

TERMS & CONDITIONS FOR BIDDING AND PURCHASING ITEMS AT MANHEIM LIMITED

Terms & Conditions of Auction Sale

I, the named Buyer on the Buyer Registration Card, on my own behalf, and where I am acting on behalf of another party, on that party's behalf, in consideration of being permitted to bid for goods or other items (**Items**) at this auction, agree and acknowledge, as follows:

- A. I declare the information provided by me on the Buyer Registration Card is correct;
 - B. I declare I am authorised to act on behalf of any party nominated on the Buyer Registration Card in relation to any Items for which I may bid, or subsequently buy.
 - C. I have read these Terms & Conditions and understand if I bid at auction it is subject to these Terms & Conditions and any special conditions announced prior to the auction by Manheim. If I am the successful bidder I acknowledge am bound to purchase the Items I have successfully bid for in accordance with these Terms & Conditions and any special conditions announced prior to the auction.
 - D. I acknowledge Manheim as the auctioneer, is acting as an agent for the Seller. If any dispute arises in relation to the supply of goods (whether before or after Manheim has paid the Seller the proceeds of any sale) the dispute will be between the prospective buyer and the Seller and I acknowledge and agree Manheim will be excluded from any subsequent action or court proceedings. If Manheim is subsequently included in any such action or proceedings, I agree to indemnify Manheim for any liability or costs incurred by Manheim in relation to such action or proceedings.
 - E. Notwithstanding clause D and subject to clauses 19 and 22, if any dispute arises with the Seller, I agree to allow Manheim to attempt to mediate and resolve the matter with the Seller, and:
 - (a) if Manheim determines the most appropriate resolution of the matter is the cancellation of sale and refund of purchase monies paid I will have no further claim or recourse against Manheim or the Seller upon refund of the purchase monies; and
 - (b) I will not institute other action or proceedings unless Manheim advises it is unable to assist further in the resolution of the matter, or has failed to resolve the matter within a reasonable period of time having regard to all relevant circumstances.
1. The auction period for an Item is completed upon the acceptance and declaration by Manheim of the highest bid, whether by fall of the hammer or otherwise by negotiation or closed offer at the time and date nominated for that Item by Manheim (**Auction Close**).
 2. The bidder with the highest bid at the Auction Close, will purchase the Item at the price specified in the bid, subject to Seller acceptance, but if any dispute arises to the last or highest bid, Manheim (at its sole discretion), may auction or resell the Item.
 3. All Items are subject to a reserve price unless otherwise stated.
 4. All auction bid prices are GST inclusive unless the owner of the goods is not registered or required to be registered for GST (in which case no GST is payable on the sale of the Item). Items to be sold on behalf of owners not registered or required to be registered for GST will be separately identified in the catalogue.
 5. The Buyer must disclose to Manheim at the time of registration as a Bidder and prior to any bidding, that there is an intention to purchase an Item for export purposes. The ability of a Buyer to purchase in this manner is at the discretion of Manheim and subject to the Seller's consent. In the event this type of purchase is permitted the Buyer is required to comply with all legislated disclosure requirements and Manheim's reasonable directions.
 6. All bids submitted must be bona fide and must not be fixed or adjusted in collusion (or otherwise in accordance with any arrangement or agreement) with any third party (including but not limited to providing information relating to intended bids or attempting to manipulate the sale in any way). If Manheim becomes aware of any form of collusive activity by a bidder, Manheim may terminate the bidder's right to participate in the auction, or if Manheim has accepted the bidder's bid, Manheim may terminate any contracts entered into by the bidder relating to the bid.
 7. Manheim may refuse to accept any bid or withdraw any Item from sale.
 8. Manheim may hold a bid and refer such a bid to the Seller before acceptance. In some circumstances further negotiations may only be held with the highest bidder.
 9. All Buyers shall, on the fall of the hammer, if required to do so by Manheim, pay a deposit.
 10. In the case of non-payment of such deposit by a Buyer (**Defaulter**), the Item/s may, at the option of Manheim, be auctioned or resold and Manheim may in its discretion, refuse to accept any bid made by the Defaulter.
 11. Road Test Reports (excluding Truck & Machinery and Salvage Auctions), may be prepared by Manheim as a result of a brief road test undertaken prior to auction and are a guide only. No warranty or guarantee concerning known or unknown faults is given or implied by Manheim in relation to the Item/s of the Road Test Report. The Road Test Report covers no items capable of visual inspection. Vehicles sold with a Road Test Report are sold subject to these Terms & Conditions including clause 21, which refers to vehicles being sold with all faults (if any).
 12. Risk of damage to, and loss or destruction of, the Item shall pass to the Buyer immediately at Auction Close. Subject to clause 19, neither the Seller nor Manheim shall be accountable for any deficiency, damage or loss, which may arise thereafter.
 13. It is the Buyer's responsibility to independently verify any information relevant to any Item important to the Buyer's decision to bid on the Item.
 14. Stamp duty and delivery charges to be paid by the Buyer where and when applicable.
 15. Title in the Item or any part thereof shall not pass to the Buyer until Manheim receives clear funds on the full payment for the Item from the Buyer. Full payment is due and payable by

4:00pm one business day after auction. A failure to make full payment by 4:00pm one business day after auction may incur a late payment fee.

