



CAROFFER, LLC

TERMS AND CONDITIONS OF SERVICES

Updated as of January 24, 2020

These Terms and Conditions of Services (“**Terms**”) constitute a binding legal agreement between your dealership or other company and your representatives (collectively referred to as “**you**”, “**your**” or “**Dealer**”) and CarOffer, LLC (referred to as “**we**”, “**us**”, “**our**” or “**CarOffer**”) governing all of your business at and with CarOffer and are implied terms and conditions of every agreement that you enter into with CarOffer (including your Enrollment Agreement) and with every bidder, buyer and seller of vehicles using CarOffer’s online auction services. You or Dealer can mean the party selling a motor vehicle (a “**Seller**”) or the party buying a motor vehicle (a “**Buyer**”).

These Terms and any amendments to them will be effective as of the date they are posted on the CarOffer website at <https://www.caroffer.com/legal>.

By accessing or using the CarOffer Platform, you agree to abide by the then current Terms (including terms, conditions or provisions referenced herein and available by hyperlink to other web pages) and the CarOffer Privacy Policy, each as located at <https://www.caroffer.com/privacy>.

Capitalized terms used in these Terms have the meaning assigned to them herein. See **Section 45** for an index of defined terms.

GENERAL

1. **Purpose.** CarOffer provides a real-time live bidding online auction service and related mobile and desktop applications and services (collectively, the “**CarOffer Platform**”) for licensed motor vehicle remarketers to list, sell, bid on and buy used motor vehicles (each a “**Vehicle**” and collectively “**Vehicles**”). These Terms are for the benefit of CarOffer and, as third-party beneficiaries, CarOffer’s affiliates and any subsidiaries and its service partners, including Alliance Auto Auction of Dallas, AutoVin, Upstream, WeGoLook, and Acertus (collectively, the “**CarOffer Service Partners**”). By participating in an auction or accessing or using the CarOffer Platform, you agree to be bound by these Terms as may be amended and/or relocated on the applicable CarOffer website from time to time. Breach of these Terms may result in the assessment of penalties and/or the temporary or permanent suspension of your access to the CarOffer Platform.

DEALER

2. **Dealer Eligibility.** Our auction services as part of the CarOffer Platform are intended for professional Vehicle remarketers only. Only authorized representatives of licensed dealerships are eligible to participate. You represent and warrant that you are a licensed retail or wholesale dealer of Vehicles and/or a business that is otherwise legally eligible to purchase or sell Vehicles at wholesale auto auctions. A state-issued dealer’s license and federal tax identification are among the documents a Dealer will need to present to become active on the CarOffer Platform. You agree that these Terms shall apply to all transactions conducted by you and your Authorized Users on the CarOffer Platform; provided, however, that CarOffer may in its sole discretion elect to enter into direct agreements with certain Dealers, which will govern such Dealers’ (and their Authorized Representatives’) use of the CarOffer Platform to the extent of any conflict with these Terms. CarOffer reserves the right to refuse access to the CarOffer Platform or any service or feature provided by CarOffer to anyone who breaches these Terms or other applicable agreement(s) or otherwise interferes with or violates CarOffer’s rights or the rights of others.
3. **Registration.** To be eligible to access or use the CarOffer Platform, a Dealer must have executed and delivered to CarOffer an “**Enrollment Agreement**” in the form specified by CarOffer, and the Dealer and any of its designated authorized users (“**Authorized Users**”) must complete CarOffer’s online registration process. Upon receipt and approval of your registration, you and your Authorized Users will be issued unique usernames and passwords to access and use the CarOffer Platform. You are liable and responsible for all actions, omissions and any failure to act of your Authorized Users in connection with your Authorized User’s access to and use of the

CarOffer Platform. You agree not to give anyone access to the CarOffer Platform other than your Authorized Users. We reserve the right to temporarily or permanently suspend your access rights and/or the access rights of any of your Authorized Users at any time. You represent and warrant that all information that you provide to CarOffer is accurate and complete and that you will notify us in writing of any changes to the information provided. You hereby authorize CarOffer to share the information you provide to us (including financial information and any other Data) with CarOffer Service Partners solely to the extent such information is needed in order to use the CarOffer Platform or any other party in connection with an assignment made pursuant to **Section 44(d)**. You will also need to register with Auction ACCESS® (or already be registered) prior to using CarOffer's auction services.

4. **Access Security.** Sharing or lending of usernames or passwords is strictly prohibited. You are responsible for maintaining the confidentiality and security of the usernames and passwords issued to you and your Authorized Users. You will be liable and responsible for all actions, omissions, failures to act, or transactions conducted with the username and password issued to you or any of your Authorized Users. You will immediately notify us in writing of any unauthorized use of a username or password.
5. **Payment Information.** You agree to provide CarOffer with, maintain with CarOffer, and permit CarOffer and its authorized agents to retain record of, valid, updated payment information (i.e., credit card or ACH information) for the purpose of charging any Fees not otherwise paid in connection with a completed sale or sales of Vehicles.
6. **Permitted Use.** You agree that you will use the CarOffer Platform solely for your internal business purposes and will not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign (except as permitted by **Section 44(d)**), distribute, time share or otherwise commercially exploit or make the CarOffer Platform available to any third party, other than to your Authorized Users or as otherwise contemplated by these Terms; (b) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (c) send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious material, including material that violates third-party privacy rights; (d) send or store malicious code or viruses; (e) interfere with or disrupt the integrity or performance of the CarOffer Platform or the Data contained therein; (f) attempt to gain unauthorized access to the CarOffer Platform; or (g) reverse engineer, decompile, disassemble, sniff or otherwise derive the source code, object code or any other intellectual property constituting or relating to the CarOffer IP.
7. **Compliance.** You represent and warrant to CarOffer that: (a) you and your Authorized Users are in compliance with and shall comply with all laws and regulations that apply to your business; and (b) you and your Authorized Users have secured and will maintain all permits, licenses and governmental approvals required to operate your business, including as required to access and use the CarOffer Platform.
8. **Dealer's Responsibility.** It is your responsibility to acquire, provide and maintain at your own expense all other hardware, equipment, connections, software licenses, facilities, services and other supplies necessary for you to access and use the CarOffer Platform.

