

# ELSO CARS PTY LTD

## TERMS OF USE

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## 1 AGREEMENT TO TERMS

These terms of Use constitute a legally binding agreement made between you, whether personally or on behalf of an entity (“you”) and ELSO CARS PTY LTD (hereinafter referred to as “**Company**”, “**we**”, “**us**” or “**our**”), concerning your access and use of the <https://elsocars.co.za> website as well as any other media form, media channel, mobile website or mobile application related, linked, or otherwise connected thereto (collectively, the “**Site**”). ELSO CARS PTY LTD is a private company incorporated in the Republic of South Africa under registration number 2019/510648/07 and whose registered office is situated at Unit 11 Pryde Park 86 Broadlands Road Strand Western Cape 7140. The Site provides an online marketplace for the following goods, products, and/or services: pre-owned vehicles; secondhand vehicles (the “**Marketplace Offerings**”). In order to help make the Site a secure environment for the purchase and sale of Marketplace Offerings, all users are required to accept and comply with the Terms of Use. You agree that by accessing the Site and/or the Marketplace Offerings, you have read, understood and agree to be bound by all of these Terms of Use regardless of whether or not you choose to register as a user or a provider of content on the Site. IF YOU DO NOT AGREE WITH ALL OF THESE TERMS OF USE, THEN YOU ARE EXPRESSLY PROHIBITED FROM USING THE SITE AND/OR THE MARKETPLACE OFFERINGS AND YOU MUST DISCONTINUE USE IMMEDIATELY.

Supplemental terms and conditions or documents that may be posted on the Site from time to time are hereby expressly incorporated herein by reference. We reserve the right, in our sole discretion, to make changes or modifications to these Terms of Use at any time and for any reason. We will alert you about any changes by updating the “Last updated” date of these Terms of Use, and you waive any right to receive specific notice of each such change. Please ensure that you check the applicable Terms every time you use our Site so that you understand which Terms apply. You will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms of Use by your continued use of the Site after the date such revised Terms of Use are posted.

The Site is intended to provide online information, mechanisms, resources and a platform whereby Sellers and Buyers can post vehicles on the Website which are offered for sale and/or sold. The information provided on the Site is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject us to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Site from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable.

The Site is intended for users who are at least 18 years old. Persons under the age of 18 are not permitted to use or register for the Site or use the Marketplace Offerings.

## 2 INTELLECTUAL PROPERTY

Unless otherwise indicated, the Site and the Marketplace Offerings are our proprietary property and all source code, databases, functionality, software, website designs, audio, video, text, photographs, and graphics on the Site (collectively, the "Content") and the trademarks, service marks, and logos contained therein (the "Marks") are owned and controlled by us or licensed to us, and are protected by copyright and trademark laws and various other intellectual property rights and unfair competition laws of the Republic of South Africa, international copyright laws, and international conventions. The Content and the Marks are provided on the Site "AS IS" for your information and personal use only. Except as expressly provided in these Terms of Use, no part of the Site or the Marketplace Offerings and no Content or Marks may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission.

Provided that you are eligible to use the Site, you are granted a limited license to access and use the Site and to download or print a copy of any portion of the Content to which you have properly gained access solely for your personal, non-commercial use. We reserve all rights not expressly granted to you in and to the Site, the Content and the Marks.

## 3 USER REPRESENTATIONS

By using the Site or the Marketplace Offerings, you represent and warrant that: (1) all registration information you submit will be true, accurate, current and complete; (2) you will maintain the accuracy of such information and promptly update such registration information as necessary; (3) you have the legal capacity and you agree to comply with these Terms of Use; (4) you are not a minor in the jurisdiction in which you reside; (5) you will not access the Site or the Marketplace Offerings through automated or non-human means, whether through a bot, script or otherwise; (6) you will not use the Site for any illegal or unauthorized purpose; and (7) your use of the Site or the Marketplace Offerings will not violate any applicable law or regulation.

If you provide any information that is untrue, inaccurate, not current, or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Site (or any portion thereof).

You may not use the Site or the Marketplace Offerings for any illegal or unauthorized purpose nor may you, in the use of the Marketplace Offerings, violate any laws. Among unauthorized Marketplace Offerings are the following: intoxicants of any sort, illegal drugs or other illegal products; alcoholic beverages; games of chance; and pornography or graphic adult content may result in immediate termination of your account and a lifetime ban from use of the Site.

You acknowledge that content on the Site is provided by Users (Purchasers and Sellers) and we do not control, and are not responsible for content, messages between Users, including but not limited to emails outside our email system or other means of electronic communication, whether through the Site or another third-party website. We do not pre-screen or approve any content, but we reserve the right, in our sole and absolute discretion, to refuse, delete or move any content that is or may be available on our Site.

We are a service provider and make no representations as to the safety, effectiveness, adequacy, accuracy, availability, prices, ratings, reviews or legality of any of the information contained on the Site or the Marketplace Offerings displayed or offered through the Site. You understand and agree that the content of the Site does not contain or constitute representations to be reasonably relied upon, and you

agree to hold us harmless from any errors, omissions, or misrepresentations contained within the Site's content. We do not endorse or recommend any Marketplace Offerings and the Site is provided for informational and advertising purposes only.

