

VEHICLEXCHANGE: TERMS AND CONDITIONS OF USE

Last updated: 1 April 2022

Definitions

"Registered Motor Vehicle Trader" means that you are a current Registered Trader on the New Zealand Motor Vehicle Traders Register held by the New Zealand Ministry of Economic Development.

"Vehicle Wholesaler" means a person who carries on the business of selling new or used motor vehicles to Registered Motor Vehicle Traders.

"Seller" means the Registered Motor Vehicle Trader or Vehicle Wholesaler placing the Listing.

"Buyer" means the Registered Motor Vehicle Dealer purchasing the Motor Vehicle.

"Services and "VehicleXchange" means this online service.

"Listing" means a vehicle advertised for sale on VehicleXchange.

"We", "us" and "our" and "Limelight" means Limelight Financial Services Limited trading as Motorcentral.

"You" and "your" means you.

Background

- A. "VehicleXchange" is an online marketplace where Registered Motor Vehicle Traders and Motor Vehicle Wholesalers can transact the sale and purchase of motor vehicles.
- B. By registering as a member of or by using VehicleXchange, you agree to be bound by these terms and conditions.
- C. You further acknowledge that these terms and conditions may be amended from time to time by us. Any amendments will be posted on the Motorcentral website (www.motorcentral.co.nz).

1. Membership

- 1.1. You must be a registered member of VehicleXchange to list, buy and sell vehicles with us.
- 1.2. In order to become a registered member of VehicleXchange, you must register with us and in accordance with our applicable terms and conditions.
- 1.3. You must be over 18 years of age and must be a resident of New Zealand.
- 1.4. We reserve the right to decline to accept any person as a member and reserve the right to cancel any membership at any time for any reason whatsoever. The decision to suspend or terminate a member is our sole right and is at our sole and absolute discretion.
- 1.5. We may terminate your account on the following (but not limited to) basis:
 - a. if these terms and conditions are breached;

Initials:

- b. if you have sufficient negative feedback that we consider, at our absolute discretion, you to be an inappropriate customer;
- c. if you fail to comply with any contractual terms and/or conditions of a transactional party;
- d. if you failed to provide accurate information when registering as a member;
- e. by giving you 3 working days' notice for any reason whatsoever and at our sole and absolute discretion.

2. Use and restriction of use

- 2.1. You must not misuse the Services. For example, you must not interfere with the Services or try to access them using a method other than the interface and the instructions that we provide. You may use the Services only as permitted by law, including applicable export and re-export control laws and regulations.
- 2.2. Using the Services does not give you ownership of any intellectual property rights in our Services or the data and information you access. We (and our licensors or suppliers, as the case may be) own all proprietary and intellectual property rights in our Services (including text, graphics, logos, icons and sound recordings) and any software and other material underlying and forming part of our Services.
- 2.3. You acknowledge that the Services may use, present or be based on information provided to us or obtained by us through third parties. In such cases we will not be liable for the accuracy of this data and any impact it may have on you.

3. Content and usage of content

- 3.1. You must not use the Services to supply, submit, store, send or receive any content that is illegal, offensive (including anything of a defamatory, pornographic, or racially or ethnically objectionable nature), stolen, or unsafe, anything which infringes copyright or other intellectual property rights, vehicles which have been illegally imported or which would require illegal import or export in order to be sold, or any item of which the sale is prohibited by, or violates any, law. You are responsible for ensuring that any content supplied by you does not breach this clause (3). You agree that we may disclose your personal information, including your name and contact details, to the relevant authorities, parties and/or the applicable intellectual property right holders (or their representatives) if we consider that you are in breach of this clause (3) at any time.
- 3.2. We may review content for purposes such as to determine whether it is illegal or violates our policies, and we may remove or refuse to display any content we deem to be in breach. We are not obligated to review content and will do so at our own discretion.

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- 3.3. When you upload, submit, store, send or receive content to or through the Services, you give us (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content. The rights you grant in this license are for the limited purpose of operating, promoting, and improving the Services, and to develop new ones. This license continues even if you stop using the Services. You warrant that you have the necessary rights to grant us this license for any content that you submit to the Services and you indemnify against any losses, damages, liability, costs and claims (including solicitor's costs on a solicitor-client basis) arising from any violation of this clause (3).
- 3.4. Our automated systems may analyse your content (including emails). This analysis occurs as the content is sent, received, and when it is stored.
- 3.5. You may not use content from the Services unless you obtain permission us or are otherwise permitted by law. These terms do not grant you the right to use any branding or logos used in our Services. You may not remove, obscure, or alter any legal notices displayed in or along with our Services.

