

AMENDED

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

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

BY: **CGY RIGHTRIDE GP INC.**
o/a RIGHTRIDE
in the city of Calgary, 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 activities of leasing, retail sales and used sales in the Province of Alberta.
- B. An administrative review was held on July 4, 2023 at approximately 9 a.m. via teleconference call. Participating in the administrative review were C. Whelan, general manager of the Supplier; J. Parker, vice president of the Supplier; T. DeVries, senior associate general counsel for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC investigator; and G. Gervais, Director of Fair Trading (as delegated).

Case file 22-06-188

- C. AMVIC received a consumer complaint in June 2022 (case file 22-06-188) relating to the purchase of a 2018 Mercedes GLA 250 (the "Mercedes") by a consumer ("JT") on June 9, 2022.
- D. JT began negotiations on June 7, 2022, however the bill of sale ("BOS") and associated documents are dated June 9, 2022 and were not shared with JT until then. The Supplier delivered the Mercedes to JT in Saskatchewan on June 14, 2022, four days later than what was agreed to and five days later than what is indicated as the delivery date on the BOS.
- E. The Mercedes arrived damaged and did not pass an out of province inspection. The out of province inspection identified the Mercedes required mud flaps and had a rock chip in the windshield. The Supplier agreed to pay for the items required to pass the inspection, however JT noted a number of areas of damage and declined the repairs. JT had an autobody estimate completed to repair the damage to the Mercedes. The estimate to repair the autobody damages totaled \$4,666.20. The Supplier offered \$1,000 to cover the damages. JT refused to take delivery of the Mercedes and never registered or insured the Mercedes.

- F. On Dec. 7, 2022, the Mercedes was seized by the lender and sent to an auction. JT paid \$49,205.73 for the Mercedes and has a current debt owing to the lender of \$22,814.78, after the amount that was obtained from the seizure and sale of the Mercedes at auction.
- G. The AMVIC investigation identified a number of contraventions and unfair practices. The Supplier made several statements that were either inaccurate, misleading or potentially misleading about the condition of the Mercedes, the availability of the Mercedes, the ability of JT to requalify for lower payments after a period of time and referring to a Mechanical Fitness Assessment ("MFA") as an inspection. The investigation identified that JT completed a credit application with a different business and JT does not recall at what point she became aware that she was negotiating with the Supplier. As per Section 166 of the CPA, the Supplier is vicariously liable for the representations made to consumers by their employees and designated agents. The evidence supports that the Supplier's statements breached Section 6 of the CPA.

Consumer Protection Act**Unfair practices****Section 6**

(1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

(1.1) It is an offence for a supplier to engage in an unfair practice.

(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
- (b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;
- (j) a supplier's representation that goods or services have been made available in accordance with a previous representation if they have not;
- (k) a supplier's representation that the supplier can supply goods or services if the supplier cannot;
- (n) a supplier's representation that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not;

Vicarious liability**Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

- H. The Supplier failed to provide JT with an MFA prior to entering into a consumer transaction. The completed MFA is further missing the previous province of registration and does not identify the

proper trade name of the Supplier on the document. As per Section 15 of the Vehicle Inspection Regulation ("VIR"), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle MFA and must comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles as per Section 12(o) of the Automotive Business Regulation ("ABR").

Automotive Business Regulation

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition must

- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

Vehicle Inspection Regulation

Sale of used motor vehicle

Section 15

(1) Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
 - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
 - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

- I. In review of the Supplier's completed BOS in this consumer transaction, it is not compliant with Section 31.2 of the ABR. The BOS does not contain the proper trade name of the Supplier, is missing the registration number of the salesperson involved in the consumer transaction, the delivery date of the Mercedes is inaccurate, the disclosure statement that the Supplier obtained written confirmation from the consumer that the consumer has received the information required under Section 31.1 of the ABR is also missing, and the cash back given to JT is not listed on the BOS. Based on the evidence before me, the Supplier has breached Sections 31.1, 31.2 and 31.3 of the ABR.

