



ASTON BARCLAY

WESTBURY

GENERAL CONDITIONS OF AUCTION

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ENTERING A VEHICLE FOR SALE, OR BEFORE BIDDING OR BUYING. YOU WILL BE BOUND BY THESE TERMS AND CONDITIONS. COPIES OF THESE TERMS AND CONDITIONS ARE AVAILABLE FROM ASTON BARCLAY WESTBURY UPON REQUEST, WITHOUT CHARGE.

Aston Barclay Westbury Limited
Brook Lane, Westbury, Wiltshire BA13 4EN
Tel: 01373 827777 Fax: 01373 864286
Website: www.astonbarclay.net

Interpretation

“The Auctioneer” means Aston Barclay Westbury Limited.

1. “**Tariff**” means the list of charges, fees and commissions that apply from time to time. Copies of the Tariff are exhibited in the Auction Hall and can be obtained from the Auctioneer’s general office.
2. “**Auction Premises**” means the Auctioneer’s site at Brook Lane, Westbury, Wiltshire BA13 4EN
3. “**Seller**” means the party (business or private) entering the Vehicle into the auction and on whose behalf the Vehicle is being sold.
4. “**Buyer**” means the person making the highest bid accepted by the Auctioneer either on the fall of the hammer or otherwise.
5. “**Reserve Price**” means the minimum sale price set by the Seller and notified to the Auctioneer for which the Vehicle may be sold.
6. “**Buyer’s fee**” means the fee payable by all Buyers for services provided by the Auctioneer including the compensation fund fee referred to in Part C, Paragraph 4 below.
7. “**Lien**” means the right to retain goods as security pending the payment of unpaid monies owing to the Auctioneer.
8. “**Vehicle**” means any form of motor car, motor cycle or other motorized vehicle or caravan or mechanical or electrical equipment or machinery

PART A.

CONDITIONS OF THE AGENCY CONTRACT BETWEEN THE AUCTIONEER AND THE SELLER.

1. The Auctioneer undertakes, subject to Condition 2 below, to auction the Vehicle entered for sale by the Seller. Any sale will be in accordance with the Conditions of the Contract of Sale set out at Part B below. The Auctioneer acts as agent of the Seller and any contract of sale, whether on the fall of the hammer or otherwise, will be between the Seller and the Buyer.
 2. (a) A Vehicle is entered for auction when it is brought onto the Auction Premises.
(b) The Auctioneer may, at his discretion, reject any Vehicle that has been entered in accordance with (a) above in any of the following events:
 - (i) The entry fee specified in the Tariff is not paid in full before the auction.
 - (ii) Where a Vehicle is to be sold with the benefit of an M.O.T. Certificate, and the Seller fails to deliver a current and valid Certificate to the Auctioneer before the auction.
 - (iii) The Seller fails to deliver the Vehicle’s Registration Document (Form V5C) and/or other proper document of ownership to the Auctioneer before the auction.
 - (iv) The Seller fails to deliver the Vehicle’s keys to the Auctioneer before the auction.
 - (v) The Seller fails fully to complete and sign the Auctioneer’s appropriate entry form and to deliver it to the Auctioneer before the auction.
 - (vi) Where the Vehicle is subject to a hire purchase, conditional sale or other finance interest, and the Seller fails to pay to the Auctioneer the sums referred to in Paragraph 4 below before the auction.
 - (c) Where a vehicle is rejected from the auction under (b) above, the rejection shall be deemed to be a withdrawal by the Seller, who will be liable to pay a charge to the Auctioneer under Paragraph 3 below.
 - (d) The Auctioneer reserves the absolute right to refuse any Vehicle for sale.
3. A Seller may only withdraw a Vehicle, once entered for auction, on payment to the Auctioneer of the full commission calculated on the Reserve Price or, where none is set, the minimum commission set out in the Tariff.
4. Where a Vehicle entered for auction is subject to a hire purchase, conditional sale or other finance interest the Seller shall, immediately on entering the Vehicle for auction, pay to the Auctioneer
 - (a) a negotiating fee equal to the compensation fund fee referred to in Part C, Paragraph 4 below, and
 - (b) an amount sufficient to discharge all finance outstanding on the Vehicle as confirmed in writing by the finance provider or providers to be the appropriate settlement sums.
5. A vehicle which is not sold will, unless it is removed beforehand, be entered in the Auctioneer’s next auction sale and a further entry fee as specified in the Tariff will be payable by the Seller.
6. Where the Auctioneer fails to sell a Vehicle at auction because no bid reaches the Reserve Price, the Auctioneer may make a provisional contract with the person who made the highest bid or with any other person who makes a similar offer, subject to Part B Paragraph 4 below.
7. Where a contract for the sale of a Vehicle is rescinded or revoked as a result of the Buyer failing to make payment in accordance with Part B Paragraph 5 below, the Auctioneer shall have a Lien on the Vehicle the subject of the contract, pending a full refund by the Seller to the Auctioneer of any sums due from the Seller including any part of the purchase price for the Vehicle already paid to the Seller by the Auctioneer.

