

Website Application Terms and Conditions of Use

1.0. Definitions

In these terms and conditions:

Account means the entity, dealership group or dealer responsible for the payment of the services provided by Formula Vehicle Management Pty. Ltd.

Account holder means the person who has authorisation over the account and dealership, who has permission to enter into a legal agreement with drivible, can create or remove users and can authorise payment.

Agreement means this agreement consisting of:

- (a) the Subscription Details;
- (b) these Terms and Conditions; and

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Authority means any government, semi governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

Content means all photos, videos, documents, instructions, specifications, codes, requirements, graphs, data, samples and other information and materials developed by drivible in relation to the performance of the Services, including the Platform and its content.

Claim includes any claim, including a notice, demand, debt, account, action, expense, damage, loss, cost, lien, liability, proceeding, litigation (including legal costs), investigation or judgment of any nature, whether known or unknown, whether brought by the Dealer or a third party.

Consumer Guarantee means a consumer guarantee as it applies to supplies made under this agreement, as set out in under Part 3-2, Division 1 of the Australian Consumer Law.

Credit Card means any Australian Financial issued credit card being either Mastercard, Visa or American Express.

Dealer means the organisation, account holder or their employees or **users** who downloads or otherwise accesses the Platform and agrees to be bound by these Terms and Conditions or is acting on behalf of an organisation.

Dealer Content means all Inventory Details, photos, videos, documents, instructions, specifications, codes, requirements, samples, pricing, user information, data and other information and materials uploaded by the Dealer or it's users to the Platform.

Dealers' Licence means a registered Approval in an Australian state or territory allowing the dealer to trade in motor vehicles, and specifically second-hand motor vehicles.

Drivable is the trading name of Formula Vehicle Management Pty. Ltd. and can be used interchangeably.

Event of Default means an event of default described in clause 9.1.

Fees means the fees set out in the Subscription Details including but not limited to monthly subscription fees and/or transactional fees, payments.

GST has the meaning defined in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Insolvency Event means one or more of the following events:

- (a) the Dealer is unable to pay their debts as and when they fall due;
- (b) an application is made, or a resolution is passed, to wind up the Dealer;
- (c) a controller or administrator is appointed in respect of the Dealer or any of its assets;
- (d) the Dealer commits any act of bankruptcy within the meaning of the Bankruptcy Act 1966 (Cth); or
- (e) the Dealer dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason.

Intellectual Property means any and all items in which Intellectual Property Rights subsist, existing now or in the future and whether or not registered or registrable in connection with the Dealer Content, User Content or drivable Content.

Intellectual Property Rights means all current and future registered and unregistered rights and all renewals and extension of those rights in respect of copyright, Marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Loss means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.

Monthly Fee means the monthly fee or subscription as set out in the Payment section.

Password is either the default password you are issued when your account or users are created or the password you manually create to access the website of these services.

Privacy Act means the *Privacy Act 1998 (Cth)*.

Privacy Policy means the drivable privacy policy available at

Services means the provision of the Platform to the Dealer during the Term, subject to these Terms and Conditions.

Taxes means any tax, levy, charge, impost, rates, duty, fee, deduction, compulsory loan or withholding tax which is (or is able to be) assessed, levied, imposed or collected by or payable to any Authority and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed.

Term means the term described in the Subscription Details or if none is specified, 1 month, commencing on the date that the Dealer registration has been approved.

User means the individual employee of the dealership and/or account holder who possesses a login and uses the product.

User Content means all Inventory Details, photos, videos, documents, instructions, specifications, codes, data, requirements, samples, pricing and other information and materials uploaded by a Third Party User to the Platform.

Website means the web address <https://www.drivable.com.au> and the application web address <https://admin.drivable.com.au>

About the Website and it's use

1. Welcome to drivable (the 'Website'). The Website services include; test drive, loan cars & drive cars, vehicle appraisals, document storage, sales logs, surveys, and other products (the 'Services').
2. The Website is operated by Formula Vehicle Management Pty Ltd PTY. LTD. (ACN 629 071 647) . Access to and use of the Website, or any of its associated Products or Services, is provided by Formula Vehicle Management Pty Ltd. Please read these terms and conditions (the 'Terms') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
3. Formula Vehicle Management Pty Ltd reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Formula Vehicle Management Pty Ltd updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

4. Acceptance of the Terms

You accept the Terms by remaining on and using the Website. You may also be asked to accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Formula Vehicle Management Pty Ltd in the user interface.

