OUTPUT TAX – sale of cars by dealer to finance company – taxable amount – Article 11(A)(i)(a) of the Sixth Directive

LONDON TRIBUNAL CENTRE

A & D STEVENSON (TRADING) LTD - Appellant
- and -
THE COMMISSIONERS OF CUSTOMS AND EXCISE - Respondents

Tribunal: Peter H Lawson (Chairman)

Sitting in public in London on 7th and 8th November 2002

Paul Key, Counsel, for the Appellant

Jeremy Hyam, Counsel, for the Respondents

DECISION

1. This appeal by A & D Stevenson (Trading) Ltd (hereafter "Stevenson") is against a decision of the Commissioners that it must account for VAT on the total selling price of vehicles supplied by it at the time at which they are supplied to a finance house, Credit Acceptance Corporation ("CAC"). The appeal was dated 15 May 1997 and the Commissioners' decision was issued on 22 April 1997. The hearing of the appeal was postponed by agreement until the decision of the European Court of Justice in the case of *Primback Ltd* was available, which was in May 2001.
2. Stevenson carries on business as a second-hand car dealer from premises at Old Station Road, Loughton, Essex and was registered for VAT with effect from 1 July 1974.
3. On 13 December 1994 the Appellant company resolved to enter into a Dealer Trading Agreement with CAC, through which the Appellant can offer its customers credit facilities. Under the Agreement the Appellant uses an arrangement called the Conditional Sale Agreement ("CSA") to offer its customers those facilities.
4. Under clause 3.1 of the Agreement CAC purchase the vehicle in question from Stevenson. Under clause 3.4 of the Agreement the purchase price payable by CAC to Stevenson is that shown on the invoice from Stevenson to the customer or on the form of CSA. Under clause 5.1 of the Agreement Stevenson is obliged to pay to CAC by way of subsidy of the finance charges payable by the customer under a Finance Agreement a Subsidy Payment of such amount as CAC may specify. The amount of the subsidy payment is the total of any cash payment made by the customer and the CAC Advance which is itself determined by a fixed formula, being the lower of a fixed percentage of the Glass's Guide value of the car and a

fixed percentage of the sum remaining after the deduction of any cash payment made by the customer.

5. CAC pay to Stevenson a sum called the Advance Payment which is the difference between the purchase price of the vehicle and the subsidy payment. The Advance Payment is payable to Stevenson on the date on which the Agreement is entered into.
6. The issue in the appeal is simply what is the value of the supply by Stevenson to CAC of a car? Does it include, or exclude, the "subsidy"? Stevenson claims that the "subsidy" is a discount. So Stevenson says that the value for VAT purposes is the amount actually received, which may be (for example) the customer's payment plus a separate amount from CAC, the Advance Payment. The Commissioners say that the "subsidy" is not a discount, and the true value for VAT purposes is the monetary consideration plus the "subsidy" on the finance charges, merely a balance between two fixed sums.
7. To take a theoretical example. Assuming that £6,000 is the "screen price" and the customer pays a deposit of £1,000, so that £5,000 has to be found, the car is supplied to CAC which then sells it on to the customer. The "CAC Advance" is agreed between Stevenson and CAC as being £4,400. Stevenson receives £5,400 on its supply of the car to CAC, being £1,000 cash paid by the customer and £4,400, the CAC Advance. The "subsidy" of £600 shown in the paperwork represents the difference between the £5,000, the notional selling price, less the customer's cash payment and £4,400, the CAC Advance.
8. Mr Key, for Stevenson, says that the amount liable to VAT is the amount which the supplier actually receives which is £5,400, i.e. £1,000 paid by the customer plus £4,400 paid by CAC to Stevenson.
9. I was provided with an actual example. In this case, a Mr Robert Cooper agreed on 11 November 1997 to purchase a Vauxhall Cavalier 1.6 car, first registered on 3 August 1994, at a price of £5,735.50. He paid a deposit of £600, leaving £5,135.50 due. The CAC motor cover premium was £450, leaving £150 available towards the deposit. The amount to be financed was, therefore, £5,585.50 but Stevenson would receive only £4,965, being the cash deposit plus £4,365 advanced by CAC, and not £5,735.50. The difference of £770.50 ("the subsidy") is attributable to the difference between the CAC advance and the "finance amount due" £5,135.50 which includes interest.
10. Mr David Stevenson, a director of Stevenson who has worked in the retail motor industry for over 40 years, gave evidence and answered various questions put by Mr Key and Mr Hyam about the financial arrangements.
11. Mr Stevenson confirmed that there is a pooling arrangement with CAC which means that when customers default on their obligations, in effect those who meet their obligations are paying for those who do not. Per contra, once arrangements have been set up with CAC, Stevenson would receive an advance payment of 75% of the cost of the car and the owner would continue to make payments which would cover the balance of the cost. The idea of this is to show the success of collecting payments. Commissions are calculated by reference to the percentage of payments made by customers. Those are calculated by reference to the finance agreement which covers the vehicle. The monthly payment is fixed by the original agreement and based on the price of the vehicle, so that there is always a correlation between the price of the car and the amount of the monthly payments made by the customer.
12. Mr Stevenson confirmed that it was CAC, the finance company, which supplies the car to the customer but the Appellant company makes the physical supply.

