

## **AGREEMENT AND UNDERTAKING**

**The Competition and Consumer Protection Commission**

**-and-**

**GC Autos Limited trading as Kylemore Cars**

## **AGREEMENT AND UNDERTAKING**

This Agreement and Undertaking (“the Undertaking”) is made by and between the Competition and Consumer Protection Commission (“the CCPC”) and GC Autos Limited trading as Kylemore Cars (“Kylemore Cars”) on the date set forth below. The CCPC and Kylemore Cars are referred to collectively herein as the “Parties.” The Undertaking contained herein is accepted by the CCPC pursuant to Section 73 of the Consumer Protection Act 2007 (the “2007 Act”).

### **WHEREAS:**

- A. The CCPC is a statutory body and its functions pursuant to Section 10 of the Competition and Consumer Protection Act 2014 (“the 2014 Act”) include, *inter alia*:
  - (i) to promote and protect the interests and welfare of consumers;
  - (ii) to carry out an investigation into any suspected breach of the 2007 Act;
  - (iii) to enforce the 2007 Act;
  - (iv) to encourage compliance with the 2007 Act.
- B. Kylemore Cars is a company incorporated within the State, having its registered office at Unit 7 Royal Liver Business Park, Naas Road, Dublin 12. Kylemore Cars makes available, in the course of its business, used cars for sale to consumers. Kylemore Cars is a trader for the purposes of the 2007 Act.
- C. On 20 June 2017 Kylemore Cars sold a black Ford Kuga car, vehicle registration number 10KE1807 (“the Vehicle”) to a consumer at its trading premises at Unit 7, Royal Liver Business Park, Naas Road, Dublin 12.

- D. On or about 05 December 2017, the CCPC commenced an investigation into an alleged misleading commercial practice and an alleged unfair commercial practice arising with respect to the Vehicle. The CCPC investigated whether Kylemore Cars had:
- i) omitted or concealed material information that the average consumer would need, in the context, to make an informed transaction decision and such practice would be likely to cause a consumer to make a transactional decision that the average consumer would not otherwise make, in particular whether Kylemore Cars had omitted to provide to a consumer all material information relating to the condition of the Vehicle; and
  - ii) engaged in an unfair commercial practice by acting contrary to the standard of skill and care that a trader may reasonably be expected to exercise in respect of consumers and would be likely to cause appreciable impairment of the average consumer's ability to make an informed choice in relation to the product concerned and cause a consumer to make a transactional decision that the average consumer would not otherwise make, in particular that Kylemore Cars had not adequately assessed the repairs made to the Vehicle by a third party at the request of Kylemore Cars.
- E. As a result of its investigation, the CCPC has reason to believe that Kylemore Cars has committed or engaged in an unfair commercial practice as described by section 41(2) and contrary to section 41(1) of the 2007 Act. The CCPC further has reason to believe that Kylemore Cars has engaged in a misleading commercial practice as described by section 46(1) and contrary to section 42(1) of the 2007 Act.
- F. As a result of the CCPC's investigation, Kylemore Cars has agreed to enter into this Undertaking and to give the undertakings set out in paragraph 1 below.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. Kylemore Cars undertakes: -
- (a) to comply with the prohibition on unfair commercial practices provided by section 41 of the 2007 Act;
  - (b) to comply with the prohibition on misleading commercial practices provided by section 42 of the 2007 Act;
  - (c) to exercise professional diligence with regard to the standard of skill and care which it may reasonably be expected to exercise in respect of consumers, including in circumstances where repair works are outsourced by Kylemore Cars to a third party;
  - (d) to provide consumers with all material information, including information relating to the condition of motor vehicles, that the average customer would need, in the context, to make an informed transactional decision.

2. In consideration of the Undertaking furnished by Kylemore Cars as set out herein, the CCPC agrees that it will not initiate proceedings against Kylemore Cars, pursuant to Section 71 of the 2007 Act, in relation to the sale and after-sales service of the Vehicle sold on 20 June 2017 for so long as GC Autos remains in compliance with this Undertaking. Nothing in this Agreement shall be construed so as to impair the CCPC's right to institute proceedings for any matter not specifically described herein.
3. This Agreement and Undertaking shall be, and is intended by the Parties to be, a binding agreement. Pursuant to section 73(7) of the 2007 Act, should Kylemore Cars fail to comply with the terms and conditions of the Undertaking, the CCPC may apply to the Circuit Court or the High Court for a prohibition order pursuant to section 71 of the 2007 Act.
4. This Undertaking shall be binding on the successors and assignees of Kylemore Cars and on its employees, servants and agents.
5. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.
6. The Agreement will take effect on the 13<sup>th</sup> November 2018.

Dated this 13<sup>th</sup> day of November 2018.

AGREED TO AND ACCEPTED BY:

Signed:

[Graham Clarke]

Director/manager/secretary or other officer\* for and on behalf Kylemore Cars

Signed:

Eksteen Maritz

Director for and on behalf of the Competition and Consumer Protection Commission

\* (Delete as appropriate)