## 4 USER REGISTRATION AND USE

You may be required to register with the Site in order to access the Marketplace Offerings. You will be required to provide all necessary equipment, network connections and software to access the Site. You will be required to create an account and select a username and password in order to login as required. We reserve the right to remove, reclaim, or change a username you select if we determine, in our sole discretion, that such username is inappropriate, obscene, or otherwise objectionable. We further reserve the right to vary, alter or change your preferred username and will notify you of any such alteration, by email. You agree to keep your password confidential and will be responsible for all use of your account and password.

We will provide you with the Site, to facilitate a process for making and receiving offers on vehicle listings on the Site. By making an offer on any vehicle listed on the Site, you confirm that you understand that making an offer is not entering into a bidding process, and the vehicle owner, in its sole discretion, and for whatever reason retains the right to accept or reject any offer at any time.

## 5 CONSUMER PROTECTION ACT NO 68 OF 2008

If any provision or term (or any contract that is governed by these Terms of Use) or the content provided and/or made available on the Site is regulated by or is subject to the Consumer Protection Act No 68 of 2008, as may be amended from time to time, it is not intended that any provision of these terms contravene any provision of the Consumer Protection Act No 68 of 2008. These Terms of Use are thereby treated as qualified, to the extent required, to ensure that the provisions of the Consumer Protection Act No 68 of 2008 applicable are complied with.

No provision in these Terms of Use (or any contract that is governed by these Terms of Use) limits or purports to limit or exempt the Company from any liability which includes but is not limited to any loss directly or indirectly attributable to our gross negligence or willful default or that of any other person representing or directed by us to the extent that the law does not allow such a limitation or exemption; nor will you be required to assume risk or liability for the kind of liability or loss, to the extent that the law does not allow such assumption of risk or liability; nor will any provision in these Terms of Use limit or exclude any warranties or obligations which are implied into these Terms (or any contract that is governed by these Terms) by the Consumer Protection Act No 68 of 2008 to the extent applicable or which we have assigned in terms of the Consumer Protection Act to the extent applicable, to the extent that the law does not allow them to be limited or excluded.

## 6 MARKETPLACE OFFERINGS

We make every effort to display as accurately as possible the colours, features, specifications, and details of the Marketplace Offerings available on the Site. However, we do not guarantee that the colours, features, specifications, and details of the Marketplace Offerings will be accurate, complete, reliable, current, or free of other errors, and your electronic display may not accurately reflect the actual colours and details of the products. All Marketplace Offerings are subject to availability, and we cannot guarantee that Marketplace Offerings will be in stock. Certain Marketplace Offering may be available exclusively online through the Site. Such Marketplace Offerings may have limited quantities and are subject to return or exchange only according to our Return Policy.

We reserve the right to limit the quantities of the Marketplace Offerings offered or available on the Site. All descriptions or pricing of the Marketplace Offerings are subject to change at any time without notice, at our sole discretion. We reserve the right to discontinue any Marketplace Offering at any time for any reason. We do not warrant the quality of any of the Marketplace Offerings purchased by you will meet your expectations or that any errors in the Site will be corrected.

## 7 THE SELLER (NOT ELSO CARS PTY LTD)

The Seller may post the vehicles that he/she wishes to offer for sale on auction on the Site. The Seller agrees and warrants to the Purchaser of the vehicle(s) and separately to the Company that his/her information:

- 7.1. is accurate and not false, misleading, deceptive or fraudulent;
- 7.2. Does not breach any Intellectual Property Rights of a third party;
- 7.3. Is made in compliance with all applicable laws, government regulations or guidelines;
- 7.4. Is not forged, threatening or offensive or otherwise constitutes harassment
- 7.5. Does not contain confidential information or trade secrets of a third party unless he/she has obtained the consent of a third party owner
- 7.6. Does not contain any viruses, worms, Trojan horses or other invidious programs or data, whether attached to or embedded in other programs or data or not;
- 7.7. Will not defame (libel or slander) another person or transmit misleading or inaccurate information of any kind, whether of a personal or commercial nature; and
- 7.8. Does not contain child pornography, adult pornography, bestiality or any other obscene or offensive material;
- 7.9. He/she is the legal owner of the goods and services he/she is offering for sale on the Site and that he/she has the legal capacity to conclude the sale and to pass the title in the goods and services to the successful Purchaser;
- 7.10. He/she will not hyperlink to or include descriptions of vehicles and services that he/she is not offering for sale on the Site
- 7.11. The Seller represents and warrants to the Company, and separately to the successful Purchaser that the vehicle he/she offers for sale, and sells, on the Site
  - 7.11.1 Is reasonably fit for the purpose or purposes for which the vehicle(s) of that kind are commonly bought as it is reasonable to expect having regard to matters including, but not limited to the description of the vehicle(s) and their price; and
  - 7.11.2 Corresponds with the description that he/she posts on the Site; and
  - 7.11.3 Is not defective; and
  - 7.11.4 Is free of any charge or encumbrance such that the Purchaser will be able to enjoy quiet possession of the vehicle
  - 7.11.5 Will be offered for sale, and sold, in compliance with the laws of the Republic of South Africa and especially that of the Consumer Protection Act, effective as of 1 April 2011;
  - 7.11.6 Is legally able to be offered for sale, and sold on this Site, and otherwise, that the offer and sale of the vehicle(s) is not in contravention of any law
  - 7.11.7 The Seller may set a minimum price or reserve price for the vehicle, but such minimum price or reserve price, must not be set out in the information regarding the vehicle to which that reserve or minimum price, whichever is applicable, applies, or otherwise disclosed to any person at any time.
- 7.12. Unless otherwise stated, any value will be construed to refer to South African Rands (ZAR).
- 7.13. Selling prices will be considered to include Value Added Tax (VAT) unless otherwise stated.

