

# NEED A CAR DEALER TERMS AND CONDITIONS

Last updated: July 2017

## A. INTERPRETATION

1. In these terms and conditions, unless the context otherwise requires:
  - i. **'Limelight', 'we', 'us' and 'our'** means Limelight Software Limited trading as Motorcentral.
  - ii. **'Listing'** means a single vehicle advertised for sale on a Listing Website;
  - iii. **'Listing Website'** means a website and/or related services with the primary purpose of advertising  
vehicles for sale;
  - iv. **'Need A Car' and 'Services'** means the Need A Car Listing Website and any associated services;
  - v. **'Registered Vehicle Trader' and 'Dealer'** means a motor vehicle trader currently registered on the New Zealand Motor Vehicle Traders Register; and
  - vi. **'You' and 'your'** means you.

## B. BACKGROUND

1. Need A Car is a Listing Website that Registered Vehicle Traders in New Zealand can advertise their vehicles for sale.
2. The Services are owned and maintained by Limelight Software Limited, trading as Motorcentral.
3. These terms govern the use of the Services. If you do not accept these terms you must not use the Services.

## C. APPLICATION OF TERMS

1. In addition to these Terms and Conditions you acknowledge that the supply of the Services will (unless otherwise agreed) be subject to:
  - i. Limelight's current standard credit terms and terms of trade;
  - ii. Any terms and conditions set out in an Order Form accepted by you;
  - iii. The terms of any other agreement accepted by you,  
collectively known as **'Additional Terms and Conditions'**.
2. These Terms and Conditions shall supersede any Additional Terms and Conditions if there are any inconsistencies or conflict.

## **1. REGISTERED MOTOR VEHICLE DEALERS**

- 1.1 To advertise Listings on the Services you must be a Registered Vehicle Trader and enter into an agreement with us.
- 1.2 We reserve the right to decline to accept any Dealer and reserve the right to cancel any agreement to use the Services at any time for any reason whatsoever. The decision to suspend or terminate your use of the Services is our sole right and is at our sole and absolute discretion.
- 1.3 We may terminate your use of the Services on the following (but not limited to) basis:
  - i. you fail to maintain your Registered Vehicle Trader status;
  - ii. you breach these Terms and Conditions;
  - iii. you have sufficient negative feedback that we consider, at our absolute discretion, you to be an inappropriate customer of the Services;
  - iv. you failed to provide accurate information when registering with us;
  - v. by giving you 3 working days' notice for any reason whatsoever and at our sole and absolute discretion.

## **2. USE AND RESTRICTIONS 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, items 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.
- 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**

- 4.1 All Listings must provide accurate, legally compliant and complete information and where possible include the terms of sale, payment terms, related insurance products, shipping method and who bears the cost of 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 You will not offer items or services, unless authorised by us in writing, other than those contemplated by the Services and us as the sale of motor vehicles.
- 4.5 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 and may withdraw a listing on this basis at any time.
- 4.6 You agree not to display any URLs, including any hyperlinks to websites, within a listing unless you have written authorisation from us.

- 4.7 You acknowledge that we do not screen Listings for content, however if the content of a Listing is revealed to be unacceptable then we may withdraw that Listing at any time.
- 4.8 You will not charge an unreasonable amount for insurance related products and/or shipping.
- 4.9 You agree not to withdraw and re-list vehicles in order to artificially elevate the listing presence on our Services.
- 4.10 You agree not to include your email address, phone number or any other contact detail within the description of your Listings or Listing comments.
- 4.11 You agree that the primary image of any Listing must be of the vehicle for sale only and does not contain any promotional material (such as overlaid promotions).
- 4.12 You agree that we may withdraw any Listing that is not listed in the most relevant category or does not, at our sole discretion, meet our Terms and Conditions or minimum quality requirements.

## **5. FEES AND ACCOUNTS**

- 5.1 We reserve the right to change our fees at any time by posting a new fee schedule on our website and will give no less than 5 working days' notice (by posting on our website) of the change of fees.
- 5.2 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 unless otherwise arranged.
- 5.3 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 unless otherwise arranged.
- 5.4 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, use of money interest and administration costs) as a result of servicing overdue accounts.
- 5.5 We reserve the right to interrupt or delay the provision of the Services to you until payment is received in full.
- 5.6 Such interruption does not relieve you from the obligation to pay all outstanding amounts owing to us.

## **6. NO RESALE**

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

## 7. DISCLAIMER

- 7.1 Information and data contained in the Services may be provided by third parties and accordingly we cannot guarantee that the information is true and correct. Any transaction conducted via the Services is at your own risk and you acknowledge that we take no responsibility or liability for any loss or damage that you suffer as a result of using the Services.
- 7.2 We will however use reasonable endeavours to ensure that the information contained in the Services is correct and that a reliable online platform is maintained for the purpose of advertising and transacting vehicles.
- 7.3 You acknowledge that you are using the Services on an “as is where is” basis and on an “as available” basis and that we are excluded from any liability implied or otherwise.

