

General Terms and Conditions of Business

The following General Terms and Conditions of Business come into force from 15.04.2011, 4.00 p.m. for all customers registered at Autobid.de (who have registered by 15.04.2011, 4.00 p.m.), if the coming into force of the new General Terms and Conditions of Business is not objected to within two weeks following 15.04.2011. The objection is to be addressed to: Auktion & Markt AG, Internet Auction Department Autobid.de, Klarenthaler Straße 83, 65197 Wiesbaden, Germany. For all customers who register after 15.04.2011, 4.00 p.m., these General Terms and Conditions of Business apply from the time of registration and acceptance of the new General Terms and Conditions of Business. The preamble was changed as follows: "Autobid.de/Premium" was changed to "Autobid.de", sentence 3, second half sentence was erased without substitution.

The following sections have been amended:

Section II. 1
Section III. 5. b)
Section III. 5. d. aa)
Section III. 5. d. cc) now section III. 5 d) bb)
Section IV. now Section V.
Section V. now Section VI.
Section VI. now Section VII.
Section VII. now Section VIII.
Section VIII. now Section IX.
Section IX now Section X.
Section X. now Section XI.
Section XI. now Section XII.
Section XII. now Section XIV.

The following sections have been inserted:

Section IV. 1 – 5.
Section XIII.

I. General matters, 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 AG [Auction and Market plc], a public limited company with its head office in Wiesbaden, entered in the Commercial Register of the Magistrates' Court of Wiesbaden under the register number HRB 20968.

2. Object of these General Terms and Conditions of Business

The object of these General Terms and Conditions of Business is to regulate the sale of movable articles by the user as a businessperson (hereinafter referred to as 'the vendor') to persons who are likewise businesspersons rather than consumers (hereinafter referred to as 'purchasers', 'the purchaser'). The sale is managed through the internet platform of the user, web address www.autobid.de, and the external proceedings of the sale are similar to an auction. In legal terms, however, purchasing deals come about through offer and acceptance [Angebot und Annahme] as defined by §§ 145–151 of the Bürgerliches Gesetzbuch (BGB) [German Civil Code], and not by knockdown [Zuschlag] as defined by § 156 of the BGB.

3. General Terms and Conditions of Business of other parties

The following General Terms and Conditions of Business shall also apply to future deals with the purchaser, in so far as they shall not have been replaced with others by the vendor before the future deals take place, the changes having been communicated to the purchaser. General Terms and Conditions of Business of the purchaser that deviate from these shall not apply, even if not explicitly excluded by the vendor.

4. Applicable law

The law of the Federal Republic of Germany shall apply exclusively to the agreement between the parties. The UN Sales Law (CISG) is hereby expressly excluded.

II. Registration as a purchaser, authorisation as a purchaser

1. Registration as a purchaser

Consumers in the sense of § 13 of the Bürgerliches Gesetzbuch (BGB) [German Civil Code] cannot be purchasers. Purchasers can only be businesspersons in the sense of § 14 of the BGB, who acquire the object of sale with a view to exercising their trade or profession, when the object of their trade or profession is dealing in motor vehicles. Before taking part in a sales event, each purchaser must apply in writing and be registered. Before being authorised for the first time to place bids, each purchaser is required to declare and demonstrate in explicit terms his character as a businessperson and as a dealer in motor vehicles. The nature of the demonstration required shall be determined by the vendor. In the case of purchasers with a head office on the territory of the Federal Republic of Germany, the following evidence is needed in all cases: a copy of his business registration [Gewerbeanmeldung], for businesspersons and companies entered in the Commercial Register the relevant extract from the Commercial Register, and a copy of the personal identity papers 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.

