

## **General Terms and Conditions of Business of Auktion & Markt AG for live auctions of used movable articles, valid from 15.04.2011, Time: 4.00 p.m.**

The following sections have been amended:

Section II  
Section V. no. 1. and no.2  
Section VI. no. 1 – no. 6  
Section VII. no. 1  
Section VII.no. 3 now Section VII.no. 2  
Section X. no. 1 and no. 2  
Section XV

### **I. General matters and applicable law**

#### **1. User of these General Terms and Conditions of Business**

The user of these General Terms and Conditions of Business is Auktion & Markt Aktiengesellschaft, a public limited company founded under German law with its head office at Klarenthaler Strasse 83, 65197 Wiesbaden. The registered seat of the company is Wiesbaden, where it is entered in the Commercial Register of the Magistrates' Court of Wiesbaden under the register number HRB 20968.

### **II. Object of these General Terms and Conditions of Business**

The object of these General Terms and Conditions of Business is the auctioning of movable articles by the user as a company (hereinafter referred to as the 'Auctioneer') to parties who are also companies or business persons, rather than consumers (hereinafter referred to as the 'Bidder').

### **III. General Terms and Conditions of Business of other parties**

The following General Terms and Conditions of Business shall also apply for future transactions with the Bidder, in so far as they shall not have been replaced with others by the Auctioneer prior to the future transactions with the Bidder being notified thereof. Any other General Terms and Conditions of Business of the Bidder shall not apply, even if not explicitly excluded.

### **IV. Applicable law**

The law of the Federal Republic of Germany shall apply exclusively to the agreement between the parties. The UN Convention of Contracts for the International Sale of Goods (CISG) is hereby expressly excluded.

### **V. Registration and authorization as a Bidder**

#### **1. Registration**

Bidders may only be companies or businesspersons within the sense of § 14 of the German Civil Code (Bürgerliches Gesetzbuch - BGB), who acquire the used article with a view to exercising their trade or profession, when the object of their trade or profession is dealing in motor vehicles. Consumers within the sense of § 13 of the German Civil Code (BGB) cannot be Bidders. Prior to participating in the auctions, Bidders must first apply in writing and be registered. Before being authorized to place bids, Bidders are required to declare and demonstrate in explicit terms their character as a company or businessperson and as a dealer in motor vehicles. The nature of the demonstration required shall be determined by the Auctioneer. In the case of Bidders with their head office within the territory of the Federal Republic of Germany, the following documents are required as evidence in all cases: a copy of the business registration (Gewerbeanmeldung), for business persons and companies entered in the Commercial Register, the relevant extract from the Commercial Register, and a copy of the personal identity document of the proprietor of the business (or of the CEO or Managing Director entered in the Commercial Register). In the case of purchasers with a head office outside of the territory of the Federal Republic of Germany additionally certified translations of the above documents in the foreign language into the German language have to be supplied, foreign purchasers with a head office in a state of the European Union are also required to give notice of the valid VAT ID that has been allotted to them. All purchasers are required to return the above documents together with the

signed registration confirmation and the agreement on the choice of applicable law and responsible court of law as well as the acknowledgement of the General Terms and Conditions to the Seller. Every bidder is required to inform the Auctioneer immediately of any changes in its (business) coordinates.

## 2. Authorization as a Bidder

If the Bidder has demonstrated that they are a company or businessperson in accordance with the terms defined above, they shall receive a confirmation of registration from the Auctioneer. This will be handed over to the Bidder at the auction centre or sent to the Bidder by telefax or e-mail, and will include the bidder number assigned by the Auctioneer. With the allocated bidder number, the Bidder will be able to participate in auctions organized by the Auctioneer throughout Germany.

