

## MAG Rotherham Ltd

## T/A The Motor Auction Group or MAG

### Terms & Conditions of Sale and Entry

#### **ALL VEHICLES ENTERED FOR SALE AND/OR SOLD (WHETHER SOLD AT A PHYSICAL AUCTION OR ONLINE) AND ALL PURCHASES ARE SUBJECT TO THE TERMS AND CONDITIONS.**

#### **THESE TERMS ARE BINDING UPON EVERY SELLER, AND PROSPECTIVE SELLER, AND EVERY BUYER AND PROSPECTIVE BUYER.**

This document sets out the standard terms and conditions (“**Conditions**”) which forms the contractual terms between a Seller and Buyer of Vehicles and further details each party’s rights and obligations.

MAG reserves the right, at its discretion, to alter, amend and/or vary these Conditions at any time.

### Definitions

**MAG** means MAG Rotherham Ltd T/A The Motor Auction Group or MAG. MAG Rotherham Limited (a company registered in England under registration number 10052865) whose registered office address is 49 Market Place, Bawtry, Doncaster DN10 6JL.

**Buyer** means the person, company or organisation, including provisional Buyers, who has made the Offer which has been accepted for the Vehicle.

**Seller** the person, company or organisation that has instructed MAG to perform services on its behalf in relation to the sale of Vehicles.

**Vehicle** means any car, motorcycle, light commercial van, caravan, heavy goods vehicle or any other vehicle.

**Contract of Sale** means the contract between the Seller and the Buyer for the purchase of the Vehicle. This Contract of Sale is subject to these Conditions and is formed upon the Seller’s acceptance of the Buyer’s Offer.

**Sale Price** means the price which has been accepted for a Vehicle, excluding fees.

**Fees** are any charges which MAG makes or may make for its products and services.

**Buyer’s Premium** means the fee which is payable by the Buyer, due from the fall of the hammer, and shall be paid when the vehicle is paid for. This fee is due to MAG for the

provision of auction facilities, administration and other associated services.

**Market Value** the mileage adjusted trade valuation for the vehicle, as described in the motor trade guides.

**Insurance Total Loss** means a Vehicle which has been categorised by insurers as category A, B, S or N, deeming the vehicles to be an insurance write-off.

**Reserve Price** means the price stipulated by the Seller as the lowest acceptable price for an item sold at the auction.

### Entry of Vehicles into Auction

- 1) Unless otherwise instructed in writing prior to a vehicle being entered for sale, the Seller warrants to both MAG and the Buyer that:
  - a) the Seller is the legal owner of the Vehicle and has clear unencumbered title to, and a right to sell the Vehicle;
  - b) the Vehicle is Entered for sale with its correct registration mark and chassis number and/or vehicle identification number and that these correspond to the Vehicle’s registration documents;
  - c) the year registered, or year of manufacture, whichever is earlier, which has been provided by a Seller is correct;
  - d) the odometer reading of the vehicle is true and accurate if noted as “Correct” when Entered for sale;
  - e) the Vehicle has not been subject to an Insurance Total Loss and/or has not been stolen & recovered;
  - f) the Vehicle has not been used by the police, used as a taxi, re-registered, imported and/or registered outside of the United Kingdom;
  - g) where any Vehicle has been Entered for sale with a cherished Vehicle registration plate, the Seller has all rights, title and interest to sell that cherished registration plate, where the cherished Vehicle registration plate is not offered for sale with the Vehicle the Seller must inform MAG in writing prior to the Vehicle being Entered for sale;
  - h) all Safety Recalls applicable to the Vehicle have been dealt with in accordance with manufacturer instructions;
  - i) all documents and information provided by the Seller are true, accurate and complete in each and every particular.
- 2) In respect of a breach of the warranty set out in clause 1)d) above, the Seller shall only be liable to the Buyer:

- a) in respect of any negative difference between the Market Value of the Vehicle and the actual price paid for the Vehicle;
  - b) only then if the discrepancy is at least 1,000 (one thousand) miles or 10% (ten per cent) more than the actual mileage of the Vehicle (whichever is greater); and
  - c) the Buyer gives notice in writing to MAG (as agent of the Seller) of said discrepancy within 3 (three) Business Days of the date of the sale (failing which the Seller will have no further liability in relation to the warranty set out in clause 1)d) above.
- 3) Save as set out in clause 1), no warranties or representations are made by a Seller regarding the mechanical condition or general quality of the Vehicle and neither the Seller, nor MAG, shall have any liability or obligation to provide such warranties to the Buyer.
  - 4) Until a Contract of Sale has been entered into the full risk in the vehicle remains with the Seller. It is therefore the responsibility of the Seller to insure the Vehicle against third party damage and theft whilst on MAG's premises or in MAG's control and shall remain insured until risk passes to a Buyer upon acceptance.
  - 5) The Seller must inform MAG of the VAT status of the Vehicles, in writing prior to the Vehicle being Entered for sale. This VAT status shall be binding and may not be changed following a Contract of Sale arising in respect of that Vehicle.
  - 6) A Seller must supply MAG with accurate information regarding its VAT status and registration and it is the Sellers responsibility to advise MAG of any changes to this status.
  - 7) A Seller shall be responsible for any loss suffered by MAG as a consequence of MAG acting on inaccurate information supplied by the Seller.
- 12) The Seller makes no other warranties or representations about the Vehicle other than those made by the Seller at clause 1 of these conditions.
  - 13) The Seller shall not be liable to any Buyer for any loss of profit, loss of contract, loss of revenue, loss of opportunity or loss of chance or special, consequential or indirect losses suffered by a Buyer in relation to the Vehicle, whether such losses are direct or indirect or reasonably foreseeable at the time of the Contract of Sale.
  - 14) At no time will the Seller's liability to a Buyer exceed the Sale Price.
  - 15) Other than as set out in these Conditions, the Seller expressly excludes any and all representations and warranties about the Vehicle including any which may otherwise be implied into the Contract of Sale by the Consumer Rights Act 2015, any other legislation or by common law (whether this be terms implied by custom and practice or otherwise).

## Buyer's Duties

- 16) Risk in the Vehicle passes to the Buyer upon acceptance. It is therefore the Buyer's duty to insure the Vehicle from that time.
  - 17) The Buyer warrants and represents to MAG that it has read and agreed all of these Conditions. The Buyer warrants and represents to MAG and the Seller that the exclusions of liability (whether by MAG or the Seller) are fair and reasonable.
  - 18) Each prospective Buyer shall provide his true name and address and such other information and proof of identity (whether in respect of money laundering procedures or otherwise) as may reasonably be required by MAG.
  - 19) Where a cherished registration plate is assigned to a Vehicle but not purchased with the Vehicle, the Buyer:
    - a) warrants, represents and undertakes that it will cooperate in the retention of the cherished registration plate by the Seller; and
    - b) acknowledges that the Vehicle will require a valid MOT certificate for the allocation of a new registration number.
  - 20) Upon purchase, it is the Buyer responsibility to ensure that the Vehicle complies with all relevant road traffic acts before leaving site. Where the Vehicle is not roadworthy the Buyer is liable for ensure that the Vehicle is made Roadworthy and safe for use before putting it on the road.
- 8) When an Offer is accepted by the Seller a Contract of Sale is formed between the Buyer and the Seller.
  - 9) The Contract of Sale is between the Seller and the Buyer, MAG acts as an agent facilitating the Sale and has no liability or responsibility in respect of the Contract of Sale.
  - 10) A Provisional Offer shall remain valid for 24 business hours from the time of the sale if, for whatever reason, MAG is unable to contact the Seller to confirm acceptance the Buyer has the right to stand down from the Offer made.
  - 11) Whilst risk in the Vehicle passes to the Buyer at the time of acceptance, all ownership and title of the Vehicle remains with the Seller until it has received the Sale Price less any Fees.

- 21) The Buyer must pay any deposit in respect of the purchase of Vehicles as may be required by MAG. The deposit shall only be returned by MAG if:
- an Offer is withdrawn prior to acceptance and no Contract of Sale is therefore concluded in respect of the Vehicle; or
  - a Seller has agreed to cancel a Contract of Sale.

*Deposits are non-refundable where a Buyer seeks to withdraw an Offer after acceptance or where a Buyer otherwise fails to pay for a Vehicle, under any circumstances.*

- 22) The Buyer must take all reasonable actions to update MAG on any changes to information provided by the Buyer to MAG.
- 23) The Buyer warrants and represents to a Seller and MAG that it understands and agrees that:
- it has no rights against MAG in respect of the quality, condition or merchantability of the Vehicles;
  - prior to making any Offer in respect of any Vehicle, it will satisfy itself regarding the value and condition of the Vehicle by inspecting them and / or making such other background checks as are prudent and sensible; and
  - it will indemnify MAG and hold MAG harmless on demand against any losses, costs, damages, expenses or liabilities suffered by MAG by reason of the prospective Buyer being in breach of these Conditions. This includes any legal fees on a full indemnity basis.
- 24) The Buyer accepts full responsibility for the safekeeping of its buyer account details and any passwords or user names provided to it by MAG and that it shall be liable for any costs, liabilities, damages, expenses, fees (including legal fees) and losses suffered by MAG by reason of any third party use of these facilities.
- 25) Where a Buyer trades online a buyer warrants and represents to MAG that it is trading in the course of business and not as a private consumer.

