

Terms and Conditions for Sale and Purchase of Pre-Owned / Used Vehicle

Introduction

1. This terms and conditions govern the sale and purchase of Mazda brand of pre-owned / used vehicle by the interested owner ("**Seller**") to interested buyer ("**Buyer**") via the online platform ("**Platform**") provided by Prima Merdu Sdn Bhd ("**Company**").

Service Provided by the Company

2. The Company is an authorised dealer appointed by its distributor to sell the pre-owned Mazda brand of vehicles to the public at large. Subject to the terms and conditions herein, the services provided by the Company herein are as follows:-
 - (a) developing an online domain or sub-domain to cater for the sale and purchase of the Mazda brand of pre-owned / used vehicle;
 - (b) assisting the Seller to sell its Mazda brand of pre-owned / used vehicle ("**Vehicle**") via the platform; and
 - (c) assisting the Seller and Buyer to complete the sale and purchase of the Vehicle.

Initial Inspection of the Vehicle by the Company

- 3.1 To be eligible to sell the Vehicle via the Platform, the Seller shall first submit the Vehicle for inspection at the authorised workshop by Bermaz Motor Trading Sdn Bhd ("**BMTSB**") at the inspection fee of RM100.00 (excluding taxes) per inspection.
- 3.2 After the inspection is performed, BMTSB shall issue a certificate for inspection whereby the Seller will be advised as to the conditions of the Vehicle, the suggested repair to be performed; and the suggested selling price of the Vehicle. The certificate for inspection is only valid for the period of sixty (60) days. After the expiry of sixty (60) days, the Seller shall submit the Vehicle for re-inspection by BMTSB at the same inspection fees as stipulated above, if the Seller is desirous to continue the posting of the Vehicle via the Platform.
- 3.3 The Seller needs not place his Vehicle with the Company after the inspection and may continue to use the Vehicle until there is a potential sale, or such date for surrender of the Vehicle as notified by the Company to the Seller.
- 3.4 The Seller shall be entitled to decide whether to carry out the suggested repair at its own discretion. In any event, the Seller hereby agrees that the Vehicle to be posted on the Platform shall be of a road-worthy condition (even if the suggested repair is not carried out) and the Company has the absolute discretion and right to approve or reject or remove the posting of the Vehicle on the Platform at any point of time.

Usage of the Platform

- 4.1 The Company shall be entitled to decide whether to post the particulars and selling price of the Vehicle on the Platform for the viewing of the public at large. The Seller shall not be given access to perform posting of the Vehicle, the Company shall effect the posting or removing the same on its own. The Buyer and the public at large shall be entitled to view the information and particulars of the Vehicles via the Platform. If the Buyer is desirous to purchase a Vehicle, he shall comply with Clauses 5 as stipulated herein.

- 4.2 The Seller acknowledges that the posting of the Vehicle via the Platform is a service rendered by the Company to the Seller. All information and selling price pertaining to the Vehicle shall be taken as approved and supplied by the Seller and the Seller shall not be held accountable to the condition and selling price of the Vehicle. The selling price of the Vehicle is only valid for thirty (30) days. After the expiry of thirty (30) days, the Company shall be entitled to revise the price of the Vehicle on the Platform based on the internal evaluation by the Company and certificate of inspection carried out earlier. In any event, the Seller shall always carry out the inspection and re-inspection in accordance with clauses 3.1 and 3.2 hereto.
- 4.3 In the event the Seller decides not to continue the posting of the Vehicle via the Platform, the Seller shall provide at least seven (7) days notice for the Company to remove the Vehicle from the Platform, failing which the Seller shall indemnify the Company of all losses it may incur as a result of the continuous posting of the Vehicle via the Platform.
- 4.4 For the avoidance of doubt, the Company is not involved in the sale of the Vehicle. The Company is merely providing the Platform to cater for the sale and purchase of the Vehicle. The Vehicle shall be sold on an “as is where is” condition and the Company shall not be responsible or be taken to make any representation of the Vehicle on behalf of the Seller. The sale and purchase of the Vehicle shall be performed on an “willing Buyer-willing Seller” basis.

