

### IMPORTANT ANNOUNCEMENT:

AS OF APRIL 19, 2010, OPENLANE, INC. AMENDED ITS TERMS OF USE. THESE TERMS OF USE CONTAIN IMPORTANT PROVISIONS REGARDING, AMONG OTHER THINGS, VEHICLE LISTING CATEGORIES (AND THE EFFECT OF LISTING CATEGORIES ON BOTH DISCLOSURE OBLIGATIONS AND ELIGIBILITY FOR PURCHASE DISPUTES), INDEMNIFICATION OBLIGATIONS, OPENLANE'S RIGHT TO OFFSET AMOUNTS OWED AND OPENLANE'S LIMIT OF LIABILITY. BY CLICKING ON THE BUTTON THAT SAYS "I ACCEPT," YOU, AS AN AUTHORIZED USER, AGREE ON BEHALF OF THE ELIGIBLE PARTICIPANT FOR WHICH YOU ARE LISTING, BUYING AND/OR SELLING VEHICLES THAT SUCH ELIGIBLE PARTICIPANT WILL ADHERE TO THESE TERMS OF USE. YOU SHOULD READ THESE TERMS OF USE CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO CLICK "I ACCEPT."

For full details on the **OPENLANE.com** Terms of Use, please go to [www.OPENLANE.com](http://www.OPENLANE.com).  
Contact your sales representative at **866-969-0321**, if you have questions.

## Terms of Use

The following Terms of Use set forth the agreement between Eligible Participants and OPENLANE Inc. (“**OL**”) with regard to Eligible Participant’s use of OL’s OPENLANE.com auction website (the “**Auction**”). The Auction provides a venue for Eligible Participants that may act as either buyers (each, a “**Buyer**”) and/or sellers (each, a “**Seller**”) of wholesale used vehicles to list and/or purchase those vehicles (each, a “**Vehicle**”). By accessing or using the Auction, Eligible Participant agrees to abide by all the terms and conditions set forth in these Terms of Use, including those available by hyperlink to other OL web pages. These provisions include, among other things, payment deadlines, deadlines for delivery of title, listing requirements and purchase dispute guidelines. Please read these Terms of Use carefully before clicking “I Accept.” By clicking on “I Accept,” Eligible Participant agrees to these Terms of Use, including the Purchase Dispute Guidelines set forth in Section 4. OL may amend these Terms of Use at any time without sending a notice to Eligible Participants. The amended Terms of Use will be effective immediately upon posting to the Auction, and Eligible Participant’s continued access or use of the Auction following the posting of any such amendment will constitute full acceptance of the Terms of Use as amended.

This Agreement is effective on April 19, 2010 for current Eligible Participants and upon acceptance for new Eligible Participants.

### 1) Eligible Participants; Registration; Usernames and Passwords.

- a) **Eligible Participants.** Eligible Participant is either a licensed retail or wholesale motor vehicle dealer, operating in compliance with all relevant laws, rules and regulations of the jurisdictions in which it is located and conducts business (a “**Dealer**”) or a corporation or other legal entity that is an auctioneer, vehicle leasing company, vehicle rental company, fleet management company or financial institution that finances vehicle purchases, in each case which holds all necessary licenses to conduct its business, **provided however** that a Buyer must be a Dealer in order to purchase a Vehicle on the Auction. No retail consumer may access, use, list, purchase or sell or attempt to purchase or sell Vehicles through the Auction.
- b) **Registration of Authorized Users.** Eligible Participant agrees to designate one or more individuals, each of whom is authorized to list, sell and/or purchase Vehicles and otherwise act on Eligible Participant’s behalf on the Auction (each, an “**Authorized User**”). An Eligible Participant should submit signed applicable forms under Dealer Registration on OPENLANE.COM by fax at (480) 393-2960 in order to register each Authorized User. OL may, at its sole discretion and without prior notice, change, suspend, discontinue, terminate, or otherwise limit any Authorized User’s or Eligible Participant’s ability to access and use the Auction or any portion thereof, at any time.
- c) **Eligible Participant’s Responsibility.** Eligible Participant acknowledges and agrees that the use of the Auction and all transactions conducted through the Auction are conducted on Eligible Participant’s behalf by one or more Authorized Users. Accordingly, Eligible Participant is liable and responsible for all the actions, omissions and any failure to act of its Authorized Users. Eligible Participant is responsible for maintaining the security of all usernames and passwords that are issued to Authorized Users. Eligible Participant is responsible for all actions, including but not limited to the purchase and/or sale of Vehicles or other services (in each case, a “**Transaction**”), carried out by anyone using a user identification code and password issued to an Authorized User registered by Eligible Participant.

### 2) General Auction Rules.

- a) **Risk of Loss.** Risk of loss for a Vehicle remains with the Seller until the earlier of the time that Buyer or Buyer’s designated transportation company or other agent (“**Buyer’s Authorized Person**”) picks up the Vehicle from the grounding location (the “**Vehicle Pick Up Time**”) or the Vehicle Pick Up Deadline, as defined in Section 2(e)(i), at which point the risk of loss for the Vehicle is transferred to the Buyer. Buyers and Sellers acknowledge and agree that OL is not a party to the sale or disposition of any Vehicle on the Auction; rather, the sale is between the Buyer and Seller only. OL only serves in the capacity of facilitating the buying and selling of Vehicles, and is not directly involved in such purchases and sales. Information provided on the Auction about each Vehicle is based solely on data provided by the Seller of the Vehicle, and/or on inspection reports provided by third party inspection companies on behalf of the Seller. Accordingly, OL does not provide any warranties with regard to any such information.

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- b) Right of OL to Cancel Transaction. OL may in its discretion cancel any Transaction if OL in its sole discretion deems the Transaction to be unfair, unlawful, fraudulent, unethical, deceptive or in error. If OL cancels a Transaction, Eligible Participants will promptly return funds and title and Vehicle (where applicable) without dispute or delay. Eligible Participants also understand that time is of the essence when OL chooses to exercise its right to cancel any Transaction.
- c) Fees, Costs and Payments. Certain fees are payable by Eligible Participants to OL for listing, purchase or sale of Vehicles, other services provided by OL, penalties for failure to comply with various provisions, or certain convenience features (the “**Fees**”). In addition, Buyer will pay for the transportation of the Vehicle, any third party inspection that it elects to receive or any other third party service that OL arranges at Buyer’s request, and Seller will pay for any third party service that OL arranges at Seller’s request (in either case, the “**Costs**”). The Fees and Costs that are applicable to any particular transaction on the Auction will vary between Buyers and Sellers of Vehicles, and are disclosed on the appropriate listing/bidding/purchasing/transport pages of the Auction. OL may, in its sole discretion and at any time, add, delete or change some or all of the Fees and Costs. The purchase price of the Vehicle plus all applicable Fees and Costs payable by Buyer in connection with the transaction is the “**Total Payment Amount.**”
- i) Method of Payment. The Buyer will pay OL the Total Payment Amount by either: (1) ACH payment or other electronic funds transfer method, (2) wire transfer, (3) Buyer’s faxing a copy of a check to OL at (480) 393-2931, which constitutes Buyer’s authorization to OL to initiate debit entries to Buyer’s checking account at Buyer’s depository on which such check was written, which authorization will remain in force until OL has received written notification from Buyer of Buyer’s termination of such debit authorization (an “**Electronic Check**”), provided however that OL may decline to process an Electronic Check for various reasons (4) regular check, (5) floorplan financing, if Buyer has been previously approved by one of OL’s authorized floorplan financing partners (See “Floorplan Financing” on OPENLANE.com or another approved consignor floorplan program) or (6) other payment method that may be approved in advance by OL in writing. OL may at its discretion require an Eligible Participant to pay by a certain method. If Buyer elects to pay by regular check, OL may in its discretion delay the release of title to the Vehicle to Buyer.
- ii) Payment Due Date for Buyer. The online purchase date of the Vehicle or services is the “**Transaction Date.**” The Total Payment Amount from Buyer must be received by OL on or before the second business day after the Transaction Date (the “**Payment Due Date**”). If Buyer’s floorplan financing partner declines to finance the purchase for any reason, Buyer will be notified and must deliver payment by ACH payment or wire transfer to OL no later than one business day after such notification.
- iii) Fees and Costs Payable by Seller. The Fees and Costs payable by the Seller in connection with the Transaction will generally be deducted from the purchase price of the Vehicle payable to Seller. If any such Fees and Costs are not deducted from the purchase price or if the Vehicle does not sell, OL will send an invoice for such Fees and Costs, in which case payment for such Fees and Costs will be due seven (7) days after the date of the invoice.
- iv) Dealer’s Representations Regarding Taxes. Dealer certifies that Dealer holds a certificate, license or other permit, issued by the sales tax authority of the state or province, and if necessary locality, of Dealer’s automobile business or businesses, which certificate, license or permit exempts Dealer from the payment of sales tax with respect to the purchase of Vehicles in the Auction and a copy of which has been supplied to OL. Any Vehicles purchased by Dealer in the Auction are purchased for resale in the form of tangible personal property in the regular course of business and are of the sort usually purchased by Dealer for resale. If the Vehicle is used for any purpose other than for resale, Dealer will pay directly to the proper taxing authorities such sale or use tax as may then accrue and be due and payable.
- v) Late Payment. If Eligible Participant is late in making any payment to OL, OL may, without prejudice to any other rights and remedies, at its option, take any or all of the following actions: (1) cancel the Transaction to which the late payment relates; (2) charge late payment penalty fees of \$10 per day and/or charge interest on any past due payments at the rate of one and one half (1.5%) percent per month, calculated in US dollars, or the maximum rate allowed by law, whichever is less, (3) offset any late payment against any amount that may be payable by OL to Eligible Participant pursuant to Section 2(c)(vi) below and/or (4) cancel Buyer’s right to initiate a Purchase Dispute with regard to the Vehicle. Eligible Participant agrees that it will be responsible to reimburse OL for all costs of collection of any of the late payments, including, without limitation, reasonable attorneys’ fees and expenses.