INTELLECTUAL PROPERTY; DATA

9. **Ownership.** You acknowledge and agree that the CarOffer Platform, related services, Data and Web Information, including all copyright and rights to patent, industrial design, trademark and trade dress protection, trade secrets and all other intellectual property rights (collectively, the "**CarOffer IP**") are owned by CarOffer or its licensors and are protected by United States and international intellectual property laws and treaties. Subject to the limited rights of access and use expressly granted hereunder, CarOffer reserves all rights, title and interest in and to the CarOffer IP. No rights are granted to you other than the limited rights expressly set forth in these Terms. You acknowledge and agree that you do not own, and shall not acquire, any right, title or interest in the CarOffer IP and that, if necessary, you agree to perform any acts that may be reasonably necessary to transfer or confirm ownership of any right, title, and interest in or to the CarOffer IP. You further agree that you will not (a) modify, copy or create derivative works based on the CarOffer IP; (b) frame or mirror any content forming part of the CarOffer IP; (c) reverse engineer or decompile the CarOffer IP; (d) access the CarOffer IP in order to (i) build a competitive product or service or (ii) copy any ideas, features, functions or graphics of the CarOffer IP; or (e) permit or authorize any third party to do any of the above at your direction or on your behalf.

10. **Data.** You agree that all information and records, whether oral, written, visual, electronic, digital or tangible transmitted, received or stored on the CarOffer Platform or using the systems, equipment, computers, servers, or premises of CarOffer or any CarOffer Service Partner (collectively "**Data**") is the property of CarOffer or CarOffer Service Partners. You agree that we have the right to receive, use, disseminate, control access to, aggregate, modify, package, derive benefit from, remove, destroy Data in whole or in part. Notwithstanding the foregoing, Data that contains personally identifiable information will only be used and disclosed in accordance with CarOffer's Privacy Policy. CarOffer hereby grants a limited, non-transferrable, non-sublicensable, royalty-free, fully paid-up, worldwide license to you to the Data submitted by you solely for your use in connection with the CarOffer Platform or in your ordinary course of business (e.g., record-keeping, etc.).
11. **Dealer Content.** In addition to the rights set forth in **Section 10**, CarOffer has the right to use certain Dealer-generated information, content, photographs and Vehicle data for the limited use of promoting and carrying out the CarOffer Platform requested by such Dealer. You grant CarOffer a limited, royalty free, irrevocable and worldwide license to utilize non-confidential information for the general purpose of promoting and providing Services to our Dealers for so long as such Dealer information is held by CarOffer, and this license extends to trusted third parties. All Data provided by Dealer remains the property of the Dealer (e.g., DMS Data). CarOffer agrees that it shall not sell the Dealers data or use it for any purpose outside of the CarOffer Platform without the approval of the Dealer.
12. **No Interference.** All Data submitted by you through the CarOffer Platform will be free from malicious software, including viruses, worms, Trojans, software that bypasses normal authentication mechanisms or exploits or attacks software security or any software or data designed to disable, modify or damage the CarOffer Platform. You will not use any device, software or routine to interfere or attempt to interfere with the proper working of the CarOffer Platform. You will not take any action that imposes an unreasonably or disproportionately large load on CarOffer's information technology infrastructure.

SALES AND PURCHASES

13. **CarOffer's Role.** CarOffer is a provider of online auction services in order to facilitate sales and purchases of Vehicles between Sellers and Buyers, whose identities are known only to CarOffer. CarOffer does not take title to any Vehicle listed for sale through the CarOffer Platform. CarOffer is neither the Buyer nor the Seller of any Vehicle listed for sale. CarOffer only performs auction services on behalf of Sellers and Buyers and provides services to facilitate the exchange of Vehicles between Sellers and Buyers. Each Buyer bidding on a Vehicle is making an offer to purchase the Vehicle. As a sophisticated commercial party, you as a prospective Buyer should research the value of any Vehicle and the terms of sale before bidding. Buyer should research the third-party condition report provided by CarOffer post bid acceptance and notify CarOffer if there are any discrepancies to Seller's representation. Each Seller accepting a bid for a Vehicle is accepting an offer to sell the Vehicle, creating a sale contract between Buyer and Seller. Each Seller warrants each Vehicle's condition has been described accurately, including mileage, options and physical condition. CarOffer is only an intermediary and not a party to any Vehicle sale contract, but is a third-party beneficiary of the contract, entitled to the parties' performance and to seek legal remedies for any party's breach. You agree that any disputes between Buyers and Sellers will be resolved in accordance with the CarOffer Arbitration Policy set forth herein.
14. **CarOffer Tools and Process.** Please see the CarOffer Processes page (<https://www.caroffer.com/processes>) for detailed information regarding the CarOffer tools made available to Dealer and the listing, bidding, sale and purchase process.
 - (a) **General.** Each Dealer may enroll for use of the CarOffer Platform. A Dealer's enrollment in the CarOffer Platform will be indicated on its respective Enrollment Agreement.
 - (b) **Dealers as Sellers.**
 - (i) Seller may, at any time, place a Vehicle for sale through the CarOffer Platform.
 - (ii) On a real-time basis at point of appraisal, CarOffer will provide a Backstop Bid for each Vehicle placed for sale through the CarOffer Platform; provided it has a matched Buyer bid.

