

CAP MOTOR RESEARCH LIMITED - TERMS AND CONDITIONS

1 Definitions

1.1 In these terms and conditions, the following words and expressions shall have the following meanings:

"CAP" means CAP Motor Research Limited, of Capitol House, Bond Court, Leeds LS1 5EZ;

"CAP Data" means the vehicle valuation and/or other vehicle information (including vehicles codes and descriptions) supplied as part of any CAP Product in the medium or media specified in the Order;

"CAP Products" means the vehicle valuation and other vehicle information products as specified in the Order, consisting in each case of CAP Data and CAP Software. CAP Products include any Updates provided from time to time;

"CAP Services" means the CAP Consult services, if any, as specified in the Order;

"CAP Software" means in the case of any CAP Product supplied in digital media, the software applications supplied with the CAP Data forming part of that CAP Product;

"Contract" means the contract between CAP and You for the provision of CAP Products and (if applicable) CAP Services, and governed by these terms and conditions;

"Licensed User" means, in respect of each CAP Product, each person having licensed access to such product, not to exceed (at any one time) the number licensed under the Order;

"Order" means the order placed by You for the supply of CAP Products and (if applicable) CAP Services, as set out on the completed Subscription Order Form (and whether a new or a renewal order);

"Subscription" means the fee payable by You in respect of the CAP Products and (if applicable) the CAP Services, as set out in the Order;

"Term" means the period of one year commencing on the date of this Contract or such other period as is stated in the Order;

"Update" means an updated version of any CAP Product from time to time issued by CAP;

"User Instructions" means the user instructions relating to the CAP Products, provided to You by CAP; and

"You" means the customer named on the Order, and "Your" shall be construed accordingly.

2 This Contract

A Contract between CAP and You shall come into force when You return to CAP the Order, prepared by CAP and signed on Your behalf. These terms and conditions shall govern the Contract to the exclusion of all other terms and conditions (including any terms or conditions which You purport to apply under any purchase order or other document).

3 Supply and licence

3.1 In consideration of and subject (a) to payment of the Subscription and (b) the licence restrictions set out at 4 below, CAP shall provide to You:

- for the Term, the CAP Products; and
- (if agreed by You and CAP) the CAP Services

and licenses You to use the CAP Products for Your normal internal business purposes.

3.2 CAP will use its reasonable endeavours to provide Updates at the frequency specified in the Order.

3.3 Time of delivery of the CAP Products and any Updates, and of provision (if applicable) of the CAP Services, shall not be of the essence.

3.4 Risk in the physical media (if any) on which the CAP Products are recorded shall pass to You on delivery.

3.5 Extension of licence for website usage. If You and CAP have agreed on the Order that any CAP Product shall be licensed to You for "web use", the licence granted at Condition 3.1 shall be extended to permit you to allow visitors to Your website identified on the Order to access the CAP Product in question, on the following conditions:

- use by Your website visitors shall be subject at all times to contractually binding user terms, such terms to include terms which (i) restrict visitors to use for personal, non-commercial purposes; (ii) prohibit visitors from mass-extracting or re-utilising information from the website; (iii) include a prominent copyright/database right notice on each page relating to any CAP Data product in the following form: "CAP DATA AND SOFTWARE IS PROTECTED BY COPYRIGHT AND DATABASE RIGHT. ALL RIGHTS RESERVED"; and (iv) ensure that CAP can enforce directly any breach of any such terms; and
- Your website shall at all times be configured in such a way as to prevent so far as reasonably possible breach by visitors of the prohibition at (a)(ii) above;
- any such use shall at all times be subject to the User Instructions;
- any such service offered to Your website visitors shall be accompanied, if required by CAP, by the CAP name and logo in a prominent manner and place, as reasonably required by CAP.

4 Licence restrictions

4.1 Except to the extent otherwise agreed in writing by CAP, You:

- agree and acknowledge that, except (if applicable) to the limited extent permitted by Condition 3.5, the licence granted at Condition 3 is non-exclusive, personal and non-transferable, and may not in any circumstances be sub-licensed to any third party or made use of by any agent on Your behalf;
- shall use the CAP Products at all times strictly in accordance with the User Instructions;
- shall keep the CAP Products (in whatever media they are supplied) and User Instructions secure and confidential in accordance with condition 5 below and effect such security measures as may reasonably be necessary

to keep the CAP Products and (if applicable) the product of the CAP Services secure and confidential. You shall not in any circumstances resell the CAP Products or make them available to any third party;

- shall not in any circumstances allow use of the CAP Products by or on behalf of any third party, except (if applicable) to the limited extent permitted by Condition 3.5; and
 - shall always use the CAP Products in the form in which they are provided to You by CAP. You acknowledge that the CAP Products constitute the intellectual property of CAP and, unless expressly allowed by CAP, You shall not allow any third party, or agent on your behalf, to match or merge or otherwise use the CAP Products or any part thereof with any third party codes, descriptions or data;
- 4.2 In relation to any CAP Product provided by CAP in digital media, and except to the extent otherwise agreed in writing by CAP, You will in addition:
- ensure the CAP Product is used, at all times, only by the permitted number of Licensed Users;
 - except as permitted by law, not alter, modify, adapt or translate the whole or any part of the CAP Product in any way whatsoever; and
 - be responsible for configuring Your own systems appropriately, and for installing the CAP Product in accordance with the User Instructions.

