

## Terms & Conditions are current as at November 2021

**When you apply to register as a bidder at a Manheim Sale, you are making representations to each member of the Manheim Group and also agreeing to the following important Terms. You should ensure you have read these Terms prior to registering and making any bid at a Manheim Sale. If you bid or purchase at any Manheim Sale, your participation is subject to these Terms.**

### 1. GENERAL TERMS RELATING TO SALES

- 1.1 You acknowledge and agree that Manheim, as the auctioneer, is acting, in each Auction, as an agent for the Seller. If any dispute arises in relation to the supply of any such Item(s) (whether before or after Manheim has paid the relevant Seller the proceeds of any Sale), the dispute will be between You (the prospective or actual buyer) and the relevant Seller. You further acknowledge and agree that Manheim will be excluded from any such dispute and any subsequent action or court proceedings. If Manheim is subsequently included in any such dispute, action or proceedings, You agree to fully indemnify and hold harmless Manheim for any liability, loss, cost and expense incurred by Manheim in relation to such dispute, action or proceedings, except to the extent caused or contributed to by the negligence of Manheim.
- 1.2 Notwithstanding clause 1.1 and subject to clauses 8.4 and 8.6, if any dispute arises with a Seller, You agree to allow Manheim (but Manheim will not be obligated to) to attempt to mediate and resolve the matter with the Seller and if Manheim, in its absolute discretion determines the most appropriate resolution of the matter is the cancellation of the Sale and refund of purchase monies paid, Manheim's determination will be final and You will have no further claim or recourse against Manheim or the Seller upon such refund. You agree You will not institute any action or proceedings in connection with the Sale unless Manheim advises it is unable or unwilling to assist 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 (and in any event, such action or proceeding remains subject to clause 1.1). Nothing in this clause 1.2 prevents a party from seeking urgent interim relief, such as an interim injunction, subject to the final resolution of any dispute.
- 1.3 You represent and warrant, by Your use of the Online System, logging into the Website, Your submission of any Application to become a Registered Bidder, and in all Sales, Auctions and other dealings with Manheim, that:
- You have read, understood and You accept and agree to be bound by these Terms;
  - You are properly authorised to provide Manheim with any information which You provide;
  - You are fully authorised to act on behalf of any person or party You purport to represent (including any Registered Bidder You have specified in an Application);
  - You are not breaching any obligation of confidence or any requirement of any applicable law relating to the privacy of Personal Information by providing the information to Manheim; and
  - all information You provide to Manheim is true, complete and accurate.
- 1.4 Vehicle Registration - All Items for Sale by Manheim which are vehicles are sold as unregistered unless expressly stated to the contrary.
- 1.5 You must disclose to Manheim at the time of becoming a Registered Bidder and prior to commencement of any Auction (and before any bidding has taken place in such Auction), if You have an intention to purchase an Item for export purposes. Your ability to purchase an Item for export purposes is at the discretion of Manheim and subject to the Seller's consent. If Manheim and the Seller permit the purchase of an Item for export purposes, You must comply with all legislated disclosure requirements and Manheim's reasonable directions.

### 2. REGISTRATION OF BIDDERS

- 2.1 Bidders must be registered
- 2.1.1 You may not participate or Bid in any Sale unless You are a Registered Bidder under clause 2.2 of these Terms.
- 2.2 Applications for Registration
- 2.2.1 You may apply to Manheim to become a Registered Bidder to participate in Sales online by completing the online application form ("Online Application").

- 2.2.2 You may apply to Manheim to become a Registered Bidder for a Sale conducted in person or "in-lane", by completing Manheim's buyer registration card or such other form as Manheim may require from time to time ("Buyer Registration Card").
- 2.2.3 Manheim may accept or reject an Application in its absolute discretion by notice to You. If Manheim accepts the Application, You will become a "Registered Bidder" for the purposes of these Terms.
- 2.2.4 If you make an Application, you warrant that the details of Your application (including any company details) are true and correct, that your Application does not include any misleading information, and that You have authority to bind the entity or persons being registered as bidder under the Application.
- 2.2.5 If You fail to comply with any of these Terms, Manheim is entitled to be reimbursed by You for all costs, fees and charges pertaining to any Sale affected by Your non-compliance, where reasonably incurred by Manheim. Manheim may apply these costs, fees and charges against the credit card details provided in accordance with clause 3.1. If a credit card was not provided, is declined or is otherwise not available, You must pay such costs, fees and charges on demand.
- 2.2.6 You confirm that You have read these Terms and understand that if You are the successful Bidder at any Auction, You are legally bound to purchase the Item/s for which You have Bid, in accordance with these Terms and any special conditions announced prior to the Auction.

### 3. ONLINE REGISTRATIONS

- 3.1 If You submit an Online Application, Manheim may require You as a Registered Bidder to provide Your credit card details before providing You access to the Online Sales System. You must maintain current credit card details while You are a Registered Bidder for Online Sales.
- 3.2 You acknowledge that Manheim may in its sole and unfettered discretion carry out a Document Verification Service check on personal identifiers supplied by You at any time during or after the Online Application and registration process through any of Manheim's third party service providers (DVS Check).
- 3.3 In submitting an Online Application, You give consent and authority for Manheim to carry out a DVS Check on Your personal identifiers for the purposes of verifying Your identity or information supplied by You in the Application.
- 3.4 You acknowledge that Manheim is reliant, at all times, on information provided by You and nothing by way of Manheim conducting a DVS Check limits in any way Your obligation to provide correct and accurate information.
- 3.5 In the event a DVS Check results in a failure of matching results between the information supplied by You and the results of the DVS Check, Manheim may in its sole and unfettered discretion exercise its immediate termination rights as set out in clause 19.

