

Simon Beirne Limited – Terms and Conditions

Purchases

The following terms and conditions apply to any purchase made by you in any instance through Simon Beirne Limited (SBL)

Where any purchase is made by you through the SBL internet auction purchasing site (“the SBL website”), use of the SBL website by you will bind you to these terms and conditions of use in relation to any vehicles purchased from or through SBL on the SBL website.

Where used in these Terms and Conditions:

- “SBL”, “our”, “us” and “we” means Simon Beirne Limited.
- “Purchaser”, “you”, “your” and “Customer” means the dealer purchasing vehicles using the SBL website or otherwise.
- “Vehicle” and “goods” means any motor vehicle purchased from SBL and described in any tax invoice issued to a purchaser by SBL.

Bidding

1 Unsuccessful Bidding

- Please note the highest bid SBL received through the day will be the successful owner for the vehicle, provided the bid is received prior to the vehicle being auctioned and no higher bids or offers are received for the vehicles in Japan from a non-SBL source.
- If you are unsuccessful with your potential purchase no contract will be made.

2 Successful Bidding:

- When your bid is successful and SBL has had confirmation from its agent/agents in Japan then SBL will purchase the vehicle on your behalf. Once SBL has the final car cost price, a purchase confirmation invoice will be generated and forwarded to within two business days of the auction.
- SBL will not be liable in any way, shape or form for currency fluctuations.
- SBL will convert the Yen FOB cost (FOB = Car Cost plus Agent’s Fee) into NZ\$ on the next business day after the auction.
- You are bound by contractual agreement to SBL and the sale is irrevocable.

Costs and Invoicing

3 Costing Process

- During the auction, the estimated landed cost (ELC) is calculated and displayed on the screen in NZ dollars.
- ELC is a very accurate estimate of the landed cost of the vehicle based on the exchange rate on that day. SBL will not be liable for currency fluctuations.
- ELC includes for a standard passenger vehicle: the purchase price, all costs of processing, freight, customs clearance, MAF, cleaning and re-inspection (if needed) and standard NZ delivery to the dealership or compliance centre of choice.
- ELC excludes any BMSB fees, BAF fees, compliance costs, mechanical allowance or paint and panel allowance.
- As New Zealand Customs GST is not set until the vehicle lands, a tax invoice will be sent to you with a total amount including GST and freight charge upon the arrival of the vehicle at port.

Terms of Payment and Transfer of Title

4 The following payment terms apply:

- The vehicle and deregistration papers will only be released to you on full and final payment of the total price of the vehicle.
If you purchase a complied vehicle the MR2A will be forwarded to you on receipt of full payment in cleared funds, thereby giving you the title.

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- Unless pre-arranged with SBL the full cost of the vehicle is due, the earlier of, the date of final invoice or on arrival of the vehicle at port in New Zealand.
- Finance Packages may be available given security deemed satisfactory by SBL with interest charged weekly.
- When the FOB cost of the vehicle exceeds the indicator of 5 million yen, payment in full by the Purchaser is required by close of business on the day following the auction.
- If the Purchaser fails to pay any amount to SBL on the due date for payment, the Purchaser shall pay to SBL on demand interest at the rate of 16%pa on the amount outstanding from the due date until the date of payment
- For non-SBL website purchases, SBL will use its best endeavours to make the Vehicle available for delivery on the day specified on the purchase confirmation and tax invoice. However, such date is not to be treated as a condition of the sale and if delivery of the Vehicle is delayed for any reason, SBL will not be responsible or liable in any way to the Purchaser or any other party for loss suffered due to that delay.

Purchaser Obligations

5 Your Responsibility is to:

- Use your knowledge, skills and experience to appraise the vehicles displayed by the SBL system and to make your bidding and purchasing decisions accordingly.
- Ensure that vehicles that you purchase comply with all NZ legal requirements.
- Make payments as they fall due, according to your Terms of Trade with SBL.
- For SBL website purchases keep your Login and Password details secure. Failure to do so will result in a “dual login” that has the potential to lock you out of the site for a 30 minute period.