8. On any sale of a Vehicle negotiated or agreed on the Auction Premises commission shall be payable to the Auctioneer on the sale in accordance with the Tariff.
9. Where any person is lawfully in possession of the Vehicle under these conditions, the Seller undertakes that he will at no time disturb or interfere with such possession.
10. The Auctioneer shall not be liable for any loss or damage to any vehicle on the Auction Premises where the Auctioneer, its servants or agents are not at fault and which was not reasonably foreseeable when the vehicle was brought onto the Auction Premises.
11. The Seller shall pay to the Auctioneer for each day or part thereof that the Seller's Vehicle is left on the Auction Premises the garaging charge specified in the Tariff.
12. Where a contract of sale is rescinded by the Buyer in accordance with Part B Paragraph 6 below, the Seller shall nevertheless be liable to pay the Auctioneer the commission that would otherwise have been payable in accordance with the Tariff had the contract not been so rescinded.
13. When remitting sale proceeds, the Auctioneer shall operate a self billing system and any VAT registered Seller, by entering a Vehicle for sale, shall accept this system and agree not to issue tax invoices in respect of transactions covered by this system.
14. The Seller shall be liable to ensure that the entry form is completed accurately and fully. In the event of a sale being rescinded or damages being claimed by reason of the information thereon being inaccurate or incomplete, then the Seller shall remain liable to the Auctioneer for commission on the sale notwithstanding that the sale has been rescinded or damages claimed.

PART B.