- (iii) CarOffer will provide a 45-day Guaranteed Bid, on a real-time basis and at the point of appraisal or any time the Vehicle is in Dealer's inventory, which represents a guaranteed purchase price from CarOffer for the Vehicle 45 days after the guaranteed bid (the "**Guaranteed Bid**") has been accepted by Seller. The Seller must exercise the Guaranteed Bid during this 45-day period, and the Vehicle's mileage at the time of exercise must be within 100 miles of the mileage when the Guaranteed Bid was provided.
 - (iv) Automatic aged inventory bids based upon make, model, cost and age thresholds may be set by Dealer. As Vehicles in Dealer's inventory hit applicable thresholds, the CarOffer Platform will automatically initiate auction process for Vehicles on behalf of Dealer, including population of required Vehicle information based upon Dealer's retail listing feed.
 - (v) The CarOffer Platform provides email marketing to Dealer's service drive and prior retail customers with estimated positive Vehicle equity with an appeal for a cash offer on behalf of the Dealer for the Vehicle. Upon completion of a Vehicle condition report, the CarOffer Platform will automatically make a cash offer for the Vehicle on behalf of the Dealer. If the customer accepts the offer, the Dealer may arrange for the sale of the Vehicle through the CarOffer Platform, accept a 45-day Guaranteed Bid or keep the Vehicle in inventory.
 - (vi) Dealer may place a "buy from consumer" CarOffer widget on its website. Upon completion of a Vehicle Condition Report, CarOffer will automatically make a cash offer for the Vehicle on behalf of the Dealer. If the customer accepts the offer, the Dealer may arrange for the sale of the Vehicle through the CarOffer Platform, accept a 45-day Guaranteed Bid or keep the Vehicle in inventory.
- (c) For Dealers as Buyers, the CarOffer Buyer Matrix, which provides a streamlined automated bidding process based on detailed filters and variables selected by Dealer (including, e.g., make, model, color, options, cost, age, condition, geographic location, or transportation cost) on a real-time basis for Vehicles listed on or available through the CarOffer Platform. The Dealer may make bids automatic or bid manually through the CarOffer bidding portal. The Dealer may at any time, prior to acceptance by a Seller, suspend or terminate any automated bids on the CarOffer Buyer Matrix.
15. **Dealer Obligations Generally.** Each Dealer selling Vehicles on the CarOffer Platform hereby grants CarOffer an irrevocable license to receive Dealers data from certified 3rd party data providers. Dealer must authorize all data feeds sent to CarOffer for use on the CarOffer Platform. To the extent CarOffer receives Dealer data, CarOffer will (a) limit such access to authorized personnel; (b) use its access solely for purposes described herein; (c) ensure all data transmissions are obtained through a secure connection. Dealer acknowledges that the limited, irrevocable license granted pursuant to this **Section 15** is a fundamental part of the CarOffer Platform and is a material part of these Terms.
16. **Basic Seller Obligations.** For the benefit of CarOffer, each Seller represents, warrants and agrees to each of the following terms and conditions in connection with any Vehicle sale through the CarOffer Platform:
- (a) Seller is a licensed dealer of motor vehicles.
 - (b) Any amounts owed by Seller to CarOffer, any CarOffer Service Partner or their respective affiliates will be deducted from the sale proceeds due Seller. CarOffer may effect (directly or through a CarOffer Service Partner) a stop payment or refuse to authorize payment to Seller pursuant to a right of offset with respect to any such amounts owed.
 - (c) Seller is the true and lawful owner of the Vehicle. Seller is required to provide Vehicle condition report upon listing the Vehicle on the CarOffer Platform.
 - (d) Seller shall make each Vehicle listed on the CarOffer Platform available for inspection as further described in these Terms.
 - (e) Seller will provide Vehicle title, free and clear from all liens and encumbrances, to CarOffer or its CarOffer Service Partner for all accepted bids within 21 days of such acceptance.
 - (f) The Vehicle Condition Report is a true, correct and complete description of the Vehicle.

- (g) Seller has full power and authority to sell and transfer the Vehicle title to Buyer.
 - (h) Seller shall produce the Vehicle title as follows:
 - (i) if the Vehicle is sold as Title With Deal (“TWD”), the Vehicle title will be produced within 5 Business Days;
 - (ii) if the Vehicle is sold as Title Attached (“TA”), the title must be produced within 21 Business Days; and
 - (iii) if a title cannot be produced within the allowed timeframe for the sale as announced (TWD or TA), Buyer has a right to cancel the sale with a 24-hour notice, in which event Seller is responsible for all transportation costs to return the Vehicle to Seller and all Seller fees owed to CarOffer in connection with the cancelled sale.
 - (iv) Seller is responsible for any fees and expenses incurred in connection with obtaining valid title to the Vehicle, including CarOffer transaction fees.
 - (i) Seller is responsible for completion and execution of the required odometer mileage statement pertaining to the Vehicle and on the certificate of title and compliance with any other applicable state law requirements in connection with the wholesale sale of a motor vehicle.
 - (j) Risk of loss for a Vehicle remains with the Seller as long as the Vehicle is at Seller’s premises. Risk of loss for the Vehicle is transferred to Buyer when it is picked up from Seller by the transportation service provider arranged by CarOffer or a CarOffer Service Partner or by Buyer.
 - (k) Unless otherwise agreed, Seller will hold and make available the sold Vehicle for transportation for up to seven days after a Vehicle is marked “SOLD” and bill of sale is made available (and the Vehicle condition is verified by a third-party inspection company that is a CarOffer Service Partner) on the CarOffer Platform, after which an abandoned vehicle notice can be sent to CarOffer to request us to remove the Vehicle within 24 hours.
 - (l) If Seller cancels or abandons a sale transaction after a Buyer's bid is accepted, Seller will be assessed a transaction cancellation fee by CarOffer.
 - (m) If Sellers accepts a Buyer’s bid and fails to make Vehicle available for inspection by a third-party inspection company that is a CarOffer Service Partner or fails to make the Vehicle available for transport after Vehicle passed inspection, Seller will be assessed a transaction cancellation fee.
 - (n) We reserve the right to limit the number of Vehicles posted by a Seller as determined in CarOffer’s sole discretion.
17. **Basic Buyer Obligations.** For the benefit of CarOffer, each Buyer represents, warrants and agrees to each of the following terms and conditions in connection with any Vehicle purchase through the CarOffer Platform:
- (a) Buyer is a licensed dealer of motor vehicles.
 - (b) Buyer is solvent.
 - (c) Buyer agrees to purchase the Vehicle for Buyer’s bid price, which can be accepted by the Seller at any time as long as the bid is active. Upon acceptance, the Vehicle is marked “SOLD” on the CarOffer Platform and the accepted bid price is the **“Purchase Price”**.
 - (d) For accepted bids, the Total Payment Amount shall be automatically processed promptly to CarOffer’s Service Provider upon notification of the inbound Vehicle, in accordance with the default method previously selected by Buyer.
 - (e) No stop payment of Buyer’s Total Payment Amount shall be authorized, made or honored. Any stop payment order shall be deemed by the parties to be evidence of fraud existing at the time the transaction

