

Buyer Terms

1. APPLICATION

1.1 **Auction Terms:** Clauses 2 and 3 and the general terms in clauses 6 to 15 apply where the Buyer purchases Goods:

(a) at Auction; or

(b) where Goods were offered for sale by Auction, the Buyer participated in that Auction and the Goods are sold before the end of the first working day following the day of the Auction.

1.2 **Buy Now Terms:** Clauses 4 to 15 apply:

(a) where the Buyer purchases Goods from Turners using Buy Now or on Trade Me;

(b) after any Auction to a Buyer who did not participate in the Auction; or

(c) after the end of the first working day following the day of the Auction.

2. PRE AUCTION

2.1 **Registration:** Any person who wishes to bid on Goods for sale by Auction must either register at the auctioneer's office or register to use Turners Live at www.turners.co.nz prior to commencement of bidding. Turners reserve the right to request identification from or deny registration to any intending Buyer without giving any reason.

2.2 **Reserve Price:** Subject to clause 2.4 all Goods offered for sale at Auction are subject to a reserve price.

2.3 **Bids and Lots:** Turners has full and sole discretion to refuse any bid, to divide any lot, to combine any two or more lots, to withdraw any lot or lots (whether or not the reserve has been reached) or to change the order of sale shown in the catalogue without in any case giving any reason. Bids may also be placed by a registered user of Turners Live at www.turners.co.nz.

2.4 **Changes to published terms:** Turners reserves the right to add additional conditions of sale to any Auction. Turners also reserve the right to modify or withdraw any of the Auction Terms. In such circumstances, additions, modifications or withdrawals will be announced at the commencement of the Auction or any time during an Auction. In the event of there being a variation or conflict between descriptions published prior to any Auction, including in any catalogue and the particulars given by the auctioneer at Auction then the details given by the auctioneer shall prevail.

2.5 **Variations to Terms:** Any time before an Auction commences any person may request that Turners vary the terms of the Auction for that person in the event that person is the Buyer. Variations to the terms shall only be effective if the variation is authorised by Turners in writing prior to the Auction and if that person is the Buyer.

3. DURING THE AUCTION

3.1 **Announcements:** The Buyer acknowledges that:

(a) during an Auction the auctioneer may place a vendor bid at any price below the reserve price and if that occurs the auctioneer will announce that it is a bid on behalf of the Vendor;

(b) Turners will publish, display or announce whether the Vendor of the Goods is selling the Goods in trade as a supplier (within the meaning of the Consumer Guarantees Act 1993) prior to and during the Auction.

3.2 **Sale:** Once the reserve has been achieved or exceeded the highest bidder shall be the Buyer. On the fall of the gavel or any other similar act which concludes the bidding the Buyer shall have entered into an unconditional agreement to purchase the Goods on the Buyer Terms.

4. SALE OF GOODS AND PAYMENT

4.1 **Sale:** The Buyer has entered into an unconditional agreement to purchase the Goods on the Buy Now Terms:

(a) once a written agreement has been entered into by Turners and the Buyer; or

(b) once Trade Me notifies the Buyer that the Goods have been sold to the Buyer.

4.2 **Payment:** Subject to clause 5 (Trade In Vehicles), the Buyer must pay the Purchase Price for the Goods together with any Fees due to Turners in cleared funds by cash or electronic transfer to the bank account nominated by Turners within 1 working day from the day the Goods are sold to the Buyer. (Please note that we do not accept cheques. We will no longer be issuing cheques from the 31st of July 2021. Please also check with your banks as to when they will stop processing cheques as well.)

5. TRADE IN VEHICLES

5.1 **Application:** This clause applies if the Buyer purchases a vehicle from Turners using Buy Now.

5.2 **Agreement:** If the Trade In Section has been completed the Buyer offers to sell and Turners agrees to purchase the vehicle specified in that section (**Trade In Vehicle**) on the terms and conditions set out in that sale and purchase agreement and on the Buy Now Terms. In the event of any conflict between the sale and purchase agreement and Buy Now Terms, the Buy Now Terms shall apply.

5.3 **Payment:** The Buyer must pay the Purchase Price for the Goods together with any Fees due to Turners less the trade in price shown in the sale and purchase agreement by payment in cleared funds by cash or electronic transfer to the bank account nominated by Turners within 1 working day from the day the Goods are sold to the Buyer. (Please note that we do not accept cheques. We will no longer be issuing cheques from the 31st of July 2021. Please also check with your banks as to when they will stop processing cheques as well.)