13. Mr Stevenson agreed that CAC do not sell cars and they do not lend money direct to the car purchaser. The whole industry depends on the finance company having ownership. Mr Stevenson agreed with Mr Hyam that the customer buying the car never knows about the financial arrangements which I have explained. He knows nothing about subsidies or the credit arrangements. If the purchaser defaults CAC would want to sue him for the whole amount. The Appellant company would get the car back and would itself give back the deposit to the purchaser.
14. The following points arose from Mr Hyam's cross-examination of Mr Stevenson.
15. All sales of cars are covered by conditional sale agreements and there is equivalence between the "customer price" and the amount to be paid to Stevenson by CAC. Under the terms of the Dealer Trading Agreement the Customer is defined as the "person who enters into a Finance Agreement with CAC, having been introduced to CAC by the dealer for this purpose."
16. Mr Stevenson accepted that under the Consumer Credit Act a cancellation notice could be served on Stevenson. Mr Hyam suggested that it is Stevenson which sells the vehicle but Mr Stevenson considered that it is the finance company. There is a three-way transaction. The purchaser of a car is the customer of both the finance company and the dealer. The position is the same with all car finance agreements.
17. Mr Hyam asked Mr Stevenson whether there was any real distinction between conditional sale agreements with CAC and other finance houses. Mr Stevenson explained that many people borrow to buy cars, whether from building societies, banks or other lenders, but all finance houses want the security of the ownership of the vehicle.
18. In re-examination by Mr Key, Mr Stevenson confirmed that it is the finance company from which the customer buys the car. That is the contract. All finance companies want the title to the goods financed. The invoice in each case is made out to CAC. Copies of several examples were produced to me.
19. The legal basis of the arrangements are clauses 3, 4 and 5 of the Agreement between Stevenson and CAC International Inc of which a copy is Annex 1 to this Decision.
20. I turn to the law. The basic question is the value of the supply of a car by Stevenson. The supply is made to CAC. This is abundantly clear from Mr Stevenson's evidence and from the documents, including the sample invoices produced and also clause 3.1 of the Agreement with CAC.
21. Article 11 of the Sixth Directive provides as follows:

    "(A) Within the territory of the country:
    (1) The taxable amount shall be:
        a. In respect of supplies of goods and services other than those referred to in (b) (c) and (d) below, everything which constitutes the consideration which has been, or is to be, obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies..."
22. (2) .....

    (3) The taxable amount shall not include:
    (a) Price reductions by way of discount for early payment;
    (b) Price discounts and rebates allowed to the customer and accounted for at the time of the supply....
    (c) ....."

23. What Stevenson receives on a sale, Mr Key submitted, is:

i. the deposit paid by the customer, and
ii. the CAC advance.

That is all.

24. Mr Key referred to a number of authorities as follows:

H J Glawe Spiel [1994] STC (ECJ) – this case involved gaming machines installed and operated in bars and restaurants. The machines were equipped with two separate compartments: the "cash box" and the "reserve". The reserve held a stock of coins from which winnings were paid out. The cash box held coins which the operator of the machine was able to remove from the machine and retain for his own benefit. The machines were designed to ensure that when the reserve was full, any coins inserted by players entered the cash box. If the reserve was not full the coins entered the reserve. The reserve was filled with coins by the operator before a machine was put into service and on each occasion that the machine was opened. There was a mandatory statutory requirement that the machines were set so that they automatically paid out on average at least 60% of the coins inserted after the deduction of turnover tax; the remaining coins were retained in the cash box. The question arose as to whether Glawe was assessable to VAT on the total of the coins inserted or only on the coins which entered the cash box. The local court referred to the ECJ the question of whether, for the purposes of Article 11A(1)(a) of the Sixth Directive the taxable amount was the total of the coins inserted without deduction of the winnings paid out. The court held that as the proportion of the coins which were paid out as winnings was mandatorily fixed in advance, it could neither be regarded as part of the consideration for the provision of the machines nor as the price for any other service provided such as giving players the opportunity of winning or the payment of winnings itself. Accordingly, in the case of gaming machines offering the possibility of winning, the taxable amount under Article 11A(1)(a) did not include the statutorily prescribed proportion of the total of the coins inserted which corresponded to the winnings paid out to the players.

