

NEXTGEAR APPROVED SUPPLIER AGREEMENT

This is an agreement between you (the company named in the online registration form, referred to in this Agreement as the **"Supplier"**) and us (NextGear Capital UK Limited, referred to in this Agreement as **"NextGear"**) to become a NextGear Capital Approved Supplier and accept payment from NextGear when a payment request is initiated through the Dealer PX Platform.

1. Definitions and Interpretation

1.1 When used in this Agreement, the following words and expressions have the meanings given:

"Account" means an arrangement between NextGear and the Account Holder whereby the Account Holder has been appointed as NextGear's agent for the purpose of, inter alia, the purchase of Vehicles for the Purchase Price from the Supplier and other vendors up to a certain maximum aggregate amount agreed between NextGear and the Account Holder from time to time;

"Account Holder" means a Dealer that has an Account with NextGear and who has been allocated an Account Number;

"Account Number" means the exclusive identification number allocated by NextGear to an Account;

"Agreement" means this NextGear Approved Supplier Agreement;

"Business Day" means a day (other than a Saturday, Sunday, or bank holiday in England) when the banks in London are generally open for business;

"Confidential Information" means, for each party:

- (i) that party's trade secrets and confidential information, all information it discloses relating to this Agreement or disclosed in its negotiation, and any information relating to or comprising its operations, processes, product information, designs, know-how, methodologies, algorithms, contracts, market opportunities, transactions, databases, customers, finances, sales, plans, intentions, strategies, projections, affairs and/or business;
- (ii) the existence, terms and subject matter of this Agreement; and
- (iii) the negotiations relating to this Agreement, including all related documents;

"Dealer" means a natural or legal person, partnership, limited company, limited partnership or other legal entity whose business is the retail trade of Vehicles;

"Dealer PX" means Rycliff Cars Limited (company number 02670570) whose registered office is at 6 Athena Court, Athena Drive Tachbrook Park, Warwick, Warwickshire, CV34 6RT;

"Dealer PX Platform" means the online used vehicle auction platform managed by Dealer PX and its affiliates;

"Defective Vehicle" means any Vehicle which does not comply with the Road Vehicles (Construction and Use) Regulations 1986 or which otherwise is unsafe or suffers from any design or manufacturing defect which makes it potentially unsafe or which otherwise is not movable under its own power;

"Disbursements" means those costs, fees and expenses of or associated with the purchase of a Vehicle by NextGear acting through the agency of an Account Holder as charged by the Supplier and which NextGear has agreed in writing to pay;

"EDI" means electronic data interchange, being the transfer of administrative and invoice information between computer systems, using EDI which have been mutually agreed by the parties involved in the transfer.

"EDI Invoice" means an invoice that consists of a set of data, structured using agreed formats, prepared in a computer readable form and capable of being automatically and unambiguously processed;

"Eligible Vehicle" means a Vehicle that is not a Defective Vehicle and that an Account Holder is permitted to purchase under the terms of their Account;

"Force Majeure Event" means an event beyond the reasonable control of the relevant party;

"Insolvency Event" means any of the following events affecting a party:

- (a) distress or execution or other similar process is levied on any of its goods or assets;
- (b) any of the following events occurs or any action or proceeding is taken, or demand or application made, or petition presented for or any notice is given in anticipation of:
 - (i) a voluntary arrangement or composition or reconstruction of its debts;
 - (ii) the appointment of an administrator;
 - (iii) its bankruptcy, winding up or dissolution;
 - (iv) the appointment of a liquidator (whether voluntary or compulsory but excepting for the purposes of a solvent amalgamation or reconstruction where the resulting company agrees to be bound by or assume the obligations imposed under this Agreement), trustee in bankruptcy, receiver, receiver and manager, administrative receiver or similar officer;
 - (v) any similar action, application or proceeding in any jurisdiction to which it is subject.

- (c) It is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (d) any event occurs which at the date of its occurrence shall be treated as equivalent or additional but similar to or which shall have been substituted for any of the events listed above under any modification or re-enactment then being in force of the current legislation relating to matters of insolvency;
- (e) it shall fail to pay on its due date for payment any sum due or owing under this Agreement; or

any event analogous to any of those described in sub-clauses (a) to (e) occurs in the Supplier's jurisdiction of incorporation, its usual place of business or its Centre of Main Interests.