## 8 THE BUYER

The buyer agrees and warrants to each Seller and separately to the Company that the buyer's information is accurate and not false, misleading, deceptive or fraudulent; does not breach any Intellectual Property Rights of a third party and that the information provided by the buyer is made in compliance with all applicable laws, government regulations or guidelines. The buyer further warrants that the information he/she provides is not forged, threatening, offensive or otherwise constitutes harassment; does not contain information or trade secrets of a third party unless you have obtained consent of the third party owner; that the information provided does not contain any viruses, worms, Trojan horses or other invidious programs or data, whether attached to or embedded in other programs or data and that such information provided will not defame (libel or slander) another person or transmit misleading or inaccurate information of any kind, whether of a personal or commercial nature.

The buyer hereby confirms that he/she has the legal capacity to purchase any vehicles that he/she bids for, and will not otherwise be breaching any law in purchasing those goods or services. The buyer will not bid for any vehicles on the Site unless he/she is able, and has sufficient, available capacity to pay for the vehicles bid for. The buyer acknowledges that the purchase of any vehicle(s) on the Site is at his/her own risk. The buyer acknowledges that to the extent permitted by law, the Seller may exclude all terms, conditions and warranties whether express, implied, statutory, common law, or otherwise, relating to the vehicle(s), in all of the Seller's dealings in regard to the vehicle(s) that the buyer may purchase from the Seller on our Site.

## 9 CONDUCT OF AUCTION

The Rules of Auction applicable can be found on the Site or through this URL: <https://elsocars.co.za/rules-of-auction>

The following rules are to be followed in conducting auction on the Site:

No bids below the stated minimum price (if there is one) will be accepted. A User must not engage in bid manipulation to unfairly induce any other person to make bids and/or to manipulate the bid price. Should the highest bid not reach the reserve price (if applicable), then no bid will be regarded as having been successful unless otherwise stated. All bids are final and are not retractable by the Purchaser and a Purchaser shall be deemed to be the successful bidder should the Seller accept his/her offer. Should the Purchaser be a successful bidder as determined by the Seller's acceptance, or deemed to be accepted, by the Seller, the Purchaser must complete the purchase of the vehicle.

To participate within an ELSO CARS PTY LTD online auction of vehicles located at Unit 11 Pryde Park, 86 Broadlands Road, Strand, 7140, you need to do and note the following:

- 9.1. Confirm your personal details
- 9.2. Pay a deposit after you have successfully registered for Auction by means of an Electronic Funds Transfer (hereinafter referred to as "EFT")
- 9.3. The deposit must reflect in the bank account of ELSO CARS PTY LTD prior to the commencement of the Auction.
- 9.4. The buyer may be required to pay an administration fee in addition to the offer amount
- 9.5. Deposits are refundable after the conclusion of the Auction registered for.
- 9.6. View the asset prior to the auction start date at the location provided
- 9.7. If the asset is not collected within the set date after the clearance of funds, you as Purchaser will be liable to pay the outstanding storage fees

- 9.8. You confirm that all details provided to us are correct, that the credit card or account you use is your own and that sufficient credit/funds are available to allow for a successful transaction;
- 9.9. Obtain a pre-approval before participating in an auction if you are going to apply for finance
- 9.10. A registration deposit made by an unsuccessful bidder (where the offer is not accepted) can be refunded on request of the person who made such deposit or shall be refunded to the User 48 hours after the conclusion of the Auction.
- 9.11. A registration deposit made by an unsuccessful bidder can be held on account for future bidding at Auctions to be held.
- 9.12. Successful bidder (where offers are accepted) defaulting on payments or by any means cancelling the transaction will forfeit the auction deposit
- 9.13. Successful bidders will have their deposits go towards the full outstanding amount as reflecting on the invoice for payment of the goods successfully bid for.
- 9.14. Vehicles are sold "voetstoots" or "as is" and the Company cannot accept any return of goods and/or lots for any reason whatsoever.

## 10 VEHICLES SOLD ON CONSIGNMENT

You hereby agree and acknowledge that the Company does not represent itself as the manufacturer or agent of any such manufacturer or sales representative of any such manufacturer, of any vehicles which are offered for sale and/or which are sold on the Site; nor does the Company have any control over, nor represents to have any control over any of the sales on the Site unless otherwise stated. We do not have any control over, nor represent that the vehicles offered for sale on the Site are legally able to be sold unless otherwise stated. We cannot and do not guarantee, nor represent that the descriptions of any vehicles and services on the Site will be accurate. We do not act as agent for the Seller nor the Purchaser in either the making of the offer, by the placement of the vehicles on the Site for auction, the acceptance of the offer placed nor the acceptance of the bid by the Seller unless otherwise stated. We cannot and do not represent nor do we confirm that each Purchaser and Seller is who they claim to be.