## Payment Seller

- 26) Under normal circumstances MAG shall remit the Sale Price (less its Fees) for the Vehicle to the Seller within 5 (five) Business Days of acceptance, providing that:
- MAG having received the full Sale Price in cleared funds; and
  - provided there is no existing dispute in relation to the Vehicle; and
  - any and all third party interests (including Finance interests) in the Vehicle have been settled in full.

- 27) The Seller authorises MAG to deduct from the Sale Price any and all Fees which are payable by the Seller.
- 28) A Seller must provide MAG with details of the VAT number issued by HMRC and notify MAG immediately if the VAT number is changed or cancelled. MAG may issue the Seller with a self-billed invoice and the Seller must account for any input tax shown on the invoice to HMRC and agree not to issue a VAT invoice in respect of any self-billed invoice issued by MAG

## Buyer

- 29) A Buyer must pay the Sale Price (and any VAT, where relevant), Buyer's Premium and any other Fees by 5.00pm of the next day following acceptance, late payment of Fees shall result in MAG charging the Buyer a late payment charge.
- 30) Where the Buyer fails to pay for the vehicle by the agreed payment time MAG has the right to resell the Vehicle without notice to the buyer and to recharge any loss incurred on any resale of the vehicle to the Buyer. The Buyer accepts that failure to pay for a vehicle shall result in MAG suspending the Buyers trading facilities with MAG.
- 31) Where the Buyer has purchased more than one Vehicle, MAG reserves the right not to allow any Vehicle to be removed from its premises until payment in full has been made in respect of all the Vehicles purchased.

## Buyer's Rights

- 32) Title of the Vehicle passes to the Buyer upon payment having been made in full, comprising of the Sale price and MAG Fees.
- 33) All of the Sellers conditions and warranties covered in clause 1) are incorporated into the Contract of Sale.
- 34) Subject to clause 35) below, in the event that any of the warranties and representations given at clause 1) are untrue, the Buyer has the right to, at least in so far as it relates to title, to rescind the Contract of Sale (subject to the time limit below) and be refunded the Sale Price in full and final settlement of any claim the Buyer may have.
- 35) The time limit for bringing a claim for breach of warranty or representation under clause 1) is three (3) days from the date of sale, unless it relates to title in which case it is six (6) months from the date of sale.
- 36) Subject to the Buyer having made full payment for a Vehicle, which includes the Sale Price and all Fees, and no disclosures having been made otherwise, the Buyer is entitled to rely on the following representations and warranties made by MAG:
- unencumbered title to the Vehicle;

- b) the odometer of any Vehicle if noted to be Correct will be true and accurate, unless amended/declared otherwise by the auctioneer at the point of sale;
  - c) the Vehicle has not been the subject of an Insurance Total Loss and/or is stolen & recovered (unless disclosed otherwise).
- 37) In the event that any of the warranties and representations given at clause 36) are proven to be untrue and where the Buyer has provided reasonable and satisfactory evidence to MAG, then a Buyer shall have the right to return the Vehicle to MAG and to be repaid the Sale Price provided always that:
- a) the Buyer has complied with the time limits as set out in point 35).
  - b) in respect of clause 36)b), the Buyer has notified MAG in writing within three (3) days of acceptance bringing a claim under clause 36) and MAG shall only be liable to the Buyer in respect of any negative difference in accordance with the terms set out in point 2).
  - c) in respect of each of clause a) to b), the Buyer has not by its own acts or omissions damaged or tampered with the Vehicle.
- 38) MAG has the right, at its sole discretion, to:
- a) decline to auction or offer for sale any Vehicle;
  - b) refuse any person or company entry to its premises or require any individual to leave its premises;
  - c) refuse any person or company access to its physical, electronic or any other facilities and/or to suspend any such rights of access.
- 39) MAG is not bound to accept or submit any particular Offer and MAG's decision regarding Offers shall be final.
- 40) Buyers agree to use any of MAG's digital systems at their own risk that an Offer may not be received, accepted or utilised. A Buyer agrees and understands that where it is using a digital means of submitting Offers, an Offer may not be received by MAG and/or MAG's system may not recognise, accept or utilise that Offer.
- 41) MAG makes no guarantees as to the availability of any equipment or digital systems or communication facilities made available by it.
- 42) The Seller grants MAG the express authority at MAG's sole discretion, to rescind the Contract of Sale, withdraw any Vehicle from sale and/or negotiate the sale of any Vehicle by private treaty between any Buyer and the Seller.
- 43) Private treaty sales made under these Conditions are deemed to be sales by auction for the purpose of consumer protection. The sale of a Vehicle by private treaty shall incorporate these Conditions as if sold by auction
- 44) The Seller, or an agent of the seller, (limited to one person) is permitted to bid on the Seller's Vehicle, up to but not exceeding the Reserve Price for the Vehicle.
- 45) Each Buyer and Seller agrees that all right, title and interest in data collected and processed by MAG (including all database rights created by it) shall belong to MAG.
- 46) Sellers and Buyers agree that MAG shall have a lien on any Vehicle in respect of any monies due to it from the Seller or the Buyer (as relevant).
- 47) MAG shall have the right to deduct from the Sale Price its Fees or any other amount properly due and owing to it by the Seller whether the deductions relate to the said vehicle or not.
- 48) Where the Seller and Buyer have reached an agreement between themselves on the sale and purchase of a Vehicle which is on MAG's premises, both the Seller and Buyer agree that MAG has the right to charge both parties a Fee in relation to the Contract of Sale agreed.
- 49) In the event that there is any dispute between a Seller and a Buyer:
- a) the Seller and Buyer authorise MAG to retain the Sale Price and possession of the Vehicle until that dispute has been settled.
  - b) In the event that a Seller agrees to cancel the Contract of Sale, MAG shall return the Sale Price to the Buyer and the Vehicle shall remain in the ownership of the Seller to dispose of as it wishes.
  - c) In the event that the Seller agrees to reduce the Sale Price, MAG shall return the amount equivalent to the reduction in the Sale Price to the Buyer and pass the residue (less MAG's Fees) to the Seller and release the Vehicle to the Buyer.
  - d) The Seller agrees to reimburse MAG for any refund or out of pocket expenses incurred by MAG as apart of a dispute resolution.
  - e) The Buyer and the Seller both agree to cover MAG for any consequential losses incurred in the resolution of a dispute.