### 4. ONLINE SALES

- 4.1 Without limiting any other provisions of these Terms, this clause 4 applies to Online Sales and to Registered Bidders applying under clause 2.2.1.
- 4.2 Access is provided to the Website and the Online Sales System by Manheim solely for the purpose of You (as a Registered Bidder) participating in Sales and subject to Your ongoing compliance with these Terms. Your viewing and use of the Website and the Online Sales System is governed by and subject to Your agreement to these Terms. By applying to become a Registered Bidder under clause 2.2.1, or by logging onto and using the Website and the Online Sales System, You irrevocably submit that You:
- have examined to the best of Your ability and knowledge all information relevant to the risks, contingencies and other circumstances affecting the Website and Online Sales System; and
  - have had an opportunity to clarify any questions or issues in relation to the Website or the Online Sales System. You may enquire by telephoning the Manheim Service Desk on 1800 001 278.
- 4.3 If Manheim provides You (or an individual who You nominate) with a login and password to use the Online Sales System You:
- acknowledge that the login and password are for the personal use of the named entity who is the Registered Bidder;
  - agree to maintain the confidentiality of the login and password both separately and as a pair;
  - agree not to disclose the login or password to any other person;
  - agree, where a login and password are provided to an individual at Your request, to ensure that the individual complies with these Terms, including clauses 4.3(a)-(g);

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- (e) accept full responsibility for all actions taken by any person using Your login and password (whether authorised or not) and indemnify Manheim for any expenses, loss, damage, costs, demands or liabilities incurred by Manheim directly or indirectly, out of or in connection with, the use, including (without limitation) any improper or unauthorised use, of the login and password, except to the extent caused by the negligence of Manheim;
- (f) agree to only access the Website and Online Sales System for legitimate and lawful purposes and in accordance with these Terms and any instructions or directions given to You on the Website or Online Sales System from time to time; and
- (g) agree and acknowledge that Manheim may, in its absolute discretion, withdraw or restrict Your access to the Website or Online Sales System at any time and without reason, explanation or prior notice.
- 4.4 You agree not to do, or attempt to do, any of the following:
- (a) reverse engineer any aspect of the Website or Online Sales System or do anything that might discover source code, or bypass or circumvent measures employed to prevent or limit access to any area or code of the Website or Online Sales System (except as otherwise expressly permitted by law);
- (b) use any robot, spider, scraper or other automated means or interface not provided by Manheim to access the Website or Online Sales System;
- (c) extract data or gather or use information available through the Website or Online Sales System though any means not intentionally made available or provided for through the Website or Online Sales System;
- (d) frame any part of the Website or Online Sales System, or link to the Website or Online Sales System, or otherwise make it look like You have a relationship to Manheim or that Manheim have endorsed You or Your content for any purpose except as expressly permitted in writing by Manheim;
- (e) send to or otherwise impact Manheim, the Website or the Online Sales System with harmful, illegal, deceptive or disruptive code such as a virus, "spyware," "adware," or other code that could adversely impact the Website or Online Sales System or any Manheim recipient; or
- (f) interfere with or disrupt the Website, Online Sales System or server or network connected to the Website or Online Sales System, take any action that might impose a significant burden (as determined by Manheim) on the Website or Online Sales System infrastructure or computer systems, or otherwise interfere with the ordinary operation of the Website or Online Sales System.
- 4.5 No Warranty or Representation of Availability  
Manheim expressly disclaims any representation or warranty that the Online Sales System will be available for use by You at all times or at any particular time, during and for the duration of any particular Sale Process or at all.
- 4.6 Interruption to Service during Sale Process  
If the Online Sales System is interrupted (either generally or for a particular Bidder(s) or person(s)) for any reason during a Sale Process (whether by way of suspension by Manheim or otherwise) Manheim may, but is not obliged to, declare the Sale Process void and recommence the Sale from the beginning.
- 4.7 Suspension of Service
- 4.7.1 Manheim may from time to time suspend the provision of the Online Sales System.
- 4.7.2 Where possible, Manheim will notify You in advance of the time and duration of any suspension of the Online Sales System, but does not represent or warrant that it will do so on every occasion, on any particular occasion or any occasion at all.
- 4.8 Necessary Authority  
If You make use of the Online Sales System, whether for You or another person, You acknowledge and warrant to Manheim that:
- 4.8.1 You have the full authority to engage in the transactions You undertake; and
- 4.8.2 You will be liable for compliance with all of these Terms and for all costs, fees, charges and other amounts which may become payable to Manheim or any other person as a result of the use of the Online Sales System.
- 5. IN-LANE (IN-PERSON) SALES**
- 5.1 Without limiting any other provisions of these Terms, this clause 5 applies to in-lane (in person) Auctions and Registered Bidders under clause 2.2.2 of these Terms.
- 5.2 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 a successful Bidder, 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 You engage 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 You to participate in any Auction and terminate these Terms with immediate effect. Termination by Manheim does not release You from, or affect, any of Your accrued obligations under these Terms.
- 5.3 If Your Bid is successful, You must, on the fall of the hammer or otherwise when your Bid is accepted and declared successful by Manheim, if required to do so by Manheim, pay the deposit notified to Bidders prior to the Auction commencing. If you do not pay such deposit, 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 You.
- 6. CONDUCT OF SALE**
- 6.1 By submitting a Bid at an Auction, the Bidder accepts and agrees to be bound by these Terms and any special conditions announced by the Auctioneer prior to the Auction.
- 6.2 All bidders must be 18 years of age or older.
- 6.3 Online Sales only – The Online Sales System may incorporate a proxy bidding facility. The proxy bidding facility allows Registered Bidders to enter a maximum Bid amount for a particular Item, and an incremental Bid amount which the proxy bidding facility will automatically submit, to the Online Sales System on the Registered Bidder's behalf in response to a higher Bid submitted by another Bidder for that Item, until the maximum Bid amount specified by the Registered Bidder is reached.
- 6.4 Online Sales only – Registered Bidders may submit Bids for Items offered for Sale by proxy set prior to, or during the auction period Sales Process by using the Online Sales System. This is performed on the Website by submitting a "Submit Bid" request.
- 6.5 Each Bid constitutes an irrevocable offer by the Bidder to purchase the Item at the specified price, which may be accepted or rejected by the Seller or Manheim. Once a Bid has been made, it cannot be revoked and remains open for acceptance by the Seller or Manheim until the Sale Process is completed, despite any subsequent higher Bid being made.
- 6.6 A Bid is taken to be a representation and warranty by the Bidder that the Bid is a genuine offer to purchase the Item at the price specified. 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 Sale Process, or if Manheim has accepted the Bidder's Bid, Manheim may terminate any contracts entered into by the Bidder relating to the Bid.
- 6.7 Subject to any reserve price and the Seller's acceptance, and at the sole discretion of the Auctioneer, the highest bidder who is not in breach of these Terms or any other terms set out by the Auctioneer, will be the purchaser of the Item. If any dispute arises as to the purchaser of the Item, Manheim at its sole discretion, may auction or re sell the Item again.
- 6.8 Manheim may hold a Bid and refer such a bid to the Seller before acceptance. Manheim reserves the right to further negotiate with the highest Bidder.
- 6.9 You acknowledge that in the event of a technology failure or system malfunction which affects the Manheim the Website and/ or the Online Sales System, the Auctioneer has the discretion to do any of the following:

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- (a) extend the Sale by any time the Auctioneer deems fit; or  
 (b) suspend the Sale or end the Sale early; or  
 (c) reschedule the Sale; or  
 (d) cancel the Sale and any bids made by bidders and refund any amounts paid.
- 6.10 All Bid prices are GST inclusive unless the owner of the Items 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 Online Sales System or catalogue.
- 6.11 Manheim may refuse to accept any Bid, cancel or reschedule any Sale, suspend the Sale and/or withdraw any Item from Sale.
- 7. CANCELLATION DUE TO ERROR**
- 7.1 Manheim has the right to cancel any Auction, Sale or purchase transaction due to error even after Auction Close and 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.
- 8. LIABILITY AND INDEMNITY**
- 8.1 Manheim shall not be responsible for any damage to property or injury to persons incurred during the removal of Items except to the extent caused by the negligence of Manheim.
- 8.2 Subject to clause 8.4, the Registered Bidder is not entitled to cancel any transaction on the basis that the Items were not accurately described.
- 8.3 Subject to clause 8.4, all Items are offered for sale 'as is, where is' with all faults (if any).
- 8.4 No Exclusion of Legislation  
 To the full extent permitted by law, and notwithstanding the contents of any description given in any catalogue, advertisement, Road Test Report, engineers' report or other materials issued by any member of the Manheim Group, all conditions, warranties, guarantees (including without limitation as to the condition, quality, fitness for purpose, merchantability or compliance with description of an Item), rights, remedies, liabilities and other terms implied or imposed on any member of the Manheim Group by statute, custom or the common law are excluded from these Terms. If a supply under these Terms is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in these Terms excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits any member of the Manheim Group to limit its liability, then its liability shall be limited to:
- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and  
 (b) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- 8.5 You acknowledge that You are responsible for conducting searches on Items, including but not limited to a search of the Personal Property Securities Register (PPSR) maintained pursuant to the *Personal Property Securities Act 2009 (Cth)* (PPSA) to ascertain whether any security interests and write off notifications are recorded in relation to the Item.
- 8.6 You acknowledge that any information provided by Manheim in relation to any Items reflects the information provided to Manheim by the Seller, and, Manheim has not independently verified its completeness or accuracy.
- 8.7 You acknowledge that Manheim does not carry out mechanical inspections on any Items prior to Sale, nor does Manheim inspect for rust, or carry out any inspections under the body of any Items.
- 8.8 Manheim does not give any warranty as to the completeness or accuracy of any information provided to You about any Item, including without limitation any information in relation to prior servicing, the distance travelled by a vehicle, or its 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. You agree that it is Your responsibility to independently verify any information which is important to Your purchasing decision prior to placing any bid or making any purchase, and that You accept the risk of not doing so.
- 8.9 You acknowledge and agree 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 product descriptions prior to the commencement of bidding at Auction.
- 9. ROAD TEST REPORTS**
- Road test reports (excluding Truck & Machinery Auctions and Salvage Vehicle Auctions) may be prepared by or on behalf of Manheim as a result of a brief road test undertaken prior to Auction, and are intended as a guide only (Road Test Report). 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 in relation to the Item the subject of the Road Test Report. The report covers no items capable of visual inspection. Vehicles sold with a Road Test Report are still sold subject to these Terms including, without limitation, clauses 8.3, 8.4 and 8.6.
- 10. TRUCK AND MACHINERY AUCTIONS, OR WHERE VEHICLES PURCHASED FOR BUSINESS USE**
- Manheim does not warrant that any electrical or mechanical appliance, plant and/or equipment (collectively, Plant and Equipment) complies with the requirements of any Commonwealth, State or Territory occupational health and safety laws (OHS Laws). Where practical to do so and where the Plant and Equipment is likely to be used in a workplace, Manheim has requested that the Seller display a statement on the Plant and Equipment to indicate the safety condition of the Plant and to supply certificates, operational manuals, etc, which may exist for the particular Plant and Equipment. If the Plant and Equipment purchased does not include this information, upon the 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 it complies with OHS Laws before it is used. Heavy penalties apply for non-compliance. A summary of the occupational health and safety requirements in Your State or Territory is available from Manheim on request.
- 11. SALVAGE VEHICLE AUCTION OR NON-MOBILE VEHICLES**
- Manheim does not accept any responsibility or liability for damage sustained to Auctioned vehicles or equipment through the normal use of forklifts or other equipment to load, unload and shift damaged and non-mobile vehicles.
- 12. LIMITATION OF LIABILITY**
- 12.1 To the full extent permitted by law and subject to clause 8.4, neither the Seller nor Manheim will be liable for any loss, damage, cost or expense suffered or incurred by a buyer arising out of the sale and purchase of an Item except to the extent caused by the negligence of Manheim, or a material breach of these Terms by Manheim.
- 12.2 Subject to clause 8.4, You agree and acknowledge that no member of the Manheim Group accepts any liability or responsibility to You or any third party for any indirect or consequential loss, damage or expense of any kind or nature and You release and forever discharge each member of the Manheim Group from any such liabilities and any claims, demands or causes of action in respect thereof.
- 12.3 Subject to clause 8.4, no member of the Manheim Group accepts any responsibility for any interpretation which may be placed upon the information provided to You.
- 12.4 Subject to clause 8.4, any deficiency in the Items sold shall not impair the legality of the sale, but neither the Seller nor Manheim shall be bound to deliver more than is in their possession.

