

Indirect Lending



Non-Recourse Dealer Agreement (Marine)

The undersigned Dealer proposes to submit to Leominster Credit Union ("LCU") for purchase contracts and /or security agreements evidencing installment sales of goods and/or services to Buyers, including their successors in interest, in connection with the retail credit sales of marine vessel, and security interests in the goods and proceeds thereof (hereinafter referred as "Contracts"). The terms and conditions and representations and warranties (collectively the "provisions") in this Dealer Agreement, in any separate contract assignment form and in any other related written agreement (i.e. rate sheets,) between the Dealer and LCU apply to all Contracts submitted to LCU. For the purpose of this Agreement the term "Buyer" means any person or other legal entity that purchases a marine vessel from the Dealer, including any co-buyer, cosigner or guarantor.

Sale and Purchase of Contracts

- 1) LCU may from time to time purchase Contracts from the Dealer written on forms satisfactory to LCU. All contracts will be purchased at purchase prices determined as provided in this Agreement. Any amounts owed by LCU to the Dealer may be applied at LCU's discretion to any indebtedness of the Dealer to LCU arising under this Agreement or otherwise, and shall secure the performance of Dealer's obligation to LCU arising under this agreement or otherwise.
- 2) LCU may purchase any such Contract from Dealer, provided the purchaser (a) is or will become a member of the Credit Union as required by applicable law (to be or become a member of LCU, the purchaser must live or work in one of the following counties within the Commonwealth of Massachusetts: Franklin, Hampden, Hampshire, Middlesex, Norfolk, and Worcester) and (b) meets the LCU standards for creditworthiness. Upon receipt of request from the Dealer to purchase a Contract, together with the applicable supporting documents required by LCU. LCU shall determine whether the purchaser meets the requirements of the Credit Union and shall immediately notify Dealer of its decision whether or not to purchase such Contract.
- 3) To the extent permitted by applicable law, the Dealer shall communicate to LCU or its designees all such credit information concerning a Buyer as Dealer may have. LCU will make a decision as to whether LCU will purchase each Contract offered to it by the Dealer if documentation (including credit information) is satisfactory to LCU and has been received. If LCU decides that it will purchase such Contract after receipt of such documentation, Dealer shall: (1) Execute an assignment of the Contract to LCU. (2) deliver the original executed contract (and promissory note) to LCU; (3) file and record within 20 days of the date of the sale of the marine vessel all such documents, and take all such action as may be necessary under the Uniform Commercial Code and other applicable law to convey to LCU (and to record such conveyance of) the Contract, to perfect a valid and enforceable first lien of the applicable marine vessel to which the Contract relates in favor of LCU, and to comply with all related provisions of the applicable marine vessel laws.
- 4) LCU shall only purchase a Contract on forms acceptable to LCU. The Contract shall comply with the criteria announced periodically by LCU in respect to the amounts which LCU will finance, the aggregate of which amounts will not exceed the "amount financed" as set forth in the Contract. If LCU decides to purchase a Contract, it will do so at a price equal to the "amount financed". Such price will be paid to the Dealer upon LCU's receipt of satisfactory documentation.

Dealer Participation

LCU will credit to an accounting record in respect of the dealer, the amount of the agreed upon dealer financing income participation for a contract pursuant to the participation plan as agreed to by the Dealer and an authorized signer of LCU. All amounts credited will be held no longer than 30 days from the date of the reception of the contract less any accrued charge backs. The Participation plan is paid accordance to the Participation plan which is designated on the LCU Rate sheet. Dealership will receive the entire agreed participation amount and is forgiven from any obligation to reimburse such participation amount upon payoff or termination (including repossession) of the Contract occurring more than 180 days after the date of the Contract. Payoff or termination (including repossession) of the Contract prior to expiration of such 180 day period will entitle LCU to reimbursement of the Contracts Participation plan amount. Flat reserves are not subject reimbursement.

Credit Union shall from time to time specify the annualized interest rate at which LCU will purchase Contracts (such interest rate being herein called the "Buy Rate"). The Buy Rate shall be specified in the Rate Schedule, which shall be issued by the Credit Union from time to time. The Rate Schedule may show varying Buy Rates based on the creditworthiness of the purchaser. Dealer may sell Contracts to the Credit Union which have an annualized interest rate (herein called the "Contract Rate") that is equal to, greater than or less than the then applicable Buy Rate. In the event that the Contract Rate is the different than the Buy Rate, the difference between (a) the total of payments under the Contract at the Contract Rate and (b) what the total of payments would have been under the Contract assuming the Buy Rate had been used as the annualized interest rate shall rate shall be called the "differential". LCU may limit the amount of the differential and if it elects to do so, it will provide notice to Dealer of any such limitation, including any limitation, which shall be applicable to a purchaser who is an existing member of the Credit Union.