5. Registration to use the Services

- 5.1 In order to access the Services, you must first register for an account through the Website (the '**Account**').
- 5.2 As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself and your employees (such as identification or contact details), including:

- (a) Name

- (b) Email address
- (c) Mobile phone
- (d) Mailing address
- (e) Telephone number
- (f) Password
- (g) drivers licence
- (h) website address
- (i) social media profile

5.3 You warrant that any information you give to Formula Vehicle Management Pty Ltd in the course of completing the registration process will always be accurate, correct and up to date.

5.4 Once you have completed the registration process, you and your employees will be a registered user of the Website ('**User**') and agree to be bound by the Terms.

5.5 You may not use the Services and may not accept the Terms if:

- (a) you are not of legal age to form a binding contract with Formula Vehicle Management Pty Ltd; or
- (b) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.
- (c) You are not authorised to act on behalf of the dealership or you are not the account holder.
- (d) The business does not hold a dealer's licence and does not have an Australian Business Number.

6 Your obligations as a User

6.1 As a User, you agree to comply with the following:

- a) you will use the Services only for purposes that are permitted by:
- b) the Terms; and
- c) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;

6.2 you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;

6.3 any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Formula Vehicle Management Pty Ltd of any unauthorised use of your password or email address or any breach of security of which you have become aware;

- 6.4 access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of Formula Vehicle Management Pty Ltd
- 6.5 you will not use the Services or the Website in connection with any commercial endeavours except those that are specifically endorsed or approved by Formula Vehicle Management Pty Ltd;
- 6.6 you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of clients by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;
- 6.7 you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice and may result in termination of the Services. Appropriate legal action will be taken by Formula Vehicle Management Pty Ltd for any illegal or unauthorised use of the Website; and
- 6.8 you acknowledge and agree that any automated use of the Website or its Services is prohibited.

7 Payment

- 7.1 Where the option is given to you, you may make payment for the Services ('the Services Fee') by way of:
 - (a) Credit Card Payment ('Credit Card')
 - (b) By agreement, a direct deposit via BSB and Account number.
- 7.2 The payment to drivible will be as per the 'Pricing' page of the drivible website at time of signup or as notified to you by giving you 30 days notice.
- 7.3 The first user of an account will be free of charge, however subsequent users created will be charged as per clause 8.2 by calculating the total number of users at the end of a monthly billing cycle.
- 7.4 All payments made in the course of your use of the Services are made using a credit card payment. In using the Website, the Services or when making any payment in relation to your use of the Services, you warrant that you have read, understood and agree to be bound by the terms of use which are available on the website.
- 7.5 You acknowledge and agree that where a request for the payment of the Services Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Services Fee.
- 7.6 You agree and acknowledge that Formula Vehicle Management Pty Ltd can vary the Services Fee at any time by giving 30 days notice.

8 Refund Policy

Formula Vehicle Management Pty Ltd will only provide you with a refund of the Services Fee in the event they are unable to continue to provide the Services or if the manager of Formula Vehicle Management Pty Ltd makes a decision, at its absolute discretion, that it is reasonable to do so under the circumstances (the 'Refund').

9 Copyright and Intellectual Property

- 9.1 The Website, the Services and all of the related products of Formula Vehicle Management Pty Ltd are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website, code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by Formula Vehicle Management Pty Ltd or its contributors.
- 9.2 All trademarks, service marks and trade names are owned, registered and/or licensed by Formula Vehicle Management Pty Ltd, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a User to:
- (a) use the Website pursuant to the Terms;
 - (b) copy and store the Website and the material contained in the Website in your device's cache memory; and
 - (c) print pages from the Website for your own personal and non-commercial use.

Formula Vehicle Management Pty Ltd does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by Formula Vehicle Management Pty Ltd.

- 9.3 Formula Vehicle Management Pty Ltd retains all rights, title and interest in and to the Website and all related Services. Nothing you do on or in relation to the Website will transfer any:
- a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
 - b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
 - c) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process), to you.
- 9.4 You may not, without the prior written permission of Formula Vehicle Management Pty Ltd and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.
- 9.5 You may not, reverse engineer, access, copy or distribute the source code for your own, business or commercial use.
- 9.6 You may not, use parts of the application or create derivatives of the application for your own, business or commercial use.