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- vi) Right to Offset. OL has the right to offset, deduct, or retain out of any amounts payable by OL to Eligible Participant any amounts payable to OL by Eligible Participant in connection with the Auction or other services provided by OL to Seller or Buyer, as applicable. This right to offset will be in addition to, and not exclusive of, any other remedy available to OL, whether at law or in equity.
- vii) Records/Compliance with Laws. Eligible Participant will maintain complete and accurate records concerning all aspects of any Transaction. All business practices, acts and operations of Eligible Participant in connection with the Auction will be in compliance with all applicable federal, state and local laws and regulations.
- viii) Conducting Business. So long as OL has no actual knowledge to the contrary regarding the authority of Eligible Participant or any Authorized User or other person purporting to be an agent or employee of Eligible Participant, OL: (i) may rely and act upon any purported signature of, and/or oral, written, electronic or other communication in connection with the Auction purportedly sent by Eligible Participant and/or any Authorized User or person purporting to be an agent or employee of Eligible Participant, and (ii) has no obligation to scrutinize, inquire, or confirm any signature or communication with Eligible Participant, any Authorized User or other person purporting to be an agent or employee of Eligible Participant. OL may conduct business with Eligible Participant through the (nonexclusive) use of electronic, computer, digital, or other paperless means, including the good faith reliance on electronic mail, facsimile transmittal, telephonic or other usual and regular forms of communication without confirmation or authentication of the communication by receipt of an original signature, document, paper or otherwise.
- ix) Completion of Sale Transaction. Eligible Participant will complete the sale of the Vehicle, in accordance with the terms and conditions set forth in these Terms of Use, as follows:
- (1) Buy Now. If the Vehicle is listed for a fixed price, Seller will sell and Buyer will purchase such Vehicle, if Buyer clicks on the appropriate button evidencing Buyer's agreement to purchase the Vehicle for that fixed price;
  - (2) Place Bid Format. If the Vehicle is listed for auction with a stated opening minimum bid price (the "**Minimum Bid**"), with or without an undisclosed reserve price (which is the lowest price at which the Seller will sell the Vehicle), Seller will sell to the Buyer that submits the highest bid for the Vehicle that also meets or exceeds the Minimum Bid and the undisclosed reserve price (if any), and Buyer will purchase the Vehicle at such price.
  - (3) If Bid Process. From the opening of a given auction until the time that is up to three hours after the close of such auction (the "**Resolve Time**"), a Seller may either:
    - (a) lower the hidden reserve price for the Vehicle during the Resolve Time. If the hidden reserve price is lowered to a price that is equal to or less than the Maximum Bid Amount of the bidding Dealer with the then highest Maximum Bid Amount, then the Seller will sell and such bidding Dealer will buy the Vehicle at such lowered reserve price or
    - (b) submit, or direct OL in writing (including by email) to submit on Seller's behalf, a counteroffer (the "**Seller's Counteroffer Price**") to the bidder with the highest bid showing for the Vehicle and if such bidder authorizes OL (through the OL Auction system or by recorded telephone message or email) to agree to the Seller's Counteroffer Price, Seller will sell the Vehicle and Buyer will purchase the Vehicle at the Seller's Counteroffer Price.
  - (4) Proxy Bidding. OL's proxy bidding process allows a bidding Dealer to enter a maximum bid amount that such Dealer is willing to pay for a particular Vehicle under the box labeled "Your Maximum Bid Amount" (the "**Maximum Bid Amount**"). This Maximum Bid Amount is not visible to the Seller or other bidding Dealers. The OL Auction system will automatically increase such bidding Dealer's bid up to such Maximum Bid Amount in accordance with the following rules:
    - (a) The OL Auction system will only increase the bidding Dealer's bid by the particular dollar increment that applies to that particular Vehicle or group of Vehicles. OL will never increase the bidding Dealer's bid above such Dealer's Maximum Bid Amount.

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- (b) If two bidding Dealers place the same dollar bid for a Vehicle, the earlier placed bid remains the high bid until a competing bid is higher than the earlier Dealer's Maximum Bid Amount.
  - (c) If the then high bidding Dealer is outbid, the OL Auction system will send a notification to such bidding Dealer through the OL system.
  - (d) A Seller may preconfigure the auction cycle of a Vehicle prior to release of the Vehicle to have the auction cycle automatically extend beyond the original close time in order to prevent bidding Dealers from "sniping" (ie placing a bid immediately before the auction close in order to prevent a competing bid from being placed).
  - (e) A Seller may not increase the hidden reserve price for a Vehicle after a bidding Dealer has placed a bid.
- (5) **"Make an Offer" Submission Not Binding.** If a potential Buyer uses the "Click here to MAKE AN OFFER ON THIS VEHICLE" email functionality, such submission is not considered a binding offer.

d) Additional Listing/Sale Rules for Sellers.

- i) Possession of Title and Vehicle. Seller will make the Vehicle available for pick-up by Buyer's Authorized Person on the Transaction Date. Seller will convey good and valid title to the Vehicle, free and clear of all defects, liens and encumbrances ("**Good Title**") by the applicable deadline set forth in Section 2(d)(iv).
- ii) Vehicle Listing Disclosure Requirements and Purchase Dispute Categories. The Seller will ensure that the disclosures regarding the Vehicle will comply with the requirements of this subsection, provided however that if Seller has a Separate Agreement, as defined in Section 15, then Seller will ensure that the disclosures correspond with the requirements of such Separate Agreement and Buyer will purchase the Vehicle subject to those disclosure and Purchase Dispute guidelines, which are set forth below or on the vehicle detail page of the applicable Vehicle.
- iii) Seller's Responsibility for Accuracy of Disclosures and Release of Vehicle Listing to Auction. A Seller may use a third party to inspect the Vehicle and/or prepare the vehicle detail page and list the Vehicle on Seller's behalf. Despite any such third party inspection and/or listing services, as between the Seller, on the one hand, and OL and/or the Buyer, on the other hand, the Seller remains responsible for the completeness and accuracy of the required disclosures regarding the Vehicle on the vehicle detail page. The Seller may not rely solely on information contained in vehicle history reports, including but not limited to CarFax and AutoCheck, to satisfy its disclosure obligation. Conversely, a Buyer may not initiate a Purchase Dispute and a Seller may not defend against a Purchase Dispute by referencing information that is disclosed through an internet link to a non-OL webpage except for links to Monroney sticker information provided by OEMs. By either "releasing" a Vehicle for sale in the Auction (or having OL release such Vehicle on Seller's behalf) or listing a Vehicle for sale in the Auction through an automatic datafeed, Seller confirms that: (i) Seller has reviewed all of the listing disclosures with regard to such Vehicle (ii) all disclosures with regard to the Vehicle are complete and accurate and (iii) OL is released and indemnified from and against any and all claims in connection with any errors with regard to such disclosures. With regard to potentially conflicting disclosures regarding a Vehicle, the order of precedence is as follows 1) a specific disclosure in a section entitled "Announcements" takes precedence over all other disclosures, 2) evidence in clearly visible photographs takes precedence over conflicting disclosures in an inspection report or an "options" section of the vehicle detail page, provided however that non-OEM equipment, including but not limited to bike racks and rims, that is disclosed solely through photographs of off-lease Vehicles should be presumed by the Buyer not to be included with the Vehicle (and the lack of such equipment on an off-lease Vehicle in such circumstance is not a Dispute-Eligible Claim), and 3) disclosures in an inspection report take precedence over conflicting disclosures in an "options" section of the vehicle detail page.

