



Western Australia

## **Motor Vehicle Dealers (Sales) Regulations 1974**

Compare between:

[27 Apr 2015, 03-d0-00] and [01 Jul 2015, 03-e0-02]



Western Australia

Motor Vehicle Dealers Act 1973

## Motor Vehicle Dealers (Sales) Regulations 1974

### Part 1 — Preliminary

*[Heading inserted in Gazette 13 Aug 2002 p. 4159.]*

**1. Citation**

These regulations may be cited as the *Motor Vehicle Dealers (Sales) Regulations 1974*<sup>1</sup>.

**2. Interpretation**

In these regulations unless the contrary intention appears —

***Form*** means a form in Schedule 1;

***section*** means a section of the Act.

*[Regulation 2 amended in Gazette 13 Aug 2002 p. 4159;  
17 Nov 2006 p. 4750.]*

## **Part 2 — Forms**

*[Heading inserted in Gazette 13 Aug 2002 p. 4159.]*

### **3. Form of register of transactions**

For the purposes of section 25 the register of prescribed transactions —

- (a) is to be in the form of Form 1; and
- (b) may be kept —
  - (i) in writing in accordance with regulation 4; or
  - (ii) in an electronic form in accordance with regulation 4A.

*[Regulation 3 inserted in Gazette 17 Nov 2006 p. 4750.]*

### **4. Registers kept in writing**

- (1) A register that is kept in writing is to be kept in a series of books each of which —
  - (a) consist of pages permanently bound together; and
  - (b) bear on the front cover a number corresponding to the book's number in the series; and
  - (c) are used for the purposes of the register and for no other purpose.
- (2) Each page in a book of the register is to consist of white paper of a size not less than 297 mm by 210 mm.
- (3) Each record (which consists of one or more entries) in respect of a vehicle is to be consecutively numbered (the Register No. in Form 1).
- (4) Each person who makes an entry in the register (including an amendment or deletion of a previous entry) must record his or her name and the date of the entry in the Remarks column (see Form 1).
- (5) The register is to be clearly legible.

- (6) Any amendment or deletion to the register is to be made so as to leave the amended or deleted particulars decipherable.

*[Regulation 4 inserted in Gazette 17 Nov 2006 p. 4751.]*

**4A. Registers kept in electronic form**

- (1) A register that is kept in electronic form is to be kept by means of software that ensures that —
- (a) the information in the register —
    - (i) is capable of being displayed and printed at any time at each place of business to which the dealer's licence relates; and
    - (ii) when displayed or printed, is displayed or printed in the form of Form 1; and
    - (iii) includes the date on which each entry in the register was made and who made it; and
    - (iv) is backed up to an electronic storage facility kept at separate premises on a weekly basis;
  - and
  - (b) if any information in the register is amended or deleted, a record is kept —
    - (i) of the information in the form in which it was before it was amended or deleted; and
    - (ii) of the date on which the information was amended or deleted and who amended it.
- (2) Each record (which consists of one or more entries) in respect of a vehicle is to be consecutively numbered (the Register No. in Form 1).

*[Regulation 4A inserted in Gazette 17 Nov 2006 p. 4751-2.]*

**5. Notice of required particulars (section 33)**

- (1) For the purposes of section 33(1) of the Act the form of the notice containing the required particulars shall also set out —
- (a) the make and model of the vehicle; and

- (b) whether the vehicle is of a type or class to which the obligations imposed by section ~~34(1)~~[34A](#) of the Act apply.
- (2) The notice of required particulars may be either —
- (a) printed on a sheet of plastic approximately 220 mm by 100 mm (*see example in the table to this regulation*); or
  - (b) on a sheet of paper approximately 210 mm by 150 mm.

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Motor Vehicle Dealers Act 1973 (s. 33)  
Motor Vehicle Dealers (Sales) Regulations 1974

DEALER	ADDRESS	<b>Table</b>	
		<b>VEHICLE PARTICULARS</b>	
MAKE .....	YEAR OF FIRST REGISTRATION .....	LICENCE PLATE ..... REGISTER REFERENCE/ STOCK No. .....	CASH PRICE OF VEHICLE \$...... STATUTORY WARRANTY <input type="checkbox"/> YES <input type="checkbox"/> NO
MODEL .....	YEAR OF MANUFACTURE (Compliance plate) .....	ODOMETER READING (at time vehicle acquired from last owner) .....	<input type="checkbox"/> YES <input type="checkbox"/> NO
			ADVERTISING

[Regulation 5 inserted in Gazette 26 Jun 1998 p. 3375-6;  
amended in Gazette 18 Sep 1998 p. 5158; [30 Jun 2015 p. 2331.](#)]

[5A. Deleted in Gazette 13 Aug 2002 p. 4160.]

**6. Notice of excluded defects (Form 5)**

- (1) The form of notice for the purposes of section 35(1) shall be in the form of Form 5.
- (2) The notice prescribed by subregulation (1) of this regulation —
  - (a) shall be printed on paper that is not less than 170 mm long and 210 mm wide; and
  - (b) shall be printed in the type, size and manner to conform to Form 5.

*[Regulation 6 amended in Gazette 11 Oct 1974 p. 3885;  
17 Nov 2006 p. 4752.]*

**7. Copies of notice at time of sale (section 33(7))**

- (1) Where a dealer sells a vehicle to which the obligations imposed by section 34 do apply, the copy of the notice required under section 33(7) shall be —
  - (a) in the form of Form 4, and if that vehicle is not a motor cycle, the reverse of the form is to contain the illustration entitled ‘The Used Car Warranty’;
  - (b) in the form of Form 4, and if that vehicle is a motor cycle, the reverse of the form is to contain the illustration entitled ‘The Used Bike Warranty’,

and completed using the appropriate details from the notice attached to the vehicle under section 33(1).