16. The Buyer cannot collect their Items or any portion thereof, until Manheim has clear funds on the full payment for the Item from the Buyer in accordance with Clause 15 (Completion). If Completion has occurred, the Buyer must take all Items no later than 4:00pm one business day after Completion. Storage charges may apply on Items paid for and remaining uncollected at 4:00pm one business day after Completion.
17. Manheim shall not be responsible for any damage to property or injury to persons incurred during the removal of Items after Completion.
18. If the Buyer fails to comply with these Terms & Conditions, any money deposited by the Buyer in part payment shall be forfeited, all Items may be resold and the defaulting Buyer must reimburse Manheim for all costs and charges consequent upon resale.
19. To the full extent permitted by law, and notwithstanding the contents of any materials issued by Manheim, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or imposed on Manheim by statute, custom or the common law are excluded from these Terms & Conditions. In entering into these Terms and Conditions (unless a supply is a supply of goods or services to a consumer within the meaning of the Consumer Guarantees Act 1993 (**CGA**)) we both confirm, acknowledge and agree that:
 - (a) we are each 'in trade';
 - (b) the Items are supplied to you and acquired by you in trade and for a business purpose; and
 - (c) the statutory guarantees and implied terms, covenants and conditions contained in the CGA are excluded to the fullest extent permitted at law, and do not apply.

If a supply is a supply of goods or services to a consumer within the meaning of the CGA, nothing contained in these Terms & Conditions excludes, restricts or modifies the application of the CGA.
20. The Seller represents and warrants to the Buyer & Manheim that the Item is not subject to a security interest of any kind including without limitation under the Personal Property Securities Act 1999 (PPSA) (other than a security interest in favour of the Seller which will be released at or prior to the time title in the Item is intended to pass to the Buyer).
21. Subject to clause 19, the Buyer accepts all Items, having been made available for inspection prior to auction, are offered for sale 'as is, where is' with all faults (if any). The Buyer acknowledges that it is also responsible for conducting a search of the PPSR to ascertain whether any security interests are recorded in relation to the Item.
22. The Buyer acknowledges any information provided by Manheim in relation to any Item reflects the information provided to Manheim by the Seller, and subject to clause 19, Manheim has not independently verified its completeness or accuracy. Manheim does not give any warranty as to the completeness or accuracy of any information provided to a Purchaser about any Item, including without limitation any information as to the distance travelled or machine or engine hours and Manheim will not be liable for any loss, damage, cost or expense suffered or incurred by a Buyer arising out of incorrect or incomplete information. The Buyer agrees to independently verify any information important to their purchasing decision.
23. Subject to clause 19, the Buyer agrees and acknowledges Manheim accepts no liability or responsibility to the Buyer or any third party arising from any indirect or consequential loss, damage or expense of any kind or nature and the Buyer releases and forever discharges Manheim from any such liabilities and claims, demands or causes of action in respect thereof.
24. Subject to clause 19, Manheim accepts no responsibility for any interpretation placed upon the information provided to the Buyer.
25. Subject to clause 19, the Buyer agrees to indemnify Manheim the full amount of any claim, suit or demand and Manheim's costs of such a claim, suit or demand (including, without limitation, Manheim's legal costs on a full indemnity basis) made by the Buyer or any other person in relation to a sale. This clause 25 survives termination of this Agreement for any reason and does not merge upon completion.
26. Manheim is not responsible or otherwise liable for any delay in, or failure of, performance to the extent of any delay or failure due to circumstances beyond Manheim's reasonable control including, without limitation, strikes, lockouts and other industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident.
27. Manheim has the right to cancel any purchase transaction due to error even if the purchase price of the Item has been paid. Manheim may exercise this right up until the time the Buyer collects the Item(s). If Manheim exercises this right, Manheim will refund to the Buyer any purchase price that the Buyer has paid.
28. Manheim may terminate this Agreement without cause immediately by giving notice to the Buyer.
29. The Buyer may cease to remain a Buyer by notice in writing to Manheim, provided the Buyer does not have any active or outstanding bids or sales. Any purported termination by the Buyer does not release the Buyer from, or affect, any accrued obligation under this Agreement.
30. On termination of this Agreement for any reason, any amounts owed by the Buyer to Manheim, whether under this Agreement or otherwise become immediately due and payable.
31. All vehicles are sold as unregistered unless otherwise stated by Manheim.
32. Any deficiency in the goods sold shall not vitiate the sale, but neither the Seller nor Manheim shall be bound to deliver more than is in their possession.
33. A Buyer's Administration Fee and other fees may be payable by the Buyer on Items sold at Manheim. The Buyer's Administration Fee and other fees are noted in the catalogue.