We have no control over, nor do we represent nor do we confirm that a Seller or Purchaser will perform their respective sale and purchase obligations of vehicles or services auctioned or bought on the Site unless otherwise stated. We cannot and do not control, nor represent or confirm that a Purchaser will pay for the vehicle that he/she has successfully bid for in an auction on the Site. We cannot and do not control nor represent nor confirm that any vehicles and services will be delivered to a respective Purchaser by the Seller unless otherwise stated.

## 11 PURCHASES AND PAYMENT

We accept the following forms of payment:

- Electronic Funds Transfers (EFTs)

You agree to provide current, complete, and accurate purchase and account information for all purchases of the Marketplace Offerings made via the Site. Sales tax will be added to the price of purchases as deemed required by us. We may change prices at any time. All payments shall be in (ZAR) Rand.

You agree to pay all charges at the prices then in effect for your purchases and any applicable delivery fees. We reserve the right to correct any errors or mistakes in pricing, even if we have already requested or received payment. We reserve the right to refuse any order placed through the Site. We may, in our sole discretion, limit or cancel quantities purchased per person, per household, or per order. These restrictions may include orders placed by or under the same customer account, the same payment method, and/or orders that use the same billing or shipping address.

## 12 RETURN POLICY

All sales are final and no refund will be issued.

## 13 PROHIBITED ACTIVITIES

You may not access or use the Site for any purpose other than that for which we make the Site available. The Site may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by us.

As a user of the Site, you agree not to:

- Systematically retrieve data or other content from the Site to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from us.
- Trick, defraud, or mislead us or other users, especially in any attempt to learn sensitive account information such as user passwords.
- Circumvent, disable or otherwise interfere with security-related features of the Site, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the Site and/or the Content contained therein.
- Disparage, tarnish or otherwise harm, in our opinion, us and/or the Site.
- Use any information obtained from the Site in order to harass, abuse, or harm another person.
- Make improper use of our support services or submit false reports of abuse or misconduct.
- Use the Site in a manner inconsistent with any applicable laws or regulations.
- Engage in unauthorized framing of or linking to the Site.
- Upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses, or other material, including excessive use of capital letters and spamming (continuous posting or repetitive text), that interferes with any party's uninterrupted use and enjoyment of the Site or modifies, impairs, disrupts, alters or interferes with the use, features, functions, operations or maintenance of the Marketplace Offerings.
- Engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots or similar data gathering and extraction tools.
- Delete the copyright or other proprietary rights notice from any Content.
- Attempt to impersonate another user or person or use the username of another user.
- Upload or transmit (or attempt to upload or to transmit) any material that acts as a passive or active information collection or transmission mechanism, including without limitation, clear graphics interchange formats ("GIFs"), 1x1 pixels, web bugs, cookies, or other similar devices (sometimes referred to as "spyware" or "passive collection mechanisms" or "pcms").
- Interfere with, disrupt, or create an undue burden on the Site or the networks or services connected to the Site.
- Harass, annoy, intimidate or threaten any of our employees or agents engaged in providing any portion of the Marketplace Offerings to you.
- Attempt to bypass any measures of the Site designed to prevent or restrict access to the Site, or any portion of the Site.
- Copy or adapt the Site's software, including but not limited to Flash, PHP, HTML, JavaScript, or other code.
- Except as permitted by applicable law, decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the Site.
- Except as may be the result of standard search engine or Internet Browser usage, use, launch, develop, distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper, or offline reader that accesses the Site, or using or launching any unauthorized script or other software.



- Use a buying agent or purchasing agent to make purchases on the Site.
- Make any unauthorized use of the Marketplace Offerings, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses.
- Use the Marketplace Offerings as part of any effort to compete with us or otherwise use the Site and/or the Content for any revenue-generating endeavor or commercial enterprise.
- Use the Site to advertise or offer to sell goods and services
- Sell or otherwise transfer your profile.

## 14 USER GENERATED CONTRIBUTIONS

The Site may invite you to chat, contribute to, or participate in blogs, message boards, online forums, and other functionality, and may provide you with the opportunity to create, submit, post, display, transmit, perform, publish, distribute, or broadcast content and materials to us or on the Site, including but not limited to text, writings, video, audio, photographs, graphics, comments, suggestions, or personal information or other material (collectively, "Contributions"). Contributions may be viewable by other users of the Site and the Marketplace Offerings and through third-party websites. As such, any Contributions you transmit may be treated as non-confidential and non-proprietary. When you create or make available any Contributions, you thereby represent and warrant that:

- The creation, distribution, transmission, public display, or performance, and the accessing, downloading, or copying of your Contributions do not and will not infringe the proprietary rights, including not limited to the copyright, patent, trademark, trade secret, or moral rights of any third party.
- You are the creator and owner of or have the necessary licenses, rights, consents, releases, and permissions to use and to authorize us, the Site, and other users of the Site to use your Contributions in any manner contemplated by the Site and these Terms of Use.
- You have the written consent, release, and/or permission of each and every identifiable individual person in your Contributions to use the name or likeness of each and every identifiable individual person to enable inclusion and use of your Contribution in any manner contemplated by the Site and these Terms of Use.
- Your Contributions are not false, inaccurate or misleading.
- Your Contributions are not unsolicited or unauthorized advertising, promotional materials, pyramid schemes, chain letters, spam, mass mailings or other forms of solicitation.
- Your Contributions are not obscene, lewd, lascivious, filthy, violent, harassing, libelous, slanderous, or otherwise objectionable (as determined by us).
- Your Contributions do not ridicule, mock, disparage, intimidate, or abuse anyone.
- Your Contributions are not used to harass or threaten (in the legal sense of those terms) any other person and to promote violence against a specific person or class of people.
- Your Contributions do not violate any applicable law, regulation or rule.
- Your Contributions do not violate any applicable law concerning child pornography, or otherwise intended to protect the health or well-being of minors.
- Your Contributions do not include any offensive comments that are connected to race, national origin, gender, sexual preference, or physical handicap.
- Your Contributions do not otherwise violate, or link to material that violates any provision of these Terms of Use, or any applicable law or regulation.

Any use of the Site or the Marketplace Offerings in violation of the foregoing violates these Terms of Use and may result in, among other things, termination or suspension of your rights to use the Site and the Marketplace Offerings.

## 15 CONTRIBUTION LICENSE

By posting your Contributions to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to us an unrestricted, unlimited, irrevocable, perpetual, non-exclusive, transferable, royalty-free, fully-paid, worldwide right, and license to host, use, copy, reproduce, disclose, sell, resell, publish, broadcast, retitle, archive, store, cache, publicly perform, publicly display, reformat, translate, transmit, excerpt (in whole or in part), and distribute such Contributions (including, without limitation, your image and voice) for any purpose, commercial, advertising, or otherwise, and to prepare derivative works of, or incorporate into other works, such Contributions, and grant and authorize sublicenses of the foregoing. The use and distribution may occur in any media formats and through any media channels.

This license will apply to any form, media, or technology now known or hereafter developed, and includes our use of your name, company name, and franchise name, as applicable, and any of the trademarks, service marks, trade names, logos and personal and commercial images you provide. You waive all moral rights in your Contributions, and you warrant that moral rights have not otherwise been asserted in your Contributions.

We do not assert any ownership over your Contributions. You retain full ownership of all your Contributions and any intellectual property rights or other proprietary rights associated with your Contributions. We are not liable for any statements or representations in your Contributions provided by you in any area on the Site. You are solely responsible for your Contributions to the Site and you expressly agree to exonerate us from any and all responsibility and to refrain from any legal action against us regarding your Contributions.

We have the right, in our sole and absolute discretion, (1) to edit, redact, or otherwise change any Contributions; (2) to re-categorize any Contributions to place them in more appropriate locations on the Site; and (3) to pre-screen or delete any Contributions at any time for any reason, without notice. We have no obligation to monitor your Contributions.

## 16 SUBMISSIONS

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information regarding the Site or the Marketplace Offerings (“Submissions”) provided by you to us are non-confidential and shall become our sole property. We shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any lawful purpose, commercial or otherwise, without acknowledgement or compensation to you. You hereby waive all moral rights to any such Submissions, and you hereby warrant that any such Submissions are original with you or that you have the right to submit such Submissions. You are there shall be no recourse against us for any alleged or actual infringement or misappropriation of any proprietary right in your Submissions.

## 17 SITE MANAGEMENT

We reserve the right, but not the obligation, to: (1) monitor the Site for violations of these Terms of Use; (2) take appropriate legal action against anyone who, in our sole discretion, violates the law or these Terms of Use, including without limitation, reporting such user to law enforcement authorities; (3) in our sole discretion and without limitation, refuse, restrict access to, limit the availability of, or disable (to the extent technologically feasible) any of your Contributions or any portion thereof; (4) in our sole discretion and without limitation, notice, or liability, to remove from the Site or otherwise disable all files and content

that are excessive in size or are in any way burdensome to our systems; and (5) otherwise manage the Site in a manner designed to protect our rights and property and to facilitate the proper functioning of the Site and the Marketplace Offerings.

Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, you hereby acknowledge and agree to our right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by you to the Site or to our staff and employees. The RIC Act is available from [Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 | South African Government \(www.gov.za\)](http://www.gov.za). Subject to the provisions of the Electronic Communications and Transactions Act No 25 of 2002, you agree and acknowledge that the consent provided by you in this clause fulfills the “writing” requirement.

## 18 PRIVACY POLICY

We care about data privacy and security. Please review our Privacy Policy: <https://elsocars.co.za/privacy-policy/>. By using the Site or the Marketplace Offerings, you agree to be bound by our Privacy Policy, which is incorporated into these Terms of Use. Please be advised the Site and the Marketplace Offerings are hosted in the Republic of South Africa. If you access the Site and the Marketplace Offerings from any other region of the world with laws or other requirements governing personal data, collection, use or disclosure that differ from the applicable laws in the Republic of South Africa, then through your continued use of the Site, you are transferring your data to the Republic of South Africa and you agree to have your data transferred to and processed in the Republic of South Africa.

## 19 COPYRIGHT INFRINGEMENTS

We respect the intellectual property rights of others. If you believe that any material available on or through the Site infringes upon any copyright you own or control, please immediately notify us using the contact information provided below (a “Notification”). A copy of your Notification will be sent to the person who posted or stored the material addressed in the Notification. Please be advised that pursuant to applicable law you may be held liable for damages if you make material misrepresentations in a Notification. Thus, if you are not sure that material located on or linked to by the Site infringes your copyright, you should first contacting an attorney.

