

What are the circumstances in which the TMA provides for early termination?

The circumstances in which the TMA provides for early termination are either Events of Default or Termination events (the latter being non default changes of circumstance such as tax law changes).

So the terms of the TMA itself (and the terms of the PRS confirmation templates) do not contemplate a right to early terminate other than where default or an external event arises. An option to early terminate is not contemplated. So the short answer to your first question is no, because the documents contemplate early termination only in circumstances of default or specified external event.

Parties can of course agree to include an option to early terminate in their confirmation ie they could contractually agree that one or both of the parties is to have an option to early terminate even where there is not a default or specified external event.

Because the TMA and the template confirmations do not contemplate this, they also do not contemplate how an early termination amount should be calculated in such circumstances. So if the parties were to agree to include such an early termination option, they would at the same time need to agree how the early termination payment is to be calculated and they would need to write that into their confirmation documents (and obtain the appropriate Shari 'ah approval for it).

They could agree to use the same calculation methodology as is provided in the TMA for where there is an event of a default or relevant external event (subject to Shari 'ah approval) i.e. a methodology that accelerates deferred purchase price payments that have accrued and a replacement cost for the balance of the transaction.