



**ASTON BARCLAY**

Vehicle Remarketing

# GENERAL CONDITIONS OF AUCTION

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ENTERING A VEHICLE FOR SALE, OR BEFORE BIDDING ON OR BUYING A VEHICLE. YOU WILL BE BOUND BY THESE TERMS AND CONDITIONS.

COPIES OF THESE TERMS AND CONDITIONS ARE AVAILABLE FROM ALL ASTON BARCLAY PREMISES UPON REQUEST AND ARE ON THE COMPANY WEBSITE.

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## Interpretation

The following definitions apply in these Conditions:

1. “**Account**” means the account with the Auctioneer required by a Buyer (or prospective buyer) or Seller for the purpose of using the Auctioneer’s services or participating in Auctions containing information including (but not limited to) full details of: the Buyer or Seller’s corporate entity, representatives, contact and payment details.
2. “**Auction**” means a live auction for Vehicles held by the Auctioneer whether physically at an Auction Premises, Online Auctions, offsite auctions or any simultaneous hybrid of these auction styles.
3. “**Auctioneer**” means Aston Barclay Ltd or any employee, representative or agent nominated to conduct an Auction on its behalf.
4. “**Auction Premises**” means a site or platform where the Auctioneer holds its Auctions.
5. “**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
6. “**Buyer**” means the person making the highest bid at an Auction which is accepted by the Auctioneer either on the fall of the hammer, or otherwise as determined by the Auctioneer in accordance with these Conditions.
7. “**Buyer’s Fee**” means the fee payable by all Buyers to the Auctioneer in accordance with the Tariff.
8. “**Commission**” means the relevant commission set out in the Tariff.
9. “**Conditions**” means these general conditions of auction.
10. “**Contract Deposit**” means the deposit (in the amount set out in the Tariff) payable by the Buyer to secure the Vehicle(s) subject to a Contract for Sale.
11. “**Contract for Sale**” means the contract for the sale/purchase of a Vehicle at an Auction between a Buyer and Seller which shall come into effect immediately on the fall of the hammer, or as otherwise determined by the Auctioneer in accordance with these Conditions.
12. “**Entered for Auction**” means the point at which a Vehicle is considered to be listed for sale in an Auction and is therefore available for buyers to purchase.
13. “**Entry Form**” means the entry form submitted by the Seller to the Auctioneer setting out the key details of the Vehicle, or where instructed to do so, as completed by the Auctioneer on the Seller’s behalf with the information provided by the Seller.
14. “**Lien**” means the Auctioneer’s right to retain possession of the Vehicle as security pending the payment of the Purchase Price and other unpaid monies owing from the Buyer.
15. “**Online Auction**” means a live auction for Vehicles held by the Auctioneer through the Auctioneer’s online platforms “LIVE” and “Bid Now” or other digital auction platform offered by the Auctioneer on its Website from time to time.
16. “**Pay**” shall mean, where a payment is required to be made to the Auctioneer in accordance with these Conditions, an electronic payment by bank transfer by the Seller or Buyer from the same bank account referred to on its Account, accepted by the Auctioneer in full and cleared funds to the Auctioneer’s satisfaction (without any set-off or deduction), and the word “**payment**” or “**paid**” shall be construed accordingly.
17. “**Privacy Policy**” means the Auctioneer’s privacy policy as displayed on the Website from time to time.
18. “**Private Treaty Sale**” means a privately negotiated sale, where items are not sold through an Auction process.
19. “**Purchase Price**” has the meaning given to it in Part B Paragraph 4.
20. “**Reserve Price**” means the minimum sale price set by the Seller and notified to the Auctioneer by email for which the Vehicle may be sold at Auction.
21. “**Seller**” means the party (business, partnership or other corporate entity) entering the Vehicle for Auction and on whose behalf the Vehicle is being sold.
22. “**Tariff**” means the list of charges, fees and commissions that apply from time to time. Copies of the Tariff for Buyers are available at each Auction Premise and on the Website. The Auctioneer will provide the Seller with the applicable Tariff.
23. “**Vehicle**” means any form of motor car, light commercial vehicle, motorcycle, other motorized vehicle, caravan or mechanical or electrical equipment or machinery owned by a Seller being auctioned by the Auctioneer.