5.4 **Warranties:** At the time the Buyer entered into an agreement with Turners to purchase a vehicle and again on the date that Turner's takes possession of the Trade In Vehicle the Buyer represents and warrants to Turner's that:

(a) the Buyer is the sole legal and beneficial owner of the Trade In Vehicle;

(b) the Trade In Vehicle is free of all mortgages, charges, security interests as defined in the PPSA and other encumbrances;

(c) the details set out in the Trade In Section are complete and accurate in all respects;

(d) in all respects the condition and standard of the Trade In Vehicle is the same or better than it was at the date of this agreement;

- (e) the Trade In Vehicle is not liable to be seized or forfeited to any person and that that all securities and monies owed against the Trade In Vehicle and that all security interests as defined by the PPSA (registered or unregistered) over the Trade In Vehicle have been disclosed in writing to Turners;
- (f) all details of the Trade In Vehicle provided by the Vendor to Turners are true and correct; and
- (g) the Vendor has disclosed to Turners all information concerning the Trade In Vehicle including ownership records, details of any mechanical fault, details of any accident, water or other damage to the Trade In Vehicle notwithstanding the repair or replacement of the damaged part of the Trade In Vehicle, any chassis repair and/or whether the Trade In Vehicle has ever been an insurance write off.

5.5 **Breach:** If Turner's in its sole and absolute discretion at any time considers that any of the warranties in clause 5.4 have or may be breached (to any extent) and/or any other term of the Buyer Terms have been or is likely to be breached by the Buyer then Turners may:

- (a) after the date of this agreement but before giving possession of the vehicle and taking delivery of the Trade In Vehicle:
 - (i) proceed with the sale and purchase of the vehicle and Trade In Vehicle but adjust the Trade In Value to compensate for any loss or damage suffered or likely to be suffered as a result of a breach of any of the warranties including reducing the Trade In Value by an amount equal to the amount required to discharge any security interest over the Trade In Vehicle;
 - (ii) sever and terminate the parts of the Buyer Terms that relate to the Trade In Vehicle and require to you complete the purchase of the vehicle except that you must pay the Purchase Price in full (no offset of the Trade In Value);
 - (iii) terminate this agreement;
- (b) after giving possession of the vehicle and taking delivery of the Trade In Vehicle and in addition to Turner's rights under clauses 5.5(a) and Turners rights to terminate this agreement, Turners may sue the Buyer for any direct or indirect loss or damage suffered (including legal costs on an indemnity basis), and including reasonable storage costs which result from the breach or likely breach of any of the warranties in clause 5.3.

5.6 **Risk:** Risk in and ownership of the Trade In vehicle shall pass to Turner's when Turner's accepts delivery of the Trade In Vehicle.

5.7 **Offset:** Turner's shall offset the Trade In Value against any amount to discharge any security interest (as defined in the PPSA), Fees due to Turners, Purchase Price of any Goods purchased from Turners. In no circumstances shall Turners have any obligation to pay the Trade In Value to the Buyer.

GENERAL TERMS

6. CONTRACT

6.1 **Agent:** The Buyer acknowledges that Turners is the Vendor's agent and that any sale of the Goods to a Buyer is an agreement between the Vendor and Buyer.

6.2 **Buyer Fees/Payment:** The Buyer shall pay Turners the Purchase Price for Goods plus any Fees and other amounts due under these Buyer Terms. All amounts must be paid to Turner's in cleared funds, by cash without set off or deduction within 1 working day from the day that the Goods are sold.

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7. RISK, TITLE AND DELIVERY

7.1 **Risk:** Risk in all Goods shall pass to the Buyer at the time the Buyer collects the Goods from Turners.

7.2 **Title:** Goods do not become the property of the Buyer until Turners receives payment of all amounts due from the Buyer to Turners. Turners reserve the right to withhold delivery of the Goods until cleared funds are received and the Buyer complies with all of its obligations under the Buyer Terms.

7.3 **Delivery:** The Buyer shall collect the Goods from Turners on the date title passes. If title does not pass on the date risk passes to Turners the Buyer shall pay Turners storage charges set out in the Services and Fee Schedule.

8. WARRANTIES AND REPRESENTATIONS

8.1 **Representations:** The Buyer acknowledges and agrees that the Buyer has not relied upon any representation made by the Vendor or Turners and has undertaken its/their own independent inquiries into the Goods and in making the decision to purchase the Goods.

8.2 **Special Use:** Unless disclosed to Turners in writing prior to any sale, the Buyer agrees that it has not communicated any special circumstances to Turners as to the use to which any Goods are to be put.

8.3 **Turners Warranty:** Subject to clause 9.1, Turners warrants that at the time of sale that Turners are authorised to sell the Vehicle and that:

(a) Turners will apply the Purchase Price to repay any person who has a Financing Statement registered against the Goods; and

(b) If the Purchase Price is insufficient to discharge all of the Financing Statements registered at the time the Goods are sold to the Buyer, then contemporaneously with the Buyer delivering the Goods to Turners, Turners shall, subject to the Goods being in the same or similar condition as when they were sold to the Buyer:

(i) purchase the Goods from the Buyer for the Purchase Price subject to the Financing Statement; and

(ii) refund Fees, if any, the Buyer has paid to Turners in relation to the Goods, or

(c) any Financing Statements which will not be discharged have been disclosed in full to the Buyer.