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### 13. INDEMNITY

Subject to clause 8.4, You agree to indemnify each member of the Manheim Group for the full amount of any claim, suit or demand and all costs of such a claim, suit or demand (including, without limitation, legal costs on a full indemnity basis) made by You or any other person in relation to each Sale (which You make or in which You participate in any way), and in relation to Your use of the Online Sales System and the Website. Your obligation to indemnify under this clause 13 is reduced to the extent that the claim, suit or demand was caused by the negligence or material breach of these Terms by Manheim.

### 14. CIRCUMSTANCES BEYOND MANHEIM GROUP'S REASONABLE CONTROL

No member of the Manheim Group is responsible for or otherwise liable for any delay in, or failure of, performance to the extent that any delay or failure is due to circumstances beyond its reasonable control including, without limitation, strikes, lockouts and other industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident.

### 15. END OF LIFE VEHICLE CLOSED AUCTIONS

15.1 Items sold through an "END OF LIFE VEHICLES – CLOSED AUCTION" ("EOL Closed Auction") are end of life Items which are considered industrial waste under EPA waste code T325 under the Environment Protection Act 2017 (Vic) ("EP Act"). Any reference to 'industrial waste', 'waste code' and 'EPA' in this clause has the definition provided in the EP Act.

15.2 By applying to Manheim to register to bid in an EOL Closed Auction, You agree to provide satisfactory evidence (as determined by Manheim) to enable Manheim to verify that the proposed place or premises for receipt of the end of life Items authorised to receive industrial waste in accordance with the EP Act. Manheim may choose to decline to accept an application to participate in an EOL Closed Auction. Manheim reserves the right to withdraw its approval of any Bidder registered to bid in an EOL Closed Auction at any time and without further notice to You.

15.3 By submitting a Bid at an EOL Closed Auction, You acknowledge and agree that:

- (a) You are authorised to receive industrial waste in accordance with the EP Act; and
- (b) any Items You purchase are to be transported to, and received at, a place or premises that is authorised to receive industrial waste under the EP Act.

15.4 Unless Manheim is engaged to provide Delivery Services under these Terms, if You engage a transport carrier on Your behalf to transport an Item purchased through an EOL Closed Auction, You must:

- (a) ensure that the transporter is:
  - i. notified prior to collecting the Item that they will be transporting industrial waste categorised by waste code T325, and that Manheim may ask them to confirm the same in writing;
  - ii. instructed by You to deliver the Item to an address that is authorised to receive industrial waste under the EP Act, and that Manheim may ask them to confirm that they are aware of this requirement in writing; and
  - iii. suitably qualified and experienced to transport industrial waste; and
- (b) keep a record of the transporter You engaged to transport the Item, as well as the information You provided to them. You agree to provide Manheim with a copy of this information at Manheim's request.

### 16. PAYMENT AND DELIVERY

16.1 You agree that Manheim is authorised to debit Your nominated debit card, credit card or PayPal account (whichever has been supplied and nominated) for a deposit if You are the successful Bidder for an Item. Item Value: up to \$500 – no deposit taken; Item Value \$501 to \$10,000 – deposit of \$500 or 10% (whichever is higher); Item Value over \$10,000 – deposit of \$1,000, together with any applicable online payment fee. If there are insufficient funds in Your nominated account Manheim reserves the right to resell the Item and charge You an administration fee.

16.2 Note that any payments made by credit card and PayPal attract a credit card surcharge fee.

16.3 If You fail to pay a deposit required by Manheim, the Item or Items may, at the option of Manheim, be auctioned or resold and Manheim may in its discretion, refuse to accept any Bid made by You.

16.4 A Buyer Administration Fee and other fees may be payable by You on Items You purchase.

16.5 Stamp duty and delivery charges are Your responsibility and are to be paid by You where and when applicable under the relevant law.

16.6 Full payment is due and payable by 4:00pm one Business Day after Auction. A failure to make full payment by 4:00pm one Business Day after auction may incur a reasonable late payment fee, that reflects the costs incurred by Manheim as a result of the late payment.