## 20 TERM AND TERMINATION

These Terms of Use shall remain in full force and effect while you use the Site.

WITHOUT LIMITED ANY OTHER PROVISION OF THESE TERMS OF USE, WE RESERVE THE RIGHT TO, IN OUR SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ANY ACCESS TO AND USE OF THE SITE AND THE MARKETPLACE OFFERINGS (INCLUDING BLOCKING CERTAIN IP ADDRESSES), TO ANY PERSON FOR ANY REASON OR FOR NO REASON, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT CONTAINED IN THESE TERMS OF USE OR OF ANY APPLICABLE LAW OR REGULATION. WE MAY TERMINATE YOUR USE OR PARTICIPATION IN THE SITE AND THE MARKETPLACE OFFERINGS OR DELETE YOUR ACCOUNT AND ANY CONTENT OR INFORMATION THAT YOU POSTED AT ANY TIME, WITHOUT WARNING, IN OUR SOLE DISCRETION.

If we terminate or suspend your account for any reason, you are prohibited from registering and creating a new account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party. In addition to terminating or suspending your account, we reserve the right to take appropriate legal action, including without limitation pursuing civil, criminal and injunctive recourse.

## 21 ACCESS, MODIFICATIONS AND INTERRUPTIONS

Access to the Site is granted on a temporary basis, and we may restrict access to some parts of the Site or the entire Site, to you. We reserve the right to change, modify, or remove the contents of the Site at any time or for any reason at our sole discretion without a notice. However, we have no obligation to update any information on our Site. We also reserve the right to modify or discontinue all or part of the Marketplace Offerings without notice at any time. We will not be liable to you or any third party for any modification, price change, suspension, or discontinuance of the Site or the Marketplace Offerings.

The Company and sellers accept no responsibility for any interruption in internet connection resulting in the bidder being disconnected from the live auction, be it the bidder's or seller's internet connection interruption for any reason whatsoever. We cannot guarantee the Site and the Marketplace Offerings will be available at all times. We may experience hardware, software, or other problems or need to perform maintenance related to the Site, resulting in interruptions, delays or errors. We reserve the right to change, revise, update, suspend, discontinue or otherwise modify the Site or the Marketplace Offerings at any time or for any reason without notice to you. You agree that we have no liability whatsoever for any loss, damage or inconvenience caused by your inability to access or use the Site or the Marketplace Offerings during any downtime or discontinuance of the Site or the Marketplace Offerings. Nothing in these Terms of Use will be construed to obligate us to maintain and support the Site or the Marketplace Offerings or to supply any corrections, updates, or releases in connection therewith.

## 22 GOVERNING LAW

These terms shall be governed by and defined following the laws of the Republic of South Africa. ELSO CARS PTY LTD and you irrevocably consent that the courts of the Republic of South Africa shall have exclusive jurisdiction to resolve any dispute which may arise in connection with these terms.

## 23 BREACH

In the event of breach by a User of these Terms and should the User fail, neglect, or refuse to remedy such breach within 48 hours after receipt of a notice to such effect from the Company or should a User repeatedly breach these Terms of Use in such a manner that the User's conduct is inconsistent with the intention or ability of the User to abide by these Terms, the Company shall be entitled, in its sole and absolute discretion, without prejudice to its rights in law or in terms hereof, without notice to terminate this agreement and recover all and any costs related to such termination and/or terminate, without notice, a User's access to the Site and/or any of the Company's services which a User may have subscribed to.

## 24 LEGAL PROCEEDINGS

The Company shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrates' Court, be entitled to institute action out of such court. In the event of a User breaching any of its obligations and/or failing to timeously make payment of any

amount to the Company, the User agrees to pay, and shall be liable to pay, all debt collection and legal costs incurred by the Company in enforcing its rights in terms of these Terms of Use. Legal costs shall be recovered on an attorney/own client scale including collection commission, tracing agent's fees, air fares and export fees.

For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose *domicilium citandi et executandi* ("domicilium") as:

The Company will accept service of documents at 42 Grey Street Strand Western Cape 7140 and the User(s) at the address to be found in the information submitted by same in terms of their registration to use the Site, in terms of this agreement. A party may at any time change its *domicilium* by notice in writing provided that the new *domicilium* provided consists of, or includes, a physical address at which processes can be served.

Any notice provided in connection with this agreement may be delivered by hand; or be sent by prepaid registered post; or be sent by prepaid telegram or cablegram; or be sent by telex or telefax if the *domicilium* includes a telex or telefax number, to the *domicilium* chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any party and it shall not be necessary to hand such process or notice to any party personally.

A notice delivered or handed as set out above shall be presumed to have been duly delivered on the date of delivery if delivered by hand, telex or telefax; on the 7<sup>th</sup> (seventh) day from the date of posting including the date of posting if posted by prepaid registered post from within the Republic of South Africa; and on the 14<sup>th</sup> (fourteenth) day from the date of posting including the date of posting if posted from outside the Republic of South Africa.