4.3 All rights not expressly granted to You under this Contract are reserved to CAP. You will permit CAP to take such steps as CAP reasonably considers appropriate to monitor compliance with the terms of this Contract, and shall co-operate fully with CAP in relation to such monitoring.

5 Confidentiality

5.1 In addition to Your obligations under Condition 4, You shall keep the CAP Data and the CAP Software and any other confidential information disclosed to You by CAP strictly confidential. Subject only to such rights as may (where applicable) be granted to You under Condition 3.5, You shall only permit access to the CAP Data and/or CAP Software and such confidential information to those of your employees who need to know the same in relation to Your permitted use of the CAP Data and/or CAP Software under this Contract, and shall ensure that all such persons are made fully aware of the confidentiality of the CAP Data and/or CAP Software and such confidential information.

5.2 Condition 5.1 shall not apply to information which was lawfully known to You prior to disclosure by CAP or to information which is in the public domain through no fault of Yours.

5.3 You hereby indemnify CAP against any and all losses, damages, costs and expenses incurred or suffered by CAP as a result of any unauthorised use or disclosure of the CAP Data or the CAP Software by You or by any party gaining access thereto under licence from You.

6 Intellectual property

6.1 All intellectual property rights (including without limitation copyright and database right) in the CAP Data and the CAP Software or arising as a result of provision of the CAP Services are and shall remain at all times the property of CAP.

6.2 You shall promptly notify CAP of (a) any unlicensed use of CAP's intellectual property rights (whether by Your employees, agents or any third party) which comes to Your attention; and (b) any allegation by any person that the use of the CAP Data and/or the CAP Software breaches the rights of any third party.

7 Subscription

7.1 You will pay the Subscription to CAP. The Subscription is:

- unless otherwise agreed in writing by CAP, payable annually in advance not later than 30 days after the date of CAP's invoice, issued not earlier than the date of this Contract; and
- exclusive of VAT, which shall to the extent applicable be payable in addition.

7.2 If this Contract relates in whole or in part to CAP Products which were previously provided to You by CAP in the period immediately before this Contract, and You did not pay any renewal subscription charge within 30 days of an invoice issued by CAP not earlier than expiry of the contract under which such renewal subscription CAP Products were previously supplied, CAP shall be entitled to treat such renewal subscription charge as an overdue sum and to charge interest on such renewal subscription charge in accordance with Condition 7.3.

7.3 Without prejudice to CAP's other rights (including the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998), interest shall be payable by You on any sum overdue from the due date for payment (whether under Condition 7.1 (a) or Condition 7.2) at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis, until payment is made.

8 Liability

8.1 Although CAP endeavours to use reasonable care at all times in generating, compiling and publishing the CAP Products and in providing the CAP Services, the liability of CAP for any errors or omissions therein or any breach of this Contract for whatever reason is limited as set out in this condition 8.

8.2 CAP shall use reasonable endeavours to notify You of any material errors or faults in the CAP Products or the produce of the CAP Services which may come to CAP's attention, and to rectify the same (whether by provision of replacement CAP Products or otherwise). You shall promptly install any such replacement CAP Products and/or take such action as CAP may reasonably require in relation to any such error or fault.

8.3 You accept that estimates of vehicle values, running costs and other data, contained within the CAP Products, are calculated by reference to third party-provided data or market intelligence information which may be inaccurate. Furthermore, such estimates and other data may be affected by circumstances that it may not have been possible to take into account in the preparation of the said estimates and other data, and such preparation cannot be guaranteed to be error-free. Accordingly, no liability can be accepted for any loss arising as a result of any reliance placed on estimates, data or information provided under this Contract, whether due to inaccuracy contained in third party data, market intelligence information or CAP Data.

8.4 Notwithstanding anything else contained in this Agreement, CAP shall not be liable to You for (i) loss of profits or contracts or goodwill or statutory penalties or indirect or consequential loss whether arising from negligence, breach of contract or howsoever caused; (ii) any loss or damage arising from Your failure to ensure software compatibility with Your hardware and other software or to carry out appropriate virus checks; (iii) third party claims of any kind; or (iv) any loss or damage arising from Your failure to use the CAP Data and/or the CAP Software strictly in accordance with the terms of this Contract and the instructions set out in the User Instructions. All implied warranties, terms, conditions and

obligations are hereby excluded to the fullest extent permitted by law.