8.4 **No Warranties:** Subject to clause 9.1 the Goods are offered for sale "as is, where is" and no representations or warranties, either express or implied are given by Turners or the Vendor:

(a) as to merchantability or fitness for purpose or quality or condition; and

(b) where the Goods are vehicles, as to:

(i) the condition, mileage, description or performance characteristics of the Vehicle notwithstanding information published in any catalogue or advertisement;

(ii) either the distance travelled or the accuracy of the odometer reading of any vehicle;

(iii) the past use of any vehicle;

(iv) whether the vehicle has or has not suffered flood or water damage, structural, chassis or other repair.

9. CONSUMER GUARANTEES ACT

9.1 **No Contracting Out:** Subject to clause 11.1, where the Consumer Guarantees Act 1993 applies nothing in the Buyer Terms shall contract out of or shall limit the application of that Act.

9.2 **Relevant Circumstances:** Where the Consumer Guarantees Act 1993 does apply the Buyer acknowledges that the following are relevant circumstances in relation to the supply of the Goods and may reduce the acceptable quality guarantee under the Consumer Guarantees Act 1993:

- (a) any information Turners has disclosed on behalf of the Vendor concerning the nature of the Vendor (for example whether the Vendor has used the Goods itself), the context in which the Vendor offers to supply the Goods;
- (b) where the Goods are a vehicle:
 - (i) the results of any Vehicle Condition Report;
 - (ii) any defects or observations in relation to the Vehicle and which are recorded on the CIN card or notified by Turners have been taken into account by the Buyer before bidding on the vehicle;
 - (iii) notification of any defects is an indication to the Buyer that further defects may exist.

10. VEHICLES

10.1 **Buyer Inspection:** A vehicle is complicated machinery that may contain inherent and latent defects which can only be discovered by a thorough pre purchase inspection. The Buyer acknowledges and agrees that:

- (a) the responsibility for examining and assessing the condition of any vehicle rests with the Buyer;
- (b) Turners recommends that the Buyer carry out a pre purchase inspection even where no defect disclosures have been made by the Vendor; and
- (c) the Buyer has had every opportunity to carry out an inspection and its own evaluation of the Goods and their quality prior to purchasing the Goods.

10.2 **Vehicle Condition Report:** Any Vehicle Condition Report attached to the Vehicle has been prepared following a limited and basic inspection of the Vehicle. When preparing the Vehicle Condition Report, no part of the Vehicle was dismantled, no diagnostic testing was undertaken and the Vehicle was driven up to 50km/h from a cold start. The Vendor and Turners recommend that any interested Buyer arrange a full mechanical inspection of the Vehicle prior to purchase.

10.3 Warrant or certificate of fitness:

- (a) Where any vehicle does not at the time of delivery have a current certificate or warrant of fitness the Buyer undertakes to Turners that they will not, except for the purpose of obtaining in-service certification, operate the vehicle until it has been inspected and certified for in service fitness as provided for in Rule 9.12(4) of the Land Transport Rule 35001/1 Vehicle Standards Compliance 2002.
- (b) If the vehicle has at the time of delivery a current certificate or warrant of fitness issued more than one month prior to delivery then the buyer acknowledges and accepts this.

10.4 **CIN:** As soon as practicable after the purchase of a vehicle the Buyer must sign a written acknowledgement that Turners has provided the Buyer with a copy of the Consumer Information Notice which was attached to the vehicle or displayed online.

10.5 **Change of ownership:** Every Buyer must supply to Turners before taking delivery of a Vehicle the information necessary to enable a change of ownership to be registered. Turners reserve the right to delay release of the Vehicle until this is done.

11. EXCLUSIONS AND LIMITATIONS

11.1 **In Trade Buyer:** Where the Vendor is In Trade and the Buyer has acquired the Goods in trade, the Vendor, Turners and the Buyer agree to contract out of the Consumer Guarantees Act 1993 and sections 9 (Misleading and deceptive conduct generally), 12A (unsubstantiated representations), and 13 (False or misleading representations) of the Fair Trading Act 1986.

11.2 **Generally:** If the Consumer Guarantees Act 1993 does not apply to the sale of the Goods or if the Vendor and Buyer have contracted out of the Consumer Guarantees Act 1993:

(a) Turners excludes any liability for any representation(s) or statement(s) that may be made or implied by Turners or the Vendor;

(b) in the case of any dispute relating to the Goods or the sale of the Goods any remedy of the Buyer shall be against the Vendor only and under no circumstances (including an action for breach of any fundamental obligation) shall any remedy lie against Turners or any agent, contractor or employee of Turners.

