

# TERMS & CONDITIONS FOR BIDDING AND PURCHASING ITEMS AT MANHEIM

## Terms & Conditions of Auction Sale

I, on my own behalf, and where I am acting on behalf of another party, on that party's behalf, in consideration of being permitted to bid for goods or other items (Items) at this auction, agree and acknowledge as follows:

- A. I declare the information provided by me on the Buyer Registration Card is correct.
  - B. I declare I am authorised to act on behalf of any party nominated on the Buyer Registration Card in relation to any Items for which I may bid, or subsequently buy.
  - C. I have read these Terms & Conditions and understand if I bid at auction it is subject to these Terms & Conditions and any special conditions announced prior to the auction by Manheim. If I am the successful bidder I acknowledge I am bound to purchase the Items I have successfully bid for in accordance with these Terms & Conditions and any special conditions announced prior to the auction.
  - D. I acknowledge Manheim as the auctioneer, is acting as an agent for the Seller. If any dispute arises in relation to the supply of an Item(s) (whether before or after Manheim has paid the Seller the proceeds of any sale) the dispute will be between the prospective buyer and the Seller and I acknowledge and agree Manheim will be excluded from any subsequent action or court proceedings. If Manheim is subsequently included in any such action or proceedings, I agree to indemnify Manheim for any liability or costs incurred by Manheim in relation to such action or proceedings, except to the extent caused or contributed to by the negligence of Manheim.
  - E. Notwithstanding clause D and subject to clauses 21 and 24, if any dispute arises with the Seller, I agree to allow Manheim to attempt to mediate and resolve the matter with the Seller and
    - (i) if Manheim, acting reasonably, determines the most appropriate resolution of the matter is the cancellation of sale and refund of purchase monies paid I will have no further claim or recourse against Manheim or the Seller upon refund of the purchase monies; and
    - (ii) I will not institute other action or proceedings unless Manheim advises it is unable to assist further in the resolution of the matter, or has failed to resolve the matter within a reasonable period of time having regard to all relevant circumstances. Nothing in this clause E(ii) prevents a party from seeking urgent interim relief, such as an interim injunction, subject to the final resolution of any dispute.
1. The auction period for an Item is completed upon the acceptance and declaration by Manheim of the highest bid, whether by fall of the hammer or otherwise at the time and date nominated for that Item by Manheim (Auction Close).
  2. The bidder with the highest bid at the Auction Close will purchase the Item at the price specified in the bid, subject to Seller acceptance, but if any dispute arises to the last or highest bid, Manheim (at its sole discretion), may auction or resell the Item.
  3. Each bid constitutes an irrevocable offer by the bidder to purchase the Item at the specified price. Once a bid is made, it cannot be revoked and remains open for acceptance by the Seller or Manheim until the sale is completed.
  4. A bid is taken to be a representation and warranty by the Buyer that the Bid is a genuine offer to purchase the Item at the price specified. If any member of Manheim becomes aware of any form of collusive activity by a Buyer, Manheim may terminate the Buyer's right to participate in the Auction, or if the Buyer's Bid has been accepted by Manheim, Manheim may terminate any contracts that were entered into by the Buyer relating to the Bid.
  5. All auction bid prices are GST inclusive unless the owner of the goods is not registered or required to be registered for GST (in which case no GST is payable on the sale of the Item). Items to be sold on behalf of owners not registered or required to be registered for GST will be separately identified in the catalogue.
  6. The Buyer must disclose to Manheim at the time of registration as a Bidder and prior to any bidding, that there is an intention to purchase an Item for export purposes. The ability of a Buyer to purchase in this manner is at the discretion of Manheim and subject to the Seller's consent. In the event this type of purchase is permitted the Buyer is required to comply with all legislated disclosure requirements and Manheim's reasonable directions.
  7. All bids submitted must be bona fide and must not be fixed or adjusted in collusion (or otherwise in accordance with any arrangement or agreement) with any third party (including but not limited to providing information relating to intended bids or attempting to manipulate the sale process in any way, or otherwise contravene or attempt to contravene Part IV of the Competition and Consumer Act 2010 (Cth)). If Manheim becomes aware of any form of collusive activity by a bidder, Manheim may terminate the bidder's right to participate in the auction, or if Manheim has accepted the bidder's bid, Manheim may terminate any contracts entered into by the bidder relating to the bid.