24. “**Vehicle Price**” means the Purchase Price of any Vehicle, less all sums due to the Auctioneer pursuant to the Conditions and Tariff.
25. “**Website**” means the Auctioneers website <https://www.astonbarclay.net/>.

## PART A

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

1. The Auctioneer undertakes to act as the Seller’s agent and auction the Vehicle(s) entered for sale by the Seller in accordance with these Conditions. The Seller warrants and represents that it holds clear and unencumbered title to each Vehicle, and that it will continue to hold such good title on the date of the Auction.
2. Unless otherwise agreed with the Auctioneer, the Seller shall deliver the Vehicle to the relevant Auction Premises.
3. The Seller must inform the Auctioneer in the Entry Form if a Vehicle has ever been considered a total loss, or has sustained or been subjected to:
  - (a) water damage;
  - (b) theft;
  - (c) fire damage
  - (d) previous accident damage;
  - (e) after market modifications; or
  - (f) NMR Clear.
4. Any Contract for Sale will be between the Seller and the Buyer. For the avoidance of doubt, the Auctioneer shall not be party to any Contract for Sale.
5. A Vehicle which is not sold during an Auction will, unless it is removed at the Seller’s instruction in accordance with Part A Paragraph 6 (Rejection) or Part A Paragraph 8 (Withdrawal), be entered in the Auctioneer’s next Auction, for a maximum of three consecutive Auctions (“**Maximum Entry Limit**”). If a Vehicle is not sold by the Maximum Entry Limit the Seller must notify the Auctioneer it would like to enter the Vehicle in further Auctions to achieve a sale, and the Auctioneer shall have the option (at its sole discretion) to accept or reject the Sellers request. If the Auctioneer accepts for the Vehicle to entered into further Auctions after the Maximum Entry Limit has been reached then the Auctioneer may impose any reasonable condition on the Seller and/or Vehicle in respect of that further Auction entry it deems fit. An entry fee (as specified in the Tariff) will be incurred by the Seller for each Auction the Vehicle is entered into.
6. The Auctioneer, at its discretion, reserves the right to reject any Vehicle prior to it being Entered for Auction if any of the following events occur:
  - (a) The entry fee (specified in the Tariff) is not paid by the Seller.
  - (b) Where a Vehicle is to be sold with the benefit of an M.O.T., the Seller fails to deliver a current and valid M.O.T. Certificate to the Auctioneer.
  - (c) The Seller fails to deliver the Vehicle’s Registration Document (Form V5C) and/or other proper document of ownership to the Auctioneer.
  - (d) The Seller fails to deliver the Vehicle’s keys to the Auctioneer.
  - (e) The Seller fails fully to complete, sign and deliver the Entry Form required by the Auctioneer.
  - (f) 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 Part A Paragraph 9 below.
7. Where a Vehicle is rejected from an Auction under Part A Paragraph 5, the rejection shall be deemed to be a withdrawal of the Vehicle by the Seller, who will be liable to pay all the Auctioneer’s charges, costs and expenses in accordance with the Tariff and Conditions.
8. Where a Vehicle is entered for Auction, a Seller may only withdraw that Vehicle 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.
9. Where a Vehicle is proposed to be Entered for Auction and that Vehicle is subject to a hire purchase, conditional sale or other finance interest the Seller shall prior to it being Entered for Auction pay to the Auctioneer:
  - (a) in relation to a private individual, the difference between the Purchase Price for the Vehicle and the figure for the settling finance on the Vehicle; or
  - (b) in relation to finance house, an amount sufficient to discharge all finance outstanding on the Vehicle as confirmed in writing by the finance house; and in both instances
  - (c) the Auctioneer’s administration charge notified to the Seller in respect of settling the finance.
10. Where the Auctioneer fails to sell a Vehicle at Auction because no bid reaches the Reserve Price, the Auctioneer has the Seller’s unconditional authority to make a “**provisional contract**” (which shall not be deemed to be binding on the Seller) with either:
  - (a) the person who made the highest bid for the Vehicle; or
  - (b) any other person who makes a similar bone fide offer,

and shall notify the Seller of the provisional contract. The Seller must communicate to the Auctioneer whether it accepts or rejects the provisional contract no later than 2 hours from the end of the sale. If the Seller accepts the provisional contract it will be converted into a binding Contract for Sale. If the Seller rejects the provisional contract with the proposed Buyer the provisional contract shall cease and have no effect, and the Auctioneer shall enter the Vehicle into the next Auction.

