

General Terms & Conditions as at January 2008

1. Part: General provisions

Section 1 - Preamble

1. The following Terms and Conditions ("T&C") set out the basic principles of the business relationships between AUTOonline GmbH and AUTOonline, LLC ("AUTOonline") and the users ("User") of the online system provided by AUTOonline for marketing accident vehicles ("salvage exchange") as well as the users ("User") involved in the sale of fleet vehicles ("fleet marketing system"). Both "salvage exchange" and "fleet marketing system" shall subsequently be jointly referred to as "systems".
2. In addition to the rules of participation agreed between AUTOonline and the users of the systems, these T&Cs contain further provision which shall also apply to any contracts of sale arising from the use of the salvage system or the fleet marketing system and concluded between the relevant buyer and seller ("used vehicle sales contract").
3. Diverging, contrary or supplementary Terms & Conditions shall not form part of the contract, unless AUTOonline has explicitly agreed to them in writing. AUTOonline hereby explicitly objects to any counter-acknowledgments of contractual partners referring to their own Terms & Conditions.
4. The User agrees that AUTOonline is acting as an independent contractor in performance of this Agreement, and nothing contained herein shall be deemed to create a partnership, joint venture, or employer-employee relationship between the Parties hereto nor between AUTOonline and any Service Provider. Personnel employed by User are not AUTOonline employees or agents and User assumes full responsibility for their acts.
5. Nothing in this Agreement or any arrangement contemplated by User shall authorize User to act as agent for AUTOonline or bind AUTOonline in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
6. The User is a legitimate commercial business in good standing and has all requisite licenses, permits, power and authority to carry on its business as now conducted.
7. The system users and any other potential contracting parties acknowledge that they have read and will accept these Terms & Conditions when registering for the systems.
8. Both AUTOonline and User agree and acknowledge that this Agreement is non-exclusive and both either party is free to enter into similar agreements with other parties.

Section 2 - Legal position of AUTOonline with regard to the marketed goods

1. The contracting parties take note of the fact that the vehicles, accessories and other goods offered for sale on the systems are not property of AUTOonline.
2. In none of the procedures described in detail in these Terms & Conditions does AUTOonline become a partner in the sales contracts for vehicles, accessories or other goods offered on AUTOonline systems. Unless AUTOonline has explicitly agreed this with the seller or buyer, AUTOonline does not issue statements on the sale or purchase of vehicles in its own name. However, AUTOonline may be authorised to conclude contracts of sale on behalf of the relevant vehicle owner. AUTOonline may also be authorised to collect the purchase price in its own name or, where applicable, to bring an action in its own name for recovery of the purchase price of a vehicle sold through use of the systems, or to reverse the seller's sales contract with the buyer on behalf of the seller. Where AUTOonline has been given authority to do so by the relevant seller, AUTOonline will notify the affected buyer accordingly.

3. AUTOonline is at no time the owner of the vehicles or items for listed on either the salvage or fleet system marketing systems. AUTOonline accepts no responsibility for the accuracy of the description or actual condition of the vehicles listed on either system. AUTOonline does not subject these vehicles or items to any technical and/or visual inspection. The description of the vehicle's/item's condition is based entirely on information provided by the seller.

Section 3 - Admission to the marketing system, revocation and cancellation

1. Only commercial buyers that have been authorised in writing by AUTOonline will be admitted to the systems.
 - a) Utilization of the AUTOonline **salvage** system in the capacity of a buyer is reserved exclusively to certified automobile recyclers, dismantlers, rebuilders, vehicle dealerships and the motor vehicle trades.
 - b) Utilization of the AUTOonline **fleet marketing** system in the capacity of a seller is open to fleet operators of any type (e.g. banks, finance companies, vehicle manufacturers, importers, leasing companies, authorities etc.). Registered salvage system buyers may also participate as fleet system buyers.
2. Admission to the systems is upon application and approval by AUTOonline. AUTOonline reserves the right to review information at a later stage and to reject an application for admission without giving any reason or to revoke an admission granted earlier. Admission may be revoked in particular for the following reasons:
 - Failure to meet the applicable State or Federal legal requirements of an automobile recycler, dismantler, rebuilder, vehicle dealership in the State which the Buyer or Seller resides.
 - Violation of any of the provisions stated in these Terms & Conditions
 - Deliberate or grossly negligent inducement to advertise incorrect data on the part of sellers
 - Delay of more than 14 calendar days in the payment of the participation fee,
 - Repeated delays in the processing, delivery, payment and collection of vehicles.
 - Misuse of AUTOonline user ID and/or password,
 - Violation of applicable laws or rights of a third party, where this affects the interests of AUTOonline, in particular with regard to the integrity and reliability of the trade on the systems,
 - Initiation of insolvency proceedings or refusal to initiate such proceedings due to insufficient assets, and cessation of business,
 - Use of the marketing system outside the scope of its intended purpose,
 - Establishment or operation of a marketing system in direct or indirect competition with AUTOonline.

