

Conditions of business general

1. Definitions

- 1.1 "Buyer" means the person to whom a Lot is sold via auction or private treaty.
- 1.2 "Buyer's Premium" shall have the definition given in Condition 8.2.
- 1.2 "Coys" means Coys of Kensington Automobiles Ltd.
- 1.3 "Seller" means the person who offers the Lot for sale.
- 1.4 "Seller's Commission" shall have the definition given in Condition 8.1.
- 1.5 "The Auction" means the auction sale in respect of which a Lot is consigned for sale.
- 1.6 "The Lot" means any item(s) consigned with the view to its or their sale at auction.

2. Governing law

All transactions to which the conditions apply shall be governed by English Law, and Coys and the Seller hereby submit to the exclusive jurisdiction of the English Courts and irrevocably agree to waive any right to assert that proceedings ought not to be brought in England and Wales on grounds of forum non conveniens.

3. Coys as agent

Coys sells as agent for the Seller (except where it is expressly stated to be selling as principal) and is not liable for any act or default by the Seller or the Buyer save where such act or default is due to the actual fault of Coys. All sales are to be presumed to be sales on behalf of private individuals unless specifically notified to the contrary in the catalogue, or elsewhere in writing. Where this form has been signed by the Seller it shall be valid notwithstanding that it has not been signed by Coys.

4. Coys' discretion in case of disputes between the buyer and the seller

If Coys is notified about the Seller's alleged breach of any of the Conditions before it has remitted the proceeds of sale from any Lot to the Seller, it may at its sole discretion, withhold payment until that dispute is resolved. Coys may, however, deduct any sums that are due to it from the sum held.

5. Seller's warranties and representations

- 5.1 The Seller warrants and represents to Coys in the terms of sub-paragraphs (a) to (f) that :-
 - (a) The Seller is the owner of the Lot or is properly authorised to sell the Lot by the owner and is able to sell the Lot with full original title guarantee (ownership) free from all encumbrances and third party claims;
 - (b) The Seller has complied with all requirements relating to any export or import of the Lot as may be required, and has notified Coys in writing of any failure to comply with such requirements by the Seller or any previous owner of the Lot;
 - (c) The Seller has notified Coys in writing of any material alterations to the Lot of which the Seller is aware and of any concerns expressed by third parties in relation to the authenticity, provenance, origin, age, condition or quality of the Lot and has provided Coys with all such information in the Seller's possession;
 - (d) Any motor vehicle comprised in the Lot may be lawfully used on a public road and complies with all statutory provisions and that there is in force any test certificate required by law in relation to such use or the Seller has notified Coys in writing that any such vehicle cannot lawfully be used on a public road;

- (e) If a Lot is not in the possession of Coys on its premises or under its control that the Lot will be available within 14 days from the date of sale and in a deliverable state on demand by the Buyer;
- (f) That the information about the Lot given to Coys, including (for the avoidance of doubt and without prejudice to the generality of the foregoing) all information set out in the Entry Form, and statements made about it, are true.

- 5.2 The parties hereby acknowledge that Coys has entered into this contract in reliance on the representations set out in Conditions 5.1(a) to (f) and the information set out in the Entry Form.
- 5.3 The Seller shall indemnify and keep Coys harmless from and against any and all actions, claims, costs (including legal and expert costs, fees and disbursements), demands, expenses, fines, liabilities, losses, penalties and proceedings arising out of the breach of any of the warranties and representations set out in Conditions 5.1(a) to (f).
- 5.4 If Coys has reasonable cause for believing that either the Seller is in breach of any one or more of the warranties set out in this Condition 5 or Coys and/or the Seller may be restrained by Order of any Court or other competent authority from selling the Lot, Coys may by giving notice in writing to the Seller decline to sell the Lot pending further agreement or Order of the Court.
- 5.5 The Seller shall further indemnify Coys in respect of any legal or other costs reasonably incurred by it in investigating any claim concerning the ownership of a Lot and/or the Seller's right to sell the Lot, the accuracy of the description of the Lot contained in the Catalogue or in defending any claim relating thereto, and Coys shall be entitled to withhold the amount of such costs from any payment due to be made to the Seller in accordance with Condition 13.