10. Where a Contract for Sale is breached, terminated, rescinded or revoked as a result of the Buyer failing to make any payment when due in accordance with these Conditions, then;
  - (a) the Seller and Buyer both warrant that the Auctioneer shall have a Lien on the Vehicle in its possession.
  - (b) the Auctioneer shall only release its Lien and return the Vehicle to the Seller once the Seller has paid to the Auctioneer in full any sums due (or the case of payments partially made, the outstanding balance) under the Conditions (including any of the Auctioneer's fees, costs and expenses); and
  - (c) the Buyer shall be liable for, and pay to the Auctioneer on demand, any resale loss below the Purchase Price agreed by the Buyer incurred as a result of having to re-Auction the Vehicle and associated fees.
11. On any sale of a Vehicle negotiated, agreed or effected through a Contract of Sale, Commission shall be payable to the Auctioneer by the Seller.
12. Where the Auctioneer is lawfully in possession of the Vehicle under these Conditions, the Seller undertakes that it will at no time unlawfully disturb or interfere with such possession.
13. Risk in the Vehicle passes to the Auctioneer when the Vehicle arrives at the Auction Premises. The Auctioneer shall not be liable for any loss or damage to any Vehicle on the Auction Premises where the Auctioneer, its employees, workers, servants or agents are not materially at fault and/or the cause of the loss or damage was not reasonably foreseeable when the Vehicle was brought onto the Auction Premises.
14. The Seller shall pay the storage charge (specified in the Tariff) to the Auctioneer for each day, or part thereof, that the Seller's Vehicle is present on the Auction Premises.
15. Where a Contract for Sale is rescinded by the Buyer in accordance with Part B Paragraph 8(b) below, the Seller shall nevertheless be liable to pay the Auctioneer the Commission that would otherwise have been payable had the Contract for Sale not been so rescinded.
16. Subject to the Buyer making payment to the Auctioneer for a Vehicle, the Auctioneer shall pay the Vehicle Price to the Seller by electronic transfer (less any finance payments paid by the Auctioneer on the Seller's behalf, and less any fees (including administration fees) due from the Seller to the Auctioneer within 5 Business Days of the relevant Contract for Sale for the Vehicle being concluded.
17. The Seller warrants and undertakes to the Auctioneer that the Entry Form is accurate and true. In the event of a Vehicle being rejected by the Auctioneer, due to the information in the Entry Form being inaccurate or untrue, then the Seller shall:
  - (a) remain liable to the Auctioneer for all Commission on the sale of the relevant Vehicle(s); and
  - (b) shall indemnify the Auctioneer against and covenants to pay the Auctioneer any other losses, liabilities, damages, expenses and costs the Auctioneer directly or indirectly occurs as a result of the Seller's breach of such warranty.
18. The Seller will indemnify the Auctioneer against, and covenants to pay the Auctioneer on demand an amount equal to:
  - (a) all losses (including but not limited to all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Auctioneer does or will incur or suffer;
  - (b) all claims or proceedings made or brought or threatened against the Auctioneer by the Buyer or any person and all losses, liabilities or costs (on a full indemnity basis), damages and expenses the Auctioneer does or will incur or suffer as a result of defending or settling any such actual or threatened claims or proceedings,in each case arising out of or in connection with a claim or Claim by the Buyer under Part C Paragraph 8.
19. Where the Seller is acting as a Consumer, the provisions of Part D of these Conditions apply.

