



## **Conditions of Purchase of Seized Vehicles by Auction**

### **1. DEFINITIONS**

1.1 The definitions in this clause apply to these Conditions:

“Authorised Treatment Facility” shall mean the holder of an Authorised Treatment Facility Certificate licensed to handle and dispose of end of life vehicles.

“Buyer” shall mean the maker of the highest bid accepted by THIMBLEBY & SHORLAND.

“Buyer’s Premium” refers to the premium of 20% plus VAT which is incurred on the Hammer Price of all Lots unless stated otherwise.

“Certificate of Destruction” means the document completed and submitted to DVLA upon the disposal of an end of life vehicle.

“Contract” means the contract for purchase formed between the Buyer and the Seller once the Hammer Price has been achieved.

“Defaulter’s Entry Fee” means the fee of £100 plus VAT to be charged to the relevant party in the case of any Vehicle having to be re-auctioned otherwise than due to a fault of THIMBLEBY & SHORLAND.

“Deposit” means the deposit paid by the potential buyer upon Registration of £200.

“DVLA” means the Driver and Vehicle Licensing Agency.

“Hammer Price” means the highest bid accepted by THIMBLEBY & SHORLAND including any VAT that may be included therein.

“Premises” means the premises in which the auction is taking place, and, where relevant, the location where the individual Vehicles and/or Lots under the control of THIMBLEBY & SHORLAND are stored.

“Registration Form” means the slip to be completed by a potential buyer prior to participating in an auction.

“Registration” means:

- (i) the payment of the Deposit; and
- (ii) the presentation of 2 forms of identification acceptable to THIMBLEBY & SHORLAND; and
- (iii) the completion and submission of the Registration Form.

“Sale Notes” means the Notes associated with each auction which will include: viewing times; payment details; collection times; VAT chargeable; and any other relevant terms relating to that particular auction and/or sale, and which in all cases are governed by these Conditions.

“THIMBLEBY & SHORLAND” means Thimbleby & Shorland and/or any other authorised representative thereof.

“VAT” means Value Added Tax.

“Seized Vehicle” means any Vehicle that is entered in a sale the whole or any part of which is described as a sale of Seized Vehicles.

“Vehicle” includes every kind of motor car, motor cycle, motorised caravan and every kind of commercial, agricultural and other self-propelled vehicle that is registered in the UK.

“Working Day” means Monday to Friday inclusive, excluding Bank Holidays.

- 1.2 Headings do not affect the interpretation of these Conditions and do not form part of them.
- 1.3 Save in the context of any online auctions held by THIMBLEBY & SHORLAND where reference to writing will include reference to email, writing or written does not include faxes and email unless otherwise notified by THIMBLEBY & SHORLAND.
- 1.4 If any of these Conditions are inconsistent with any term of the Sale Notes, the Sale Notes shall prevail.
- 1.5 These Conditions only relate to the sale of Seized Vehicles.

- 1.6 All Buyers acknowledge and agree that these Conditions are binding upon them, and by the Buyers completing Registration these Conditions are deemed accepted and incorporated into all dealings between the parties.

## **2. BASIS OF SALE**

- 2.1 All Vehicles are sold as seen with all faults and imperfections and errors of description. Photographs published are for identification only. Buyers are deemed to have satisfied themselves prior to sale as to the condition of each Vehicle and should exercise and rely on their own judgment as to whether the Vehicle accords with its description. Neither THIMBLEBY & SHORLAND, their servants nor agents will be responsible for errors of description or for the genuineness or authenticity of any Vehicle.
- 2.2 No warranty (written or oral) or other term (whether express or implied) as to the age, description, suitability, fitness for purpose, satisfactory quality or roadworthiness of the Vehicle is given by THIMBLEBY & SHORLAND, their servants or agents or by any Seller to any Buyer in respect of any Lot, and any express or implied conditions or warranties are excluded to the fullest extent permitted by law.
- 2.3 Any reference to the age of a Vehicle is intended to be a reference to the year of first registration of the Vehicle in the United Kingdom.
- 2.4 If the date of a current or expired MOT for a Vehicle is stated in a catalogue, no MOT certificate will be supplied with the Vehicle.
- 2.5 If a key is supplied with a Vehicle no warranty is given as to its condition, suitability and whether it will operate the Vehicle.
- 2.6 Buyers buy Vehicles where they lie and are wholly responsible for bringing any necessary labour and equipment in order to remove their Vehicle(s) and shall comply with any directions which may be given by THIMBLEBY & SHORLAND as to the safe removal of the Vehicle(s) and give due care to other goods on the Premises and the Premises itself.