## Risks

- 50) All Vehicles are handled, driven (including during collection and delivery of the Vehicle) and left on MAG's premises at the risk of the Seller until acceptance and then the Buyer immediately upon acceptance.
- 51) MAG accepts no liability whatsoever in relation to the Vehicle whilst left on its premises.
- 52) MAG accepts no liability for personal property and documentation left inside a Vehicle and/or any subsequent loss.
- 58) MAG shall have no responsibility to check the accuracy of any information provided or made available to it including but not limited to: any listed in the entry form, catalogues, listings, appraisals and any other sales literature. Prospective Buyers rely on all such information solely at their own risk.
- 59) MAG shall accept no responsibility to safeguard any data not belonging to MAG.
- 60) At no time shall MAG's liability exceed the greater of the Sale Price or the Market Value of the Vehicle (that the claim or loss relates to).

## Additional Services

### Delivery/Collection

- 53) MAG will use reasonable care and skill in delivering and/or collecting the Vehicles, but all risk in the Vehicles during the transportation of them shall remain with the Seller and/or Buyer as relevant in accordance with these Conditions.

### Storage

- 54) MAG shall have the right to charge storage fees where any Vehicles remain on MAG's premises (including all land leased, owned or utilised by MAG) and where:
  - a) a Buyer leaves the Vehicle on MAG's premises for more than 3 (three) days after acceptance (including where the reason for them being left on MAG's premises is that the Buyer has failed to pay the Sale Price in respect of those Vehicles); or
  - b) where storage fees are chargeable in accordance with this clause 54), storage fees will be charged (unless agreed otherwise) from up to and including the date the Vehicles are removed.
- 55) Unless agreed otherwise, risk in such Vehicle shall at all times remain with the Seller and/or Buyer (whichever is relevant). Where Vehicles have been left or abandoned on MAG's premises, the Seller and/or the Buyer (whichever is relevant) hereby authorise MAG to sell the Vehicles.

### Liability

- 56) MAG shall have no liability to either a Buyer or a Seller for any loss of profit, loss of goodwill, loss of business, increased management costs, lost opportunity and special and consequential losses.
- 57) MAG shall have no liability for theft or damage to a Vehicle when on MAG's premises, except where the damage is caused by MAG's employees.

## General

- 61) These Conditions set out the entire agreement between MAG, the Seller and the Buyer, no other party has any rights under this contract.
- 62) These Conditions form the agreement in relation to the sale and purchase of a Vehicle and supersede any prior written or oral agreements, representations or understandings between the parties relating to the Vehicle.
- 63) If any clause, sub-clause, or part therefor, of these Conditions is found to be illegal, invalid or unenforceable than that provision will, to the extent required, be severed from these Conditions and will be ineffective. All other provisions of these Conditions will remain in full force and effect with such modifications as may be necessary to give effect to the remaining Conditions.
- 64) These Conditions shall be governed by English law.