## **PART B**

### **CONDITIONS OF THE CONTRACT FOR SALE BETWEEN THE SELLER AND THE BUYER**

1. The Entry Form completed by the Seller or by the Auctioneer using the information provided by the Seller on entering a Vehicle for sale by the Auctioneer shall be incorporated into, and form part of, the Contract for Sale between the Seller and the Buyer. The Seller warrants to the Buyer that the Entry Form is accurate and true.
2. If the Seller informs the Auctioneer of any alteration to the information in the Entry Form prior to the Vehicle being entered for sale, this will be announced by the Auctioneer in the Auction and will be binding on both the Seller and the Buyer.
3. A Seller, its authorised representatives, servants or agents shall not bid on the Seller's own Vehicle. Any such bid will be deemed invalid.
4. At the fall of the hammer, or otherwise as determined by the Auctioneer:
  - (a) the price offered by the Buyer for a Vehicle in an Auction which is accepted as the winning bid by the Auctioneer shall

- constitute the purchase price for that Vehicle (the "**Purchase Price**");
- (b) a Contract for Sale is made between the Seller and the Buyer; and
  - (c) risk in the Vehicle shall pass from the Auctioneer to the Buyer (subject to the Auctioneer's responsibilities under these Conditions).
5. On the creation of a Contract for Sale, the Buyer shall immediately identify themselves to the Auctioneer's representative conducting the Auction and provide any details necessary to match the Contract for Sale with their Account, together with the Contract Deposit.
  6. Where the Auctioneer fails to sell a Vehicle at Auction because no bid reaches the Reserve Price, the Auctioneer has the Seller's unconditional authority to make a provisional contract in accordance with Part A Paragraph 10.
  7.
    - (a) Where the Auctioneer stipulates a time for payment under these Conditions, time for payment shall be of the essence.
    - (b) The Buyer shall pay the Purchase Price and all relevant fees specified on the relevant invoice for the Vehicle to the Auctioneer within 48 hours of the relevant Auction closing.
    - (c) The Auctioneer reserves the right to stop any Vehicle being removed from the Auction Premises by the Buyer until payment of the Purchase Price and all relevant fees has been made and received in cleared funds by the Auctioneer. Where a Buyer has purchased more than one Vehicle, the Auctioneer reserves the right to stop any of the Vehicles the Buyer has purchased from being removed from any Auction Premises until payment (as aforesaid) has been made for all the Vehicles.
    - (d) Until the Buyer has paid (as aforesaid) for the all the Vehicle(s) purchased at all Auction Premises:
      - (i) Title to the Vehicle(s) shall remain with the Seller, and the Seller shall be entitled to require the Buyer to deliver the Vehicle(s) up to him.
      - (ii) The Buyer shall not be entitled to remove the Vehicle(s) from the Auction Premises.
      - (iii) Save where the loss or damage is the fault of the Seller or its servants or agents, after the Contract for Sale has been entered the Buyer will be responsible for any loss or damage caused to the Vehicle(s).
      - (iv) Title in a Vehicle shall pass to the Buyer on payment of the Purchase Price in full including any relevant fees in accordance with Part C Paragraph 6.