## VI. Conclusion of contracts

### 1. Invitation to place bids

The Auctioneer advertises movable articles for auction in auction catalogues. Each movable article in the auction catalogue is given a starting price. In addition, the auction catalogue also states for each movable article whether it is a new or a used article, and whether, in exceptional cases, the auction is to be carried out as a 'net auction', that is to say, the hammer price is to be understood as the highest bid exclusive of statutory value added tax.

### 2. Bid acceptance, bidding deadline, bids, binding nature of bids

The bid is accepted if it is called out three times without any higher bids being placed. The Auctioneer reserves its right to accept a bid and may turn down a bid. If several bidders place the same bid at the same time and no higher bids are placed after it was called out three times, then a draw may be used to decide which bid is accepted. If it is not possible to immediately agree on which bid is to be accepted, then the used article shall continue to be auctioned. If a higher bid is placed on time and mistakenly overlooked or other doubts exist with regard to acceptance, then the Auctioneer is entitled to withdraw acceptance and reoffer the used article for auction. The acceptance of the bid obliges the Bidder to purchase the item and to pay the hammer price. If the bid is accepted under reserve, then the bidder shall remain bound to their bid for up to 72 hours. If the Bidder does not receive acceptance without reserve within the specified period, then they are no longer bound. If the Auctioneer accepts the bid under reserve, then they may at any time and without consulting with the reserve Bidder, accept the bid of a limit Bidder or sell on the open market. It is not possible to accept any more bids after the acceptance of the highest bid. It is also possible to place bids prior to the auction. These bids must be in writing and must be submitted at least two days before the auction.

### 3. Acceptance of the bid

The Auctioneer shall be entitled to turn down bids of the Bidder that are lower than the starting price (displayed as 'under reservation' ('im Vorbehalt')). The Auctioneer may also turn down bids above the starting price, and shall not be obliged to accept bids made by the Bidder. The Auctioneer will accept the highest bid, in so far as they do not avail themselves of the right to decline to accept bids. The Auctioneer shall decide, within the period of 48 hours, whether they will accept the bid of the Bidder. The highest bid is accepted when the hammer is struck three times.

### 4. Hammer price

The hammer price corresponds to the highest bid of the Bidder and shall include the applicable VAT at the current statutory rate as defined in the Federal Republic of Germany, in so far as the auction catalogue does not expressly advertise the movable article in question as a 'net auction'. The Auctioneer shall send German Bidders a properly made out invoice, showing the net hammer price and the clearly indicated VAT amount at the current statutory level. This shall not apply if the movable article in question is subject to differential taxation (Differenzbesteuerung) in accordance with § 25a of the Value Added Tax Act (Umsatzsteuergesetz - UStG).

5. Prior to placing any bids for articles subject to regular VAT (Regelbesteuerung) in accordance with the Value Added Tax Act (Umsatzsteuergesetz - UStG), Bidders from EU states other than the Federal Republic of Germany must notify the Auctioneer in writing of their valid international VAT identification number. Furthermore, they shall guarantee in a written communication to the Auctioneer that the sold article will be immediately conveyed to another state of the EU outside the Federal Republic of Germany. The purchaser will first be issued a gross invoice on the purchase price and the costs of the contract handling. After examining and existence of the preconditions stipulated in the German VAT Act the purchaser is then issued a net invoice on the purchase price and the costs of contract handling.

### 6. Bidders from third countries

Bidders from non-EU states (third countries) must pay the Auctioneer a security deposit in addition to the hammer price of the movable article in question: The security deposit shall be equal to the amount of the currently applicable VAT rate as defined in the Federal Republic of Germany. This security deposit will immediately be reimbursed to the Bidder, as soon as it shall have been shown beyond doubt that the acquired movable article, which is subject to regular VAT (Regelbesteuerung) in accordance with the Value Added Tax Act (Umsatzsteuergesetz - UStG), has left the EU. For this purpose the Bidder shall promptly submit the original of the completed official export declaration featuring the seal

of the EU border customs office to the Auctioneer. Upon the receipt of confirmation, the security deposit will immediately be reimbursed to the Bidder. The claim to repayment of the security deposit may only be assigned with the consent of the Auctioneer.

