



Dealer Service Level Agreement

THE PARTIES AGREE THAT –

1. DEFINITIONS

In this Agreement, unless a contrary intention clearly appears, the following terms shall bear the meanings assigned to them and cognate expressions shall have corresponding meanings –

- 1.1. **“Accepted Offer”** means the Offer made for the Vehicle at the expiration of the bidding period for that Vehicle on the Website which as accepted by the Seller.
- 1.2. **“Agreement”** means this service level agreement;
- 1.3. **“Company”** means Weelee Pty Ltd, registration number 2013/207927/07;
- 1.4. **“Dealer”** means the person who makes Offers for Vehicles on the Website and/or purchases a Vehicle from a Seller introduced to by the Company;
- 1.5. **“Lead”** means all or any sale(s) of vehicle(s) to the Seller by the Dealer and includes lead(s) for vehicles supplied by the Company to the Dealer, through any medium whatsoever;
- 1.6. **“Lead Fee”** means a fee equal to a percentage of the sale price of any vehicle sold by the Dealer to any customer of the Company as set out in 6 on the cover page, payable by the Dealer to the Company for introducing the Seller to the Dealer, subject to any increase from time to time in accordance with the provisions of clause 6.5
- 1.7. **“Offer”** means an offer made by the Dealer to the Seller to purchase a Vehicle for the Purchase Price placing bids on the Website;
- 1.8. **“Offer Fee”** means a fee equal to 3.75% of the Purchase Price with a minimum of R5250 and a maximum of R25000 (all including VAT), payable by the Dealer to the Company for procuring the Offer, subject to any increase from time to time in accordance with the provisions of clause 6.5;
- 1.9. **“Parties”** means the Company and the Dealer;
- 1.10. **“person”** means any person, company, close corporation, trust, partnership or other entity;
- 1.11. **“Purchase Price”** means the purchase price payable for the Vehicle, being an amount equal to the Accepted Offer, such amount being inclusive of VAT;
- 1.12. **“Seller”** means a person loading its Vehicle on the Website for the purposes of receiving Offers;
- 1.13. **“Sale Agreement”** means the sale agreement entered into or to be entered into between the Dealer and the Seller in terms of which, *inter alia*, the Dealer shall purchase the relevant Vehicle from the Seller, in the event that the –
 - 1.13.1. Dealer places the Accepted Offer; and
 - 1.13.2. Seller accepts such Offer;
- 1.14. **“Signature Date”** means the date of this Agreement by the Party last signing in time;
- 1.15. **“VAT”** means value-added tax as levied from time to time in terms of the Value-Added Tax Act, 1991, as amended;
- 1.16. **“Vehicle”** means the vehicle(s) loaded by the Seller on the Website; and
- 1.17. **“Website”** means www.weelee.co.za.

2. INTERPRETATION

- 2.1. Clause headings in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify its terms nor any of its clauses.
- 2.2. Reference to days, months or years in this Agreement shall be construed as Gregorian calendar days, months or years.
- 2.3. Expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they shall continue to operate thereafter or which of necessity must continue to have effect thereafter notwithstanding that the clauses themselves do not expressly provide for this.
- 2.4. In this Agreement the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 2.5. In this Agreement the words **“include”**, **“including”** and **“in particular”** shall be construed as being by way of example or emphasis only and shall not be construed nor shall they take effect as limiting the generality of any preceding words.
- 2.6. In this Agreement the words **“other”** and **“otherwise”** shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

3. RECORDAL

- 3.1. The Company runs an online platform which enables persons to load their Vehicles with the intention of offering them to certain approved vehicle traders.
- 3.2. The Parties hereby enter into this Agreement in terms of which the Dealer will be entitled to, *inter alia*, make Offers on Vehicles loaded on the Website and, if successful, shall pay the Offer Fee to the Company.

4. DURATION

This Agreement shall commence on the Signature Date and endures indefinitely unless cancelled by either Party this Agreement on 30 (thirty)

days’ written notice to the other or by the Company in accordance with the provisions of clause 11.

5. OFFERS

- 5.1. The Dealer shall be entitled to make Offers on Vehicles loaded on the Website, subject to the terms and conditions of this Agreement, as read with the Sale Agreement.
- 5.2. In the event that the Dealer makes a Accepted Offer, and the Seller accepts the Accepted Offer, a Sale Agreement will automatically be entered into between the Dealer and the Seller and the Dealer shall be obliged to purchase such Vehicle from the Seller on the terms and conditions set out in the Sale Agreement.
- 5.3. The Dealer acknowledges that the Company is only responsible for providing the platform for the introduction of the Sellers to the Dealer but cannot be held responsible in the event of any misrepresentation, nondisclosure and/or delinquency on the part of all or any Seller(s) and/or whether or not any proposed sale of a Vehicle is concluded.