    - (e) Failure to make due payment to the Auctioneer under Part B Paragraph 7(b) shall cause the Contract Deposit referred to in Part B Paragraph 5 (if any) to be forfeited and the Contract for Sale shall, at the option of the Seller, be considered to have been breached by the Buyer and immediately terminable (at its option) by the Seller. If the relevant Vehicle is re-sold, the defaulting Buyer shall indemnify (and covenants to pay) the Seller for all charges, expenses and costs incurred by the Seller, or that it suffers, in each case arising from the re-sale of the Vehicle, and secondly the amount (if any) by which the Purchase Price, as liquidated damages for breach of the Contract for Sale, obtained for the Vehicle on re-sale is lower than the price agreed to be paid by the defaulting Buyer.
  8.
    - (a)
      - (i) Prior to bidding at an Auction or entering into a Contract for Sale to buy a Vehicle, the Buyer shall satisfy itself of the condition of the Vehicle.
      - (ii) Subject to Part B Paragraph 8(b) and to the extent permissible by law, 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 for Sale or to recover damages in respect of any defect.
    - (b) Subject to the Buyer fulfilling its obligation to inspect a Vehicle under Part B Paragraph 8(a)(i) to a reasonable standard, the Buyer shall have the right (subject to notifying the Auctioneer and Seller in writing) to rescind a Contract for Sale where:
      - (i) the Vehicle has been materially misrepresented on the Entry Form as to its age or make; or
      - (ii) the mileage (as per the Vehicle's odometer) having been warranted on the Entry Form (unless stated otherwise), is materially incorrect. In such an instance, the Buyer shall be obligated to provide substantive evidence to the Auctioneer on demand explaining why the Vehicle's mileage is incorrect and providing substantive evidence the Vehicle's true mileage materially exceeds the mileage shown on the odometer and the Entry Form. For the purposes of this Part B Paragraph 8(b)(ii), the Buyer shall have no right to rescind the Contract for Sale where the mileage has not been warranted, even when a service history, M.O.T. or any other documentary evidence is produced which shows that the true mileage exceeds that shown on the odometer and the Entry Form; or
      - (iii) 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 is proved to have been breached; or
      - (iv) the Buyer can provide verifiable evidence to the Auctioneer and Seller that the Vehicle has been recorded as a total loss or insurance write-off prior to the Contract for Sale being entered into and this is not stated on the Entry Form.
    - (c) The terms implied by Section 14 of the Sale of Goods Act 1979 (as amended) shall be excluded from the Contract for 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) Where the Buyer has purchased a Vehicle at Auction, the Buyer shall have 72 hours from the date of the Contract for Sale to assess the Vehicle for any defects or discrepancies against the information in the Entry Form and notify the Seller and Auctioneer in writing (giving reasonable detail of the defect or discrepancy) it wishes to exercise the right to rescind the Contract for Sale under Part B Paragraph 8(b).
    - (e) Where the Buyer gives a notice under Part B Paragraph 8(d), it must return the Vehicle in question to the Auctioneer at the Auction Premises from which it collected the Vehicle from as soon as practically possible (and not later than 7 days from giving notice under Part B Paragraph 8(d)) after discovering the defect, to enable the Auctioneer to investigate the complaint. Once the Vehicle has been delivered to the Auction Premises, the Auctioneer will assess the Vehicle and consider independently the merit of the Buyer's complaint. The Auctioneer shall convey its findings and proposed decision in writing to the Buyer and Seller as soon as reasonably practicable. The Auctioneer's advisory findings in respect of the

