

## USER TERMS AND CONDITIONS

### 1. INTRODUCTION

These Terms and Conditions (the “**Terms**”) set out the terms on which Online Auto Sales (t/as Tootle) a company registered in England and Wales with company number 09325623 whose registered office is at Cornwall Court, 19 Cornwall Street, Birmingham, B3 2DT (“**Tootle**”) provides the Services (defined below). Reference to “**you**”, “**User**” or “**User’s**” in these Terms, means you the User of the Services, whether you are accessing the relevant services, browsing and/or buying a vehicle listed by a Seller (defined below) or selling your vehicle to a Buyer on the Website (defined below) you will be deemed a User.

As a User, your access to and use of the Services are conditional upon our acceptance and of continuous compliance with these Terms at all times. By accessing, browsing the Website and/or using the Services, you agree to be bound by these Terms and all rules, guidelines, policies, terms and conditions applicable to Tootle, as may be amended by Tootle from time to time.

### 2. INTERPRETATION

The following words and expressions shall have the following meanings:

“**Background Checks**” means checks conducted by Tootle including, but not limited to, a provenance check to verify that such vehicle has not been stolen or is in an insurance write-off;

“**Buyer**” means a company or organisation registered to purchase vehicles’ through the Website;

“**Contract**” means the contract between Tootle and the User in respect of the relevant and applicable Services, and which incorporates these Terms;

“**Intellectual Property Rights**” means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;

“**Offer**” means a non-binding offer, by a Buyer, to purchase the Seller’s vehicle. The offer amount is what the Seller will receive and is exclusive of any Sourcing Fee;

“**Purchase Price**” means the price that the Buyer will pay to purchase a vehicle listed for sale on the Website which is inclusive of any VAT;

“**Services**” means the services made available by Tootle to the User to facilitate the:

- Buyer’s purchase of a Seller’s vehicle that is or has been advertised by way of a Vehicle Profile on the Website;
- Seller’s sale of their vehicle to a Buyer that they are advertising or have advertised on the Website;

“**Seller**” means the individual, company or organisation, the current owner of the vehicle, or an individual acting on behalf of a company or a group company, from whom the Buyer purchases a vehicle through the Website;

“**Seller Content**” means all information (in all current and future formats) created by a Seller, submitted to and/or published by Tootle on the Website, including, without limitation, photographs, messages, comments, reviews, profiles, and documents;

“**Sourcing Fee**” means the fee that the Buyer agrees to pay Tootle if the Buyer purchases a vehicle that is or has been advertised by way of a Vehicle Profile on the Website;

“**Vehicle Profile**” means the online profile of the Seller’s vehicle that contains photographs and information on the Seller’s vehicle, which is used to inform Buyers about the vehicle; and

“**Website**” means the website owned and managed by Tootle and operating from [www.tootle.co.uk](http://www.tootle.co.uk), and any widget, online platform or add-ons to third party websites operated or powered by Tootle.

Where “**notice**” is given in writing, such notice may also be given by email.

2.1. The User acknowledges that Tootle is not a party to any transaction between the Users and shall not be responsible in any manner whatsoever for any representations made by one User to another (whether on the Website or otherwise). The User agrees and acknowledges that it has had the opportunity to independently investigate, analyse and construe the purchase and/or sale opportunity being offered under these Terms.

2.2. The User hereby acknowledges that before entering into a contract with another User, that the User has satisfied itself that the Background Checks are deemed satisfactory and is entering into any contract being aware of these Terms. The User further acknowledges that Tootle is independent from any contract, agreement, or offer made between the Users (whether on the Website or otherwise) and that Tootle is in no manner acting as an agent of either the Seller or of the Buyer and that Users will be separately responsible and liable to one another under that contract.

### 3. **USER ELIGIBILITY**

3.1. Each and every User must be:

3.1.1. legally capable of entering into binding contracts, with any and all necessary regulatory approvals and requirements in place;

3.1.2. not in any way prohibited by the applicable law in the jurisdiction which the User is currently located to enter into these Terms.

