

USER AGREEMENT

TERMS AND CONDITIONS

1. Definitions

In these terms and conditions, unless the context otherwise requires or implies:

Auctioneer means the person or Company appointed to conduct the Auction Sale

Auction Sale means the auction of all of the Lots listed in a Catalogue.

Australian Consumer Law means the Australian Consumer Law set out in Schedule Two of the Competition and Consumer Act 2010 (Cth).

Bidder means an individual that registers online.

Buyer's Premium means a percentage as nominated by the Auctioneer and identified in the Catalogue. The Buyer's Premium is payable by the Purchaser in addition to the Purchase Price and must be paid prior to collection of any Lot. The Buyer's Premium is inclusive of GST.

Catalogue means a list containing some or all of the Lots available and provided by the Auctioneer from time to time.

General Items means any goods which are not motor vehicles.

GST means the goods and service tax as imposed by the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Loss means any claim, delay, loss, liability, damage, expense, penalty, outgoing or cost whatsoever and however arising, whether present, unascertained, immediate, future or contingent and includes indirect and consequential losses.

Lot means any goods available for purchase at the Auction Sale.

Motor Vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

Purchaser means the successful bidder for a Lot, as determined by the Auctioneer.

Purchase Price means the highest bid accepted by the Auctioneer for a Lot.

Seller means the owner of a Lot or the person authorising the Auctioneer to sell that Lot on the owner's behalf.

Taxable Supply has the meaning given to that term by the GST Law.

Tax Invoice means a tax invoice as defined in the GST Act.

2. Auction Contract Particulars

- a. The Auctioneer is acting as an agent for the Seller.
- b. The sale contract for the purchase of a Lot is made directly between the Seller and the Purchaser.
- c. The Catalogue, the Purchaser's identification form and these terms and conditions constitute the entire relationship between the Auctioneer, the Seller and the Purchaser.
- d. If any dispute arises in relation to a Lot, the dispute is between the Purchaser and the Seller. The Purchaser and the Seller agree to release the Auctioneer from any claim, action, or legal proceeding in respect of that Lot and to indemnify the Auctioneer, on a full indemnity basis, from all liability, including all costs incurred by it in relation to any such claim.

3. Registration and Bidding

- a. All Bidders must be 18 years of age or older.
- b. All Bidders must register to bid at the Auction Sale by providing the Auctioneer with their full name and residential address and evidence of identification. Registration must take place prior to the completion of the Auction Sale.
- c. Upon registration all Bidders agree to be bound by these Terms and Conditions or any other terms set out by the Auctioneer.

- d. If a Bidder does not register, the Auctioneer may choose not to accept their bid.
- e. A Bidder will be deemed to be bidding on his or her own behalf.
- f. A Bidder who makes a bid is making an offer to purchase the Lot at the price of his or her bid.
- g. A bid cannot be withdrawn.
- h. Subject to any reserve price, and at the sole discretion of the Auctioneer, the highest Bidder who is not in breach of these Terms and Conditions or any other terms set out by the Auctioneer, will be the Purchaser.
- i. The recording of the Purchaser's details by the Auctioneer or its clerk is binding on the Purchaser, and is prima facie evidence that the Purchaser has agreed to purchase the Lot.
- j. If you are the Purchaser you must pay the Purchase Price and Buyer's Premium in accordance with the Tax Invoice provided to you and upon terms as stated in paragraph 7 hereto.
- k. All Lots are bid on and purchased on an 'as is, where is' basis.

4. Procedures

- a. All bidding will start at a specified time and starting price as determined by the Auctioneer. All specified times will be Australian Eastern Standard Time unless otherwise notified in the Catalogue.
- b. All bids are to be increased by multiples as determined by the Auctioneer and shall be in Australian dollars.
- c. The Auctioneer may close any Auction Sale before the scheduled time.
- d. It is the responsibility of the Bidder to monitor all bids in the Auction Sale in which they are participating.
- e. If a reserve price is not achieved at the end of the Auction Sale for a Lot, the Auctioneer may contact any of the bidders for that Lot.
- f. The Auction Sale for any individual Lot closes at the specified time on the proviso that no new bids have been received in the ten minutes immediately preceding the specified time. Should any successful bids be received within the ten minutes prior to the closing specified time then the auction will continue until no successful bids are made within the period of time that is ten minutes from the last successful bid ("the Extended Time"). The Auctioneer accepts no responsibility for any matters arising out any variations that may occur in, to or during the extended time period.
- g. The Purchaser will be notified of any successful bid together with the Lot number and shall be provided with a Tax Invoice.