## **VII. Auction fees**

1. Besides the purchase price, the cost of handling the contract shall be borne by the purchaser. The cost of handling the contract (fees) depend on the seller's respective valid price list, to be viewed under [Price list](#).

2. The handling fee for the contract is payable immediately together with the hammer price.

## **VIII. Cost of the payment transaction and fulfillment**

All foreign Bidders shall be liable for any bank charges that arise for the international transfer of funds. The payment of the hammer price and the contract handling fee shall occur as a cashless bank transfer. In special cases the acceptance of cheques or bills of exchange shall have been agreed, this shall only be for the sake of fulfillment and not as a substitute for payment.

## **IX. Obligation of advance payment**

After the conclusion of the contract, the Bidder shall be obliged to pay the hammer price and the contract handling fee in advance. The Bidder shall only receive the acquired article after the complete fulfillment of their payment obligations.

## **X. Transfer of risk, collection and transfer of ownership**

### **1. Transfer of risk**

The risk of any accidental deterioration or accidental destruction of the used article shall pass to the Bidder upon payment of the purchase price.

### **2. Collection**

Immediately after the payment of the hammer price, the Bidder will receive a note authorizing collection of the article or authorization by fax or phone. On presenting this note of authorization the Bidder shall receive the acquired article at location of the article. Acquired articles are to be collected by the Bidder at their own cost from the location of the article (auction centre).

## **XI. Right of retention of the Auctioneer**

The Auctioneer shall be entitled to refuse to issue the collection authorization and to hand over the acquired article, as well as the relevant documents, until such time as the Bidder shall have fulfilled all of their obligations to the Auctioneer. This also applies if these obligations have arisen from other auctions and/or other legal relations between them.

## **XII. Withdrawal from the contract, rights in case of default of payment, offsetting rights and rights of retention**

### **1. Withdrawal**

The Auctioneer shall be entitled to withdraw from the contract if the Bidder has made incorrect statements about their creditworthiness or discontinued their payments, or if insolvency proceedings have been filed or opened on their assets. The Auctioneer shall also be entitled to withdraw from the contract if they are unable to fulfil it. If before the transfer of risk to the Bidder, the acquired article shall be damaged or destroyed, then the Auctioneer shall be entitled to withdraw from the contract, provided that the Auctioneer immediately notifies the Bidder of the damage or destruction, and promptly reimburses the paid hammer price to the Bidder. After the withdrawal from the contract and the repayment of the hammer price, neither party shall have any further claims to the other party.

### **2. Damages arising from default of payment**

The first reminder establishing a situation of arrears in payment shall be free of charge. The Bidder shall be charged

EUR 15.00 for the second reminder, unless the Bidder shall be able to demonstrate that the Auctioneer did not incur any expense or did not incur any expense to this amount.

### 3. Interest on arrears

In case of arrears in payment, the Auctioneer shall be entitled to call for payment of interest on arrears to the amount of eight percentage points higher than the basic interest rate that applies at the time. The Auctioneer reserves the right to charge higher interest on other legal grounds. The Auctioneer's right to assert further indemnification claims remains unaffected.

### 4. Offsetting rights and rights of retention

The Bidder shall only be entitled to offsetting rights or rights of retention in cases where their counterclaims have been established at law, are uncontested or have been acknowledged by the Auctioneer.

## **XIII. Reservation of the right of modification**

1. All articles that are to be auctioned may be viewed and inspected before the auction during the specified times. The statements made about the features of the used articles that are to be auctioned and the information in the auction catalogues have been compiled by the Auctioneer to the best of their knowledge and belief. Inessential deviations in the supplied article shall be accepted by the Bidder. This applies, for example, in the case of lesser specifications. Superior specifications are in all cases to be considered as an improvement in the supplied article.

