

BestCar Terms of Use

8 June 2022

Welcome to our terms of use. These terms apply to all services provided at www.bestcar.co.nz as well as to other services if we both agree. These terms are subject to any specific amendments we agree with you in writing.

1 Introduction

This section includes some things you'll need to know when reviewing any of our terms.

1.1 Definitions used in our terms. The words in bold below have the same meaning each time they're used in our terms. So when we say:

- (a) **BestCar** we're referring to the www.bestcar.co.nz website and/or www.app.bestcar.co.nz application (as the context permits) including their backend infrastructures.
- (b) **BestCar data** it means the data we make available via the "BestCar data" service on the BestCar application.
- (c) **OptiFleet, we, our or us**, we're talking about Optimal Fleet Solutions Limited.
- (d) Our **services** we mean the services that we provide to you under these terms, whether from the BestCar website or otherwise.
- (e) **You or your**, we mean the individual or organisation purchasing our services.

1.2 Changing our terms. Sometimes we'll decide to change our terms. But don't worry, the changes won't apply retrospectively and, if we make changes that affect you, we'll make every effort to let you know. You can keep track of changes to our terms by referring to the date last updated at the top of the terms. Generally, we endeavour to provide you with 30 days' notice of material changes before they become effective, unless we need to make immediate changes for reasons we don't have control over. When we notify you, we'll do it by email or by posting a notice through the BestCar website. If a change isn't material, we may not notify you. If you find a change unacceptable, you may terminate your service in accordance with these terms. If you terminate within the period of our notice, the change will not apply to you for the remainder of your term.

2 Ordering Services

You can order services through our standard ordering processes. Some of our services can be ordered online, while others need you to sign or email a service order. No order is effective, and we aren't required to provide the service to you, until we accept the order in writing or start providing the service to you. We can refuse your order for any service if we have any concerns about you using the service. For example, if you had a poor payment history with us.

3 Provision of Services

We hope you love using our services. The following apply to all our services.

3.1 Service descriptions. Except for services that we agreed specifically for you, our services are as described on the BestCar website from time to time. Before using any of our services you must check that, as described, they'll be suitable for whatever purpose you want to use them.

3.2 Service duration. Unless we agreed a service duration specifically for you, or the service is terminated in

accordance with these terms, we'll provide each service for as long as you continue to pay the applicable fees.

3.3 Modified services. As we're always thinking about how to make our services better, we regularly adjust the services described on the BestCar website and may sometimes discontinue some of their features. If new terms apply as a result of these modifications, we'll let you know what those terms are using the process in section 1.2 (Changing our terms). This ability to modify our services doesn't apply to services that we agreed specifically for you.

3.4 Free services. Occasionally we might offer a service at no charge – for example a beta service, or a time-limited trial. Because of the nature of these services, you use them at your own risk and we have no liability for them as described in accordance with section 10.4 (Liability for free services).

3.5 Responsibility for application users. You can invite users into your account for the BestCar application. You are responsible for:

- (a) Controlling access to your account by inviting users and deciding what kind of access they have. You can change or stop their access at any time.
- (b) The activity of your users in relation to the service, and the consequences of that activity.

Users don't need to accept these terms themselves but you have full responsibility for them. We can revoke a user's access if we have any material concern about them using the service.

3.6 Your responsibilities. You're responsible for:

- (a) Verifying the accuracy of any information that you use from our services.
- (b) Ensuring that you and your users:
 - (i) Don't use user or account names that are:
 - Intended to impersonate someone else.
 - Subject to someone else's rights, without their authorisation.
 - Offensive, vulgar, or obscene.
 - (ii) Keep your information in the BestCar application (including a current email address) complete, accurate and up to date.
 - (iii) Protect usernames and passwords from being stolen or misused. You will ensure that passwords are very strong and not easily guessable. The stronger the password the better! For more about security, see section 8 (Security) below.
- (c) Using our services only for lawful purposes and in line with the instructions and guidance we provide.

3.7 Things you must never do. There are some things you must never do:

- (a) Undermine the security or integrity of our computing systems or networks.
- (b) Use our services in any way that might impair functionality or interfere with other people's use.
- (c) Access any system without permission or try to circumvent any restrictions we place.

