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**Sales and Purchase Agreement**

**This agreement is between:**

**Government**: His Majesty the King in right of the Government of the Cook Islands acting by and through the Ministry of Finance and Economic Management. (“the seller”)

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position/Department:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**And:**

**Purchaser Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“the purchaser”)

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Terms and Conditions**

**WHEREAS:**

* The Seller issued a Request for Tender ("RFT") bearing Reference No: SA2425-01, for the disposal of used government vehicles.
* The Purchaser submitted a tender in response to the RFT.
* The Seller has accepted the Purchaser's tender for the acquisition of the vehicle(s) described in the Attachment 1 annexed hereto.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

**1. Definitions**

1.1 "**RFT**" shall mean Request for Tender Reference No: SA2425-01.

1.2 "**Vehicle(s)"** shall mean the used government vehicle(s) as detailed in Attachment 1 annexed hereto.

1.3 "**Price**" shall mean the total purchase price offered by the Purchaser in their tender and accepted by the Seller, as specified in Attachment 1.

1.4 “**Attachment 1**” shall mean the attachment filled in by the purchaser when it submitted its’ tender and contains the vehicle details

**2. Agreement to Sell and Purchase**

2.1 The Seller hereby agrees to sell, and the Purchaser hereby agrees to purchase, the Vehicle(s) as described in Attachment 1 annexed hereto, subject to the terms and conditions of this Agreement.

**3. Price and Payment**

3.1 The total Price shall be NZD $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Amount].

3.2 Full payment of the Price shall be made upon the execution of this Agreement and prior to the collection of the Vehicle(s).

3.3 Payment shall be effected by means of bank transfer or cash to the account designated by the Seller.

**4. Collection and Storage Fees**

4.1 The Purchaser shall collect the Vehicle(s) within 48 hours from the date of execution of this Agreement.

4.2 Collection shall not be permitted until full payment of the Price has been received.

4.3 In the event that the Vehicle(s) is not collected within 48 hours, a storage fee of NZD $\_\_\_\_\_\_\_\_\_\_\_ [Amount] per day per vehicle shall be payable by the Purchaser prior to release.

4.4 If the Purchaser fails to collect the Vehicle(s) within ten (10) calendar days from the date of execution of this Agreement, the Seller shall have the absolute right to rescind the sale, retain all payments made by the Purchaser as liquidated damages to compensate for storage and administrative costs, and dispose of the Vehicle(s) in any manner it deems appropriate, including but not limited to resale or disposal as scrap. No refund of any payments shall be provided to the Purchaser.

4.5 The Purchaser acknowledges that failure to collect the Vehicle(s) within the stipulated ten (10) day period constitutes a material breach of this Agreement and that the Seller's retention of payments and disposal of the Vehicle(s) are reasonable and necessary to mitigate the Seller's losses and administrative burdens. The Purchaser accepts all risks associated with non-collection, including the loss of the Vehicle(s) and any payments made.

4.6 While the Seller reserves the right to immediately rescind the sale and dispose of the Vehicle(s) after the ten (10) day period, the Seller may, at its sole discretion, grant a reasonable extension of time for collection if the Purchaser provides a compelling reason for the delay and agrees to pay any additional storage fees incurred. However, the Seller is under no obligation to grant such an extension and any extension provided shall not waive the original 10 day period.

4.7 The Seller will make reasonable efforts to notify the purchaser prior to the 10 day deadline, and again prior to the disposal of the vehicle. However the seller is not obligated to provide such notice, and lack of notice does not waive the sellers’ rights under this clause.

**5. Transfer of Ownership and Risk**

5.1Title to the Vehicle(s) shall vest in the Purchaser solely upon the Seller's receipt of the full Price, in cleared funds. Notwithstanding, risk of loss or damage to the Vehicle(s), irrespective of causation, including but not limited to fire, theft, vandalism, or acts of nature, shall transfer to the Purchaser upon the earlier occurrence of: (a) the Seller's receipt of the full Price, in cleared funds, or (b) the expiration of forty-eight (48) hours from the execution of this Agreement.

 5.2 The Purchaser shall be solely responsible for arranging and bearing all costs associated with the prompt collection, registration, transfer of ownership, and transportation of the Vehicle(s) from the government agency premises where the Vehicle(s) is/are located.

5.3 Until the Vehicle(s) are collected, the Seller shall exercise reasonable care in the storage and security of the Vehicle(s) on its premises. Notwithstanding, the Seller's liability for any damage to the Vehicle(s) occurring subsequent to the earlier event described in clause 5.1 shall be strictly limited to direct damage directly attributable to the Seller's gross negligence or wilful misconduct, and in no event shall the Seller's aggregate liability exceed the Price paid by the Purchaser for the Vehicle(s) pursuant to clause 3.1.

**6. Vehicle Condition and Exclusion of Warranties**

6.1 The Purchaser acknowledges and agrees that the Vehicle(s) being sold under this Agreement are second-hand and are sold on an "as is, where is" basis, with all faults and defects, whether known or unknown.

6.2 The Seller provides no warranties, guarantees, or representations, whether express or implied, regarding the condition, quality, merchantability, or fitness for any particular purpose of the Vehicle(s). The Purchaser accepts the Vehicle(s) in their present condition, without any recourse against the Seller for any defects or deficiencies.

 6.3 The Purchaser acknowledges that test driving of the Vehicle(s) prior to purchase is expressly prohibited. The Purchaser's decision to purchase the Vehicle(s) is based solely on their own inspection and assessment, or their decision to waive such inspection.