"Invoice" means the invoice or other document addressed to NextGear and generated by DealerPX evidencing the purchase of a Vehicle by NextGear through the agency of an Account Holder and disclosing (i) the name, address, phone number and Account Number of the buying Account Holder; (ii) the make, model, date of first registration, colour, mileage, vehicle registration number and the entire vehicle identification number for the Vehicle; (iii) the Sale Date for the Vehicle; (iv) the Purchase Price of the Vehicle; (v) details of the Vehicle's eligibility for the VAT Margin Scheme; and (vi) each eligible Disbursement;

"NextGear" means NextGear Capital Limited, (company number 08696123) whose registered office is at NextGear House, Kingsfield Court, Chester Business Park, Chester, CH4 9RE.

"Purchase Price" means in relation to any Purchased Vehicle, an amount equivalent to the full purchase price paid or payable by NextGear acting through the agency of an Account Holder as concluded through the Dealer PX Platform and excluding any Disbursements;

"Purchased Vehicles" means at any time each and every Vehicle which NextGear has purchased from the Supplier through the agency of an Account Holder;

"Sale" means a sale by private treaty whether physical or on-line where the Supplier acts as the seller;

"Sale Date" means the date upon which a sale is agreed determining the Purchase Price of a Vehicle;

"Sale Payment" means the aggregate of the Purchase Price of a Vehicle purchased by NextGear through the agency of an Account Holder and the related Disbursements;

"Supplier" means the company named in the online registration form that has agreed to the terms and conditions of this Agreement;

"Unauthorised Dealer" means a person or Dealer that is not an Account Holder;

"Vehicle" means a used motor vehicle built to standard United Kingdom specification or of such other description as NextGear shall from time to time approve in its sole discretion.

- 1.2 The Parties agree that any terms and conditions of sale or other terms of business of the Supplier are hereby excluded.

2. Account Holders

- 2.1 The Supplier acknowledges and agrees that:

- (a) NextGear has the sole discretion as to whether a Dealer is and shall remain an Account Holder;
- (b) NextGear reserves the right to terminate, withdraw or suspend the Account Number of an Account Holder upon which such Account Holder shall immediately become an Unauthorised Dealer unless and until such Dealer is subsequently issued with another Account Number or the suspension of its existing Account Number is lifted; and
- (c) an Account Holder purchasing a Vehicle or Vehicles on an Account does so as agent of NextGear.

If NextGear has notified the Supplier that NextGear has terminated, withdrawn or suspended the Account Number of an Account Holder such that the Account Holder has become an Unauthorised Dealer, NextGear shall not be obliged to purchase any Vehicle through the agency of that Dealer and the Supplier shall not allow that Dealer to complete the purchase of any Vehicle as agent of NextGear on Account.

- 2.2 Only Account Holders are authorised to purchase Vehicles on an Account. The Supplier shall use reasonable endeavours to verify the status of a purchaser as an Account Holder and shall not knowingly allow unauthorised persons (including an Unauthorised Dealer) to purchase or attempt to purchase Vehicles on an Account.

- 2.3 The Supplier shall indemnify NextGear against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits and all interest and legal costs on a full indemnity basis and all other reasonable professional costs and expenses suffered or incurred by NextGear) arising out of or in connection with:

- (a) the delivery or release by or on behalf of the Supplier of a Vehicle to an Account Holder in contravention of clause 2.1 or clause 2.2;
- (b) the processing of a sale or purported sale of a Vehicle on an Account to an Unauthorised Dealer;
- (c) the delivery or release by or on behalf of the Supplier of any Purchased Vehicle to an Unauthorised Dealer;
- (d) the granting of access to any Purchased Vehicle in contravention of clause 3.5;
- (e) any breach of the Supplier's undertakings under clause 7;

- (f) any breach or non-performance of this Agreement by the Supplier;
- (g) any claim made against NextGear by a third party arising out of or in connection with the sale or purported sale of any Vehicle or Vehicles to the extent such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or its employees, agent or subcontractors.