6. FEES

- 6.1. The Dealer shall pay the Offer Fee to the Company in the event of an Offer by the Dealer being the Accepted Offer, and such Offer being accepted by the Seller.
- 6.2. To the extent that the Dealer sells the Seller a vehicle(s), the Dealer shall pay the Lead Fee to the Company.
- 6.3. **The Dealer undertakes to pay all fees to the Company on presentation of tax invoice, the Dealer acknowledging that fees shall be invoiced immediately and automatically in the circumstances referred to in clauses 6.1 and 6.2.**
- 6.4. **Should an Offer on a Vehicle be accepted and should to Dealer introduce the Seller to another person or entity which purchases that Vehicle, the Dealer will be liable for the Offer Fee, the Dealer acknowledging and confirming that it understands and agrees to this and that the Company will be entitled to recovery such Offer Fee from the Dealer.**
- 6.5. The Company will put in an Offer Fee increase annually and further reserves the right, on 10 (ten) days’ notice to the Dealer, to increase the Offer Fee and which increase shall take effect immediately thereafter.
- 6.6. The Dealer may only be entitled to a reduction of the Offer Fee in the event that a new Purchase Price is agreed to with the Seller in consultation with the Company in terms of clause 9.3.

7. INVOICING AND PAYMENT

- 7.1. All amounts invoiced by the Company to the Dealer shall be paid to the Company immediately on presentation of any tax invoice.
- 7.2. All payments to be made in terms of this Agreement will be made by electronic transfer of immediately available and freely transferable funds, free of any deductions or set-off whatsoever, in the currency of the Republic of South Africa, and shall be paid into the bank account set out on the cover page of this agreement, or such other bank account nominate by the Company in writing.

8. DEALER’S OBLIGATIONS

The Dealer shall be obliged to ensure the following in respect of each Accepted Offer:

- 8.1. the Seller is contacted telephonically within 12 hours of accepting the Offer;
- 8.2. the Dealer shall travel to the Seller at a time and place suitable to the Seller;
- 8.3. **the Dealer shall hold his offer for a period of 5 days after it has been made, irrespective of whether the dealer is the winning bidder or an underbidder, so as to afford the Company an opportunity to sell the vehicle in the event of a sale not going through with the winning bidder;**
- 8.4. the Dealer shall not attempt to renegotiate the Purchase Price with the Seller in anyway whatsoever, unless the vehicle is not in the condition as described on the Website, in which event the Dealer shall contact the Company immediately via telephone to explain the discrepancies;
- 8.5. the Dealer shall pay the Purchase Price to the Seller via instant transfer of immediately available and freely transferable funds without setoff, which funds shall reflect in the Seller’s nominated bank account prior to the Vehicle being uplifted from the Seller. The Dealer shall not pay for any vehicle in cash; and
- 8.6. to conduct all checks prior to purchasing any vehicle, including but not limited to HPI, year of registration as per NATIS, active motorplan/warranty, trade/retail values. The Company will not be responsible in the event that the Dealer does not perform these checks;
- 8.7. **the Dealer shall dealer stock any vehicle bought within 72 hours;**
- 8.8. the Dealer shall conduct itself in a professional and courteous manner towards to Seller, it being acknowledged that although the Dealer, and any of its partners, dealers and/or persons within its group, are in no way affiliated to the Company, the Company could incur reputational damage by means of its association with the Dealer.

9. DEALER SKILLS AND EXPERTISE

- 9.1. The Dealer acknowledges and agrees that it has been selected to participate in the Company process due to its experience in the motor industry and, as such, it will be making Offers on Vehicles based on such experience and on the basis that it –
- 9.1.1. is making Offers on used Vehicles, which will have *wear and tear*;
- 9.1.2. has taken into account that the Vehicle may require some additional reconditioning, including dent removal, scratch removal, filling of chips and/or repairing of rims, which may have not been disclosed by the Seller; and
- 9.1.3. is making Offers on used Vehicles that are being offered by individuals who do not necessarily have the skills and/or expertise to deduce whether or not the Vehicle requires any mechanical and/or electrical work to be carried out on it,
- and accordingly, the Dealer has priced this into account when making its Offer.
- 9.2. The Company will not be responsible in the event that the Dealer purchases a vehicle which may have any structural/mechanical or other problems. The Dealer will still be obliged to pay the Company for such vehicle.

10. COMPANY'S RIGHT TO INVESTIGATE

The Company shall be entitled, but not obliged, to audit and/or follow-up on all or any interaction and dealings between the Dealer and the Seller so as to ensure that, *inter alia*, all sales are concluded on the agreed terms and conditions and that the Seller(s) are satisfied with the service provided by the Dealer, the manner in which the transaction(s) are dealt with and that the spirit and provisions of this Agreement and the Sale Agreement are being complied with.

