

WITHOUT PREJUDICE

DEED OF RELEASE

Australian Automotive Group Pty Ltd t/as
Titan Ford and Brookvale Mitsubishi

And

Garry Kelly

This Deed

made on the date noted at **Item 1** of the Schedule

Between

See **Item 2** of the Schedule (**the Company**)

and

See **Item 3** of the Schedule (**the Employee**)

Background

- A. The Employee has been employed by the Company since the date noted at **Item 4** of the Schedule (**Employment**).
 - B. The Employee and the Company have agreed the role which the Employee works in is being modified in a fundamental way and the Employee has elected not to take on that new role.
 - C. The Employee and the Company have agreed on the terms of settlement in relation to various matters concerning the Employee's employment as a result of which the parties to this Deed seek to make arrangements and resolve all issues concerning the Employment to date on the terms of this Deed noted below.
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The Company and the Employee agree that:

1 DEFINITIONS

In this Deed, except to the extent the context otherwise requires:

Claim includes any complaint, dispute, action, suit, cause of action, arbitration, debt due, cost, claim, demand, cost and demand in respect of damages, and any other benefit, verdict and judgment whatsoever both at law or in equity or arising under the provisions of any statute, award, or determination whether or not known at the date of this Deed except for any statute, award, or determination relating to worker's compensation;

Company includes the company noted at **Item 2** of the Schedule and any predecessor, company, partnership, trust or sole trader with common ownership or control (whether in whole or part directly or indirectly, or through interposed entities or not) including any Related Bodies Corporate;

Company Property means property of the Company including intellectual property and Confidential Information and includes, but is not limited to items of physical property such as books, documents, materials, computer hardware and software, computer disks or other forms of information technology, credit cards, keys and any other property (including copies, summaries and excerpts), motor vehicle, fuel card, mobile telephone, personal protective equipment, uniforms and other items of a similar nature.

Confidential Information means the confidential information of the Company or a Related Body Corporate relating to the Company or its operations or business affairs and includes:

- (a) marketing and financial information and policies, marketing plans, business plans, strategic plans, acquisition or business expansion plans, costing information, pricing policies, price lists and reporting procedures of the Company whether relating to past, present or future operations of the Company;
- (b) the Company's past, present and future client information, including client identity, value of client accounts, pricing arrangements and terms of dealing with specific clients;
- (c) the Company's past, present and future supplier information, including supplier identity, price for supply, terms and conditions of supply and the value of accounts to suppliers;
- (d) the Company's past, present and future employee information, including terms of employment and Employee remuneration packages;
- (e) information marked as confidential or which the receiving party could reasonably regard as confidential; and
- (f) the Company's general know-how and procedures whether or not marked as confidential;

but Confidential Information does not include information which:

- (g) is legally in the public domain or is generally known or is available by publication; or
- (h) the receiving party either already possesses at the time of disclosure to it by the disclosing party or independently acquires except through a breach of an obligation of confidentiality by any third party.

Deed means this Deed of Release;

Entitlements includes any wages, allowances, annual leave, long service leave, notice of termination or payment in lieu of notice of termination, redundancy or severance pay, commissions, bonuses, reimbursement of expenses, superannuation and any entitlement which may be owed or payable pursuant to any award or agreement or contract of employment to which the Employee may have been entitled in respect of the Employee's employment with the Company including payment of penalty rates;

Related Body Corporate has the meaning given to that term by section 50 of the *Corporations Act 2001* (Cth).

2. THE PARTIES AGREE

- 2.1 Within Seven (7) days of signing this Deed, the Company will make payment to the Employee via bank transfer of the sum noted at **Item 6** of the Schedule (**the Settlement Sum**):

This amount will be in full and final settlement and satisfaction, of any Claim.

- 2.2 The Employee's employment with the Company will terminate on the date noted at **Item 5** of the Schedule.

3. RELEASE AND INDEMNITY

- 3.1 The Employee forever releases, discharges and indemnifies the Company, its officers, employees and agents from all present and future Claims (legal, equitable or statutory) which the Employee may have against any of them.
- 3.2 The Employee agrees that the release and discharge in clause 3.1 may be pleaded as a bar to any proceedings commenced by the Employee (or on his behalf) against the Company and any subsidiary, Related Body Corporate or entity and their officers, employees and agents.
- 3.3 The Settlement Sum is paid with an express denial of liability by the Company to make any payment to the Employee. The Settlement Sum is paid solely to settle the matters in dispute between the parties. This Deed must not be interpreted by the Employee as an admission by the Company of liability to the Employee for any matter.
- 3.4 Notwithstanding clause 3.2 above, the Employee agrees that the Settlement Sum satisfies the Company's obligation to pay the Employee wages under any individual or collective agreement, award, or otherwise in full to the date of this agreement and that the Settlement Sum can be off set against any sums found to be due as a result of any third party investigation, including any enquiry or investigation by the Fair Work Ombudsman or equivalent statutory body.