Automotive Business Regulation**Vehicle history information****Section 31.1**

(1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:

- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
- (b) whether the vehicle has sustained damage caused by fire;
- (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
- (d) whether the vehicle has been used as a police car or an emergency vehicle;
- (e) whether the vehicle has been used as a taxi cab or a limousine;
- (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
- (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
 - (i) salvage motor vehicle;
 - (ii) non-repairable motor vehicle;
 - (iii) unsafe motor vehicle;
- (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;
- (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
 - (i) the name of the jurisdiction in which the vehicle was previously registered,
 - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
 - (iii) whether the vehicle passed or failed any required inspections.

(2) The business operator must disclose the information required under subsection (1) in a clear and legible manner (a) in any online advertisement for the vehicle, (b) on any sales tag affixed to the vehicle, and (c) in writing to the consumer before purchase.

Bill of sale**Section 31.2**

(1) A business operator engaged in automotive sales must use a bill of sale that includes the following:

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;**

- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;**
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;
- (i) the date that the vehicle is to be delivered to the consumer;**
- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
 - (i) charges for transportation of the vehicle;
 - (ii) fees for inspections;
 - (iii) fees for licensing;
 - (iv) charges for warranties;
 - (v) taxes or levies, including GST;
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
 - (i) information about the vehicle being traded in, and
 - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;**
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
 - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
 - (ii) the vehicle is a new, specifically identified vehicle;
- (u) any mechanical fitness assessment that has been issued under the Vehicle Inspection Regulation (AR 211/2006);

(v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;

(w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.

(2) The business operator must ensure that all restrictions, limitations and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

Receipt of information

Section 31.3

A business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has obtained written confirmation from the consumer that the consumer has received the information required under section 31.1.

- J. In review of the evidence currently before the Director, the Supplier's documents are not being accurately created and maintained. The discrepancies and deficiencies between all the documents created during the course of this transaction demonstrates the Supplier has contravened Section 132(1) of the CPA and Section 9 of the ABR. In addition, during the course of the investigation of multiple consumer complaints (case files 22-09-241, 22-06-185 and 22-07-051) the Supplier failed to make their records available to the AMVIC inspector at a time specified by the inspector despite several requests. In doing so, the Supplier breached Section 132(2) of the CPA.

Consumer Protection Act

Duty to maintain records

Section 132

- (1)** Every licensee and former licensee must create and maintain
- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
 - (b) other records and documents described in the regulations for the period specified in the regulations.
- (2)** Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

Automotive Business Regulation

Records

Section 9

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

Case File 23-02-049

- K. AMVIC received a consumer complaint in February 2023 (case file 23-02-049) relating to the condition of a 2017 Chevrolet Equinox (the "Equinox") which was purchased on Jan. 27, 2023 by a consumer ("KM"). In early December 2022, KM was referred by a consumer debt agent to the Supplier.
- L. This AMVIC investigation identified a number of contraventions and unfair practices in relation to this consumer transaction. The Supplier made several statements that were either inaccurate, misleading or potentially misleading including but not limited to the Supplier's ability to requalify KM for a newer vehicle or a lower payment in a specified period of time, as well as the condition of the Equinox. The evidence in relation to this investigation supports breaches of Section 6 of the CPA.
- M. The BOS and finance documents in the consumer transaction with KM contain the name of a different automotive business and were completed with this business as the Supplier uses this other business' financing portal when they do not have access to a lender. The investigation revealed that the Supplier did in fact have access to the lender that was utilized in the consumer transaction and they could not provide an explanation as to why they simply did not use their own lender options for KM's approval. The AMVIC investigation determined that the Supplier sold the Equinox to the other automotive business on Jan. 30, 2023 three days after the consumer transaction with KM. As a result, this created confusion for KM as she was unaware she was dealing with a different automotive business. The evidence supports the Supplier breached Section 132(1) of the CPA and Section 9 of the ABR by failing to create and maintain accurate records.
- N. The MFA listed under the name of the Supplier is dated Jan. 27, 2023 the same date as the BOS, however KM did not see the MFA until five days later on Jan. 31, 2023 when the Equinox was delivered to her. Based on the evidence, the Supplier breached Section 15(1) of the VIR and Section 12(o) of the ABR.
- O. When the Equinox was delivered to KM she discovered there was significant body damage on the vehicle. On March 1, 2023 a repair estimate was completed by an autobody shop to repair the damages for a total of \$6,515.31. The deal was reversed by the other automotive business whose name was listed on the BOS.
- P. A Supplier must notify the Director when a salesperson either ceases to be authorized or within 15 days after the salesperson ceases to be authorized as per Section 21 of the ABR. The AMVIC investigation identified that one of the salespeople who interacted with KM in the course of her consumer transaction ceased to be authorized to work for the Supplier effective March 29, 2023 when he resigned, however the Supplier failed to notify the Director.