CONDITIONS OF THE CONTRACT OF SALE BETWEEN THE SELLER AND THE BUYER

1. The entry form completed by the Seller on entering a Vehicle for sale by the Auctioneer is the basis of the contract of sale and purchase between the Seller and the Buyer. The Seller agrees and guarantees that the information contained in the entry form is true and accurate. If the Seller informs the Auctioneer of any alteration to the information in the entry form prior to the Vehicle being offered for sale, this will be announced by the Auctioneer and will be binding on both the Seller and the Buyer.
2. All auctions are carried on subject to the right of the Seller, whether by himself his servants or agents, to bid for the Seller's Vehicle, subject to the Seller being liable for the due commission on sale on any bid at or above the Reserve Price.
3. (a) At the fall of the hammer a contract is made between the Seller and the Buyer and the Vehicle is then at the Buyer's risk (subject to the Auctioneer's responsibilities referred to in Part A Paragraph 10 above).
(b) On the making of a contract, the Buyer shall immediately give his name and address to the Auctioneer's employee or agent conducting the auction on the rostrum, together with a contract deposit in the sum specified in the Tariff.
4. Where a Vehicle is to be sold subject to a Reserve Price stated on the entry form and the bidding for that Vehicle does not reach its Reserve Price, the Auctioneer may make a provisional contract with the person who made the highest bid or with any other person who makes a similar offer, such contract being conditional upon the Seller agreeing it.
5. (a) In this clause the word "pay" shall mean handing to the Auctioneer cash or, if the Auctioneer so requires, a properly drawn cheque in favour of the Auctioneer or any other method of payment agreed by the Auctioneer, and the word "payment" shall be construed accordingly. It is an essential condition of the contract that payment must be made at the time stipulated. By reason of the EU Money Laundering Directive of 2001, the Auctioneer can under no circumstances accept cash payments or linked cash payments totalling more than €15,000 (or such other sum as may be specified in the Directive, or any amending directive or legislation from time to time)
(b) The Buyer shall pay the full price for the Vehicle to the Auctioneer by the end of the sale.
(c) The Auctioneer as agent of the Seller reserves the right not to allow any Vehicle to be removed from the Auction Premises by the Buyer until full payment has been made by the Buyer and any cheque or cheques handed to the Auctioneer by or for the Buyer have been cleared. Where a Buyer has bought more than one Vehicle, the Auctioneer reserves the right not to allow any of the Vehicles so bought to be removed until full payment has been made for all the Vehicles so bought and until all or any cheques handed to the Auctioneer by or for the Buyer have been cleared.
(d) Whether or not the Auctioneer has exercised its rights under (c) above, until the Buyer has paid in full for the Vehicle or Vehicles bought by him and any cheques handed to the Auctioneer have been cleared:-
 - (i) The Vehicle or Vehicles shall remain the property of the Seller, and (subject to the Auctioneer's responsibilities referred to in Part A Paragraph 10 above, and save where the loss or damage is the fault of the Seller or his servants or agents) the Buyer will pay for any loss or damage caused to the Vehicle or Vehicles.
 - (ii) Irrespective of any other remedies which the Seller may have against the Buyer, the Seller shall be entitled to require the Buyer to deliver the vehicle up to him.
 - (iii) The Buyer may agree to sell after the auction any Vehicle or Vehicles he has agreed to buy, prior to paying the Seller for the Vehicle(s) in part or in full. However, any such subsequent sale shall be deemed to be

made by the Buyer on the Seller's behalf (but without imposing any liability on the Seller to that subsequent buyer) and the Buyer shall retain all proceeds of such subsequent sale on the Seller's behalf until such time as the Buyer has paid for the Vehicle(s) in full.

