

# PEKAR HOLDINGS PTY LTD t/a WE BUY BAKKIES

## TERMS AND CONDITIONS, INCLUDING THE RULES OF AUCTION

Updated: 17 January 2023

STANDARD TERMS AND CONDITIONS, INCLUDING THE RULES OF AUCTION, USE OF WEBSITE AND PRIVACY POLICY (COLLECTIVELY THE "TERMS AND CONDITIONS"): PLEASE READ THIS DOCUMENT CAREFULLY. YOUR USE OF THIS WEBSITE AND/OR ANY BID PLACED WITH PEKAR HOLDINGS PTY LTD T/A WE BUY BAKKIES ( "THE COMPANY or "WE" or "US" or "WBB") CONFIRMS YOUR UNCONDITIONAL ACCEPTANCE HEREOF.

### 1. DEFINITIONS

- 1.1 **"Auctioneer"** means We Buy Bakkies;
- 1.2 **"Buyer"** means the purchaser of the Goods.
- 1.3 **"Cleared Funds"** means the approved bid purchase price paid by the Buyer into the Seller's nominated bank account, which funds are cleared by such nominated bank and to which the Seller has immediate access.
- 1.4 **"Company"** means PEKAR HOLDINGS PTY LTD t/a WE BUY BAKKIES, a company duly incorporated in accordance with the laws of South Africa, with registration number 1998/015165/07.
- 1.5 **"Contract"** means any contract or agreement arising out of the acceptance of any offer.
- 1.6 **"ECTA"** means the Electronic Communications and Transactions Act, No 2 of 2002 and can be accessed at [https://www.gov.za/sites/default/files/gcis\\_document/201409/a25-02.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a25-02.pdf);
- 1.7 **"Effective Date"** means the date of payment of the approved bid purchase price;
- 1.8 **"FICA"** means the Financial Intelligence Centre Act, 38 of 2001 and can be accessed at [https://www.gov.za/sites/default/files/gcis\\_document/201409/a38-010.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a38-010.pdf);
- 1.9 **"Goods"** means the motor vehicles and/or any other item listed for sale on the Website.
- 1.10 **"Party"** shall mean either the Buyer, Seller and/or the Company as the context may apply and **"Parties"** shall mean a collection of the Buyer, Seller and/or the Company as the context may apply.
- 1.11 **"POPIA"** means the Protection of Personal Information Act, No 4 of 2013 and can be accessed at [https://www.gov.za/sites/default/files/gcis\\_document/201409/3706726-11act4of2013popi.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013popi.pdf);
- 1.12 **"Regulations"** means the Consumer Protection Act Regulations, as amended from time to time.
- 1.13 **"Reserve Price"** means the minimum VAT inclusive price at which the Seller is prepared to sell the Goods.
- 1.14 **"Seller"** means the seller of the Goods and may include the Company where context applies.
- 1.15 **"User"** means the user, juristic or natural, of the Website and can include the Buyer and the Seller where context applies.
- 1.16 **"Website"** means [www.webuybakkies.co.za](http://www.webuybakkies.co.za)

## 2. IMPORTANT NOTICES

- 2.1 This document contains the standard terms and conditions of auction on which the Company auctions the Goods to the User.
- 2.2 In the event that a further risk assessment is required, the Seller reserves the right to conduct such assessment after the auction process is concluded and may cancel the sale transaction should the Seller no longer deem the transaction to fall within an acceptable threshold of our risk appetite to conclude the sale.
- 2.3 These terms and conditions constitute the entire agreement between the Company and the User relating to the subject matter hereof and shall be binding between the Parties for all current and future online auctions of Goods, unless modified and/or amended by the Company. The Seller shall also be bound to these terms and conditions.
- 2.4 Nothing in these terms and conditions are intended to or must be understood to unlawfully restrict, limit or avoid any rights, obligations, as the case may be, in the event of the CPA applying.
- 2.5 The User, by its application for registration and subscription to the Website, logging in on the Website and the submission of electronic bids, warrants that it has read and understood all the terms and conditions contained in this document and agrees to be bound hereby.
- 2.6 The Seller, by listing the Goods on the Website, warrants that it has read and understood all the terms and conditions contained in this document and, where applicable, agrees to be bound thereby.