## 25 DISPUTE RESOLUTION

### 23.1 Informal Negotiations

To expedite resolution and control the cost of any dispute, controversy, or claim related to these Terms of Use (each "Dispute" and collectively, the "Disputes") brought by either you or us (individually, a "Party" and collectively, the "Parties"), the Parties agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least SEVEN (7) days before initiating arbitration. Such informal negotiations commence upon written notice from one Party to the other Party.

If the parties are unable to resolve any dispute resulting from this agreement by means of joint cooperation or discussion between the parties directly involved with the execution of this agreement, within SEVEN (7) working days or such extended time period as the parties may in writing allow, from the time that the dispute is brought to the attention of all parties involved, then such dispute will be submitted to the most senior executives of the parties who shall endeavour to resolve this dispute within 5 calendar days of the dispute having been referred to them.

Should the dispute not be resolved in the aforementioned manner, then the dispute will resort to resolution through arbitration, in accordance with the provisions contained in Clause 23.2 of this agreement.

### 23.2 Binding Arbitration

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by the Arbitration Foundation of South Africa (“AFSA”) in accordance with the Commercial Arbitration Rules of AFSA, which, as a result of referring to it, is considered as part of this clause. The number of arbitrators shall be three (3). The seat, or legal place of arbitration shall be Cape Town, South Africa. The language of the proceedings shall be English. The governing law of the contract shall be the substantive law of the Republic of South Africa.

A dispute between the parties relating to any matter as a result of this agreement or the interpretation thereof will be referred to arbitration, by either of the parties, by way of a Notice to the other party, in which Notice particulars of the dispute are set out. Arbitration proceedings will be held in Cape Town and will be held in a summary manner, in terms of the Rules of AFSA which shall mean that it will not be necessary to observe or carry out the usual formalities of procedure (no pleadings or discovery); the strict rules of evidence will apply; and immediately and with a view to its being completed within 30 (THIRTY) calendar days after it is demanded.

The arbitrator for such arbitration proceedings shall if the matter in issue is primarily an accounting matter, be an independent auditor with at least 10 (TEN) years’ experience as agreed upon by the parties involved and, failing such agreement, be nominated by the chairperson for the time being of the South African Institute of Chartered Accountants; or if the matter in issue is primarily a technical matter, be a suitably qualified person as agreed upon by the parties and, failing such agreement, nominated by the Secretariat for the time being of AFSA; or any other matter, be a practicing advocate or attorney, admitted in accordance with the legislation of the law governing this agreement, with at least 10 (TEN) years’ experience as agreed upon by the parties and, failing such agreement, nominated by the chairperson for the time being of the Law Society of South Africa; or in the event that the parties are unable to reach agreement regarding the nature of a dispute is predominantly of an accounting nature, technical nature or any other nature, then the nature of that dispute shall be determined by a practicing advocate or attorney, admitted as such in accordance with the legislation of the law governing this agreement, with at least 10 (TEN) years’ experience as agreed upon by the parties and, failing agreement, nominated by the chairperson for the time being of the Law Society of South Africa.

The decision of the arbitrator shall be final and binding on the parties, who shall summarily carry out that decision as soon as possible and either of the parties will be entitled to have the decision made an order of any court with competent jurisdiction. The “arbitration” clause in this agreement will be severable from the rest of the agreement and will remain effective between the parties after this agreement has been terminated. No clause in this agreement which refers to arbitration will mean or be deemed to mean or interpreted to mean that either of the parties will be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

### **18.3 Restrictions**

The Parties agree that any arbitration shall be limited to the Dispute between the Parties individually. To the full extent permitted by law, (a) no arbitration shall be joined with any other proceeding; (b) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (c) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

### **18.4 Exceptions to Informal Negotiations and Arbitration**

The Parties agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (a) any Disputes seeking to enforce or protect, or concerning the

validity of, any of the intellectual property rights of a Party; (b) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use; and (c) any claim for injunctive relief. If this provision is found to be illegal or unenforceable, then neither Party will elect to arbitrate any Dispute falling within that portion of this provision found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above, and the Parties agree to submit to the personal jurisdiction of that court.

## 26 CORRECTIONS

There may be information on the Site that contains typographical errors, inaccuracies, or omissions that may relate to the Marketplace Offerings, including descriptions, pricing, availability, and various other information. We reserve the right to correct any errors, inaccuracies, or omissions and to change or update the information on the Site at any time, without prior notice.

## 27 DISCLAIMER

THE SITE AND THE MARKETPLACE OFFERINGS ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. YOU AGREE THAT YOUR USE OF THE SITE AND OUR SERVICES WILL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SITE AND THE MARKETPLACE OFFERINGS AND YOUR USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SITE'S CONTENT OR THE CONTENT OF ANY WEBSITES LINKED TO THE SITE AND WE WILL ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (1) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (2) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE, (3) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (4) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE OR THE MARKETPLACE OFFERINGS, (5) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE BY ANY THIRD PARTY, AND/OR (6) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIAL OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SITE, ANY HYPERLINKED WEBSITE, OR ANY WEBSITE OR MOBILE APPLICATION FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND ANY THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT. YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

## 28 LIMITATION OF LIABILITY

IN NO EVENT WILL WE OR OUR DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT, LOST REVENUE, LOSS OF DATA, OR OTHER DAMAGES ARISING FROM YOUR USE OF THE SITE OR THE MARKETPLACE