3. Procedures for the sale of Vehicles on Account

- 3.1 NextGear shall have allocated to each Account Holder an Account Number prior to NextGear making any purchases from the Supplier through the Dealer PX Platform on Account acting through the agency of the Account Holder.
- 3.2 Upon completion of a purchase of a Vehicle by NextGear acting through the agency of the Account Holder on that Account Holder's Account, the Supplier shall, within 24 hours, initiate through the Dealer PX Platform an invoice to be generated by Dealer PX on behalf of the Supplier and a data feed generated by the Dealer PX Platform and sent to NextGear.
- 3.3 Subject to satisfaction of all conditions for the purchase by NextGear of a Vehicle through the agency of an Account Holder on Account, within three (3) Business Days of receipt by NextGear of the Invoice and the data feed in accordance with clause 3.2, NextGear shall initiate the transfer by BACS to the Supplier's bank account payment in full of each of the Purchase Price and of the Disbursements. For the purposes of this clause 3.3, the Supplier's bank account shall be that for which the Supplier shall have previously provided NextGear with the name of the account holding bank, account name and any designation, account number, sort code and any reference.
- 3.4 In the event that the purchase of a Vehicle by NextGear through the agency of an Account Holder from the Supplier and which is governed by this Agreement has been subsequently cancelled or the Purchase Price of such Vehicle has been reduced, the Supplier shall immediately but in any event within one Business Day notify NextGear and issue to NextGear a refund of the Purchase Price of the Vehicle and any Disbursements in full and, in those cases where a reduction in the Purchase Price has been agreed, an Invoice for the reduced Purchase Price together with the applicable Disbursements and shall pay to NextGear within three (3) Business Days of request the amount which is the Purchase Price of the Vehicle together with the Disbursements or the amount by which the amount of the Purchase Price and/or Disbursements has reduced, as the case may be.

4. EDI Invoicing

- 4.1 The Parties agree to conduct transactions by the use of electronic data interchange (EDI). Dealer PX will generate invoices on behalf the Supplier and provided to NextGear.
- 4.2 The Parties undertake to implement and maintain the operational environment to operate EDI according to the terms and conditions of this Agreement, including without limitation providing and maintaining, the equipment, software and services necessary to transmit, receive, translate, record and store EDI invoices, determining the means of communication used, and transmitting the EDI Invoices in accordance with agreed formats and procedures.
- 4.3 A complete and chronological record of all EDI invoices exchanged by the parties in the course of a trade transaction and the transmission log files shall be stored by each party, unaltered and securely, in accordance with the time limits and specifications prescribed by the legislative requirements of England and Wales.
- 4.4 EDI invoices shall be stored by the sender in the transmitted format and by the receiver in the format in which they are received.
- 4.5 Each Party shall ensure that electronic or computer records of the EDI invoices shall be readily accessible, are capable of being reproduced in a human readable form and of being printed, if required.
- 4.6 Each Party shall ensure that information contained in EDI invoices, are maintained in confidence and are not disclosed or transmitted to any unauthorized persons nor used for any purposes other than those intended by the parties. When authorized, further transmission of such confidential information shall be subject to the same degree of confidentiality. EDI invoices shall not be regarded as containing confidential information to the extent that such information is in the public domain.
- 4.7 Each Party undertake to implement and maintain security procedures and measures in order to ensure the protection of EDI invoices against the risks of unauthorized access, alteration, delay, destruction or loss. Security procedures and measures include the verification of origin, the verification of integrity, the non- repudiation of origin and receipt and the confidentiality of EDI invoices. Security procedures and measures for the verification of origin and the verification of integrity, in order, to identify the sender of any EDI invoice and to ascertain that any EDI message received is complete and has not been corrupted, are mandatory for any EDI invoice.
- 4.8 If an invoice is rejected due to technical issues or because errors in the message have been detected, the receiver shall not process the invoice. The receiver will inform the sender in the agreed response time about the detected errors. Error handling procedures have to be initiated to re-send a correct invoice.
- 4.9 To the extent permitted by any national law which may apply, the Parties hereby agree that in the event of dispute, the records of EDI invoices, which they have maintained in accordance with the terms and conditions of this Agreement, shall be admissible before the Courts and shall constitute evidence of the facts contained therein unless evidence to the contrary is adduced.
- 4.10 Each Party expressly waives any rights to contest the validity of a contract effected by the use of EDI invoices on the sole ground that it was effected by EDI.