## 3. REGISTRATION BY USER

- 3.1 **The User:**
  - 3.1.1 **will complete, in full, the registration document provided on the Website.**
  - 3.1.2 certifies that the information provided by the User in all respects is true and correct.
  - 3.1.3 will furnish the Company with such supporting documentation as may be required by the Company for any reason whatsoever including, without limitation, documentation required for FICA purposes.
  - 3.1.4 certifies that the User and/or Buyer is a motor dealer registered in terms of the laws of the Republic of South Africa; and
  - 3.1.5 acknowledges that the bidding for any Goods on auction on the Website and any sale concluded as a result thereof will give rise to a contractual relationship between the Seller and the Buyer.
- 3.2 At the Company's absolute and sole discretion and upon compliance with the requirements of clause 3.1 above, the Company shall activate the User as a subscriber to the Website and will, within a reasonable period, provide the User access to the Website for the purposes of viewing and bidding for Goods listed on auction on the Website.
- 3.3 The Company reserves the **right to decline or at any time cancel a user's registration for any reason whatsoever and for which the User will have no recourse.**
- 3.4 The User's registration to the Website shall be deemed to provide consent by the User that the Company may conduct various checks on the User including, without limitation, credit reference checks with a registered credit bureau.
- 3.5 The User shall furthermore make available to the Company and/or the Seller such information as may be required by the parties including, without limitation:
  - 3.5.1 the User's information for FICA purposes.
  - 3.5.2 the User's registration and/or founding documentation and/or any other documentation verifying the identity of the User.
  - 3.5.3 proof of the User's VAT registration number; and
  - 3.5.4 proof of the User's registration as a motor vehicle dealer.

- 3.6 The purpose of collection and processing of the information as contained within clause 3.5 above shall be in terms of the following:
- 3.6.1 In order to comply with legislation including, but not limited to the Consumer Protection Act and the Financial Intelligence Centre Act (FICA), the Company may from time-to-time request updated information from the User or from registered credit bureaus, to verify the User's information.
  - 3.6.2 Should updated information be requested and be received within 7 (seven) business days of the request, the Users profile will remain active.
  - 3.6.3 It is required by law that the Company is notified without delay of any changes to the Users information.
  - 3.6.4 Any documentation held by the Company may be provided by the Company, to a party with whom the User has successfully concluded a transaction on the Website. The documents and information shall only be provided in relation to and as is necessary for the concluded transaction.
  - 3.6.5 The Company shall comply with any lawful request for information, with regards to Goods or Users.
  - 3.6.6 By accepting these terms and conditions, the User consents to the use and transfer of information to third parties, to conduct the procedures as set out in this clause 3.6.
- 3.7 The User furthermore agrees and consents to the Company having access to and/or conducting credit reference checks in relation to the User.

#### **4. RULES OF AUCTION**

- 4.1 PEKAR HOLDINGS PTY LTD t/a WE BUY BAKKIES shall act as the Auctioneer and the auction is a closed auction as defined in the Regulations.
- 4.2 All bids will be submitted electronically through the Website and no alternative form of a bid will be accepted or considered valid for any reason whatsoever.
- 4.3 Where the auction is subject to a Reserve Price, the Seller reserves the right to reject any bid below the minimum Reserve Price.
- 4.4 By placing a bid, the User warrants that they have the ability and the intention to proceed with the purchase of the Goods. All successful bids placed by the User constitute an irrevocable offer by the User to the Seller and may not be withdrawn by the User, unless otherwise agreed in writing by the Seller, or if the User falls within the ambit of the CPA (insofar as the CPA is applicable).
- 4.5 The Company and/or the Seller reserves the right, in its sole and absolute discretion to withdraw its listed Goods from auction at any time before acceptance of a bid.
- 4.6 **Auction Operating Hours:**
  - 4.6.1 Each and every auction shall open when the Goods are uploaded onto the Website, unless indicated otherwise on the Website.
  - 4.6.2 All auctions and biddings shall close on its respective indicated closing dates at **16h30.**
  - 4.6.3 The Company and/or the Auctioneer endeavours to use its best efforts to notify a bidding subscriber, per short message service or electronic mail, if any higher bids are placed on the Website immediately before the 16h30 close time.
    - Where such a bid is placed the User will have an additional **6 (six) minutes** in which to continue bidding.