5. Online Bidding

Bidders acknowledge and agree:

- a. that the Auctioneer is not responsible for bids that were not processed due to technical problems and/or delays;
- b. that they will not make any claims against the Auctioneer from any loss or damage arising as a result of the use of the online bidding process, including but not limited to, losses resulting from errors or problems on the internet, service or any issues beyond the Auctioneers' control or losses arising from Bidder's use of or inability to use the service;

- c. that the Auctioneer cannot prevent inappropriate use of the system or bidder information stored in the system; and
- d. that the bidder cannot withdraw his or her bid and place a lower bid.

6. Reserve Prices and Seller's Bids

- a. The auction of a Lot may be subject to a reserve price specified to the Auctioneer by the Seller.
- b. The Auctioneer may bid for any prospective purchaser with or without disclosure and any such bid, if the highest bid, will be sufficiently evidenced if recorded by the Auctioneer.

7. Risk Falls With The Hammer

- a. The Purchaser assumes all risk in relation to a Lot from the fall of the hammer in respect of that Lot, and neither the Auctioneer nor the Seller will be accountable for any deficiency damage or loss to the Lot which may arise, occur, or become apparent thereafter.
- b. The Purchaser agrees to release and indemnify the Auctioneer and Seller from any claim, action, or legal proceeding in respect of any such deficiency or damage and to indemnify the Auctioneer, on a full indemnity basis, from all liability, including all costs incurred by it in relation to any such claim.

8. Payment upon completion of sale

- a. The Purchaser is not entitled to remove the Lot from the sale point until the Purchase Price and Buyer's Premium has been paid in full.
- b. The Purchaser of a Lot must pay the Purchase Price and Buyer's Premium, or a deposit as agreed by the Auctioneer and Seller, to the Auctioneer upon completion of the Auction Sale.
- c. If the Purchaser pays a deposit, it must pay the balance of the Purchase Price within one business day of completion of the Auction Sale or as otherwise specified by the Auctioneer.
- d. Payment of the above must be paid to the Auctioneer in Australian dollars by direct deposit or bank transfer to the account specified by the Auctioneer unless otherwise agreed by the Auctioneer. Should the Auctioneer accept payment made by cheque and the cheque is dishonoured, the Purchaser will be deemed to be in fundamental breach of its obligations pursuant to these Terms and Conditions.
- e. In the event of late payment the Auctioneer reserves the right to charge the Purchaser interest which will accrue at the rate of 12% per annum calculated daily from the day of the Auction Sale.
- f. If the Purchaser fails to complete the purchase, any money which has been paid on deposit may be forfeited to the Auctioneer or the Seller. The Seller may also bring an action against the Purchaser to recover the balance of any amount not paid under the Tax Invoice.

9. Removal of a Lot from the Auction Site

- a. No Lot may be removed by the Seller and the Purchaser during the Auction Sale without the express consent of the Auctioneer.
- b. The Auction Sale will be deemed complete after all of the Lots listed in the auction catalogue have auctioned, irrespective of whether or not all Lots have been sold.
- c. Subject to clause 14 the Purchaser must remove the Lot from the sale point immediately after the completion of the Auction Sale or as otherwise specified by the Auctioneer, but no later than one business day after the completion of the Auction Sale.
- d. If the Purchaser does not immediately remove the Lot, the Auctioneer or Seller may remove the Lot from the sale point and store it in an alternate location. The Purchaser is required to pay all reasonable costs incurred by the

Auctioneer or the Seller in relation to the relocation and storage prior to removing the Lot.

- e. The Purchaser will be strictly liable for any damage to the sale point, or other goods, caused by the removal of any Lot from the sale point.