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- (1) Vehicle Listing Categories. A Seller will designate a Vehicle for sale under one of the following categories: “Major Defects Disclosed,” “As Described,” “Wholesale Ready,” “Front Line Ready,” or, in certain cases as described below, “OEM-CPO Eligible” or “As Is.” The Seller will ensure that any Vehicle listed under a particular category will conform to the minimum requirements in the applicable definition. If Seller does not designate a listing category for a Vehicle, the Vehicle will be considered to be “As Described” and will be subject to the disclosure and Purchase Dispute provisions of subsection (c) below. Any and all interpretation as to whether a Vehicle meets any aspect of these definitions is in OL’s sole discretion.
- (a) **“As Is”** means that any and all Flood Damage, Structural Damage, damage from fire, Odometer Problems, Non-Runner Status and/or Title Brands have been disclosed in the vehicle detail page or vehicle condition report or are clearly visible in the photographs in the vehicle detail page or vehicle condition report. Only certain Sellers that are pre-approved in writing by OL to list Vehicles as “As Is” may do so and any vehicle listed “As Is” without prior written approval will have their vehicles considered to be “As Described” in (c) below.
- (i) Dispute-Eligible Claim on “As Is” Vehicle. The Buyer of a Vehicle categorized as “As Is” may initiate a Purchase Dispute solely for Flood Damage, Structural Damage, damage from fire, an Odometer Problem, Excess Unpaid DMV Fees or a Title Brand that was not disclosed in the vehicle condition report or vehicle detail page.
- (b) **“Major Defects Disclosed”** means that any and all Major Defects have been disclosed in the vehicle detail page or vehicle condition report or are clearly visible in the photographs in the vehicle detail page or vehicle condition report.
- (i) Required Photographs. Seller must include at least the following six (6) (or, in the case of a pickup truck, seven (7)) separate photographs for each Vehicle listed under the “Major Defects Disclosed” category: (1) exterior front, (2) exterior rear, (3) exterior left side, (4) exterior right side, (5) interior front driver section, (6) engine bay, and (7) if Vehicle is a pickup truck, the truck bed. If the Seller fails to include these requisite photographs of the Vehicle, OL may determine, in its discretion, that Seller will be obligated for any Purchase Dispute under the more Buyer-favorable “As Described” Purchase Dispute Guidelines, rather than the “Major Defects Disclosed” guidelines.
- (ii) Gray Market Vehicle and Excess Unpaid DMV Fees Disclosure. Gray Market Vehicle status and Excess Unpaid DMV Fees are disclosed.
- (iii) Title Brands. Seller must disclose if there are any Title Brands, provided however that if the Seller of the Vehicle is generally known to be a rental car agency, then it will be deemed to constitute sufficient disclosure of the Vehicle’s status as a former rental car.
- (iv) Dispute-Eligible Claim on “Major Defects Disclosed” Vehicle. The Buyer of a Vehicle categorized as a “Major Defects Disclosed” may initiate a Purchase Dispute for: (a) a Major Defect that is not disclosed in (or clearly visible in photographs contained in) the vehicle condition report or vehicle detail page, for which the estimated cost of repair or replacement (as determined by OL) is in excess of Four Hundred Dollars (\$400), or (b) a failure to make the required disclosures under subsections (b)(ii) or (b) (iii) above.
- (c) **“As Described”** means the following:
- (i) All Material Information Disclosed. All material information about the condition, description, mileage and defects of the Vehicle, including but not limited to any and all Major Defects, Proper Prior Repair (as specifically described below) and Poor Prior Repair are either disclosed in the vehicle condition report and/or vehicle detail page or clearly visible in the photographs in the vehicle detail page or vehicle condition report.
- (ii) Specific Disclosures on Proper Prior Repairs.
- I. Vehicle with Minimum Bid of less than \$35,000: Seller must disclose if three or more Panels have had Proper Prior Repair.

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2. Vehicle with Minimum Bid of \$35,000 or more: Seller must disclose if two or more Panels have had Proper Prior Repair.
  3. Current Model Year Vehicle: Seller must disclose if two or more Panels have had Proper Prior Repair.
- (iii) There are no Title Brands other than former rental car status, which if applicable, have been disclosed, provided however that if the Seller of the Vehicle is generally known to be a rental car agency, then it will be deemed to constitute sufficient disclosure of the Vehicle's status as a former rental car.
- (iv) Gray Market Vehicle and Excess Unpaid DMV Fees Disclosure. Gray Market Vehicle status and Excess Unpaid DMV Fees are disclosed.
- (v) No Aggregate Defects in Excess of \$500 to Repair. There are no aggregate items of defect, damage and/or discrepancy (including but not limited to Poor Prior Repairs or Major Defects), for which the aggregate estimated cost of wholesale repair (as determined by OL) exceeds Five Hundred Dollars (\$500) that are not either disclosed in the vehicle condition report or vehicle detail page or clearly visible in photographs of the Vehicle in the vehicle condition report or vehicle detail page.
- (vi) Dispute-Eligible Claim on "As Described" Vehicle. The Buyer of a Vehicle categorized under "As Described" may initiate a Purchase Dispute for lack of compliance with subsections (c) (ii), (iii), (iv) or (v) above, provided however that a Buyer may not initiate a Purchase Dispute for any of the following under any circumstances.
1. A General Reconditioning Item;
  2. Normal Exterior Wear and Tear; or
  3. Any of the following items on a Vehicle with mileage in excess of 60,000 miles: damage to CV joints; damage or failure in rack & pinion steering; air conditioning leaks, cracks in hoses, lines or charge (provided however that Air Conditioning Failure is eligible for Purchase Dispute); engine cooling leaks; cracks or holes in hoses or lines; moderate smoke emitted from emission system; or noisy lifters and camshafts.
- (vii) Default Listing Category. If Seller does not designate a listing category for a Vehicle, the Vehicle will be listed as "As Described" and will be subject to the disclosure and Purchase Dispute provisions of this subsection (c).
- (d) **"Wholesale Ready"** means a Vehicle that meets the following minimum criteria:
- (i) There are no Major Defects or Poor Prior Repairs.
  - (ii) Gray Market Vehicle status and Excess Unpaid DMV Fees are disclosed.
  - (iii) There are no Title Brands other than former rental car status, which if applicable, has been disclosed, provided however that if the Seller of the Vehicle is generally known to be a rental car agency, then it will be deemed to constitute sufficient disclosure of the Vehicle's status as a former rental car.
  - (iv) Aggregate Defects Not in Excess of \$300 to Repair. The aggregate defects, damage and discrepancies (excluding General Reconditioning Items and Normal Exterior Wear and Tear) are estimated to cost in the aggregate no more than Three Hundred Dollars (\$300) to repair.

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- (v) Dispute-Eligible Claim on Wholesale Ready Vehicle. The Buyer of a Vehicle categorized as “Wholesale Ready” may initiate a Purchase Dispute for: (a) any failure to meet the above requirements if the total estimated wholesale cost of repair for the aggregate of such defects, damage and discrepancies, excluding General Reconditioning Items and Normal Exterior Wear and Tear (as determined by OL) is in excess of Three Hundred Dollars (\$300), whether or not such defects, damage and/or discrepancies are disclosed), or (b) a failure to comply with subsections (d)(ii) or (d)(iii) above.
- (e) **“Front Line Ready”** means that:
- (i) Retail Condition. The Vehicle is in retail condition with no defects, damage or discrepancies.
- (ii) Proper Prior Repairs are disclosed as follows:
1. Vehicle with Minimum Bid of less than \$35,000: Seller must disclose if three or more Panels have had Proper Prior Repair.
  2. Vehicle with Minimum Bid of \$35,000 or more: Seller must disclose if two or more Panels have had Proper Prior Repair.
  3. Current Model Year Vehicle: Seller must disclose if two or more Panels have had Proper Prior Repair.
- (iii) Gray Market Vehicle status and Excess Unpaid DMV Fees are disclosed.
- (iv) There are no Title Brands other than former rental car status, which if applicable, has been disclosed, provided however that if the Seller of the Vehicle is generally known to be a rental car agency, then it will be deemed to constitute sufficient disclosure of the Vehicle’s status as a former rental car.
- (v) Additional Front Line Ready Conditions. In addition, the Vehicle meets the following additional criteria: (i) all OEM-specified scheduled maintenance has been performed, (ii) oil and oil filter have been changed within the last 250 miles (ii) Brake Standards are met (iii) Tire Standards are met (iv) battery holds charge and starts Vehicle without assistance from another power source (v) there are no leaks in the transmission, differential or engine cooling components (vi) vehicle height, spring support and mounting must be OEM (modifications prohibited); (vii) shock absorbers show no signs of leaks and should not bottom out easily (viii) springs, sway bars, bushings, ball joints and mounts show no signs of damage or wear, (ix) clutch has no excessive noise or play and clutch hydraulic systems are secure and have no leaks (x) all windows, headlights and taillights function properly (xi) the alarm (if applicable) and parking brake function properly (xii) the carpet and upholstery have no tears or holes; (xiii) the interior is free of foul odors (ix) Vehicle’s glass is free of damage.
- (vi) Dispute-Eligible Claim on Front Line Ready Vehicle. The Buyer of a Vehicle categorized as “Front Line Ready” may initiate a Purchase Dispute for failure to comply with subsections (e)(i), (e)(ii), (e)(iii), (e)(iv) or (e)(v) above.
- (f) **“OEM-CPO Eligible”** means that the Vehicle meets the minimum standards described in the Vehicle’s factory authorized certified pre-owned program (the **“CPO Program”**), provided however that certification paperwork (if any) may not be transferable from the Seller to the Buyer and Buyer may have to pay an additional certification fee. Only a new car franchise dealer that is also eligible to participate in that franchise’s CPO Program may designate Vehicles of the same make as that franchise as OEM CPO Eligible.
- (i) Dispute-Eligible Claim on OEM-CPO Eligible Vehicle. The Buyer of a Vehicle categorized as “OEM-CPO Eligible” may initiate a Purchase Dispute if the Vehicle fails to meet any of the minimum criteria contained in the definition.