- The process referred to in this clause 4.6.3 shall continue until the competitive bidding ends.
  - By way of an example and in order to clarify the provisions of this clause 4.6.3, if bidder places a bid at 16h29 then the bidding process will continue up until and including 16h35 and if a bid is then placed at 16h34 then the bidding process will continue up until and including 16h40. This process will continue until no more bids are placed on the particular Goods within the last 6 (six) minutes of the auction (which continuation of the aforementioned competitive process shall be at the sole and exclusive discretion of the Company).
- 4.7 Neither the Company or the Auctioneer will be held liable in the instance where the competitive process referred to in clause 4.6.3 above does not take place and the auction closes, for whatsoever reason, at 16h30. In such an instance the Company shall have the sole discretion as to re-start the auction, reopen the auction or sell the Goods to a bidder as determined at 16h30.
- 4.8 **Save for the situation provided for in clause 4.9 below, notice of acceptance of a successful bid will be forwarded by electronic mail, to the Buyer notifying him/her of the successful purchase of the Goods. The receipt of such notice by the Buyer shall bind him to purchase the Goods from the Seller at the amount bid by the Buyer on the Website.**
- 4.9 Receipt of the electronic mail notice referred to in clause 4.8 above sent as a result of, among other things, a website error or a defect in the Website or server will not be binding on the Company and/or the Seller and the Company reserves the right to retract the notice in such circumstances. The User shall have no recourse against the Company, Auctioneer and/or the Seller in such circumstances whatsoever.
- 4.10 In the event that a sales transaction is in dispute due to, but not limited to, the vehicle not being as described on the auction, either party to the transaction, Buyer or Seller, shall attempt to resolve the matter between themselves. If no resolution is reached between the Buyer and the Seller, **the sale transaction will be cancelled** or reversed.
- 4.11a **in the event where the sale transaction is cancelled due to the fault from the Seller (Example: Seller misrepresented the Goods), then the vehicle will be reloaded on the auction platform with the correct details. In such an event the Dealer will not be held responsible for cancelling the transaction.**
- 4.11b **in the event where the sale transaction is cancelled with no viable reason by the Dealer, a warning will be issued to the Dealer. Should the Dealer act in a similar way with his/her future bidding, such a Dealer will be removed from the platform without further notice.**
- 4.12 The Seller agrees that in the event where a sales transaction is cancelled or reversed, the Goods shall be re-listed with similar reserve price at least once after said cancellation or reversal for auction on the Website until closing date of said re-listed auction.

## 5. FINALISATION OF SALE AND PAYMENTS

- 5.1 The Auctioneer and/or the Company shall notify the successful Buyer of its successful winning bid via email at close of auction.
- 5.2 Following receipt of the confirmation notice from the Seller the following procedure will apply:
- 5.2.1 Payment from the Buyer for the respective Goods shall be due within **2 (two) business days of receipt of the Tax Invoice and copy of Natis in Seller's name** from the Seller, by way of electronic funds transfer.
  - 5.2.2 The Tax invoice shall consist of the Purchase Price with applicable VAT thereto, the Bank details where payment must be paid into, and the **Reference Code** to use when making the payment.

- 5.2.3 **A Copy of the Natis document will be supplied with the Tax Invoice to the Buyer, if noted as available on the system.**
- 5.2.4 The Seller must ensure that the Tax Invoice as per clause 5.2.3 above, reflects the Title Holder/Owner details as contained within the copy of Natis document in order to ensure payment from the Buyer.
- 5.2.5 The Seller shall notify and advise the Buyer if there are any delays with regards to getting the Natis up to standard in order to reflect the details as per clause 5.2.4 above.
- 5.2.6 The Buyer shall issue the Seller with a **confirmation of payment** as soon as payment is made to its nominated/designated email address.
- 5.3 All amounts are quoted and payable in South African Rand, unless otherwise stated and are inclusive of VAT.