was completed (i.e., upon Seller's acceptance of Buyer's bid price) and shall be construed by the parties as an intent to defraud in order to complete the transaction.

- (f) If Buyer fails to remit the Total Payment Amount within two Business Days of the inbound Vehicle notification the buyer will be assessed a late payment fee by CarOffer and Buyer is subject to suspension of Buyer's access to and use of the CarOffer Platform at the discretion of CarOffer.
- (g) If Buyer cancels or abandons a purchase transaction after a Buyer's bid is accepted, Buyer will be assessed a transaction cancellation fee by CarOffer.
- (h) Title to the Vehicle does not pass to Buyer until immediately available funds for the Total Payment Amount have been received by CarOffer or the applicable CarOffer Service Partner.
- (i) CarOffer, or its applicable CarOffer Service Partner, may deposit or use the Total Payment Amount immediately upon receipt. After receipt of the Total Payment Amount, CarOffer or a CarOffer Service Partner will promptly send, by overnight mail using Buyer's preferred overnight carrier and account number, negotiable title to the Vehicle.
- (j) Any rejections of title must be made within three Business Days of Buyer's receipt of title.
- (k) Buyer will utilize the transportation service provider arranged through CarOffer or a CarOffer Service Partner unless otherwise approved by CarOffer and subject to **Section 19**. The Vehicle will be picked up for transport within seven days after it is marked "SOLD" on the CarOffer Platform. If a Buyer is directly responsible for transport, failure to do so in the required time period may result in loss of arbitration rights and/or assessment of daily storage fees at CarOffer's discretion.
- (l) Risk of loss for the Vehicle is transferred to Buyer when it is picked up from Seller by the transportation service provider arranged by CarOffer or a CarOffer Service Partner or by Buyer.
- (m) The Vehicle is purchased solely for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased by Buyer for resale.
- (n) If Buyer is planning to export a Vehicle, it is responsible for ensuring that the Vehicle satisfies all export requirements and all import requirements of the destination country.
- (o) If the Vehicle is used for any purpose other than for resale, Buyer shall be solely responsible for paying directly to the proper taxing authorities such sale or use tax as may then become payable.
- (p) Buyer holds all required retail sales tax registrations, certificates, licenses or other permits issued by all applicable sales taxing authorities.
- (q) We reserve the right to limit the number of Vehicles purchased by Buyer as determined in CarOffer's sole discretion.

18. Vehicle Condition Report.

- (a) Vehicles with a value equal to or greater than \$15,000 must have an AutoGrade score of 3.5 or greater. Vehicles with a value of \$14,999 or less must have an AutoGrade score of 3.0 or greater.
- (b) Seller is bound by any commitments made in the Vehicle Condition Report area of the CarOffer Platform. For example, if Seller stated in the Vehicle Condition Report that the Vehicle comes with four snow tires, Seller will be required to provide four snow tires.
- (c) Disclosures made by Seller in the Vehicle Condition Report are binding on the Seller.
- (d) When a Vehicle is re-launched on the CarOffer Platform, prior comments in the Vehicle Condition Report area may be reused or updated by Seller.

19. **Vehicle Transport.** Vehicles cannot be removed from a Seller's location until the Vehicle passes inspection.
20. **Vehicle Inspection.** CarOffer will arrange for inspection of the Vehicle by a third-party inspection company that is a CarOffer Service Partner (e.g., AutoVin) in order to verify that the Vehicle's condition has been accurately described in the Vehicle Condition Report. If a Vehicle does not pass inspection, the Seller will be notified and CarOffer will facilitate communications between the Buyer and Seller for the purpose of resolving the Vehicle's failed inspection. If a resolution is not reached, the Seller will be charged for the inspection. Buyer is required to communicate any concerns regarding the Vehicle's conditions to CarOffer within the arbitration period.
21. **Transfer of Legal Ownership from Seller.** Notwithstanding any language in these Terms and subject to Seller's obligations with respect to any arbitrated Vehicle, both parties have entered into an irrevocable contract of sale of a Vehicle upon Seller's acceptance of Buyer's bid price, and Seller relinquishes legal ownership of the Vehicle upon the earlier of (a) the payment to Seller of the sale net proceeds or (b) Buyer taking possession of the Vehicle, regardless of whether title documents have been provided to Buyer or the applicable CarOffer Service Partner by that time.