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- (2) Definitions. Interpretation of these definitions is in OL's sole discretion.
- (a) Air Conditioning Failure means an air conditioning system that does not blow cold air after compressor recharge or several minutes after the Vehicle has been running. Note that noise and/or dripping water, in and of themselves, do not mean that there is an Air Conditioning Failure if the air conditioning system blows cold air.
  - (b) Brake Standards means that (i) the master cylinder should be full and fluid in good condition (ii) the hydraulic system has no leaks, cracks or signs of significant deterioration (iii) the rotors, drums, calipers and brake hardware are free of significant defects (iv) rotor thickness is more than the minimum thickness stamped on the inside of the rotor and does not have excessive lateral runout or lack parallelism enough to cause pulsation (v) the calipers slide freely and do not stick (vi) the brake pads have a minimum of 50% material and measure to 5/16 inch or more (vii) the drums are not out of round enough to cause pulsation and have above the minimum thickness standard stamped inside the drum (viii) the brake shoes have a minimum of 3/16th of lining (ix) the parking brake maintains vehicle in parked position and releases without difficulty and (x) the brakes do not pull, clunk, scrape, squeal, grab or exhibit premature lockup.
  - (c) Current Model Year Vehicle means: (1) if the Transaction occurs on or before August 31<sup>st</sup> of a given year, the Vehicle has a model year that is the same as the year of the Transaction Date, and (2) if the Transaction occurs after August 31<sup>st</sup> of a given year, the Vehicle has a model year that is the next year after the year of the Transaction Date.
  - (d) Engine Sludge means the thick, dark gel substance, which comes from the solidification of an engine's oil and which causes engine damage or failure.
  - (e) Excess Unpaid DMV Fees means that at the time of the Transaction there are pending state or local DMV fees or taxes due on the Vehicle in excess of \$100.
  - (f) Flood Damage means water immersion or flood damage as described in the then current version of the National Auto Auction Association Water/Flood Damage Policy.
  - (g) General Reconditioning Item means (i) OEM specified scheduled maintenance (ii) tire wear or condition (iii) brake wear or condition (iv) oil change (v) springs (vi) shocks (vii) suspension (viii) clutch failure on a Vehicle with standard or manual transmission or (ix) engine or rear-end noises that are typical to a particular model or manufacturer, unless deemed excessive by a reputable source as determined by OL.
  - (h) Gray Market Vehicle means that the Vehicle is either a Canadian Vehicle (ie made in North America for Canadian use and properly converted to U.S. specifications) or is a Vehicle that was not manufactured for sale in the United States.
  - (i) Major Defect means (i) Flood Damage (ii) Structural Damage (iii) fire damage (iv) cracks in engine block (v) Engine Sludge (vi) non Original Equipment Manufacturer (OEM) engine or engine modification (vii) fuel conversion (viii) missing or modified exhaust system or catalytic converter (ix) inability to pass state emission test (x) deployed airbag or Supplemental Restraint System (SRS) warning light(s) (xi) Air Conditioning Failure (xii) Major Mechanical Defect (xiii) Major Electrical Defect, (xiv) Odometer Problem or (xv) Non-Runner Status.
  - (j) Major Electrical Defect means the Anti-lock Break System (ABS), Hybrid Drive control modules or main wiring harness are not materially functioning (as determined by OL) in accordance with the OEM factory specifications.
  - (k) Major Mechanical Defect means the internal, lubricated components of one or more of the following is not materially functioning (as determined by OL) in accordance with the Original Equipment Manufacturer's (OEM) factory specifications: (1) transmission, (2) engine and/or (3) axle assembly (including front, rear, four wheel and all wheel drive).

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- (l) Non-Runner Status means a Vehicle with an engine that does not start or cannot idle on its own due to some electrical or other engine failure.
  - (m) Normal Exterior Wear and Tear means damage that would be considered normal wear and tear given the age and mileage of the Vehicle and is not easily seen, such as scratches that do not break the paint, minor nicks, cuts and/or scuffs.
  - (n) Odometer Problem means (i) the actual mileage of the Vehicle at Vehicle Pick Up Time is at least 1,000 miles greater than the disclosed odometer reading, (ii) the actual mileage of the Vehicle at Vehicle Pick Up Time is less than 1,000 miles greater than the disclosed odometer reading, but such excess mileage triggers the expiration of the manufacturer's warranty due to the maximum allowed mileage for the warranty, (iii) evidence of odometer tampering; or (iv) a broken or replaced odometer.
  - (o) Panel means the parts of a Vehicle made up of (i) the left and right fenders; (ii) left and right quarters; (iii) all doors, engine hood and trunk or hatchback lifts covers; and (iv) roof. Note that the front or rear bumper fascia are not considered Panels.
  - (p) Poor Prior Repair means a Prior Repair in which the damage has not been removed completely and/or the paint work is, in OL's judgment, substandard, including but not limited to, as evidenced by "runs," "orange peel," "tape marks," "poor color match" and other industry terms that signify substandard paint work.
  - (q) Prior Repair means a Panel that has been repaired and painted.
  - (r) Proper Prior Repair means a Prior Repair in which damage has been completely removed, and paint color and surface texture match adjacent Panels in a highly consistent manner so that the Prior Repair is largely undetectable to an untrained, naked eye.
  - (s) Single Defect means a flaw in the Vehicle's condition that resulted from one event, provided however that cumulative damage from hail and/or acid rain will be considered a "Single Defect."
  - (t) Structural Damage means frame/unibody damage or alteration as described in the then current version of the National Auto Auction Association Structural Damage Policy, provided however that minor components welded or removed from the frame (trailer hitches, bumpers, etc.) will not be considered structural damage or structural alteration unless they have compromised the structural integrity of the Vehicle; and minor dents in the frame/structure and minor tie down hole tears that do not affect the structural integrity of the frame will not be considered structural damage or structural alteration.
  - (u) Tire Standards means that tires, excluding space saving spare tires, are (i) all of the same make, model and size (ii) not out of round (iii) free of flat spots (iv) without visible broken belts or excessive camber/toe wear (v) free of plugs or damage to walls and (vi) having tread depth of at least 4/32.
  - (v) Title Brands means title brands and/or usage history that may materially affect a Vehicle's value, including but not limited to: salvage, previous salvage, fire, reconstructed vehicle title; stolen vehicle, theft recovery; manufacturer, lemon law or warranty buybacks; donated or charity vehicles; former taxis and livery vehicles; government or municipal vehicles; rental cars; "true mileage unknown" and any other damage disclosures required by applicable state law.
- iv) Vehicle Availability and Working Keys. The Seller will make the Vehicle (with at least one set of working keys) available for pick-up at the location specified on the vehicle release form on the Transaction Date (except for certain rental Vehicles, which will be made available within seven (7) days after the Transaction Date). If the Seller fails to make the Vehicle (with at least one set of working keys) available by such deadline and at such specified location, OL may at its discretion: (i) charge the Seller a penalty fee, (ii) require Seller to pay some or all of Buyer's Fees and/or Costs in connection with the Transaction, including but not limited to transport, "dry run" fees, floorplan financing interest charges and/or service charges, and/or (iii) cancel the Transaction and require Seller to refund the Total Payment Amount to OL, which will refund the Buyer.