10 Privacy, data and content

- 10.1 Formula Vehicle Management Pty Ltd takes your privacy and customers privacy seriously and any information provided through your use of the Website and/or Services are subject to Formula Vehicle Management Pty Ltd's Privacy Policy, which is available on the drivable Website.

- (a) Your clients data obtained through drivible services will not be sold or distributed by us, but will be used in aggregate to enhance the quality and range of services for users and clients.
- (b) All clients obtained by the user will also be considered a client of drivible. However, all client details collected by the dealer will be considered property of the dealer.
- (c) Customers may be marketed to by drivible to promote other services it may offer.
- (d) Data obtained by drivible may be used in aggregate to measure dealer KPI's and may be packaged into products for the user or clients. These products will be considered the property of drivible.
- (e) Aggregated data collected will be deemed to be the property of Formula Vehicle Management Pty. Ltd. and will be considered the intellectual property of drivible.

11 General Disclaimer

- 11.1 Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 11.2 Subject to this clause, and to the extent permitted by law:
 - (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
 - (b) Formula Vehicle Management Pty Ltd will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 11.3 Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Formula Vehicle Management Pty Ltd make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of Formula Vehicle Management Pty Ltd) referred to on the Website, includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
 - (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;

- (b) the accuracy, suitability or currency of any information on the Website, the Services, or any of its Services related products (including third party material and advertisements on the Website);
- (c) costs incurred as a result of you using the Website, the Services or any of the products of Formula Vehicle Management Pty Ltd; and
- (d) the Services or operation in respect to links which are provided for your convenience.

12 Limitation of liability

- 12.1 Formula Vehicle Management Pty Ltd's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.
- 12.2 You expressly understand and agree that Formula Vehicle Management Pty Ltd, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

13 Termination of Contract

- 13.1 The Terms will continue to apply until terminated by either you or by Formula Vehicle Management Pty Ltd as set out below.
- 13.2 If you want to terminate the Terms, you may do so:
 - (a) you may terminate your account with Formula Vehicle Management Pty Ltd with no notice, however you agree to forfeit all amounts or monies paid in advance (whichever is greater); and
 - (b) closing your accounts for all of the services which you use, where Formula Vehicle Management Pty Ltd has made this option available to you.
 - (e) you agree to the access to all data that has been entered onto the site.
- 13.3 Formula Vehicle Management Pty Ltd may at any time, terminate the Terms with you if:
 - (a) you have breached any provision of the Terms or intend to breach any provision;
 - (b) Formula Vehicle Management Pty Ltd is required to do so by law;
 - (c) the provision of the Services to you by Formula Vehicle Management Pty Ltd is, in the opinion of Formula Vehicle Management Pty Ltd, no longer commercially viable.
- 13.4 Subject to local applicable laws, Formula Vehicle Management Pty Ltd reserves the right to discontinue or cancel your usership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if

your conduct impacts Formula Vehicle Management Pty Ltd's name or reputation or violates the rights of those of another party.

14 Indemnity

- 14.1 You agree to indemnify Formula Vehicle Management Pty Ltd, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with Your Content;
 - (b) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or
 - (c) any breach of the Terms.

15 Dispute Resolution

- 15.1 **Compulsory:** If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).
- 15.2 **Notice:** A party to the Terms claiming a dispute ('Dispute') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.
- 15.3 **Resolution:** On receipt of that notice ('Notice') by that other party, the parties to the Terms ('Parties') must:
- (a) Within 30 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
 - (b) If for any reason whatsoever, 30 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the Manager of Mediation – Adelaide Magistrates Court or his or her nominee;
 - (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
 - (d) The mediation will be held in Adelaide, Australia.
- 15.4 **Confidential:** All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.
- 15.5 **Termination of Mediation:** If 12 months have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

16 Venue and Jurisdiction

The Services offered by Formula Vehicle Management Pty Ltd is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of South Australia, Australia.

17 Governing Law

The Terms are governed by the laws of South Australia, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of South Australia, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

18 Force Majeure

Formula Vehicle Management Pty. Ltd. will not be liable for any Loss incurred as a result of delay or failure to observe any of these Terms and Conditions due to an event of force majeure, being any cause or circumstance beyond our control. During the continuance of an event of force majeure our obligations under these Terms and Conditions will be suspended and will resume as soon as the cause of circumstance has ceased to have effect.

19 Independent Legal Advice

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

20 Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.