6.4 The Purchaser acknowledges that they have been afforded the opportunity to thoroughly inspect the Vehicle(s), or have knowingly waived their right to such inspection, and that they are satisfied with the condition of the Vehicle(s) at the time of purchase. The Purchaser confirms that they have relied solely on their own judgment and assessment in deciding to purchase the Vehicle(s).

**7. Damage after Tender Closing (Before Collection)**

7.1 In the event that damage beyond normal wear and tear occurs to the Vehicle(s) after the tender closing date but prior to collection, the Seller may, at its sole discretion:

1. undertake repairs to the damage at its own expense; or
2. reduce the sale price accordingly.

7.2 The Purchaser hereby agrees to unconditionally accept the Vehicle(s) in its damaged or repaired state, or at the reduced price (if any), as determined by the Seller. The Purchaser waives any and all rights to dispute or challenge the Seller's decision.

7.3 The Purchaser shall have no right to inspect or approve any repairs undertaken by the Seller. The Purchaser's acceptance of the Vehicle(s) shall not be contingent upon any inspection.

**8. Prohibition of On-Selling Prior to Collection**

8.1 The Purchaser is strictly prohibited from leaving the Vehicle(s) at its/their current location, or any other location under the Seller’s control, for the purpose of, or with the intent to, on-sell, transfer, assign, or otherwise dispose of the Vehicle(s) to any third party prior to the Purchaser taking physical possession of the Vehicle(s) following full payment and execution of all necessary transfer documents.

8.2 In the event of a breach of clause 8.1, the Seller may, at its discretion, either terminate this Agreement, retaining a portion of payments as liquidated damages, and reclaim the Vehicle(s); or impose a substantial daily penalty fee, in addition to other legal remedies.

**9. Acknowledgement & Indemnity**

9.1 By executing this Agreement, the Purchaser acknowledges:

1. that they have inspected the Vehicle(s) or that they have the opportunity to inspect the vehicles but choose not to so and accept the Vehicle(s) condition at the time of sale;
2. that they have read, understood, and agree to the terms and conditions of this Agreement; and
3. That the purchaser acknowledges that the Cook Island Government is not bound to accept the highest, or any, tender.

9.2 The Purchaser acknowledges and agrees that the Cook Islands Government, its Ministry of Finance and Economic Management, and its agents shall bear no responsibility or liability for any financial, operational, logistical, or other challenges, difficulties, or problems that the Purchaser may experience or incur as a direct or indirect result of this Agreement, including but not limited to, issues arising from the condition of the Vehicle(s), delays in transportation or registration, or any subsequent use or disposal of the Vehicle(s); the Purchaser hereby accepts full and sole responsibility for all such matters, and agrees to indemnify and hold harmless the Government from any claims, demands, or actions arising therefrom.

**10. Governing Law and Jurisdiction**

10.1 This Agreement shall be governed by and construed in accordance with the laws of the Cook Islands.

10.2 Any legal action arising hereunder shall be brought before the Courts of the Cook Islands.

**11. Entire Agreement**

11.1 This Agreement, in conjunction with the RFT and the tender submitted by the Purchaser, constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, whether written or oral.

11.2 No variation, amendment, or modification of this Agreement shall be effective unless it is in writing and signed by duly authorised representatives of both parties.

**12. Force Majeure**

12.1 The Seller shall not be held responsible for any delay or failure in performing its obligations under this Agreement if such delay or failure is caused by events beyond its reasonable control, including but not limited to natural disasters, government actions, or widespread disruptions; in such cases, the Seller will make reasonable efforts to fulfil its obligations once the event concludes, and while the Seller will endeavor to minimize any impact on the Purchaser, it shall not be liable for any direct losses necessarily incurred as a direct result of the delay

**13. Termination by Seller**

13.1 The Seller may terminate this Agreement immediately upon written notice to the Purchaser if the Purchaser:

1. fails to pay the Price in full by the due date;
2. fails to collect the Vehicle(s) within the stipulated collection period as specified in clause 4; or
3. engages in any conduct that, in the Seller's reasonable opinion, brings the Seller or the Cook Islands Government into disrepute.

13.2 The Seller may terminate this Agreement for its convenience at any time prior to the delivery of the Vehicle(s) by providing 10 days' written notice to the Purchaser. In the event of termination for convenience, the Seller shall refund the Purchaser any payments made, less any reasonable costs incurred by the Seller.

13.3 Upon termination for cause under clause 13.1, the Seller shall be entitled to retain all payments made by the Purchaser as liquidated damages, reclaim possession of the Vehicle(s), and pursue any other remedies available at law or in equity.

 **14. Notices:**

* 1. Any written notices required to be given under this Agreement and other correspondence relating to this Agreement must be addressed to the relevant party’s address.
	2. All such notices and correspondence shall be:
		1. delivered by hand or by tracked courier to the intended recipient's physical address; or
		2. sent by email to the intended recipient's email address.
	3. A notice given in accordance with this clause 18 shall be deemed to be received:
		1. if delivered by hand or tracked courier, upon delivery; or
		2. if sent by email, one hour after the email is sent unless a return email is received by the sender within that one-hour period stating that the addressee’s email address is wrong or that the message cannot be delivered,

provided that the Government will be deemed to have received delivery of a notice only upon the Government also acknowledging in writing receipt of the notice.

**15. Severability**

* + 1. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.

**16. Waiver**

* + 1. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the waiving party.

**17. Counterparts**

* 1. This agreement may be executed in counterparts.

**18. Time is of the essence.**

* 1. Time is of the essence in the performance of the obligations under this agreement.