25. The next case was *Argos Distributors Limited* [1997] QB 499 which concerned a retailer which listed goods in a catalogue and sold them from showrooms, and also issued and sold vouchers which could be used by purchasers of goods for full or part payment of the goods, at the value shown on the face of the voucher. The vouchers were sold principally to companies which distributed them to their staff and financial services companies which resold them to the public. Where an order for vouchers exceeded a certain amount, the vouchers were sold at a discount on their face value. The question was whether the part of the consideration for goods purchased represented by a voucher was, for the purposes of Article 11A(1)(a) of the Sixth Directive the face value of the voucher or the sum actually obtained by the taxpayer on the sale of the voucher. The ECJ held that for the purposes of Article 11A(1)(a) of the Sixth Directive the consideration representing the taxable amount was, and could not exceed, the value, in money or money equivalent, actually received by the supplier in respect of the supply in each specific case and the taxable amount could not exceed the consideration actually paid by the final consumer; secondly, that the money equivalent which the voucher represented for the taxpayer, when the voucher was accepted in payment of goods, was the sum of money received by the taxpayer on the sale of the voucher, namely its face value less any discount allowed. When the supplier sold the voucher at a discount and promised subsequently to accept the voucher at its face value in full or part payment of the price of goods

purchased by a customer who was not the buyer of the voucher and who normally did not know the actual price at which the voucher had been sold by the supplier, the consideration represented by the voucher was the sum actually received by the supplier on the sale of the voucher.

26. The case of *Elida Gibbs Limited* [1996] STC 1307 (ECJ) was similar but concerned discount vouchers. The Appellant company operated two coupon schemes to promote retail sales of its products. Under the first, "money off" coupons, which bore a stated face value and indicated to consumers that the coupon could be presented as partial payment for specified products were distributed to the public. The company charged wholesalers and retailers of the goods in question the manufacturer's original prices. On sales of products under the scheme, where the retailer received from the consumer the shelf price less the value of the coupon, and kept the coupon, the retailer was entitled under certain conditions, to redeem the value of coupons from the taxpayer. Under the second scheme, "cash back" coupons printed on the packaging of the products carried the taxpayer's offer, subject to conditions, to refund direct to the consumer, on application, the part of the price of the product representing the face value stated on the coupon. This Tribunal referred to the ECJ for a preliminary ruling on the question whether, in the context of coupon schemes, the manufacturers' taxable amount was the manufacturers' price of products or that amount less the amount stated on coupons redeemed or refunded. The ECJ held that, for the purposes of Article 11(1)(A)(a) of the Sixth Directive the consideration representing the taxable amount was, and could not exceed, the value in money or money equivalent, actually received by the supplier in respect of the supply in each specific case and the taxable amount could not exceed the consideration actually paid by the final consumer.
27. The foregoing cases were recently considered by the Court of Appeal in the *Littlewoods case* [2001] STC 1568 at 1590 in paragraphs 41 to 49, and also in the case of *Freemans plc* [2001] STC 960 at paragraphs 31 and 33.
28. There is an analysis of the principles involved at pages 1576 to 1578 of the *Littlewoods* case. At para 13 it is stated that the consideration for the provision of services is the consideration actually received and not a value assessed according to objective criteria. There are three principles (para 14), namely:
    i. there must be a direct link between the supplier of goods or services and the consideration for which it is said to have been received for that supply;
    ii. the consideration must be capable of being expressed in money or monetary equivalent; and
    iii. the basis of the assessment is the consideration actually received.

    The "subjective" value must be ascertained by reference to the consideration actually received for the goods or services actually supplied. The enquiry excludes any valuation which is independent of the actual transaction; that is to say any valuation based on criteria which are not those adopted by the parties themselves.