Pre-sale Conditions

- 5.1 After viewing the Vehicle as posted on the Platform, if the Buyer is desirous of purchasing the Vehicle, the Buyer shall contact the Company via the Platform and the Company will attend to the queries of the Buyer accordingly.
- 5.2 In order to confirm a purchase, the Buyer shall submit to the Company the followings:-
- (a) services fees (“**Service Fee**”) of RM1,500.00 (excluding taxes) address to the Company for usage of the Platform;
 - (b) this Terms and Conditions as duly signed by the Seller and Buyer (the Company will arrange for the execution by the Seller);
 - (c) the letter as enclosed together with this Terms and Conditions and marked as **Annexure A** hereto; and
 - (d) any documents as required by the Company to be provided by the Buyer.
- 5.3 In addition to the payment / documents as stated in Clause 5.2 above, the Buyer is also required to confirm with the Company whether he intends to effect the purchase of the Vehicle by way of loan or by cash, and shall submit to the Company the initial deposit (“**Deposit**”) in the sum as advised by the Company in the following manner:-
- 5.3.1 if the Buyer intends to effect the purchase by way of loan, it shall prepare the Deposit by way of banker’s cheque addressed to the Buyer’s bank, and the Buyer shall procure the Buyer’s bank to disburse the full purchase price of the Vehicle to the Seller (in the case of no hire-purchase or hire-purchase has been settled) OR to the Seller’s bank (to settle the hire-purchase loan) after Clause 7.1(b) has been duly fulfilled; or
- 5.3.2 if the Buyer intends to effect the purchase by way of cash, it shall prepare the Deposit by way of banker’s cheque addressed to the Seller (if the Seller’ hire-purchase is fully settled) and the balance purchase price shall be settled in accordance with clause 7.1(a). The Company shall safekeep the Deposit and only release to the Seller after Clause 6.4 has been duly fulfilled.

- 5.4 If the sale and purchase of the Vehicle cannot be performed due to no fault of the Buyer, the Company shall refund the Service Fee (after deducting taxes and all necessary expenses) and Deposit (if collected) to the Buyer.
- 5.5 If the Buyer defaults in the purchase of the Vehicle after paying the Service Fees and Deposit (or cancel the banker's cheque) due to no fault of the Company or the Seller, the Service Fee shall be forfeited by the Company and that the Buyer shall be responsible to liaise with Buyer on the refund of the Deposit (if collected by the Seller). The Company shall not be held accountable if the Seller refuses to refund the Deposit and the Buyer shall indemnify the Company on all losses and expenses it may incur as a result of the failure or default of the Buyer to complete the purchase of the Vehicle.

Surrender of Vehicle by the Seller

- 6.1 After the Company having received the documents and payment as stipulated in Clauses 5.2 and 5.3 hereto, the Company will notify the Seller and the Seller shall comply with the timeline to surrender and place his Vehicle with the Company. The Seller shall not be entitled to refuse the sale of the Vehicle at this point of time failing which the Seller shall indemnify the Company and Buyer for all losses and expenses incurred as a result of this act.
- 6.2 The Company shall then assess the conditions of the Vehicle whether it is still in the road-worthy condition. If the Vehicle is no longer in the road-worthy condition, the Company shall be entitled to return the Vehicle to the Seller, and shall return the Service Fees and Deposit to the Buyer in the same manner as stipulated in Clause 5.4 hereto. If the Company is of the opinion that the Vehicle is still in the road-worthy condition but do not commensurate with the selling price, the Company shall be entitled (but not obligated) to adjust the selling price accordingly and shall inform the Seller and Buyer of the same.
- 6.3 Subject to the loan has been approved by the Bank (for loan Buyer) and/or the Buyer has submitted Deposit to the Company in accordance with Clause 5.3 hereto (for loan and cash Buyer), and further subject to the Company is satisfied that the Vehicle is still in the road-worthy condition, the Company shall assist the Seller and Buyer to surrender the Vehicle for Puspakom's inspection. The Company may appoint a runner to surrender the Vehicle to Puspakom and the Buyer shall be responsible to pay the runner's fees and the inspection fees as imposed by Puspakom.
- 6.4 The Company shall only release the Deposit to the Seller (for cash Buyer) or the Bank (for loan Buyer), as the case may be, after the Vehicle has passed the test and inspection as imposed by Puspakom. The Seller shall then inform the Company within three (3) working days whether the Deposit in the form of banker's cheque has been cleared off. In the event of non-confirmation, the Company shall be entitled to treat it has been cleared and continue with the registration of the Vehicle in favour of the Buyer and the Seller shall not hold the Company accountable to the same.
- 6.5 In the event the Vehicle does not pass the test and inspection by Puspakom, the Company shall refund the Service Fee and Deposit in accordance with Clause 5.4 hereto. The Seller and Buyer hereby acknowledge that Puspakom is an independent corporation which has no relation with the Company and the Company shall not be held responsible in the event the Vehicle does not pass the test and inspection as carried out by Puspakom.