  8. All persons entering Manheim's premises must conduct themselves in a courteous manner and observe all directions in relation health and safety requirements. Manheim reserves the right to require anyone, including the Buyer, to leave the premises prior, during or after an auction for any reason, including for health and safety reasons or if any person engages in disruptive, abusive or intimidating behaviour. If the Buyer engages in any disruptive, abusive or intimidating behaviour on Manheim's premises or towards Manheim or its personnel, without limiting any of its other rights, Manheim may refuse to permit the Buyer to participate in any auction and terminate this Agreement with immediate effect. Termination by Manheim does not release the Buyer from, or affect, any accrued obligation of the Buyer under this Agreement.
  9. Manheim may refuse to accept any bid or withdraw any item from sale.
  10. Manheim may hold a bid and refer such a bid to the Seller before acceptance. In some circumstances further negotiations may only be held with the highest bidder.
  11. All Buyers shall, on the fall of the hammer, if required to do so by Manheim, pay the deposit notified to bidders prior to the auction commencing.
  12. In the case of non-payment of such deposit by a Buyer (Defaulter), the Item/s may, at the option of Manheim, be auctioned or resold and Manheim may in its discretion, refuse to accept any bid made by the Defaulter.
  13. Road Test Reports (excluding Truck & Machinery and Salvage Auctions), may be prepared by Manheim as a result of a brief road test undertaken prior to auction and are a guide only. Road tests are not performed on items unless expressly stated in writing prior to the auction and if conducted, are done at the absolute discretion of Manheim. No warranty or guarantee concerning known or unknown faults is given or implied by Manheim in relation to the Item/s of the Road Test Report. The Road Test Report covers no items capable of visual inspection. Vehicles sold with a Road Test Report are sold subject to these Terms & Conditions including clause 23, which refers to vehicles being sold with all faults (if any).
  14. Risk of damage to, and loss or destruction of, the Item shall pass to the Buyer immediately at Auction Close. Subject to clause 21, neither the Seller nor Manheim shall be accountable for any deficiency, damage or loss, which may arise thereafter except to the extent that the loss is caused by the negligence of Manheim.
  15. It is the Buyer's responsibility to independently verify any information relevant to any item important to the Buyer's decision to bid on the item.
  16. Stamp duty and delivery charges to be paid by the Buyer where and when applicable.
  17. Title in the item or any part thereof shall not be eligible to pass to the Buyer until Manheim receives clear funds on the full payment for the item from the Buyer. Full payment is due and payable by 4:00pm one business day after auction. If the Bidder fails to make full payment by 4:00pm one business day after auction, Manheim may charge, and the Bidder must pay to Manheim, a reasonable late payment fee, that reflects the costs incurred by Manheim as a result of the late payment.
  18. The Buyer cannot collect their Items or any portion thereof, until Manheim has clear funds from the Buyer in accordance with clause 17 (Completion). If Completion has occurred, the Buyer must take all Items no later than 4:00pm one business day after Completion. Storage charges (that reflects the costs incurred by Manheim as a result of the late collection) may apply on items paid for and remaining uncollected after 4:00pm one business day after Completion.
  19. Manheim shall not be responsible for any damage to property or injury to persons incurred during the removal of Items after Completion except to the extent caused by the negligence of Manheim.
  20. Without limiting any other rights of Manheim, if the Buyer commits a material breach of these Terms & Conditions, any money deposited by the Buyer in part payment shall be forfeited, all Items may be resold and the defaulting Buyer must reimburse Manheim for all reasonable costs and charges consequent upon resale.
  21. To the full extent permitted by law, and notwithstanding the contents of any materials issued by Manheim, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or imposed on Manheim by statute, custom or the common law are excluded from these Terms & Conditions. If a supply is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in these Terms & Conditions excludes, restricts or modifies the application of the Australian Consumer Law, provided that, to the extent the Australian Consumer Law permits Manheim to limit its liability, then Manheim's liability shall be limited to;
    - (a) in the case of services, the cost of supplying the services again or payment of cost and
    - (b) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of those costs.
  22. The Seller represents and warrants to the Buyer and Manheim that the Item is not subject to a security interest of any kind including without limitation under the Personal Property Securities Act 2009 (Cth) (PPSA) (other than a security interest in favour of the Seller which will be released at or prior to the time title in the Item is intended to pass to the Buyer).
  23. Subject to clause 21 the Buyer accepts all Items, having been made available for inspection prior to auction, are offered for sale 'as is, where is' with all faults (if any). The buyer acknowledges it is also responsible for conducting a search of the PPSR to ascertain whether any security interests and write off notification are recorded in relation to the Item.