29. Mr Key submitted that the position is quite simple. Mr Stevenson supplies cars to CAC. The cars supplied to CAC form, in turn, the subject of a supply by CAC to a customer. The initial "selling price" is agreed for (i) the supply of the car by Stevenson to CAC and (ii) the supply of the car by CAC to the customer. The same notional "selling price" is used for both supplies.

30. The arithmetic involved in calculating the CAC advance is set out in para 7 above.
31. The issue on the appeal is whether the value of Stevenson's supply of the car to CAC is £5,400 (the money actually received by Stevenson) or £6,000 being the money received by Stevenson plus the sum of the "subsidy".
32. Mr Hyam for the Commissioners submitted that their ruling made on 22 April 1997 and the consequent assessment of output tax in the sum of £91,447 was correct and to best judgement.
33. The question is what was the consideration to the dealer for the supply of the vehicle. The Commissioners contend it was the selling price as stated on the invoice to CAC. The CAC Agreement defines the "purchase price" as "the amount paid by CAC to the dealer or by the customer to the dealer by way of purchase price for a vehicle to be financed by a finance agreement". Therefore, what is purchased is not simply a vehicle but a vehicle to be financed by a finance agreement. It is a classic tri-partite agreement.
34. The expression "conditional sale agreement" is defined as "an agreement between CAC as seller and a customer as buyer under which CAC sells to the customer a vehicle which CAC has purchased from the dealer on terms that the price is payable by the Customer to CAC by instalments."
35. The word "customer" is defined as "the person who shall enter into a finance agreement with CAC having been introduced to CAC by the dealer for this purpose."
36. Thus, Mr Hyam said, the purchase is of a vehicle already the subject of a finance agreement. The parts of the triangular deal are inseparable. Also the invoice issued to CAC has the customer's name on it and the details of the vehicle.
37. What is the value of the supply? Mr Hyam said that the *Elida Gibbs* case [1996] STC 1387 and similar cases are not applicable. The facts were different. There was a chain of supply with money coming back up the chain.
38. Mr Hyam relied on the *Primback* case [2001] 1WLR 1693.
    The headnote reads as follows:
    "Customers of the claimant, a furniture retailer, could pay for goods purchased, at the price advertised in the store, either in cash or on credit. A customer who chose the latter option received an invoice from the claimant, showing the price as advertised, and obtained from a finance house a loan for the amount of that sum, which the finance house undertook to pay directly to the claimant, the customer agreeing to repay the loan in instalments, without interest. The finance house in fact, under a verbal agreement with the claimant of which the customer was unaware, paid to the claimant that amount less a sum for commission. On the claimant's assessment to value added tax, the Commissioners claimed that the taxable amount, in the meaning of Article 11(A)(1)(a) of Council Directive 77/388/EEC on turnover taxes, was the full purchase price of the goods, but the claimant contended that, in relation to purchases on credit, the amount was only that actually received by it after deduction of the finance house's commission."

    The European Court held that since the agreement between the claimant and the customer in each case was that the customer would pay the full advertised price, which was known in advance and invoiced as such and did not vary according to the method of payment, it was that that constituted the consideration for the goods, in the meaning of Article 11(A)(1)(a); and that, accordingly, in the circumstances, the taxable amount was the full amount payable by the purchaser.