Registration of Ownership & Collection of Vehicle by Buyer

7.1 The Company shall be entitled to assist the Seller and Buyer to perform the change of ownership of the Vehicle with the Road Transport Department (“JPJ”) in the following manner:-

- (a) if the Buyer is a cash Buyer, the Buyer shall submit to the Company the balance purchase price by way of banker’s cheque addressed to the Seller. The Seller and Buyer shall attend to the JPJ to perform the change of the ownership of the Vehicle in favour of the Buyer. After the Vehicle is duly registered in favour of the Buyer, the banker’s cheque for the balance purchase price will be released by the Company to the Seller and the Seller shall confirm within three (3) working days whether the banker’s cheque has been cleared. The Company shall be entitled to release the Vehicle to the Buyer after having received the confirmation from the Seller. If the Seller did not inform the Company as to the status of the banker’s cheque within the stipulated three (3) working days, the Company shall be entitled to treat the Seller as having duly received the balance purchase price and release the Vehicle to the Buyer without any liability attributable to the Company; or
- (b) if the buyer is a loan Buyer, the Buyer and Seller shall attend to the JPJ to perform the change of ownership of the Vehicle in favour of the Buyer. After the Vehicle is duly registered in favour of the Buyer, the Buyer may collect the Vehicle from the Company provided that the Buyer shall acknowledge receipt of the Vehicle in the manner as stated in **Annexure B** hereto. Furthermore, the Buyer (or with the assistance of the Company) shall forward the Vehicle Original Certificate, Road Tax, Insurance Policy to the bank. The Buyer shall comply with all the hire-purchase conditions as may be imposed by the bank so that the bank may release payment of the balance purchase price to the Seller. For the avoidance of doubt, the Company shall assist but shall not be held accountable to the Seller in the event the bank does not release the balance purchase price to the Seller.

7.2 For the avoidance of doubt, before the change of ownership is effected in favour of the Buyer, the Seller shall submit to the Company the service fee of RM600.00 (excluding tax) (also “**Service Fee**”) for usage of the Platform to effect the sale of the Vehicle. The Service Fee shall be non-refundable to the Seller at all material time.

Insurance

8. Unless as otherwise determined by the bank, the Buyer (be it loan Buyer or cash Buyer) shall always procure the insurance coverage and renew the future insurance coverage of the Vehicle with the insurance panel as suggested by the Company.

Termination of this Terms and Conditions

9.1 The Company shall be entitled to terminate this Terms and Conditions if:-

- (a) either the Buyer or the Seller is in breach of any of the terms herein stated; or
- (b) either the Buyer or Seller is declared bankrupt or wound up or a receiver or manager is appointed in respect of his assets, or a receiving order is made against him or he enters into any composition or arrangement with creditors generally, or he is unable to pay his debt as they fall due; or
- (c) the Buyer refuses to effect the purchase of the Vehicle by cancelling the banker’s cheque drawn in favour of the Seller for Deposit or balance purchase price. The Buyer

shall indemnify the Company and the Seller for all losses and expenses incurred or may be incurred as a result of this breach; or

- (d) the Seller refuses to effect the sale of the Vehicle in accordance with Clause 6.1 hereto and the Seller shall indemnify the Company and the Buyer for all losses and expenses incurred or may be incurred as a result of this breach.