24. The Buyer acknowledges any information provided by Manheim in relation to any item reflects the information provided to Manheim by the Seller. Manheim has not independently verified its completeness or accuracy. Manheim does not give any warranty as to the completeness or accuracy of any information provided to a Buyer about any item, including without limitation any information as to the distance travelled or machine or engine hours and Manheim will not be liable for any loss, damage, cost or expense suffered or incurred by a Buyer arising out of incorrect or incomplete information. The Buyer agrees to independently verify any information important to their purchasing decision.
25. The Buyer acknowledges and agrees that catalogues may be subject to change and update from time to time. Manheim reserves the right to withdraw items from sale and to clarify any descriptions prior to the commencement of bidding at auction.
26. Subject to clause 21, the Buyer agrees and acknowledges Manheim accepts no liability or responsibility to the Buyer or any third party arising from any indirect or consequential loss, damage or expense of any kind or nature and the Buyer releases and forever discharges Manheim from any such liabilities and claims, demands or causes of action in respect thereof.
27. Subject to clause 21, Manheim accepts no responsibility for any interpretation placed upon the information provided to the Buyer.
28. Subject to clause 21, the Buyer agrees to indemnify Manheim the full amount of any claim, suit or demand and Manheim's costs of such a claim, suit or demand (including without limitation, Manheim's legal costs on a full indemnity basis) made by the Buyer or any other person in relation to a sale except to the extent caused by the negligence or a breach of these Terms and Conditions by Manheim. This clause 27 survives termination of this Agreement for any reason and does not merge upon completion.
29. Manheim is not responsible or otherwise liable for any delay in, or failure of, performance to the extent of any delay or failure due to circumstances beyond Manheim's reasonable control including without limitation, strikes, lockouts and other industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident.
30. The Buyer acknowledges and agrees that state legislation may require vehicles to be quarantined where they have been transported from interstate. Unless expressly agreed with the Seller or Manheim, the Buyer bears sole responsibility for compliance and all costs (including regulatory fees charged by quarantine authorities) associated with satisfying State or Federal legislation concerning the quarantine of items.
31. Manheim has the right to cancel any purchase transaction due to error even if the purchase price of the item has been paid. Manheim may exercise this right up until the time the Buyer collects the item(s). If Manheim exercises this right, Manheim will refund to the Buyer any purchase price that the Buyer has paid.
32. Without limiting any other right of Manheim, Manheim may terminate this Agreement
  - (a) for convenience without cause in its absolute discretion by giving reasonable notice to the Buyer;
  - (b) immediately by giving notice to the Buyer, if Manheim reasonably suspects the Buyer has engaged in fraudulent or illegal conduct in relation to the auction;
  - (c) subject to clause 32(b), if the Buyer breaches this agreement and:
    - (i) fails to rectify the breach as directed by Manheim within a reasonable time period specified by Manheim (which need not be more than 2 business days); or
    - (ii) the breach is incapable of remedy.
33. The Buyer may cease to remain a Buyer by notice in writing to Manheim, provided the Buyer does not have any active or outstanding bids or sales. Any purported termination by the Buyer does not release the Buyer from, or affect, any accrued obligation under this Agreement.
34. On termination of this Agreement for cause, any amounts owed by the Buyer to Manheim, whether under this Agreement or otherwise become immediately due and payable.
35. All vehicles are sold as unregistered unless otherwise stated by Manheim.
36. Any deficiency in the items sold shall not vitiate the sale, but neither the Seller nor Manheim shall be bound to deliver more than is in their possession.
37. A Buyer's Administration Fee and other fees may be payable by the Buyer on items purchased at Manheim. The Buyer's Administration Fee and other fees are specified in the catalogue and on display at Manheim's premises or website. Where a fixed dollar amount is specified, the fee is inclusive of GST. Where a percentage is noted, the Buyer's Administration Fee is inclusive of GST and is calculated using the item purchase price.
38. Manheim may amend these Terms & Conditions (including any fees charged by Manheim to the Buyer) at any time by giving the Buyer at least 30 days' notice, either by sending a notice of variation to the Buyer's email or postal address (as set out on the Buyer Registration Card) or by publishing a notice of the variation at Manheim's premises or on Manheim's Website (Notice of Variation).
  - (a) If the Buyer does not agree to be bound by the varied Terms & Conditions, the Buyer may, subject to clause 33, terminate this Agreement by notifying Manheim in writing within 30 days of the Notice of Variation.
  - (b) If the Buyer does not notify Manheim within 30 days of a Notice of Variation that the Buyer wishes to terminate this Agreement, the Buyer agrees to be bound by the Terms & Conditions as varied.
39. Additional Terms & Conditions for truck and machinery auctions, or where vehicles are purchased for business use:  
Manheim does not warrant any electrical or mechanical appliance, plant and/or equipment (collectively Plant and Equipment) complies with the requirements of any federal, state or territory occupational health and safety laws (OHS Laws). Where reasonably practicable and where the Plant and Equipment is likely to be used in a workplace, Manheim has requested the Seller display a statement on the Plant and Equipment to indicate the safety condition of Plant and Equipment and to supply certificates, operation manuals, etc. which may exist for the particular Plant and Equipment. If the Plant and Equipment purchased does not include this information, upon request of a Buyer, Manheim will use its reasonable efforts to obtain this information from the Seller. By law, a Buyer of any Plant and Equipment for use in a workplace must ensure the Plant and Equipment complies with applicable OHS Laws before it is used. Heavy penalties apply for non-compliance. A summary of OHS requirements in your state or territory is available from Manheim.
40. Manheim may give notice of any matter or permitted to be notified under these Terms & Conditions by email or post or by posting on Manheim's website or at Manheim's premises.
41. Except to the extent any specific State, Territory or Commonwealth laws apply to the sale of a particular item, the Buyer Registration Card and these Terms & Conditions shall be governed by and construed in accordance with the law of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.
42. If any provisions of these Terms & Conditions are found to be invalid or unenforceable, the provision will be read down or severed and the invalidity or unenforceability does not affect the validity or enforceability of the other Terms & Conditions.
43. Each indemnity in this document is a continuing obligation, separate and independent from other obligations of the parties and survives termination of this document.
44. These Terms & Conditions represent the entire understanding between parties.
45. In these Terms & Conditions, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.
46. Additional Terms & Conditions for Salvage Auctions:  
Subject to clause 19 and in addition to clause 21, Manheim does not accept any responsibility for damage sustained to vehicles or equipment through the normal use of forklifts to load, unload and shift damaged and non-driveable vehicles.