4. RELEASE DOES NOT INCLUDE WORKERS COMPENSATION

- 4.1 Nothing in this Deed prevents the Employee from lodging a claim for workers compensation under workers compensation legislation.

5. CONFIDENTIALITY

- 5.1 The Employee and the Company agree to keep confidential:
 - (a) all matters, negotiations or discussions whatsoever relating to the reason or reasons for this Deed; and
 - (b) the terms of this Deed,otherwise than as may be necessary to disclose to a party's legal or accounting adviser and as may be required to be disclosed by law.

6. RETURN OF COMPANY PROPERTY AND CONFIDENTIAL INFORMATION

- 6.1 The Employee will, on their final day of employment or prior to the Termination Date, return to the Company all items of Company Property or Confidential Information in the possession or control of the Employee.
- 6.2 The Employee agrees not to use or disclose Confidential Information following their Employment.
- 6.3 The Employee agrees that the Company may withhold payment of the Settlement Sum under this Deed if the Employee fails to return such Company Property or Confidential Information within the required timeframe and in a condition satisfactory to the Company.

7. COSTS

- 7.1 Each party will bear their own legal costs in relation to the preparation of this Deed and any costs associated with obtaining legal or accounting advice in relation to the execution of this Deed.
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8. ACKNOWLEDGMENTS

8.1 The Company and the Employee agree and acknowledge:

- (a) That this Deed is intended to be legally binding.
- (b) In consideration of the Settlement Sum, the Employee agrees to release the Company from all or any liability in respect of all or any Claims made against it by any person or body on the basis that the payment was reduced by tax at the correct rate and the Employee will fully indemnify the Company in respect of all or any claims made against it by the Australian Taxation Office or any other body, including but not limited to claims for unpaid tax, interest and penalties.
- (c) That with effect from the date of execution of this Deed they will not disparage each other.
- (d) They have freely entered into this Deed after having the opportunity to carefully consider its contents and to obtain legal advice on the matters in this Deed.
- (e) That a breach by the Employee of the terms of this Deed, other than as set out in this Deed, in particular in relation to Confidentiality, could cause loss and/or damage to the Company and may lead to proceedings to enforce this Deed and/or proceedings to compensate for any loss or damage to the Company as caused by the Employee.
- (f) This Deed terminates and supersedes any prior oral or written agreements between the parties concerning the Employee's Employment or payment of employment entitlements and constitutes an entire understanding between them.

9. GOVERNING LAW AND JURISDICTION

- 9.1 This Deed is governed by the laws of the State or Territory noted at **Item 7** of the Schedule and the Commonwealth.
- 9.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State or Territory noted at **Item 7** of the Schedule and the Commonwealth.

10. SEVERABILITY

- 10.1 If a provision of this Deed is invalid, illegal or unenforceable it must, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this Deed.
- 10.2 Severance of a provision will not affect the validity and enforceability of the remaining provisions.

11. WHOLE AGREEMENT

- 11.1 This Deed is the whole agreement between the parties concerning the subject matter. It replaces any prior agreement, arrangement or understanding concerning the subject matter.

12. VARIATION

- 12.1 No provision of this Deed or right conferred by it can be varied except in writing signed by the Parties.

13. COUNTERPARTS

13.1 If this document is signed in counterparts then:

- (a) each is deemed an original; and
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- (b) together they constitute one document.

14. INTERPRETATION


14.1 In this Deed:

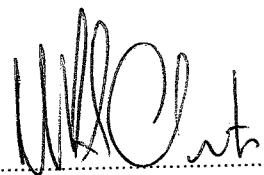
- (a) The singular includes the plural and vice versa;
- (b) A reference to a party is to be construed as a reference to a party to this Deed;
- (c) A reference to a document or agreement including this Deed includes a reference to that document or agreement as amended, notated, supplemented, varied or replaced from time to time;
- (d) In the interpretation of this Deed, headings are to be disregarded.

Executed as a Deed

Signed sealed and delivered by the Company)

Signed by Michael Clements in the presence
of:)



Signature of Witness

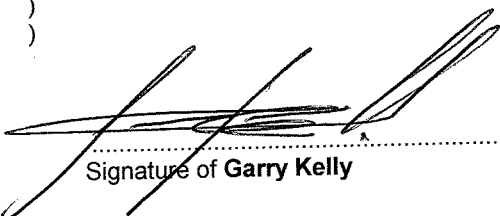

Signature of **Michael Clements**

MARIE THOMAS
Print name of Witness

20.12.2018
Date:

Signed sealed and delivered by the Employee)
in the presence of:)


Signature of Witness


Signature of **Garry Kelly**

MARIE THOMAS
Print name of Witness

20.12.2018
Date:

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ITEM	DAYS OWING	GROSS	TAX
Annual Leave	17.38	\$ 11,700.60	\$ 3,744.00
Redundancy Pay	50	\$ 33,653.85	\$ 4,821.00
Notice in Lieu	20	\$ 15,505.69	
		\$ 60,860.14	\$ 8,565.00
	Total (less tax):	\$ 52,295.13	

[illegible]