

Turners Vendor Terms & Conditions

Vendor Terms

1. DEFINITIONS

1.1 In these terms the definitions on any page attached to these terms will apply in addition to the following definitions unless the context otherwise requires:

Auction means the sale of Goods by public auction carried out by a Turners auctioneer.

Buyer Claim has the meaning set out in the Buyer Terms applicable to Buyers.

Fees mean the amounts payable to Turners for the Services which are set out in the Services and Fee Schedule.

Goods mean personal property which the Vendor has authorised Turners to sell in accordance with these terms.

In Trade means whether the Vendor of the goods is selling the goods in trade as a supplier (within the meaning of the Consumer Guarantees Act 1993).

Security Interest(s) means a security interest which is registered on the Personal Property Securities Register under the Personal Property Securities Act 1999.

Services means the services set out in the Services and Fee Schedule which relate to the marketing and offer to sell Goods by public auction conducted by Turners, at a fixed price using Turners Buy Now, Turners Tender or online at Trade Me for auction or with a buy now price together with additional and ancillary services.

Services and Fee Schedule means the schedule of services and the price of those services offered by Turners to Vendors.

Vehicle(s) means any motor vehicle(s) which is part of the Goods.

Vehicle Condition Report means the vehicle inspection described in the Services and Fee Schedule.

2. APPOINTMENT

2.1 **Appointment:** The Vendor appoints Turners as its agent to do all things on behalf of the Vendor that Turners considers necessary to market, sell and transfer title to the Goods including without limitation:

- (a) store, inspect, and market the Goods for sale using the Services;
- (b) to request a settlement amount from any person having Security Interest in the Goods;
- (c) publish and/or announce at any time prior to offering the Goods for sale:
 - (i) information concerning the nature of the Vendor, including whether the Vendor is or is not selling In Trade, and the context in which the Vendor offers to supply the Goods; and
 - (ii) the results of the Vehicle Condition Report and nature of the Goods including any defects or damage to the Goods;
- (d) to sell the Goods for the Vendor on the Auction Terms or Buy Now Terms or Tender Terms;
- (e) collect proceeds from the sale of Goods, pay any settlement amount required to discharge a Security Interest over the Goods along with Fees due to Turners and transfer ownership of Goods to the buyer.
- (f) respond to, negotiate and settle any Buyer Claim as the Vendor's agent and in the manner set out in the Buyer Terms.

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- 2.2 **Sale:** The sale of Goods represents an agreement between the Vendor and buyer on the Auction Terms or Buy Now Terms or Tender Terms.
- 2.3 **Buyer Default:** Turners will not be obliged to take any action against a Buyer to enforce the agreement between the Vendor and Buyer.
- 2.4 **Buyer Enquiries:** The Vendor agrees to refer to Turners all enquiries from prospective buyers who may have become aware of the Goods as a result of Turner's marketing of the Goods and agrees not to deal direct with such buyers.
3. **RESERVE PRICE AND MANNER OF SALE**
- 3.1 **Reserve Price:** The Vendor acknowledges and agrees that the Auction Reserve Price and Buy Now Reserve Price were set by the Vendor in reliance on his/her or its own judgement and not in reliance on any statements, warranties or representations made to the Vendor or to any other person by or on behalf of Turners. All express, implied or other representations and warranties of Turners in relation to the Auction Reserve Price and Buy Now Reserve Price are expressly excluded to the maximum extent permitted by law.
- 3.2 **Trade Me:** Turners may list Goods for sale on Trade Me. If the Goods listed on Trade Me for sale:
- (a) by "auction", then the reserve shall be the same at the Auction Reserve Price;
 - (b) by "buy now", then the buy now price on Trade Me shall be the Buy Now Reserve Price; and
 - (c) the Goods will be offered for sale on the Buy Now Terms and any applicable Trade Me terms.
- 3.3 **Buy Now Reserve Price:** If a Buy Now Reserve Price is specified for any Goods then the Vendor authorises Turners to sell the Goods at any price on the Buy Now Terms. If Turners sells the Goods using this method of sale Turners must pay the Buy Now Reserve Price less any Fees to the Vendor.
- 3.4 **Auction Reserve Price:** If an Auction Reserve Price is specified for any Goods then the Vendor authorises Turners to sell the Goods by Auction and/or by listing the Goods on Trade Me at any price equal to or greater than the Auction Reserve Price on the Auction Terms.
- 3.5 **Goods Fail to Sell at Auction:** If any Goods fail to sell at Auction:
- (a) before the end of the first working day following the day of the auction the Vendor authorises Turners to accept any offer which is at least equal to the Auction Reserve Price from a person who participated in the auction, in which case the sale shall be a sale on the Auction Terms; or
 - (b) after the end of the first working day following the day of the auction the Vendor authorises Turners to accept any offer which is at least equal to the Auction Reserve Price, in which case the sale shall be a sale on the Buy Now Terms and the Auction Reserve Price is deemed to be the Buy Now Reserve Price.
- 3.6 **Vehicle Condition Report:** Turners may in its absolute discretion:
- (a) carry out a Vehicle Condition Report; and
 - (b) display the results of a Vehicle Condition Report on any vehicle offered for sale.
4. **RISK, STORAGE AND VEHICLE USE**
- 4.1 **Risk:** Goods which Turners has accepted for sale but are not on Turners premises are at the sole risk of the Vendor.
- 4.2 **Damage:** Subject to clause 4.3, if Goods are damaged or destroyed while on Turner's premises then Turners will, at its option, repair the damage to the Goods or pay to the Vendor any loss in value which is directly attributable to the damage. Turners will not be liable in any case for any consequential loss or loss of profit suffered by the Vendor which results from damage to the Goods.