- (e) Failure to make due payment to the Auctioneer under (b) above (including the dishonour of a cheque or cheques tendered by or on behalf of a Buyer) shall cause the contract deposit referred to in paragraph 3(b) above (if any) to be forfeited and the contract shall be considered breached by the Buyer and not binding on the Seller; additionally, if the Vehicle is re-sold, the defaulting Buyer shall be liable to pay the Auctioneer firstly the charges involved in the re-sale, and secondly the amount if any by which the sale price obtained for the Vehicle on re-sale is lower than the price agreed to be paid by the defaulting Buyer.
6. (a) (i) Prior to bidding and making a contract to buy a Vehicle, the Buyer shall satisfy himself as to the condition of the Vehicle.
- (ii) Subject to Paragraph 7 below, all conditions warranties or representations expressed or implied by statute, common law or otherwise in respect of the condition of the Vehicle are hereby excluded and the Buyer shall have no claim to terminate the contract or to recover damages in respect of any defect. In consumer sales where the Seller is acting in the course of a business, the Buyer's statutory rights are not affected by this exclusion.
- (b) Subject to (a) above, the Buyer shall have the right (subject to the Auctioneer's consent) to rescind the contract of sale where:
- (i) the Vehicle has been materially misrepresented on the entry form as to its age, or the Vehicle has been materially misdescribed on the entry form, or
 - (ii) the "mileage as per the odometer" having been warranted on the entry form, evidence is obtained and produced to the Auctioneer which shows that the Vehicle's true mileage materially exceeds the mileage shown on the odometer and the entry form. For the purposes of this sub-paragraph, there is no right to rescind the contract where the mileage has not been warranted, even when a service history, MOT or any other documentary evidence is produced which shows that the true mileage exceeds that shown on the odometer and the entry form; or
 - (iv) the condition implied by Section 12 of the Sale of Goods Act 1979 (as amended) – which provides that a seller must have the right to sell at the time when ownership is going to pass to a buyer – has been breached; or
 - (v) the Vehicle has been recorded as a total loss.
- (c) Where the Vehicle is sold by a Seller acting in the course of a business the terms implied by Section 14 of the Sale of Goods Act 1979 (as amended) – which provide that goods sold by a seller acting in the course of a business must be of a satisfactory quality and reasonably fit for the purpose– shall be excluded from the contract of sale (unless the sale is by a seller selling in the course of a business by private treaty sale rather than by a sale by auction).
- (d) A Buyer must as soon as reasonably possible check to the best of his ability for any defects or discrepancies which could give rise to a claim for rescission under Paragraph (b) above, and must return the Vehicle in question to the Auctioneer at the Auction Premises as soon as practically possible after discovering the matter complained of and in any event within a reasonable time after the sale, to enable the Auctioneer to investigate the complaint and determine the validity thereof. The Auctioneer will consider the complaint and make a decision thereon without delay; if the Buyer or Seller are not satisfied with the decision, then he or they must take the matter up with the other party to the sale/purchase and there shall be no liability on the Auctioneer arising from its decision.
- (e) Subject to Paragraphs 6 (b)(v) and/or except where it is sold by private treaty rather than by auction sale, a Vehicle which is "sold as seen" is sold with any faults it may have; no guarantees as to the mechanical condition of such Vehicle (whether express or implied by law) are given.
7. Where a Vehicle is sold in an unroadworthy condition within the meaning of Section 75 of the Road Traffic Act 1988 (as amended by Section 16 and Schedule 8 of the Road Traffic Act 1991 or subsequent legislation), the Buyer undertakes not to use such Vehicle on any road to which the public has access until such Vehicle has been put into a roadworthy condition as so defined.

PART C. TERMS AS BETWEEN THE AUCTIONEER AND THE BUYER.

- 1. (a) The Auctioneer may at his discretion refuse to accept a bid which is less than the Reserve Price.
 - (b) In the event of a dispute arising in respect of any bidding, the Auctioneer shall be at liberty to put the Vehicle up for sale again at the last undisputed bidding or withdraw the vehicle from the current auction.
2. The Auctioneer knows of no defect in the Seller's legal ownership of the Vehicle, except as specified on the entry form.
3. On the making of the contract of sale, the Buyer shall pay to the Auctioneer a Buyer's fee for each Vehicle bought, as specified in the Tariff.
4. Without prejudice to the Buyer's right to pursue all remedies available at law against the Seller for such defect, the Auctioneer will compensate the Buyer of a Vehicle where there is a defect in the legal ownership of the Vehicle, in the manner set out below:
- (a) For the purposes of this paragraph, legal ownership of a Vehicle shall be defective if the Seller did not have the right (whether knowingly or not) to transfer the full legal ownership of the Vehicle free of all Liens, claims, set offs, third party rights or encumbrances.
 - (b) (i) The Buyer having paid the Buyer's fee specified in the Tariff, the Auctioneer will compensate the Buyer for any loss caused to him by reason of the legal ownership of the Vehicle being found to be defective and

notified to the Auctioneer during the period of one year following the date of the contract of sale and otherwise subject to the terms set out below.

