



# BIDDER TERMS & CONDITIONS

Wheeler Auctions  
1 Impala Court  
Park Hills, MO 63601 USA

p 833.599.8999 | f 888.801.4567 [Buyers@WheelerAuctionGroup.com](mailto:Buyers@WheelerAuctionGroup.com)

## TERMS AND CONDITIONS OF SALE

This Bidder Agreement ("Agreement") is made between WHEELER AUCTIONS ("WA") and the person or entity listed on this form ("Buyer").

### 1. LIMITATIONS AND DISCLAIMERS

(A) Each Lot is consigned to WA by a seller with a Consignment Agreement ("Seller"). Each Lot is sold "AS IS-WHERE IS", with all faults and defects and all errors of description. Buyer understands that: (i) any and all information concerning any Lot is provided by Seller; (ii) WA does not make any representations or express any opinions of its own concerning any Lot; and (iii) WA does not undertake any duty to examine any component of any Lot, research the title documents or the provenance of the Lot or verify any information provided by Seller for the benefit of Buyer or anyone else. Buyer acknowledges that WA's only duty toward Buyer is to transfer the Lot to Buyer "AS-IS-WHERE IS", upon full performance by Buyer under this Agreement. Except with regard to such duty, Buyer hereby waives and releases WA from and against any claim, demand, liability, or expense of any kind arising out of or related to the Lot, expressly including without limitation any assertions of negligence (including negligent misrepresentation), breach of contract or breach of warranty. Buyer agrees not to join WA as a defendant in any action or proceeding arising directly or indirectly out of the condition of the Lot or any alleged representations concerning the Lot, and further agrees to look solely to Seller with respect to such matters. If Buyer fails to comply with this provision, Buyer agrees to reimburse WA for all costs, expenses and fees, including attorney fees, in defense of such claims.

(B) WA expressly disclaims all warranties, express or implied, concerning the Lot, including warranties of merchantability or fitness for any purpose. Buyer represents that the amount bid for any Lot is based solely on Buyer's own independent inspection and evaluation of that Lot. As a material inducement to this agreement: (i) Buyer has undertaken to make his own examination of any Lot before bidding; and (ii) assumes all risk of any nonconformities in any Lot. Buyer further acknowledges that he has not relied upon any assumptions regarding WA's knowledge concerning the Lot or the Seller, or upon any oral or written representations by WA, including without limitation any representations as to condition, year or age, serial or identification number, make, model, mileage, equipment, genuineness or authenticity, originality, previous use or ownership, manufacturing or restoration processes of any Lot or any component of any Lot. Finally, Buyer acknowledges that his invocation of the mediation provision set forth in Section 5(B) below does not create any warranties, express or implied, and that WA shall have no liability to Buyer or Seller as a result of its facilitation of any mediation.

(C) All Statements contained in any catalogs or advertisements of any type pertaining to the sale, including without limitation any statements concerning condition, genuineness or authenticity, origin or provenance, previous use or ownership, manufacturing or restoration processes, year or age, serial number, make, model or mileage of any Lot or of any component of any Lot, are provided by the Seller, not WA, and are either expressions of opinion or are for ease of identification only, and they are not to be relied upon by Buyer as representations of fact. Buyer assumes all risks associated with any nonconformity of any Lot or any component of any Lot. As a condition of participation in the auction, Buyer represents that he will conduct any inspections and examination necessary to satisfy himself of all material facts before making any bid.

(D) Neither WA nor any agent, employee or representative of WA has given or authorized any other person to give any oral or written affirmation, representation, warranty or guarantee concerning any Lot. WA assumes no liability for any affirmations, representations, warranties or guarantees made by Seller to Buyer.

(E) Buyer acknowledges that WA must comply with U.S.-mandated economic and trade policies and that such compliance may include reviewing individual customer and/or transactional data for compliance.

