

Consumer Protection (Importation and Sale of Second-hand Motor Vehicles) Regulations 2004

GN 196/2004

THE CONSUMER PROTECTION (PRICE AND SUPPLIES CONTROL) ACT

Regulations made by the Minister under section 35 of the Consumer Protection (Price and Supplies Control) Act

1. These regulations may be cited as the **Consumer Protection (Importation and Sale of Second-hand Motor Vehicles) Regulations 2004**.

2. In these regulations -

"Act" means the Consumer Protection (Price and Supplies Control) Act;

"authorised dealer" means a company licensed as such under regulation 6;

"business premises" means business premises which meet the requirements specified in regulation 3(2);

"company" has the same meaning as in the Companies Act 2001;

"motor vehicle" has the same meaning as in the Road Traffic Act;

"second-hand motor vehicle" means a used motor vehicle, other than a motorcycle, first registered in a foreign country.

3. (1) No person shall carry on the business of importation and sale of second-hand motor vehicles unless the person is a company which -

(a) has an issued share capital of not less than 2 million rupees;

(b) holds a licence issued under regulation 6; and

(c) operates from its business premises.

(2) For the purposes of these regulations, business premises shall consist of a showroom, or a closed yard, or both, and an office which are -

- (a) destined solely for the display and sale of imported second-hand motor vehicles, and sale of spare parts;
 - (b) separated from any other compound or building used for a purpose other than the purposes specified at subparagraph (a); and
 - (c) easily accessible to the public and motor vehicles.
- 4. (1) Any company which intends to carry on the business of importation and sale of second-hand motor vehicles shall apply to the Permanent Secretary for a licence authorising it to do so.
- (2) An application for a licence under paragraph (1) shall -
 - (a) be made in duplicate in the form specified in the First Schedule;
 - (b) be accompanied by-
 - (i) any licence to deal in the importation and sale of second-hand motor vehicles required under any other enactment; and
 - (ii) a certificate attesting that the company has not been wound up; and
 - (iii) a declaration as to whether any director of the company has or has not been convicted of an offence involving fraud or dishonesty during a period of 10 years preceding the application.
- 5. The Permanent Secretary may, on receipt of an application under regulation 4 -
 - (a) consult such person or authority as he considers necessary;
 - (b) request the applicant to furnish such additional information or document as he may reasonably require in relation to the application; and
 - (c) inspect the business premises to ensure whether it complies with the requirements of regulation 3(2).
- 6. (1) After considering the application and any information and document submitted in relation to the application, the Permanent Secretary may -

- (a) grant the application and issue to the applicant a licence in the form specified in the Second Schedule in respect of premises specified in the licence and. subject to-
- (i) the conditions specified in that Schedule;
 - (ii) the payment of a fee of 50,000 rupees; and
 - (iii) the submission of a security by means of a bank guarantee issued by a local bank, or a security by an insurance company registered under the Insurance Act in the appropriate form specified in Part I or Part II of the Third Schedule, for a sum of 2 million rupees in favour of the Government for a period of 24 months starting from the date of commencement of the validity of the licence; and

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- (iv) such other conditions as the Permanent Secretary may impose; or
- (b) reject the application, where he is satisfied that the applicant has not complied with these regulations or is not otherwise fit to be granted a licence.
- (2) The Permanent Secretary shall, at the expense of the applicant, give notice of the grant of any application under paragraph (1)(a) in the *Gazette* and in 2 daily newspapers.
- (3) A licence issued under paragraph (1)-
- (a) shall be valid for a period of 12 months; and
 - (b) may, subject to paragraphs (4) and (5), be renewed for further periods of 12 months.
- (4) Subject to regulation 9, a licence granted under this regulation shall not be transferable.
- (5) An application for the renewal of a licence shall be made by the authorised dealer in duplicate to the Permanent Secretary in the form specified in the Fourth Schedule not less than 21 days before the expiry date of the licence and the applicant shall comply with regulation 4(2)(b) and (c).
- (6) The Permanent Secretary may, on receipt of an application under paragraph (5) apply the provisions of regulation 5.
- (7) After considering an application under paragraph (5), the Permanent Secretary may -