5. Confidentiality

- 5.1 Each party shall, throughout the term of this Agreement and for a period of five (5) years thereafter:

- (a) subject to clause 5.1(d) keep confidential all of the other party's Confidential Information;
- (b) only use the other party's Confidential Information for the purpose of complying with, or taking professional advice regarding, this Agreement;
- (c) protect the other party's Confidential Information in its possession from unauthorised use or disclosure using at least the same standard of care as it employs in protecting its own Confidential Information; and
- (d) only disclose the other party's Confidential Information:
 - (i) to its officers, employees and professional advisers (including insurance advisers) on a confidential basis;
 - (ii) to any other person where the other party has given its prior written consent to such disclosure;
 - (iii) where required by applicable law (including the lawful order of any court, governmental or regulatory authority of competent jurisdiction having the force of law) or the rules of a relevant stock exchange, provided that in each case (but subject to applicable law) the disclosure shall only be made after consultation with the other party and after taking into account the other party's reasonable requirements as to the timing, content and manner of communication of such information.

5.2 Clause 5.1 does not apply to any information where a party can show that:

- (a) such information is already lawfully in the public domain;
- (b) such information was lawfully in its possession without restriction on its disclosure or use, prior to the time at which it received the same from the other party;
- (c) such information has subsequently been lawfully disclosed to it without restriction on its disclosure or use by a third party who was itself acting lawfully at the time of such disclosure; or
- (d) it has independently and lawfully developed the same information itself.

5.3 Each party acknowledges that, if it is in breach of its obligations under this clause 5, the other party shall be entitled to equitable relief in addition to any other right available under applicable law.

6. Representations and Warranties

6.1 The Supplier represents and warrants to NextGear on and with respect to each purchase of a Vehicle by an Account Holder as agent of NextGear that:

- (a) it has not taken any action nor have any other steps been taken or legal proceedings started or threatened for its winding up, dissolution or reorganisation or for the appointment of an administrator, receiver, trustee or similar officer of or to it or over all or any part of its asset;
- (b) it is duly authorised to sell or procure the sale of the Vehicle by any owner or relevant principal, whether disclosed or otherwise;
- (c) the Vehicle actually exists and conforms to description in all respects;
- (d) the Vehicle (i) is registered with the UK Driver and Vehicle Licensing Agency (DVLA); (ii) is not an import; (iii) is not a non-runner; (iv) is not an ex-service vehicle; (v) has not been written off by an insurance company or sustained accident damage; (vi) is not stolen; and (vii) is not already subject to a stock funding arrangement;
- (e) the sale of the Vehicle was the product of a valid Sale conducted by the Supplier in the ordinary course of the Supplier's business;
- (f) the Vehicle is available immediately for the Account Holder's actual possession;
- (g) all documents for the Vehicle are valid and under the control of the Supplier on the day of purchase by the Account Holder as the agent of NextGear;
- (h) the Supplier has not requested NextGear to purchase the Vehicle through the agency of the Account Holder on Account for the purpose of indebtedness owed to the Supplier by the Account Holder at the time of such purchase of the Vehicle;
- (i) the Supplier has settled all third party finance on the vehicle and arranged the removal of any finance markers and security markers; and
- (j) the Vehicle is sold with full title guarantee, free from all liens, encumbrances and other security interests.

6.2 Each party represents and warrants to the other that:

- (a) it is a company incorporated in England and Wales, Scotland, Northern Ireland, or the Republic of Ireland (as applicable); and has the right, power and authority to enter into and exercise its rights and perform its obligations under this Agreement;
- (b) it has not taken any action nor have any other steps been taken or legal proceedings started or threatened for its winding up, dissolution or reorganisation or for the appointment of an administrator, receiver, trustee or similar officer of or to it or over all or any part of its assets.

7. Undertakings

7.1 The Supplier undertakes with NextGear:

- (a) to keep all Purchased Vehicles secure and, so far as reasonably practicable, protected against the elements

- pending delivery or release of possession to an Account Holder;
- (b) not to change the specification of any such Purchased Vehicle;
 - (c) to keep all Vehicles adequately and comprehensively insured against all appropriate risks to the satisfaction of NextGear for its full reinstatement value and that it shall not use or allow any Vehicle to be used for any purpose not permitted by the terms or conditions of such insurance nor do or allow to be done any act or thing whereby such insurance may be invalidated in whole or in part;
 - (d) to hold the policy or policies of insurance so far as they relate to Purchased Vehicles and any monies paid or payable thereunder in trust for NextGear;
 - (e) to provide to NextGear on request a copy of its policy or policies of insurance relating to the Vehicles;

8. Audit Rights

The Supplier shall permit NextGear or its authorised representatives at all reasonable times to inspect any Vehicles in its possession, custody or control which are or may become Purchased Vehicles and to inspect and take copies of all books, insurance papers, records and documents relating to such Vehicles. the Supplier shall grant reasonable facilities for such inspections and hereby grants to NextGear an irrevocable licence for it and its authorised representatives to enter during normal working hours upon any premises on or at which such Vehicles and/or such books, insurance papers, records or documents may be situated or stored.