11. COMPANY'S RIGHT TO TERMINATE

Notwithstanding the provisions of clause 14, the Company shall be entitled, on written notice to the Dealer, to cancel this Agreement and/or prohibit the Dealer's use of the Website in the event of any of the following circumstances:

- 11.1. the Dealer failing to comply with all or any of its obligations set out in clause 8;
- 11.2. the Dealer failing to pay any amount due to the Company;
- 11.3. the Dealer conducting all or any interactions with the Seller in a manner that brings or may bring the Company's reputation into disrepute;
- 11.4. the Company not being satisfied with the result of any investigation conducted by the Company in terms of clause 10;
- 11.5. the Dealer renegotiating or attempting to renegotiate the Purchase Price of any Vehicle (unless agreed to by the Company in writing);
- 11.6. the Dealer cancelling the sale of a Vehicle (unless agreed to by the Company in writing);
- 11.7. the Dealer acting dishonestly; and/or
- 11.8. the Dealer not acting in accordance with the provisions or spirit of this Agreement, the Sale Agreement and/or attempting to circumvent any provision of this Agreement and/or the Sale Agreement.

12. WARRANTIES:

The Dealer hereby warrants that:

- 12.1. it has the financial ability to pay for all or any Vehicles initiate through the Company in cash and immediately on inspection of the Vehicle;
- 12.2. it will assist the Seller to settle any outstanding finance on the Vehicle with the relevant financial institution, and pay the balance over to the Seller (if applicable);
- 12.3. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
- 12.4. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms; and

13. CONFIDENTIALITY

Each party acknowledges and agrees that any information relating to the other party's business which is not generally known to the public is confidential and proprietary information. Neither party will disclose the confidential information to third parties without prior written agreement. This business agreement, relationship, or operating practices shall not be made public on any website, Internet forum, social networking site, message board, or any other public media without the express written consent of both parties.

14. BREACH

Subject to Should either Party breach any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fail to remedy such breach within 7 days of receipt of notice requiring it to do so, the other Party may exercise its rights in terms of this clause, then the other Party shall be entitled without notice, in addition to any other remedy available to it at law or in terms of this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the other Party's right to claim damages.

15. DOMICILIUM CITANDI ET EXECUTANDI

- 15.1. The Parties choose as their *domicilia citandi et executandi* for all purposes in terms of this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), their respective addresses set out on the cover page.
- 15.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email.
- 15.3. Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address, or its email address, provided that the change shall become effective on the 5th Business Day from the deemed receipt of the notice by the other Party.
- 15.4. A notice to a Party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi*, shall be deemed to have been received on the day of delivery.
- 15.5. A notice to a Party sent by email to its chosen email address, shall be deemed to have been received on the date of transmission.
- 15.6. Notwithstanding the foregoing, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

16. RELATIONSHIP OF PARTIES

the Company is only responsible for providing the platform for the introduction of the Sellers to the Dealer and *vice versa*, the Dealer acknowledging and agreeing that the Dealer is an independent third party to the Company and nothing contained herein shall be deemed to constitute a partnership, joint venture or the like between them nor to constitute the Dealer as the agent of the Company for any purpose. the Company shall not by reason of the actions of the Dealer incur any liability whatsoever and the Dealer shall not be entitled to authorise, represent or to hold out to any third party that the relationship between the Company and the Dealer is that of a partnership, joint venture or the like.

17. GOVERNING LAW

- 17.1. This Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of South Africa.
- 17.2. The Parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement.

18. GENERAL

- 18.1. The Company reserves the right to amend any provision of this agreement on written notice to the Dealer.
- 18.2. This Agreement constitutes the whole agreement between the Parties relating to its subject matter and replaces, supersedes and cancels in its entirety, with effect from the Signature Date, any other agreements whatsoever (whether written or oral) in force between the Parties relating to the subject matter of this Agreement.
- 18.3. Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by the Dealer without the prior written consent of the Company. The Company shall be entitled to cede, delegate or assign any part, share or interest herein nor any rights or obligations under this Agreement on written notice to the Dealer.
- 18.4. This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.
- 18.5. No amendment or consensual cancellation of this Agreement shall be binding unless recorded in a written document signed by the Parties.
- 18.6. The person(s) signing this Agreement hereby bind(s) himself(s)/herself(s) jointly and severally, as surety and co-principal debtor(s) in solidum, together with the Dealer for the due and punctual payment of all amounts of money and claims which the Dealer may now and from time to time hereafter owe or be indebted to the Company arising from this Agreement, including all costs which may be incurred as a result of collecting all or any amounts owing.
- 18.7. No failure or delay on the part of either Party in exercising any right, power or privilege in terms of this Agreement shall operate as a waiver thereof.

19. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.

20. DEALER HANDBOOK

The Dealer confirms that it has read and understands the terms and conditions set out in the Weelee Dealer Handbook, and undertakes to comply with same, such Dealer Handbook forming part of this Agreement.