- (a) grant the application for renewal and issue to the applicant a licence in the form specified in the Second Schedule subject to-
- (i) the condition specified in that Schedule;
 - (ii) the payment of a fee of 50,000 rupees;
 - (iii) the submission of a security by means of a bank guarantee issued by a local bank, or a security by an insurance company registered under the Insurance Act in the appropriate form specified in Part I or Part II of the Third Schedule, for a sum of 2 million rupees in favour of the Government for a period of 24 months starting from the date of commencement of the validity of the licence; and

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- (iv) such other conditions that the Permanent . Secretary may impose; or
- (b) subject to paragraph (8), reject the application, where he is satisfied that the authorised dealer has not complied with these regulations or is not otherwise fit to have its licence renewed.
- (8) The Permanent Secretary shall not reject an application for renewal of a licence under paragraph (7)(b) unless he has given the authorised dealer a reasonable opportunity to show cause why the application should not be rejected.
- (9) Where an authorised dealer applies for the renewal of its licence within a period of 21 days after the date of expiry of its licence, the authorised dealer shall pay, in addition to the licence fee, a surcharge of 10 per cent.
- (10) Where an authorised dealer fails to apply for the renewal of its licence within 21 days after its expiry-
- (a) the licence shall lapse; and
 - (b) the Permanent Secretary shall, at the expense of the authorised dealer, publish a notice to that effect in the *Gazette* and in 2 daily newspapers.

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7. (1) The Permanent Secretary may cancel the licence of an authorised dealer -
- (a) where the authorised dealer has -

- (i) ceased its business;
- (ii) given to the Permanent Secretary information which is false and misleading in a material particular;
- (iii) breached any conditions of its licence;
- (iv) failed to start its business within 6 months of the issue of a licence to it, or within such extended period as the Permanent Secretary may allow;
- (v) contravened the Act or any regulations made under the Act;

(b) for such other reasons as are specified in these regulations;

(c) on any grounds on which he would have been entitled to reject an application for a licence or the renewal of a licence.

(2) Before the Permanent Secretary cancels a licence of an authorised dealer under these regulations, he shall give written notice of his intention to do so to the authorised dealer and require him to make such representations as he may deem fit as to why the licence must not be cancelled.

(3) The Permanent Secretary may, after considering the representations, and affording, where necessary, an oral hearing to the authorised dealer, cancel the licence and inform the authorised dealer of his decision and the reasons for his decision.

8. (1) Where an authorised dealer wishes to cease its business, it shall so inform the Permanent Secretary, by registered post, 15 days prior to the date of projected cessation of its business.

(2) The Permanent Secretary shall, at the expense of the authorised dealer, publish in the *Gazette* and 2 daily newspapers -

(a) a notice of the projected cessation of business; and

(b) a notice requesting any person who claims to be entitled to a payment out of the amount of the guarantee issued under regulation 6(1)(a)(iii) and 6(7)(a)(iii) to give notice of his claim to the Permanent Secretary within 3 months from the publication of the notice.

(3) The guarantee referred to in paragraph (2)(b) shall be discharged -

(a) where no claim has been received within the time limit specified in that paragraph;

(b) after the disposal of all claims made under paragraph (2) or regulation 14.

9. (1) Where an authorised dealer intends to change the address of its business premises, it shall notify the Permanent Secretary, by registered post, of the intended change of address and shall apply for an amendment of the address of the business premises on its licence.
- (2) The notification under paragraph (1) shall be accompanied by any licence referred to in regulation 4(2) (b).
- (3) The Permanent Secretary shall, at the expense of the authorised dealer, give notice of the proposed amendment in the *Gazette* and 2 daily newspapers.
- (4) The Permanent Secretary may, on receipt of a notification under paragraph (1) -
- (a) apply the provisions of regulation 5;
- (b) amend the address of the business premises on the licence of the authorised dealer; or
- (c) reject the application for amendment, if the new business premises do not comply with the requirements of regulation 3(2).
10. (1) Where there is a transfer of shares of the authorised dealer or a change in directors, the company shall forthwith inform the Permanent Secretary and submit documentary evidence to that effect.
- (2) The authorised dealer shall inform the Permanent Secretary in writing whether any new director has been convicted of an offence involving fraud and dishonesty during a period of 10 years preceding his appointment.
- (3) Where a director has been convicted of an offence involving fraud or dishonesty, the Permanent Secretary shall require the authorised dealer to show cause why its licence must not be cancelled.
- (4) Where the Permanent Secretary is satisfied that the authorised dealer is no longer a fit and proper company to continue holding a licence, he shall cancel the licence.
11. (1) Where an authorised dealer wishes to operate under a new company name, it shall notify the Permanent Secretary by registered post of the proposed change of name and shall apply for an amendment of its name on its licence.