3.2. In addition to Clause 3.1, a Seller must, to use the Services as a Seller:

3.2.1. be the registered owner of the vehicle that the Seller wishes to sell;

3.2.2. warrant that they have the right, authority and capacity, in respect of their status as a Seller to enter into and be bound by these Terms;

3.2.3. warrant that they are the legal owner of the vehicle they wish to sell;

3.2.4. warrant that the vehicle has not been involved in a major accident; and

3.2.5. agree to their registration with Tootle as a Buyer.

3.3. In addition to Clause 3.1, a Buyer must, to use the Services as a Buyer:

3.3.1. be an authorised representative of a company, registered in England and Wales, that is either a car dealer or a car buying service;

- 3.3.2. warrant that they have the right, authority and capacity, in respect of their status as a Buyer to enter into and be bound by these terms.

#### **4. THE CONTRACT BETWEEN THE USER AND TOOTLE**

- 4.1. The commencement of the Contract between Tootle and the User shall be the date that the User registers as a User of the Website.
- 4.2. The Contract shall be effective and in force until terminated by either party in accordance with Clause 10 hereunder.
- 4.3. Notwithstanding the foregoing, Tootle reserves the right at their sole and absolute discretion and for any reason whatsoever to accept or reject the User's application to register on the Website and/or refuse the User's access to the Services or part thereof at any time before or after such application, and in each case without reason.
- 4.4. The User acknowledges that Tootle's liability with respect to the Services shall be limited and shall be as per these Terms.

#### **5. TOOTLE'S OBLIGATIONS**

- 5.1. Tootle will maintain all necessary insurances, licences and consents required to deliver the Services.
- 5.2. Tootle will use reasonable endeavours to deliver the Services to you. Tootle's ability to provide the Services and the availability of the Website may be impaired by conditions or circumstances that are beyond our control. Such circumstances may result in the Services and/or the Website being temporarily unavailable. Tootle will take reasonable action to minimise the disruption caused by such circumstances, but some interruptions may not be avoidable.
- 5.3. Tootle reserves the right to make changes to the Services from time to time, and Tootle may add, remove, modify and/or vary any elements of the Services.
- 5.4. Even though Tootle accepts no liability in respect of Seller Content, Tootle has the sole and absolute discretion to accept, modify, edit, vary, re-format, or reject the Seller Content submitted to it by the Seller for the publication of such Seller Content on its Website.

#### **6. THE USER'S OBLIGATIONS**

- 6.1. The User shall comply with all applicable laws, regulations, directives and legislations which apply to the use of the Services.
- 6.2. The User warrants and undertakes:
  - 6.2.1. to provide to Tootle true, correct and accurate information;
  - 6.2.2. to promptly inform Tootle in the event that any information that the User has provided to Tootle changes or becomes inaccurate; and
  - 6.2.3. to cooperate with reasonable security or other checks or requests for information made by Tootle from time to time.
- 6.3. Where the User is a Seller, in addition to Clauses 6.1 and 6.2, such User further warrants and undertakes:

- 6.3.1. not to re-sell, promote for resale or for any commercial reason use the Services and/or Website or engage in any other commercial activities unless otherwise permitted by Tootle; and
- 6.3.2. not to use the Website and/or Services in any way that will infringe any Intellectual Property Rights or other rights of any third parties, including without limitation, posting any information (in any format) on the Website which may be deemed to be obscene, defamatory, libellous or which may cause injury to, invade the privacy of or otherwise violate other rights of any person.
- 6.4. The User shall not transfer, assign or sub-licence their right to use the Services.
- 6.5. The User shall not attempt to copy the Website or any of its content. The User shall not attempt to gain access to any restricted part of the Website. The User shall not attempt to collect data by scraping or other automated means.
- 6.6. The User may be provided with login details or a unique link to access certain features and functionalities of the Service. The User agrees not to disclose their login details or unique link to a third party.
- 6.7. Tootle reserves the right, in its sole discretion, to take any action that it deems necessary and appropriate in the event it considers that there is a breach or threatened breach of the terms set out in this Clause 6.