- (2) Where a dealer sells a vehicle to which the obligations imposed by section 34 do not apply, the copy of the notice required under section 33(7) shall be in the form of Form 6, and completed using the appropriate details from the notice attached to the vehicle under section 33(1).

*[Regulation 7 inserted in Gazette 26 Jun 1998 p. 3376;  
amended in Gazette 17 Nov 2006 p. 4752.]*

*[8-10. Deleted in Gazette 17 Nov 2006 p. 4752.]*



## **Part 3 — Trust accounts**

*[Heading inserted in Gazette 13 Aug 2002 p. 4160.]*

### **Division 1 — General**

*[Heading inserted in Gazette 13 Aug 2002 p. 4160.]*

#### **10A. Application**

This Part applies to trust accounts required to be maintained by a dealer under section 32C.

*[Regulation 10A inserted in Gazette 13 Aug 2002 p. 4160.]*

#### **10B. Prescribed financial institutions (section 32C)**

For the purposes of section 32C all banks, building societies and credit societies are prescribed financial institutions.

*[Regulation 10B inserted in Gazette 13 Aug 2002 p. 4160.]*

### **Division 2 — Keeping and management of trust accounts**

*[Heading inserted in Gazette 13 Aug 2002 p. 4160.]*

#### **10C. Information to be given by the dealer to the Commissioner**

- (1) When a dealer opens a trust account the dealer must ensure that the name of the trust account includes —
  - (a) the full name of the dealer;
  - (b) the dealer's licence number;
  - (c) the trading name (if any); and
  - (d) the words "consignment trust account".
- (2) When a dealer opens or closes a trust account the dealer must, as soon as is practicable, inform the Commissioner in writing of the opening or closure of the trust account and, in doing so, must specify —
  - (a) the name and number of the trust account; and

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**Part 3** Trust accounts

**Division 2** Keeping and management of trust accounts

**r. 10D**

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- (b) the name and address of the financial institution with which the trust account is or was maintained.

*[Regulation 10C inserted in Gazette 13 Aug 2002 p. 4160; amended in Gazette 30 Jun 2011 p. 2660.]*

**10D. Trust accounts records**

- (1) A dealer must ensure that a record is kept relating to a trust account.
- (2) The record must be —
  - (a) kept in written form;
  - (b) kept for a period of not less than 6 years from the date on which the money was received; and
  - (c) readily accessible.
- (3) The record must contain the information contained on every receipt issued for money received, and may take the form of a duplicate copy of the receipt.

*[Regulation 10D inserted in Gazette 13 Aug 2002 p. 4160-1.]*

**10E. Manner of accounting for moneys received**

- (1) Where money has been received the dealer must ensure that a written receipt is issued to the person giving the money.
- (2) However the receipt may be in an electronic form where the money is received by electronic transfer.
- (3) The receipt must contain —
  - (a) the name of the dealer and the dealer's licence number;
  - (b) a number or letter, or a combination of both, in consecutive order that allows the receipt to be uniquely identified;
  - (c) the date on which the money is received;
  - (d) the name of the person paying the money;
  - (e) the amount of money received;

- (f) a brief description of the purpose of the payment; and
- (g) if the receipt is hand-written, the name of the person receiving the money evidenced by the signature of that person.

*[Regulation 10E inserted in Gazette 13 Aug 2002 p. 4161.]*

**10F. Statutory declaration**

Where in a calendar year a dealer has neither held nor received money in relation to a trust account, the dealer must, within 3 months of the end of that year, provide the Commissioner with a statutory declaration to this effect.

*[Regulation 10F inserted in Gazette 13 Aug 2002 p. 4161; amended in Gazette 30 Jun 2011 p. 2660.]*

**Division 3 — Duties of financial institutions**

*[Heading inserted in Gazette 13 Aug 2002 p. 4161.]*

**10G. Reporting overdrawn accounts**

If a dealer's trust account is overdrawn the relevant financial institution must, as soon as is practicable, inform the Commissioner in writing of —

- (a) the name and number of the trust account; and
- (b) the amount by which the trust account is overdrawn.

*[Regulation 10G inserted in Gazette 13 Aug 2002 p. 4161; amended in Gazette 30 Jun 2011 p. 2660.]*

**Division 4 — Auditing of trust accounts**

*[Heading inserted in Gazette 13 Aug 2002 p. 4161.]*

**10H. Appointment of auditors**

- (1) A dealer must appoint an auditor, approved by the Commissioner, at the time of opening a trust account.

- (2) An auditor's appointment under this section is continuous unless the Commissioner approves a subsequent change in the appointment.

*[Regulation 10H inserted in Gazette 13 Aug 2002 p. 4161-2; amended in Gazette 30 Jun 2011 p. 2660.]*

**10I. Production of records to auditors**

The dealer and the relevant financial institution must, at the request of an auditor engaged in the audit of the dealer's trust account, produce to that auditor all such books, papers, accounts, documents and securities in their possession, custody, or power as may be reasonably necessary for the purposes of the audit.

*[Regulation 10I inserted in Gazette 13 Aug 2002 p. 4162.]*

**10J. Conduct of audits**

The auditor must conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate.

*[Regulation 10J inserted in Gazette 13 Aug 2002 p. 4162.]*

**10K. Auditors' reports, contents of**

An auditor's report must contain a statement as to the following matters —

- (a) whether the trust account has, in the opinion of the auditor, been kept regularly and properly written up;
- (b) whether the trust account has been ready for examination at the periods appointed by the auditor;
- (c) whether the dealer has complied with the auditor's requirements;
- (d) whether the trust account is, or has been during the period of the audit, overdrawn;

- (e) whether in the opinion of the auditor the trust account is, and has been during the period of the audit, in order or otherwise;
- (f) any matter or thing in relation to the trust account that should in the opinion of the auditor be communicated to the Commissioner.