## **6. COLLECTION AND TRANSFER OF OWNERSHIP AND RISK**

- 6.1 Ownership in and to the Goods shall only be deemed to pass from the Seller to the Buyer once confirmation of all Cleared Funds owing to the Seller has been received.
- 6.2 The Buyer shall pay and take possession of the Goods **within 2 (two) business days** after his/her successful bidding. All sums owing to the Seller must reflected as Cleared Funds in the Seller's nominated bank account. The Buyer shall collect the Goods directly from the Seller.
- 6.3 The Seller shall be liable for all fines on the Goods until such time that possession of the Goods has transferred to the Buyer.
- 6.4 Should the Buyer fail to collect the Goods from the Seller within a reasonable time as aforementioned (clause 6.2 above) then the Seller shall be entitled to store the Goods which storage and associated costs shall be for the Buyer's sole account and will not exceed an amount of more than **R250.00 (Two Hundred and Fifty Rand) per day** (VAT inclusive). The Seller shall be entitled to not release the Goods to the Buyer until such time as the storage and associated costs have been paid by the Buyer and the Seller will hold a lien over such Goods.

## **7. TERMINATION, TERMINATION FEE AND DURATION**

- 7.1 The Company may, at its discretion, terminate the User's access to buy on auction and cancel the agreement in the following, but not limited to events:
  - 7.1.1 The User has provided the Company with false or misleading information.
  - 7.1.2 The User did not make payment for the Goods within the prescribed timeframe.
  - 7.1.3 The Dealer renegotiate or attempting to renegotiate the purchase price without any valid reasons.
  - 7.1.4 The Dealer cancelling the sale of a vehicle for no valid reason. (Unless agreed to by the Company in writing)
  - 7.1.5 The User has committed an offence of fraud or money-laundering (this will result in permanent termination and notification to authorities).
  - 7.1.7 The User has outstanding fees owing to the Company (this can result in legal action being taken against User).
  - 7.1.8 The User did not comply with any other terms and conditions and/or any applicable law.
  - 7.1.9 This agreement shall commence on the Signature date and endures indefinitely unless cancelled by either party with a thirty (30) day written notice to the other party in accordance with the provisions of clause 7.

- 7.2 The Company shall duly notify the User if said access is terminated, with explanation as to why such termination occurred and the respective re-activation fee applicable thereto (if any).
- 7.3 Should the User, wish to gain access to participate in the Company's auctions again, the Company can, at its discretion and depending on degree of offence committed, allow participation once the payment of a non-refundable re-activation fee is made, as follows:
- First Offence:** R 3 000  
**Second Offence:** R 5 000  
**Any Offence thereafter:** R 10 000 per cancellation

## 8. WARRANTIES

### 8.1 The User hereby warrants that:

- 8.1.1 the information provided by it during the Website registration process is true and correct in all respects.
- 8.1.2 upon the submission of a bid, the User is willing and able to effect payment of that sum plus any additional costs specified on the Website.
- 8.1.3 it has not, directly or indirectly, engaged in or been involved in bid manipulation and/or unfairly induced any other person to make bids and/or alter and/or affect the bid price and/or in any way colluded with any person whomsoever, juristic or natural, to alter or attempt to alter a fair bidding process.
- 8.1.4 **it agrees that the successful bid + admin fee** shall be the final purchase price for the Goods, **and it shall not negotiate the purchase price of the Goods unless there was misrepresentation on the details of the goods.**
- 8.1.5 it shall not contact or request the Seller to remove the Goods from auction.
- 8.1.6 **it has viewed and/or inspected the Goods and/or hereby waives its right to view and/or inspect the Goods and has satisfied itself as to the condition thereof.**
- 8.1.7 The User furthermore warrants that he/she is over the age of 18 (eighteen) years.
- 8.1.8 it has the legal capacity and has taken all necessary corporate action required to empower and authorise him/her to enter into this agreement.
- 8.1.9 this agreement constitutes an agreement valid and binding on him/her and enforceable against him/her in accordance with its terms.

### 8.2 The Seller Warrants that:

- 8.2.1 it is the owner or authorised agent of the Goods.
- 8.2.2 it shall act in good faith and has used its best endeavours to conduct all necessary checks on the Goods in order to accurately describe the Goods on the Website and the listing description is accurate (it however being understood that it is the obligation of the Buyer to conduct the necessary investigation to satisfy itself as to the correctness of the information therein contained).