4. Your obligations as a Seller

- 4.1. All Seller Listings must provide accurate, current and complete information about the vehicle, terms of sale, payment terms, shipping method and who bears the cost of compliance and /or shipping.
- 4.2. You may only list those items which are actually for sale.
- 4.3. You may only list those items which you have a legal ability to sell.
- 4.4. At least 80% of your Listings must be either:
 - a. exclusively for sale to Registered Motor Vehicle Traders; or
 - b. listed at a lesser price by a reasonable amount, than any other advertised price to the general public for that vehicle.
- 4.5. You will not offer items or services other than those contemplated by this website as the sale and purchase of motor vehicles.
- 4.6. You must not list anything that is illegal, offensive (for any reason stated or deemed by us), stolen, unsafe or anything which infringes copyright or other intellectual property rights or items which have been illegally imported or which would require a legal import or export licence in order to complete the transaction or any item which sale of is prohibited by or violates any law. You agree that we have complete discretion as to whether or not this rule has been breached.

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- 4.7. When you list a wholesale vehicle for sale on VehicleXchange, it should be your intention to sell it via VehicleXchange only and not elsewhere (with the exception of your own wholesale website if you have one).
- 4.8. Your Listing may only obtain a URL for a website that contains further information on the item you have listed for sale. Accordingly you must not use the this website as a basis for promotion of products or services other than the vehicle that is for sale.
- 4.9. You acknowledge that we do not screen your Listings for content, however if the content of the Listing is revealed to be unacceptable then we may withdraw that Listing at any time.
- 4.10. If you are the Seller on a transaction you will liaise with the Buyer on a successful sale and purchase transaction immediately following acceptance by the Buyer.
- 4.11. You will not charge an unreasonable amount for shipping.

5. Seller warranties

- 5.1. You warrant to us that none of your Listings or supplied information will:
 - a. give rise to any claims or liabilities against Limelight;
 - b. infringe copyright, trade mark or other intellectual property rights of any person;
 - c. in the case of digital advertising, contain cookies, tracking tags or other tracking device unless Limelight
 - d. has provided its prior written consent, or allow for data leakage or the on selling of retargeted audiences; or
 - e. be, or be likely to be, misleading or deceptive or otherwise infringe the Fair Trading Act 1986 or any other
 - f. statute, regulation, code or rule of law.

6. Your obligations as a Buyer

- 6.1. You must be a Registered Motor Vehicle Trader that resides in New Zealand to buy on VehicleXchange.
- 6.2. Your offer to purchase is irrevocable non-retractable unless you have the Seller consent in writing.
- 6.3. Immediately following acceptance of your offer, you must arrange for full payment with the Seller.

7. Fees and accounts

- 7.1. Our fees are as set out in Schedule 1.

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- 7.2. We reserve the right to change the fees at any time by posting a new fee schedule on the Motorcentral website (www.motorcentral.co.nz). Not less than 5 working days' notice will be given (by posting on this website) of any change of fees.
- 7.3. All of our fees are exclusive of GST and are in New Zealand dollars and must be paid within 14 working days of date of the invoice.
- 7.4. In the event of overdue or non-payment of an invoice you will pay any reasonable costs incurred by us (including legal costs, collection agency fees and administration costs) as a result of servicing overdue accounts.
- 7.5. We reserve the right to interrupt or delay the provision of Services to you until payment is received in full. Such interruption does not relieve you from the obligation to pay all outstanding amounts owing to us.

8. Mailing list

- 8.1. It is our policy to send out promotional material and newsletters, including material not actually directly related to VehicleXchange to our users and members. Further, it is our policy to immediately remove any registered user or member from any mailing list upon that members or registered users request.

9. Disclaimer

- 9.1. The information and data contained on VehicleXchange is provided by third party Sellers and accordingly we cannot guarantee that the information is true and correct. Accordingly, any transaction conducted on this website is at your risk and you acknowledge that we take no responsibility or liability for any loss or damage that you suffer as a result of transacting on this website.
- 9.2. You acknowledge that you are using VehicleXchange on an "as is where is" basis and on an "as available" basis and that we are excluded from any liability implied or otherwise.