*[Regulation 10K inserted in Gazette 13 Aug 2002 p. 4162; amended in Gazette 30 Jun 2011 p. 2660.]*

**10L. Obligation of auditor to disclose certain information**

An auditor must disclose to the Commissioner —

- (a) any close relationship by blood or marriage that he or she has with a dealer whose trust accounts the auditor has been appointed to audit; or
- (b) any business dealings the auditor has with or through the dealer at any time during the auditor's appointment,

and the Commissioner may, if the Commissioner thinks fit, disqualify that auditor from acting in that particular case.

*[Regulation 10L inserted in Gazette 13 Aug 2002 p. 4162; amended in Gazette 30 Jun 2011 p. 2659 and 2660.]*

**10M. Costs of auditing**

The reasonable fees and expenses of an auditor for an audit under section 32I are payable by the dealer.

*[Regulation 10M inserted in Gazette 13 Aug 2002 p. 4163.]*

**10N. When and to whom the auditor must report**

- (1) The audit period is to be set by the Commissioner in relation to each dealer.
- (2) The auditor must within 3 months after the end of that period —

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**Part 3** Trust accounts

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**r. 100**

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- (a) deliver to the Commissioner a report of the result of the audit, verified by a statutory declaration of the auditor, in an approved form; and
  - (b) deliver a copy of the report so verified to the dealer.
- (3) The dealer must retain the copy of the report and produce it on demand to the auditor making the next succeeding audit of the dealer's trust account.

*[Regulation 10N inserted in Gazette 13 Aug 2002 p. 4163;  
amended in Gazette 30 Jun 2011 p. 2660.]*

**100. Confidentiality of audit information**

- (1) An auditor must not, directly or indirectly, record, disclose or make use of any information obtained in the course of conducting any audit except —
- (a) for the purpose of performing functions under the Act;
  - (b) as required or allowed by the Act or under another law.
- (2) However the Commissioner may divulge the information to an interested person or to an auditor making a succeeding audit of the dealer's trust account.

*[Regulation 100 inserted in Gazette 13 Aug 2002 p. 4163;  
amended in Gazette 30 Jun 2011 p. 2660.]*

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## Part 4 — Miscellaneous

*[Heading inserted in Gazette 13 Aug 2002 p. 4163.]*

### 11. Advertising

- (1) Every advertisement referring to a specified second-hand vehicle or to any specified second-hand vehicles shall clearly and accurately specify —
  - (a) the registration number of the second-hand vehicle;
  - (b) the year of manufacture;
  - (c) the cash price; and
  - (d) address of the registered premises of the dealer at which the vehicle is offered for sale.
- (2) A dealer shall not advertise a second-hand vehicle or cause or permit a second-hand vehicle to be advertised unless the advertisement conforms to the provisions of subregulation (1).

### 12. Undesirable practices (Schedule 2)

The practices set out in Schedule 2 are undesirable practices for the purposes of section 41.

*[Regulation 12 amended in Gazette 17 Nov 2006 p. 4752.]*

### 13. Prescribed accessories (Schedule 3)

The accessories set out in Schedule 3 are prescribed accessories for the purposes of section 34B(1)(d).

*[Regulation 13 amended in Gazette 13 Aug 2002 p. 4163; 17 Nov 2006 p. 4752.]*

### 13A. Prescribed requirements for vehicle consignment agreements (Schedule 4)

For the purposes of section 32B the prescribed particulars, terms and conditions are those set out in Schedule 4.

*[Regulation 13A inserted in Gazette 13 Aug 2002 p. 4163; amended in Gazette 17 Nov 2006 p. 4753.]*

**13B.    Prescribed requirements for vehicle sale agreements  
(Schedule 5)**

For the purposes of section 42A the prescribed particulars, terms and conditions are those set out in Schedule 5.

*[Regulation 13B inserted in Gazette 13 Aug 2002 p. 4164;  
amended in Gazette 17 Nov 2006 p. 4753.]*

**14.    Penalties**

A person who contravenes or fails to comply with the provisions of these regulations commits an offence and is liable to a penalty of \$2 000.

*[Regulation 14 amended in Gazette 13 Aug 2002 p. 4164.]*



## Schedule 1 — Forms

[Heading inserted in Gazette 17 Nov 2006 p. 4753.]

### Form 1 — Register of transactions

[r. 3]

Western Australia <i>Motor Vehicle Dealers Act 1973 section 25</i> <i>Motor Vehicle Dealers (Sales) Regulations 1974 regulation 3</i>  <b>Dealers register of transactions for registered premises situated at:</b> ..... (This register is to be produced on demand by any person mentioned in the <i>Motor Vehicle Dealers Act 1973 section 25(2).</i> )						<b>Register No.:</b>	<b>Vehicle:</b>		<b>Person in whose name vehicle is registered:</b>	<b>Date purchased:</b>	<b>Date sold:</b>	<b>Purchaser of vehicle:</b>	<b>Remarks:</b>				
		Licence Plate No.	VIN/Chassis No.	Engine No.	Make	Model			Name:	Address:							

[Form 1 inserted in Gazette 17 Nov 2006 p. 4753.]

Note: Forms 2 and 3 have been deliberately omitted.