### 2. COMMISSIONS AND FEES

(A) A BUYER'S PREMIUM OF 8% OF FINAL BID PRICE IS PAYABLE FOR ALL VEHICLE LOTS (15% for all other Lots). Buyer understands and agrees that he must pay the sum equal to 8% for any vehicle Lot or 15% for any other Lot purchased at this auction, that this fee will be automatically included in the final settlement figure, and that buyer will be subject to applicable taxes and license fees. Buyer(s) also understand that if they bid online or on the phone that a buyer's premium of 12% for vehicle lots and 19% for all other lots shall be paid. Buyer understands and agrees that a 2% penalty will be added to the Buyer's premium if Buyer leaves the auction venue without settling his final account. Sales tax, if applicable, will be charged on the final total of hammer price plus premium.

(B) Buyer will be required to pay all applicable taxes, license fees, or other fees levied by any authority unless WA receives satisfactory proof of exemption (to be determined in WA's sole discretion). There are no refunds once WA has paid taxes and license fees (typically two weeks). Buyer acknowledges that the bidder registration fee paid to participate in the auction is not included in or deducted from the total price of any Lot purchased.

(C) Buyer agrees that if buyer acquires, or if any related entity, affiliate or person acquires, within 60 days after the auction date, any Lot consigned to the WA auction that is not sold through the auction for any reason Buyer will be obligated jointly and severally, with the Seller, for the immediate payment to WA of a commission in the amount of 20% of the sale price of the Lot. Definitions of "any related entity, affiliate or person" shall be defined solely at the discretion of WA.

### 3. PAYMENT

(A) All bidder fees are non-refundable and non-transferrable.

(B) A valid method of payment must be submitted for each auction. Buyer shall bring a bank reference and a copy of Buyer's signature certified by that bank. Buyer agrees to pay for all Lots on the day of sale in U.S. currency, certified check or cashier's check. Personal checks may be accepted, at WA's sole discretion, but only if accompanied by an irrevocable bank letter of guaranty in favor of WA stipulating Buyer's credit limit on the day of the sale. There shall be no deviation from this provision without the prior written consent of WA. Buyer hereby authorizes WA to recover lost commissions or fees due to WA should Buyer default and charge this amount to Buyer's credit card on file or to recoup such commissions or fees through any other available means of payment. Buyer shall also be responsible for all other related fees, not limited to storage, shipping, etc.

(C) Buyer acknowledges and agrees that he is expressly prohibited from submitting a bid for purchase of any Lot if any such single or cumulative bid(s) exceed(s) Buyer's credit limit then on file with WA for the auction. If Buyer circumvents this provision and succeeds in entering a winning bid in excess of Buyer's credit limit, Buyer hereby warrants and agrees that he shall remain fully liable to WA and to Seller for the complete purchase price, plus applicable fees and commissions, and that funds shall be remitted to WA on the day of sale.

(D) Should Buyer default upon the purchase for any reason, Buyer agrees to pay WA the full sum of both the Buyer's premium and Seller's commission. This sum is due and payable without relief. Buyer also agrees to pay any court cost, attorney fees, storage, or other related cost or expense of any kind or nature whatsoever incurred by Seller or WA as a result of Buyer's default. This provision is in addition to and in no way supersedes or replaces Buyer's financial responsibility regarding such purchase.

#### **4. PASSING OF TITLE**

(A) Upon the fall of the Auctioneer's hammer, title of the offered Lot will pass to the highest Bidder acknowledged by the Auctioneer, subject to the conditions set forth herein, and at such time Buyer: (i) assumes full risk and responsibility for the Lot and neither WA nor its agents shall be responsible for the loss of, or any damage to, any article due to theft, fire, breakage or any cause whatsoever; (ii) will sign a Contract of Sale confirming purchase of the Lot; (iii) will pay the full purchase price plus applicable commission; (iv) will ensure the purchased vehicle complies with any emissions testing requirements in the applicable jurisdiction; and (v) warrants and agrees that he will perform the necessary steps to document the transfer of title in accordance with applicable state law within 30 days of receipt of transfer documentation from WA.