10. Title of the Lot

- a. The Seller represents and warrants to the Purchaser and the Auctioneer that at the time of delivery of a Lot:
 - a. it has good title to the Lot;
 - b. it has proper authority to sell the Lot; and
 - c. there are no undisclosed encumbrances, liens or security interests (as defined in the Personal Property Securities Act 2010 (Cth)) over the Lot.
- b. The Seller acknowledges that the Auctioneer relies on this representation and warranty in auctioning the Lot on behalf of the Seller.
- c. The Purchaser acknowledges that it is its responsibility to conduct a search of the Personal Property Securities Register and that search must be undertaken no earlier than the day prior to the day it bids for the Lot to ensure that there is no undisclosed encumbrance over the Lot.
- d. Where the Seller is not a motor dealer the Purchaser acknowledges that any guarantee is given by the Seller.
- e. If, subsequent to the fall of the hammer but before the delivery of a Lot, the Auctioneer becomes aware that the Seller does not have good title to the Lot sold, the Auctioneer has the discretion to cancel the sale of that Lot. The Purchaser agrees that it will not make a claim against the Auctioneer in such an instance. If it does so, it agrees to indemnify the Auctioneer from any, and all, costs, on a full indemnity basis that the Auctioneer incurs as a result.
- f. Title in any Lot does not pass until the Purchase Price and Buyer's Premium (and if applicable, any other Governmental charges or fees payable pursuant to these Terms and Conditions, including, but not limited to any taxes, levies, duties, imposts, deductions and charges) has been paid in full.
- g. Any guarantee made by the Seller or Auctioneer under this clause 10 is in addition to and is not intended to replace or detract from any rights or remedies a Purchaser may have under the Australian Consumer Law or any other applicable laws.

11. Rights Reserved

- a. The Auctioneer and/or Seller reserve their right to withdraw any Lot or Lots listed in the Catalogue from the Auction Sale;
- b. The Auctioneer reserves its rights:
 - a. to offer for sale part only of any Lot listed in a Catalogue;
 - b. to offer two or more separate Lots listed in a Catalogue for sale together as one Lot and if that Lot is not sold, to offer those Lots for auction as separate Lots;
 - c. to refuse any person admission to or eject them from the sale point;
 - d. to not disclose the existence and/or quantum of the reserve price (if any) of a Lot prior to the close of bidding or withdrawal of the Lot;
 - e. in the event that any Purchaser successfully bids for more than one Lot at the Auction Sale:
 - i. to allocate any monies received from that Purchaser between the Lots as it sees fit; and
 - ii. to regard the sale of multiple Lots as interdependent and treat default under a contract for either Lot as
 - f. to (whether or not a Lot has been knocked down as sold) in its sole discretion resubmit it for sale by

at the Auction Sale in progress or as soon as practicable thereafter; and

- g. to offer and sell a Lot that is not sold at an Auction Sale immediately thereafter by private agreement. Any such private agreement is also subject to these conditions unless otherwise agreed in writing by the Auctioneer.

12. Purchaser Acknowledgements and Consumer Guarantees

- a. The Purchaser acknowledges that the consumer guarantees stipulated in sections 54, 55, 56, 57, 58 and 59 of the Australian Consumer Law do not apply to the sale of goods by auction. As a result, the Auctioneer and the Seller make no warranties and give no guarantees regarding:
 - a. the goods being of acceptable quality;
 - b. the goods being fit for any disclosed purpose or any purpose for which the supplier represents they are fit;
 - c. the goods matching their description or corresponding to any sample or demonstration model;
 - d. the availability of repairs or spare parts for the goods; or
 - e. express warranties in respect of the goods made by the manufacturer being complied with
- b. Nothing in this clause 12 or any other provision of these Terms and Conditions should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law, or the liability of the Auctioneer or the Seller for failing to comply with these provisions of the Australian Consumer Law or the right of a consumer to make a claim in respect of these guarantees or under any other provision of the Australian Consumer Law.

13. Limitation of liability

Where the Purchaser suffers Loss as a result of its purchase of any Lot and:

- a. the goods forming part of a Lot are General Items with a purchase price of more than \$40,000; or
- b. the Purchaser suffers the Loss other than as a result of any breach by the Seller or the Auctioneer of the consumer guarantee or other similar provision of the Australian Consumer Law;

then, subject to any other laws which may apply and may not be excluded, or in respect of which liability cannot be limited by these Terms and Conditions, the Seller and the Auctioneer will not be liable for any such Loss suffered by the Purchaser. This clause applies even if the Seller and/or the Auctioneer knew or ought to have known that the relevant Loss would be suffered.

14. Finance

The Purchaser expressly acknowledges and warrants to the Auctioneer and to the Seller that prior to making an offer or bid for a Lot or successfully negotiating the purchase of a Lot by private agreement, that he or she has the either cash resources immediately available to complete the purchase or has obtained approval for financial assistance on reasonable terms which are satisfactory to the Purchaser.