16.7 Where You are the successful Bidder:

- (a) title in the Item or any part thereof shall not pass or be eligible to pass to You (or the Registered Bidder); and
- (b) You will not be allowed to collect an Item or any part of an Item;
- (c) until Manheim receives clear funds on the full payment for the Item, including the full purchase price (less any deposit already paid) and all applicable fees, from You.

16.8 Risk of damage to, and loss or destruction of, the Item shall pass to the buyer immediately on Auction Close. Subject to clause 8.4 of these Terms, neither the Seller nor Manheim shall be accountable or liable for any deficiency, damage or loss in connection with the Item, which may arise thereafter (except to the extent caused by the negligence of Manheim).

16.9 All Items purchased must be removed from the nominated storage premises by You no later than 4.00pm one Business Day after completion (being the date You are required to make full payment under these Terms). Storage charges (that reflect the costs incurred by Manheim as a result of the late collection) may apply on Items which remain uncollected after this time.

16.10 You (on behalf of the Registered Bidder) are responsible for the payment of all delivery charges, if applicable.

16.11 You acknowledge and agree that applicable Federal, State and Territory legislation may require Items which are vehicles to be quarantined where they have been transported from interstate. Unless expressly agreed with the Seller or Manheim, You bear sole responsibility for compliance and all costs (including regulatory fees charged by quarantine authorities) associated with satisfying such legislation.

16.12 If You fail to comply with any of these Terms, then to the maximum extent permitted by law, any contractual right to be repaid any deposit by You under clause 16 of these Terms or otherwise, shall be forfeited, and all Items may be resold by Manheim. You will also be liable to reimburse Manheim for all costs and charges incurred in such resale.

16.13 At any time Manheim may, without any demand or notice, set off and apply any deposit paid by You for an Item (under clause 16 of these Terms or otherwise), or any other amount Manheim may owe to You, against any money owing to Manheim by You under these Terms, whether or not the amount owed by Manheim or You is immediately payable. You irrevocably authorise Manheim for this purpose.

16.14 If the Registered Bidder is in possession of the Item and Manheim is required to refund the price of the Item (or the price less any deposit) to the Registered Bidder for any reason (including without limitation, at the request of a credit service provider used by the Registered Bidder to purchase the Item), title in the Item passes back to Manheim and the Registered Bidder will at its cost return the Item to Manheim within seven (7) days of receiving written notice from Manheim to do so, failing which (and to the maximum extent permitted by law):

16.14.1 The Registered Bidder irrevocably consents to Manheim seizing possession of the Item, and in doing so irrevocably authorizes Manheim to enter into any land or premises of the Buyer or to which the Buyer has a right of entry, for the sole purpose of taking or collecting the Item; and

16.14.2 The Registered Bidder agrees that: (i) the costs incurred by Manheim in both refunding the price to the Registered Bidder; (ii) the costs incurred in repossessing or attempting to repossess the Item; and (iii) the price of the Item if Manheim is not able to or otherwise does not repossess the Item, become a debt immediately due and payable to Manheim, with daily interest accruing on the debt at a rate of either 10% per annum or otherwise the maximum rate permitted by law (whichever is higher).