2. Authorisation as purchaser

If the purchaser has demonstrated that he is a businessperson in the terms defined above, he shall receive a confirmation of registration from the vendor. This will be sent to him by e-mail, and will include the personal password of the purchaser as defined by the vendor. With the password he has been allocated, and the nickname which he is free to choose himself, the purchaser can then log into sales events, as soon as the purchaser shall have sent back to the vendor the documents mentioned in section 1 above. The return of the documents mentioned in section 1 above shall bring about the purchaser's authorisation to take part in sales events. The purchaser's nickname will be visible in the screen presentation of the sales proceedings, but the name of the purchaser remains anonymous, and the password likewise remains secret. Each purchaser shall be obliged to notify the vendor immediately of any changes in his personal data (name, head office, address etc.).

III. How a contract comes about

1. Invitation to place bids

The vendor advertises movable articles for sale in electronic sales catalogues. Each movable article therein is given a starting price. For each movable article the sales catalogue further states whether it is a new or a used article, and whether the sale is to be carried out, as an exceptional case, as a 'net sale', that is to say, if the purchase price is to be understood as the highest bid exclusive of the statutory VAT. Through the publication of the sales catalogue on the internet the vendor invites potential purchasers to place bids.

2. Bidding deadline, bids, binding nature of bids

a) The vendor determines the duration of the "Hotbid phase" for every single auction. The "Hotbid phase" starts again every time a new bid is submitted. If no further bids are submitted during a "Hotbid phase", then it ends after the time set in the system. This is the end of the bidding phase.

b) The vendor reserves the right to end the “Hotbid phase” early in special cases.

c) The purchaser places a bid by entering a number within the term set by the bidding deadline. The bid may also be lower than the starting price. The bid is binding on the purchaser only up to the expiry of forty-eight hours from the end of the Hotbid phase; in the case of bids that are lower than the starting price, which are shown in the screen presentation as standing 'under reservation' ['im Vorbehalt'], the bid shall be binding on the purchaser up to the expiry of seventy-two hours from the end of the Hotbid phase. After the end of the term set by the bidding deadline, no further bids may be placed.

Not only can bids be placed by entering a number during the current term set by the bidding deadline, they can also be placed in advance in the form of the offer of a maximum price in the electronic bidding agent. The electronic bidding agent is a technical tool which automatically and repeatedly outbids other electronically placed bids up to the maximum price bid by the purchaser, outbidding the latest bid by a minimum increment as advertised in the auction catalogue.

3.) Acceptance of the bid

The vendor shall be entitled to turn down bids of the purchaser that are lower than the starting price. Such bids are shown in the screen presentation as 'under reservation' ['im Vorbehalt']. The vendor may also turn down bids above the starting price, and shall not be obliged to accept bids made by the purchaser. The vendor will accept the highest bid, in so far as he does not avail himself of the right to decline to accept bids. The vendor shall decide, within the duration of the term under which the bid is binding on the purchaser, whether he will accept the bid of the purchaser. The vendor will notify the purchaser by e-mail that the vendor has accepted his bid; in other cases the notification of the acceptance of the bid shall be waived by the purchaser.

4. Contract of sale

With the e-mail notification of acceptance by the vendor, a contract of sale between the vendor and the purchaser and the vendor is considered to have come about.

5. Purchase price

a) Purchasers from the Federal Republic of Germany

The purchase price corresponds to the highest bid of the purchaser, and shall include – in so far as the sales catalogue does not expressly specify terms to the contrary for the article in question, i.e. if a 'net sale' has been advertised – the applicable VAT at the current statutory rate as defined in the Federal Republic of Germany (gross purchase price). The vendor will send to German purchasers a properly made out invoice, showing the net purchase price and the clearly indicated VAT amount at the current statutory level. The preceding sentence shall not apply if the sale is one subject to differential taxation (Differenzbesteuerung) as defined by § 25a of the Umsatzsteuergesetz [VAT Act].

b) Purchasers from EU states outside the Federal Republic of Germany

Before placing a bid for articles subject to regular VAT [Regelbesteuerung] under VAT tax law, purchasers from EU states other than the Federal Republic of Germany must notify the vendor in writing of the valid international VAT ID allotted to them, and furthermore guarantee in a written communication to the vendor 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. If these conditions have been fulfilled, no German VAT will be payable on the net purchase price, and consequently the purchase price will consist only of the net purchase price without VAT.