8.5 If notwithstanding the provisions of Conditions 8.3 and 8.4 CAP is held to be liable to You for any reason, CAP's aggregate liability to You under this Contract (whether arising from negligence, breach of contract or otherwise) shall not (subject to Condition 8.5) exceed the Subscription.

8.6 CAP does not exclude liability for death or personal injury to the extent that the same arises as a result of the negligence of CAP, its employees, agents or authorised representatives.

8.7 You agree that You are best placed to evaluate, and insure against, any loss you may suffer in connection with the CAP Products or the CAP Services and that the terms of this Condition 8 represent a fair and reasonable apportionment of risk having regard to the services to be provided by CAP hereunder and the price thereof.

9 Term and termination

9.1 This Contract shall commence on the date prescribed by Condition 2 and shall, unless otherwise agreed in writing by CAP or terminated under condition 9.2 or 9.3, continue in force for the Term. The Contract may not be terminated before expiry of the Term except in accordance with its terms, and the Subscription is not refundable in any circumstances. It shall following expiry be subject to renewal on terms to be agreed, but subject to the provisions of Condition 7.2.

9.2 CAP may terminate (or, at its discretion and without prejudice to its other rights under this Contract, suspend performance of its obligations under) this Contract immediately on written notice in the event of any sum due from You being overdue for more than 14 days.

9.3 Either party may terminate this Contract immediately by notice in writing if:

- the other has committed a material or persistent breach of this Contract and, in the case of a breach capable of remedy, has failed to remedy such breach within 21 days of a written notice requiring it to do so; or
- the other is unable to pay its debts as they fall due or is the subject of a bankruptcy petition or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver, manager, administrator or administrative receiver appointed of its assets or ceases for any reason to carry on business.

9.4 Termination of this Contract, however arising, shall be without prejudice to (a) the rights and obligations of CAP and You accrued prior to termination; and (b) the operation of conditions which expressly or impliedly have effect after termination.

9.5 On termination of this Contract, however arising, You shall immediately destroy all copies of the CAP Products (including, in the case of CAP Products maintained on digital media, the erasure of them from those media) in Your possession or control and shall promptly certify such destruction to CAP in writing.

10 Variation

10.1 Subject to Condition 10.2, this Contract may not be varied except where a change is agreed by You and CAP in writing. If You wish to alter the CAP Products licensed to You under this Contract, CAP may (at its discretion and provided the aggregate subscription cost of the proposed altered package of Products exceeds the then current package) agree to such alteration, subject to payment of a fee reflecting the increased subscription cost over the remaining period of the Contract and an administration fee (plus VAT in each case).

10.2 CAP reserves the right to change the format of the CAP Products from time to time, provided that it will use all reasonable endeavours to ensure that any such change shall not substantially detract from the functionality of the CAP Products.

11 General

11.1 Assignment. You shall not, without the prior written consent of CAP, assign, sub-license, sub-contract or otherwise transfer to any third party any of Your rights or obligations under this Contract. CAP shall be entitled to assign its rights and/or obligations under this Contract.

11.2 Third party rights. CAP and You agree that no term of this Contract will be enforceable by any third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

11.3 Force majeure. Neither party shall be liable to the other in respect of any delay or breach of this Contract if and to the extent that such delay or breach is caused by circumstances beyond its reasonable control, (including, for example, failure of any electronic link by which any CAP Data or CAP Software is delivered to You) provided that the party so affected shall promptly notify the other, and that the other party shall be entitled to terminate the Contract if such circumstances persist for a continuous period in excess of four weeks.

11.4 Severance. In the event that any provision (including any distinct sub-condition) of this Contract is held to be illegal, invalid, void or unenforceable, it shall be severed from the remaining provisions of this Contract which shall continue in full force and effect.

11.5 Waiver. Failure or neglect by CAP or You to enforce any provision of this Contract shall not be construed nor shall be deemed to be a waiver of that party's rights under this Contract and shall not prejudice that party's rights to take subsequent action.

11.6 Entire agreement, prior representations and variations. This Contract contains the entire agreement between CAP and You in relation to the supply by CAP to You of the CAP Products and the CAP Services. It supersedes any prior agreements, representations, arrangements or undertakings in relation to such subject matter, provided that nothing in this condition shall exclude or limit liability for fraudulent misrepresentation. The terms of this Contract may only be varied by written agreement.

11.7 Law. This Contract shall be governed by and interpreted in accordance with English law and CAP and You submit to the exclusive jurisdiction of the English courts.

11.8 Headings. The headings of the conditions and sub-conditions of this Contract are used for convenience only and shall not affect the interpretation hereof.

CAP Motor Research Limited, Capitol House, Bond Court, Leeds LS1 5ER
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