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- v) Delivery of Title/Good Title vs. Title Absent. The Seller will either: (i) deliver Good Title to the Vehicle to OL on or before the third business day after the Transaction Date or (ii) disclose on the vehicle detail page that the Vehicle is being listed as “Title Absent,” in which case Seller will deliver Good Title to the Vehicle to OL on or before twenty one calendar days after the Transaction Date. If Seller fails to deliver Good Title on or before the applicable deadline, OL may charge Seller penalty fees for late title delivery, retain any fee previously paid by Seller in connection with the Transaction and/or cancel the Transaction and require Seller to refund to Buyer the Total Payment Amount (including transportation costs both to and from the Buyer).
- vi) Payment of Net Purchase Price to Seller. Subject to OL’s right of offset in Section 2(c)(vi), OL will deliver the purchase price of the Vehicle, net of any Fees and/or Costs payable by the Seller relating to such Vehicle (the “**Net Purchase Price**”), to Seller on or before three (3) business days after OL’s receipt of Good Title from the Seller, provided however that if the Buyer or OL has initiated a Purchase Dispute regarding such Vehicle prior to OL’s payment to Seller, OL will withhold the Net Purchase Price pending the resolution of such Purchase Dispute, at which point OL will release the funds to Seller and/or Buyer as appropriate.
- vii) Repossessed Vehicles. Seller will not list any Vehicle for sale on the Auction: (a) before the expiration of any cure, reinstatement, or redemption period, or any stay, (b) if it has been repossessed unlawfully, or (c) in violation of any law requiring public sale. If the Title for a lawfully repossessed Vehicle is accompanied by a repossession affidavit or other standard evidence of repossession, then the failure to disclose the Vehicle’s repossession status in the vehicle detail page does not constitute grounds for a Purchase Dispute.
- e) Additional Rules for Buyers.
- i) Vehicle Pick Up Deadline. The Buyer will either pick up the Vehicle or arrange for OL-Arranged Transportation or a third party transportation company to pick up the Vehicle on or before: (i) seven (7) calendar days after the Transaction Date or (ii) in the case of a Vehicle for which a Post-Sale Inspection was ordered pursuant to Section 3(b)(ii), two (2) business days after the PSI Process End Date (the “**Vehicle Pick Up Deadline**”), provided however that if the seventh calendar day falls on a day that is not a business day, then the Vehicle Pick Up Deadline is the next business day. Risk of loss for a Vehicle shifts from the Seller to the Buyer at the earlier of the Vehicle Pick Up Time, as defined below, and the Vehicle Pick Up Deadline. As a Buyer, you acknowledge and agree that you are responsible to arrange for transport of Vehicles that you buy through the Auction. If Buyer (or its third party transportation company) does not pick up the Vehicle on or before the Vehicle Pick Up Deadline or Buyer does not pay the Total Payment Amount to OL and arrange for OL-Arranged Transport by the Payment Due Date, Buyer agrees that OL may do any or all of the following: 1) suspend Buyer’s purchasing privileges in the Auction, 2) cancel the Transaction, 3) charge Buyer a storage fee for the Vehicle and/or a penalty fee, 4) arrange for delivery of the Vehicle to Buyer, at Buyer’s expense or 5) cancel Buyer’s ability to initiate a Purchase Dispute with regard to the Vehicle.
- ii) Buyer Vehicle Condition Inspection Obligations.
- (1) Vehicle Transported by OL-Arranged Transportation. If Buyer uses OL-Arranged Transportation to transport the Vehicle, Buyer must, at the time Buyer takes delivery of the Vehicle from the carrier (the “**Delivery Time**”), perform a careful visual inspection of the exterior of the Vehicle for exterior damage or missing standard exterior equipment that is consistent with loss or damage during transport, including to glass (an “**Exterior Inspection**”) as against the description in the Bill of Lading and write a description of all discrepancies on the Bill of Lading before signing the Bill of Lading. Buyer must report any discrepancies between the original Bill of Lading and vehicle condition at Delivery Time to OL on or before the Purchase Dispute Initiation Deadline. Note that if Buyer is late in making any payment to OL, OL may cancel Buyer’s right to initiate a Purchase Dispute with regard to the Vehicle.
- (2) Vehicle Transported by Buyer (Vehicle not Driven or Towed). If Buyer arranges other transportation for the Vehicle that does not involve the Vehicle being either driven more than 75 miles or towed to Buyer’s location, Buyer must ensure that at the Vehicle Pick Up Time, Buyer’s Authorized Person conducts an Exterior Inspection of the Vehicle and specifically notes all damage or discrepancies on the Bill of Lading or other writing, which must be signed by Buyer’s Authorized Person and a person who is authorized to release the Vehicle from the grounding location (“**Grounding Location Person**”). If no Grounding Location Person is available at the Vehicle Pick Up Time, Buyer’s Authorized Person, in addition to describing any damage or

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discrepancies with regard to the exterior of the Vehicle in writing on the Bill of Lading or other writing, must call OL (telephone: 866-969-0321) and describe the damage or discrepancies in detail to OL personnel at the Vehicle Pick Up Time.

- (3) Vehicle Driven or Towed. If Buyer arranges to have the Vehicle driven more than 75 miles or towed from the grounding location, Buyer's Authorized Person must carefully inspect the Vehicle for any exterior damage and mechanical defects or discrepancies not disclosed on the vehicle condition report or vehicle detail page and also inspect the dash lights and odometer reading and write a description of any discrepancies from the vehicle condition report and vehicle detail page on the Bill of Lading, which must be signed by Buyer's Authorized Person and Grounding Location Person. If no Grounding Location Person is available at the Vehicle Pick Up Time, Buyer or Buyer's Authorized Person, in addition to describing the damage and discrepancies in writing on the Bill of Lading, must call OL (telephone: 866-969-0321) and describe the damage and/or discrepancies in detail to OL personnel at the Vehicle Pick Up Time.

### 3) Other Services.

- a) OL-Arranged Transportation. A Buyer may request that OL arrange transportation of a particular Vehicle on Buyer's behalf. OL provides this service for a fee and as a convenience for certain Buyers; however, OL does not warrant or otherwise endorse the services provided by the third party transportation company. By selecting "OL-Arranged Transportation" or "CarsArrive transport" for a Vehicle on the OPENLANE.com websites, Buyer agrees to the terms in this Section 3(a) in addition to any terms set forth on the "OL-Arranged Transportation" or "CarsArrive" section of OPENLANE.com:
- i) Authorization to Arrange Transportation. By selecting "OL-Arranged Transportation" or "CarsArrive transport" for a specific Vehicle, Buyer authorizes and directs OL to arrange the transportation of such Vehicle on Buyer's behalf with a third party transportation company.
  - ii) Payment of Fees Prior to Arrangement of Transportation. Buyer will pay OL the fee as shown on the applicable webpage under either "OPENLANE-Arranged Transportation" or OL's CarsArrive System for the transportation of the Vehicle on or before the Payment Due Date. Transportation will not be arranged until Buyer has paid the Total Payment Amount, including all Fees and Costs, including transportation Fees to OL.
  - iii) Standard Transport – Delivery Times are Estimates Only. The "Standard Transport" section of the applicable webpage on OPENLANE.com or CarsArrive System shows the estimated days until delivery. This estimate is based on a mileage algorithm and the start date is the date payment is received by OL. Note that this delivery date is an estimate only, and OL does not guarantee that the Vehicle will be delivered within that timeframe and is not liable for any costs associated with the late delivery of any Vehicle. In the event of a delay in delivery, OL will not assume or be responsible for any claims, including but not limited to: a) decreases in the value of a Vehicle arising between the time of purchase and delivery for depreciation or other reasons, b) storage costs, c) lost sales, d) financing or floor planning costs, and e) any other fees or costs incurred by the Buyer and/or passed-on by the Seller or transportation company to the Buyer. (In certain geographic areas, OL offers an "Expedited Transport" service option, under which the Buyer may be refunded the transportation fee if the Vehicle isn't delivered within a specified period of time.)
  - iv) Buyer's Obligation to Conduct Exterior Inspection at Delivery Time. Buyer must, at the time Buyer takes delivery of the Vehicle from the transportation company (the "**Delivery Time**"), perform a careful visual inspection of the exterior of the Vehicle for exterior damage or missing standard exterior equipment that is consistent with loss or damage during transport, including to glass (an "**Exterior Inspection**") as against the description in the Bill of Lading and write a description of all discrepancies on the Bill of Lading before signing the Bill of Lading. Buyer must report any discrepancies between the original Bill of Lading and the condition of the Vehicle at Delivery Time to OL on or before the Transportation Damage Claim Deadline (as defined below).
  - v) Risk of Loss. Risk of loss for a Vehicle remains with the Seller until the transportation company, arranged on Buyer's behalf by OL as a convenience to Buyer, picks up the Vehicle from the grounding location (the "**Vehicle Pick Up Time**"), at which point the risk of loss for the Vehicle is transferred to the Buyer. If the Vehicle is damaged in transit, OL will, as a convenience to Buyer, use commercially reasonable efforts to assist Buyer in making a claim against transportation company or its insurer, but OL is not liable for any damage that occurs to the Vehicle in transit or any other liability or claim that may arise and relates in any way to the

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transport of the Vehicle. OL is not responsible for prosecuting a claim against the transportation company or its insurer on Buyer's behalf.