AUTOonline explicitly reserves the right to claim damages in case of any violation of these Terms & Conditions.

9. Users wishing to avail themselves of the AUTOonline systems as a seller for a single transaction may revoke their consent to these T&Cs and the resulting usage agreement with AUTOonline in writing within two weeks after their declaration of consent. This requires a notice in writing, addressed to AUTOonline, LLC 9909 Mira Mesa Blvd, Suite #155 San Diego, California 92131 or an e-mail to Info-USA@AUTOonline.com. Provided the revocation was declared in a timely manner, the user is not bound by the usage agreement or their declaration of consent to these Terms & Conditions. However, this right of revocation lapses as soon as a vehicle is advertised on the AUTOonline system.
4. The user may cancel their usage agreement at any time. Such cancellation requires a notice in writing, addressed to AUTOonline, LLC 9909 Mira Mesa Blvd, Suite #155, San Diego, California 92131 or an e-mail to Info-USA@AUTOonline.com.
5. AUTOonline is entitled to cancel this usage agreement at any time and in writing, with a notice of 14 days. However, this does not affect the right of suspension.

Section 4 - Users' rights of use

1. Upon admission to the AUTOonline salvage or fleet marketing system the user is issued with the required software or access to the relevant website for the area which they are authorized... With this access, the user is assigned a non-transferable, restricted right of use which is limited to the duration of mutual business relations and the proper use of the services of AUTOonline.
2. It is strictly prohibited to share an AUTOonline user ID and access information with any third party without written permission from AUTOonline; any contravention will result in immediate suspension of user privileges. AUTOonline also reserves the right to claim damages in such cases. Each user is responsible for ensuring the non-disclosure of their access information. In this respect the user is fully liable to AUTOonline for any loss or theft of this information.
3. The rights of the user are limited to the use of the services provided by AUTOonline in accordance with their intended use.
4. AUTOonline does not grant rights to copyright protected property or any other proprietary rights. This includes all present and future offers, the software, relevant documentation and instructions.
5. The AUTOonline logo and the associated claim "Every car's a winner" may only be used with prior written agreement by AUTOonline and within the limits specified.

AUTOonline endeavours to ensure maximum possible system security. However, the users' entitlement to utilization of the systems is restricted to the present state of technology. In addition there may be delays or system failures, especially during maintenance work on the server or the software used by AUTOonline. AUTOonline May limit its services at times, where this is necessary in order to ensure the security of the server or to carry out maintenance work. In such cases AUTOonline will endeavour to take into account the legitimate interests of the system users by carrying out maintenance work outside the usual core business hours or by AUTOonline notifying the users in advance and in a suitable fashion. In case of an unforeseen system failure, the Principles for the handling of AUTOonline system failures also apply. However, the above provision does not affect AUTOonline's limitation of liability as set out in section 15.

Section 5 - Prices

Usage of the salvage and/or fleet marketing system is subject to the payment of usage fees set out in a separate price list. The user will be charged the prices valid on the day of use plus any applicable State, Federal or VAT taxes.

Section 6 - Payment

1. Unless otherwise agreed, all invoices issued by AUTOonline are payable in full within 14 days from date of invoice. Late payments may be subject to an additional fee or penalty...
2. Invoice disputes must be lodged in writing, addressed to AUTOonline, LLC 9909 Mira Mesa Blvd, Suite #155, San Diego, California 92131 or by an e-mail to Info-USA@AUTOonline.com.
3. Users are only entitled to offset counter-claims against AUTOonline if such claims have been finally established and are undisputed.