15. Default

- a. If the Purchaser is in default of any of its obligations under these Terms and Conditions or any interdependent or separate agreement with the Auctioneer or Seller, the Auctioneer and/or the Seller may:
 - a. recover damages from the Purchaser;
 - b. without notice to the Purchaser resell the Lot or Lots in any manner upon such terms and conditions as it may think proper and recover all

losses, costs and expenses incurred from any such resale from the Purchaser by way of damages, whether or not that amount exceeds the Purchase Price that was to be paid by the Purchaser for the Lot or Lots (and including all legal costs) and the amount of any commission lost on the original sale as the result of the Purchaser's default and the cost of advertising in respect of any such resale; and

- c. forfeit any monies paid by the Purchaser in consideration for a Lot and/or Lots.
- b. If the Seller defaults on the delivery of a Lot or part thereof, the Seller must refund any money which the Purchaser had paid to the Auctioneer on account of its purchase.

16. General Law

- a. The proper law governing the interpretation and enforcement of these conditions including all substantive rights and obligations hereunder and the manner mode and method of performance is the law of the State in which the Auction took place.
- b. (b) All rights and remedies available to the parties against each other under the general law are subject to these conditions.
- c. (c) If any of the conditions in these Terms and Conditions are to any extent held by any court of competent jurisdiction to
- d. be invalid or unenforceable, the remaining conditions will not be affected thereby, and will remain in full force and effect. (d) To the extent that they are applicable, the requirements stipulated in section 41 of Part 3 of the Motor Car Traders Act 1986 (Vic) and prescribed particulars in Schedule 3 of the Motor Car Traders Regulations 1998 are incorporated into these terms and conditions and to the extent that those provisions are inconsistent with these terms and conditions, the former will prevail. Please note that this part does not apply to sales of Motor Vehicles previously belonging to a government department.

17. Further special conditions

The Auctioneer may prior to the commencement, or during an Auction Sale announce further special conditions applying to that Auction Sale or a particular Lot put up for auction in which event such further special condition or conditions will be deemed to be incorporated into and form part of these conditions.

18. Goods and services tax (GST)

- a. The Purchase Price for the Lot is inclusive of GST.
- b. The Buyer's Premium is inclusive of GST.
- c. The Auctioneer will provide to the Purchaser a Tax Invoice.

19. Auction of Used Motor Vehicles and Other Goods

- a. The Purchaser acknowledges that:
 - a. the Auctioneer is unable to, and does not carry out an inspection of the Lots offered for sale;
 - b. the information that the Auctioneer has in relation to each Lot is information provided to the Auctioneer by the Seller of each Lot (including, in the case of Motor Vehicles, any inspection, condition, pre-auction reports or other information as to the condition of the Motor Vehicle);
 - c. the information provided by the seller in relation to each Lot is not guaranteed by the Auctioneer;
 - d. the Purchaser must satisfy itself as to the condition, description and state of repair of the Lot prior to the Auction Sale;
 - e. in the case of Motor Vehicles, it may not rely on the category in which a Motor Vehicle is sold as a representation as to the condition of or ability to

- register the Motor Vehicle; and it is the Purchaser's responsibility to check the Written Off Vehicles Register prior to an Auction Sale to satisfy itself as to the future registration of the Motor Vehicle; and
- f. if a dispute arises in relation to this information, the Purchaser will exclude and indemnify the Auctioneer from any such dispute (including costs on a full indemnity basis by any costs incurred by the Auctioneer in relation to such dispute).

20. Auction of Used Plant and Equipment

The Purchaser acknowledges that:

- a. The OH&S Legislation imposes obligations in respect of safety for workers arising out of the design manufacture and supply of Plant and Equipment ("plant") for use in a workplace.

- b. The Auctioneer and the Seller have warned prospective purchasers that no plant is being offered for sale for use in any workplace.
- c. In so far as it is readily available, information prepared by the designer or manufacturer of the plant and any records kept by previous owners of the plant that were required to be kept ("the information and/or records") is made available for inspection to prospective purchasers and will be provided to the Purchaser.
- d. Where no such information and/or records are available, no liability for the absence of same is assumed by the Auctioneer and/or the Seller.
- e. It is the responsibility of the Purchaser to ensure that the Purchaser seek to ascertain the information and/or records.
- f. Safety inspections of all plant purchased at the Auction Sale must be performed by the Purchaser.

SIGNATURE

By printing and signing below I confirm I have read, understood and agree to Auctions 247 Terms & Conditions and confirm the information given on this form is true and correct.

Signature:		Date:
Full Name: (Print)	Position:	



FEE SCHEDULE