2. The statements made in the auction catalogues do not represent an agreement that the article contains certain properties, nor is any kind of guarantee given or assurance made that the article is functionally effective for any specific purpose.

## **XIV. Rights and liability in respect of defects in quality and title**

### 1. Defects of quality

In the case of second-hand articles, all claims based on defects in quality or title are excluded. In the case of new articles, the Auctioneer hereby assigns any claims for defects in quality to which they may be entitled against the manufacturer of the articles (and against the Auctioneer's supplier) to the Bidder. The Auctioneer will however admit liability in a subsidiary sense for defects in quality in accordance with the sales law of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*), if the manufacturer of the articles (or the Auctioneer's supplier) should fail to satisfy the Bidder's claims in full based on assigned rights.

2. Liability based on culpability in contractual negotiations and liability in tort Any liability based on culpability in contractual negotiations or unauthorized actions is hereby excluded. Any liability for gross negligence of vicarious agents is also excluded.

### 3. Limitation of all exclusions of liability

The aforementioned exclusions of liability do not apply for; damages resulting from the loss of life and limb or damage to physical health, which result from a negligent breach of obligation on the part of the Auctioneer, or from a deliberate or negligent breach of obligation on the part of the Auctioneer's statutory representatives or vicarious agents; other damages resulting from a gross negligent breach of obligation on the part of the Auctioneer, or a negligent breach of obligation on the part of the Auctioneer's statutory representatives or vicarious agents; damages caused by vicarious agents, in so far as these do not represent a breach of material contractual obligations.

### 4. Limitation of liability

In cases where liability cannot be excluded, liability is restricted to those damages that typically arise in this nature of transaction.

## **XV. Demurrage Charges**

The Auctioneer shall implement a demurrage charge plus the applicable statutory VAT as of the first day of delayed collection. The amount of the respective due demurrage charge is listed in the respective auction catalogue.

## **XVI. Limitation**

The period of limitation is one year from the statutory commencement of the limitation period. The shortened limitation period does not apply for the claims stated under section XIV. number 3.

## **XVII. Claims to indemnification by the Auctioneer**

1. The right of the Auctioneer to lay claim to indemnification is based on statutory stipulations, in so far as nothing to the contrary is specified in these General Terms and Conditions of Business.

2. If the Auctioneer calls for indemnification in place of performance, and if the acquired article has not yet been delivered or is taken back by them, they shall be entitled without the need of special proofs to a one-time amount equal to 8% of the hammer price in the way of indemnification. The Bidder retains the right to demonstrate that the damages incurred were less than those represented by the one-time amount referred to above. If the Auctioneer can demonstrate that more extensive damages were incurred, then they may call for indemnification of these as well.

## **XVIII. Retention of title**

All used articles shall remain the property of the Auctioneer until such a time as the Bidder has satisfied all of the claims to which the Auctioneer is entitled. The Bidder is not authorized to pledge or assign the movable article. The Bidder is entitled to sell the used article to third parties in normal business transactions. The retention of title shall then be assigned to the processed articles and, in the case of resale, to the claim for the payment of the purchase price (extended retention of title).

## **XIX. Severability clause**

If individual sections of these General Terms and Conditions of Business or parts thereof become ineffective, this shall not affect the effectiveness of the remaining sections or the validity of the contract between the Auctioneer and the Bidder.

## **XX. Prohibition of assignment**

The rights of the Bidder derived from the contract that has been concluded may not be assigned to third parties.

## **XXI. Place of fulfilment and jurisdiction**

The place of fulfilment and responsible court of law, for both parties, shall be the registered seat of the Auctioneer. This shall also apply for legal proceedings in connection with transactions involving cheques and bills of exchange. The same shall apply for persons that do not have a responsible court of law in Germany or persons who move their domicile or usual place of residence outside Germany after the conclusion of the contract or whose domicile or usual place of residence is unknown at the time that legal proceedings are filed for.

Modified on the 15.04.2011