- (2) The notification under paragraph (1), shall be accompanied by a certificate issued by the competent authority attesting. the change of name.
- (3) The Permanent Secretary may, on receipt of an application under paragraph (1), apply the provisions of regulation 5 (a) and (b) and amend the name of the authorised dealer on the licence.
- (4) Before amending the name of the authorised dealer on the licence, the Permanent Secretary shall require the authorised dealer to furnish a fresh bank guarantee or a security given by an insurance company registered under the Insurance Act in the form specified in the Third Schedule subscribed in the proposed new name of the authorised dealer:

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12. (1) An authorised dealer shall enter into a sale agreement, which shall be substantially in the form specified in the Fifth Schedule, with a purchaser at the time of sale of an imported second-hand motor vehicle.
 - (2) An authorised dealer shall not sell or enter into any agreement under paragraph (1) in respect of a second-hand motor vehicle which-
 - (a) has not been cleared from the Customs;
 - (b) is kept in bond under the supervision of the Comptroller of Customs;
 - (c) has been initially shipped under the name of another person; or
 - (d) has been cleared from the Customs under the name of another importer, including another authorised dealer.
 - (3) An authorised dealer shall not sell, keep, or offer for sale an imported second-hand motor vehicle at any place other than its licensed business premises.
13. Notwithstanding regulation 12, an authorised dealer may enter into a Purchase Order Agreement substantially in the form set out in the Sixth Schedule with a purchaser, where-
 - (a) the request for the importation of a specific second- hand motor vehicle has been made by the purchaser;
 - (b) the vehicle and the country from which the vehicle is to be consigned have been specified by the purchaser;

(c) the sale price of the vehicle has been agreed upon;

(d) the time of the delivery of the vehicle has been specified.

14. (1) Where any person, other than a purchaser of a second-hand motor vehicle, contravenes any provision of these regulations or breaches a Purchase Order Agreement or a Sale Agreement, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 3 years.

(2) Where an authorised dealer is convicted under paragraph (1), the Court may, in addition to the penalty provided, forfeit the bank guarantee or the security given the insurance company and

submitted by the authorised dealer under these regulations and cancel its licence.

(3) Where any Court, tribunal or arbitrator orders or awards payment to be made by an authorised dealer in favour of an aggrieved consumer, the bank guarantee subscribed by the authorised dealer or the security submitted by the insurance company shall be applied towards such payment where the authorised dealer fails to comply with the order or award.

(4) (a) Where an authorised dealer fails to comply with an order or an award, the Permanent Secretary shall serve a written notice on the authorised dealer requiring it to show cause why the bank guarantee subscribed or the insurance security given by it must not be used to pay any sum ordered or awarded in favour of a consumer.

(b) A notice served under this paragraph shall specify the amount of money to be paid out of the bank guarantee or the security given by the insurance company and the time period within which the authorised dealer has to comply with the order or award.

(5) Where the authorized dealer fails to comply with the notice referred to in paragraph (4) within the period specified in the notice, the Permanent Secretary shall, by written notice served on the bank which has issued the bank guarantee or the insurance company which has given the insurance security, require the bank or the insurance company, as the case may be, to pay to the aggrieved consumer the amount representing any sum ordered or awarded under paragraph (3) within 10 days of the date of the notice; and

(6) Where a payment is effected under paragraph (5), the Permanent Secretary shall inform the authorised dealer in writing and require him to submit a fresh bank guarantee or fresh insurance security in the sum of 2 million rupees in favour of the Government of Mauritius, valid for the period starting from the date of the payment made under paragraph (5) to a date 12 months after the expiry of the current licence of the authorised dealer, failing which the Permanent Secretary may cancel the licence of the authorised dealer.