## 7. **BUYER OBLIGATIONS**

- 7.1. Where the User is a Buyer, in addition to these Terms as a whole, the Buyer agrees to be bound by the following terms in this Clause 7 and the following terms shall apply solely to the Buyer.
- 7.2. By purchasing a vehicle that is or has been advertised on the Website, the Buyer acknowledges and agrees that they are entering into a contract directly with a Seller in connection with the purchase and sale of the vehicle that is or has been advertised on Tootle's Website.
- 7.3. The Buyer is required to provide Tootle with details on their dealership or car buying service as well as contact information (including telephone and email address) of a primary contact, FCA registration number and VAT number.
- 7.4. The Website includes information from third parties, including but not limited to, Seller Content, technical specifications, service history, and background checks. Tootle does not verify this information and there may be errors in this information. Tootle does not guarantee the accuracy, correctness, or reliability of this information and any reliance placed on this information by the Buyer is at the Buyer's own risk and liability.
- 7.5. The views expressed in any Seller Content, including any review of the Buyer or the Buyer's business, are the views of the Seller and not those of Tootle. Tootle disclaims any liability for any views made in Seller Content.
- 7.6. Vehicle registration marks of vehicles for sale will be made available on the Website, and provided to the Buyer directly. If the Buyer agrees to purchase a vehicle that is or has been advertised on the Website, Tootle will provide the Buyer with the Seller's name, email address and contact number, so that the Buyer may contact the Seller to arrange completion of the purchase and sale of the vehicle.

- 7.7. The Buyer agrees to use vehicle registration marks and the Seller's contact information solely for the purpose of purchasing the vehicle that is or has been advertised on the Website. The Buyer will not use the Seller's contact information to contact the Seller for other reasons, sell the Seller's contact information to third parties or add the Seller to any marketing list without the explicit consent of the Seller to do so.
- 7.8. The Buyer agrees to process any personal data which is provided to it by Tootle in accordance with applicable data protection legislation.
- 7.9. An offer made by the Buyer, to the Seller, is non-binding. The Buyer can adjust or withdraw their Offer at any point up to purchase of the vehicle. Nonetheless, Tootle expects the Buyer to honour their Offer amount if the vehicle is in the condition as described in the Vehicle Profile.
- 7.10. All vehicles purchased by a Buyer from a Seller that is or has been advertised on the Website will be liable to the Sourcing Fee. This applies even if the deal is completed off-line.
- 7.11. **Payment for Services Rendered**
- 7.11.1. If the Buyer agrees to purchase a vehicle that is or has been advertised on the Website, the Buyer agrees to inform Tootle that they have purchased a vehicle as soon as is reasonably practicable and agrees to pay Tootle the Sourcing Fee. The Sourcing Fee will be communicated by Tootle.
- 7.11.2. The Buyer shall promptly provide Tootle with such information as it may reasonably require in order to calculate the Sourcing Fee.
- 7.11.3. Tootle will send the Buyer an invoice for the Sourcing Fee. Payment of the invoice is due within 7 days of receipt ("**Invoice Due Date**").
- 7.11.4. Tootle reserves the right to terminate access to the Service if the Buyer fails to make payment to Tootle by the Invoice Due Date, or if the Buyer completes the purchase of vehicles that are or have been advertised on the Website without informing Tootle.

## 8. **SELLER OBLIGATIONS**

- 8.1. Where the User is a Seller, in addition to these Terms as a whole, the Seller agrees to be bound by the following terms in this Clause 8 and the following terms shall apply solely to the Seller.
- 8.2. By selling a vehicle that is or has been advertised on the Website, the Seller acknowledges and agrees that they are entering into a contract directly with a Buyer in connection with the purchase and sale of the vehicle that is or has been advertised on the Website.
- 8.3. The Seller is required to provide Tootle with personal details, including but not limited to, contact details, full name and address as well as certain information relating to the Seller's vehicle, including but not limited to, the registration details, mileage, and any existing finance agreements relating to the vehicle.
- 8.4. When the Seller registers with Tootle, the Seller agrees to provide Tootle with all necessary documents to verify the information the Seller has provided relating to the vehicle and the Seller's contact details.
- 8.5. In the event that the Seller's vehicle fails Background Checks, Tootle will cease to provide Services to the Seller.