## Privacy

47. Manheim protects the privacy of individuals in accordance with the Privacy Act 1988 (Cth) (Privacy Act).
48. The Buyer agrees that it will only collect, hold, use, disclose or otherwise deal with any personal information (as defined in the Privacy Act) (Personal Information) disclosed to it by Manheim or the Seller for the purpose in which it was disclosed.
49. The Personal Information collected on the Buyer Registration Card and otherwise in connection with these Terms & Conditions is collected by Manheim for the purpose of complying with these Terms & Conditions and may be disclosed to the Seller, Manheim's related bodies corporate and other third parties (such as delivery contractors, roads or licensing authorities) for this purpose. Manheim is required and/or authorised to identify the buyers and sellers of vehicles under applicable Commonwealth, State and Territory legislation including the Motor Car Traders Act, Australian Consumer Law and Fair Trading Act and Unclaimed Money Act. Details are available in Manheim's Privacy Policy which may be accessed at [www.manheim.com.au](http://www.manheim.com.au).
50. Manheim may also use the Personal Information provided by the Bidder and any Buyer identified on the Buyer Registration Card to contact the Bidder or Buyer for marketing purposes, as detailed on the Buyer Registration Card.
51. It is not likely that the Personal Information collected on the Buyer Registration Card and otherwise in connection with these Terms & Conditions will be disclosed to any third parties located overseas.
52. If the Personal Information requested on the Buyer Registration Card is not provided, the Bidder or Buyer may not be able to bid or purchase items from Manheim.
53. Manheim's Privacy Policy contains information about how individuals may:
  - (a) access and correct the Personal Information held about them by Manheim;
  - (b) complain to Manheim about a breach of privacy and how Manheim will deal with such a complaint.
54. Any queries about privacy can be directed to Manheim's Privacy Officer, PO Box 34 Altona North, Victoria 3025, by email at [privacy@manheim.com.au](mailto:privacy@manheim.com.au) or by telephone on (03) 9222 6555.