**Form 4 — Vehicle particulars and warranty**

[r. 7]

**WESTERN AUSTRALIA**

*Motor Vehicle Dealers Act 1973* section 33

*Motor Vehicle Dealers (Sales) Regulations 1974* regulation 7

**VEHICLE PARTICULARS AND WARRANTY**

<b>YEAR OF MANUFACTURE</b> (Compliance Plate) .....	<b>ODOMETER READING</b> (at time vehicle acquired from last owner) ..... Kilometres/Miles	<b>CASH PRICE (INC. GST)</b> \$ .....
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Make ..... Model .....

V.I.N./Chassis No. .... Engine No. ....

Licence Plate No. ....

Year of first registration ..... Registration expires on .....

(If vehicle not licensed under *Road Traffic (Vehicles) Act 2012*, insert "Unlicensed")

Date of sale ..... Odometer reading at time of sale ..... kms/miles

Register reference/Stock No. ....

Dealer — Name and address .....

.....

.....  
 Signature of dealer, yard manager  
 or salesperson

.....  
 Signature of purchaser

**STATUTORY WARRANTY**

A motor vehicle is covered by the terms of a statutory warranty under the *Motor Vehicle Dealers Act 1973* if the cash price (inc. GST) paid is \$4 000 or more and the vehicle is not more than 12 years old and has travelled not more than 180 000 km. The length of time the vehicle is covered under warranty is determined by the age of the vehicle and kilometres it has travelled at the time of sale. Where a vehicle is —

- not more than 10 years old and has travelled not more than 150 000 km at the time of sale — warranty is for 3 months or 5 000 km, whichever happens first; or
- between 10 and 12 years old or has travelled between 150 000 and 180 000 km at the time of sale — warranty is for 1 month or 1 500 km, whichever happens first.

A motorcycle is covered by the terms of a statutory warranty if the cash price (inc. GST) paid is \$3 500 or more and the motorcycle is not more than 8 years old and has travelled not more than 80 000 km. The warranty is for 3 months or 5 000 km, whichever happens first.

The warranty means that the selling dealer must repair or make good all defects which make or are likely to make the vehicle unroadworthy or unserviceable. The repair should make the vehicle roadworthy and in a reasonable condition having regard to its age.

**MORE INFORMATION**

If you have any questions or require further information about the statutory warranty contact the Consumer Protection Call Centre on 1300 304 054 (Mon to Fri).  
TTY (08) 9282 0800 (hearing impaired).

*Internet:*    [www.docep.wa.gov.au](http://www.docep.wa.gov.au)

**ALWAYS CONTACT THE DEALER FIRST TO DISCUSS  
WARRANTY REPAIRS**

Please see reverse for a “Quick Guide to Warranty Items”

(reverse — for cars)

## THE USED CAR WARRANTY

Check to see which defects are covered and which are excluded from warranty

**LEGEND**  
 ● Items covered by warranty  
 □ Items not covered by warranty

**WARNING:** It is not possible to list all items covered by warranty in this illustration.

Callouts for car components and their warranty status:

- Seat adjusters, seat mountings and seat belts
- Surface rust
- Speedometer
- Odometer and fuel gauge
- Stereo, radio and airconditioning
- Damaged or torn upholstery
- Rear demister
- Windscreen wipers and washer (not blades)
- Heater demister and fan
- Battery
- Damaged or faded paint work
- Spare tyre, jack and brace
- Light globes
- Sealed units
- Surface rust
- Side windows to wind up and down
- Engine defects and serious oil leakage
- Doors must open and shut from inside and outside
- Serious structural rust in subframe, roof, rocker panels, door pillars
- Tyres, wheel balance and alignment
- Brakes, leaks and serious wear
- Defects and oil leaks in gear box or automatic transmission
- Radiator leaks, hoses and fan belts, core damage and blockages

(reverse— for bikes)

## THE USED BIKE WARRANTY

Check to see which items are covered (✓) and which are not (✗) by the warranty

**WARNING:** It is not possible to list all items covered by warranty in this illustration

Callouts for motorcycle components and their warranty status:

- ✓ Speedometer
- ✗ Odometer and fuel gauge
- ✗ Light globes
- ✗ Sealed units
- ✗ Damaged or torn upholstery
- ✗ Damaged or faded paint work
- ✓ Radiator or cooling system leaks, hoses, core damage and blockages
- ✓ Electrical faults
- ✗ Surface rust
- ✓ Front suspension
- ✓ Rear suspension
- ✓ Exhaust system
- ✗ Battery
- ✓ Engine defects and serious oil leakage
- ✗ Tyres, wheel balance
- ✓ Drive shaft, chain, belts
- ✓ Serious structural rust in frame
- ✓ Defects and oil leaks in gear box
- ✓ Brakes, leaks and serious wear
- ✓ Broken or loose spokes

[Form 4 inserted in Gazette 17 Nov 2006 p. 4754-5; amended in Gazette 8 Jan 2015 p. 89.]

**Form 5 — Notice of defects excluded from warranty**

[r. 6]

WESTERN AUSTRALIA

*Motor Vehicle Dealers Act 1973* section 35

*Motor Vehicle Dealers (Sales) Regulations 1974* regulation 6

**NOTICE OF DEFECTS EXCLUDED FROM WARRANTY**

*This vehicle is provided with a warranty under the Motor Vehicle Dealers Act 1973, except for the defects stated below*

THIS VEHICLE CONTAINS THE DEFECTS STATED BELOW. THE COST OF REPAIR, UP TO THE ESTIMATES SHOWN, BECOME THE RESPONSIBILITY OF THE PURCHASER. THE DEALER REMAINS LIABLE FOR THE REPAIR OF ANY DEFECTS NOT LISTED.

Dealer — name and address .....

.....

Make .....

Model .....