(B) Buyer must remove all property from WA's premises not later than the following day of the last day of the sale, unless otherwise specifically instructed in writing by WA. If any Lot is not removed, a handling charge of 1% of the purchase price will be payable by the Buyer per month, until the Lot is removed, with minimum of 5% for any property not removed within 60 days after the sale. After 90 days, WA may dispose of the property and/or claim it as abandoned. BUYER HEREBY WAIVES ALL REQUIREMENTS OF NOTICE, ADVERTISEMENT AND DISPOSITION OF PROCEEDS REQUIRED BY LAW, AND RELEASES WA FROM ANY LIABILITY WHATSOEVER IN CONNECTION WITH SUCH DISPOSAL, UP TO THE LIMITS OF LOCAL LAW.

(C) Lots, titles and/or bills of sale will only be released in the case of cash purchases. In all other cases release will be made only after payment has cleared WA's bank account and is free of all possible holdbacks or chargebacks. The title and/or bill of sale will be delivered to Buyer at the time settlement is made with Seller (typically within 21 business days from the date of sale).

(D) If Buyer or Buyer's representative drives a vehicle on the auction site, all applicable Motor Vehicle Laws must be observed at all times. Buyer is responsible for providing proof of current insurance for each auction event.

#### **5. REMEDIES**

(A) In the event Buyer breaches these terms and conditions or fails to consummate the sale for any reason, WA may, in addition to and not in lieu of any rights available at law or in equity, and at its sole discretion: (i) compel specific performance and hold Buyer liable for the bid price plus commissions; (ii) resell any Lot by public or private auction for Buyer's account and risk, after 15 days' written notice to Buyer at Buyer's last known address, and hold Buyer liable for all damages, including the difference between the bid price and resale price, WA's full commission on the bid price, all costs for resale (including commissions), and consequential damages; or (iii) cancel the sale and retain all payments made by Buyer, including any advance deposits, as liquidated damages and not as a penalty.

(B) Unless otherwise prohibited by law, before Buyer may initiate any legal proceeding arising out of or relating to any sale occurring as a result of this Agreement, including, but not limited to issues related to Seller's representations or statements concerning condition, genuineness or authenticity, origin or provenance, previous use or ownership, manufacturing or restoration processes, year or age, serial number, make, model or mileage, or any other representation made regarding any Lot, Buyer shall submit to a mediation with Seller to be facilitated by WA or its designee on the terms and conditions set forth by WA. WA or its designee will facilitate this mediation in good faith in an effort to resolve any such dispute. If the parties are unable to reach an agreed resolution, or if WA in its sole discretion determines this effort or the prospect of mediation to be unsuccessful, Seller and Buyer may thereafter resolve their dispute through appropriate legal channels. If Buyer avails himself of this mediation provision, Buyer must request a Request for Mediation form from WA and submit the completed form in accordance with the instructions contained therein to begin the mediation process. The form must be submitted within 1 day from the date of purchase of the vehicle or Buyer shall be deemed to have waived and forfeited the opportunity to request mediation assistance from WA.

(C) Buyer acknowledges that WA may have an interest in commissions resulting from the resolution of a dispute through this mediation process. Buyer hereby waives any potential or actual conflict of interest inherent in such a mediation process and agrees to defend (using counsel reasonably acceptable to WA), indemnify and hold WA harmless for, from and against any claims, demands, actions, judgments, liabilities, losses or expenses (including attorney fees) arising from or related to WA's mediation of any dispute arising out of or relating to this Agreement, excepting only those matters arising out of WA's willful misconduct.

(D) Notwithstanding the foregoing, and in the event the mediation referenced in section 5(B) is not requested in a timely fashion or is unsuccessful, Buyer's sole and exclusive remedy shall be an action for actual damages against Seller. Buyer shall have no right to revoke acceptance of any Lot after the fall of the hammer, and Buyer shall have no right to maintain any action for consequential damages.

(E) Buyer's invocation of the mediation provisions of this Agreement shall not create any warranty or any other liability between WA and Buyer. As stated in section 1(B) above, WA expressly disclaims all warranties, express or implied, concerning the Lot, including the warranties of merchantability or fitness for any particular purpose(s).