## 8. WARRANTIES, INDEMNITIES AND LIABILITY

- 8.1 Customer Warranty: The Customer warrants to Limelight that no Listing or supplied information will:
- i. give rise to any claims or liabilities against Limelight;
  - ii. infringe copyright, trade mark or other intellectual property rights of any person;
  - iii. in the case of digital advertising, contain cookies, tracking tags or other tracking device unless Limelight has provided its prior written consent, or allow for data leakage or the on selling of retargeted audiences; or
  - iv. be, or be likely to be, misleading or deceptive or otherwise infringe the Fair Trading Act 1986 or any other statute, regulation, code or rule of law.
- 8.2 Customer indemnity: By submitting or authorising a Listing, the Customer 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.
- 8.3 Liability exclusion and limitation: Except as expressly provided in these Terms and Conditions, Limelight excludes, to the fullest extent permitted by law, all warranties, representations and conditions whether implied by law, trade, custom or otherwise. In no circumstances will Limelight (its employees or agents) be liable, whether in tort, contract or otherwise for any indirect loss, loss of profits, consequential loss or special damage suffered by the Customer or any other person. Limelight’s (including Limelight’s officers, employees and agents) liability to the Customer, or any other person, for any and all loss or damage arising in relation to these Terms and Conditions and/or advertisements (including from any errors, omissions, non-publication or inaccuracies however caused, including without limitation by negligence, system or press failure, mistake, misclassifications, early, late or non-insertion of advertisements, or loss or delay in the delivery of replies) will be limited to an amount equal to the cost of the space of the relevant Listing, provided that if

the Customer does not advise Limelight of any error within five days of publication of the Listing, Limelight will have no liability whatsoever.

- 8.4 The Services are provided on an "as is" and "as available" basis. Limelight shall not be liable for any Listings that appears on the Services nor the content of any web site or web page.
- 8.5 Limelight will not be liable to the Customer 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 the Customer has the right to cancel the particular 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).

## **9. CANCELLATION**

- 9.1 The Customer may only cancel this agreement by giving written notice to Limelight. The Customer acknowledges that the removal of any Listings may not be immediate.
- 9.2 Upon cancellation the Customer agrees that Limelight may at its discretion charge cancellation fees. The Customer acknowledges these cancellation fees are a genuine estimate of the loss Limelight will suffer as a result of the cancellation.
- 9.3 Cancellation of this agreement may, at the discretion of Limelight incur the following cancellation fees:
- i. if the Customer cancels this agreement by giving less than 14 days written notice before the Initial Term Start Date, the Client shall pay Limelight 25% of the total charges for the Initial Term.
  - ii. if the Customer cancels this agreement on or after the Initial Term Start Date, the Customer shall pay Limelight 100% of the total charges for the Initial Term.
- 9.4 Limelight may cancel this Agreement by giving notice to the Customer at any time. Limelight reserves the right to reject any Listing at any time.

## **10. GENERAL**

- 10.1 System: We have developed a robust system in which Dealers can advertise vehicles for sale in conjunction with information and data provided by third parties. We will use reasonable endeavours at all times to ensure that the Services are available and that there is the least amount of down time 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.

- 10.2 Copyright: The copyright in these Services, including all text, graphics, logos, icons, sound recordings and software is owned or licenced by us. 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 these Services or commercialise any information, products or services obtained from any part of the Services without our written permission.
- 10.3 Force Majeure: 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 any failure of ours to comply with these Terms and Conditions where the same arises from any cause reasonably beyond the control of us.
- 10.4 Governing Law: 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.
- 10.5 Non-Waiver: 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.
- 10.6 Assignment: You may not:
- i. assign this Contract or any part of it (including advertising space allocated to it) to any third party; or
  - ii. 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 the you.
- 10.7 Entire agreement: These Terms and Conditions set out the entire agreement between you and us in relation to the Services and supersede all prior arrangements, undertakings, representations and warranties by or between the parties in relation to such Services.
- 10.8 Severability: 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.
- 10.9 Limelight ability to change: Limelight may vary these Terms and Conditions at any time in its sole discretion, provided that:
- i. you will be notified of such amendments in writing to the last contact details provided by you to us; and
  - ii. if your does not agree with a variation you may cease Listings with us.
- 10.10 Each party warrants to the other that it has the right and ability to enter into this agreement and that this agreement will be legally binding on it.

## **11. RESOLUTION OF DISPUTES**

- 11.1 Limelight is not a party to any sale transaction between the you and the end customer and accordingly will not be involved with any dispute between these parties.

-- END --