Where a fixed dollar amount is noted, the Buyer's Administration Fee is inclusive of GST. Where a percentage is noted, the Buyer's Administration Fee is inclusive of GST and is calculated using the Item purchase price.

34. Manheim may amend these Terms & Conditions (including any fees charged by Manheim to the Buyer) at any time by giving the Buyer at least 30 days' notice, either by sending a notice of the variation to the Buyer's email or postal address (as set out on the Buyer Registration Card) or by publishing a notice of the variation at Manheim's premises or on Manheim's Website (Notice of Variation).
 - (a) If the Buyer does not agree to be bound by the varied Terms & Conditions, the Buyer may, subject to Clause 29, terminate this Agreement by notifying Manheim in writing within 30 days of the Notice of Variation.
 - (b) If the Buyer does not notify Manheim within 30 days of a Notice of Variation that the Buyer wishes to terminate this Agreement, the Buyer agrees to be bound by the Terms & Conditions as varied.
 35. Additional Terms & Conditions for truck and machinery auctions, or where vehicles are purchased for business use: Manheim does not warrant any electrical or mechanical appliance, plant and/or equipment (collectively **Plant and Equipment**) complies with the requirements of any occupational health and safety laws (**OHS Laws**). Where reasonably practicable and where the Plant and Equipment is likely to be used in a workplace, Manheim has requested the Seller display a statement on the Plant and Equipment to indicate the safety condition of Plant and Equipment and to supply certificates, operation manuals, etc. which may exist for the particular Plant and Equipment. If the Plant and Equipment purchased does not include this information, upon request of a Buyer, Manheim will use its reasonable efforts to obtain this information from the Seller. By law, a Buyer of any Plant and Equipment for use in a workplace must ensure the Plant and Equipment complies with applicable OHS Laws before it is used. Heavy penalties apply for non compliance. A summary of OHS requirements is available from Worksafe NZ (<http://www.business.govt.nz/worksafe>).
 36. Manheim may give notice of any matter or permitted to be notified under these Terms & Conditions by email or by posting on Manheim's website.
 37. The Buyer Registration Card and these Terms & Conditions shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
 38. If any provisions of these Terms & Conditions are found to be invalid or unenforceable, the provision will be read down or severed and the invalidity or unenforceability does not affect the validity or enforceability of the other Terms & Conditions.
 39. Each indemnity in this document is a continuing obligation, separate and independent from other obligations of the parties and survives termination of this document.
 40. These Terms & Conditions represent the entire understanding between parties.
 41. In these Terms & Conditions, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements or any of them.
 42. Vendor bids are not permitted unless otherwise stated.
 43. Additional Terms & Conditions for Salvage Auctions: Subject to clause 19, and in addition to clause 21, Manheim does not accept any responsibility for damage sustained to vehicles or equipment through the normal use of forklifts to load, unload and shift damaged and non-driveable vehicles.
- ### Privacy
44. Manheim protects the personal privacy of its customers and complies with Information Privacy Principles in the Privacy Act 1993 (**Privacy Act**).
 45. The information collected by Manheim includes name, telephone number, email address, physical address, fax number, driver licence and passport numbers and date of birth. If you do not provide us with all information requested, we may not be able to deliver some or all products and services. Manheim is required by law to accurately identify who is purchasing vehicles. If you are a bidder providing another person's personal information it is your responsibility to ensure the person is aware of these Terms & Conditions and of our Privacy Policy.
 46. The information you provide will be used for operating our business and to provide products and services requested. If you successfully buy goods, we may disclose your personal information to the seller of the goods. Your information may be disclosed to third parties for purposes associated with the completion of the transaction, such as delivery of goods you have requested. You consent to us using your personal information for marketing purposes. We may contact you by mail, telephone, email, SMS or facsimile to market our products and services and those of others we think may interest you. We will provide a mechanism to opt-out of further correspondence.
 47. For details on how we handle, or to seek access to your personal information view our privacy policy at our office or on our website at manheim.co.nz.