11.3 **Sale of Goods Act Exclusion:** The warranties or conditions implied by the Sale of Goods Act 1908 shall not apply to the sale of the Goods.

12. BUYER CLAIMS

12.1 **Application:** This clause applies if a Buyer:

(a) after being bound to complete a purchase, returns any Goods to Turners and Turners accepts the return of the Goods for any reason; and

(b) alleges that there has or may have been:

(i) a breach of any warranties relating to the Goods including statutory warranties, conditions or guarantees which apply to the sale of the Goods, or a breach of any other obligation at law including a breach of the Fair Trading Act 1986, Consumer Guarantees Act 1993, any applicable consumer law or standard, the Motor Vehicle Sales Act 2003 or any other law or regulation whatsoever);

(ii) a failure by the Vendor to comply with its agreement with Turners.

12.2 **Buyer Claims:** In the event of a Buyer Claim the Buyer may:

(a) request the Vendor's details from Turners for the purpose of pursuing any claim directly against the Vendor;

(b) where Turners confirm that they are willing and authorised to deal with a Buyer claim, discuss the claim with Turners with a view to settling the claim.

13. DEFAULT AND TERMINATION

13.1 **Default Interest:** The Buyer acknowledges that payment of all amounts due pursuant to these terms on time is essential to Turners. The Buyer will pay Turners interest, if demanded, on any amount due but not paid, from the due date until the date of payment at 15% per annum, calculated daily.

13.2 **Termination:** If the Buyer fails to collect the Goods or pay for the Goods on the date payment is due, Turners may without further notice terminate this agreement.

13.3 **Consequences of Termination:** If this agreement is terminated by Turners under clause 13.2:

(a) the Buyer shall forfeit the deposit (if any) paid to Turners, in which case the Buyer acknowledges and agrees that the deposit represents a reasonable pre estimate of Turners loss; and

(b) the termination will be without prejudice to any rights accrued or obligations owing by the Buyer to Turners as at the date of termination and without limitation to those rights Turners may, at its sole discretion:

(i) re-sell the Goods by any means and if by auction, at no reserve, and claim from the Buyer all costs and any loss, including any loss on resale;

(ii) sue the Buyer for the full Purchase Price of the Goods plus interest pursuant to clause 13.1 and costs (including legal costs on an indemnity basis) and including reasonable storage costs.

14. GENERAL

14.1 **Electronic Messages:** The Buyer acknowledges and agrees that Turners may store personal information and provide the Buyer with unsolicited electronic messages on the terms published on Turners website at www.turners.co.nz, available from any of Turners premises or will be made available by mail on request.

14.2 **Costs:** Turners may recover from the Buyer any and all costs incurred by Turners in enforcing the provisions of these terms, including debt collection costs and any legal costs as between solicitor and client on an indemnity basis.

14.3 **Privity:** Clauses in the Buyer Terms which are for the benefit of Turners or the Vendor are intended to be for the benefit of Turners, Turner's employees, agents, contractors and assigns jointly and severally and the provisions of the Contracts (Privity) Act 1982 apply accordingly.

14.4 **Entire agreement:** The Buyer Terms constitute the entire agreement between the parties.

15. DEFINITIONS

15.1 Capitalised words on these terms will apply in addition to the following definitions unless the context otherwise requires:

Auction means the sale of Goods by public auction carried out by a Turners auctioneer.

Auction Terms mean the terms in clauses 2 to 3 and the general terms in clauses 6 to 15.

Buy Now Terms mean the terms in clauses 4 to 15.

Buyer means the person who has purchased Goods.

Buyer Claim has the meaning set out in clause 12.1.

Buyer Terms means the terms set out in this agreement.

Consumer has the meaning set out in the Consumer Guarantees Act 1993.

Fees means the fees payable by the Buyer and displayed in the auction rooms, auction catalogue, online at www.turners.co.nz and set out in the Services and Fee Schedule.

Financing Statements means any financing statement(s) as defined in the PPSA, which are prima facie valid and are registered on the PPSR at the time Goods are sold.

Goods means personal property sold to the Buyer on these terms.

In Trade means whether the Vendor of the goods is selling the goods in trade as a supplier (within the meaning of the Consumer Guarantees Act 1993).

PPSA means Personal Property Securities Act 1999.

PPSR means the Personal Property Securities Register required by the PPSA.

Purchase Price means the amount a Buyer is obliged to pay for the Goods.

Services and Fee Schedule means the schedule of services and the price of those services offered by Turners to Buyers.

Trade Me means the where the Goods are offered for sale by Turners on www.trademe.co.nz whether by "online auction" or "buy now".

Vehicle Condition Report means the vehicle inspection described in the Services and Fee Schedule.

Vendor means the person who has authorised Turners to sell any Goods.