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### 17. DELIVERY SERVICES

- 17.1 If You request Manheim to arrange delivery of Your Item (**Delivery Services**), this clause 17 will apply to the Delivery Services.
- 17.2 The standard fees for the Delivery Services (**Delivery Fees**) are set out at [www.manheim.com.au](http://www.manheim.com.au) and any additional fees and charges (applicable in accordance with these Terms) will be as notified by Manheim. You must pay all applicable Delivery Fees when requested. You may be required to pay Delivery Fees in advance. If any Delivery Services have been provided but You have not fully paid the Delivery Fees as required by these Terms, You will not be entitled to receive possession of the Item and Manheim may hold the Item under lien until any outstanding Delivery Fees have been paid.
- 17.3 Manheim will, subject to these Terms, arrange delivery of Your Item to the address You nominate at the time of booking (**Delivery Location**). Manheim will make commercially reasonable efforts to ensure the Item is delivered to the Delivery Location in the same condition as the Item was in at the time of collection. Any agreed delivery dates or delivery times are estimates only and not guaranteed. Manheim will not be liable for any delays in the Delivery Services.
- 17.4 You are responsible for ensuring the Delivery Location is accessible at the agreed time(s) for delivery and suitable for delivery of the Item. If, when attempted, the Delivery Location is not reasonably accessible for delivery, unattended, or if delivery is not accepted, Manheim may, at its election and in its sole discretion, deposit the Item at that Delivery Location, deliver and store the Item at a depot or storage facility used by Manheim or its carrier, or arrange for re-delivery at the Delivery Location, in each case at Your expense. Any such action will be deemed to constitute delivery.
- 17.5 If Manheim stores Your Item, You must collect it from the storage location within a reasonable period and pay any additional applicable Delivery Fees in connection with the storage. If You fail to collect or pay as required, Manheim may remove the Item to another location, return the Item to its origin or to the Delivery Location, or treat the Item as abandoned goods, in each case at Your sole risk and expense.
- 17.6 Manheim may, at Your risk and cost, provide the Delivery Services in a different manner to that agreed or instructed by You if reasonably necessary for safety reasons or to comply with any law. Manheim may use any method for handling, transporting or storing the Item as it sees fit in its discretion (but will endeavour to comply with instructions you provide about the method where commercially reasonable). Manheim may deviate from any usual route of transport or place of storage in its discretion.
- 17.7 Manheim does not accept risk in the Item (and risk is retained solely by You) and does not accept liability for any damage to the Item, where: (a) the damage existed prior to collection of the Item by Manheim, (b) the Item is placed in storage by Manheim in accordance with these Terms, (c) any force majeure event caused the damage, or (d) in other circumstances specified in these Terms. For the purposes of this clause, "force majeure event" includes, without limitation, acts of God such as storm, hail, flood, fire, lightning, earthquake and explosion, and includes any event beyond the reasonable control of Manheim including, without limitation, accidents, stones, debris, bird droppings and weather events which may impact the Item while in transit, civil commotion and sabotage.
- 17.8 You are solely responsible for insuring the Item against the risk of loss or damage while in transit and You acknowledge that Manheim does not insure Your Item on Your behalf while in transit as part of the Delivery Services.
- 17.9 Other than as specified in clause 17.19 or required by Australian Consumer Law, Manheim's liability in connection with the Delivery Services is strictly limited as specified in clause 8.4 of these Terms.
- 17.10 Manheim may subcontract the whole or any part of the Delivery Services to a third party (and those parts of the Delivery Services may be further subcontracted) without notice to You.
- 17.11 Manheim and its carriers are not common carriers and may refuse to provide Delivery Services to You or handle an Item in their absolute discretion.
- 17.12 You acknowledge that Manheim and its carriers agree only to provide Delivery Services for Items which are in all respects safe and suitable for carriage, and may lawfully be carried.
- Without limiting the foregoing, Your Item must:
- be in a good condition and state of repair which is adequate to withstand the ordinary risks of the Delivery Services, including transportation/carriage, handling and storage;
  - be compliant with all laws and able to be lawfully and safely transported, handled and stored;
  - be properly and accurately described to Manheim in all respects (including measurements and dimensions);
  - be free from all dangerous goods (including any articles or substances which are, or may become a risk to health, safety property or the environment, but not goods inherently part of a vehicle like petrol in the tank), and free from all personal effects;
  - unless otherwise advised, have a minimum ground clearance of 15cm (6 inches) all around, and be free of roof racks and bull bars; and
  - be free of mud, plant material and insects.
- 17.13 If Your Item fails to meet any of the requirements set out in clause 17.12 above:
- Manheim and its carriers accept no risk of loss or damage in Your Item (or any personal effects within or on it), and You bear this risk solely;
  - You release and hold harmless Manheim and its carriers from and against any loss or damage to Your Item and any personal effects inside it; and
  - You must pay any additional fees, charges, costs and expenses charged or incurred by Manheim or its carriers, in relation to the carriage, attempted carriage or inspection of Your Item, which will form part of the Delivery Fees.
- 17.14 You indemnify Manheim and its carriers from and against any fees, charges, costs, expenses, losses (**Loss**) and third party claims in connection with the carriage, inspection or attempted carriage of Your Item, including but not limited to any charges incurred in cleaning the Item for quarantine inspection, any fines or penalties incurred in connection with Your Item or its carriage, any property damage or personal injury (including death) caused by Your Item (including any personal effects in or on it), and any other Loss or claim arising from the handling, storage, carriage, attempted carriage or inspection of Your Item. You will not be liable under this indemnity where a Loss was caused by Manheim's negligence.
- 17.15 Prior to carrying an Item, Manheim may (and You authorise Manheim to), but is not obliged to, open, search and inspect the Item including its interior. If Manheim discovers any personal effects within the Item, You authorise Manheim to remove or reposition such personal effects as it sees fit. Manheim may refuse to collect or accept the Item if Manheim deems it to be dangerous or contain dangerous goods, be inadequately packed, not within applicable weight or dimensions restrictions, or otherwise unsafe or unsuitable for collection or delivery (in its absolute discretion).
- 17.16 Where applicable to the Item, both parties acknowledge Australian laws and regulations concerning chain of responsibility (including those concerning heavy vehicles) and dangerous goods, and agree to comply with them. You must comply with any directions Manheim gives You in connection with unloading or receiving the Item in order to comply with such laws.
- 17.17 You may only cancel the Delivery Services if Manheim or its carrier has not yet collected the Item and in any event, such cancellation will attract a cancellation or processing fee which must be paid by You prior to the cancellation taking effect.
- 17.18 You need to inspect the Item immediately at the time of delivery and before accepting delivery. If you believe that the Item has been lost or damaged in transit or otherwise during the Delivery Services, You must notify Manheim in writing immediately. If any damage is visible at the time of delivery, You must note the damage on the carrier's docket prior to accepting delivery. In any event, You must notify and submit any claim in relation to loss or damage to the Item during the Delivery Services to Manheim strictly within one (1) business day of delivery. Your notification and claim must be complete and include supporting evidence (i.e., photographs clearly depicting the damage). Manheim accepts no responsibility or liability, and You discharge Manheim from all responsibility and liability, for any damage or loss which is not notified and claimed in accordance with these requirements, to the extent permitted by law.

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17.19 Manheim will assess any written claim under clause 17.18 above (which may include inspecting the Item, and You must reasonably allow Manheim to do so). If responsible for the loss or damage, Manheim will (at its election) either repair the Item, pay the cost of repairing the Item or agree an alternative remedy with You. You are still responsible for and must pay all Delivery Fees.

### 18. PRIVACY

18.1 Manheim protects the privacy of individuals in accordance with the Privacy Act 1988 (Cth) (Privacy Act).

18.2 You agree that You will only collect, hold, use, disclose or otherwise deal with any personal information (as defined in the Privacy Act) (Personal Information) disclosed to You by Manheim or the Seller for the purpose in which it was disclosed.

18.3 The Personal Information collected from You at the time of registration including on Your Application and otherwise in connection with these Terms is collected by Manheim for the purpose of these Terms and any Sale, and may be disclosed to the Seller, Manheim's related bodies corporate and other third parties (such as delivery contractors and roads and 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, fair trading legislation and unclaimed money legislation. Details are available in Manheim's Privacy Policy which may be accessed at [www.manheim.com.au](http://www.manheim.com.au).