c) Purchasers from non-EU states (third countries)

Purchasers from non-EU states (third countries) must pay to the vendor, towards the purchase price of the article in question, a security deposit to the amount of the currently applicable VAT rate. This

security deposit will be reimbursed to the purchaser immediately, as soon as it shall have been shown beyond doubt that the article purchased and subject to regular VAT [Regelbesteuerung] under VAT tax law has left the EU. For this purpose the purchaser shall submit to the vendor the original copy of the export declaration, having been completed and stamped by the EU border customs office. On receipt of the form, the security deposit will be reimbursed to the purchaser directly. The claim to repayment of the security deposit may be assigned only with the consent of the vendor.

d) Cost of handling the contract

aa) 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.

bb) The costs of handling the contract shall be paid together with the purchase price.

e) Cost of the payment transaction, fulfilment

All foreign purchasers shall be liable for the bank charges that fall due for an international transfer of funds.

If in special cases the acceptance of cheques or bills of exchange shall have been agreed, this shall be only for the sake of fulfilment and not as a substitute for payment.

IV. Electronic invoices

1. The purchaser agrees to be sent electronic invoices.
2. The electronic invoices shall be sent to the customer's mailbox.
3. The purchaser is informed that it shall be required to check the signature on the electronic invoice.
4. It is pointed out to the customer that the electronically transmitted invoice may be printed as a hard copy, that the hard copy is not accepted as a receipt under fiscal law.
5. The electronically transmitted invoice must be stored like a hard copy invoice for 10 years.

V. Obligation of advance payment

After the conclusion of the contract the purchaser shall be obliged to pay the purchase price and the cost of handling the contract (cf. section III. 5 above) in advance. Thus the purchaser shall receive the article of sale only after the complete fulfilment of his payment obligations as defined by section III. 5.

VI. Transfer of risk, collection, transfer of ownership

1. Transfer of risk:

With the payment of the purchase price, the risk of any accidental deterioration or accidental destruction of the article shall pass to the purchaser.

2. Collection:

Purchased articles are to be collected by the purchaser at his own cost from the place where the article is located, as specified in the electronic sales catalogue.

3. Transfer of ownership:

Immediately after the payment of the purchase price, the purchaser will receive a note authorizing collection of the article. On presenting this note of authorization the purchaser shall receive the article.

VII. Vendor's lien

The vendor shall be entitled to refuse to issue the collection authorisation and to hand over the article sold until such time as the purchaser shall have fulfilled all his obligations to the vendor, even if these obligations have arisen from other sales and/or other legal relations between them.

VIII. Retention of Title

All second-hand articles shall remain the property of the vendor until such a time as the purchaser has satisfied all of the claims to which the vendor is entitled. The purchaser is not authorized to pledge or assign movable articles. The purchaser is entitled to sell the second-hand articles 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).

IX. Withdrawal from the contract, rights in case of delayed payment, offsetting rights and rights of retention

1. Withdrawal

The vendor shall be entitled to withdraw from the contract if the purchaser has made incorrect statements about his creditworthiness or has discontinued his payments or if insolvency or composition proceedings have been applied for in respect of his assets.

If before the transfer of risk to the purchaser the sold article shall be damaged or destroyed, the vendor shall be entitled to withdraw from the contract, provided that the vendor notifies the purchaser immediately of the damage or destruction, and promptly reimburses to the purchaser the purchase price that has been paid. After the withdrawal from the contract and repayment of the purchase price, neither party shall have any further claims on the other.

If before the transfer of risk to the purchaser, and before the transfer of property, the sold article shall be damaged or destroyed through circumstances for which the vendor may be held responsible, the vendor shall be entitled to withdraw from the contract of sale, provided that the vendor notifies the purchaser immediately of the damage or destruction, and promptly reimburses to the purchaser the purchase price that has been paid. After the withdrawal from the contract and repayment of the purchase price, neither party shall have any further claims on the other.