Automotive Business Regulation
Salesperson ceases to be authorized
Section 21

- (1) When an automotive sales business operator, automotive leasing business operator or automotive consignment business operator ceases to authorize a salesperson to act on its behalf, the business operator must send to the Director written notification of
- (a) the name of the salesperson, and
 - (b) the date that the salesperson ceases to be authorized to act on its behalf.
- (2) The business operator must notify the Director either before the salesperson ceases to be authorized or within 15 days after the salesperson ceases to be authorized.

- Q. During the administrative review, the Supplier indicated they have approximately 20 employees, including approximately 12 salespeople and on average they sell approximately 1,100 new and used vehicles annually.
- R. In advance of the administrative review, the Supplier provided written representations and took responsibility for several of the breaches outlined and identified steps they have undertaken to prevent them from reoccurring.
- S. The Supplier acknowledges and accepts that their staff members made several statements that were either inaccurate, misleading or potentially misleading. The Supplier takes responsibility for failing to provide records as requested by the inspector and provided a letter assuring the Director they will respond to future requests as per the guidelines in the request on a go forward basis.
- T. The Supplier expressed a willingness and commitment to improve upon its business operations to ensure they are complying with the law. The Supplier has hired a finance director whose main role is to ensure the Supplier's paperwork is properly filled in and is in compliance with the applicable legislation. In addition, the Supplier intends to provide training to its employees on proper business practices.
- U. The Supplier acknowledged the general conduct described in the AMVIC investigation, regrets engaging in the aforementioned activity and are taking this matter very seriously.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA, and ABR, 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 do not engage in unfair practices as outlined in Section 6 of the CPA.
3. The Supplier will undertake to create and maintain complete and accurate business records as per Section 132(1) of the CPA and Section 9 of the ABR.

4. If a consumer complaint is received, the Supplier will undertake to respond to an investigator, inspector or consumer services officer's email request for documentation regarding the complaint as per Section 132(2) of the CPA and the guidelines in the email request.
5. The Supplier will undertake to ensure their BOS is completed in full and properly itemizes the accurate details of the transaction in accordance with the requirements of Section 31.2 of the ABR.
6. The Supplier will undertake to disclose the vehicle history information, as applicable, in writing to consumers before entering into a contract as per the requirements in Sections 31.1 and 31.3 of the ABR.
7. The Supplier will undertake to ensure that all salespeople they employ are properly registered with AMVIC and these registrations are renewed prior to their expiry date. If a salesperson ceases to be authorized as a designated agent of the Supplier, the Supplier will notify the Director either before the salesperson ceases to be authorized or within 15 days after the salesperson ceases to be authorized as per the requirements in Section 21 of the ABR.
8. 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 **Jan. 31, 2024**.
9. The Supplier will pay the remaining outstanding balance owed to JT's lending institution which is a total of **\$22,814.78**. The Supplier will provide AMVIC with confirmation that the debt has been paid. Such confirmation must be submitted to AMVIC no later than **thirty (30) days** from the date of signing this Undertaking.
10. The Supplier shall pay the sum of **\$2,500** 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.
11. 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.
12. 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.

13. 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*.
14. 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 30 day of August, 2023.

CGY RIGHTRIDE GP INC.
o/a RIGHTRIDE

PER: "original signed by"
Peter HONG
Chief Strategy Officer & General Counsel

ACCEPTED by the Director of Fair Trading on the 6 day of September, 2023

PER: "original signed by"
Gerald Gervais
Director of Fair Trading
(as delegated)