39. The following extracts from the *Primback* Decision are relevant to this case:

"9. In parallel with the contract of sale concluded with the claimant, a customer who so wishes may enter into a contract with a finance house for a loan, in respect of the sale, for an amount equivalent to the cash sales price of the goods, plus, if applicable, any credit insurance taken out, and less, if applicable, any deposit paid by the customer to the claimant.
10. Pursuant to that contract, the finance house undertakes to lend to the customer a sum equal to the purchase price which the customer owes to the claimant and to pay that sum directly to the claimant in settlement of the amount owed after receiving written confirmation from the customer that the goods have been delivered and installed. The finance house does not acquire title to the goods purchased by that customer.
11. The customer repays the amount of the loan to the finance house by way of monthly instalments for a fixed amount spread over the term of the loan; the customer thus pays no interest.
.....
27. Further, as the court has already held, Article 11(A)(1)(a) of the Sixth Directive must be interpreted as meaning that where, in the context of a transaction of sale, the price of the goods is met by the purchaser by means of a credit card and paid to the supplier by the organisation issuing the card, after deduction of a percentage as commission in payment for the service rendered by the latter to the supplier of the goods, the sum so deducted must be included in the taxable amount on which the supplier, as the taxable person, must pay tax to the revenue authorities: *Chaussures Bally SA v Belgian State* (Case C-18/92) [1993] ECR1-2871, 2896-2897, para 18.
.....
29. In paragraphs 9, 10 and 16 of *Bally*, the court also held that retention by the organisation issuing the credit card of a percentage calculated on the sales price agreed between the supplier and the purchaser represents the consideration for a service rendered to the supplier by the card-issuing organisation, consisting in particular in the guarantee of payment for the goods, this service being the subject of a VAT-exempt transaction which is distinct and independent and in respect of which the purchaser is a third party, and which is not capable of affecting the taxable amount of the sales transaction between the supplier and the purchaser.
.....
41. According to the order for reference, where a customer makes use of the possibility of paying for goods purchased from the claimant by way of interest-free credit, that customer receives from the seller an invoice stating the price of the goods as advertised in the store at the time of sale and concludes with a finance house a loan agreement for an amount equivalent to the cash sale price of the goods. The finance house undertakes to pay that amount directly to the seller, on the purchaser's behalf, in settlement of the price advertised and invoiced by that seller. The customer repays to the finance house only the amount of the loan.
.....
44. With regard to the transaction concluded between the claimant and the final consumer, which alone is relevant in the main proceedings, it should be added that, even if it were possible to distinguish the supply of services, allegedly consisting in the supply of credit, from the supply of goods, the former supply would, in circumstances such as those in issue in the main proceedings, have to be construed as being in any event ancillary to the principal transaction consisting of the sale of goods.

45. Indeed, it follows from the court's case law that, where a transaction consists of several elements, there is a single supply, particularly where one element is to be regarded as constituting the principal service, whilst another is to be regarded as an ancillary service sharing the tax treatment of the principal service; and a service is to be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied: see, in this sense, *Card Protection Plan Ltd v Customs and Excise Commrs* (Case C-349/96) [1999] 2 AC 601, para 30.

.....

48. By calculating VAT on the total price advertised and invoiced by the seller, the Commissioners are not therefore charging a taxable person such as the claimant an amount of tax exceeding that ultimately borne by the final consumer: see *Elida Gibbs Ltd v Customs and Excise Commrs* (Case C0371/94) [1997] QB 499, 561, 562, paras 24 and 31. In contrast, if the tax authorities were able to charge VAT only on a fraction of the price invoiced to the purchaser and payable by him, as the claimant argues, a portion of the advertised price of the goods sold to the final consumer would not be subject to tax, with the result that the principle of fiscal neutrality would be infringed."

40. These extracts from the *Primback* case show, Mr Hyam submitted, that the present case is on all fours. In particular, there is a tripartite agreement between CAC, the Appellant company and the customer. Contrary to Mr Key's submission, there is not a separate supply of the car. Clause 6.6. of the Dealer Trading Agreement states "at such time as there is a credit balance under the Dealer Pool Account, CAC will account to the dealer for an amount equal to the credit balance and debit it to the Dealer Pool Account. That payment by CAC to the dealer will be commission to the dealer for the introduction of persons seeking to enter into Finance Agreements with CAC. CAC will pay to the dealer amounts payable under this clause 6.6 accruing due during any calendar month after the Month End Date for that calendar month."
41. Therefore, Mr Hyam said, what is sold is a vehicle subject to the conditional sale agreement and the payment of commission depends on fulfilment of that agreement. The commission is, therefore, part of the consideration.
42. In reply Mr Key said the focus must be on what consideration has been received from the finance company. Where there is a sale to a finance company, the two parts of the transaction must be separated. He referred to two cases, the first being *North Anderson Cars Limited* [1999] STC 602, a decision of the Inner House of the Court of Session, where it was held that the consideration for the purposes of Article 11A(1)(a) was not a value estimated according to objective criteria, but the subjective value, which was what was actually received for the supply of the goods and services. In that case, it was necessary to determine what the value the Appellant company and the finance company, as the parties to the supply of cars to the finance company, had treated as the consideration.
43. Mr Key also referred to the decision in *Kingfisher plc*[2000] STC 992, which was concerned with sales by a retailer of goods to a customer through a credit card. The Court of Justice had held that where a retailer sold goods in this way, the amount on which output tax should be assessed was the price the customer effectively agreed to pay, namely the shelf price and not the amount actually transmitted to the retailer by the credit card company, i.e. the shelf price less the credit card company's commission. The fact that the purchaser did not pay the price agreed direct to the supplier but through the intermediary of the organisation issuing the card, which retained a percentage calculated on the price,

could not change the taxable amount. The deduction made by the card-issuing organisation represented the consideration for a service rendered by it to the supplier.