- (ii) The maximum liability of the Auctioneer to a Buyer in the event of a claim shall not exceed the price paid by the Buyer for the vehicle or (if the claim is made more than three months after the sale) the lower of the purchase price or the value of the Vehicle. The value of the Vehicle shall for this purpose be the trade value according to CAP Black Book of current market prices for the month in which the claim is made.
 - (iii) Unless the Auctioneer agrees otherwise in writing, any claim made by the Buyer shall be invalid (and the Auctioneer shall have no liability thereunder) if the Buyer fails to notify the Auctioneer –
 - (1) by the second weekday following the day of sale of the vehicle in question:
 - any difference between the chassis number of the Vehicle and that in the V5C supplied to the Buyer (or deemed to be supplied), and
 - any evidence that the chassis number has been altered or removed and in this respect the Buyer shall be on notice and shall be deemed (whether the Buyer has or not) to have inspected the Vehicle and chassis and the chassis number on or immediately after the sale; and
 - any other evidence which indicates a defect in the Seller's legal ownership of the Vehicle.
 - (2) or within three days of receipt of any notice (or of otherwise obtaining any knowledge) of any claim against the Buyer actually made or anticipated to be made in respect of which the Buyer claims or intends to claim compensation hereunder from the Auctioneer.
 - (3) It is a term of this compensation scheme that the Buyer shall, as soon as practicable after the receipt or intimation of any notice, forward such notice or intimation to the Auctioneer and shall at the same time give to the Auctioneer (in writing) full and sufficient information as to any verbal notice of any such claim against the Buyer and all such information evidence or the circumstances surrounding such claim as the Auctioneer shall require.
 - (c) The liability of the Auctioneer hereunder shall be limited to the direct pecuniary loss of the Vehicle arising from any defect in the Seller's legal ownership of the Vehicle, and not further or otherwise. Without prejudice to this, the Auctioneer shall not be liable for any consequential loss or damage to the Buyer (whether directly or indirectly) arising in any way whatsoever.
 - (d) The Auctioneer shall be entitled in its sole discretion at any time after a claim has been made to require the Buyer, upon payment to the Buyer of the sum specified in paragraph (b) (ii) above, to assign to the Auctioneer all rights in the Vehicle and against the Seller, and such payment to the Buyer by the Auctioneer shall be in full and final settlement of all liability to the Buyer hereunder, provided that if the Auctioneer shall have paid any sum or sums to any person other than the Buyer in respect of any claim hereunder the Auctioneer shall be entitled to take credit for the money so paid and shall reduce the amount payable to the Buyer.
5. The Auctioneer undertakes to give possession of the Vehicle to the Buyer as soon as full payment has been made therefor and any cheque or cheques handed to the Auctioneer have been cleared, and further undertakes that such possession will not be interfered with by the Auctioneer or by the Seller.
6. (a) The Auctioneer is not a party to the contract of sale between the Seller and the Buyer, and makes no assurances guarantees or representations save as set out above.
- (b) For the avoidance of doubt, as the Auctioneer is not a party to the contract of sale, he shall not be liable for any breach of term or condition, express or implied, as to the condition, quality or fitness of any Vehicle sold on the Auction Premises.
- (c) In circumstances where representations are made by the Auctioneer in respect of a Vehicle (including representations as to the odometer reading) on behalf of the Seller based on information given by the Seller, the Auctioneer makes such representations in good faith, but without verifying the information so given and without incurring personal liability therefor. The Buyer should note whether the odometer reading as disclosed on the entry form or notified to the Auctioneer by the Seller is warranted by the Seller or not.
7. The Auctioneer shall not be liable for any loss or damage to any vehicle on the Auction Premises where the Auctioneer, its servants or agents are not at fault or which was not reasonably foreseeable when the vehicle was brought onto the Auction Premises.
8. The Buyer shall pay to the Auctioneer, for each day or part thereof that the Buyer's vehicle is left on the Auction premises subsequent to the sale, the garaging charge specified in the Tariff.
9. Unless the Buyer notifies the Auctioneer otherwise prior to purchase, the Buyer shall be deemed to be a trade buyer and will only receive the vehicle's Form V5C (assuming the Seller has provided the same) for completion by him as necessary, with Section 9 having been removed. If he has notified the Auctioneer that he is a private buyer, he will receive Section 10 of the vehicle's Form V5C (assuming the Seller has provided the Form V5C) and the Auctioneer will complete the remainder of the form as agent for the Buyer on the basis of the information supplied by the Buyer.