- 8.6. The Seller will not be authorised to sell or advertise any vehicles on the Website without having first created a Vehicle Profile. For the avoidance of doubt, no Vehicle Profile will be made live until it has been approved by Tootle. Tootle will only approve a Vehicle Profile if it has satisfactory photographs and information about the Seller's vehicle and where the vehicle has passed Background Checks, and Tootle is satisfied that the Seller is genuinely looking to sell their vehicle to a Buyer.
- 8.7. Tootle may contact Buyers and invite them to make an Offer. Tootle may send to the Seller Offers from Buyers by email and text message to the email address and mobile phone number respectively that the Seller has provided when they registered as a Seller.
- 8.8. An Offer to buy the Seller's vehicle is not binding. The Buyer is not committed to buy the Seller's vehicle for that Offer price nor buy the Seller's vehicle at all. The Buyer has the right to edit or remove the Offer at any time. An Offer to buy the Seller's vehicle will have an expiry time and the Buyer may either withdraw or lower their Offer if it has not been accepted by the Seller before the expiry time.
- 8.9. The Seller agrees to Tootle providing the Buyer or a prospective buyer with their contact details so that the Buyer may contact the Seller directly to complete the purchase and sale of your vehicle through the Website. By accepting an Offer, the Seller is not committed to selling their vehicle to the Buyer.
- 8.10. Tootle cannot guarantee that any vehicle advertised on the Website will attract Offers from Buyers.
- 8.11. **Seller Content**
  - 8.11.1. It is hereby clarified that, any views expressed in Seller Content will be the Seller's views and not those of Tootle.
  - 8.11.2. Tootle reserves the right to edit or remove Seller Content for any reason (which, notwithstanding the foregoing, shall not constitute Tootle expressing any views or opinions in respect of any vehicle).
  - 8.11.3. The Seller shall grant Tootle a non-exclusive, transferable, royalty-free, perpetual world-wide licence to use the Seller's Seller Content for any reason.

## 9. **INTELLECTUAL PROPERTY RIGHTS**

- 9.1. All trademarks, logos or other marks identifying Tootle (the "**Trademarks**") remain the exclusive property of Tootle, whether or not specifically recognised or protected under the laws of any applicable territory. Nothing contained in these terms shall grant any right, title or interest in the Trademarks.
- 9.2. Unless, by exemption permitted within these Terms, the User may not copy, reproduce, redistribute, download, republish, transmit, display, adapt, alter, create derivative works from or otherwise extract or re-utilise any contents of the Website. In particular, the User must not cache any of the contents for access by third parties, nor mirror or frame any of the content of the Website nor incorporate it into another website without Tootle's express written permission.

## 10. **TERM AND TERMINATION**

- 10.1. Subject to Clauses 10.2 and 10.3 and unless otherwise expressly set out to the contrary I these Terms, our Contract with the User shall remain in force for the duration of the User's registration with Tootle as either a Seller or a Buyer.

- 10.2. Tootle's may terminate the User's Contract at any time and for any reason.
- 10.3. Tootle reserves the right to suspend and/or terminate the User's access to the Services immediately on notice if:
  - 10.3.1. Tootle believes that there has been fraudulent use, misuse or abuse of the Services;
  - 10.3.2. Tootle believes that the User has provided them with false, inaccurate or misleading information in respect of the User's registration and/or the Service; or
  - 10.3.3. Tootle believes that such suspension or termination would be beneficial for itself or any other User.
- 10.4. Where the User is a Seller, the Contract will terminate on notice, with immediate effect, if:
  - 10.4.1. The Seller's vehicle fails Background Checks; or
  - 10.4.2. Tootle does not approve your Vehicle Profile.
  - 10.4.3. Tootle will remove a listing if Tootle suspect the seller is not the registered keeper
- 10.5. For the avoidance of doubt, if the User's Services have been terminated by Tootle in accordance with these terms, the User's access to Services (in whole or in part) shall cease.
- 10.6. The following terms and clauses required for their interpretation shall survive the termination of these Terms for any reason: 3, 5, 6, 7.10, 9, 10, 11, 12 and 13.
11. **EXCLUSION OF WARRANTIES AND LIABILITIES**
  - 11.1. Unless expressly provided to the contrary in these Terms and to the maximum extent permitted by law, Tootle excludes all representations, warranties, obligations and liabilities in connection with the information provided through the use of Services and/or the Website, including but not limited to warranties of satisfactory quality, non-accuracy, completeness, reliability, fitness for a particular purpose or otherwise.
  - 11.2. If Tootle fails to comply with these Terms or Tootle is responsible for loss or damage the User suffers that is a foreseeable result of Tootle's breach of the Terms, such amount that Tootle may pay to the User for such loss or damage the User suffers under or arising out of the Contract shall be limited in the aggregate to the greater of (i) the charges paid by the User to Tootle under the Contract or (ii) two hundred pounds (£200.00).
  - 11.3. Tootle shall not be responsible for any:
    - 11.3.1. losses, damages, costs and expenses which were not reasonably foreseeable to be incurred by the User and could not have been reasonably foreseeable by the User or Tootle on entering into these Terms; or
    - 11.3.2. loss of profits, contracts or business, business interruption, loss of business opportunity, loss of an anticipated outcome or anticipated savings.
  - 11.4. Tootle does not exclude or limit in any way our liability for:
    - 11.4.1. death or personal injury caused by Tootle's negligence;
    - 11.4.2. fraud or fraudulent misrepresentation; or
    - 11.4.3. breach of any terms implied by the Consumer Rights Act 2015 that cannot be excluded.