FEES; PAYMENT

22. **Fees.** In consideration of access to and use of the CarOffer Platform, you agree to pay CarOffer and CarOffer Service Partners (as applicable) all fees and charges assessed by CarOffer and/or the CarOffer Service Partners for access to and use of the CarOffer Platform and related services (collectively, the "**Fees**"). All Fees are non-refundable. Fees are subject to change effective upon publication thereof at <https://www.caroffer.com/fees>, provided that CarOffer shall use commercially reasonable efforts to provide you advance notice of any fee changes in writing to the email address associated with your account. For an up-to-date list of CarOffer's Fees at any time, go to <https://www.caroffer.com/fees>.
23. **Payment Terms—Buyer.** For Buyers, the Purchase Price of the Vehicle, service charges and Fees payable by Buyer in connection with a transaction, including, without limitation, Fees related to transportation, inspections, and any accrued unpaid fees, is the "**Total Payment Amount**". For accepted bids, the Total Payment Amount shall be automatically processed promptly upon the title to the Vehicle being cleared by the applicable CarOffer Service Partner in accordance with the default method previously selected by Buyer (i.e., electronic funds transfer, ACH, credit card, or other arrangement approved in advance by CarOffer). All payments shall be made in U.S. dollars.
24. **Payment Terms—Seller.** After a Vehicle is marked "SOLD" on the CarOffer Platform, title to the Vehicle being cleared by the applicable CarOffer Service Partner, the Vehicle has passed inspection and CarOffer or the applicable CarOffer Service Partner has received the Total Payment Amount, CarOffer will pay, or cause the applicable CarOffer Service Partner to pay, Seller an amount equal to (a) the Purchase Price, less (b)(i) Fees payable by Seller with respect to the Vehicle, including the Fee payable to the CarOffer Service Partner and (ii) any accrued but unpaid Fees otherwise payable by Seller within two Business Days of receipt of the Vehicle title and any other documents required to transfer clear title to Buyer. If you do not sell any Vehicle on the CarOffer Platform for 30 days or if you have not accepted any Buyer bids in 14 days, CarOffer may charge you for the amount of any accrued but unpaid Fees payable by you and provide you with an invoice therefor.
25. **Payment Terms — Fees.**
 - (a) **Failure to Pay; Offset.** If payment is not received when due and payable, the total amount then due and payable will be automatically debited from the Dealer's account via ACH instructions to the Dealer's floorplan or bank account or charged to the Dealer's credit card on file for the amount outstanding. In addition to whatever rights of set-off CarOffer may have in any jurisdiction where Vehicles are sold, if Dealer or any party affiliated with Dealer ("**Dealer Affiliate**") fails to pay Fees or other amounts due and payable to CarOffer or any CarOffer Service Partner, CarOffer will be entitled to immediately offset the amount owed by Dealer or Dealer Affiliate from any funds owed by CarOffer to Dealer or Dealer Affiliate. In addition, if you fail to pay any amount when due and payable and such credit card charge cannot be processed, we may, as applicable: (i) withhold title documents until all amounts owed have been paid; (ii) cancel a sale transaction(s); (iii) charge late payment fees, or charge interest on any past due amounts at the rate of 1.5%

per month, calculated in U.S. dollars, or the maximum rate allowed by law, whichever is less; or (iv) pursue any other remedy or relief available at law or in equity.

- (b) *Electronic Check.* If we accept payment from you by electronic check, you authorize CarOffer to initiate debit entries to your account at the financial institution on which the electronic check was written. The electronic check debit authorization will remain in force until we have received written notice from you of its termination. CarOffer reserves the right to decline payment by electronic check at any time and for any reason. Any Payment Instrument withdrawn, rejected or returned for non-sufficient funds ("**NSF**") must be settled and replaced immediately. NSF transactions will be subject to a service charge up to the maximum amount allowed by law and shall be immediately due and payable.
- (c) *Collection.* You agree to pay all costs including attorney fees, court costs and other expenses reasonably incurred by CarOffer or a CarOffer Service Partner to collect any monies due and payable by you to CarOffer.
- (d) *Definition.* "**Business Days**" are days other than Saturdays, Sundays and United States Postal Service holidays.

CAROFFER ARBITRATION POLICY

26. **General.** CarOffer offers an arbitration service to assist Buyers and Sellers in resolving disputes on all Vehicles offered for sale through the CarOffer Platform. CarOffer follows the National Auto Auction Association ("**NAAA**") Arbitration Policy as amended or updated and it applies as if it was recited at length in these Terms. In addition, the supplementary arbitration rules set out in these Terms apply to all Vehicles offered for sale through the CarOffer Platform. If there is a conflict between the NAAA Arbitration Policy and these Terms, these Terms shall prevail to the extent of the inconsistency. The NAAA Arbitration Policy can be viewed at: www.naaa.com under the *Policy* section. The decision of the arbitrator is final and binding on both Buyer and Seller. A Vehicle purchased through CarOffer will only be arbitrated once for any defects in accordance with the NAAA Arbitration Policy. Once a Vehicle is arbitrated for any reason, further arbitration of the Vehicle is not available. Arbitration is not available if Buyer no longer possesses the Vehicle or title. Arbitration is only available to CarOffer's Buyers and Sellers and not to the customers of Buyers and Sellers.

27. Seller Obligations.

- (a) It is Seller's obligation to fairly represent its Vehicle and to correct any errors made regarding disclosed conditions prior to launching a Vehicle for sale. Seller is responsible for the accuracy and completeness of all disclosures regardless of whether Seller has relied on CarOffer or third-party resources (e.g., inspection company, vehicle listing service, electronic data vehicle history report, etc.). In addition to the disclosures required under the NAAA Arbitration Policy, Sellers must disclose the following:
 - (i) visible interior and exterior damage, glass damage, missing equipment and vehicle accessory electrical Problems (subject to the arbitration threshold in **Section 28**;
 - (ii) Vehicles not equipped with air conditioning (if not disclosed on the Vehicle listing);
 - (iii) paintwork, bumpers not included; and
 - (iv) tire tread depth measured at the lowest point less than 5/32nd inches.
- (b) Seller has three Business Days to respond to the arbitrator's inquiries and preliminary findings. If Seller fails to respond within the time limit, the arbitrator will decide the arbitration claim without further input from Seller. If the arbitration results in cancellation of the sale or other remedy in favor of Buyer, the Seller is required to (i) reimburse Buyer its transportation costs, (ii) reimburse Buyer for up to \$95 of costs incurred (verified by invoice and before taxes) of obtaining repair estimates, (iii) pay the actual transportation costs for the return transport of the Vehicle to Seller by CarOffer or its CarOffer Service Partner and (iv) pay applicable Seller's fee associated with the cancelled transaction. Seller is required to pay any award amount that is determined by the arbitrator to be payable within three Business Days. If payment is not received within the time limit, CarOffer reserves the right to assess a late payment charge and/or deduct the award amount from any amounts payable by CarOffer to Seller.