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15. (1) Where an authorised dealer has ceased its business or where the licence of an authorised dealer has not been renewed or has lapsed under regulation 6 or has been cancelled under regulation 14(2) or for any other reason, the authorised dealer shall submit to the Permanent Secretary a return of its stock of imported second-hand vehicles.
- (2) On receipt of the return referred to in paragraph (1), the Permanent Secretary may authorise the re-exportation of the second-hand vehicles, or their registration with the National Transport Authority under the name of the authorised dealer.
- (3) Any stock of imported second-hand motor vehicles held by an authorised dealer under paragraph (1) shall not be transferred to the business premises of another authorised dealer without the prior written authorisation of the Permanent Secretary.
16. The Consumer Protection (Licensing of Authorised Dealers in Imported Second-hand Motor Vehicles) Regulations 2003 are revoked.
17. (1) A licence issued or renewed under the regulations referred to in regulation 16, and which is still in force at the time of coming into operation of these regulations, shall be deemed to have been issued or renewed under these regulations.
- (2) An authorised dealer carrying on the business of imported and sale of second-hand motor vehicles under a licence issued or renewed under the regulations referred to in regulation 16 or renewed under the present regulations shall be exempted by the Permanent Secretary from complying with regulations 3(1)(a), 6(1)(a)(iii) and 6(7)(a)(iii) for a period of 3 months from the date of coming into operation of these regulations.
- (3) Where an authorised dealer holding a licence under the regulations referred to in regulation 16, has failed to renew its licence within 15 days of the expiry of the licence, it shall make an application to the Permanent Secretary for the renewal of the licence within 21 days from the date of coming into operation of these regulations, failing which the licence shall lapse.
- (4) An application made under paragraph (3) shall not be subject to any surcharge.
18. These regulations shall come into operation on the 01 December 2004.

Made by the Minister on Monday 29 November 2004.

FIRST SCHEDULE

(regulation 4)

**THE CONSUMER PROTECTION (IMPORTATION AND SALE OF SECOND-HAND MOTOR VEHICLES)
REGULATIONS 2004**

Application for a licence of Authorised Dealer in Importation and Sale of Second-hand Motor Vehicles

1. Particulars of Applicant

- (a) Name of company*.....
(Block Letters)
- (b) Address of registered office.....
.....
(Block Letters)
- (c) Address of business premises **.....
.....
(Block Letters)
- (d) Names and addresses of shareholders [list to be attached].....
.....
- (e) Names and addresses of directors***.....
.....

2. Financial Structure of Company

- (a) Issued share capital Rs.....
- (b) Loan capital- (a) Long-term.....
(b) Short-term.....
Total.....

Bank certificate attesting a credit balance of not less than 2 million rupees or credit facilities of not less than 2 million rupees in favour of the company to be attached.

3. Estimated Imports of Vehicles

(a) Yearly

| Type (car, van truck) | Quantity (units) | Exporting country | Approximate c.i.f. value Rs. |
|--------------------------|---------------------|-------------------|--|
|--------------------------|---------------------|-------------------|--|

.....

(b) Imports at anyone time

| Type (car, van truck) | Quantity (units) | Exporting country | Approximate c.i.f. value Rs. |
|--------------------------|---------------------|-------------------|--|
| | | | |
| | | | |
| | | | |

4. Clearance of Vehicles from Customs

(a) To be kept in bond under supervision of the Comptroller of Customs Yes No ****
 If 'Yes', specify address and storage capacity.....

(b) To be kept in public bonded warehouse Yes No ****
 If 'Yes', state the name of owner of the bonded warehouse and address-
 (certificate from owner attesting the space provided for and the number of vehicles to be stored to be attached).

(c) To be cleared from the customs against payment of all dues
 Yes No ****

5. DECLARATION

I hereby declare that the particulars given in this application and the documents attached herewith are, to the best of my knowledge and belief, true and correct and that the estimates given in this application have been made in good faith and with all due care. I further declare that no director/director.....(****) has been convicted of an offence involving fraud or dishonesty during the last 10 years preceding this application. I undertake to comply with all the provisions of the Consumer Protection (Importation and Sale of Second-hand Motor Vehicles) Regulations 2004.

Date:.....
 Signature:.....
 Designation:.....