V.I.N./Chassis No. ....

Licence Plate No. .... Engine No. ....

Date of sale .....

Odometer reading at time of sale ..... kilometres/miles

Details of defect	Estimated cost of repair (inc. GST)
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....

**UNDERESTIMATED REPAIR COSTS**

If the amount estimated by the dealer as the fair cost of repairing or making good the defect is underestimated, then you may claim the difference between the fair cost of repair and the amount stated by the dealer on this form as the cost of repair.

.....  
Signature of dealer, yard manager  
or salesperson

.....  
Signature of purchaser

PLEASE SEE REVERSE FOR IMPORTANT INFORMATION ABOUT  
THIS VEHICLE PURCHASE

*(reverse)*

**ITEMS COVERED BY THE STATUTORY WARRANTY**

This vehicle is covered by the terms of the statutory warranty under section 34 of the *Motor Vehicle Dealers Act 1973*. This means the dealer must repair or make good all defects which make or are likely to make the vehicle unroadworthy or unserviceable. For more information on warranty defects, refer to the vehicle diagram on the reverse side of the “Vehicle Particulars and Warranty” Form 4.

**ITEMS NOT COVERED BY THE STATUTORY WARRANTY**

The defects which are not required to be repaired by the dealer are those stated on the front of this form, provided —

- this form was filled out and displayed on the vehicle before you negotiated to purchase it; and
- an accurate and detailed description of the defect, and an accurate estimate of the repair cost has been stated; and
- you are given a signed copy of this notice before, or at the time of, sale.

**Remember, it will be your responsibility to repair the defects listed on the front of this notice.**

**DESCRIPTION OF DEFECTS**

The “Details of Defect” should set out (with reasonable particularity) a description of the nature of the defect. For example, it would not be considered reasonable for a dealer to state “engine” as the defect and estimate \$800 as the cost of repairs. What should be stated is the particular defect with the engine, such as “excessive exhaust smoke — piston rings require replacement” together with the estimated cost of repairs.

**MORE INFORMATION**

If you have any questions or require further information about statutory warranties or this notice, contact the Consumer Protection Call Centre on 1300 304 054 (Mon to Fri). TTY (08) 9282 0800 (hearing impaired).

*Internet:   www.docep.wa.gov.au*

*[Form 5 inserted in Gazette 17 Nov 2006 p. 4755-7.]*





(reverse)

### STATUTORY WARRANTY

This vehicle is not covered by the terms of the statutory warranty under Part III Division 4 of the *Motor Vehicle Dealers Act 1973*. This is because —

- the cash price (inc. GST) paid in the case of a motor cycle is less than \$3 500 or in the case of any other vehicle is less than \$4 000; or
- in the case of a motor cycle it is more than 8 years old or has been driven more than 80 000 km or in the case of any other vehicle it is more than 12 years old or has been driven more than 180 000 km; or
- the vehicle was sold at auction on behalf of a member of the public; or
- the vehicle is excluded from the statutory warranty under the *Motor Vehicle Dealers Act 1973*.

The following vehicles are excluded —

1. A caravan built to be towed by a motor vehicle.
2. A motor cycle —
  - (a) built for off-road use; and
  - (b) not built to carry any passengers.
3. A motor vehicle —
  - (a) built to be used primarily to carry goods or materials used in any trade, business or industry; and
  - (b) having only one row of seats.
4. A motor vehicle —
  - (a) built to be used primarily to carry people; and
  - (b) that seats more than 9 adults (including the driver).
5. A multi-wheeled open motor vehicle the driver of which sits astride the vehicle or part of the vehicle in a manner similar to that customary for the driver of a motor cycle.

### WARRANTIES IMPLIED UNDER FAIR TRADING AND TRADE PRACTICES LAWS

The *Fair Trading Act 2010* and *Trade Practices Act 1974* (Cwlth) require the dealer selling this vehicle to ensure that the vehicle matches any description given and that it is of “merchantable quality”. This means that it must be fit for the purpose for which a vehicle of that nature is normally used. The amount of money you have paid for the vehicle is taken into account when determining merchantable quality.

For example, even though a vehicle is not covered by the statutory warranty under the *Motor Vehicle Dealers Act 1973*, you are entitled to expect the dealer to repair any major defects that were present at the time of sale which prevent the vehicle from being used in the normal way. This also applies to anything that makes the vehicle unsafe to drive (eg. faulty brakes, faulty steering or major structural rust).

The requirement of merchantable quality does not apply —

- to defects specifically drawn to your attention before the contract of sale is made; or
- if you examine the vehicle for defects before the contract is made, to defects that examination should have revealed.

**VEHICLES BOUGHT AT AUCTION**

Vehicles purchased at auction do not carry a “statutory warranty” if they are being auctioned on behalf of a member of the public.

**MORE INFORMATION**

If you have any questions or require further information about statutory warranties or this notice, contact the Consumer Protection Call Centre on 1300 304 054 (Mon to Fri). TTY (08) 9282 0800 (hearing impaired).