28. **Enhanced Arbitration Disclosure Threshold.** Sellers must disclose any single defect that has a repair cost of \$400 or more or multiple defects with a cumulative repair cost of \$800 or more, in each case verified by invoice and before taxes.
29. **No “As Is” Vehicle Listings.** Only “Green Light” guaranteed condition vehicles are sold on the CarOffer Platform. No “As Is” Vehicle listings will be allowed.
30. **Arbitration Period.** If Vehicle transport is arranged through CarOffer or a CarOffer Service Partner, Buyer must begin an arbitration claim within two Business Days of Vehicle delivery. If CarOffer transport services are not used, Buyer must begin an arbitration claim within two Business Days of Vehicle delivery, not to exceed 10 calendar days after the date the Vehicle is marked “SOLD” on the CarOffer Platform (e.g., if a Vehicle is delivered on a Tuesday at 2:00 p.m., any arbitration claim must be started by Thursday at 2:00 p.m.). **Section 31** sets forth the time limit for arbitration claims regarding absent titles.
31. **Absent Title Policy.** The arbitration window for absent Vehicle titles is 21 to 90 calendar days after the date the Vehicle is marked “SOLD” on the CarOffer Platform. Seller has up to 21 calendar days from such date to deliver the Vehicle title to CarOffer (or the applicable CarOffer Service Partner). The date the Vehicle is marked “SOLD” is counted as day 1. After 21 days (but before 90 days), Buyer can open an arbitration claim if Seller has not delivered the Vehicle title. Seller will have 24 hours after the arbitration claim is initiated to deliver the Vehicle title. If Seller fails to do so, the sale will be cancelled. Seller must provide a current KSR report for Vehicles with California titles. Seller will be responsible for all charges/penalties listed on the KSR report and Seller will be assessed additional charges if a current KSR report does not accompany the Vehicle title.
- 32. Buyer Obligations.**
- (a) Prior to placing a bid, Buyer is required to know the arbitration rules in place for the Vehicle. Buyer should carefully review all disclosed information, including photos, videos, announcements, damages, equipment, inspection summary and additional Vehicle history information.
- (b) No later than two Business Days after starting an arbitration claim, Buyer is required to submit supporting documentation to CarOffer, including, if applicable, wholesale (trade) repair estimates from an arm’s-length franchise dealership or NAAA member auction. Failure to do so may result in denial of the arbitration claim. For the purposes of calculating repair costs, a flat labor rate of \$100 per hour will apply and part costs will be calculated at wholesale cost or at 80% of retail cost. If the arbitration claim is proved, Seller is required to reimburse Buyer its costs (verified by invoice) of obtaining any required repair estimates in an amount up to \$95 (before taxes). Buyer shall not use any Vehicle that is subject to an arbitration claim other than for test-driving purposes (not to exceed 20 miles). Buyer may lose the right to make or continue an arbitration claim if the Vehicle is otherwise driven, subject to CarOffer’s discretion.
- (c) CarOffer reserves the right to assess an arbitration fee for invalid arbitration claims.

LIABILITY

33. **DISCLAIMER OF WARRANTIES.** CAROFFER AND THE CAROFFER SERVICE PARTNERS PROVIDE THE CAROFFER PLATFORM AND ALL RELATED SERVICES TO DEALER ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND HEREBY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES RELATED TO DEALER’S AND/OR AUTHORIZED USER’S ACCESS TO AND USE OF THE CAROFFER PLATFORM AND ANY RELATED SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY WARRANTIES THAT MAY BE CREATED THROUGH COURSE OF DEALING OR USAGE OF TRADE. DEALER UNDERSTANDS THAT THERE MAY BE INTERRUPTIONS, DELAYS, INACCURACIES, OMISSIONS, OR OTHER PROBLEMS WITH THE CAROFFER PLATFORM, INFORMATION OR VEHICLE LISTINGS PUBLISHED ON THE CAROFFER PLATFORM, WHICH CAROFFER RESERVES THE RIGHT TO CHANGE OR UPDATE AT ANY TIME WITHOUT PRIOR NOTICE, AND THAT CAROFFER WILL NOT BE LIABLE TO DEALER, AUTHORIZED USERS OR TO ANY THIRD PARTY THEREFOR. CAROFFER DOES NOT WARRANT THAT THE CAROFFER PLATFORM WILL BE ERROR FREE, CONTINUOUSLY AVAILABLE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR MEET DEALER’S, CONSUMER’S OR ANY THIRD PARTY’S REQUIREMENTS.