44. The Commissioners were saying that in the present case there is a supply by the dealer to the customer. This is not what the Commissioners had pleaded in their Statement of Case and it is incompatible with it. (Paragraph 5 of the Statement of Case stated that under clause 3.1 of the Agreement with CAC, when the conditional sale agreement is used CAC purchase the vehicle from Stevenson. Also under clause 3.4 of that Agreement, the purchase price payable by CAC to Stevenson is that shown on the invoice from Stevenson or on the form of CSA from Stevenson.) It would be incompatible, Mr Key said, with the Statement of Case that the agreement should be tripartite. It is also incompatible with the terms of the agreement. There is a clear distinction in the Agreement between a supply to CAC and a separate supply to a customer. This can be seen from clauses 3 and 4 of the Agreement itself. Clause 3.1 is clear that there is a sale by Stevenson to CAC. Clause 3.2 and 3.3. are entirely consistent with this. Clause 4 deals with a different situation, namely Stevenson selling a vehicle to a customer, the purchase of which is to be financed by a loan agreement on terms equivalent to those contained in clauses 3.4 to 3.8. (See Annex 1)
45. If clause 4 is not relevant, the *Primback* case is not relevant.
46. Who can claim the property in the vehicle? Clearly in the clause 3 case, only CAC can claim title. This is not surprising or unusual. The invoice is, quite properly, addressed to CAC. Mr Stevenson himself drew a distinction between legal entitlement to the car and the right to possession of it.
47. An analogy might be seen with the *Kingfisher* case [2000] STC 992, which dealt with payment by credit card. It was pointed out that the fact that the purchaser did not pay the price agreed direct to the supplier but through the intermediary of the organisation issuing the card, which retained a percentage calculated on the price, could not change the taxable amount. In the present case, there is no finance by credit.
48. In the *North Anderson* case, there is no argument based on *Primback* because it does not apply. The test is what is received by Stevenson for the supply of cars to the finance company. As was held in the *Elida Gibbs* case, a consideration representing the taxable amount was, and could not exceed the value, in money or money equivalent, actually received by the supplier in respect of the supply in each specific case. The taxable amount could not exceed the consideration actually paid by the final consumer. That fits the present case. The facts are simple. The sale is by Stevenson to CAC and the taxable amount is the money actually received by Stevenson from CAC. There is no tripartite transaction; if there were, it might well result in Stevenson paying more for a car than it received. That would be unjust and is not fiscally neutral. (Because of the margin scheme CAC cannot recover input tax).
49. I find myself preferring Mr Key's submissions to those of Mr Hyam. In particular, I agree that there is no tripartite transaction and that the sale in each case is simply by Stevenson to CAC and the taxable amount is the money actually received by Stevenson from CAC.
50. The appeal succeeds and the Commissioners must pay Stevenson's costs. If the costs cannot be agreed the parties may apply to the Tribunal for directions.

51.

PETER H LAWSON

CHAIRMAN

RELEASED:

LON/97/696

Annex 1

TERMS OF SALE OF VEHICLE BY THE DEALER TO CAC PRIOR TO CONDITIONAL SALE AGREEMENT

3.1 **Terms of Contract**

The provisions of this Clause 3 shall be terms of the contract between the Dealer and CAC for purchase of the Vehicle by CAC from the Dealer.

3.2 **Offer**

3.2.1 Without affecting any other valid method of offer, either of the following acts shall constitute an offer by the Dealer to sell the Vehicle to CAC subject to the terms contained in this Clause 3:

3.2.1.1 the delivery to CAC of an invoice addressed from the Dealer to CAC specifying the Vehicle to be sold, or

3.2.1.2 the delivery to CAC of a form of Conditional Sale Agreement (signed by the Customer) specifying the Vehicle to be sold.

3.2 The Dealer will not withdraw that offer except in writing delivered to CAC.

3.2.3 The Dealer authorises CAC to insert the date of supply/date of sale in any Dealer's invoice to CAC if it has not previously been inserted.