*Internet:      [www.docep.wa.gov.au](http://www.docep.wa.gov.au)*

*[Form 6 inserted in Gazette 17 Nov 2006 p. 4757-8; amended in Gazette 30 Jun 2011 p. 2660; 8 Jan 2015 p. 89.]*

## **Schedule 2 — Undesirable practices**

[r. 12]

*[Heading inserted in Gazette 17 Nov 2006 p. 4758.]*

1. Failing to hand over at the time of sale or to forward to a purchaser within 5 days of the sale the registration papers in respect of a motor vehicle.
2. Offering for sale by a person licensed under the Act of a second-hand vehicle other than a second-hand vehicle of which he or his employer is not the trade owner from a place that is not a registered premises under the Act.
3. Advertising or displaying a telephone number for the purpose of selling a vehicle the vendor of which is the trade owner or is employed by the trade owner except —
  - (a) a telephone number of a registered premises under the Act; and
  - (b) an “after-hours” telephone number that is advertised or displayed —
    - (i) at a registered premises;
    - (ii) on business cards or letterheads; or
    - (iii) in a telephone directory.
4. Offering for sale or the advertising of a second-hand vehicle for sale by a person who is not the owner or assignee of the second-hand vehicle.
5. The giving, by a dealer, yard manager or salesman, of misleading advice to a person (in this item called *the representee*) concerning —
  - (a) the nature of a written offer to purchase a motor vehicle, which offer has been prepared by a person other than the representee; and
  - (b) the effect of the offer referred to in paragraph (a) if signed by the representee or any other person.

*[Schedule 2, formerly Second Schedule, amended in Gazette  
11 Oct 1974 p. 3885; 14 Nov 1975 p. 4220; 5 Aug 1988 p. 2629;  
13 Aug 2002 p. 4167.]*

### **Schedule 3 — Prescribed accessories**

[r. 13]

*[Heading inserted in Gazette 17 Nov 2006 p. 4758.]*

1. Radios.
2. Tape Players.
3. Refrigerated air conditioning units.

*[Schedule 3, formerly Third Schedule, amended in Gazette  
11 Oct 1974 p. 3885.]*

## **Schedule 4 — Vehicle consignment contract**

[r. 13A]

*[Heading inserted in Gazette 17 Nov 2006 p. 4759.]*

### **VEHICLE CONSIGNMENT CONTRACT** **TERMS AND CONDITIONS** **(PLEASE READ CAREFULLY)**

#### **1. FORMATION**

- 1.1 The signing of this Contract by the Owner and the Dealer or a person authorised by the Dealer means an agreement has been made between the Owner and the Dealer for the Vehicle to be sold on the terms and conditions stated in this Contract.
- 1.2 No agreement is made unless the Owner is provided with a copy of this Contract at the time it is signed by the Owner and Dealer or a person authorised by the Dealer.
- 1.3 The Owner grants the Dealer exclusive right to sell the Vehicle for the period stated on the Contract.

#### **2. SALE PRICE**

- 2.1 The Dealer may sell the Vehicle for more than the amount agreed to as the Minimum Sale Price for the Vehicle. The Dealer will be entitled to retain any amount in excess of the Minimum Sale Price as Commission.

#### **3. SETTLEMENT**

- 3.1 If the Dealer sells the Vehicle, the Dealer will pay any Total Net Proceeds to the Owner within two business days of receiving payment.
- 3.2 If the payment for all or part of the Sale Price of the Vehicle has been made by cheque, the payment will not be considered to have been received by the Dealer until the cheque has been honoured.
- 3.3 The Dealer will not release the Vehicle to the Purchaser until the Purchase Price has been paid in full to the Dealer.

#### **4. OWNERSHIP**

- 4.1 The Owner will retain ownership and property in the Vehicle until such time as the Purchase Price has been paid in full to the Dealer.

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**5. RESPONSIBILITY FOR REPAIRS**

- 5.1 Subject to Clause 8.1, the Owner will be responsible for the cost of repairing any defects or faults identified prior to the Sale of the Vehicle.

**6. VEHICLE DECLARED UNFIT FOR SALE**

- 6.1 The Dealer will give Notice to the Owner if the Vehicle is declared unfit for Sale by any Government Authority.
- 6.2 The Owner will be responsible for any costs or actions necessary to have the Vehicle declared fit for sale or to remove the Vehicle from the Dealer's premises.

**7. PAYMENT FOR REPAIRS**

- 7.1 The Dealer will not carry out any work on the Vehicle without the prior written consent of the Owner. The Owner may authorise the Dealer to deduct the cost of repairs from the Proceeds Payable after the Sale of the Vehicle.

**8. DEALER'S RESPONSIBILITY**

- 8.1 The Dealer will not be liable for any loss or damage which may occur to the Vehicle while on Consignment except for:
- (a) any theft, loss or damage which may arise out of any negligent act or omission on the part of the Dealer or any person acting on behalf of the Dealer; or
  - (b) any breach of the *Fair Trading Act 2010* or *Trade Practices Act 1974*, the liability and remedies for which cannot be excluded by agreement.

**9. WARRANTY CLAIMS**

- 9.1 The Dealer will be responsible to pay for warranty claims which arise about the quality or fitness of the Vehicle in accordance with the Dealer's statutory responsibility under the *Motor Vehicle Dealers Act 1973*, *Fair Trading Act 2010* or the *Trade Practices Act 1974*.
- 9.2 The Dealer can not claim from the Owner any costs arising for such repairs, either directly, or by way of deduction from the Total Net Proceeds retained in a Trust Account.

**10. OWNERSHIP AND ENCUMBERANCES**

- 10.1 The Owner declares that the Owner has the right to sell the Vehicle. The Owner will provide the Dealer with a certificate from the Register of Encumbered Vehicles within two (2) business days after signing this Contract.
- 10.2 If a registered security interest is recorded pursuant to the *Chattel Securities Act 1987* on the Vehicle, the interest must be discharged prior to the Sale of the Vehicle.
- 10.3 The Owner will give the Dealer all licence and registration documents, owner's manual and service records (if any) relating to the Vehicle within two (2) days after signing this Contract.