34. **EXCLUSION OF CERTAIN LIABILITIES.** UNDER NO CIRCUMSTANCES SHALL CAROFFER, THE CAROFFER SERVICE PARTNERS OR THEIR RESPECTIVE AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, LICENSORS, INDEPENDENT CONTRACTORS OR SUPPLIERS (THE "**CAROFFER PARTIES**") HAVE ANY LIABILITY TO DEALER FOR ANY CONSEQUENTIAL (INCLUDING LOST PROFITS), EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS RESULTING FROM ANY CLAIM (WHETHER IN CONTRACT, TORT, EQUITY, NEGLIGENCE OR STRICT LIABILITY) RELATED TO OR ARISING OUT OF THE CAROFFER PLATFORM, ANY RELATED SERVICES, THESE TERMS, INCLUDING THE PERFORMANCE OR BREACH THEREOF OR THE USE OR INABILITY TO USE, OR PERFORMANCE OR NONPERFORMANCE OF THE CAROFFER PLATFORM OR ANY COMPONENT THEREOF, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

35. LIMITATION OF LIABILITY.

- (a) WITHOUT LIMITING SECTIONS 33 AND 34, THE LIABILITY OF ANY CAROFFER PARTIES ARISING OUT OF OR RELATED TO THESE TERMS, THE CAROFFER PLATFORM OR ANY TRANSACTION OR SERVICE (WHETHER IN CONTRACT, TORT, EQUITY, NEGLIGENCE, OR STRICT LIABILITY) SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES INCURRED BY DEALER AND THE AGGREGATE LIABILITY OF THE CAROFFER PARTIES FOR SUCH ACTUAL DAMAGES SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE FEES PAID BY DEALER TO CAROFFER DURING THE THREE-MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OR ACT OR OMISSION GIVING RISE TO THE CLAIM. MULTIPLE CLAIMS SHALL NOT EXPAND THESE LIMITATIONS.
- (b) DEALER AGREES THAT THE CAROFFER PARTIES SHALL HAVE NO LIABILITY WHATSOEVER, ACTUAL OR OTHERWISE, TO DEALER OR AUTHORIZED USERS BASED ON ANY OF THE FOLLOWING: (i) ANY DELAY, INTERRUPTION IN USE OF, FAILURE IN OR BREAKDOWN OF THE CAROFFER PLATFORM OR ERRORS OR DEFECTS IN TRANSMISSION OCCURRING IN THE COURSE OF ACCESSING OR USING THE CAROFFER SYSTEM; (ii) ANY UNLAWFUL OR UNAUTHORIZED USE OF THE CAROFFER PLATFORM; (iii) ANY LOSS OF OR DAMAGE TO DEALER'S RECORDS OR INFORMATION; OR (iv) ANY CLAIM RESULTING FROM THE TERMINATION OF ACCESS TO THE CAROFFER PLATFORM OR ANY RELATED SERVICES.

36. **Indemnification.** Dealer hereby agrees to indemnify, defend and save harmless the CarOffer Parties from and against all liabilities, losses, suits, claims, demands, costs, fines and actions of any kind or nature whatsoever to which a CarOffer Party shall or may become liable, or which a CarOffer Party may suffer (including reasonable legal fees and expenses incurred in connection therewith) (each an "**Indemnified Claim**") by reason of (a) your breach of these Terms or any other obligation hereunder or any agreement between Dealer and a CarOffer Party; (b) your negligence or willful misconduct; (c) any personal injury or property damage that Dealer or any person for whom Dealer is responsible causes to a CarOffer Party; (d) your violation of any third party right, including any intellectual property right, right of attribution, association, integrity, publicity, confidentiality, property or privacy right; (e) Dealer's or any Authorized User's use of the CarOffer Platform or any services or products provided by a CarOffer Party; or (f) any claim in connection with a Vehicle.

SUSPENSION; TERMINATION

37. **Suspension; Termination.** You are free to stop access and use of using the CarOffer Platform at any time. We reserve the right to suspend or terminate your access and use of the CarOffer Platform at any time at our discretion and without notice. For example, we may suspend or terminate your access and use of the CarOffer Platform if you are not complying with these Terms or any other agreements with us, including your nonpayment of Fees when due and payable, or you use the CarOffer Platform in a manner that would cause us legal liability, disrupt the CarOffer Platform or disrupt other Dealer's use of the CarOffer Platform. We also reserve the right to terminate the CarOffer Platform at any time at our discretion and without notice. Notwithstanding the foregoing, no such suspension or termination will change your obligation to pay all amounts due and payable pursuant to these Terms, and this **Section 37, Sections 33 through 36** and **Section 44** will survive any suspension or termination and continue to apply thereafter.

ADDITIONAL TERMS

38. **Web Information.** The CarOffer Platform may display information or materials or provide access via website links to third-party websites or services that are not owned or controlled by CarOffer (the “**Web Information**”). Web Information is provided as a courtesy to you and for informational purposes only. Although we try to ensure that Web Information is accurate, errors may occur. In addition, some Web Information may be dependent on subjective interpretation or opinion. CarOffer has no control over, assumes no responsibility for and does not warrant or guarantee the Web Information or the privacy policies or practices of any third-party websites or services. You acknowledge and agree that CarOffer shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with your use of or reliance on the Web Information. We strongly advise you to read the terms and conditions and privacy policies of any third-party websites or services that you visit.
39. **Conducting Business.** CarOffer: (a) may rely and act upon any purported signature whether oral, written, or electronic and other communication in connection with the CarOffer Platform purportedly sent by Dealer or any Authorized User or person purporting to be an agent or employee of Dealer, and (b) has no obligation to scrutinize, inquire, or confirm any signature or communication with Dealer, any Authorized User or other person purporting to be an agent or employee of Dealer. CarOffer may conduct business with Dealer through the (nonexclusive) use of electronic, computer, digital, or other paperless means, including the good faith reliance on electronic mail, facsimile transmittal, telephonic or other usual and regular forms of communication without confirmation or authentication of the communication by receipt of an original signature, document, paper or otherwise.
40. **Electronic Signatures.** You will permit CarOffer to capture your signature in electronic or digital form. You hereby authorize CarOffer and its CarOffer Services Partners to apply your electronic signature to documents necessary or incidental to your use of CarOffer’s services, including bills of sale, odometer disclosure statements, invoices, acknowledgements, approvals and title documents submitted by you. You agree that your electronic signature is intended to authenticate the document to which it is applied and shall have the same force and effect as a manual signature.
41. **Price Boosting.** Price boosting (aka “shilling”), or any other activity in which a Dealer on its own or with others attempts to artificially inflate or decrease the selling price of a Vehicle, is strictly prohibited.
42. **Representations Regarding Taxes.** Dealer certifies that it holds the appropriate documentation issued by the sales tax authority of the state or province, or locality of its business, if necessary, which exempts Dealer from the payment of sales tax. In the event that Vehicles or other products purchased are used for any purpose other than for resale, Dealer will pay directly to the proper taxing authorities such sale or use tax as may then accrue and be due and payable.