18.4 Manheim may also use the Personal Information provided by You in the Application to contact You or the Registered Bidder for marketing purposes (as detailed on the Application).

18.5 It is not likely that the Personal Information collected at the time of registration (including in the Application) and/or updated or provided by You thereafter in connection with these Terms will be disclosed to any third parties located overseas.

18.6 If the Personal Information requested at the time of registration (including in the Application) is not provided, You may not be able to bid or purchase Items from Manheim.

18.7 Manheim's Privacy Policy contains information about how individuals may:

18.7.1 access and correct the Personal Information held about them by Manheim; and

18.7.2 complain to Manheim about a breach of privacy and how Manheim will deal with such a complaint.

18.8 Any queries about privacy can be directed to Manheim's Privacy Officer, PO Box 34 Altona North, Victoria 3025, by email at [caa.privacy@coxautoinc.com](mailto:caa.privacy@coxautoinc.com).

### 19. TERMINATION

19.1 Termination by Manheim

19.1.1 Manheim may terminate these Terms and, if applicable, cease to provide access to the Online Sales System to You, for convenience (without cause) and in its absolute discretion, by giving reasonable notice to You.

19.1.2 Without limiting any other right of Manheim, Manheim may terminate these Terms:

(a) immediately by notice to You if Manheim reasonably suspects You have engaged in fraudulent or illegal conduct in relation to any Auction or Sale;

(b) Subject to clause 8.1.2(a), if You breach these Terms and:

- i. fail 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.

19.2 Termination by You

You may cease to remain a Registered Bidder and terminate these Terms by notice in writing to Manheim which may be by email via Your Website account (if You are a Registered Bidder on the Online Sales System) or by mail to Manheim, provided that You do not have any active or outstanding Bid in the Online Sales System. Any purported termination of these Terms by You does not release You from, or affect, any accrued obligation under these Terms.

19.3 Consequences of Termination

Upon termination of these Terms:

19.3.1 You must immediately cease to use the Online Sales System;

19.3.2 If the termination is for default by You, any amounts You owe to Manheim, whether under these Terms or otherwise become immediately due and payable; and

19.3.3 You must destroy or delete any copy of the Online Sales System or any information collected from the Online Sales System You have in Your possession or under Your control.

### 20. DISPUTES

20.1 The parties will use reasonable efforts to resolve any disputes arising under these Terms through prompt, good faith discussions.

20.2 Neither party will initiate proceedings against the other until the process contemplated by this clause 20 has been exhausted, however nothing in this clause prejudices the right of a party to seek injunctive or urgent interlocutory relief

### 21. GENERAL

21.1 Notices

21.1.1 Manheim may give You notice of any matter or thing required or permitted to be notified to You under these Terms by either:

(a) sending You an email to an electronic mail address nominated by You;

(b) send You a notice to your postal address (as specified in the Application); or

(c) posting the notice to the Website (if You were registered online under clause 2.2.1); or

(d) at Manheim's premises (if You were registered in person under clause 2.2.2).

21.1.2 Such notice takes effect and is deemed served from the time the electronic mail message leaves the Manheim system, is visible on the Website or at the premises, or three (3) Business Days after posting, as the case may be.

21.2 Governing Law

Except to the extent otherwise stated in any specific State, Territory or Commonwealth laws applying to the sale of a particular Item, and as otherwise stated on Your Application, these Terms shall be governed by and construed in accordance with the law for the time being in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

21.3 Personal Knowledge

A reference to a matter being to the knowledge of a person means the matter is to the best of the knowledge and belief of the person after making proper enquiry including enquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.

21.4 Severance

If any provisions of these Terms are found to be invalid or unenforceable, then that provision will be read down or severed and that invalidity or unenforceability does not affect the validity or enforceability of the other terms and conditions.

21.5 Entire Agreement

These Terms (and any other details incorporated expressly by reference) represent the entire agreement between You and Manheim.

21.6 Variation of these Terms

21.6.1 Manheim may amend or vary these Terms (including any fees charged by Manheim to You) at any time by giving You at least 30 days' notice in accordance with clause 20.1.1.

21.6.2 If You do not agree to be bound by the varied Terms, You may terminate these Terms under (and subject to) clause 19.2 within 30 days of the notice given by Manheim under clause 20.6.1. If You do not provide such a notice to terminate these Terms, You are deemed to have agreed to be bound by these Terms as varied.

21.7 Waiver and Exercise of Rights

21.7.1 A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.

21.7.2 Subject to clause 8.4, no party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

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### 21.8 No Relationship

No party to these Terms has the power to obligate or bind the other party. Nothing in these Terms will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.

### 21.9 Survival of Indemnities

Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of these Terms.

### 21.10 Enforcement of Indemnities

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by these Terms.

### 21.11 No Merger

The warranties, undertakings, indemnities, agreements and continuing obligations in these Terms do not merge on completion.

### 21.12 Rule of Construction

In the interpretation of these Terms, no rule of construction applies to the disadvantage of the party preparing these Terms on the basis that it put forward these Terms or any part of it.

### 21.13 Interpretation

In these Terms, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

## 22 DEFINITIONS

In these terms and conditions, unless expressed or implied to the contrary:

**Application** means an Online Application under clause 2.2.1 or an application via a Buyer Registration Card under clause 2.2.2.

**Auction Close** means the completion of an auction period for an Item, occurring on Manheim's acceptance and declaration of the highest Bid, whether by fall of the hammer or otherwise, at the time and date nominated for that Item by Manheim.

**Auction Sale or Auction** means a sale or prospective sale by auction of an Item, conducted by way of the Online Sales System or "in-lane" (in person, at premises nominated by Manheim), or a combination of both, in accordance with these Terms.