**11. ENDING THE AGREEMENT**

- 11.1 This Contract can be terminated by either the Dealer or the Owner by giving twenty-four (24) hours Written Notice to the other at any time prior to the sale of the Vehicle.
- 11.2 The Owner will remove the Vehicle from the Dealer's premises within seven (7) days after termination of the Contract.
- 11.3 The Owner will pay any monies owed to the Dealer before removing the Vehicle.
- 11.4 If the Vehicle is not removed, or monies owed are not paid within seven (7) days, the Dealer may return the Vehicle to the Owner's address and recover any expenses incurred during the Consignment.

**12. CHANGING THE AGREEMENT**

- 12.1 Any variation of this Contract must be in writing and signed by both the Owner and Dealer or a person authorised by the Dealer.

**13. NOTICE**

- 13.1 Any Notice required by this Contract may be given by direct communication, telephone, electronically, fax or post to the addresses and numbers included in this Contract.
- 13.2 If sent by post, a Notice will be considered to have been received, unless the contrary is shown, at the time when the Notice would have been delivered in the ordinary course of the post.

*[Schedule 4, formerly Fourth Schedule, inserted in Gazette  
13 Aug 2002 p. 4167-9; amended in Gazette 30 Jun 2011 p. 2660.]*

## **Schedule 5 — Vehicle sale contract**

[r. 13B]

*[Heading inserted in Gazette 17 Nov 2006 p. 4759.]*

### **VEHICLE SALE CONTRACT TERMS AND CONDITIONS (PLEASE READ CAREFULLY)**

#### **1. FORMATION**

- 1.1 The signing of this Contract by the Purchaser means an offer has been made to purchase the Vehicle on the terms and conditions stated in this Contract. No offer is made unless the Purchaser is provided with a copy of this Contract at the time it is signed by the Purchaser.
- 1.2 The offer of the Purchaser is accepted by the Dealer when:
  - (a) this Contract is signed by the Dealer or a person authorised by the Dealer; and
  - (b) notice of the acceptance is given to the Purchaser. This Contract will then be binding on both parties.
- 1.3 The offer of the Purchaser may be withdrawn by the Purchaser any time before it is accepted by the Dealer. It will automatically lapse at the close of business on the next normal business day for motor vehicle dealers.

#### **2. FINANCE**

- 2.1 Where this Contract is subject to the Purchaser obtaining finance, the Contract is conditional upon the Purchaser obtaining approval for the granting of a loan:
  - (a) before the Latest Time stated in the Contract;
  - (b) for the amount stated in the Contract;
  - (c) from the Lender named in the Contract (or a lender acceptable to the Purchaser); and
  - (d) upon reasonable terms and conditions in the circumstances.
- 2.2 The Purchaser agrees to take all reasonable steps toward obtaining loan approval.



- 2.3 If the Purchaser has taken all reasonable steps towards obtaining loan approval, but does not obtain approval, then either the Purchaser or the Dealer may terminate this Contract by giving Notice to the other party. The Dealer must immediately refund any deposit paid and return any trade-in vehicle to the Purchaser.

**3. THE PURCHASE PRICE**

- 3.1 Upon delivery of the Vehicle, the Purchaser will pay to the Dealer all of the Total Purchase Price, less any deposit paid and any value given to the Trade-In Vehicle.
- 3.2 In the case of a new Vehicle, if at any time after this Contract becomes binding on both parties but before delivery of the Vehicle to the Purchaser, the cost of the Vehicle to the Dealer changes because the manufacturer changes its price, or there is a change in statutory charges which apply to the Vehicle, the Total Purchase Price will be adjusted by the corresponding amount.
- 3.3 If the manufacturer increases the cost of a new Vehicle to the Dealer, the Dealer is only entitled to pass on to the Purchaser, an increase of up to and including 5% of the Total Factory Price of the Vehicle.
- 3.4 Payment by cheque for all or part of the Total Purchase Price will not be considered to have been received by the Dealer until the cheque has been honoured.

**4. DELIVERY OF THE VEHICLE**

- 4.1 The Dealer will deliver the Vehicle to the Purchaser on or before the delivery date stated in this Contract.
- 4.2 In the case of a new Vehicle, if a Delivery Date is not stated in this Contract, the Dealer will deliver the Vehicle within three (3) months of this Contract becoming binding on the parties.
- 4.3 In the case of a used Vehicle, if a Delivery Date is not stated in this Contract, the Dealer will deliver the Vehicle within one (1) month of this Contract becoming binding on the parties.
- 4.4 Delivery of the Vehicle to the Purchaser will take place at the Dealer's Premises, unless other arrangements are agreed to between the Purchaser and the Dealer.
- 4.5 The Purchaser will deliver any Trade-In Vehicle to the Dealer, and take delivery of the Vehicle, within seven (7) days of being notified by the Dealer that the Vehicle is ready for collection.

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**5. PASSING OF PROPERTY AND RISK IN THE VEHICLE**

- 5.1 The Dealer remains the owner of the Vehicle until the Total Purchase Price has been received in full by the Dealer.
- 5.2 Risk in the Vehicle and the responsibility to insure the Vehicle will pass from the Dealer to the Purchaser when the Vehicle is delivered by the Dealer to the Purchaser, unless the Purchaser and the Dealer agree to some other arrangement and include it as a Special Condition of this Contract. This applies whether delivery occurs at the Dealer's Premises or any other location.

**6. TRADE-IN VEHICLE**

- 6.1 The Purchaser will deliver the Trade-In Vehicle with Accessories to the Dealer in the same condition the Trade-In Vehicle was in at the time it was valued by the Dealer for the purpose of this Contract, except for normal wear and tear.