The Dealer shall be responsible for Dealer's proportionate share of any unearned finance charges, insurance premiums and on a pro rata basis charges for extended warranty, mechanical breakdown or comparable program whether or not this Agreement has been terminated. If at any time the dealer has not in a timely manner

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paid its share of the items listed, LCU may without prior notice or demand, up to amount equal to the deficiency, reduce any payment to the Dealer required or allowed by this Agreement. In addition, the Dealer agrees to pay LCU on demand any such deficiency.

Negative Differential. If the Buy Rate is greater than the Contract Rate, the difference shall be paid, in full, to LCU as an adjustment to the proceeds deposited towards the dealer proceeds.

Flat Fee. If there is no Differential, LCU shall pay to the Dealer a flat fee. Unless otherwise agreed in writing by the parties hereto, the flat fee shall vary based upon the Amount Financed of the particular Contract and shall be set forth in the then current rate schedule. The flat fee shall be fully earned by the dealer when the Contract is purchased by LCU and shall be paid as an adjustment to the amount forwarded to the dealer proceeds.

Payments from Buyers

After purchase of a Contract by LCU, the Dealer will forward to LCU any payments on a Contract received by it from the Buyer. In the event such payment is made by check or any other instrument payable to the Dealer, the Dealer will endorse such check or other instrument to LCU. Dealer will not make any payment in respect of a Contract on behalf of the Buyer.

Insurance

Physical damage insurance acceptable to LCU covering collateral referred to in any Contract against fire, theft and collision is required and must be effective upon delivery of the collateral to the buyer. In the event of any misrepresentation by dealer regarding insurance coverage, dealer shall automatically be required to repurchase any affected Contract for the amount of any unpaid principal balance plus accrued interest and any other due thereunder.

Representations and Warranties

For each Contract sold by the Dealer to LCU, Dealer warrants and represents that, as of the time of such sale and as the date the Contract is purchased by LCU:

- 1) Dealer has satisfied all requirements of the Federal Truth in Lending Act/ Regulation Z, the Federal Equal Credit Opportunity Act/ Regulation B, and other federal, state, local and other laws, regulations or rules applicable to the extension of credit or consumer protection or otherwise applicable to the Contract
- 2) Dealer has the right to make such sale
- 3) Dealer or its authorized representative has executed the Contract and all related documentation deemed necessary for the purchase of the Contract by LCU
- 4) Dealer has received the down payment specified in the Contract and has not made a loan or cash rebate to the Buyer, or assisted the Buyer in obtaining a loan from any third party, to be used as part or all of such down payment or any other payment on the Contract, except as may be specifically indicated on the face of the Contract.
- 5) The Marine vessel sold under the Contract has been actually delivered to the Buyer and is free from all liens and encumbrances except those in favor of LCU.
- 6) The Contract is valid and enforceable according to its terms.
- 7) All registered owners of the marine vessel have signed the Contract either as Buyers or as parties agreeing to the security interest in favor of Dealer or its assignee.
- 8) Dealer does not know of any fact, which indicates the uncollectibility of the Contract, or that any statement made by the Buyer on an application is untrue.
- 9) Dealer has confirmed the identity of the Buyer(s) through reasonable means as the person(s) named in the Contract, and that all information provided in the Buyer(s) application is to the best of the Dealer's knowledge is accurate.
- 10) The Contract arose from a bona fide sale to the Buyer on the terms set forth in the Contract of the property, good and services described in the Contract and in related document.
- 11) The property, goods and services sold to the Buyer are fully and correctly described in the Contract.
- 12) Any property, goods, and services described in the Contract were actually delivered to and accepted by the Buyer and the Buyer is in possession thereof.



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- 13) The Buyer received a legible, completely filled in copy of the Contract and any purchase order, customer credit statement or other document, which the Buyer was asked to sign in connection with the Contract.
- 14) The Dealer is licensed as required by law.
- 15) The Buyer is not acting on behalf of or for the benefit of another when purchasing the marine vessel.
- 16) The signature of the Buyer named in each Contract is genuine.
- 17) That the Dealer has accurately described to LCU the marine vessel, boat options, and hours accurately.
- 18) The Dealer is not selling the Buyer a marine vessel that has been rebuilt or salvaged with a title thereto "marked" or "branded".

Dealer Liability

If any Dealer representation or warranty made in this Agreement or in connection with a Contract is breached or is untrue, or if a Dealer has failed to perform any obligation it may have under this Agreement or the Contract, or if the Buyer successfully asserts a claim for rescission with respect to a Contract, Dealer will promptly pay LCU the following amounts at the election of LCU.