- (d) Introduce or upload anything to our services that includes viruses or other malicious code.
- (e) Share or do anything that may be offensive, violates any law, or infringes on the rights of others.
- (f) Modify, copy, adapt, reproduce, disassemble, decompile, reverse engineer, extract the source code of, create derivative works from or commercially exploit any part of our services.
- (g) Use any of our services to build a product or service that competes with any of our services, or has similar features or functionality.
- (h) Resell, lease or provide our services in any way not expressly permitted through our services.
- (i) Repackage, resell, or sublicense any data accessed through our services, unless we expressly allow you to.
- (j) Commit fraud or other illegal acts through our services.
- (k) Act in a manner that is abusive or disrespectful to our staff, suppliers or other customers.
- (l) Use a robot, spider, manual and/or automatic processes or devices to data-mine, data-crawl, scrape or index our services in any way.

3.8 **Compatible browsers.** The BestCar website and application can only be used reliably on the latest general release version of FireFox, Chrome or MS Edge.

4 BestCar Data

This section applies if you use our “BestCar data” service.

4.1 **Permitted use.** We grant you a perpetual but non-exclusive, non-transferable and non-sublicensable license to copy, modify, use and redistribute the BestCar data that we give you through the BestCar application, provided you don't do so in a way that may compete with any of our products or services (whether BestCar or otherwise).

4.2 **Access options.** If you access the BestCar data:

- (a) By telling us your IP address:
 - (i) You can have no more than 5 IP addresses at once.
 - (ii) Each IP address must be static.
 - (iii) You can change IP addresses up to twice per year, on written notice to us.
- (b) By application programming interface (API), you must:
 - (i) Create no more than one integration between the API and your systems.
 - (ii) Create and operate the integration in accordance with our instructions.

4.3 **Estimated costs only.** We put a lot of effort into ensuring that the costings included in our BestCar data (including vehicle prices, running costs and valuations) are as accurate as possible. But it's important to remember that these are just estimates. Actual costs may vary depending on many factors.

4.4 **IP infringement.** We warrant that your use of BestCar data in accordance with section 4.1 (Permitted use) will not infringe the intellectual property rights of any third party, provided:

- (a) you promptly notify us of any claimed infringement you are aware of; and
- (b) our warranty does not cover infringement:
 - (i) connected with your redistribution of the BestCar data (see section 4.5 (Redistribution at your risk));
 - (ii) arising from any modification to the BestCar data; or
 - (iii) arising from any use of the BestCar data with data not supplied by us.

If an infringement claim is made or expected, we may obtain a license for you to continue using BestCar data,

replace or modify BestCar data so it becomes non-infringing but substantially similar in nature, and/or terminate this Agreement without any further liability to you.

4.5 **Redistribution at your risk.** We don't know who you might redistribute the BestCar data to, and are unable to protect ourselves against their claims. So, to the maximum extent permitted by law, you will hold us harmless and indemnify us from and against any third party claim arising from your redistribution of the BestCar data. We will promptly notify you of any such claim and use reasonable endeavours to mitigate the amount claimed under this section.

5 Support

If you need any support using our services, we're here to help.

5.1 **Help using our services.** We may provide guidance on the www.bestcar.co.nz website to help you use our services. But if you're having problems, please contact hello@optifleet.co.nz.

5.2 **Thanks for your feedback.** We love receiving your feedback on our services, but it must be provided on the basis that we can use it freely.

6 Price and Payment

We'll only charge the prices that you agreed. Please pay them on time.

6.1 **Our prices.** Unless we agreed pricing specifically for you, our prices are as specified on the BestCar website. We can change the prices specified on the BestCar website by notifying you of the change, but if we increase our prices the increase will only come into effect once you have had an opportunity to terminate the service concerned. For example, if you're on a monthly term, we'll give you at least one month's notice of any price increase. If you're on a fixed term, the increase won't apply until the end of the fixed term.

6.2 **Invoicing and payment.** Unless we agreed an invoicing arrangement specially for you, we'll invoice you monthly. If you receive an invoice on or before the 7th business day of a month, you must pay it by the 20th of that month. In order to continue accessing our services, you need to make timely payments. To avoid delayed or missed payments, please make sure we have accurate invoicing information. If we don't receive timely payments, we may suspend your service until the payment is made.

6.3 **External fees and taxes.** Unless otherwise indicated, our prices are expressed without GST. If GST is due on the services you use, we'll provide you with a GST invoice and you will pay us the GST in addition to our prices. Except for our income tax, you're responsible for paying all other external fees and taxes associated with your use of our services wherever levied.

7 Your Data

We know your data is important, and we'll only use it as agreed by you.

- 7.1 **Use of data.** When you provide data to our services, including personal information of yourself and others, we don't own that data but you grant us a licence to use, copy, transmit, store, analyse, and back up that data to:
- (a) Enable you to use our services.
 - (b) Allow us to improve, develop and protect our services and create new services.
 - (c) Communicate with you about your services.