9.2 In the event the Terms and Conditions is terminated, the Seller and the Buyer may liaise with each other to settle the matter amicably, or exercise its recourse against the other party in accordance with this Terms and Conditions. The Company may assist but shall not be compelled to participate or take action against defaulting party. For the avoidance of doubt, the Company's interest shall not be prejudiced by this clause of termination and the Buyer and Seller shall continue to indemnify and keep the Company indemnified for all losses and expenses it may incur as a result of providing the service of the Platform herein.

Governing Law

10. This Terms and Conditions shall be construed and governed in accordance with the laws of Malaysia and each party submits to the exclusive jurisdiction of the Malaysian Courts.

Notice

11.1 Any notice to be given by any party to this Terms and Conditions shall be in writing and shall be deemed to be duly served if delivered personally or sent by facsimile or by prepaid registered post to the addressee at the address and facsimile number of the addressee set out hereinabove or any address and facsimile number as shall be advised from time to time in writing.

11.2 Any notice sent by facsimile shall be deemed served when dispatched and any notice served by prepaid registered post shall be deemed served within 48 hours after the normal course of posting. In proving the service of any notice it will be sufficient to prove in the case of a letter that such letter was properly stamped addressed and placed in the post or delivered or left at the current address if delivered personally and in the case of a facsimile that such facsimile transmission was duly dispatched (with confirmed answerback) to the facsimile number of the addressee given above or subsequently notified for the purposes of this Terms and Conditions.

Severability

12. If any term condition stipulation provision covenant or undertaking contained herein shall be illegal invalid void or unenforceable under the laws for the time being in force and from time to time, such term condition stipulation provision covenant or undertaking shall automatically be deemed expunged from this Terms and Conditions and this Terms and Conditions shall be construed and remain in force as if such illegal invalid void or unenforceable term condition stipulation provision covenant or undertaking never existed.

Non-Partnership Nor Joint Venture

13. Nothing herein contained shall constitute nor be construed as a partnership between or joint venture by the parties hereto or constitute any party being the agent of any other party. No party shall hold itself out contrary to the terms of this section and no party shall be come liable by any representation, act or omission of the other contrary to the Terms and Conditions herein. This Terms and Conditions is not for the benefit of any third party and shall not be deemed to provide any right or remedy to any such party whether referred to herein or not.

Intellectual Property Rights

14. All intellectual properties such as patents, trademarks of the Company, or the patents, trademarks of the business or product of the Company, belong to the exclusive property of the Company and neither the Seller nor Buyer is not entitled to acquire, assume, use, or register the intellectual properties for any reason whatsoever.

General

15. The parties further agrees to be bound by the following:-
- (a) Time wherever mentioned herein shall be the essence of this Terms and Conditions.
 - (b) The Annexures herein shall form an integral part of this Terms and Conditions and shall have effect and continue to be binding on the parties herein.
 - (c) The acceptance of any sum by the Company or any time or indulgence given by the Company shall not constitute or be deemed to constitute or operate as a waiver by the Company of any right to proceed against the Seller or Buyer in respect of any breach or non-observance of the obligations, covenants, or stipulations herein contained or to prejudice its rights hereunder in any manner whatsoever.
 - (d) This Terms and Conditions shall be binding on the parties hereto their/his lawful assign, successors-in-title, personal representatives, administrator, executors and trustees.
 - (e) In this Terms and Conditions unless there is something in the subject or context inconsistent with such construction or unless it is otherwise express provided: -
 - i. the expression "the Company" and "the Seller" and "the Buyer" shall include their respective successors personal representatives and assigns and where two or more persons are included in any of the aforesaid expression this Terms and Conditions binds such persons jointly and severally;
 - ii. words importing the masculine gender only shall include the feminine and neuter genders;
 - iii. words importing the singular number only shall include the plural and vice versa; and
 - iv. words applicable to normal persons shall include any body or persons or firm or partnership or corporate or unincorporated.

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