- 1) The unpaid balance, including earned and unpaid finance charges, as determined by LCU, of the Contract affected by such breach or misrepresentation or claim of rescission.
- 2) Dealer's portion of any unearned finance charges previously paid to Dealer as finance income participation.
- 3) All damages, losses and expenses incurred by LCU as a result of such breach or misrepresentation or claim for rescission.
- 4) All reasonable out of pocket expenses paid or incurred by LCU in connection with the collection of any due under the Contract, including attorney's fees and court costs incurred.

If the Dealer breaches this Agreement in any other respect, the Dealer will reimburse LCU for all damages, losses and expenses incurred by LCU as a result of such a breach. In addition Dealer will indemnify LCU for all damages, losses or expenses, including reasonable attorney's fees and legal costs, suffered or incurred by LCU in any judicial or administrative proceeding because of any claim or defense asserted against LCU as a result of any act or omission on the part of the Dealer, including at the election of LCU the unpaid balance of the Contract including earned and unpaid finance charges.

Except as specifically provided for in this Agreement or as otherwise agreed, the Dealer will have no other responsibility for any default by a Buyer in respect of any Contract purchased by LCU hereunder or for the disposition of any repossessed marine vessel.

Dealer agrees to furnish LCU with audited financial statements within 120 days of the end of each fiscal year of the dealer. If requested by LCU, the dealer shall furnish to LCU personal financial statements of the owners or owners of the dealership or any capital stock issued by the dealer. Upon request by LCU, Dealer shall furnish monthly or quarterly statements of income and balance sheets to LCU. Such monthly or quarterly statements will be furnished within 15 days of the close of the applicable month or quarter.

In the event that a purchaser of a Marine Vessel exercises his or her rights under the Preservation of Consumers' Claims and Defenses regulation issued by the Federal Trade Commission at 16 CFR 433 and thereby refuses to make some or all of the payments due pursuant to the Contract, the dealer agrees to repurchase said Contract from LCU within 5 business days of receipt of a demand for such unpaid principal balance under the Contract, together with earned interest, insurance premiums, unpaid late charges and the like.

Waivers

Dealer waives all demands and notices of default, non-payment, or non-performance, and any release or impairment of collateral securing the Buyer's obligation under any Contract assigned hereunder. LCU may, without notice to the Dealer, discharge, release, extend, vary or modify, by operation of law or otherwise, any obligation of the Buyer or any other obligor or any rights against the Buyer or any other obligor without affecting or altering the obligations or duties of the Dealer under the Agreement. No waiver by LCU of any default, breach or misrepresentation under the Agreement shall be effective unless in writing, nor shall it operate as a waiver of any other different or subsequent default, breach or misrepresentation.

Amendment

All amendments or modifications of this Agreement or waivers of the same by either party must be in writing and executed by all parties hereto to be effective.



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Savings Clause

It is the intention of the parties that this Agreement be construed and interpreted in such a manner so as to be valid under applicable law. Any provision of this Agreement prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

Attorney's Fees and Costs

In any litigation or other proceeding related to or arising from this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs incurred.

Fair Credit Reporting Act

Dealer is obligated to inform each applicant that his/her application will be sent to LCU for review and of LCU's address before the credit application is actually submitted to LCU. Dealer also acknowledges that it will advise each applicant whose credit application is to be sent to LCU that the application may be considered withdrawn if the applicant does not inquire with LCU about its status within 30 days of the date of the application.

Non-Recourse

Upon the repurchase of a Contract by Dealer pursuant to this Agreement, LCU shall and will assign all rights to title and interest in the Contracts provided by the Dealer without recourse as to payment of the purchaser's obligation.

Agents and Brokers

Dealer shall not enter any relationship, affiliation, contract, or agreement with a 3rd party for the solicitation of Contracts sold to LCU.

Advertising

Dealer and LCU agree not to utilize the other parties name or symbol in any sales materials, advertising, solicitation, forms, disclosures or any other medium with express prior approval.

This Agreement constitutes the complete understanding between the parties hereto with respect to the subject matter of this Agreement and no alteration, amendment, or modification of any of the terms and provisions hereof will be valid unless made pursuant to an instrument in writing signed by both parties. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and shall be deemed to be under seal.

Signatures

Leominster Credit Union

By: _____

Signature

Its: _____

Name and Title

Date: _____

20 Adams Street _____

Leominster, MA 01453 _____

800-649-4646 _____

www.leominstercu.com _____

Dealership: _____

By: _____

Signature

Its: _____

Name and Title

Date: _____

Address: _____

Phone: _____



Equal
Opportunity
Lender