6. Vehicle registration numbers

- 6.1 If the Seller wishes to sell any vehicle as part of the Lot but to retain the right to the registration number of the Vehicle ("VRN"), it is the Seller's responsibility to notify Coys in writing either on the Entry Form or sooner.
- 6.2 It shall be the Seller's responsibility to take all necessary steps to ensure that the current VRN is reserved and that a new number is allocated prior to the vehicle being sold and if he does not do so, Coys shall not be responsible for any loss or damage whatsoever and howsoever arising (including for the avoidance of doubt arising out of Coys' negligence) out of the Seller's loss of the right to the VRN following the sale of the Vehicle.
- 6.3 Coys may, at its own discretion, (without any assumption of responsibility or duty towards the Seller or the Buyer) take such steps to facilitate the reservation or transfer of any particular registration number as it thinks fit in order to assist the Seller or Buyer but strictly on condition that no claim attaches to Coys for taking any such steps whether arising out of Coys' negligence or any other cause whatsoever.

7. Reserves

- 7.1 The Seller may place a reserve price ("Reserve") on any Lot prior to the Auction and once placed by the Seller may not be changed without the written consent of Coys. All Lots will be sold without Reserve unless a Reserve has been agreed by Coys in writing.
- 7.2 Where a Reserve has been agreed, only Coys may bid on behalf of the Seller. If the Seller makes such bid, then the auctioneer may knock the Lot down to the Seller without observing any Reserve and the Seller shall pay to Coys the Buyer's Premium in addition to the Seller's Commission and Expenses.

- 7.3 Where a Reserve is agreed, Coys may in its sole discretion sell a Lot for less than the Reserve but shall account to the Seller as if the Lot had been sold for the Reserve.
- 7.4 Where no Reserve has been placed, the Seller may bid either personally or through the agency of any person.
- 7.5 If no Reserve has been placed on a Lot, Coys shall not be held liable should the Lot be purchased for a price below any lowest estimated selling price of the Lot given in any Catalogue, save insofar as and limited to the extent that the same arises out of the actual fault or negligence of Coys.

8. Commission and expenses

- 8.1 Coys shall be entitled to deduct from the price at which the Lot is knocked down at auction ("the Hammer Price") a Seller's Commission of 5% plus VAT for motorcars (or, in the case of motorcycles, cherished registrations, automobilia, 10% plus VAT) or such other sum agreed by Coys in writing, plus any expenses in respect of insurance, storage, illustration and cataloguing costs, packing and freight costs ("Coys' Expenses"), and any other sums due from the Seller to Coys.
- 8.2 For motorcar sales the Seller acknowledges Coys' right to retain a Buyer's Premium equal to 10% of the Hammer Price, plus VAT, For motorcycles or cherished registration numbers 12.5%, plus VAT, and for automobilia or collectibles 15%, plus VAT.

9. Photography and illustrations

The Seller permits Coys without payment to photograph and make illustrations of any Lot and to use at its discretion any photograph or illustration of or in respect of a Lot supplied by the Seller, whether or not in conjunction with the Auction. The copyright in all photographs taken and illustrations made of any Lot by or on behalf of Coys shall be the absolute property of Coys.

10. Coys' estimates and descriptions

- 10.1 Coys make no warranty or representation as to the anticipated or likely selling price of any Lot. Any estimate given by Coys, whether written or oral and whether or not printed in any auction catalogue, as to the estimated selling price of any Lot is a statement of opinion only and may be subject to revision from time to time at Coys' sole discretion and should not be relied upon as an indication of the actual selling price.
- 10.2 Coys shall not be liable to the Seller for any error or misstatement in or omission from the description of any Lot in any auction catalogue where:-
- (a) Coys have been provided with such description by the Seller or any person on his behalf; or (b) Coys have provided the Seller with a copy of such description prior to publication of the Catalogue and neither the Seller nor any person on his behalf have notified Coys in writing within seven days of any error or misstatement in or omission from the description.
- 10.3 Coys has no duty to the Seller to investigate the accuracy of the description of any Lot provided by or on behalf of the Seller.

11. Withdrawal of lots

- 11.1 The Seller may by notice in writing to Coys withdraw the Lot from the Auction. In the event of such withdrawal, the Seller shall within 14 days of withdrawal pay Coys the sums set out in this Condition 11. All such sums shall be payable to Coys as remuneration for the services performed by Coys down to the date of withdrawal, and not by way of penalty or liquidated damages.

