</b> prior to the sale of a Vehicle shall be binding and may not be changed following a Sale.</li> </ul>
<i>Locking Wheel Nuts</i>	<ul style="list-style-type: none"> <li>Locking wheel nuts available</li> </ul>
<i>Accident Repair £ 1000</i>	<p>The Seller must declare a Vehicle to be Accident Repaired if the total cost to fix damage caused by a single incident was £1000 or more</p> <p>The Accident Repair declaration must be made regardless of whether the damage was caused by collision, accident, weather or by some other incident.</p>



Disclosure	Interpretation
	<p>If the pound sterling value of the Accident Repair is known, it must be disclosed. If the pound sterling value of the Accident Repair is not known but estimate data is available, the estimate data should be disclosed.</p> <p>Although not required, if the Seller chooses to disclose an accident repair under £1000 it may do so separately as an additional disclosure.</p>
<i>Adjacent Panels Replaced</i>	<p>The Seller must declare if two or more adjacent panels (excluding bumper panels) have been replaced on a Vehicle.</p> <p>Please note: If the panels were replaced due to an accident or other incident, depending on the cost of the repairs, it may also be necessary for the Seller to make the Accident Repair Disclosure.</p>
<i>Air Bags Missing/Defective</i>	<p>The Seller must disclose if the Vehicle's airbags are missing or not operational. If the airbag warning light is "on", it must be disclosed.</p>
<i>Alternate Fuel or Conversion</i>	<p>The Seller must disclose if the Vehicle uses propane or natural gas, or at any time had a propane or natural gas fuel system.</p>
<i>Excessive Rust</i>	<p>The Seller must disclose if the Vehicle suffers from excessive rust. Rust is considered to be excessive when the location or quantity of the rust affects the structural integrity of the Vehicle, e.g. the frame or any structural component is perforated by rust.</p>
<i>Fire Damage</i>	<p>The Seller must disclose if the Vehicle has been damaged by fire.</p>
<i>Flood Damage</i>	<p>The Seller must declare a Vehicle as Flood Damaged when:</p> <ul style="list-style-type: none"> <li>• water or other liquid has penetrated the Vehicle to the level of the floor boards or higher; or</li> <li>• if any of the following components have been damaged due to immersion: <ul style="list-style-type: none"> <li>➤ Front or rear lighting or wiring harnesses</li> <li>➤ Engine and its major components</li> <li>➤ Transmission and differential</li> <li>➤ Dash instrument panel and wiring</li> </ul> </li> </ul>

Disclosure	Interpretation
	<ul style="list-style-type: none"> <li>➤ Passenger seat cushions</li> <li>➤ Power seat or window motor</li> <li>➤ Major sound system components</li> </ul>
<p style="text-align: center;"><i>Mileage</i></p>	<p>If the odometer reading is accurate, the Seller must disclose the distance the Vehicle has travelled as indicated on the odometer.</p> <p>As Vehicles may be driven before they are marked <i>Arrived</i> in the ADESA system, the odometer reading on the Vehicle when picked up by the Buyer may be different than the odometer reading indicated in the Vehicle listing.</p>
<p style="text-align: center;"><i>Major Repair £1000 (details)</i></p>	<p>The Seller must disclose if a major component of the Vehicle is defective or not operational and the component would cost over £1000 before VAT (on a non-cumulative basis) to repair or replace in accordance with standard market rates. Major components include:</p> <ul style="list-style-type: none"> <li>➤ Engine</li> <li>➤ Transmission</li> <li>➤ Power train</li> <li>➤ Sub-frame</li> <li>➤ Electrical/Air ride suspension</li> <li>➤ Computer equipment</li> <li>➤ Fuel operating system</li> <li>➤ Electrical system</li> <li>➤ Emissions system</li> <li>➤ Removal of DPF system</li> </ul> <p>The Seller must disclose if there is body damage, non-mechanical or non-electrical defects (excluding General Reconditioning Items and Normal Exterior Wear and Tear) that would cost more than £1000 before VAT to repair (non-cumulative basis).</p> <p><i>“General Reconditioning Items”</i> include: (i) Original Equipment Manufacturer specified scheduled maintenance; (ii) tyre wear or condition; (iii) brake wear or condition; (iv) springs; (v) shocks; (vi) conventional suspension; (vii) clutch failure on standard or manual transmission; (viii) engine or rear-end noises that are typical of a particular model or manufacturer; (ix) upholstery/carpet stains; (x)</p>