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4.3 **Vehicle Storage:** Turners may, at its absolute discretion, store any vehicle under cover or outside and shall not be liable to the Vendor for any additional cleaning required as a result of the storage of the vehicle.

4.4 **Vehicle Use:** The Vendor acknowledges and agrees that potential buyers may examine or test drive the Vehicle; Turners will store the Vehicle together with other motor vehicles and will move the Vehicle to and from the auction or sales area buyer and may use the Vehicle for any other purpose Turners considers reasonable.

5. TURNERS ANNOUNCEMENTS AT SALE

5.1 **In Trade Status:** Turners shall display, announce or publish the Vendor's In Trade status when the Goods are offered for sale.

5.2 **Failure to Disclose In Trade Status:** If the Vendor fails to complete the In Trade disclosure, Turners may in its absolute discretion:

- (a) withdraw the Goods from sale; or
- (b) offer the Goods for sale on the basis that the Vendor has agreed that the statutory warranties and guarantees set out in the Consumer Guarantees Act which would apply if the Vendor was In Trade are incorporated in the Auction Terms even if the Vendor is not In Trade.

5.3 **Other Announcements:** Where Goods are offered for sale by:

- (a) auction carried out by a Turner's auctioneer, Turners shall display, announce or publish to auction participants whether or not there is a reserve price, that only Turner's auctioneer may make vendor bids and that the auctioneer will not make vendor bids equal to or above any reserve price;
- (b) auction on Trade Me, vendor bids are prohibited.

6. FEES

6.1 **Costs:** Where the Goods are accepted by Turners and offered for sale using any of the Services Turners:

- (a) will charge the Vendor the commission specified in the Services and Fee Schedule;
- (b) may charge the buyer the buyer's fees set out in the Services and Fee Schedule;
- (c) may add a margin and sell other products with the Goods;
- (d) where the goods are sold subject to the Buy Now terms Turners may add other amounts to the Buy Now Reserve Price and will retain any amount above the Buy Now Reserve Price.

6.2 **Other Services:** Turners may carry out additional services specified by the Vendor on the terms set out in the Services and Fee Schedule.

6.3 **Payment:** The Vendor shall pay the Fees at the time specified in the Services and Fee Schedule and to the extent Fees are unpaid Turners shall deduct those Fees from the proceeds of sale.

6.4 **Withdrawal Fee:** Where a Vendor withdraws any Goods within 24 hours prior to the scheduled sale time the Vendor shall pay Turners the withdrawal fee specified in the Services and Fee Schedule.

6.5 **No Sale:** In the event that any Goods are not sold, the Vendor must pay all Fees due to Turners prior to collecting the Goods.

7. VENDOR COVENANTS AND WARRANTIES

7.1 **Vendor Warranties:** The Vendor represents and warrants to Turners that:

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- (a) the Vendors "In Trade" or "Not in Trade" status advised to Turners is true and correct and has been determined solely by the Vendor in accordance with the provisions of the Consumer Guarantees Act 1993 and Fair Trading Act 1986;
- (b) the Vendor has disclosed to Turners all information concerning the nature of the Vendor and the context in which the Vendor supplies the Goods, for example whether the Vendor has used the goods itself or has/had not had possession of the Goods.