- vi) **Transportation Damage Claim Initiation.** A Buyer may initiate a claim for transportation damage on a Vehicle transported through OL-Arranged Transportation (a "**Transportation Damage Claim**") by sending the following information to OL via the online OPENLANE Customer Service Portal on or before the Transportation Damage Claim Deadline and OL will use its commercially reasonable efforts to assist in facilitating such claim. The "**Transportation Damage Claim Deadline**" is the day that is two calendar days after the Delivery Time, provided however that if the second calendar day falls on a day that is not a business day, then the Transportation Damage Claim Deadline is the next business day (For example, if the Vehicle is delivered to Buyer on Thursday, then the Buyer may initiate a Transportation Damage Claim on the following Monday.) and provided further that if Buyer does not pay the transportation fee to OL and arrange for OL-Arranged Transport by the Payment Due Date, OL may in its discretion cancel Buyer's right to initiate a Transportation Damage Claim with regard to such Vehicle.
  - vii) **Indemnification.** Buyer agrees to indemnify and hold harmless OL, and its subsidiaries and employees, from any and all claims, expenses, losses and costs associated with any personal injury, property damage or delay, that may occur and that relates in any way to the transportation of the Vehicle from the Vehicle Pick Up Time to the Delivery Time.
  - b) **OL-Arranged Inspection Services.** A Seller or Buyer may request that OL arrange a third party inspection of a particular Vehicle on such Seller's or Buyer's behalf and either before or after the Transaction. OL provides this service for a fee and as a convenience for certain Eligible Participants; however, OL does not warrant or otherwise endorse the services provided by the third party.
    - i) **Seller-Ordered Inspection – Seller Retains Liability.** As between a Seller and OL, the Seller (and not OL) is liable for any failure of the third party inspection company to adequately inspect the Vehicle or adequately disclose in the inspection report any discrepancy or defect of such Vehicle (See "OL-Arranged Third Party Inspection Services" on OPENLANE.com).
    - ii) **Post-Sale Inspection of Vehicle.** Buyer may in certain circumstances request that OL arrange a third party inspection of a Vehicle. OL will use commercially reasonable efforts to arrange for a third party inspection of such Vehicle as soon as practicable, which will take place at the grounding location. Seller will make the Vehicle available during normal business hours (or, if mutually agreed between inspection company and grounding location, after normal business hours) for inspection. Seller agrees that Vehicle Pick-Up Deadline will be extended until the date that is two business days after the PSI Process End Date. OL will as a convenience to Buyer review the inspection report prior to the Vehicle being transported to Buyer and may on Buyer's behalf submit a Dispute Eligible Claim to Seller based on a discrepancy between Vehicle disclosures on the vehicle detail page and inspection report, as determined in OL's reasonable judgment and in accordance with the Terms of Use. In addition, notwithstanding OL's review of the PSI inspection report, Buyer may initiate a Purchase Dispute in accordance with the applicable Purchase Dispute Initiation Deadline (below). In no event will OL be liable to either Buyer or Seller for any failure by OL to correctly interpret the inspection report as against the Vehicle disclosures in the vehicle detail page. The date on which OL both completes its review of the PSI inspection report and determines a Final Dispute Award (if any) based on the PSI inspection report is the "**PSI Process End Date.**"
  - c) **OL-Introduced Listing Agent.** A Seller may retain a third party listing agent to inspect and/or prepare listings of Vehicles, and list and sell such Vehicles on Seller's behalf in the Auction. OL may arrange such an introduction as a convenience only for Seller and may pay such listing agent a fee in certain circumstances; however, OL does not warrant the services provided by the third party listing agent to Seller. As between the Seller and OL, the Seller (and not OL) is liable for all actions and omissions of its third party listing agent, including any failure of the third party listing agent to adequately inspect Vehicles and/or prepare vehicle detail pages.
- 4) **Purchase Dispute Guidelines.** We strive to be the most efficient and fair auction for both Buyers and Sellers of wholesale Vehicles. We have developed our purchase dispute guidelines in an effort to make them appropriate for an online auction and yet familiar to Buyers and Sellers that are accustomed to physical auctions. **There are, however, important differences between our purchase dispute guidelines and those of a physical auction, and both Buyers and Sellers should read all of the Terms of Use, including this section, carefully before listing, selling, buying or transporting a Vehicle. The following purchase dispute guidelines (the "Standard Purchase Dispute Guidelines") govern the resolution of most disputes between Buyers and Sellers arising from the purchase and/or sale of Vehicles on the Auction, provided however that certain Sellers have purchase dispute guidelines that differ from the Standard Purchase Dispute Guidelines (the "Seller-Specific Purchase Dispute**

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Guidelines”). The Seller-Specific Purchase Dispute Guidelines are set forth on the applicable vehicle detail page or below. The Standard Purchase Dispute Guidelines, as amended by the applicable Seller-Specific Purchase Dispute Guidelines, are the “Purchase Dispute Guidelines.” As a Buyer or Seller, you understand and agree that, by accessing or using the Auction, you agree to abide by the Purchase Dispute Guidelines. A Buyer’s failure to comply with the Purchase Dispute Guidelines may result in the rejection of the claim, the assessment of penalty fees and/or the suspension of Buyer’s rights to use the Auction. A Seller’s failure to comply with the Purchase Dispute Guidelines may result in the assessment of penalty fees and/or the suspension of the Seller’s rights to use the Auction. OL reserves the right to waive any provision of the Purchase Dispute Guidelines if OL determines, in its sole discretion, that the provision operates in an unfair or unreasonable manner in a given instance.

a) Initiation of a Purchase Dispute.

- i) Buyer must complete Transaction. In order to initiate a purchase dispute regarding a Vehicle (a “Purchase Dispute”), Buyer must: (1) subject to Section 3(b)(ii), take possession of the Vehicle, (2) initiate the Purchase Dispute on or before the applicable Purchase Dispute Initiation Deadline and (3) pay the Total Payment Amount to OL, provided however that in an exceptional circumstance, such as a clear error in the Transaction or a material change in the Vehicle’s description on the vehicle detail page after Buyer has bid, then OL may consider canceling the Transaction prior to Buyer paying for and taking possession of the Vehicle.
- ii) Purchase Dispute Initiation Deadline means the following:
  - (1) If Buyer uses OL-Arranged Transportation to transport the Vehicle, the Purchase Dispute Initiation Deadline for any Purchase Dispute (other than for failure to timely deliver Good Title or failure to disclose Title Brands, Gray Market Vehicle status or Excess Unpaid DMV Fees) is the date that is two calendar days after the Delivery Time, provided however that if the second calendar day falls on a day that is not a business day, then the Purchase Dispute Initiation Deadline is the next business day (For example, if the Vehicle is delivered to Buyer on Thursday, then the Buyer may initiate a Purchase Dispute on the following Monday.) and provided further that if Buyer does not pay the Total Payment Amount to OL and/or arrange for OL-Arranged Transport by the Payment Due Date, OL may in its discretion cancel Buyer’s right to initiate a Purchase Dispute with regard to such Vehicle.
  - (2) If Buyer does not use OL-Arranged Transportation to transport the Vehicle, the Purchase Dispute Initiation Deadline for any Purchase Dispute (other than for failure to timely deliver Good Title or failure to disclose Title Brands, Gray Market Vehicle status or Excess Unpaid DMV Fees) is the date that is fourteen (14) calendar days after the Transaction Date or the PSI Process End Date (if applicable). Note that if a Buyer does not use OL-Arranged Transportation, the Purchase Dispute Initiation Deadline is tied to the Transaction Date or PSI Process End Date (if applicable) and not the Delivery Time. Thus, the Purchase Dispute Initiation Deadline may be missed (and the Vehicle will be ineligible for Purchase Dispute) if there is any delay in transportation of the Vehicle or payment by the Buyer (because transportation cannot be arranged until the Buyer pays the Total Payment Amount), whether as a result of a post-sale inspection of the Vehicle or any other reason.
  - (3) The Purchase Dispute Initiation Deadline for failure to disclose a Title Brand, Gray Market Vehicle status or Excess Unpaid DMV Fees is seven (7) days after Buyer’s receipt of the title, provided however that if a Title Brand or Gray Market Vehicle status: (i) appears on a Carfax or AutoCheck or similar vehicle history report (a “**Vehicle History Report**”) ordered by Buyer within forty five (45) days after the Transaction Date, then such deadline is the earlier of five (5) business days after the earlier of (1) discovery of such Title Brand or Gray Market Vehicle status or (2) the date of such Vehicle History Report, and (ii) does not appear on such timely ordered Vehicle History Report, then such deadline is extended to the earlier of five (5) business days after discovery of such Title Brand or Gray Market Vehicle status and one year after the Transaction Date.
- iii) Eligible Claims for Purchase Dispute initiated by Buyer that is not a Grounding Dealer. A Buyer that is not a Grounding Dealer may initiate a Purchase Dispute for an eligible claim described in the applicable Vehicle Listing Category set forth in Section 2(d)(ii) (in each case, a “**Dispute-Eligible Claim**”).
- iv) Eligible Claims for Purchase Dispute initiated by Buyer that is a Grounding Dealer. Notwithstanding anything to the contrary herein, if the Buyer is in possession of the Vehicle immediately prior to the Transaction on the Transaction Date (a “**Grounding Dealer**”),

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Buyer may initiate a Purchase Dispute only in the event of: (1) an undisclosed Odometer Problem, (2) undisclosed Title Brand, Gray Market Vehicle status or Excess Unpaid DMV Fees, or (3) Seller's failure to deliver Good Title in accordance with the applicable deadlines set forth herein.

- v) Additional Limit on Initiating a Purchase Dispute on a Cross-Border Vehicle Purchase. A buying Dealer may not initiate a Purchase Dispute with regard to a Vehicle if the Vehicle has been transported outside of the country of the Vehicle's grounding location.

b) Purchase Dispute Process.