- 8.2.3 it shall use its best endeavours to not provide a wilful misrepresentation in the description of the Goods.
- 8.2.4 the Goods will be made available for inspection by the User on reasonable notice.
- 8.2.5 **it shall not remove the Goods from auction to accommodate any request from any potential Buyer.**
- 8.2.6 the Goods will, as at the Effective Date, be in the same or similar condition as at the listing date; and
- 8.2.7 the Goods will be available for collection within 8 (eight) business hours immediately after confirmation of receipt of Cleared Funds into the Seller's nominated bank account.

### **8.3 The Company:**

- 8.3.1 Other than the representations stated in these terms and conditions, or the warranties as provided for in the CPA (if applicable) and ECTA, where applicable, the User acknowledges that the Company has made no representations or warranties, implied or otherwise, to the User in connection with the Goods, prior to the Contract having been made or the terms and conditions.

## **9. BREACH**

- 9.1 In the event of the User breaching (Breaching Party) any of the terms and conditions, the other User in question and/or the Company (Non-Breaching Party) shall be entitled (but not obliged) by written notice to the Breaching Party to:
  - 9.1.1 claim specific performance; or
  - 9.1.2 cancel the Contract (and any sale concluded in terms thereof); and
- 9.2 In either of the above instances the Non-Breaching Party may claim such damages as it may have suffered because of the Breaching Party's breach.
- 9.3 The foregoing remedies shall be in addition to such remedies which the Non-Breaching Party may have available provided by law.

## **10. GOVERNING LAW AND JURISDICTION**

- 10.1 The Website, these online terms and conditions, the Contract and any contract entered into between the Company and the Buyer shall be subject to the laws of the Republic of South Africa.

## **11. DISPUTE RESOLUTION**

- 11.1 Where the Parties can't resolve the dispute by means of discussions and dispute resolution, they may proceed with any route available to them in law.

## **12. USE OF WEBSITE – ONLINE PLATFORM**

- 12.1 Save for the provisions of section 43(5) and 43(6) of ECTA, neither the Auctioneer, the Company nor its duly authorised agents or representatives shall be liable for damages, loss or inability to use the Website, the services or content provided therein. Furthermore, neither the Auctioneer or the Company makes any representation or warranties whatsoever that the content and/or the technology available on the Website is free of errors, omissions, and viruses of any nature or free of interruption.
- 12.2 Any and all information on the Website should not be regarded as professional advice or the official opinion of the Company and it is the User's responsibility to ensure the correctness of any of the content displayed on the Website.

- 12.3 The User agrees to use the Website only for lawful purposes and in a manner which does not in any way infringe on the rights of or restrict or inhibit the use and the enjoyment of the Website for any third party including, without limitation, conduct which is unlawful or which may harass or cause distress or inconvenience to any person. Neither the Auctioneer or the Company will be responsible in any way whatsoever for the content of external websites linked to the Website, whether directly or indirectly. It is the User's responsibility to confirm any external website's privacy policy before transmitting personal information thereto.
- 12.4 No right or license is hereby granted to any User, whether juristic or natural, to any trademark, mark, branding, design or any other intellectual property of the Company or Auctioneer whatsoever.
- 12.5 All material located on the Website including, without limitation, text, logos and images may not be copied, reproduced, republished, downloaded, posted, broadcast or transmitted in any way whatsoever except for the User's personal non-commercial use.
- 12.6 The User agrees not to adapt, alter or create any derivative work from any of the Company's material contained on the Website nor to use any of the Company's content for commercial use in any way whatsoever, without the Company's prior written approval.