SBL’s Obligations

6 All care is taken to ensure the accuracy of the information provided to you, but to the extent permitted by law, SBL accepts no liability arising from:

- System failure.
- Faults, errors or omissions in information provided.
- Misrepresentations or incorrect descriptions of vehicle specifications.
- Defects in any vehicle purchased.
- Delays in delivery of the vehicle to you.

7 To this same extent, as far as is legally permissible, all statutory and implied warranties are excluded.

8 Without restricting the limitations of liability contained elsewhere in these Terms and Conditions, SBL’s liability in relation to the supply of the Vehicle and the Vehicle itself is limited to our brokerage fee/commission on the Vehicle. SBL has no further liability or responsibility for any direct, indirect or consequential injury, loss or damage of whatever nature and however caused. Please refer to our Claims Guidelines for further details about claims.

9 SBL will not be responsible for any damage of whatever nature caused to the Vehicle or as a result of the malfunction of the Vehicle if:

- The Vehicle is adapted to a use for which it was not specifically intended;
- The Vehicle is added to or repaired using components not recommended or approved by the manufacturer; or
- The Vehicle is improperly stored or transported.

10 SBL gives no guarantee that the accessories such as computers, audio and navigation systems etc installed in the Vehicles are in working condition.

11 SBL will not be in breach of these Terms and Conditions because of any failure on its part directly or indirectly due to wars, strikes, lock-outs, delays or defaults of manufacturers or suppliers, acts of God or any other cause (whether similar or dissimilar) beyond its reasonable control.

Consumer Guarantees Act 1993 (“CGA”) and Fair Trading Act 1986 (“FTA”)

12 Where SBL is supplying the Vehicle to the Purchaser for business purposes within the meaning of:

- The CGA, pursuant to section 43 of the CGA, the provisions of the CGA will not apply to these Terms and Conditions;
- The FTA, pursuant to section 5D of the FTA, the provisions sections 9, 12A, 13 and 14 of the CGA will not apply to these Terms and Conditions.

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- 13 Where the Purchaser supplies the Vehicle on to a person acquiring them for business purposes it will be a term of the Purchaser's contract with the buyer of the Vehicle that the CGA will not apply in respect of the Vehicle.

Title and Risk

- 14 The risk in the Vehicle supplied to the Purchaser pursuant to these Terms and Conditions shall pass to the Purchaser on delivery but ownership in them shall not pass to the Purchaser, until all money the Purchaser owes to SBL has been paid in full.
- 15 Until SBL receives payment in full the Purchaser shall hold or deal with the Vehicle for and on behalf of SBL and in every respect as a fiduciary and agent.
- 16 If the Vehicle or any part of it is sold by the Purchaser prior to payment having been made to SBL then the proceeds of sale shall be held by the Purchaser on trust for and on behalf of SBL in a separate account.
- 17 In the case of vehicles where title is reserved to SBL under this condition the Purchaser hereby authorises SBL to approach the Purchaser's existing or subsequent chargeholder(s) where appropriate to obtain the acknowledgement of the chargeholder of SBL's Security Interest in the Vehicle to SBL and confirmation that SBL shall have priority with regard to any vehicle in which title is reserved to SBL under this condition.

Personal Property Securities Act 1999 ("PPSA")

- 18 The Purchaser acknowledges SBL's Security Interest in all vehicles ("Collateral") supplied to the Purchaser but not paid for under these Terms and Conditions.
- 19 SBL reserves the right at its discretion to register a Financing Statement in respect of each vehicle supplied to the Purchaser which comprises Collateral. SBL's costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Purchaser and, where applicable, debited by SBL against the Purchaser's account with SBL. On the request by SBL the Purchaser shall promptly execute any documents and do anything else required by SBL to ensure that SBL's Security Interest in the Collateral created by these Terms and Conditions constitutes a Perfected Security Interest over the vehicles comprising Collateral.
- 20 The Purchaser shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of SBL and shall notify SBL immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.
- 21 The Purchaser:
- agrees that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to these Terms and Conditions; and
 - waives the Purchaser's right to do any of the following:
 - Object to SBL's proposal to retain any Personal Property under s121 of the PPSA;
 - Redeem any Personal Property under s132 of the PPSA; and
 - To receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.