7.2 **Goods Warranties:** The Vendor represents and warrants to Turners that:

- (a) the Vendor is the legal Vendor of the Goods or has the authority of the legal Vendor to sell the Goods;
- (b) the Goods are not liable to be seized or forfeited to any person and that all securities and monies owed against the Goods and that all registered or unregistered Security Interests have been disclosed in writing to Turners. The Vendor authorises Turners to obtain settlement figures where any Goods are subject to a Security Interest;
- (c) all details of the Goods provided by the Vendor are true and correct and where the Goods include a Vehicle, that the information provided to Turners for the purpose of display on the vehicle consumer information notice is true and correct and that the odometer reading on the Vehicle is accurate;
- (d) the Vendor has disclosed to Turners all information concerning the Goods which might be relevant to a buyer. Where the Goods are a Vehicle, relevant information to a buyer which the Vendor must disclose to Turners includes ownership records, details of any mechanical fault in the Vehicle, details of any accident, water or other damage to the vehicle notwithstanding the repair or replacement of the damaged part of the Vehicle, any chassis repair and/or whether the Vehicle has ever been an insurance write off; and
- (e) where the Goods are of a kind ordinarily acquired for personal, domestic, or household use or consumption, the nature of the Goods has been correctly disclosed in writing to Turners;
- (f) if the Goods are subject to road user charges, that all charges are paid up to date at time of sale.

7.3 **Covenants:** The Vendor covenants with Turners:

- (a) that the Goods will be delivered to Turners not less than 5 working days prior to any marketing/advertising is commenced or where the Goods are to be sold at Auction, 5 working days prior to Auction;
- (b) not to place any bid on Goods or to encourage or procure any other person to bid on the Vendor's behalf on Goods in which the Vendor has a material interest whether at Auction or on Trade Me;
- (c) to pay any GST charged on the sale of Goods to the Inland Revenue Department when due.

7.4 **Warranties Deemed Repeated:** The Vendor is deemed to repeat the warranties, representations and covenants in clause 7 at the time the Goods are unconditionally sold.

8. **SALE PROCEEDS**

8.1 **Deductions:** The Vendor irrevocably authorises and directs Turners to pay the proceeds of the sale in the following order:

- (a) any amount required to discharge any Security Interest or other amount owing in respect of the Goods;
- (b) Fees invoiced by Turners and any costs which Turners are authorised to charge the Vendor under these terms, for example fees for other services and Trade Me fees;
- (c) outstanding road user charges, if any, and any tax, including GST, which Turners is required to account for to any authorised person;

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- (d) any other monies owing by the Vendor to Turners;
- (e) any claims relating to the Goods of the type referred to in clause 8.4; and
- (f) subject to clause 8.3, the balance to the Vendor or as the Vendor directs in writing.

8.2 **Accounting and Payment:** Subject to clause 8.3 Turners shall deliver to the Vendor a statement setting out the amounts referred to in clause 8.1 and pay to the Vendor the balance of proceeds of sale referred to in clause 8.1(f) no later than the 10th working day after the sale.

8.3 **In Trade Vendor:** Where the vendor is In Trade or is selling goods other than goods of a kind ordinarily acquired for personal, domestic, or household use or consumption, the Vendor agrees:

- (a) that section 36ZF(1) of the Fair Trading Act 1986 shall have no application and to exclude its entitlements under section 36ZF(2) Fair Trading Act 1986 to an statement of account and payment in accordance with the statutory timeframes; and
- (b) Turners may withhold payment of any proceeds of sale until Turners reasonably considers that no amounts are due or likely to be due under clauses 8.1(a) to 8.1(d).

8.4 **Buyer Claims:** Where Turners receives any Buyer Claim or reasonably anticipates a Buyer Claim may be made, or reasonably anticipates any claim may be made against Turners in relation to the sale of the Goods, the Vendor irrevocably appoints Turners as its attorney to:

- (a) to hold the proceeds of sale until Turners is satisfied any claim is resolved;
- (b) provide the Vendors name, date of birth, address and any other contact details to the buyer so the buyer can pursue the claim directly against the Vendor; or
- (c) consider, negotiate and accept any claim for the Vendor;
- (d) resell the Goods and apply the proceeds on account of any amount paid by Turners without releasing the Vendor from its obligations under these terms

8.5 **Claim Management and Costs:** Turners may notify the Vendor of all Buyer Claims and while Turners may involve the Vendor in the resolution of any Buyer Claim, Turners will have the absolute right to resolve any claim in any manner Turners sees fit. If Turners incurs any third party cost in resolving a claim, including the cost of purchasing goods or services to resolve or remedy any claim, or incurs legal costs which relate to a claim, Turners will provide the Vendor with full details of those costs and the Vendor shall immediately pay the costs to Turners or Turners shall deduct those costs from proceeds held for the Vendor.