9. Term and Termination

- 9.1 This Agreement begins on the date written at the beginning of it and, subject to earlier termination in accordance with this clause 9, shall remain in force until terminated by either party on not less than thirty (30) days written notice.
- 9.2 Each party may terminate this Agreement at any time immediately on written notice if:
 - (a) the other party has breached any term of this Agreement and either such breach is irremediable or where such breach is capable of remedy it has not remedied such breach within 30 days of such notice; or
 - (b) the other party is unable to perform its obligations in relation to this Agreement by reason of Force Majeure and such Force Majeure Event continues for a continuous period of 14 days or more or for an aggregate period of 14 days or more in any 30 day period.
- 9.3 NextGear may terminate this Agreement at any time immediately on written notice if:
 - (a) the Supplier is subject to an Insolvency Event; or
 - (b) there occurs a material change in the ownership or control of the Supplier from that subsisting at the date of this Agreement or, without prejudice to the generality of the foregoing, the Supplier ceases to be a subsidiary of the company or corporation of which it is a subsidiary at the date of this Agreement and for the purpose of this provision "subsidiary" shall bear the meaning assigned to it by Section 1159 of the Companies Act 2006.
- 9.4 Save as provided below, each party's rights, liabilities and obligations under this Agreement shall cease upon its termination or expiration.
- 9.5 Each party's accrued rights, remedies, obligations and liabilities, and the rights, remedies, obligations and liabilities of each party that expressly or by implication remain in force after the termination or expiration of this Agreement shall survive any termination or expiration.

10. Notices

- 10.1 Each contractual notice or other communication to be made hereunder or pursuant hereto shall be in writing and given by email failing or by pre-paid first class post. Notices given by post shall be sent to the respective registered offices of the parties. Notices shall be deemed to have been given as follows:
 - (a) where given by electronic means, immediately upon transmission (provided no error message is received); and
 - (b) where given by post, two Business Days after the date of mailing.

11. General

- 11.1 The Supplier may not assign its rights or obligations under this Agreement without NextGear's prior written consent.
- 11.2 The Supplier shall not have and shall not hold itself out as having authority on behalf of NextGear other than as expressly provided in and subject to the terms of this Agreement and the Supplier shall not be entitled to sub-delegate its authority hereunder without the prior written consent of NextGear.
- 11.3 No failure, neglect or delay on the part of NextGear to enforce any contractual obligation on the part of the Supplier shall be construed as a waiver of or in any way prejudice the rights of NextGear.
- 11.4 The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 11.5 If any term or provision of this Agreement shall in whole or part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 11.6 Where the Supplier has incurred any liability to NextGear whether under this Agreement or otherwise and whether such liability is liquidated or un-liquidated, NextGear may set off the amount of such liability against any sum that would otherwise be due to the Supplier under this or any other Agreement without prejudice to any other rights NextGear may have.

- 11.7 Time shall be of the essence as regards the times and dates referred to in this Agreement and as regard any times and dates which may be substituted for them by agreement between the parties.
- 11.8 The terms of this Agreement may be varied from time to time by NextGear upon written notice to the Supplier.
- 11.9 The parties each acknowledge that in entering into this Agreement they have not relied on any representation or other assurance except as expressly set out or referred to in this Agreement.
- 11.10 This Agreement constitutes the entire agreement between the parties in relation to its subject matter.
- 11.11 This Agreement may be signed in any number of counterparts and this has the same effect as if the signatories on the counterparts were on a single copy of such document when each counterpart has been signed. Each such signed counterpart shall take effect as an original executed copy of this Agreement.
- 11.12 This Agreement is not intended to give rise to any right which is enforceable by any third party by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 11.13 This Agreement shall be governed by English law and subject to the exclusive jurisdiction of the English courts.