## **3. RISK AND TITLE**

- 3.1 The title in the Vehicle shall not pass to the Buyer until the Hammer Price and the Buyer's Premium have been paid to and received in full by THIMBLEBY & SHORLAND. Until title passes, and subject to clause 7.1 below, THIMBLEBY & SHORLAND reserves the right to dispose of the Vehicle in accordance with their usual Conditions of Sale of Motor Vehicles or any other Conditions that they deem appropriate.

- 3.2 From the time when a Hammer Price is reached in respect of a Vehicle, a Vehicle is deemed sold, and notwithstanding clause 3.1 above, it is at the risk of the Buyer from that point onwards.
- 3.3 Upon payment of the Hammer Price and Buyers Premium, a V5C registration certificate will be issued to the Buyer unless the vehicle must be crushed in which case the sale catalogue will state that the vehicle may only be purchased by the holder of an Authorised Treatment Facility (ATF) certificate and no V5C will be issued. The Authorised Treatment Facility must provide THIMBLEBY & SHORLAND with a copy of the Certificate of Destruction submitted to DVLA within 28 days of the date of the auction.
- 3.4 When the Buyer collects a Vehicle and if a V5C is available and issued, they will sign a declaration to confirm receipt in THIMBLEBY & SHORLAND's main office or auction office.

#### **4. CONDUCT OF THE AUCTION**

- 4.1 Any sale of Seized Vehicles is conducted subject to THIMBLEBY & SHORLAND'S Conditions of Sale and all Buyers are deemed to have read and accepted these Conditions, which will be on display at the Premises and available on request.
- 4.2 A potential buyer who does not buy at a sale may recover their deposit in full from THIMBLEBY & SHORLAND, or they may request in writing that THIMBLEBY & SHORLAND retain the deposit against future auctions of Seized Vehicles, in which case they will only need to provide proof of identity every 6 months.

#### **5. PAYMENT**

- 5.1 Immediately following the achievement of the Hammer Price, the Buyer shall pay the Hammer Price (plus VAT where relevant), and the Buyer's Premium, plus VAT. If the Buyer fails to do so by 4.30 p.m. on the next Working Day, or such other time as is specified in the Sale Notes, THIMBLEBY & SHORLAND shall have an absolute discretion to cancel the contract of sale, to retain the Deposit, and the terms of clause 8.1 below will apply.
- 5.2 All required payments will be settled in full and before removal of the Vehicle is permitted, and will be in sterling (GBP) by way of:
- Bank Transfer
  - Cash – Up to a maximum of £9,000 (in a 90 day period). Payment in excess of £4,000 must be accompanied by valid proof of identity supported by 2 utility bills or similar.
  - Debit Card

Credit Card – Payments by this method will attract an additional surcharge of 2% plus VAT

or as otherwise directed by THIMBLEBY & SHORLAND. The timing required for payment under these Conditions is of the essence and will not be adjusted under any circumstances.

- 5.3 In respect of telegraphic transfers, the remitting bank must include the Buyer's Number, the invoice number, and any other reference as shown in the Sale Notes, or as otherwise directed by THIMBLEBY & SHORLAND.
- 5.4 All Lots are sold exclusive of VAT, which will be added to the Hammer Price at the prevailing rate where applicable.
- 5.5 All Lots must be paid for in accordance with clause 5.1 above, and must be removed no later than the time specified in the Sale Notes.