Disclosure	Interpretation
	<p>wipers, brake pads, brake shoes, rotors, belts, hoses, lubricants, fluids, timing belts, bulbs, filters, struts and (xi) similar items.</p> <p><i>“Normal Exterior Wear and Tear”</i> means damage that would be considered normal wear and tear given the distance travelled and age of the Vehicle and is not easily seen, such as scratches that do not break the paint, minor nicks, cuts and/or scuffs.</p>
<p><i>Manufacture Repurchase</i> _____ (details)</p>	<p>The Seller must disclose if the Vehicle was repurchased by the manufacturer under the laws of any jurisdiction including but not limited to U.K. Consumer Rights Act. If the reasons for, date and/or jurisdiction of the repurchase are known, they should be disclosed.</p>
<p><i>Material Variation from Production Specs</i></p>	<p>The Seller must disclose if the Vehicle varies materially from the original manufacturer’s specifications.</p>
<p><i>MOT</i></p>	<p>The Seller must disclose the most recent MOT certificate and any remedial works that were required to be undertaken in order to pass the most recent MOT. If the MOT certificate is out of date and invalid this must be disclosed by the seller.</p>
<p><i>MOT Advisory Items</i></p>	<p>The Seller must disclose any matters identified as MOT Advisory items on the most recent MOT undertaken on the Vehicle.</p>
<p><i>Odo 5 digit</i></p>	<p>The Seller must disclose if the odometer is a 5 digit odometer with over 100,000 miles or kilometers.</p>
<p><i>Odo Broken/Faulty</i></p>	<p>The Seller must disclose if the odometer of the Vehicle is broken or faulty, i.e. not accurately tracking distance driven.</p>
<p><i>Odo in KMS</i></p>	<p>The Seller must disclose if the odometer is in kilometres.</p>
<p><i>Odo Replaced</i></p>	<p>The Seller must disclose if the odometer has been replaced.</p>
<p><i>Odo Roll back</i></p>	<p>The Seller must disclose if the odometer has been rolled back.</p>

Disclosure	Interpretation
<i>Odo Unreadable</i>	The Seller must declare the odometer to be unreadable if it is accurately tracking distance driven but cannot be read due to pixel damage, because the Vehicle cannot be started to obtain an odometer reading, or similar reasons.
<i>Paint Work</i>	The Seller must disclose paintwork on a current model year Vehicle or newer (excluding bumpers).
<i>Previous Daily Rental</i>	The Seller must disclose if the Vehicle was previously used as a daily rental vehicle.
<i>Previous Driving School Vehicle</i>	The Seller must disclose if the Vehicle was previously used as a driving school vehicle.
<i>Previous Emergency Services Vehicle</i>	The Seller must disclose if the Vehicle was previously used as an emergency services vehicle.
<i>Previous Police Vehicle</i>	The Seller must disclose if the Vehicle was previously used as a police cruiser.
<i>Previous Taxi/Limo</i>	The Seller must disclose if the Vehicle was previously used as a taxi or limousine.
<i>Raced or Rallied</i>	The Seller must disclose if the Vehicle was previously used as a race, track or off road vehicle.
<i>Stolen and Recovered</i>	The Seller must disclose if the Vehicle was recovered after being reported stolen.
<i>Structural damage</i>	The Seller must disclose if a Vehicle has experienced structural damage.
<i>Mileage Unwarranted</i>	The Seller must declare a Vehicle Mileage Unwarranted if the distance traveled is unknown and there are no reliable records available to verify the odometer reading as of a certain date. When this Disclosure is made, it should be assumed that the total distance that the Vehicle has been driven is substantially higher than the reading shown on the odometer.
<i>Mileage Unwarranted as of _____ (date)</i>	If the total distance driven is unknown, but based on reliable records, the distance driven as of a certain date is known, the Seller must declare the last known distance and provide the date. When this Disclosure is made, it should be assumed that the total distance

Disclosure	Interpretation
	that the Vehicle has been driven is higher than the reading shown on the odometer.
<i>Total Loss</i>	The Seller must disclose if an insurer determined the Vehicle was a total loss.
<i>Registration VIN Plate issues</i>	The Seller must disclose the chassis number and the registration mark and or the Vehicle Identification Number (VIN) which corresponds to the Vehicle registration documents. The Seller must disclose if the original VIN plate has been removed, altered or replaced. Vehicles may not be offered for sale unless the VIN plate is intact or has been replaced in accordance with DVLA/VOSA requirements. If Cherished Number Plates (i.e. number plates which are personalized or the Seller wishes to keep are not to be included in the Sale of the Vehicle Entered for Sale, the Seller must disclose the exclusion from Sale and/or state that the price for the purchase of the Cherished Number Plate is additional to the Sale Price. If such statement is not included in the Entry for Sale the Sale price shall be deemed to include the Cherished Number Plate.
<i>Warranty Cancelled</i>	The Seller must disclose if the manufacturer has cancelled the warranty on the Vehicle or has given notice of its intention to do so, or the Seller knows of any reason why the warranty might be invalid