defect shall not be binding on, or legally enforceable by, the parties. If the Buyer or Seller are not satisfied with the Auctioneer's decision, then they are invited to engage the other party directly to resolve the dispute.

- (f) The Auctioneer excludes any liability in respect of its investigation, assessment and written findings under Part B Paragraph 8(e) and the Buyer and Seller agree and acknowledge that any findings by the Auctioneer shall be advisory in nature only.
  - (g) In the event a Vehicle is deemed to be sold by Private Treaty Sale rather than by auction sale, the Vehicle shall be deemed to be "sold as seen" with any faults, defects or damage it may have prior to the Contract for Sale being entered into. For the avoidance of doubt, the Auctioneer gives no guarantees, warranties or indemnities (whether express or implied by law or otherwise) as to the mechanical condition of such Vehicle.
9. Where a Vehicle is sold at Auction 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 such other applicable laws from time to time) ("**Road Traffic Legislation**"), the Buyer warrants and 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 in the Road Traffic Legislation.

## **PART C TERMS AS BETWEEN THE AUCTIONEER AND THE BUYER**

1. In order to validly enter an Auction and bid on Vehicles a Buyer must first register an Account with the Auctioneer, or where the Buyer is attending an Auction Premises in person without an Account, register with the Auctioneer, meet any compliance requirements notified to it and, if requested by the Auctioneer, provide a satisfactory deposit.
2. The Auctioneer may at its discretion refuse to accept a bid from a prospective buyer at Auction that is less than the Reserve Price.
3. In relation to Online Auctions the following additional terms apply to a prospective buyer:
  - (a) When using the Website or entering an Online Auction the user warrants and represents that they are:
    - (i) authorised to act on behalf of and bind the prospective buyer/Buyer;
    - (ii) over the age of 18;
  - (b) When a prospective buyer bids in an Online Auction, that bid is to purchase and collect (unless other arrangements are subsequently agreed between the parties) the Vehicle from the physical Auction Premises listed on the Vehicle's online description.
  - (c) By using the Auctioneer's Website the Buyer accepts, and undertakes to comply with, the Auctioneer's Terms of Website Use and Privacy Policy.
  - (d) If the Buyer's bid is accepted in an Online Auction and a Contract for Sale comes into effect, then the Buyer will receive confirmation from the Auctioneer of this either by email, Website notification or live through the online Auction platform being used by the Buyer.
  - (e) The Auctioneer will charge the Buyer the fee set out in the Tariff for each Online Auction it enters.
4. In the event of a dispute arising in respect of any bid by a potential buyer at Auction, the Auctioneer's decision shall be final, and it shall be entitled to:
  - (a) annul a disputed bid and continue the Auction; or
  - (b) withdraw the Vehicle subject to the disputed bid from the current Auction and enter it in a subsequent Auction.
5. As far as the Auctioneer is aware there is no defect in the Seller's legal ownership of the Vehicle, except as specified by the Seller on the Entry Form. The Buyer warrants that on, or immediately after, entering into a Contract for Sale it will inspect the Vehicle, its chassis and the chassis number and immediately notify any discrepancies to the Auctioneer.
6. On entering a Contract for Sale, the Buyer must pay to the Auctioneer a Buyer's Fee for each Vehicle purchased. Title in a Vehicle shall pass to the Buyer on payment in full of the Purchase Price.
7. The Buyer shall have the right to pursue all remedies available at law against the Seller in respect of a defective Vehicle purchased at Auction, subject to the limitations and exclusions in these Conditions, and the Auctioneer shall have no liability to the Buyer.
8.
  - (a) For the purposes of this Part C Paragraph 8, "**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 and encumbrances.
  - (b) The Seller or Auctioneer (dependant on who the claim is made against) will compensate the Buyer for certain liabilities the Buyer incurs as a result of a claim against it from the immediate third party purchaser of the Vehicle involving a proven defect in the legal ownership of the Vehicle (a "**Claim**"), in the manner set in this Part C Paragraph 8.
  - (c) If the Buyer makes a Claim against the Seller, then the Seller will compensate the Buyer for any loss caused to it by reason of a Claim, if such a Claim is notified to the Seller during the period of one year following the date of the Contract for Sale.
  - (d) If the Buyer makes a Claim against the Auctioneer, then subject to the Buyer complying with its obligations under these Conditions (including payment of the Buyer's Fee), the Auctioneer being able to undertake investigations in accordance with Part B Paragraph 8(e), and the limitation on the Auctioneer's liability in Part C Paragraphs 8(d) and 8(f), the Auctioneer will compensate in the manner and on the conditions set out below:

- (ii) unless the Auctioneer agrees otherwise in writing, any Claim made by the Buyer shall be invalid and have no effect (and the Auctioneer shall have no liability in respect of that Claim) if the Buyer fails to notify the Auctioneer,
    - (1) by the second Business Day following the day of sale of the Vehicle in question of:
      - any difference between the chassis number of the Vehicle and that in the V5C supplied to the Buyer (or deemed to be supplied); or
      - that the chassis number has been altered or removed; or
      - any other evidence which indicates a defect in the Seller's legal ownership of the Vehicle; or
    - (2) within three days of receipt of any notice (or of otherwise obtaining any actual or constructive knowledge) of any claim against the Buyer in respect of the legal ownership of a Vehicle which it intends to make a Claim against the Auctioneer for.
  - (iii) In the event the Auctioneer accepts liability for a Claim:
    - (1) the Auctioneer may, at its discretion, require the Buyer to assign all rights in the relevant Vehicle to the Auctioneer;
    - (2) the settlement made by the Auctioneer to the Buyer shall be in full and final settlement of the Claim, and if the Auctioneer has paid or is required to pay any sum(s) to any other person or third party other than the Buyer in respect of any Claim, the Auctioneer shall be entitled to deduct the amount paid from the aggregate total amount payable to the Buyer; and
    - (3) the conditions and limitations in Part C Paragraphs 8(d) to 8(f) shall apply.
- (e) The Auctioneer's liability under Part C Paragraph 8 is conditional on the Buyer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Buyer that may reasonably be considered likely to give rise to a liability of the Auctioneer or a Claim, the Buyer shall:
- (i) as soon as reasonably practicable, give written notice of the claim to the Auctioneer, specifying the nature of the claim in reasonable detail;
  - (ii) not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the Auctioneer;
  - (iii) give the Auctioneer and its professional advisers access at reasonable times (on reasonable prior notice) to the Buyer's premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Buyer, to enable the Auctioneer and its professional advisers to examine them and to take copies (at the Auctioneer's expense to assess the claim); and
  - (iv) be deemed to have given the Auctioneer sole authority to avoid, dispute, compromise, settle or defend the claim.
- (f) The liability of the Auctioneer under Part C Paragraph 8 shall be limited to the aggregate total of the Purchase Price and Buyer's Fee. Without prejudice to this, the Auctioneer shall not be liable for any consequential loss, loss of profits or damage to the Buyer's goodwill (whether directly or indirectly) arising in any way whatsoever.
9. The Auctioneer undertakes to transfer physical possession of the Vehicle to the Buyer as soon as reasonably practicable after payment of the Purchase Price has been made and conditions met in Part B Paragraph 7. The Auctioneer shall not be liable for any claims, loss or damage to any Vehicle on the Auction Premises where the Auctioneer, its employees, workers, servants or agents are not materially at fault.
10. The Auctioneer is not a party to a Contract for Sale and therefore it shall not be liable for any breach of term or provision (whether express or implied) in respect of the condition, quality or fitness of any Vehicle sold on the Auction Premises save for Part C Paragraph 5. In circumstances where information and data is made available by the Auctioneer in respect of a Vehicle (including the odometer reading) on behalf of the Seller, such information is based on the Seller's representations to the Auctioneer. The Auctioneer passes on Vehicle information to the Buyer without verifying veracity of the information and data. The Buyer should check whether the odometer reading as disclosed on the Entry Form, and/or whether the odometer reading provided is warranted by the Seller or not.
11. Subsequent to the relevant Contract for Sale being entered, if the Buyer fails to pay its invoice and collect the Vehicle within 72 hours, the Buyer shall pay to the Auctioneer a storage charge for each day or part thereof that the Buyer's Vehicle remains on the Auction Premises.
12. Unless the Buyer notifies the Auctioneer otherwise prior to entering into a Contract for Sale, 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 the Buyer as necessary, with Section 9 of the Form V5C having been removed. If the Buyer has notified the Auctioneer that it is a private buyer, the Buyer will be provided with 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 V5C as agent for the Buyer using the information supplied by the Buyer.
13. Where the Buyer is acting as a Consumer, the provisions of Part D of these Conditions apply.

## **PART D**

### **TERMS THAT ONLY APPLY TO CONSUMERS (IN ADDITION TO THE OTHER PROVISIONS OF THESE CONDITIONS), AND NOT TO BUSINESS CUSTOMERS**