2. Damages arising from arrears in payment

a) The first reminder establishing a situation of arrears in payment shall be free of charge. In case of continued non-payment, on the second reminder the purchaser shall be charged € 15, unless the purchaser shall be able to demonstrate that there has been no expense incurred by the vendor or that the expense incurred has not come to this amount.

b) In case of arrears in payment on the part of the purchaser, the vendor 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 vendor reserves the right of asserting further indemnification claims to a higher amount. The purchaser shall retain the right to demonstrate that no expense has been incurred by the vendor through the arrears in payment or that the expense has been less than the amount claimed.

3. Offsetting rights and rights of retention

The purchaser shall only be entitled to offsetting rights or rights of retention in a case where his counterclaims have been established at law, are uncontested or have been acknowledged by the vendor.

X. Reservation in respect of changes

The statements made about the features of the articles to be sold and the descriptions of their state have been compiled by the vendor to the best of his knowledge and belief, and so included in the sales catalogue. Inessential deviations in the article delivered shall be accepted by the purchaser. This applies, for example, in the case of lesser specifications. Superior specifications are in all cases to be seen as an improvement in the article delivered.

Statements made in sales 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.

XI. Rights in respect of material defects, and liability

1. Material defects

a) In the case of second-hand articles, all claims based on material defects are hereby excluded.

b) In the case of new articles, the vendor hereby assigns any claims for material defects to which he may be entitled against the manufacturer of the articles (and against the vendor's supplier) to the purchaser. The vendor will however admit liability in a subsidiary sense for material defects in accordance with the sales law of the Bürgerliches Gesetzbuch [German Civil Code], if the manufacturer of the articles (or the vendor's supplier) should fail to satisfy or fail to satisfy in full the purchaser's claims based on material defects and derived from assigned rights.

2. Liability based on culpability in contractual negotiations and liability in tort

Any liability based on culpability in contractual negotiations or unauthorised actions is hereby excluded.

3. Limitation of all exclusions of liability in these General Terms and Conditions of Business

Not covered by the legal restrictions contained in these General Terms and Conditions of Business is the liability of the vendor to the purchaser in respect of the following:

- acts of deliberate intent or malice, or an expressly formulated guarantee,
- damages caused by deliberate intent or gross negligence,
- damages resulting from the loss of life and limb or damage to physical health which result from a deliberate or negligent breach of obligation on the part of the vendor, or from a deliberate or negligent breach of obligation on the part of the vendor's statutory representatives or vicarious agents.

XII. Claims to indemnification on the part of the vendor

The right of the vendor 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.

If the vendor calls for indemnification in place of performance, and if the article of sale has not yet been delivered or is taken back by him, he shall be entitled without the need of special proofs to a one-off sum amounting to 8% of the purchase price in the way of indemnification. The purchaser retains the right to demonstrate that the damages incurred have been less than those represented by the one-off sum referred to above. If the vendor can show that more extensive damages have been incurred, he may call for indemnification of these as well.

XIII. Statute of limitations

Claims are limited to one year after the beginning of the legal limitation of claims with the exception of the claims listed under Section XI 3.

XIV. General matters, prohibition of assignment

The place of fulfilment and responsible court of law, for both parties, shall be those of the head office of the vendor. This shall also apply to lawsuits in connection with transactions involving cheques and bills of exchange.

If individual sections of these General Terms and Conditions of Business should be found to conflict with statutory requirements, or for other reasons should be found to be ineffective, this shall not release the purchaser from the obligation to accept the purchased goods and to adhere to the other agreements entered into. If any one of these contractual stipulations should be or become ineffective, the effectiveness of the other stipulations shall not be affected thereby. In such a case, in place of the ineffective stipulation, that legal prescription shall be considered to apply which approximates as closely as possible in economic terms to the ineffective stipulation.

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

Modified on the 15.04.2011