- i) Buyer Initiation on or before Purchase Dispute Initiation Deadline. A Buyer may initiate a Purchase Dispute with regard to a vehicle by submitting via the OPENLANE online Customer Service Portal on or before the Purchase Dispute Initiation Deadline (the "**Purchase Dispute Initiation Date**") and reporting the following information: Buyer's name and telephone number; contact person at Buyer and telephone number; Vehicle VIN, model and year; Delivery Time; and a description of the Dispute-Eligible Claims. In certain circumstances, Buyer may be asked to submit their Purchase Dispute information to a provided email account or fax number.
- ii) Buyer Provision of Supporting Documentation on or before Documentation Deadline. The Buyer will promptly (but in any event on or before four (4) business days after the Purchase Dispute Initiation Date) provide documentation supporting the Dispute-Eligible Claim to OL, including but not limited to: (i) the original description of the Vehicle in the vehicle condition report and/or vehicle detail page, (ii) digital photographs of the defect(s) underlying the Dispute-Eligible Claim, (iii) wholesale (not retail) repair estimates from a reputable source and (iv) Bill of Lading or other document from transportation company, if applicable. Please note that information that appears on a Vehicle History Report ordered by Buyer is not sufficient evidence (in and of itself) of a Dispute-Eligible Claim other than a claim regarding an undisclosed Title Brand or Gray Market Vehicle status.
- iii) OL Assistance in Purchase Dispute Resolution; OL's Decision is Final and Binding on Buyer and Seller. OL will review the documentation provided by Buyer and any other materials in OL's discretion and will facilitate a good faith resolution of the Dispute-Eligible Claim between Buyer and Seller. If the Buyer and Seller are unable to reach a mutually acceptable solution, they hereby appoint OL to serve as arbitrator and empower it to render a final, binding decision in settlement of the dispute, by which decision they agree to abide. It is understood that, as arbitrator, OL will grant any remedy or relief that it deems just and equitable under the circumstances. Buyer and Seller agree to exculpate OL from any claims in connection with any decision that OL renders in connection with the Purchase Dispute.
- iv) Final Dispute Award. If OL determines, in its sole discretion, that the claim is a Dispute-Eligible Claim, then Seller or OL may: (1) elect to cancel the Transaction, or (2) elect to have Seller pay OL (and OL will pay such amount to Buyer) a purchase price adjustment based on the estimated cost of repair or replacement of the defect or discrepancy in question as determined by OL in its sole discretion (the "**Purchase Price Adjustment**"). If the Transaction is cancelled, Seller will pay the cost of transporting the Vehicle from Buyer's location to a location designated by Seller (but solely if the Vehicle is not transported to a physical auction site) and refund Buyer the Total Payment Amount, including certain of the Buyer's fees and the cost of transportation of the Vehicle to Buyer (the "**Cancellation Refund Amount**"). The Cancellation Refund Amount or Purchase Price Adjustment, including any fees assessed by OL on Seller in connection with the Purchase Dispute process, is the "**Final Dispute Award**."
- v) Payment of Final Dispute Award. Seller agrees to remit the Final Dispute Award to OL on or before three (3) business days after OL's notification in writing to Buyer and Seller of the Final Dispute Award (the "**Award Documentation Date**"). OL will remit the Final Dispute Award, less any fees on the earlier of: (i) two (2) business days after the date on which OL has received the relevant Final Dispute Award funds from the Seller when applicable, and (ii) up to fourteen (14) calendar days after the Award Documentation Date, at OL's discretion. OL may withhold (or offset) such funds to Buyer if (i) transferable title is not returned (when applicable), (ii) Buyer has unresolved past due amount payable to OL, and/or (iii) OL determines that the Vehicle's condition has changed while in the Buyer's possession. In the event of any late payment of a Final Dispute Award by Seller, OL may assess late payment penalties of \$10 per day (or the maximum allowable by law) or offset any such amount against other amounts payable to Seller pursuant to Section 2(c)(vi).

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- vi) Buyer's Obligations regarding Vehicle during Purchase Dispute process.
- (1) Repairs Made Prior to Initiation of Purchase Dispute. Buyer is liable for any and all repair, reconditioning or other work done to the Vehicle prior to Buyer's initiation of a Purchase Dispute, provided that Seller is liable for and will pay up to \$400 in verifiable reconditioning expense for such work that has been done on a Vehicle that is subject to a Purchase Dispute for Seller's failure to deliver Good Title by the applicable deadline or disclose Title Brands.
  - (2) No Repairs Made After Initiation of Purchase Dispute. If the Transaction is cancelled, Buyer will not be reimbursed for any repair, reconditioning or other work done to the Vehicle after Buyer's initiation of the Purchase Dispute.
  - (3) Buyer will care for Vehicle. Buyer will not use any Vehicle on which it has initiated a Purchase Dispute and must exercise reasonable care to preserve and store the Vehicle (at Buyer's own expense, and not Seller's or OL's) until the Purchase Dispute has been resolved and Seller has taken possession of the Vehicle. Risk of loss of the Vehicle remains with the Buyer until the Vehicle is picked up from Buyer's location. If the Transaction is cancelled, Buyer will make the Vehicle available for pickup by Seller (or Seller's authorized agent) and Vehicle will be in the same or better condition than it was at Vehicle Pick Up Time, unless Buyer has submitted a claim for damage as a result of OL-Arranged Transportation. Buyer will not charge any parking, marshalling or other fee in connection with its maintenance of the Vehicle pending the resolution of the Purchase Dispute. Buyer will be charged the cost of damage repair and/or assessed a penalty fee for any breach of this provision.
- c) Right to Exclude Specific Buyer from Eligibility for Purchase Disputes. A non-Dealer Seller may give written notice to a specific Buyer with a copy to OL (mailed to Attention Legal Department, OPENLANE, Inc., 2200 Bridge Parkway, Suite 202, Redwood City, California 94065), that such Buyer will not be able to initiate a Purchase Dispute with regard to any Vehicle purchased from such Seller at any time from and after the date that is thirty (30) days after the date Buyer receives such notice from Seller, and such Buyer will not be able to initiate a Purchase Dispute for any Vehicle purchased from such Seller after such deadline for any reason.
- 5) **Ownership.** OL exclusively owns all right, title and interest in and to the Auction, including all data regarding Transactions, and all intellectual property rights therein. As between Eligible Participant and OL, OL retains all right, title and interest in and to, and ownership of all intellectual property rights in, any software programs, tools, specifications, APIs, interfaces, data, concepts, knowhow, processes or techniques used or developed by OL or its employees or subcontractors in connection with developing the Auction, customizing the Auction, or otherwise making the Auction available to Eligible Participant. The materials on the Auction are the property of OL or its licensors, and are protected by copyright laws, federal and state law and regulation, and international conventions. Except as expressly provided in these Terms of Use, Eligible Participant may not distribute, transmit, display, reproduce, modify, create derivative works from, or otherwise exploit any of the materials on the Auction. Eligible Participant may not use automated means, such as robots, screen scrapers, or spiders, to collect and/or index any information contained on the Auction. Eligible Participant may display and occasionally print a single copy of any page of the Auction for its own use, but may not otherwise reproduce any material appearing on the Auction without OL's prior written consent. The trade name "OPENLANE" and our associated marks and logos are the registered trademarks of OPENLANE, Inc., and Eligible Participant may not use them. By submitting material to the Auction, Eligible Participant (i) represents that it owns the material, or is submitting the materials with the express consent of the owner; and (ii) grants to OL a perpetual, royalty-free, transferable license to the material, including the right to modify the material, to use such material for the Auction and other associated purposes.
- 6) **Privacy.** Please read OL's privacy policy as shown under "Privacy Policy" on OPENLANE.com. Eligible Participant hereby accepts and agrees to the Privacy Policy.
- 7) **Warranty Disclaimer.** OL AND ITS AFFILIATES PROVIDE THE AUCTION AND ALL RELATED SERVICES TO ELIGIBLE PARTICIPANT ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND HEREBY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES RELATED TO ELIGIBLE PARTICIPANT'S USE AND ACCESS OF THE AUCTION AND ANY RELATED SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTIES WHICH MAY BE CREATED THROUGH COURSE OF DEALING OR USAGE OF TRADE. IF ELIGIBLE PARTICIPANT RELIES ON THE AUCTION OR ANY INFORMATION, PRODUCT OR SERVICE MADE AVAILABLE THROUGH THE AUCTION, ELIGIBLE PARTICIPANT

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UNDERSTANDS AND AGREES THAT IT DOES SO AT ITS OWN RISK. ELIGIBLE PARTICIPANT UNDERSTANDS THAT THERE MAY BE INTERRUPTIONS, DELAYS, INACCURACIES, OMISSIONS, AND/OR OTHER PROBLEMS WITH THE INFORMATION, PRODUCTS, AND SERVICES PUBLISHED OR OFFERED ON THE AUCTION, AND THAT OL WILL NOT BE LIABLE TO ELIGIBLE PARTICIPANT OR TO ANY THIRD PARTY THEREFOR. OL DOES NOT WARRANT ANY INFORMATION, GOODS, OR SERVICES THAT ARE REFERRED TO, ADVERTISED, PROMOTED ON OR SOLD THROUGH THE AUCTION, NOR DOES OL WARRANT THAT THE AUCTION WILL BE ERROR FREE, CONTINUOUSLY AVAILABLE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. OL HAS NO OBLIGATIONS WHATSOEVER TO REVIEW, SCRUTINIZE OR VERIFY THE CONTENT OR FORMAT OF ANY INFORMATION PROVIDED TO IT BY ELIGIBLE PARTICIPANTS OR POSTED ON THE AUCTION BY ELIGIBLE PARTICIPANTS.

