

IJARAH TERMS & CONDITIONS OF AGENCY

1. INTRODUCTION

- 1.1 The Bank has approved an Ijarah Finance Facility ("facility") to enable the Consumer to finance the acquisition of a motor vehicle ("asset") from the Bank on the basis of Ijarah (Islamic Finance Lease).
- 1.2 The Bank and the consumer have agreed to enter into an Ijarah Finance Agreement which sets out the basis on which the parties will transact.
- 1.3 The Bank has agreed to appoint the Consumer as an agent of the Bank specifically for the purpose of purchasing a motor vehicle from a supplier(s) on behalf of the Bank for the purpose of leasing the motor vehicle to the consumer in the manner as outlined in the Ijarah Finance Agreement.
- 1.4 The terms and conditions herein highlight the Consumer's priorities, responsibilities and duties as an agent of the Bank being distinct from his relationship with the Bank as a consumer.

2. APPOINTMENT

- 2.1 The Bank appoints the Consumer as an agent of the Bank as envisaged in the aforesaid Ijarah Finance Agreement for the purpose of:
 - 2.1.1 selecting the asset from the Supplier and negotiating the price and other terms relating to the purchase thereof as outlined in the Ijarah Finance Agreement;
 - 2.1.2 accepting delivery of the asset on behalf of the Bank and ensuring that the asset is specifically that ordered by/on behalf of the Bank and that the Supplier has legal ownership and title to the asset being sold and the asset is in the required condition for re-sale and is not damaged in any way and that there is no lien or any other form of encumbrance over, nor outstanding liability in respect of the asset; and
 - 2.1.3 storing and safekeeping of the asset after accepting delivery and inspection thereof, until the asset is leased by the Bank to the Consumer or to any other person or until the Bank takes physical possession of the asset.
- 2.2 The Consumer hereby accepts such appointment subject to the terms and conditions contained herein.

3. LEGAL STATUS OF THE CONSUMER

- 3.1 The Consumer is an independent contractor and is not an employee of the Bank and the Consumer's authority to act is limited to the extent of the Agency.

In particular, and without limitation, the Consumer shall not make any contract which shall be binding upon the Bank nor incur any liability on behalf of the Bank, nor give or make or purport to give or make any warranty or representation on behalf of the Bank, excepting as which the Bank has expressly authorised the Consumer to do.

4. OBLIGATIONS OF THE CONSUMER

- 4.1 The Consumer shall:-
 - 4.1.1 act in accordance with any instructions, whether general or specific, given by the Bank;
 - 4.1.2 keep all records and documentation pertaining to the asset.
 - 4.1.3 furnish the Bank with all information as stated and envisaged in the approval letter and/or any other information requested by the Bank;
 - 4.1.4 communicate with the Bank in the manner outlined in the approval letter;
 - 4.1.5 be responsible for any damage to, destruction of, theft or any other loss or diminution in the value of the asset due to any acts or omissions attributable to the Consumer's negligence/misconduct and shall compensate the Bank for any loss sustained by the Bank due to the Consumer or its employee's or agent's negligence or dishonesty whilst acting as an agent of the Bank;
 - 4.1.6 at all times act within the confines of the mandate given to the Consumer, including but not limited to only purchasing the asset to the value of the amount of the approved facility;
 - 4.1.7 communicate with and notify the Supplier and furnish such proof in its sole discretion (where applicable) or ratify any non-compliance with the foregoing in its sole discretion.
 - 4.1.8 not give or make any warranty or representation to the Supplier, or any other party, that it has a mandate to act and/or that it is authorised to contract with the Supplier on terms other than those specified by the Bank, including but not limited to representing that it is authorised to conclude any contact for an amount exceeding the limit of the approved facility, unless it has the prior written approval of the Bank;
 - 4.1.9 Not incur any costs and disbursements related to the carrying out of the consumer's mandate herein without the express and written authority of the Bank. This Agency is limited to the direct costs of the purchase price of the asset from the supplier and excludes costs such as valuations, transportation, travel and the like.
 - 4.1.10 Act diligently and faithfully and at all times observe the utmost good faith in carrying out its obligations in terms of this Agreement.

5. LIMITATION OF THE BANK'S LIABILITY

The Bank shall not be liable for claims of any nature, whether in contract or delict, by the Consumer and whether for damages (including direct, indirect and consequential) or otherwise, howsoever arising, including but without limiting the generality of the aforesaid, by reason of the Consumer failing to adhere to any of the terms and conditions contained herein.

6. INDEMNITY BY THE CONSUMER

- 6.1 Without prejudice to any of the Bank's rights herein, the Consumer indemnifies and holds the Bank harmless against all claims, liabilities, losses, damages, costs and expenses whatsoever made against, incurred or suffered by the Bank arising directly or indirectly from or in connection with any act or omission by the Consumer which is not expressly authorised, including but not limited to any claim arising from, or, in connection with the Consumer failing to meet its obligations and duties or representing or warranting that it has authority that exceeds the scope of the Consumer's mandate.
- 6.2 The Consumer acknowledges that the Bank may settle or contest any claim brought against it in its sole discretion and without reference to the Consumer and that no actions by the Bank in settling or defending any claim shall form the basis of any defence by the Consumer to any claim by the Bank against the Consumer pursuant thereto.

7. ACKNOWLEDGEMENTS BY THE CONSUMER

Notwithstanding anything to the contrary contained herein, the Bank is and shall be entitled to communicate directly with any Supplier or perform any functions of the Consumer as agent if the Bank elects to do so.

8. TERMINATION

- 8.1 The Bank may terminate this Agency at any time with immediate effect by giving notice of such termination to the Consumer either telephonically, electronically, via telefax or in writing at the address recorded in the Ijarah Finance Agreement.
- 8.2 The termination of this Agreement shall not thereby give the Consumer any claim for compensation, loss or damages against the Bank.

9. DOMICILIUM

- 9.1 The parties choose as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the address recorded in the Ijarah Finance Agreement.
- 9.2 Any party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.
- 9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's domicilium for the time being.
- 9.4 A notice sent by one party to another party shall be deemed to be received:-
 - 9.4.1 on the same day, if delivered by hand;
 - 9.4.2 on the same day of transmission if sent by telefax with receipt received confirming completion of transmission;
 - 9.4.3 on the 10th (TENTH) day after posting, if sent by prepaid registered mail.
- 9.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

10. GENERAL

- 10.1 This document constitutes the sole record of the terms and conditions between the parties in regard to the subject matter thereof.
- 10.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 10.3 No addition to, variation or consensual cancellation shall be of any force or effect unless in writing and signed by or on behalf of all the parties.
- 10.4 No indulgence which any of the parties ("the grantor") may grant to any other or others of them ("the grantee(s)") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future
- 10.5 The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms contained herein.