10. Limitation of liability

- 10.1. Limelight will not be liable to you or any other person for any loss of whatever kind suffered as a result of a Listing not being published where such event arises from the exercise of any discretion by Limelight under these Terms and Conditions or any cause beyond its control. Any loss suffered as a result of any partial or total breakdown of Limelight's operation or network will be deemed to be an event beyond Limelight's control. Should such an event occur, Limelight will take all steps reasonably necessary to resurrect its operation and network, and you have the right to cancel the particular

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contract for the affected Listing at no penalty if such an occurrence results in the relevant Listing(s) not being published for more than 7 working days (working days being Monday to Friday inclusive, but excluding statutory holidays).

- 10.2. To the maximum extent permitted by law Limelight will not under any circumstances be liable under the law of tort, contract or otherwise for any monetary sum, including without limitation loss of profits, for any direct, indirect or consequential loss or damage, however caused, relating to or in connection with the Services, services provided by third parties or these terms & conditions.
- 10.3. In the event that clauses 10.1 and 10.2 do not apply to a particular circumstance or event, our maximum total liability to you arising out of any claim or of claims during or after the term of these terms & conditions, for any cause whatsoever, will under no circumstances exceed NZ\$1000.

11. Indemnity

- 11.1. By submitting or authorising a Listing, accepting an offer or using buy now, the Buyer indemnifies Limelight (and its employees and agents) against any proceedings, demands, losses, costs (including legal costs on a solicitor-client basis), damages (including indirect, consequential loss and special damages) and other liabilities incurred by Limelight (and/or its employees and agents) in connection with the Listing.
- 11.2. You shall also indemnify us against any and all direct, indirect and consequential damages, losses, claims, costs (including legal costs), expenses, actions, demands, liabilities or proceedings whatsoever incurred by us in respect of any claim by a third party arising from or connected to any breach or alleged breach by You of Your obligations under these terms & conditions.

12. No resale

- 12.1. You expressly confirm and agree that you will not reproduce, copy, sell, distribute or otherwise disseminate for commercial purposes the information obtained from or via VehicleXchange.

13. General provisions

- 13.1. We have developed a robust system in which Vehicle Wholesalers and Registered Motor Vehicle Traders can trade vehicles. We will use reasonable endeavours at all times to ensure that this website is available and that there is the least amount of down time

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possible for maintenance, however we do not take any responsibility for system unavailability or for any loss incurred as a result of the system unavailability.

14. Copyright

14.1. The copyright in these Services, including all text, graphics, logos, icons, sound recordings and software is owned or licenced by Limelight. Other than for the purposes of and subject to the conditions prescribed hereunder, the New Zealand Copyright Act 1994 and similar legislation which applies in your location, and except as expressly authorised by these Terms and Conditions, you may not in any form or by any means adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of this website or commercialise any information, products or services obtained from any part of this website without our written permission.

15. Resolution of disputes

15.1. Limelight is not a party to any sale transaction between any Buyer and Seller and accordingly will not be involved with any dispute between the parties.

16. Force majeure

16.1. Without prejudice to the disclaimer clauses herein, we have no responsibility or liability for any lack of performance, unavailability or failure of the services or the website or any failure of Limelight to comply with these Terms and Conditions where the same arises from any cause reasonably beyond the control of Limelight.

17. Governing law

17.1. These Terms and Conditions are governed by the laws of New Zealand and you confirm that you submit to the non-exclusive jurisdiction of the Courts of New Zealand.

18. Non-waiver

18.1. If we do not exercise or enforce any right available to us under these Terms and Conditions, that does not constitute a waiver of those rights.

19. Assignment

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- 19.1. You may not:
- a. assign this Contract or any part of it (including advertising space allocated to it) to any third party; or
 - b. create Listings (whether directly or indirectly) on behalf of a third party advertiser, except on terms previously agreed with us. Listings are deemed as created on behalf of a third party when, for example (but without limitation), the Listing promotes or otherwise notifies readers as to the goods or services of another party other than you.

20. Severability

- 20.1. If any provision of these Terms and Conditions is held illegal or unenforceable, then such illegality or unenforceability shall not affect the remaining provisions of these Terms and Conditions which shall remain in full force and effect.

Sighted and agreed:

_____ / ____ / 20 ____

(Signature)

Name _____

Company (if applicable) _____

Title (if applicable) _____

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SCHEDULE 1 - FEES

Usage of the VehicleXchange service is subject to the following fees:

Chargeable Service	Fee	Payable By
Successful sale of a vehicle that can be attributed to VehicleXchange and/or its related services	\$50 + gst	Seller

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