- 11.2 In all cases of withdrawal, (including where no commission was agreed) the Seller shall be liable to pay Coys 10% (or an amount equal to the commission Coys would have received from the Seller if less than 10%) of the estimated value of the Lot. The estimated value shall be the higher of:-
- (a) The Seller's estimate of value as previously notified to Coys or, if more than one figure, the highest figure or if none;
- (b) The value estimated in the Catalogue, or if more than one figure is given, the highest figure;
- (c) In the absence of a figure in (a) or (b) above such reasonable figure as Coys shall estimate;
- (d) Plus in each case VAT on such fee and Expenses.
- 11.3 In the event that the Lot is withdrawn from the Auction after the publication of the Auction catalogue, the Seller shall be in addition to the sum set out in Condition 11.2 be liable to pay Coys a further sum equal to the Buyer's Premium (as defined in Condition 8.2 above) that would have been payable upon the Lot realising the aforesaid estimated value at Auction, plus VAT.
- 11.4 In the event that the Seller withdraws the Lot from the Auction, the Seller shall arrange for collection and removal of the Lot at his own expense within two working days after the date of withdrawal provided that the Seller may not collect the Lot unless and until any withdrawal fee payable under Conditions 11.2 and 11.3 shall have been paid in full.

12. Unsold lots

- 12.1 Where any Lot fails to sell at an Auction, Coys will have the sole and exclusive right to sell the Lot by private treaty within 7 days of the Auction date. Any additional costs such as transport to Coys showrooms will be agreed by both parties in advance. These terms and conditions (including, for the avoidance of doubt, Condition 9 as to Reserves) shall govern any such sale by private treaty.
- 12.2 Unless Coys elects to sell the Lot by private treaty in accordance with Clause 12.1, the Seller shall arrange for the removal of any unsold Lot by 1.00 pm the day following the Auction or by such other time as agreed by Coys.
- 12.3 Failure to remove any unsold Lot pursuant to Condition 12.2 above will entitle Coys to charge the Seller a reasonable storage charge per day. The Seller shall further reimburse Coys for any reasonable removal, insurance and other expenses.
- 12.4 If within 28 days after the Auction the Seller fails to give instructions to Coys regarding the disposal of the Lot, Coys shall have the exclusive right at its election to:
- (a) sell the Lot by private treaty, or
- (b) by Auction without Reserve, in either case in accordance with these Conditions. In such case, Coys shall be entitled to deduct from any sale price all sums owing to Coys including the Seller's Commission and any charges incurred under this Condition 12.

13. Risk and insurance

- 13.1 The Lot shall at all times remain at the risk of the Seller until it passes from the Seller to the Buyer under Condition 14.
- 13.2 Until such time as risk passes to the Buyer in accordance with Condition 14, responsibility for arranging insurance for the Lot shall remain with the Seller. In no case shall Coys undertake responsibility for arranging insurance.
- 13.3 Coys will not be liable for any injury, loss or damage caused by any Lot unless caused by the negligence of Coys, its employees or agents in the ordinary course of their duties to Coys or by the Seller's negligence or other breach of the Conditions. The Seller shall compensate Coys in full in respect of all claims and proceedings brought against Coys in respect of injury, loss or damage caused by the Seller's negligence or breach of any obligation under the Conditions.

14. Sale

- 14.1 A contract of sale is made between the Seller and the Buyer on the acceptance of a bid by the fall of the Auctioneer's hammer. Coys is not a party to the contract of sale and has no liability for any act or default by the Seller or the Buyer.
- 14.2 The ownership of the Lot will pass to the Buyer only when the full purchase price, including Buyer's Premium, Coys' Expenses, and any such other sums as are due to Coys, is paid in cleared funds and has been received by Coys.
- 14.3 Immediately a Lot is sold the risk shall pass to the Buyer notwithstanding that possession will not be given and ownership will not pass to the Buyer before payment of the aforesaid price and Coys will not be responsible for any damage to or the loss or destruction of the Lot or any injury, loss or damage caused by the Lot unless caused by the negligence of or other breach of duty by Coys, its employees or agents in the ordinary course of their duties to Coys. The Buyer will compensate Coys in full in respect of all claims and proceedings brought against Coys in respect of any loss or damage to the Lot or injury, loss or damage caused by it not arising from the negligence of or other breach of duty by Coys, its employees or agents in the ordinary course of their duties to Coys.

