

Interpretation

- 1.1 **Definitions:**
 - "Business Day"** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
 - "Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.
 - "Contract"** means the contract between the Supplier and the Customer for the sale and purchase of the Product in accordance with these Conditions.
 - "Customer"** means the person or firm who purchases the Product from the Supplier.
 - "Delivery Location"** has the meaning given in clause 4.2.
 - "Delivery Timeframe"** has the meaning given in clause 4.6.
 - "Force Majeure Event"** means an event, circumstance or cause beyond a party's reasonable control.
 - "Lexus"** means Lexus (GB) Limited a company registered in England with company registration number is 02484623 whose registered office is at Great Burgh , Burgh Heath, Epsom, Surrey, KT18 5UX
 - "Order"** means the Customer's order for the Product, as set out overleaf.
 - "Product"** means the product or products (or any part of them) set out in the Order.
 - "Specification"** means any specification for the Product that is provided to the Customer by the Supplier including any custom options agreed by the Supplier.
 - "Supplier"** means Jemca Car Group Ltd (registered in England and Wales with company number 04843255), an authorized dealer of Toyota and Lexus.
 - "Toyota"** means Toyota (G.B.) PLC, a company registered in England with company registration number is 00916634 whose registered office is at Great Burgh, Burgh Heath, Epsom, Surrey, KT18 5UX.
 - "Vehicle"** means the vehicle or vehicles (or any part of them) set out in the Order.
- 1.2 **Interpretation:**
 - 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - 1.2.2 A reference to a party includes its [personal representatives,] successors and permitted assigns.
 - 1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
 - 1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
 - 1.2.5 A reference to **writing** or **written** includes fax and email.
- 2 Basis of contract**
 - 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
 - 2.2 The Order constitutes an offer by the Customer to purchase the Product in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
 - 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
 - 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
 - 2.5 Any descriptions or illustrations contained in the Supplier's brochures or on its website are produced for the sole purpose of giving an approximate idea of the Product referred to in them. They shall not form part of the Contract nor have any contractual force.
 - 2.6 A quotation for the Product given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue and is subject to any increases in the price made by the manufacturer.
- 3 Product**
 - 3.1 The Product is described in the Supplier's brochure and websites (which are operated by Toyota and Lexus respectively).
 - 3.2 To the extent that the Product is to be manufactured in accordance with a Specification supplied by the Customer (for example, the application of trade dress or get up), the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.]
 - 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 4 Delivery**
 - 4.1 The Supplier shall ensure that the delivery of the Product is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Product(s) and, if the Product consists of more than one Product and is being delivered by instalments, the outstanding balance of Product remaining to be delivered.

- 4.2 The Customer shall collect the Product from the Supplier's premises as specified in the Order or such other location as may be advised by the Supplier prior to delivery or, alternatively, the Supplier may agree to deliver the Product to the Customer at the Customer's premises (Delivery Location) within the timeframe agreed between the Customer and the Supplier once the Supplier notifies the Customer that the Product is ready.
- 4.3 Delivery is completed on the completion of loading (in the case of collection) or unloading (in the case of delivery) of the Product at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Product that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Product.
- 4.5 If the Supplier fails to deliver the Product, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Product. The Supplier shall have no liability for any failure to deliver the Product to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Product.
- 4.6 If the Customer fails to take delivery of the Product within fourteen Business Days of the Supplier notifying the Customer that the Product is ready or within such timeframe as is otherwise agreed between the Customer and the Supplier (the "Delivery Timeframe"), then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 - 4.6.1 delivery of the Product shall be deemed to have been completed at 9.00 am on the date which is the Business Day after the end of the Delivery Timeframe; and
 - 4.6.2 the Supplier shall store the Product until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the end of the Delivery Timeframe the Customer has not taken actual delivery of it, the Supplier may resell part or all of the Product and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Product or charge the Customer for any shortfall below the price of the Product.
- 4.8 The Supplier may deliver the Product by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 The Customer hereby authorised the Supplier and its personnel to drive the Product to the extent necessary for delivery, testing or inspection.

5 Quality

- 5.1 Where the Product is a vehicle the Supplier will carry out a pre-delivery inspection (in the case of a new vehicle) or a used car check (in the case of a used vehicle).
- 5.2 So far as is lawfully possible, all terms relating to quality of the Product implied by statute are expressly excluded from this Contract and replaced by the relevant warranty references in this clause. Where the Product is a new vehicle that is a Toyota brand, Toyota offers a warranty on that vehicle. Where the Product is a new vehicle that is a Lexus brand, Lexus offers a warranty on that vehicle. The Supplier does not offer its own warranties for new vehicles. Where the Product is a used vehicle, the Supplier offers a warranty. The Supplier will provide to the Customer details of the relevant warranty during the order process.
- 5.3 Subject to clause 5.4, if:
 - 5.3.1 the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Product are faulty or otherwise not fit for purpose;
 - 5.3.2 the Supplier and/or Toyota and/or Lexus is given a reasonable opportunity of examining such Product; and
 - 5.3.3 the Customer (if asked to do so by the Supplier) returns such Product to the Supplier's place of business at the Customer's cost,
 the Supplier shall or shall procure that Toyota or Lexus will, at its option, repair or replace the defective Product, or refund the price of the defective Product in full.
- 5.4 The Supplier shall not be liable for the Product's failure to comply with the relevant warranty in any of the following events:
 - 5.4.1 the Customer makes any further use of such Product after giving notice in accordance with clause 5.3;
 - 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the maintenance of the Product or (if there are none) good trade practice regarding the same;
 - 5.4.3 the Customer alters or repairs such Product without the written consent of the Supplier;
 - 5.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.4.5 the Product differs from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 These Conditions shall apply to any repaired or replacement Product supplied by the Supplier.

