

**IN THE MATTER OF THE
CONSUMER PROTECTION ACT ("CPA")**

THIS **UNDERTAKING** is made pursuant to Section 152 of the *Consumer Protection Act*.

BY: LA NATIONAL AUTO LTD.
in the city of Lethbridge, in the Province of Alberta
(hereinafter called the "Supplier")

TO: The DIRECTOR OF FAIR TRADING (as delegated)
(hereinafter called the "Director")

WHEREAS:

- A. At the time of the complaint, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the automotive business activity of retail sales in the Province of Alberta.
- B. An administrative review was held on June 6, 2023 at approximately 9 a.m. via teleconference call. Participating in the administrative review were Mr. Richard Low, legal counsel for the Supplier; Mr. Monir Omerzai, owner and director for the Supplier; Ms. Jenny Luc, salesperson for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], manager of investigations south; and K. Lockton, Director of Fair Trading (as delegated).
- C. AMVIC received a consumer complaint in September 2022 (case file 22-09-011) relating to the purchase of a 2013 BMW X6 (the "BMW") on April 19, 2022 by a consumer ("OS").
- D. While completing work for the Supplier at their business location, OS met an employee ("YE") who was interested in selling his personal vehicle, the BMW. In discussions while working at the Supplier's business location, OS decided to purchase the BMW.
- E. OS and YE approached the Supplier as OS needed to obtain financing for the BMW. The Supplier agreed to assist OS with the purchase of the BMW and obtaining financing.
- F. On May 31, 2021, the Supplier purchased the BMW from YE and sold it to OS the same day. The Supplier created a bill of sale ("BOS") selling the vehicle to OS. The Supplier does not have the ability to offer consumers financing and reached out to a third party automotive business to obtain the financing for the BMW. A second BOS was completed by the third party automotive business on the same day. OS signed both the BOS from the Supplier and the BOS from the third party automotive business.

- G. Shortly after purchase OS brought the BMW back to the Supplier as it was blowing smoke while he was driving it and he wanted to return the BMW as he did not think it was safe to drive.
- H. The Supplier took possession of the vehicle and took it to a third party automotive repair company, that was not AMVIC licensed, to complete the repairs necessary to stop the BMW from blowing smoke. Due to the COVID-19 pandemic and subsequent supplier chain issues to obtain the required parts, the BMW was not fixed for seven months. During this time OS continued to make the payments on the BMW despite not having it in his possession.
- I. The cost of the repairs completed on BMW was \$2,700. The Supplier paid the third party automotive repair company for the completed repairs and on Jan. 14, 2022, OS picked up the BMW from the third party automotive repair company. The work order from the third party automotive repair company listed a number of additional issues with the BMW and both OS and the Supplier signed the invoice.
- J. On Jan. 14, 2022, the same day OS picked up the BMW from the third party automotive repair company, the BMW broke down and OS had the BMW towed to the Supplier's business location.
- K. On March 31, 2022, the Supplier took the BMW to an auction to attempt to sell it on behalf of OS due to the mechanical condition. The BMW did not sell at auction and on June 26, 2022 the Supplier picked up the vehicle from auction and transported it back to Lethbridge.
- L. On July 4, 2022, the Supplier returned the BMW to OS where it has remained parked due to its mechanical condition. Between May 31, 2021 and July 4, 2022 OS has only put 121 kilometres on the BMW.
- M. During the administrative review, the Supplier acknowledged that they should not have involved themselves in the purchase of the BMW by OS. In an effort to assist OS the Supplier placed themselves into a consumer transaction with OS and therefore the transaction must be completed within the legislative requirements in the Province of Alberta as a licensed automotive business.
- N. During the administrative review the Supplier acknowledged the deficiencies with their documentation and maintaining complete and accurate records. The Supplier advised they have taken steps to ensure this does not occur again.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.

2. The Supplier will undertake to ensure they are not engaging in business practices that could mislead or deceive a consumer as per Section 6(4)(a) of the CPA.
3. The Supplier will undertake to create and maintain accurate business records in accordance with Section 132 of the CPA and Section 9 of the Automotive Business Regulation ("ABR").
4. The Supplier will undertake to ensure their BOS is completed in compliance with Section 31.2 of the ABR. In addition the Supplier will not have any clause on their BOS that implies the consumer is waiving their rights, as per Section 2 of the CPA a consumer cannot waive their rights.
5. To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an industry standards inspection which will take place before **Dec. 31, 2023**.
6. The Supplier shall pay the sum of **\$500** to the Alberta Motor Vehicle Industry Council, an amount that represents a portion of the costs AMVIC has incurred investigating the matters herein. Such payment is to be made to AMVIC within thirty (30) days from the date of signing this Undertaking.
7. This Undertaking will remain in force,
 - Unless:
 - a. Terminated by the Director or varied with the consent of the Supplier;
 - b. Varied by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking;
or
 - c. Terminated by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.
8. The Supplier acknowledges the Director may, upon breach of any term of the Undertaking, institute such proceedings and take such action under the *Consumer Protection Act* as they may consider necessary.
9. The Supplier acknowledges this Undertaking is a public document and will be maintained in the public record by the Director of Fair Trading (as delegated) as required by Section 157.1 of the *Consumer Protection Act*.

10. The Supplier acknowledges that they were advised by AMVIC, and are aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges they are entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 28 day of June, 2023.

LA National Auto Ltd.

PER: "original signed by"
Monir OMERZAI
Director of the Supplier

ACCEPTED by the Director of Fair Trading on the 5 day of July, 2023

PER: "original signed by"
Katie Lockton
Director of Fair Trading
(as delegated)