3.3 **Acceptance**

3.3.1 The Dealer agrees that CAC will not be obliged to purchase the Vehicle from the Dealer unless CAC shall enter a Conditional Sale Agreement in respect of that Vehicle.

3.3.2 Subject to sub-clause 3.3.1, CAC may accept the offer by the Dealer by:

3.3.2.1 the act of entering into the Conditional Sale Agreement, or

3.3.2.2 by posting to the Dealer a cheque, or by making direct payment by bank giro credit or some other payment, or by giving the Dealer credit on a set-off, for the CAC Advance Payment.

3.4 **Price**

The purchase price payable by CAC will be that shown in the invoice from the Dealer of the form of Conditional Sale Agreement submitted by the Dealer (or if different the lower). That purchase price will be accounted for in the manner described in clause 5 below. The Dealer agrees that the cash price shown will represent the price at which the Dealer is prepared to deal for cash. The part exchange allowance (if any) will represent the reasonable value of the goods traded in by the Customer.

3.5 **Delivery**

The Dealer will deliver the vehicle to the Customer on the date of the Conditional Sale Agreement. The Dealer will require that the Customer shall inspect and test the Vehicle before accepting it and obtain from the Customer a delivery note signed by the Customer confirming that the Customer has inspected and tested the Vehicle, taken delivery of it and accepted it.

3.6 **Property**

Property in the Vehicle will pass to CAC on the earlier of the date of the Conditional Sale Agreement and the time of payment of the purchase price by CAC to the Dealer. Risk in the Vehicle will pass direct from the Dealer to the Customer.

3.7 **Freedom from encumbrances**

The Dealer will have the right to sell the Vehicle and at the time of sale the Vehicle will be the sole property of the Dealer free of all charges liens and encumbrances, and CAC and the Customer will have quiet enjoyment of the Vehicle.

3.8 **Condition etc.**

The Vehicle will comply with any express terms agreed with the Customer and any representations made to the Customer; and will comply with the provisions of sections 12-15 of the Sale of Goods Act 1979. The Vehicle will be in good order and condition, of merchantable quality, durable and fit for its purposes, and conform in all respects to any representations made by the Dealer or any employee or agent of the Dealer (whether to CAC or the Customer) and to any conditions or warranties whether express or implied.

4. **TERMS OF SALE OF VEHICLE BY THE DEALER TO THE CUSTOMER FINANCED BY A LOAN FROM CAC**

4.1 Subject to sub-clause 4.2 the Dealer undertakes to CAC that the Dealer will sell a Vehicle to a Customer, the purchase of which

is to be financed by a Loan Agreement, on terms equivalent to those contained in clauses 3.4. to 3.8 inclusive of this Agreement.

4.2 The Dealer warrants that if a Customer executes a Bill of Sale in favour of CAC then title to and property in the Vehicle which is the subject of that Bill of Sale will be vested in the Customer on or before the time of execution of that Bill of Sale by the Customer.

5. **DEALER SUBSIDY OF FINANCE CHARGES, AND PAYMENT OF THE CAC ADVANCE PAYMENT**

5.1 In respect of every Finance Agreement, the Dealer will pay to CAC by way of subsidy of the finance charges payable by the Customer under a Finance Agreement a Subsidy Payment of such amount as CAC may specify when indicating the terms on which CAC is prepared to enter into the proposed Finance Agreement.

5.2 On the date of the Finance Agreement CAC shall account to the Dealer for the CAC Advance Payment (being an amount equal to the Amount Financed less the Subsidy Payment payable by the Dealer), subject to sub-clauses 12.5 and 12.6 below.

5.3 Where the Finance Agreement is a Conditional Sale Agreement the payment of the CAC Advance Payment will be a complete discharge of the liability of CAC to pay the Purchase Price for the Vehicle taking account of the amounts already received by the Dealer in the form of the Customer Deposit (which the Dealer agrees that the Dealer will have collected and applied in part payment of that purchase price) and the balance of the Amount Financed (which balance was set off against the Subsidy Payment).

5.4 Where the Finance Agreement is a Loan Agreement the payment of the CAC Advance Payment will represent (1) the amount of the loan to be advanced by CAC which is paid to the Dealer at the request and direction of the Customer by way of part payment of the Purchase Price payable by the Customer for the Vehicle financed, less (2) the Subsidy Payment.

Note: Clauses 12.5 and 12.6 deal with the termination of the Agreement by either party after the occurrence of an Event of Default.