6 Title and risk

- 6.1 The risk in the Product shall pass to the Customer on completion of delivery.
- 6.2 Title to the Product shall not pass to the Customer until the earlier of:
 - 6.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Product and any other goods that the Supplier has supplied to the Customer, in which case title to the Product shall pass at the time of payment of all such sums; and

-
- 6.2.2 the Customer resells the Product, in which case title to the Product shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Product has passed to the Customer, the Customer shall:
- 6.3.1 store the Product separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Product;
- 6.3.3 maintain the Product in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4; and
- 6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- (i) the Product; and
- (ii) the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Product in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Product. However, if the Customer resells the Product before that time:
- 6.4.1 it does so as principal and not as the Supplier's agent; and
- 6.4.2 title to the Product shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs; and
- 6.4.3 the proceeds of such sale shall be used to settle all monies owed to the Supplier by the Customer in respect of the Product.
- 6.5 At any time before title to the Product passes to the Customer, the Supplier:
- 6.5.1 may by notice in writing, terminate the Customer's right under clause 6.4 to resell the Product or use them in the ordinary course of its business; and
- 6.5.2 require the Customer to deliver up all Product(s) in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Product is stored in order to recover them.
- 7 Price and payment**
- 7.1 The price of the Product shall be the price set out in the Order.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Product to reflect any increase in the cost of the Product that is due to:
- 7.2.1 any factor beyond the Supplier's control (including increases in taxes and duties (including vehicle tax), and manufacturing costs);
- 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Product ordered, or the Specification; or
- 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Product excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 7.4 The Supplier may invoice the Customer for the Product on or at any time after the completion of delivery or, if specified in the Order, the Customer may be required to pay for the Product prior to delivery.
- 7.5 Where it has been agreed that the Customer may pay for the Product after delivery, the Customer shall pay each invoice submitted by the Supplier:
- 7.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- 7.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8 Part Exchange**
- 8.1 The Supplier may agree to accept a vehicle in part payment of the price of the product. If so, the Supplier will deduct from the price of the Product the amount agreed with the Customer for part-exchange and the Customer warrants that it has:
- 8.1.1 provided correct information in relation to the mileage, age and condition of the vehicle; and
- 8.1.2 is the legal owner of the vehicle or has provided to the Supplier the details of any higher purchase agreement or other loan in relation to the used vehicle, in which case the part payment will be reduced by the amount due to settle the higher purchase agreement or loan.
- 8.2 The Customer will provide the used vehicle to the Supplier on or before the date that the Product is delivered.

9 **Limitation of liability**

- 9.1 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 9.2.1 death or personal injury caused by negligence;
 - 9.2.2 fraud or fraudulent misrepresentation;
 - 9.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 9.2.4 any other liability that cannot be lawfully limited.
- 9.3 Subject to clause 9.2, 9.4, 9.5 and 9.6 the Supplier's total liability to the Customer shall not exceed the amount actually paid by the Customer to the Supplier in respect of the Product.
- 9.4 Subject to clause 9.2, the following types of loss are wholly excluded:
- 9.4.1 loss of profits;
 - 9.4.2 loss of sales or business;
 - 9.4.3 loss of agreements or contracts;
 - 9.4.4 loss of anticipated savings;
 - 9.4.5 loss of or damage to goodwill; and
 - 9.4.6 indirect or consequential loss.
- 9.5 Except as provided in clause 5, the Supplier shall have no liability to the Customer in respect of the Product's failure to comply with the warranty set out in clause 5.1.
- 9.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.7 The Supplier shall maintain insurance to cover the storage of the Product at its premises until the Customer collects them. The Supplier shall only be liable for loss or damage to the Product to the extent that such loss or damage is caused by its negligence or the negligence of its employees.
- 9.8 This clause 9 shall survive termination of the Contract.

10 **Termination**

- 10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within [seven] days of that party being notified in writing to do so;
 - 10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, 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;
 - 10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 10.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.3 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of any Product supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11 **Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three calendar months, the party not affected may terminate the Contract by giving fourteen days' written notice to the affected party.

12 **General**

12.1 **Assignment and other dealings.**

- 12.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

- 12.2 Confidentiality.**
- 12.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.2.
- 12.2.2 Each party may disclose the other party's confidential information:
- (i) 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 the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.]
- 12.3 Entire agreement.**
- 12.3.1 Subject to clause 12.3.3 below, this Contract 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.
- 12.3.2 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.3.3 Where the Product is subject to third party terms, the Supplier will provide such terms to the Customer. Where there is an additional signed agreement between the Customer and the Supplier, this Contract will be supplemental to such agreement and the terms of that agreement shall take precedence over this Contract.
- 12.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.7 Notices.**
- 12.7.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to :
 - (A) customerservices@jemca.co.uk for the Supplier; and
 - (B) the e-mail address routinely used by the Supplier to contact the Customer.
- 12.7.2 Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) 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; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.7.2(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 12.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.8 Third party rights.**
- 12.8.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.8.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 12.9 Governing law.** The Contract, 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.
- 12.10 Jurisdiction.** 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 Contract or its subject matter or formation.