- 8) **Waiver of Consequential Damages.** IN NO EVENT WILL OL OR ANY OF ITS AFFILIATES BE LIABLE TO ELIGIBLE PARTICIPANT OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DATA, BUSINESS OR PROFITS, OR THE COST OF OBTAINING SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF OR IN CONNECTION WITH ELIGIBLE PARTICIPANT'S USE OF OR ACCESS TO THE AUCTION OR ANY RELATED SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT OL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 9) **Limitation of Total Liability.** OL'S TOTAL LIABILITY TO ELIGIBLE PARTICIPANT IN CONNECTION WITH A TRANSACTION OR ANY OTHER SERVICES, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THREE TIMES THE FEES PAID BY ELIGIBLE PARTICIPANT TO OL IN CONNECTION WITH THE TRANSACTION OR OTHER SERVICES, PROVIDED HOWEVER THAT ELIGIBLE PARTICIPANT MUST NOTIFY OL WITHIN THREE BUSINESS DAYS AFTER THE DATE OF THE TRANSACTION UNDER WHICH LIABILITY WAS INCURRED. IF ELIGIBLE PARTICIPANT DOES NOT NOTIFY OL IN WRITING WITHIN SUCH THREE BUSINESS DAY PERIOD, ANY AND ALL LIABILITY IS WAIVED.
- 10) **Release.** If an Eligible Participant has a dispute with one or more Eligible Participants or any third party service provider with regard to the Auction or services rendered by such third party service provider, the complaining Eligible Participant releases OL (and its officers, directors, agents, employees and affiliates) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. If Eligible Participant is a California resident, Eligible Participant waives California Civil Code § 1542, which says "A general release does not extend to claims with the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."
- 11) **Indemnification.** Eligible Participant hereby indemnifies and holds harmless OL (and its officers, directors, agents, employees and affiliates) from and against any and all claims and demands, including reasonable attorneys fees, made by any third party due to or arising out of: (1) Eligible Participant's breach of these Terms of Use, (2) the failure of any representation or warranty of Eligible Participant contained in these Terms of Use to be accurate, (3) Eligible Participant's gross negligence or willful misconduct, (4) the breach of, or default under, any agreement or transaction in to which Eligible Participant enters into with another Eligible Participant or a third party service provider, or (5) Eligible Participant's violation of any law or the rights of a third party, which may arise out of or relate to Eligible Participant's access to or use of the Auction or any related services.
- 12) **Links to Other Sites.** For Eligible Participant's convenience, the Auction may contain links to other websites, including websites promoting automotive products and services that are not operated by OL. OL does not control these websites and is not responsible for the content, products or services available through these sites, nor the practices, privacy and data security promises of the owners and operators of these websites. The availability of these links should not be construed as an endorsement of such content, products or services or regarding the owners and operators of these websites. Eligible Participant releases OL and its affiliates from any damages that Eligible Participant may incur, and agrees not to assert any claims against OL and its affiliates, arising from Eligible Participant's use of these third-party websites or from Eligible Participant's purchase or use of any third-party provided product or service.
- 13) **Mandatory Arbitration; Miscellaneous Provisions.** These Terms of Use will be governed by California law, without any reference to conflicts of law. Any dispute (but not an action for debt collection) that arises in connection with the Auction or the services rendered hereunder will be settled by final and binding arbitration administered by the American Arbitration Association in San Francisco or San Mateo, California under the then-applicable AAA Commercial Arbitration Rules. Any judgment upon the award may be confirmed and entered in any court

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having competent jurisdiction. The arbitrator will be required to, in all determinations, apply California law without regard to its conflicts of law provisions. The arbitrator shall award the prevailing party the costs of arbitration, including the arbitrator's fees, travel expenses and reasonable attorneys' fees and expenses. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision, or for any dispute arising out of actual or alleged infringement or misappropriation by one party of the other party's intellectual property rights or for any action for debt collection. Eligible Participant may not assign its rights and/or obligations under these Terms of Use, in whole or in part, by operation of law or otherwise without OL's prior and express written consent to such assignment. Subject to the foregoing, these Terms of Use will bind and inure to the benefit of each party's permitted successors and permitted assigns. These Terms of Use are governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law rules. Any waiver of breach or default by OL pursuant to these Terms of Use must be in writing, and will not be a waiver of any other subsequent default. Failure or delay by OL to enforce any term or condition of these Terms of Use will not constitute a waiver of such term or condition. If any provision herein is held to be invalid or unenforceable for any reason, such provision will be enforced to the maximum extent permitted by law and the remaining provisions of these Terms of Use will continue in full force without being impaired or invalidated in any way. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. The parties to these Terms of Use are independent contractors, and these Terms of Use will not establish any relationship of partnership, joint venture, employment, franchise or agency between Eligible Participant and OL. The exercise by either party of any remedy under these Terms of Use will be without prejudice to its other remedies under these Terms of Use or otherwise.

- 14) **Confidential Information.** "Confidential Information" means any information not generally known by the public and that relates to OL's business or services and that is disclosed to Eligible Participant by OL, whether in writing, or in oral, graphic, electronic or any other form, including without limitation any (a) know-how, idea, invention, process, technique, algorithm, software, program (whether in source code or object code form), hardware, device, design, schematic, drawing, formula, data, plan, strategy or forecast and (b) technical, engineering, marketing, servicing, product, financial, personnel and other information and materials of OL and its employees, consultants, investors, parents, subsidiaries, licensors, suppliers, vendors, customers and other persons and entities. Eligible Participant agrees that (i) the Confidential Information is non-public and confidential and will remain at all times the property of OL, (ii) Eligible Participant will use the Confidential Information for the sole purpose of performing this Agreement and for no other purpose, and (iii) Eligible Participant will take the same degree of care that it uses to protect its own confidential information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information. Eligible Participant agrees that, the provisions of this Section 14 will survive the termination of this Agreement. Confidential Information will not include any information that (1) is already known to the public or Eligible Participant (as evidenced by Eligible's then existing files) before disclosure by OL, (2) is rightfully received by Eligible Participant from a third party without similar restriction and without breach of this Agreement, (3) is independently developed by Eligible Participant without breach of this Agreement, (4) is disclosed pursuant to law or regulation, provided that the Eligible Participant uses reasonable efforts to give OL reasonable advance notice of such required disclosure in order to enable OL to prevent or limit such disclosure.
- 15) **Entire Agreement.** If a Seller or Buyer is subject to a separate, written and executed agreement (not email exchange) with OL with regard to listing, selling and/or purchasing Vehicles on the OL open Auction (a "Separate Agreement"), then, to the extent that any of the provisions in these Terms of Use directly conflict with the provisions of such Separate Agreement, then the provisions of the Separate Agreement and not the directly conflicting provisions of these Terms of Use will govern during the term of the Separate Agreement. Except with regard to any directly conflicting terms contained in a Separate Agreement, these Terms of Use constitute the entire agreement between the parties with respect to the subject matter of these Terms of Use and supersede any previous and contemporaneous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof. The parties will interpret the Terms of Use and Separate Agreement in a manner that gives as much effect as possible to both provisions.
- 16) **Fee Schedule.** Below is a listing of fees that OL may charge to Buyers and/or Sellers. Please note that these fees may be superseded by fee provisions in a separate agreement and/or special marketing promotions.
- a) Buyer's fees
- i) Vehicle buy fee. Vehicle buy fees are disclosed on the relevant Vehicle Detail Page and Bid Confirmation Page, and are determined by the Seller, the final vehicle price, and in consideration of any Separate Agreement the Buyer may have with OL.

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- ii) Vehicle transportation fee. Vehicle transportation fees are disclosed on the relevant Vehicle Detail Page, Bid Confirmation Page, Transport Quick Quote, and/or Transport Create Order Page. These fees are determined by, among other things, the vehicle distance and degree of difficulty.
  - iii) Payment method fee: OL may charge Buyers and Sellers fees for different payment methods selected for the Transaction as disclosed on the appropriate Bid Confirmation Page.
  - iv) Late payment fee: \$10/day plus 1.5%/month of the Transaction Price
  - v) Returned check for insufficient funds fee: \$250
  - vi) Post sale services: OL may charge Buyer fees for different post sales services selected for the Transaction as disclosed on the appropriate Bid Confirmation or Vehicle Detail Page.
- b) Seller's Fees:
- i) Vehicle listing fee: Fees are disclosed on the relevant Vehicle Listing Page and Listing Confirmation Page, and are determined by the current fee structure and in consideration of any Separate Agreement the Seller may have with OL.
  - ii) Sales success fee: Fees are disclosed on the relevant Vehicle Listing Page and Listing Confirmation Page, and are determined by the current fee structure and in consideration of any Separate Agreement the Seller may have with OL.
  - iii) Late title fee: \$125
  - iv) Inspection arrangement fee: Dependent on volume, Vehicle grounding location, and type of inspection.
  - v) Successful Vehicle Purchase Dispute Resolution fee: OL may charge Seller any of the following, in accordance with the Purchase Dispute Guidelines, including Vehicle listing fee, Buyer's Buy Fee, Transportation dry run fee(s) (not to exceed the standard cost of transporting the Vehicle to the Buyer, as determined in OL's reasonable discretion), Floorplan fee(s), and OL dispute processing fee.

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