OFFERINGS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO US. **CERTAIN UNITED STATES LAWS AND INTERNATIONAL LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.**

## 29 INDEMNICATION

You agree to defend, indemnify, and hold us harmless, including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees, from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: (1) your Contributions; (2) use of the Marketplace Offerings; (3) breach of these Terms of Use; (4) any breach of your representations and warranties set forth in these Terms of Use; (5) your violation of the rights of a third party, including but not limited to intellectual property rights; or (6) any overt harmful act toward any other user of the Site or the Marketplace Offerings with whom you connected via the Site. Notwithstanding the foregoing, we reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate, at your expense, with our defense of such claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

## 30 USER DATA

We will maintain certain data that you transmit to the Site for the purpose of managing the performance of the Marketplace Offerings, as well as data relating to your use of the Marketplace Offerings. Although we perform regular routine backups of your data, you are solely responsible for all data that you transmit or that relates to any activity you have undertaken using the Marketplace Offerings. You agree that we shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against us arising from any such loss or corruption of such data.

## 31 ELECTRONIC COMMUNICATIONS, TRANSACTIONS AND SIGNATURES

Visiting the Site, sending us emails, and completing online forms constitutes electronic communications. You consent to receive electronic communications, and you agree that all agreements, notices, disclosures and other communications we provide to you electronically, via email and on the Site, satisfy any legal requirement that such communication be in writing. **YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS, AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES, AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY US OR VIA THE SITE.** You hereby waive any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention on non-electronic records, or to payments or the granting of credits by any means other than electronic means.



## 32 ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT NO 25 OF 2002

Access to the services and content available from the Site is identified as “electronic transactions” in terms of the Electronic Communications and Transactions Act, which hereby entitles Users of the Site to the following information:

Full name and legal status of the Site owner: ELSO CARS PTY LTD

Street Address: Unit 11 Pryde Park 86 Broadlands Road Strand Western Cape 7140

Postal address: Unit 11 Pryde Park 86 Broadlands Road Strand Western Cape 7140

Physical address for receipt of legal service: Unit 11 Pryde Park 86 Broadlands Road Strand Western Cape 7140

Main business: The main business of the Company is the sale of vehicles

Website address: [www.elsocars.co.za](http://www.elsocars.co.za)

Management: [carl@elsocars.co.za](mailto:carl@elsocars.co.za)

Management information: [carl@elsocars.co.za](mailto:carl@elsocars.co.za)

Costs: N/A

Complaints or feedback regarding the website: [carl@elsocars.co.za](mailto:carl@elsocars.co.za)

## 33 MISCELLANEOUS

The user(s) acknowledge that no representations were made by the Company in respect of the goods or services or any of the qualities related thereto, leading up to the conclusion of this agreement. These Terms of Use and any policies or operating rules posted by us on the Site or in respect to the Marketplace Offerings constitute the entire agreement and understanding between you and us. Our failure to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of such right or provision. No relaxation or indulgence which the Company may grant the user(s) shall prejudice or be deemed to be a waiver of any of the Company’s rights in terms of these Terms of Use.

These Terms of Use operate to the fullest extent permissible by law. We may assign any or all of our rights and obligations to others at any time. We shall not be responsible or liable for any loss, damage, delay, or failure to act caused by any cause beyond our reasonable control. If any provision or part of a provision of these Terms of Use is determined to be unlawful, void or unenforceable, that provision or part of the provision is deemed severable from these Terms of Use and does not affect the validity and enforceability of any remaining provisions. The clause headings in these Terms of Use are for convenience and shall not be used in their interpretation. Unless the context clearly indicates a contrary intention, an expression which denotes any gender includes the other genders; a natural person includes an artificial person and vice versa; and the singular includes the plural and vice versa.

There is no joint venture, partnership, employment or agency relationship created between you and us as a result of these Terms of Use or use of the Marketplace Offerings. You agree that these Terms of Use will not be construed against us by virtue of having drafted them. You hereby waive any and all defenses you may have based on the electronic form of these Terms of Use and the lack of signing by the parties hereto to execute these Terms of Use.

## 34 PROTECTION OF PERSONAL INFORMATION

In order for the Company to perform its obligations under this Agreement, the user(s) may need to disclose to the Company certain of the Client's or third parties' Personal Information (as defined in the Protection of Personal Information Act No 4 of 2013 and herein referred to as "POPIA", as amended). In processing the Personal Information, the Company is required to develop processes, implement measures and controls compliant with the POPIA. The Company agrees that it shall not process the Personal Information whether for its account or for any reason or purpose whatsoever unless such is being done in compliance with the POPIA. The Company warrants that it has in place appropriate security measures, both technical and organizational, against the unlawful or unauthorized processing of information. The Client is provided with the Company's Privacy Policy and Consent is given to the Company by the user's continued use of the Company's Site and services.

## 35 CONTACT US

In order to resolve a complaint regarding the Site or the Marketplace Offerings or to receive further information regarding use of the Site or the Marketplace Offerings, please contact us at:

**ELSO CARS PTY LTD**

**Unit 11 Pryde Park,**

**86 Broadlands Road, Strand**

**Western Cape 7140**

**South Africa.**

**Phone: 076 143 5898**

**[auctions@elsocars.co.za](mailto:auctions@elsocars.co.za)**