Default

- 22 If the Purchaser fails to make payment on any invoice when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed of any part of its business or assets then SBL reserves the right:-
- To treat all sums due or to become due from the Purchaser whatsoever as immediately due and payable;
 - To cancel or suspend delivery of vehicles and the provision of services;
 - By its agents to enter onto the Purchaser's premises (without the necessity of giving notice) where the vehicles may be installed or stored and to search for and remove and take possession of the vehicles without being in any way liable to the Purchaser or anyone claiming under it for so doing; and
 - To withhold the further supply of vehicles on credit.
- 23 In the event of default under these Terms and Conditions the Purchaser shall at SBL's request:-
- Re-deliver the Vehicle to SBL or do anything reasonably necessary to allow SBL to retake possession of the Vehicle;

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- Instruct any third parties who owe money in respect of Vehicle to pay that money direct to SBL; and
 - Make any records available which may assist SBL to take the proceeds of the vehicles.
- 24 The Purchaser will be liable for and indemnifies SBL for all expenses (including solicitor – own client legal costs) and losses incurred or suffered by SBL as a result of any default under these Terms and Conditions or from any other cause.

Privacy Act 1993

- 25 The provisions in clauses 26 – below will apply only where the Purchaser is a sole trader or partnership.
- 26 The Purchaser acknowledges that personal information collected or held by SBL is provided and may be held, used and disclosed to enable SBL to:
- Ascertain at any time the Purchaser’s creditworthiness and obtain any credit reports, character references or credit statements;
 - Provide to the Purchaser or have provided to the Purchaser advice or information concerning Vehicles or services SBL believes may be of interest to the Purchaser; and
 - Communicate with the Purchaser for any purpose.
- 27 The Purchaser authorises SBL to obtain at any time from any person or entity any information SBL may require for the purposes referred to in Clause 26. The Purchaser authorises any such person to release to SBL any personal information that person holds concerning the Purchaser.
- 28 The Purchaser authorises any credit reporting agency to which we provide information about you to list that information on their systems, use it as part of their information services and supply it to their customers.
- 29 Any personal information provided by the Purchaser is collected by and will be held by SBL at the address specified on SBL’s website from time to time.
- 30 If the Purchaser fails to provide any information requested by SBL, SBL may be unable to accept the Purchaser’s offer.
- 31 The Purchaser has the right under the Privacy Act 1993 to obtain access to and request correction of any personal information held by SBL concerning the Purchaser.

Assignment

- 32 SBL is entitled at any time to assign to any other person or company all or part of any debt the Purchaser owes to SBL. Such assignee will be entitled to claim full rights of set off or counterclaim against the Purchaser, its shareholders or successors in respect of the debt or part of the debt which is assigned.
- 33 The Purchaser shall not assign any rights under this agreement to purchase a Vehicle, including these Terms and Conditions.

Insurance

- 34 The Purchaser agrees to reimburse SBL for any loss caused by damage to any Vehicle in the Purchaser’s care, including any Vehicle on consignment or loan to the Purchaser, whether the Purchaser is insured or not for all Vehicles in his/her care.

Governing Law

- 35 These Terms and Conditions are governed by and construed in accordance with the laws of New Zealand.

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Simon Beirne Limited – Terms and Conditions Acceptance

I/We as an authorised signatory on behalf of the Customer declare that:

1. I/we have read the **attached** terms and conditions Version 10.0 2019 (“the Terms and Conditions”) and acknowledge that the Terms and Conditions will apply in respect of all contracts for the supply of goods and services by SBL to the Customer.
2. I/we am/are aware that:
 - 2.1. The Terms and Conditions may be altered at any time by SBL; and
 - 2.2. Clauses 18 through to 21 of the Terms and Conditions create a security interest in favour of SBL over all vehicles sold by SBL to the Customer, pursuant to the Personal Property Securities Act.

Company Name

Trading As

Signature

Date

Write Name in BLOCK letters

Company Incorporation Number

Designation

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