Section 7 – Indemnification

User hereby agrees to forever defend, indemnify, and hold harmless at its own expense AUTOonline as well as their respective directors, officers, agents, employees, attorneys in fact and shareholders from and against any and all claims, debts, losses, liabilities, demands, obligations, costs, expenses, fines, penalties, actions and causes of action, judgment for damages, alleged claims or litigation arising out of, resulting from or in connection with the Services rendered under this Agreement, any breach of this

Agreement, misconduct, error, omission, or other unauthorized act by Vendor or Service Providers or their respective employees, agents, subcontractors or franchisees in connection with this Agreement and the Services, or any claim that any Service provided hereunder infringes, violates or misappropriates any copyright, patent, trade secret or any other intellectual property right of a third party. This indemnification agreement shall include, without limitation, actual attorneys fees, expert witness fees and consultants' costs incurred and court costs, as well as other damages herein described.

2. Part: Procedures used by the salvage system and the fleet marketing system

Section 7 - General rules of procedure

1. The seller offers the vehicle(s), parts, accessories or other items for sale on the system as per contractual agreement with AUTOonline and decides, in accordance with the subsequent provisions, on the marketing procedure to be used (bid system, auction system, fixed price system). AUTOonline, in its capacity as authorised receiving agent of the buyer, shall receive the statements issued by the seller as part of the procedures used on the fleet marketing system.
2. The seller guarantees the timely submission of complete and correct details, title and required documentation for the vehicles or other goods for sale; all such details shall be sent to AUTOonline before the item is marketed. The details provided must also include known existing defects (technical and visual). AUTOonline accepts no responsibility for the details provided by the seller or seller.
3. Where a third party makes claims against AUTOonline in connection with an inappropriate vehicle description or other non-observance of an incidental obligation by the seller in connection with the offering or sale of a vehicle, the seller agrees from the outset to fully indemnify AUTOonline against such claims.
4. Registered bidders can view the auction dates by logging onto the system. The bidder agrees in advance to accept any further changes issued by AUTOonline or an authorized third party.
5. If the highest bidder claims their bid was not valid - the burden of proof is on them. – The seller is entitled, but not obliged, to accept this statement as an annulment offer and to offer the vehicle or item for sale to the next highest bidder or to offer the vehicle anew. In case of disagreements regarding the timeliness of a new highest bid, the highest bid already accepted remains valid.
6. Damaged vehicles shall be marked separately. In order to achieve the maximum sales price AUTOonline further advises the seller to provide a description of the vehicle's damage and condition by expert qualified appraiser.

Section 8 - Procedure that may be used on AUTOonline

In principle the seller can choose between the three procedures outlined in the Term & Conditions - bid system, auction system and fixed price system -, provided the subsequent provisions do not stipulate otherwise. The contract of sale is never concluded through the acceptance of an offer but through a declaration of intent. **The bid system is the default system used for both the salvage and / or fleet marketing system, unless explicitly stated otherwise.**

Section 8 a - The bid method

1. When using the bid method, the seller or, upon their request, AUTOonline will set the bid deadline for the vehicle offered. Any interested party may submit a bid. All bids are a binding offer to purchase...
2. The bidder cannot see the bids of competing bidders. Each bid submitted is confidential and binding.

3. After of the bidding deadline passes, the seller will retrieve the bids for their vehicle offered. The sale is not concluded until the offer has been reviewed and expressly accepted by the seller. The seller is under no obligation to accept any bid.

Section 8 b - The auction method

1. When using the auction system the seller, list the vehicle on system and sets a bid or bidding deadline as well as a reserve price where desired. The seller agrees to accept the highest valid bid submitted at the end of the bidding period, provided this bid has reached the seller's reserve price.
2. The bidder can follow the bids of competing bidders and outbid them if interested. Each bid submitted is binding. The bid expires if another bidder submits a higher bid during the bidding period.
3. As soon as the auction period is over a sales contract for the vehicle offered will be prepared by the seller.

Section 8 c - The fixed price method

1. When using the **fixed price method** the seller determines a fixed sale price and other conditions the potential buyer must meet.
2. The buyer submits a binding offer to purchase this item at the fixed price determined and to meet the additional criteria as described in the offer.
3. With this method the buyer effectively accepts the seller's offer.

Section 9 - Special rules for the salvage system

1. **When using the salvage system the seller can only choose between the bid system and the auction system.** The auction system is only available to those sellers authorised to dispose of the vehicles items. This procedure may not be used for vehicles advertised by buyers (so-called commercial goods). In cases where the seller is not authorized to dispose of the vehicle advertised, the user may only use the bid system.
2. The buyer is bound to their offer for 21 calendar days following the listing end date unless notified that their bid was not accepted.
3. Vehicles may be advertised on the salvage for a maximum period of 5 business days unless otherwise agreed to by AUTOonline.