(F) In the event of any dispute between Buyer and WA arising out of or related to this Agreement or its subject matter, Buyer's claim for damages shall be limited exclusively to actual damages, and shall not include consequential damages, or incidental or other special damages. In the case of

any such dispute, if the matter cannot be settled through negotiation between Buyer and WA, the parties agree first to try to settle the dispute through mediation before resorting to litigation. The matter in dispute shall be submitted to a mediator, located in St. Louis County, Missouri, selected solely by WA. The mediation shall take place in Saint Louis County, Missouri and the mediation shall be completed within 60 days from the date a party submits the dispute to mediation. The cost of any such mediation shall be divided equally between Buyer and WA. Upon conclusion of the mediation, if the parties have been unable to resolve the matter in a mutually agreeable fashion, then either party shall be free to initiate litigation on the terms contained in this Agreement.

(G) This Agreement, and any action arising out of or based on it or its subject matter, shall be governed by Missouri law excluding its conflicts of law rules. Buyer agrees that the state and federal courts located in Saint Louis County, Missouri shall have exclusive jurisdiction over any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement or its subject matter, and Buyer hereby waives any objection to venue laid therein. If a mediation described in Paragraph 5(F) above is unsuccessful, Buyer further agrees that the state and federal courts located in Saint Louis County, Missouri shall have personal jurisdiction over Buyer for the purposes of any action described above. In any litigation or proceeding arising out of or related to this Agreement, Buyer agrees to pay all of WA's attorney fees, costs and other expenses incurred in connection with the litigation or proceeding if WA is successful in such litigation or proceeding.

#### **6. ENTIRE AGREEMENT**

This Agreement and related Contract of Sale contain the entire agreement between Buyer and WA pertaining to the subject matter described herein. Any terms proposed by Buyer orally or in writing which add to, vary from or conflict with this Agreement shall be void, and the Agreement shall constitute the complete and exclusive statement of the agreement between the parties and may be modified only by written instrument executed by the authorized representatives of both Buyer and WA and which expressly modifies the Agreement.

#### **7. ASSIGNMENT**

This Agreement, and any and all rights, obligations, claims or causes of action arising from it or its subject matter, may not be assigned to or acquired by any other person or entity without WA's prior written authorization.

#### **8. SEVERABILITY**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law: (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this agreement; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement; and (iv) in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and this Agreement shall be deemed reformed accordingly.

#### **9. APPEARANCE RELEASE**

By completing this Bidder Agreement, Buyer hereby acknowledges he has given WA permission to use his likeness for television, Internet, video screens, still photography and/or any other visual/audio recording. Buyer hereby waives all residual rights or claims that might arise from use of his picture or likeness for any purpose at any future date. Entry into the auction site constitutes acceptance of the above terms and conditions. For the purposes of this agreement, I acknowledge that all copies of electronic images, facsimiles and similar images, without limitation, shall be considered duplicate originals, and fully legal and effective with respect to signatures, witnesses and dates, or other matters as appropriate. This agreement may be executed in counterparts and is fully legally binding.

### **CUSTOMER ACKNOWLEDGEMENTS**

#### **ALL VEHICLES MUST BE REMOVED FROM AUCTION PREMISES NO LATER THAN THE DAY IMMEDIATELY AFTER THE LAST AUCTION DAY.**

Bidder acknowledges that the auction event grounds must be cleared no later than THE FOLLOWING DAY AFTER THE LAST AUCTION DAY. If bidder purchases any vehicle(s), such vehicle(s) must be removed by this date. If any vehicle is not removed by a purchaser by this time, WHEELER AUCTIONS shall have the vehicle removed and shall bill purchaser for any and all towing, storage, repair and labor charges related to clearing the vehicle from the premises. For the purposes of this agreement, I acknowledge that all copies of electronic images, facsimiles and similar images, without limitation, shall be considered duplicate originals, and fully legal and effective with respect to signatures, witnesses and dates, or other matters as appropriate. This agreement may be executed in counterparts and is fully legally binding.