15. Payment of sale proceeds

- 15.1 The following conditions shall determine the payment of the proceeds to The Seller.
- 15.2 Coys shall pay the sale proceeds to the Seller net of Seller's Commission, Coys' Expenses, VAT, and any such sums that Coys is entitled to deduct ("the Net Sale Proceeds"), not later than 14 days after the Auction, subject to receipt of cleared funds, or within five working days after receiving cleared funds from the Buyer, whichever shall be the later. Coys shall be under no liability as a result or arising out of any delay or failure by the Buyer in making payment.
- 15.3 Unless an alternative method of payment has been agreed by Coys in writing, payment of the Net Sale Proceeds shall be made by telegraphic transfer to an account held in the same name as the name on the Contract Form.
- 15.4 Coys may in its discretion withhold remittance of the Net Sale Proceeds to the Seller until such time as the Seller has deposited with Coys the V5 registration document in the case of a UK registered vehicle or, in the case of a non-UK registered vehicle, the appropriate documents of title (ownership) relevant and appropriate to the country of registration of the vehicle, and any other documentation, tools, accessories, spare parts etc., relating to the vehicle in the Seller's possession or control which he agreed with Coys to supply.
- 15.5 If the Buyer fails or refuses to pay the full purchase price, including Buyer's Premium, VAT and Coys' Expenses within 14 days of the Auction, Coys will notify the Seller who may instruct Coys as to the appropriate course of action, including but not limited to one or more of the courses of action set out in Condition 15.6 below. Such notice will draw attention to 14 day limit for the provision of instructions as set out in Condition 15.6 below. Coys shall if instructed take reasonable steps to assist the Seller but Coys shall be under no obligation to institute proceedings in its own name or personally incur any cost or expense.
- 15.6 In the absence of any written instructions from the Seller to Coys within 14 days of Coys' notice to the Seller served in accordance with Condition 15.5 above then Coys shall in its sole discretion be entitled to do any of the following in its capacity as the Seller's agent and with the Seller's full authority:-
- (a) To agree terms for the payment of the Purchase Price with the Buyer;
 - (b) To remove, store and insure the Lot;

- (c) To settle claims and/or proceedings made by or against the Buyer on such terms as Coys shall at its absolute discretion think fit;
 - (d) To take such steps as Coys shall at its absolute discretion consider necessary to collect the monies due from the Buyer;
 - (e) Where appropriate, and in the event that the Buyer's default in payment has continued for at least 14 days, to rescind and/or terminate the sale and in its sole discretion:
 - (i) Refund any monies received to the Buyer, and return the Lot to the Seller upon the Seller paying such sums to Coys as may be due under Condition 15.7;
 - (ii) Offer the Lot for re-sale, by Auction or private treaty, with or without Reserve;
 - (iii) Purchase the Lot itself at the Hammer Price or such other price as may be agreed with the Seller, in which case property in the Lot shall pass to Coys and Coys shall remit the Hammer Price to the Seller within fourteen days of its election less any sums payable pursuant to Condition 15.7 below;
 - (f) To appoint a solicitor and/or other agent to pursue any of the courses of action referred to in subparagraphs (a) to (e) above and the Seller authorises Coys to take any of the courses referred to in this Condition 15.6, including where the Buyer's default in payment has continued for 14 days or more the issue and prosecution of proceedings on the Seller's behalf and in the Seller's name.
- 15.7 In the event that the sale contract for the Lot is rescinded, whether as a result of the Seller's instruction or Coys' action taken under Condition 15.6, the Seller shall nonetheless (and without prejudice to any claim that he may have against the Buyer) pay to Coys the following sums:
- (a) Legal or other costs incurred by Coys in connection with such steps; and
 - (b) Expenses;
 - (c) The Seller's Commission, by way of remuneration for the services performed by Coys down to the date of rescission, and not by way of penalty or liquidated damages.
- 15.8 Any monies recovered by and paid to Coys in consequence of Coys taking one or more of the steps referred to in Condition 15.6 against a Defaulting Buyer, or any of the Purchase Price as shall have been paid by the Defaulting Buyer, shall be applied, in the following order, to the payment of:-
- (a) Legal or other costs reasonably incurred by Coys in connection with such steps; and then
 - (b) Expenses; and then
 - (c) The Seller's Commission, by way of remuneration for the services performed by Coys down to the date of recovery, and not by way of penalty or liquidated damages.
 - (d) Any balance remaining shall be apportioned pro rata as between the Buyer's Premium, and any payable sums to the Seller; and then
 - (e) Any balance thereafter to the Buyer.
- 15.9 In the event that any monies recovered do not cover the sums set out at Conditions 15.8(a) to (c), any such shortfall shall be made good by the Seller to Coys on demand.