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Bid** means an offer to purchase an Item at a specified price in a Sale.

**Bidder** means a person who has made or purported to make a Bid.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Victoria, Australia.

**Buyer Administration Fee** (also referred to as Buyer Auction Fees) means the fees payable by You on a successful Bid, or on any Items purchased through Manheim, as specified in the applicable catalogue and displayed 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 Administration Fee is inclusive of GST and is calculated using the Item purchase price.

**Buyer Registration Card** has the meaning given to that term in clause 2.2.2.

**Delivery Fees** has the meaning given to that term in clause 17.2.

**Delivery Location** has the meaning given to that term in clause 17.3.

**Delivery Services** has the meaning given to that term in clause 17.1.

**Item** means any good made available for purchase under these Terms.

**Manheim** means Manheim Pty Ltd ACN 089 074 206.

**Manheim Group** means Manheim and each related body corporate (as that term is defined in section 50 of the Corporations Act 2001 (Cth)) of Manheim and any agent, officer or employee of any of them.

**Online Application** has the meaning given to that term in clause 2.2.1.

**Online Sale** means any sale of an Item conducted using the Online Sales System.

**Online Sales System** means the online system used by Manheim to perform Sales online.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Registered Bidder** means a person who has become a "Registered Bidder" in accordance with clause 2.2.3.

**Sale** means a sale, agreement to sell or prospective sale of an Item by Auction Sale under these Terms.

**Sale Process** means the process by which a Sale is conducted until the successful buyer's Bid (if any) is accepted by or on behalf of the Seller of the Item or the Item is withdrawn from Sale by Manheim.

**Security Interest** means 'security interest' as defined in the *Personal Property Securities Act 2009* (Cth) and any regulations under that Act.

**Seller** means the person selling an Item.

**Terms** means these Terms and Conditions for Bidding and Sales, as updated from time to time in accordance with clause 20.6.

**You and Your** means the user of the Website or the person using the Online Sales System including, without limitation, a Registered Bidder, the person completing the Application and the person nominated in accordance with these Terms as the Registered Bidder on the Application.

**Website** means Manheim's Website, located at the uniform resource locator <http://www.manheim.com.au>, and includes any part of that website.

### ADDITIONAL TERMS AND CONDITIONS FOR TRANSACTIONS IN THE NORTHERN TERRITORY:

- Where You (or the Registered Bidder), or any Item You Bid for or buy, are located in the Northern Territory, then the special terms in Annexure A (Transactions in the Northern Territory) apply. It is important that You read and understand Annexure A if it applies to You, as it contains terms that may differ from these Terms.
- If there is any inconsistency between the special terms in Annexure A (Transactions in the Northern Territory), and these Terms, then the special terms in Annexure A (Transactions in the Northern Territory) will apply and prevail.

### ANNEXURE A – TRANSACTIONS IN THE NORTHERN TERRITORY

These terms apply to any vehicle sold in the Northern Territory.

These terms apply to the sale of any Item located in the Northern Territory, in addition to Manheim's Terms and Conditions for Auction Sales. To the extent of any inconsistency between Manheim's Terms and Conditions for Auction Sales, and the terms below, the terms below will prevail.

#### Preliminary

For clarity, an "Item" is the relevant good, more fully described in the Item Details, for which the buyer placed a bid, and which is made available for purchase by Auction Sale or Tender Sale under the terms of this Agreement. The "Item Details" are the details and attributes of the Item specified on the relevant Item sale page on the Manheim website (Sale Page), including the Item make, model, body type, body colour, compliance date, engine number, VIN number, registration number, stock number and location.

#### Payment, Deposits, Title and Delivery

The buyer shall take delivery of the Item from Manheim's address as stated on the Sale Page, within 7 days from the day the buyer is notified by Manheim that the Item is available. Failure by Manheim to deliver within the time limit specified shall not entitle the buyer to rescind this agreement but the time for delivery for the purposes of this condition shall be extended until 7 days from the day Manheim notifies the buyer that the Item is in Manheim's possession.

On or before taking delivery of the Item the buyer will pay to Manheim the cash balance stated on the Sale Page. Until such time as the buyer pays the cash balance in full, no property in the Item will pass to the buyer. If the Item is delivered to the buyer before payment has been made or title given, the buyer shall have possession as bailee only (notwithstanding that the buyer may have made an offer to take the Item on hire purchase). Manheim may terminate such a bailment at any time by sending notice of the termination in writing to the buyer at the address specified in this agreement.

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This agreement to purchase is not conditional upon the acceptance by Manheim of any offer that the buyer may make to take the Item on hire purchase. Any such offer made by the buyer shall not affect the buyer's liability to pay the cash balance upon delivery of the Item.

If the buyer fails to punctually observe and perform its obligations contained in this agreement all moneys paid by way of deposit shall be forfeited, provided however that the such moneys paid shall not exceed 10% of the total selling price and Manheim shall refund to the buyer the amount by which the cash deposit exceeds such amount.

### **Consumer Law**

For section 54 of the Australian Consumer Law (NT) and section 54 of Schedule 2 of the Competition and Consumer Act 2010 (Cth), applying as a law of the Commonwealth, the buyer's attention is drawn to the defects specified in this agreement.

The buyer acknowledges that it has not relied on any warranty or representation made by Manheim, its servant or agents or any other person on its behalf in entering this agreement other than those contained herein or implied by the Competition and Consumer Act 2010 (Cth) and the Consumer Affairs and Fair Trading Act 1990.

Any request for warranty work must be directed to Manheim.



View our privacy policy document at our office or on our website.

Go to: [manheim.com.au](http://manheim.com.au)