**7. PURCHASER'S RIGHT TO TERMINATE THIS CONTRACT**

- 7.1 The Purchaser may terminate this Contract if the Dealer has breached any of the obligations imposed on the Dealer by this Contract.
- 7.2 If this Contract is validly terminated by the Purchaser, the Dealer must immediately refund any deposit paid and return any Trade-In Vehicle to the Purchaser. If, in the event the Trade-In Vehicle has been sold, the cash equivalent of the Trade-In Vehicle value determined at the commencement of the Contract shall be refunded to the Purchaser.

**8. DEALER'S RIGHT TO TERMINATE THIS CONTRACT**

- 8.1 The Dealer may terminate this Contract if the Purchaser has breached any of the obligations imposed on the Purchaser by this Contract.
- 8.2 If this Contract is validly terminated by the Dealer, the Dealer may seek an amount up to, but not exceeding, 15% of the Total Purchase Price of the Vehicle as pre-estimated liquidated damages.
- 8.3 Any deposit paid by the Purchaser may be used by the Dealer to meet the pre-estimated liquidated damages payable by the Purchaser. Any surplus will be refunded to the Purchaser.

**9. NOTICES**

- 9.1 All Notices required by this Contract may be given by direct communication, telephone, electronically, fax or post to the addresses and numbers included in this Contract.

- 9.2 If sent by post, a Notice will be considered to have been received, unless the contrary is shown, at the time when the Notice would have been delivered in the ordinary course of the post.

*[Schedule 5, formerly Fifth Schedule, inserted in Gazette 13 Aug 2002 p. 4169-71.]*

### Notes

- <sup>1</sup> This is a compilation of the *Motor Vehicle Dealers (Sales) Regulations 1974* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

Citation	Gazettal	Commencement
<i>Motor Vehicle Dealers (Sales) Regulations 1974</i>	14 Jun 1974 p. 1926-36	12 Aug 1974
Untitled regulations	11 Oct 1974 p. 3885-6	11 Oct 1974
Untitled regulations	23 May 1975 p. 1428-9	1 Jun 1975
Untitled regulations	14 Nov 1975 p. 4220	14 Nov 1975
Untitled regulations	28 May 1976 p. 1613-14	28 May 1976
Untitled regulations	27 Aug 1976 p. 3259	27 Aug 1976
Untitled regulations	21 Dec 1979 p. 3988-9	1 Jan 1980
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 1981</i>	26 Jun 1981 p. 2364	1 Jul 1981 (see r. 2)
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 1982</i>	2 Feb 1982 p. 396	2 Feb 1982 (see r. 2)
<i>Motor Vehicle Dealers (Sales) Amendment Regulations (No. 2) 1982</i>	27 Aug 1982 p. 3425-6	27 Aug 1982
<i>Motor Vehicle Dealers (Sales) Amendment Regulations (No. 3) 1982</i>	29 Oct 1982 p. 4355	29 Oct 1982
<b>Reprint of the <i>Motor Vehicle Dealers (Sales) Regulations 1974</i> dated 10 Apr 1984 in <i>Gazette</i> 16 Apr 1984 p. 1061-74 (includes amendments listed above)</b>		
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 1984</i>	30 Nov 1984 p. 3997	1 Jan 1985 (see r. 2)
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 1988</i>	5 Aug 1988 p. 2629	2 Sep 1988 (see r. 2)
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 1989</i>	25 Aug 1989 p. 2874	25 Aug 1989

**Motor Vehicle Dealers (Sales) Regulations 1974**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 1998</i>	26 Jun 1998 p. 3375-80	26 Dec 1998 (see r. 2)
<i>Motor Vehicle Dealers (Sales) Amendment Regulations (No. 2) 1998</i>	18 Sep 1998 p. 5157-8	26 Dec 1998 (see r. 2 and <i>Gazette</i> 26 Jun 1998 p. 3375)
<b>Reprint of the Motor Vehicle Dealers (Sales) Regulations 1974 as at 2 Jul 1999</b> (includes amendments listed above)		
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 2002</i>	13 Aug 2002 p. 4159-71	1 Sep 2002 (see r. 2 and <i>Gazette</i> 13 Aug 2002 p. 4151)
<i>Motor Vehicle Dealers (Sales) Amendment Regulations (No. 2) 2002</i>	30 Aug 2002 p. 4455-6	1 Sep 2002 (see r. 2 and <i>Gazette</i> 13 Aug 2002 p. 4159 and p. 4151)
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 2006</i>	17 Nov 2006 p. 4750-9	1 Jan 2007 (see r. 2)
<b>Reprint 3: The Motor Vehicle Dealers (Sales) Regulations 1974 as at 16 Feb 2007</b> (includes amendments listed above)		
<i>Motor Vehicle Dealers (Sales) Amendment Regulations (No. 2) 2011</i>	30 Jun 2011 p. 2659-60	r. 1 and 2: 30 Jun 2011 (see r. 1(a)); Regulations other than r. 1 and 2: 1 Jul 2011 (see r. 2(b))
<i>Motor Vehicle Dealers (Sales) Amendment Regulations 2014</i>	8 Jan 2015 p. 89	r. 1 and 2: 8 Jan 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 27 Apr 2015 (see r. 2(b) and <i>Gazette</i> 17 Apr 2015 p. 1371)
<a href="#"><u><i>Motor Vehicle Dealers (Sales) Amendment Regulations 2015</i></u></a>	<a href="#"><u>30 Jun 2015</u></a> <a href="#"><u>p. 2330-1</u></a>	<a href="#"><u>r. 1 and 2: 30 Jun 2015</u></a> <a href="#"><u>(see r. 2(a));</u></a> <a href="#"><u>Regulations other than r. 1 and 2:</u></a> <a href="#"><u>1 Jul 2015 (see r. 2(b))</u></a>