## **6. BUYER'S DUTIES**

- 6.1 The Buyer shall at his own expense and risk take away the Vehicle(s) purchased not later than 4.30 p.m. the second Working Day after the relevant auction in which the Vehicle was purchased has concluded, unless otherwise stated in the Sale Notes (but in any event not before payment to THIMBLEBY & SHORLAND in accordance with clause 6 above). If the Buyer fails to do so, the provisions of clause 7.2 below will apply.
- 6.2 The Buyer shall fully indemnify and keep indemnified THIMBLEBY & SHORLAND in the event of any damages or loss caused and/or occasioned to any adjoining or other Goods or to the Premises by their removal of the Vehicles.
- 6.3 The Buyer shall be responsible for any injury to and/or death of any person resulting from the removal of his Vehicle(s) and shall fully indemnify and keep indemnified, THIMBLEBY & SHORLAND against any such liability whether or not such injury and/or death was caused by the negligence of the Buyer, his employees or agents.
- 6.4 The Buyer will be responsible for loss or damage to the Vehicle(s) purchased from notification of successful bid and neither THIMBLEBY & SHORLAND nor its servants or agents shall afterwards be responsible for any loss or damage of any kind, whether caused by negligence or otherwise, while any Vehicle is in their custody or under their control.
- 6.5 The Buyer of any Vehicle is responsible for complying with all legal requirements as to the construction and use of that Vehicle and for obtaining all insurances, certificates, permits or other authorisations necessary before that Vehicle can be used on any public highway, and the Buyer will not use the Vehicle or remove it from the Premises under its own power until it is roadworthy and can be used lawfully on the public highway.

- 6.6 If required to do so by THIMBLEBY & SHORLAND the Buyer will provide a written undertaking in a form acceptable to THIMBLEBY & SHORLAND to comply with all duties and obligations in respect of the vehicle imposed by the Road Traffic Act 1972, the Health & Safety at Work Act 1974, and subsequent modification or re-enactment of either Act or by any other legislation affecting the use of the Vehicle. THIMBLEBY & SHORLAND may cancel the contract of sale if the Buyer fails to provide such an undertaking upon request and will be entitled to re-auction the Vehicle at any time.
- 6.7 Neither the Seller nor THIMBLEBY & SHORLAND shall be under any liability pursuant to section 6 of the Health & Safety Act 1974 and the Buyer's attention is drawn to the undertaking given on each Bid Slip at the sale by which the Buyer undertakes to take such reasonable and practical steps as are sufficient to ensure that his purchase will be safe and without risk to health and safety when properly used.

## **7. BUYER'S DEFAULT**

- 7.1 If the Buyer does not honour it's obligations for payment under clause 5 above in any way, THIMBLEBY & SHORLAND as agents of the Seller shall, at their absolute discretion and without prejudice to any other rights they may have, be entitled to exercise one or more of the following rights or remedies:
- 7.1.1 to rescind the contract for sale of the Vehicle (or any other Vehicle) sold to the defaulting Buyer at the auction; and
  - 7.1.2 to retain the Deposit and to pursue the Buyer directly for all monies owed including damages for breach of contract; or
  - 7.1.3 to re-sell the Vehicle in question at public auction or private sale, the defaulting Buyer then paying to THIMBLEBY & SHORLAND any resulting deficiency from the purchase price at the first auction after deduction of any part payment and addition of re-sale costs (see clause 7.3);
  - 7.1.4 to remove, store (either at the Premises or elsewhere) and insure the Vehicle at the expense of the defaulting Buyer;
  - 7.1.5 to charge interest at a rate not exceeding 2% per month on the Hammer Price plus Buyer's Premium to the extent that it remains unpaid for more than 2 Working Days after the day of the relevant auction;
  - 7.1.6 to retain that or any other Vehicle sold to the same Buyer at the same or any other auction and release it only after payment of all outstanding sums;