7.2 Anonymised statistical data. When you use our services, we may create anonymised statistical data from your data and usage of our services, including through aggregation. Once anonymised, we may use it for our own purposes, such as to provide and improve our services, to develop new services or product offerings, to identify business trends, and for other uses we communicate to you.

7.3 Using your personal information. We respect your privacy and take data protection seriously. In addition to these terms, our privacy policy is an important part of these terms. It sets out in detail how we process the personal information that you enter into our services, like user names and email addresses. We require each of your users to agree the privacy policy.

7.4 Data breach notifications. If we think there has been unauthorised access to personal information inside your BestCar account, we'll let you know and give you information about what has happened. Depending on the nature of the unauthorised access, you may be required to assess whether the unauthorised access must be reported to the relevant authority. We think you're best placed to make this decision, because you'll have the most knowledge about the personal information stored in your account.

8 Security

We take security seriously. To help protect our services and your data, we offer security features such as multi-factor authentication.

8.1 Security safeguards. We've invested in technical, physical and administrative safeguards to do our part to help keep your data safe and secure. While we've taken steps to help protect your data, no method of electronic storage is completely secure and we cannot guarantee absolute security. We may notify you if we have reason to believe that someone has accessed (or may be able to access) your account without authorisation and we may also restrict access to certain parts of our services until you verify that access was by an authorised user.

8.2 Account security features. We may provide security features to make your account more secure, such as multi-factor authentication. Depending on what services you're using, we may require you to adopt some of these features. Where we make the use of security features optional, you're responsible (meaning we're not liable) for any consequences of not using those features. We strongly encourage you to use all optional security features.

8.3 Playing your part to secure your data. You have an important part to play by keeping your login details secure, not letting any other person use them, and by making sure you have strong security on your own systems. If you realise there's been any unauthorised use of your password or any breach of security to your account or email address linked to your account, you need to let us know immediately. We aren't liable for any third party assessing your account with your passwords.

8.4 Data availability. We strive to maintain the availability of our services, but:

- (a) The internet isn't perfect. Occasionally you might not be able to access our services and your data. This might happen for any number of reasons, at any time.
- (b) On occasion, we need to perform maintenance on our services, and this may require a period of downtime. We try to minimise any such downtime. Where planned

maintenance is being undertaken, we'll attempt to notify you in advance but can't guarantee it.

- (c) Data loss is an unavoidable risk when using any technology. You're responsible for maintaining copies of your data entered into our services.
- (d) Whatever the cause of any downtime, access issues or data loss, your only recourse is to discontinue using our services.

8.5 Links to other websites. If the BestCar website or application includes any links (such as hyperlinks, framing or advertisements) to other websites, the links do not amount to endorsements of those websites or their content. The links are provided for information, reference and convenience only. We don't control those sites, and aren't responsible for their content. If you use those sites, your use will be governed by separate terms of use rather than our terms.

9 Termination

We'll agree the term of each service with you. In addition to any termination right we agree with you, we can terminate a service immediately in the following situations.

9.1 Termination for convenience. Unless a service has a minimum term or may only be terminated for convenience at the end of a certain period (as specified on the BestCar website or agreed specifically for you), either of us may terminate that service for convenience, at any time and for any reason, by telling the other in writing at least one month beforehand.

9.2 Termination for cause. We can terminate any service on written notice to you, if you don't pay your fees when due. Each of us can terminate a service on written notice to the other if the other:

- (a) Breaches these terms and does not remedy the breach within 14 days after receiving notice to do so.
- (b) breaches these terms and the breach cannot be remedied.
- (c) Becomes insolvent, goes into liquidation, has a receiver or manager appointed over any of its assets, makes any arrangement with its creditors, or becomes subject to any similar insolvency event.

9.3 Suspension by us. We can suspend access to a service in any circumstance in section 9.2 (Termination for cause), or where we think suspension is reasonable. For example:

- (a) To protect, maintain or repair any part of our services.
- (b) Where there is an emergency.
- (c) Where we think you put us or anyone else at risk.

9.4 No refunds. No refund is due to you if a service is terminated or suspended in accordance with these terms.

9.5 Retention of your data. Once a service ends or is terminated, the data submitted or created by you is no longer available to you. If you want this data, you need to retrieve it from within the service before it ends. We retain it for a period of time consistent with our data retention policy, during which you may be able to reactivate your service and once again access your data by paying the applicable fees.