16. Rescission for seller's default

- 16.1 Should the Buyer become entitled to rescind the sale contract and/or reject the Lot and/or refuse to pay the Purchase Price as a result of any breach by the Seller of these Conditions, including in particular any breach of the warranties set out in Condition 7, the Seller shall be liable to pay the following:
- (a) Any legal or other costs reasonably incurred by Coys; and
 - (b) Expenses;
 - (c) The Seller's Commission;
 - (d) The Buyer's Premium.
- 16.2 Coys shall be entitled to retain the Lot until such sums as are payable under Condition 16.1 are paid in full by the Seller.

17. Force majeure

- 17.1 Should there be any event or occurrence outside the reasonable control of Coys, whether foreseeable (or foreseen) or not, which in the reasonable opinion of Coys shall prevent, hinder or impede the Auction, its conduct, or the sale of the Lot at Auction, Coys may in its sole discretion cancel the Auction or remove the Lot from the Auction, in which case it shall as soon as reasonably possible notify the Seller of its decision accordingly.
- 17.2 Upon receipt of Coys' notice as set out in Condition 17.1, the Seller may by notice in writing to Coys elect to:
- (a) Re-enter the Lot into the next auction to be conducted by Coys in respect of which the Lot is a suitable lot (as judged by Coys in their reasonable opinion); or
 - (b) Instruct Coys to sell the Lot by private treaty within 14 days of such Seller's notice, as though the Lot was an unsold lot at Auction for the purposes of Condition 12.1; or
 - (c) Cancel this contract without any payment or penalty, save that where the Auction catalogue had been printed prior to cancellation, Coys shall be entitled to retain any cataloguing fee paid by the Seller.
- 17.3 In the event that the Seller does not make any election in writing under Condition 17.2 within 14 days of receipt of Coys' notice, the right of election shall irrevocably pass to Coys who may by notice in writing to the Seller elect for one of the three courses of action set out in Condition 17.2. In case Coys elects to sell the Lot by private treaty, the 14 day sale period shall in this case run from the date of Coys' notice served under this Condition 17.3.
- 17.4 Any sale of the Lot under this Condition 17.2, whether at subsequent auction or by way of private treaty, shall be in accordance with these Conditions.

18. Limitation of liability

- 18.1 Save as is expressly provided for in these Conditions, neither Coys nor the Seller shall be liable for any loss of profit, loss of revenue, loss of use, business of interruption, loss of reputation, credit or goodwill, or any indirect or consequential damages whatsoever.
- 18.2 Without prejudice to Condition 18.1, neither Coys nor the Seller shall be liable to pay the other a sum greater than the estimated value of the Lot as defined in Condition 11.2, save that any claim for interest or legal costs shall be in addition to this limitation.

19. Miscellaneous

- 19.1 The benefit and burden of the Conditions may not be assigned by the Seller or the Buyer without Coys' prior agreement in writing.
- 19.2 If any Condition or any part of any Condition shall be held to be unenforceable or invalid that Condition shall be severed, and such unenforceability or invalidity shall not affect the enforceability and validity of the remaining conditions or the remainder of the relevant condition.
- 19.3 These Conditions constitute the entire agreement between the parties and supersede all previous drafts, agreements, arrangements, understandings and conventions between them, whether written or oral, relating to the subject matter of this contract.
- 19.4 These Conditions may not be altered or varied unless confirmed by Coys in writing.
- 19.5 The Seller acknowledges and warrants that in entering into this contract the Seller does not rely and has not relied on any representations made by or on behalf of Coys, save where such representations have been confirmed or set out in writing signed by a partner of Coys.
- 19.6 No waiver of any rights arising under these Conditions shall be effective unless in writing. Any such waiver shall not be considered as a waiver of any subsequent breach, whether of the same or any other provision.
- 19.7 This contract is made for the benefit of Coys and the Seller and is not intended to benefit or be enforceable by anyone else. For the avoidance of doubt, any rights otherwise arising under the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.
- 19.8 The headings and numbering used in the Conditions are for convenience only and shall not affect their interpretation.