- 7.1.7 to reject or ignore any bids made by or on behalf of the defaulting Buyer at any future auction;
  - 7.1.8 to apply any proceeds of sale then due or at any time afterwards becoming due to the defaulting Buyer towards settlement of the Hammer Price and to exercise a lien on any property of the defaulting buyer which is in THIMBLEBY & SHORLAND'S possession for any purpose.
- 7.2 If the Buyer fails to remove the Vehicle from the Premises as required under clause 6.1 above (and such failure to remove the Vehicle is not due to a fault of THIMBLEBY & SHORLAND) THIMBLEBY & SHORLAND will have the right to:
- 7.2.1 re-enter the Vehicle into an auction and charge the Defaulter's Entry Fee;
  - 7.2.2 charge a one-off administration fee of £50 (plus VAT);
  - 7.2.3 move the Vehicle (at the risk of the Buyer provided that THIMBLEBY & SHORLAND will use reasonable care and skill in such a move) to another Premises from that where the Buyer purchased the Vehicle; and
  - 7.2.4 for every calendar day following the day on which the Vehicle(s) should have been collected from the Premises by the Buyer, the Buyer will incur a daily storage charge of £20 including VAT per Vehicle stored without exception, and such charge will continue to accrue notwithstanding the transfer of any Vehicle to an alternative premises by THIMBLEBY & SHORLAND (and for the avoidance of doubt, THIMBLEBY & SHORLAND will deduct such charge from the Deposit).
- 7.3 When a Vehicle is re-auctioned pursuant to clause 7.1 or 7.2 or otherwise in accordance with these Conditions as deemed appropriate by THIMBLEBY & SHORLAND, the proceeds of such re-sale will be charged in the following manner (For the avoidance of doubt, THIMBLEBY & SHORLAND will only be able to apply the Deposit as against the costs listed below when the re-sale occurs further to clause 7.1. When the re-sale occurs further to clause 7.2, the Deposit will first be applied as against the costs listed below, followed by the proceeds of the re-sale):
- 7.3.1 the Defaulter's Entry Fee and administration fee on the re-sale;
  - 7.3.2 any outstanding storage fees, removal fees and insurance expenses due;
  - 7.3.3 any sums due under the original contract following the first auction (together with any VAT chargeable).

- 7.4 The balance of the re-sale price, if any, shall be paid to the original Buyer if title in the Vehicle has passed to him but shall otherwise be paid to the original Seller or, where the Seller's rights have been transferred to THIMBLEBY & SHORLAND, shall be retained by THIMBLEBY & SHORLAND. The original Buyer will remain liable to THIMBLEBY & SHORLAND and/or the Seller subsequent to the re-sale, save where the proceeds of the re-sale have discharged such liability.
- 7.5 For the avoidance of doubt, nothing in these Terms limits THIMBLEBY & SHORLAND's liability, nor, where applicable, the liability of the Buyer or Seller for:
- (a) death or personal injury caused by negligence; or
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
  - (e) any other matter for which it would be illegal or unlawful to exclude or attempt to exclude liability.

## **8. GENERAL**

- 8.1 If THIMBLEBY & SHORLAND fail to insist that a Buyer perform their obligations under these Conditions, or if THIMBLEBY & SHORLAND do not exercise any of their rights or remedies under these Conditions, that will not mean that THIMBLEBY & SHORLAND have waived such rights or remedies and will not mean that the Buyer does not have to comply with those obligations. If THIMBLEBY & SHORLAND do waive a default by a Buyer that will not mean that THIMBLEBY & SHORLAND will automatically waive any subsequent default by that Buyer.

## **9. ON-LINE TERMS OF PARTICIPATION**

- 9.1 The above Conditions apply to the sale of Vehicles made through I-bidder (the "Website"), and to the extent that such adjustments in practical application of the Conditions are warranted by virtue of the electronic medium of participation in any given auction, such adjustments shall be deemed made so as to give full application to all relevant and applicable terms.



- 9.2 All participants in on-line auctions warrant that they are of legal age to operate any Vehicle which they purchase and are otherwise legally capable of entering into binding contracts.
- 9.3 Any reference in the above Conditions to the Buyer Premium will also, for the purposes of sale/purchases over the Website, include any online Buyer's fees of which the Buyer will be so notified at the time of Registration.
- 9.4 The Website operates a '10 minute rule' which means that any person who bids on-line within the last 10 minutes of a specific lot closing time will instigate the automatic extension of the lot closing time by an additional 10 minutes and so on for any such subsequent bids.