DISPUTE RESOLUTION

43. **Dispute Resolution.** If there is any controversy or claim arising out of or relating to these Terms or the validity, inducement, or breach hereof (each such controversy or claim is hereinafter referred to as a “**Dispute**”), the parties shall first attempt to resolve the dispute as follows:
- (a) First, the parties involved in the Dispute shall attempt to resolve any Dispute prior to commencing the procedures set forth below.
 - (b) If after seven days the parties are unable to resolve the Dispute, the parties shall submit to non-binding mediation which shall take place for a period of one day in Dallas County or Collin County, Texas before a mediator that is mutually acceptable to the parties.
 - (c) If the parties are unable to agree on the selection of a mediator, a mediator will be chosen by an arbitrator selected pursuant to the rules of the American Arbitration Association (“**AAA**”) who will then select such mediator from a list of distinguished neutral mediators maintained by the AAA. The mediator shall confer with the parties to design procedures to conclude the mediation within no more than 30 days after initiation.

- (d) Notwithstanding this **Section 43**, each party has the right to pursue any provisional relief from the appropriate court, such as attachment, preliminary injunction, specific performance (the parties acknowledging that monetary damages may not be sufficient remedy), replevin, etc. to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the Dispute even though mediation has not been commenced or completed.
- (e) Dealer may only resolve disputes with CarOffer on an individual basis and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed.

GENERAL PROVISIONS

44. General Provisions.

- (a) *Entire Agreement; Conflict.* These Terms, together with any separate agreement or agreements entered into separately between CarOffer and Dealer (including the Enrollment Agreement), constitute the entire agreement between you and CarOffer with respect to the subject matter of these Terms, and supersede and replace any other prior or contemporaneous agreements, or terms and conditions applicable to the subject matter of these Terms. In the event of any conflict between the Enrollment Agreement or any other separate agreement and these Terms, the provisions of the Enrollment Agreement or such separate agreement shall be controlling unless otherwise expressly provided therein.
- (b) *Waiver.* CarOffer's failure to enforce a provision is not a waiver of its right to do so later.
- (c) *Severability.* The provisions of these Terms shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of these Terms, or the application thereof to any person or entity or any circumstance, is invalid or unenforceable, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (ii) the remainder of these Terms and the application of such provision to other persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.
- (d) *Assignment.* You may not assign any of your rights under these Terms without CarOffer' prior written consent, and any such attempt will be void. CarOffer may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the CarOffer Platform.
- (e) *Governing Law, Jurisdiction; Waiver of Jury Trial.* THESE TERMS, AND ANY AND ALL AGREEMENTS OR AUTHORIZATIONS EXECUTED BY DEALER, AUTHORIZED USER, OR CAROFFER IN CONNECTION HERewith SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES THAT COULD CAUSE THE LAW OF ANOTHER STATE TO APPLY. THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN COLLIN COUNTY, TEXAS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OR ANY SUCH AGREEMENT. THE PARTIES EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT.
- (f) *Notices.* All notices under these Terms shall be in writing and shall be delivered personally, mailed by overnight delivery, registered or certified mail, postage prepaid, mailed by express mail service or delivered by facsimile or e-mail to the addresses, facsimile or e-mail (i) for a Dealer, based upon the most recent information provided by the Dealer and currently maintained by CarOffer and (ii) for CarOffer, to CarOffer, Inc., 2701 E. Plano Parkway, Suite 100, Plano, TX 75074, facsimile (214) 291-5593, and e-mail info@caroffer.com. Notices shall be effective upon receipt if personally delivered, on the third business day following the date of mailing if sent by certified or registered mail, and on the first business day following the date sent via overnight delivery or express mail. Notices sent by facsimile or e-mail are deemed delivered upon confirmation of transmission, except if the transmission is during the normal non-business

hours of recipient, receipt shall be deemed effective upon the resumption of the normal business hours of recipient. Either Party may change its address or other notice information by notice to the other Party pursuant to this **Section 44(f)**.

- (g) *Construction.* The following rules of construction apply to these Terms: (i) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of these Terms; (ii) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation” unless already followed by words of similar import; (iii) the term “or” is not exclusive; (iv) except as otherwise indicated, all references in these Terms to “Sections” are intended to refer to a Section of these Terms; and (v) the descriptive headings contained in these Terms are included for convenience of reference only and shall not affect in any way the meaning or interpretation of these Terms.

45. **Index of Defined Terms.** The following is an index of all terms defined in these Terms and the Section of these Terms in which they are each defined.

Defined Term	Section
AAA	43(c)
Authorized Users	3
Business Days	25(d)
Buyer	Opening Paragraph
CarOffer	Opening Paragraph
CarOffer IP	9
CarOffer Parties	34
CarOffer Platform	1
CarOffer Service Partners	1
Data	10
Dealer	Opening Paragraph
Dealer Affiliate	25(a)
Dispute	43
Enrollment Agreement	3
Fees	22
Guaranteed Bid	14(b)(iii)
Indemnified Claim	36
NAAA	26
NSF	25(b)
our	Opening Paragraph
Purchase Price	17(c)
Seller	Opening Paragraph
TA	16(h)(ii)
Terms	Opening Paragraph
Total Payment Amount	23
TWD	16(h)(i)
us	Opening Paragraph
Vehicle or Vehicles	1
we	Opening Paragraph
Web Information	38
you	Opening Paragraph

Defined Term	Section
your	Opening Paragraph