- 11.5. In the event that a User has a claim or right of action against another User, the User agrees to pursue such claim or action independently of and without any demands of Tootle, and the User agrees to fully and completely release Tootle from all claims, liability and damages arising from or in any way connected to such claim or action.
- 11.6. In the event that a claim or action is brought against Tootle in connection with or arising from the User's activities or use of the Services, including any breach by the User of these Terms or any charges or complaints made by other parties against the User, the User agrees to pay, hold harmless and defend Tootle in such claim or action. The User also agrees to cooperate fully as reasonably required in the defence of any claim and allow Tootle to assume the exclusive defence and control of such matter.
- 11.7. Tootle shall not incur any liability to any User on account of any loss or damage resulting from any delay or failure to perform all or any part of these Terms if such delay or failure is caused, in whole or in part, by events, occurrences, or caused beyond the control of Tootle. Such events, occurrences or causes will include, without limitation, acts of God, strikes, lockouts, server and network failure, riots, acts of war, acts of terrorism, earthquakes, fire and explosions.
- 11.8. Tootle only provides Services for: (i) (where the User is a Seller) the Sellers' own private use, and (ii) (where the User is a Buyer) the Buyer's commercial or business purpose only.
- 11.9. None of the above shall limit the User's obligations to mitigate any loss it may suffer.

## 12. **PRIVACY POLICY**

Tootle processes personal data in accordance with its privacy policy, which is available at [www.tootle.co.uk/privacypolicy](http://www.tootle.co.uk/privacypolicy), as may be amended from time to time.

## 13. **GENERAL**

- 13.1. Tootle may alter or amend these Terms by given reasonable notice on the Website. By continuing to use the Services and/or the Website after expiry of the notice period, the User will be deemed to have accepted any amendment to these Terms. If, on receipt of such notice, the User wishes to terminate the Contract, the User may do so by giving Tootle notice of the termination, such termination to take effect on the date upon which the amended Terms would otherwise have come into effect.
- 13.2. These Terms shall be governed by and construed in accordance with the laws of England and Wales and the User irrevocably submits to the exclusive jurisdiction of the courts of England and Wales to settle any dispute which may arise out of or in connection with these Terms.
- 13.3. These Terms do not create any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is either not a party to them or who is not a provider of the relevant goods and/or services.
- 13.4. The User may print and keep a copy of these Terms, which form the entire agreement between the User and Tootle in respect of the subject matter hereof and supersede any other communications or advertising in respect of the Services and/or the Website.
- 13.5. No delay in exercising or non-exercise by the User and/or Tootle of any of its rights under or in connection with these Terms shall operate as a waiver or release of each of the User's and Tootle's rights. Rather, any such waiver or release must be specifically granted in writing, signed by the party granting it.

- 13.6. If any part of these Terms is held unenforceable, that part shall be enforced to the maximum effect permissible so as to give effect to the intent of the parties, and the Terms shall continue in full force and effect.
- 13.7. Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, appoint a party as the agent of another party, nor authorise any party to make or enter into any commitments for and on behalf of any other party.