* Attach copy of the certificate of incorporation of the company.
 ** Attach plans showing the precise area and location of the business premises.
 *** Attach "Bank Reference" Certificate for each Director.
 **** Tick as appropriate

SECOND SCHEDULE

(regulation 6)

THE CONSUMER PROTECTION

(IMPORTATION AND SALE OF SECOND-HAND MOTOR VEHICLES) REGULATIONS 2004

Licence of Authorised Dealer in Importation and Sale of Second-hand motor Vehicles

1. M/s.....of

.....
(Name of authorized dealer)

is hereby licenced to operate as authorised dealer in imported second-hand motor vehicles at

.....
(Address of business premises)

2. Particulars of the licence-

(a) Amount Paid.....

C.B. No.

Date:.....

(b) Licence No.

Duration of Licence: from.....to.....

Date of issue:.....

Note: This licence shall be valid subject to -

(a) The condition that the authorised dealer shall ensure a reasonable availability of spare parts of models of motor vehicles which it may introduce on the local market; and

(b) Other conditions:

.....
.....
.....

for Permanent Secretary
Ministry of Commerce and Co-operatives

THIRD SCHEDULE

(regulation 6)

**THE CONSUMER PROTECTION (IMPORTATION AND SALE OF SECOND-HAND MOTOR VEHICLES)
REGULATIONS 2004**

PART I

BANK GUARANTEE

By this guarantee the.....

(Insert name of bank)

is, pursuant to the Consumer Protection (Importation and Sale of Second-Hand Motor (Vehicles) Regulations 2004,
bound to the Government of Mauritius in the sum of 2 million rupees subject to the condition that if

.....
(insert address of authorised dealer)

of.....

(insert address of business premises)

does not contravene the Consumer Protection (Importation and Sale of Second-hand Motor Vehicles) Regulation 2004
or any other enactment governing the importation, sale, storage and registration of second-hand motor vehicles and
does not cause prejudice to any consumer in the operation of his business by.....

(Insert date of expiry of bank guarantee) *

then this security shall be thereby discharged.

Dated this.....day of.....Two thousand and.....

Signature.....

Designation.....

Name of Bank.....

Official seal of Bank

* 24 months after the date of commencement of validity of second-hand dealer licence.

PART II

SECURITY OF INSURANCE COMPANY

By this security the.....

(insert name of Insurance Company)

is, pursuant to the Consumer Protection (Importation and Sale of Second-hand Motors Vehicles) Regulations 2004, bound to the Government of Mauritius in the sum of 2 million rupees subject to the condition that if.....

(insert address of authorised dealer)

of.....

(insert address of business premises)

does not contravene the Consumer Protection (Importation and Sale of Second-hand Motor Vehicles) Regulation 2004 or any other enactment governing the importation, sale, storage and registration of second-hand motor vehicles and does not cause prejudice to any consumer in the operation of his business by.....

(Insert date of expiry of insurance security).

then this security shall be thereby discharged.

Dated this.....day of.....Two thousand and.....

Signature.....

Designation.....

Name of Insurance Company.....

Official seal of Insurance Company

_____ * 24 months after the date of commencement of validity of second-hand dealer licence.

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FOURTH SCHEDULE

(regulation 6)

THE CONSUMER PROTECTION

(IMPORTATION AND SALE OF SECOND-HAND MOTOR VEHICLES) REGULATIONS 2004

Application for Renewal of Licence of Authorised Dealer in Importation and Sale of Second-hand Motor Vehicles

The Permanent Secretary

Ministry of.....

1. We.....

(Name of authorised dealer)

of

.....

(Address)

carrying on business at

(Address of business premises)

hereby apply for the renewal of our licence of authorised dealer in importation and sale of second-hand motor vehicles issued to us onbearing licence No.....and valid for the period.....to.....

2. We inform you that the address of our business premises has not changed.

3. **Declaration.**

I hereby declare that the particulars given in this application and the documents attached herewith are, to the best of my knowledge and belief, true and correct. I further declare that no director/director.....* has been convicted of an offence involving fraud or dishonesty during the last 10 years preceding this application. I undertake to comply with all the provisions of the Consumer Protection (Importation and Sale of Second-hand Motor Vehicles) Regulations 2004.

Signature of representative of authorised dealer:.....

Date:.....

Designation:.....