### **13. LIMITATIONS AND INDEMNITY**

- 13.1 Notwithstanding, and in addition to any other provision in this terms and conditions, you agree that neither the Company or the Auctioneer will be liable to you or any other person for any loss, damage, expense, or other amounts incurred, savings foregone, or hardship suffered, by any person however arising (including where the cause cannot be determined), or whether it arose directly or indirectly from any authorised or unauthorised use of, access to, reliance on, or any inability to use or access this site, the services, or as a consequence of such use, access, reliance, or inability to access the site, including, but not limited to any loss relating to one or more, or a combination, of the following:
  - 13.1.1 in relation to trading on this site, that bids were not processed or accepted due to technical difficulties or for any reason whatsoever.
  - 13.1.2 whether the Company and/or the Auctioneer and/ or another person could have foreseen such a loss or type of loss, or were negligent or reckless, whether or not the loss was suffered in connection with a business or commercial enterprise, including, but not limited to, any economic or consequential loss or damage, any and all damage to, or loss of profits, and any losses relating to contracts, business, revenue, goodwill, or any anticipated savings;
  - 13.1.3 any errors or omissions in any documentation or other provided by the Company and/or the Auctioneer and any errors or omissions in any data on this site, or any breach of contract or negligence on the part of the Company and/or the Auctioneer, our respective employees, agents or authorised representatives.
  - 13.1.4 any reliance on, the information and material contained on this site about any vehicles or any other information whatsoever.
- 13.2 To the extent permitted by law, all terms, conditions and warranties or representations, or representation whether express, implied, statutory, common law or otherwise relating to the services or anything in these terms and conditions, are excluded unless expressly included in this Agreement.
- 13.3 Notwithstanding anything else in this terms and conditions if any party, including, but not limited to, the Company and/or the Auctioneer is liable to you, whether in respect of negligence or other delict, breach of contract or warranty, breach of statute or statutory duty, equity or otherwise directly or indirectly in relation to the performance of or any delay or failure in performance of its obligations under this terms and conditions, the maximum aggregate liability of a party, in respect of all claims made by you for every 12 month period commencing on the execution of this Agreement or the anniversary thereof shall be R 100 000 (one hundred thousand Rands only).



#### **14. CONFIDENTIALITY**

- 14.1 The Company shall take reasonable steps to protect the personal information of the User collected by the Company through the Website. For the purposes of this clause "personal information" shall have the same meaning assigned to it and as defined in POPIA.  
[Our Privacy Statement can be accessed here](#)
- 14.2 The personal information will not be made available to any third party without the User's consent or unless required by means of complying with legislation, in legal process or proceedings or to protect the rights, property or safety of the Company or other parties or as required for the performance of the obligations of the Company.
- 14.3 **The User recognises that it is the User's sole responsibility to protect its website username and password.**
- 14.4 The User agrees that the Auctioneer and the Company may use its confidential information to communicate with the User from time to time, unless otherwise specified by the User in writing.
- 14.5 It is recorded that the Website may collect cookies and/or make use of tracking. All Users of the Website accept that the Company may collect the User's computer IP address in order to, among other things, measure the number of visitors to the Website for marketing research purposes. The Company shall only use the information for the intended purpose of collection.
- 14.6 Please open the link attached to review our PAIA Manual: [Company PAIA Manual](#).

#### **15. DOMICILIUM CITANDI ET EXECUTANDI.**

- 15.1 The Parties choose as their domicilia citandi et executandi for all purposes in terms of this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), their respective addresses set out on the cover page.
- 15.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing, but it shall be competent to give notice by mail.
- 15.3 Either Party may by notice to the other Party, change the physical address chosen as its domicilium citandi et executandi to another physical address, or its email address, provided that the change shall become effective on the 5<sup>th</sup> business day from the deemed receipt of the notice by the other Party.
- 15.4 A notice to a Party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi, shall be deemed to have been received on the day of delivery.
- 15.5 A notice to a Party sent by mail to its chosen email address, shall be deemed to have been received on the date of the transmission.

#### **16. GENERAL**

- 16.1 The Company shall have an absolute discretion to change these terms and conditions at any time. If we do so, we will post the amended terms on the Website, which amended terms shall be effective forthwith. By accepting these terms and conditions and continued usage of the Website, you also agree to accept and be bound by any changes made by us under this clause. In any event, your continued use of the Website and services after any

- changes to these terms and conditions have taken effect in accordance with this clause will be deemed to be your acceptance of those changes to these terms and conditions.
- 16.2 These terms and conditions constitute the entire agreement between the Parties hereto.
  - 16.3 Nothing in these terms and conditions shall be deemed to constitute any Party as the agent, partner or joint venture of another Party.
  - 16.4 The Users shall take all such steps, execute all such documents and do all such acts and things as may be reasonably required by another Party to give effect to any of the transactions contemplated by this terms and conditions.
  - 16.5 Other than as otherwise specified in this terms and conditions, neither the failure of a Party to enforce at any time any of the provisions of this terms and conditions nor the granting of any time or other indulgence shall be construed as a waiver of that provision or of the right of that Party thereafter to enforce that or any other provision.

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