9. INDEMNITY AND EXCLUSION OF LIABILITY

9.1 **General Indemnity:** The Vendor shall at all times hold Turners harmless and indemnify Turners in respect of all payments made by Turners, damages or penalties imposed on Turners and costs incurred by Turners in relation to any Buyer Claim or other claims made by any person in relation to the services provided under these terms or the sale of any Goods, whether Turners is legally liable or not, and includes a breach by any person of the Consumer Guarantees Act 1993, Fair Trading Act 1986, any applicable consumer law or standard, the Motor Vehicle Sales Act 2003 or any other law or regulation whatsoever, and any failure by the Vendor to provide correct information to Turners, and in relation to the sale of a Vehicle, includes any breach of the warranties and any statutory warranties, conditions or guarantees by any person.

9.2 **Buyer Acts:** Turners will not be responsible for any delay, breach or non-performance by a buyer.

9.3 **Exclusion of Liability:** Turners shall have no liability to the Vendor including any for any consequential losses of any kind, if any Goods are not sold, in relation to marketing the Goods or for settlement by Turners of any Buyer Claim.

9.4 **Maximum Liability:** Turner's maximum aggregate liability to the Vendor in any circumstances is limited to the amount paid by the Vendor to Turners for the Services.

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- 9.5 **No Contracting Out:** Subject to clause 9.6, where the Consumer Guarantees Act 1993 applies nothing in these Terms shall contract out of or shall limit the application of that Act.
- 9.6 **In Trade Vendor:** Where the Vendor is in Trade, the Vendor and Turners agree to contract out of the Consumer Guarantees Act 1993 and sections 9 (Misleading and deceptive conduct generally), 12A (unsubstantiated representations), and 13 (False or misleading representations) of the Fair Trading Act 1986.
- 9.7 **Contracting Out:** Where the Buyer is In Trade and has agreed to contract out of the Consumer Guarantees Act 1993 and relevant provisions of the Fair Trading Act 1986 (**Acts**) Turners shall endeavour to contract out of those Acts for the benefit of the Vendor and Turners. The Vendor acknowledges that the effectiveness of contracting out of the Acts is subject to compliance with statutory tests including that it is fair and reasonable that the buyer is bound by those terms. Turners make no representations or warranties as to the validity or effectiveness of contracting out the Acts.
- 9.8 **Variations:** The Vendor may request that Turners vary any of these Terms, including the limitations of liability, exclusions of liability and provisions contracting out of the Consumer Guarantees Act 1993 and Fair Trading Act 1986. Variations to the Terms shall only be effective if the variation is authorised by Turners in writing at the same time these Terms are entered into with the Vendor.
10. **TERMINATION**
- 10.1 Turners may in its absolute discretion terminate this agreement immediately at any time, with or without cause, whether before or after any services have been provided. On termination, subject to the Vendor paying all amounts due to Turners, Turners shall make the Goods available for collection by the Vendor at the Vendors cost.
11. **GENERAL**
- 11.1 **Set off:** Turners may set off amounts owed to the Vendor against monies owed by Turners to the Vendor.
- 11.2 **Privity:** For the avoidance of doubt any clauses which are for the benefit of Turners are also intended to be for the benefit of subsidiaries of Turners, Turner's contractors, employees, agents and assignees and the provisions of the Contracts (Privity) Act 1982 apply accordingly.
- 11.3 **Electronic Messages:** The Vendor acknowledges and agrees that Turners may store personal information and provide the Vendor with unsolicited electronic messages on the terms published on Turners website at www.turners.co.nz, available from any of Turners premises or will be made available by mail on request.
- 11.4 **Costs:** Turners may recover from the Vendor any and all costs incurred by Turners in enforcing the provisions of these terms, including debt collection costs and any legal costs as between solicitor and client on an indemnity basis.
- 11.5 **Entire Agreement:** This agreement constitutes the entire agreement between the parties.