1. Definitions that apply in this Part D:
  - (a) "**Consumer**" shall have the meaning given to it in the CRA.

- (b) “**CCRs**” means the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134).
- (c) “**CRA**” means the Consumer Rights Act 2015.
- (d) “**We**”, “**you**” and “**they**” means the Auctioneer, Seller and/or Buyer and shall be construed accordingly in the context of the clause in which the term is used.
2. We suggest you save an electronic version or retain a copy of these Conditions in case you need to refer back to them in the future. To be able to enter an Auction you will be required to accept these Conditions. The latest version of the Conditions applicable to you for an Auction will be available at each Auction Premises. We encourage you to read the Conditions carefully each time you attend an Auction Premises.
3. Consumers cannot enter our online Auctions and are only permitted to attend our physical Auction Premises.
4. You can find the key information about the Auctioneer, the Seller and their respective services for off-premises Auctions, in the Entry Form (Seller only), Contract for Sale and/or on the Website.
5. A Buyer or Seller shall not be a Consumer under the CRA, nor shall they qualify for any protections or rights under the CRA, where:
- (a) the Vehicle being sold/purchased is second-hand and sold at *public auction* (as defined in the CCRs); and
- (b) the Seller or Buyer has the opportunity to attend the sale of a Vehicle in person.
6. If the Seller is a Consumer, the contractual terms between the Seller and:
- (a) the Buyer are set out in Parts B and E of these Conditions and the Contract for Sale; and
- (b) the Auctioneer are set out in the relevant Parts of these Conditions, the Entry Form and in some circumstances on the Website (where additional services are requested).
7. If the Buyer is a Consumer, the contractual terms between the Buyer and:
- (a) the Seller are set out in Parts B and E of these Conditions and the Contract for Sale; and
- (b) the Auctioneer are set out in Parts C and E of these Conditions, your Account and in some circumstances on the Website (where additional services are requested).
8. Summary of a Consumer’s key legal rights in respect of any services provided by the Auctioneer:
- Where the product a Consumer’s is purchasing from the Auctioneer is services, the CRA says:

  - You can ask us to repeat or fix a service if it’s not carried out with reasonable care and skill, or get some money back if we can’t fix it.
  - If a price hasn’t been agreed upfront, what you’re asked to pay must be reasonable.
  - If a time hasn’t been agreed upfront, it must be carried out within a reasonable time.
9. If the Buyer is a Consumer, under the CCRs you have the following cancellation rights in respect of on-line services provided by the Auctioneer or Seller (referred to as the **relevant party** in this clause):
- You have the right to cancel a service within 14 days without giving any reason. The cancellation period will expire after 14 days from the earlier of the day you sign up for or purchase the services. To exercise the right to cancel, you must inform the relevant party of your decision to cancel the service by a clear statement (e.g. a letter sent by post or e-mail). To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired. If you cancel a service, the relevant party will reimburse to you the value of the payment for the cancelled services received from you, subject to the sentence below. The relevant party may make a deduction from the reimbursement to cover the cost of any services or part of the services already provided to you. The relevant party will make the reimbursement without undue delay, and not later than 14 days after receiving valid notice of your cancellation. The relevant party will make the reimbursement using the same means of payment as you used for the initial transaction.
10. The Auctioneer shall use any personal data given to it in accordance with its Privacy Policy.



11. The Consumer should be aware that by entering into a Contract for Sale it is entering into a contract in respect of the transfer of title of the relevant Vehicle(s) with the Buyer or Seller (as applicable), and acknowledges and accepts that the Auctioneer is not party to any Contract for Sale. The Contract for Sale shall contain all the relevant information about the identity and contact details and other contractual provisions between the Seller and the Buyer.

## **PART E**

### **GENERAL TERMS APPLICABLE TO ALL PARTS OF THESE CONDITONS**

1. Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:
  - (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
2. The total liability of the Auctioneer under these Conditions to:
  - (a) a Buyer, in the event of any claim (other than a Claim under Part C Paragraph 8) shall not exceed the Purchase Price paid by the Buyer for that Vehicle; and
  - (b) a Seller, in the event of any claim shall, in relation to each Vehicle, not exceed the fees paid by the Seller to the Auctioneer in respect of the Auction of that Vehicle.
3. The Auctioneer operates a self-billing system to remit the proceeds of Vehicles sold at Auction. If a Seller is VAT registered it accepts the Auctioneer's self-billing system shall be used and agrees not to issue tax invoices in respect of transactions covered by the system.
4. When attending an Auction Premises the Seller and Buyer shall each procure their respective employees, representatives and agents comply at all times with the Auctioneer's security, health & safety, fire and other policies in place.
5. These Conditions apply to the exclusion of any other terms that the Seller or Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Seller and Buyer waive any right they might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents they supply to the Auctioneer that are inconsistent with these Conditions.
6. The Auctioneer may replace, update, amend or vary these Conditions from time to time.
7. If any provision or part-provision of the Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Conditions.
8. Nothing in the Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party (other than the Auctioneer as agent of the Seller in accordance with Part A).
9. The Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
10. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Conditions or its subject matter or formation.

**Aston Barclay Ltd**

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