9.6 Survival. Termination or suspension will not affect the continuing operation of any sections which, by their nature, are reasonably intended to survive termination or suspension. Including sections 4 (BestCar Data), 6 (Price and Payment), 7 (Your Data), 9 (Termination), 10 (Liability) and 11 (General).

10 Liability

This section is important as it outlines the potential liability of each of us in relation to the services, so we urge you to read it closely and in full.

10.1 You indemnify us. As we can't control how you put the services to use, you indemnify us against all losses, costs (including legal costs), expenses, demands or liability that we incur arising out of, or in connection with, a third-party claim against us relating to your use of the services, except in so far as we're at fault. We will promptly notify you of all such claims we know about, provide you with all reasonable cooperation relating to the claim, and use all reasonable endeavours to mitigate the amount of your indemnity under this section.

10.2 Disclaimer of warranties. Our services are made available to you on an "as is" basis. To the extent the law allows, we disclaim all warranties, express or implied, including any implied warranties of non-infringement, merchantability and fitness for a particular purpose. If you use our services for the purpose of a business, you agree that the Consumer Guarantees Act 1993 does not apply to your use of the services.

10.3 Limitation of liability. Other than liability that we can't exclude or limit by law, our liability to you in connection with our services or these terms, whether that liability arises in contract, tort (including negligence) or otherwise, is limited as follows:

- (a) We have no liability arising from your use of our services for any loss of revenue, profit, capital or savings, loss in connection with any other contract, or indirect, consequential, incidental, punitive, exemplary or special loss.
- (b) For loss or corruption of your data, our liability will be limited to taking reasonable steps to try and recover that data from our available backups.
- (c) Our total aggregate liability to you in relation to any service, in respect of all events giving rise to such liability and all other events in the preceding 12 months, is in all circumstances limited to the total amount you paid us for that service over those 12 months.

10.4 Liability for free services. Regardless of section 10.3 (Limitation of liability), if we provide you with a service at no charge:

- (a) to the greatest extent permitted by law, we have no liability to you at all in relation to that service; and
- (b) if a court determines that we do have such liability, it will not exceed \$100 in aggregate.

11 General

Here we set out some additional terms. Take a read as they may cover important issues.

11.1 What we own. Other than your data and content owned by others, we and our licensors own the intellectual property rights in everything we've put into our services. This includes rights in the design, compilation, and look and feel of our services. You agree not to:

- (a) Copy, distribute, modify or make derivative works of any of our intellectual property rights.
- (b) Remove or alter any of our copyright, trademark or other proprietary marks.
- (c) Use any of our intellectual property rights in any way not expressly permitted by us.

11.2 Keeping it confidential. While using our services, you might share confidential information with us, and you might become aware of confidential information about us. You and we both agree to take reasonable steps to protect each other's confidential information from being accessed or used without the other's permission. You or we may share each other's confidential information with legal or regulatory authorities if required to do so.

11.3 Dispute resolution. Most of your concerns should be resolved quickly and to everyone's satisfaction by contacting hello@optifleet.co.nz. If we're unable to resolve your complaint to your satisfaction (or if we haven't been able to resolve a dispute we have with you after attempting to do so informally), you and we agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. You and we agree that any dispute must be brought in the parties' individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. You're solely responsible for resolving disputes between you and any other subscriber or user.

11.4 Notices. Any notice you send to us must be sent to hello@optifleet.co.nz. Any notices we send to you will be sent to the email address you've provided us through your account.

11.5 Events outside our control. We do our best to control the controllables. But we aren't liable to you for any failure or delay in performance of any of our obligations under these terms arising out of any event or circumstance beyond our reasonable control.

11.6 Entire agreement. Our terms constitute the entire agreement between you and us in relation to their subject matter.

11.7 Enforcement of terms. If there's any part of these terms that either one of us is unable to enforce, we'll ignore that part but everything else will remain enforceable.

11.8 Waivers. If we delay enforcing our terms, we'll not be seen as having waived our right to enforce. For our waivers to be effective, they must be in writing and signed on our behalf.

11.9 Relationship. Nothing in these terms is to be construed as constituting a partnership, joint venture, employment or agency relationship between you and us, or between you and any other subscriber or user.

11.10 Assignment. We may assign our rights and obligations under these terms to any entity that purchases BestCar and takes over operation of our services. We'll be released from our liabilities and obligations under these terms with effect from the date that such entity agrees to be bound by our liabilities and obligations under these terms, such that you can enforce those liabilities and obligations against them.

11.11 Interpretation. Words like 'include' and 'including' aren't words of limitation. Where anything is within our discretion we mean our sole discretion. Reference to any document, including these terms or legislation, is reference to it as amended or replaced from time to time.