**Delete as appropriate*

FIFTH SCHEPULE

(regulation 12)

**THE CONSUMER PROTECTION (IMPORTATION AND SALE OF SECOND-HAND MOTOR VEHICLES)
REGULATIONS 2004**

Sale Agreement

1. **Declaration and Agreement**

Sale Agreement made in duplicate this.....day of..... two thousand and.....

Between

M/s.....

whose business premises is situated at.....

(hereinafter called the "authorised dealer") and Mr./Mrs./Ms.*
.....of.....

[hereinafter called the "purchaser"].

Whereby

(a) the authorised dealer agrees to sell and deliver an imported second-hand motor vehicle to the purchaser with the following particulars -

- (i) Type of vehicle :
- (ii) Make :
- (iii) Model :
- (iv) Year :
- (v) Colour :
- (vi) Chassis No. :

(b) the purchaser confirms that he has been allowed by the authorised dealer to effect a test-drive of the above-mentioned vehicle and agrees to purchase the vehicle for a total selling price of Rs.....(excluding/including insurance)* to be paid as follows:*

(i) payment in cash of the total selling price viz. Rs.....;

or

(ii) deposit of Rs..... Balance Rs.....
payable in total on.....or in.....instalments of
Rs.....on.....

(c) the purchaser has taken cognisance of the pre-shipment inspection certificate issued in the exporting country in respect of the above-mentioned vehicle.

2. Warranty

It has been further agreed between the authorised dealer and the purchaser as follows -

(a) The authorised dealer shall guarantee the vehicle and parts for a warranty period** of.....from the date of this agreement.

(b) The warranty covers the repairing or replacement free of charge, including labour costs, of any part that is faulty and supply of materials needed to carry out the repairs under warranty.

The warranty shall not cover any defect which is due to lack of care, improper use, or is the result of an accident.

.....
Signature of purchaser

.....
Signature of authorised dealer

Name:.....

Name:.....

Address:.....

Address:.....

.....

.....

Tel. No.....

Tel. No.....

Date:.....

Date:.....

* Delete as appropriate

** the warranty period shall be for a minimum of 6 months

SIXTH SCHEDULE

(regulation 13)

**THE CONSUMER PROTECTION (IMPORTATION AND SALE OF SECOND-HAND MOTOR VEHICLES)
REGULATIONS 2004**

PURCHASE ORDER AGREEMENT

1. Declaration and Agreement

Purchase Order Agreement made in duplicate this.....day of.....
two thousand and

Between

M/ s.....

Whose business premises is situated at.....

(hereinafter called the "authorised dealer") and.....

of.....

[hereinafter called the "Purchaser")

Whereby

(a) the purchaser places an order with the authorised dealer for the importation of a second-hand motor vehicle with the following particulars -

- (i) Type of vehicle:.....
- (ii) Make:.....
- (iii) Model:.....
- (iv) Year:.....
- (v) Colour:.....
- (vi) Country of origin :.....
- (vii) Country from which vehicle is to be consigned:.....

- (viii) *Options: air-conditioned, power steering, power mirrors, central locking, radio cassette, compact disc, alloy wheel, anti lock brake system.

(b) the agreed sale price is.....rupees as per quotation dated.....from the authorised dealer.

(c) the purchaser effects a deposit, of.....rupees.

(d) the authorised dealer undertakes to deliver the vehicle to the purchaser at its showroom on or before

2. Rights of the parties

It has been further agreed between the authorised dealer and the purchaser that –

- (a) the authorised dealer shall reimburse the purchaser the deposit effected under paragraph 1(c) together with interest at the bank rate, if the imported vehicle is not as per specifications at 1(a) or is not delivered within the time limit specified at 1(d);
- (b) if the purchaser refuses to purchase the vehicle after its importation, the authorised dealer may retain the deposit of Rupees.....
(Rs.....) made by the purchaser under paragraph 1(c) and claim any reasonable additional expenses incurred by the authorised dealer to give effect to this purchase order agreement.

***delete as appropriate**

3. Other Conditions (at the option of the parties)

.....

.....
.....

.....
Signature of purchaser

.....
Signature of authorised dealer

Name:.....

Name:.....

Address:.....

Address:.....

.....

.....

Tel. No.....

Tel. No.....

Date:.....

Date:.....