Section 10 - Special rules for the fleet marketing system

1. When using the fleet marketing system the seller may choose between the bid system, the auction system or the fixed price system. Unless explicitly indicated otherwise the bid system is the default system here.
2. The buyer is bound to their offer for 21 calendar days following the listing end date
3. The seller has the option to have their vehicles seen by all buyers or a specified group.
4. The seller assures both AUTOonline and the buyer that the vehicle is not encumbered by any known, undisclosed third-party rights. The seller warrants they are the legal owner of the vehicle or otherwise authorised to sell the vehicle.
5. Upon acceptance of the offer, the buyer promises make a cashless payment to the seller or AUTOonline within 5 business days.

Section 11 - Collection of the purchased vehicles/settlement of sales contract via AUTOonline

Provided a contract of sale was concluded in accordance with the above-mentioned provisions, the buyer is obliged to collect the vehicle at their expense and without delay, but no later than 5 business days after notification their offer was accepted. Should the buyer be unable to retrieve the vehicle within 5 business days, AUTOonline reserves the right to collect the vehicle and to pay out the purchase price to the seller on behalf of the buyer.

Should this occur, the buyer is obligated to collect the vehicle from AUTOonline at their expense and promptly reimburse AUTOonline for the purchase price and any expenses that may have been incurred.

3. Part: Provisions for used vehicle sales contracts**Section 12 - Non-warranty clause**

All vehicles offered on the system are sold "as is, where is" without any warranty expressed or implied unless stated otherwise in the specific vehicle listing.

4. Part: Final provisions**Section 14 - Data protection**

The procedures used for the marketing system and the administration of data are executed in accordance with State and Federal data protection regulations. The users understand and agree that any data or bids enter by them may be disseminated, used, transferred and stored for commercial purposes, provided such handling falls within the scope of general data administration and is handled properly and professionally. Both, users of the system and AUTOonline, will treat all data with the greatest degree of confidence objectively possible.

Section 15 - Liability

1. AUTOonline assumes no liability for the correctness and completeness or the usability of the data entered by the users. Neither will AUTOonline assume liability for a loss of quality for pictures that the sellers submitted via fax.
2. Furthermore AUTOonline is not responsible for the detailed contents of the sales contracts concluded between the system users, since the latter are free to determine the contents of the sales contracts themselves by adding appropriate comments on the input screen. AUTOonline shall therefore accept no responsibility for the legal validity of the non-warranty clause ("caveat emptor") in individual cases, as set out in section 12.
3. AUTOonline' contractual and statutory liability for compensation is limited to damages caused intentionally and by gross negligence. In cases of a fundamental negligent breach of contract, AUTOonline's liability shall be limited to predictable, typical damage.
4. The above-mentioned exclusions of liability and restrictions do not apply where AUTOonline has explicitly assumed liability or where damage results from injuries to life, limb or health or where mandatory statutory regulations apply.

Section 16 - Place of performance and jurisdiction

1. These Terms & Conditions and the entire legal relations between AUTOonline GmbH, AUTOonline, LLC and the system users shall be governed by the laws of the United States. Any application of the UN Convention on Contracts for the International Sale of Goods (CISG) is precluded.
2. The place of performance for services owed by AUTOonline is Neuss (Germany). Neuss shall also be the exclusive place of performance for any present and future claims resulting from business relations with merchants entered in the commercial register; this includes claims based on checks or a bill of exchange. The same place of performance applies if the customer is not subject to general domestic jurisdiction, has moved their place of residence or habitual abode abroad or if their place of residence or habitual abode is unknown at the time of bringing an action.

Section 17 - Amendments to the Terms & Conditions

1. AUTOonline shall notify the system users of any future changes or amended versions of the T&Cs. These shall form part of the usage agreement between the users and AUTOonline, provided the user does not explicitly oppose the validity of the changed or rewritten T&Cs in writing within 21 calendar days of receipt of such notification by AUTOonline.
2. Where the user fails to file an objection such behaviour is regarded as agreement to the changes of the existing usage conditions. In the notification of changes to or a revised version of the T&Cs AUTOonline will clearly point out what implications such failure to lodge will have.

Section 18 - Final provisions, severability clause

1. In the event that any individual provisions contained in these Terms & Conditions shall be deemed invalid or unenforceable or incomplete, this shall have no bearing upon the validity of the remaining provisions.
2. Any invalid or unenforceable provisions shall be superseded by such legally valid or enforceable provision which most closely approximate to the economic objective which was pursued by such a legally invalid or unenforceable provision.