

TERMS AND CONDITIONS OF SALE OF VEHICLES SOLD BY AUCTION

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AS THEY GOVERN THE CONTRACT FOR THE SALE OF VEHICLES SOLD THROUGH THE CAR AND CLASSIC AUCTION WEBSITE.

1. THE SITE

- 1.1 Car and Classic Limited (Company Number 05599884) is a private limited company with a registered office at 1st Floor, 4 City Road, London, England, EC1Y 2AA (“C&C”).
- 1.2 C&C provides the Site for sellers to list Vehicles for sale, and for bidders to bid for the purchase of Vehicles through an auction process.

2. USER ACCOUNTS

- 2.1 Before listing a Vehicle for auction, each seller must create an account on the Site and must agree to the ‘Seller Terms and Conditions’ which will be emailed to each seller.
- 2.2 Before bidding on a Vehicle on the Site, each bidder must create an account on the Site.
- 2.3 These terms and conditions shall apply to any person from the time that they create an account on the Site or, if earlier, from the time that they first place a bid on the Site.
- 2.4 Personal information collected during the creation of each user account is processed in accordance with our privacy policy available on the C&C website (www.carandclassic.com) and [here](#).
- 2.5 C&C reserves the right to suspend and cancel user accounts at any time if C&C suspects that a seller and/or a bidder are undermining or abusing the Site, such as by seeking to purchase a Vehicle offline in order to avoid the payment of the Commission, or for any other reason, at the discretion of C&C.

3. RESERVE AND GUIDE PRICE

- 3.1 Unless otherwise specified on the Site, a Vehicle is offered by the seller subject to a confidential Reserve Price.
- 3.2 C&C ACTS SOLELY AS AGENT FOR THE SELLER IN THE SALE OF A VEHICLE ON THE SITE and accordingly C&C’S right to bid on behalf of the seller is expressly reserved up to the amount of any reserve.
- 3.3 A guide price is only an expression of C&C’s opinion of the range of what the Winning Bid might be for the Vehicle at the Auction Close. A Vehicle can sell for a price

more or less than the guide price. Any guide price shall not be relied on as an indication of the actual selling price or value of the Vehicle.

4. BIDS, WINNING BIDS AND THE CONTRACT

4.1 When a bidder enters a bid on the Site, they are irrevocably agreeing to purchase the Vehicle for that amount.

4.2 C&C reserves the right, in its sole discretion, to:

4.2.1 withdraw any Vehicle from its Site at any time prior to or during an auction;
or

4.2.2 postpone or cancel the auction of any Vehicle,

and the seller and the bidder agree that C&C shall have no liability whatsoever to any seller or bidder for exercising such rights, or for any errors in execution or failure to execute bids, regardless of the circumstances.

4.3 The auction in respect of any particular Vehicle concludes on the expiry of the deadline for bids shown on the Site in respect of such listing (“**Auction Close**”). At the Auction Close, a legally binding contract for the sale of the Vehicle (“**Sale Contract**”) shall automatically be entered into between the seller and a bidder achieving a Winning Bid (hereinafter referred to as “**the buyer**”) for the buyer to buy the Vehicle for the Sale Price subject to these terms and conditions.

4.4 ANY SALE CONTRACT IS FORMED AND FULFILLED EXCLUSIVELY BETWEEN THE SELLER AND THE BUYER.

4.5 THE SELLER SELLS THE VEHICLE AS PRINCIPAL. ANY DEALINGS THE BUYER MAY HAVE WITH C&C IN CONNECTION WITH THE VEHICLE OR AN AUCTION OF A VEHICLE ARE WITH C&C ACTING AS AGENT OF THE SELLER AND NOT AS AN ADDITIONAL PRINCIPAL.

4.6 C&C SHALL NOT BE LIABLE FOR ANY ACT OR DEFAULT BY THE SELLER OR THE BUYER.

4.7 The parties may not alter the Sale Price after Auction Close.

5. SELLER’S UNDERTAKINGS

5.1 Subject to clause 13, the seller warrants and represents to the buyer and C&C that:

5.1.1 the seller is the owner of the Vehicle or is duly authorised to sell the Vehicle;

5.1.2 save as disclosed on the Site, the seller sells the Vehicle with full title guarantee free from all encumbrances and third party claims;

5.1.3 subject to clause 6, the Vehicle corresponds with its description on the Site and is, to the best of the seller’s knowledge, accurate and not misleading;

- 5.1.4 the sale of the Vehicle conforms in every respect with the terms (if any) implied by the Sale of Goods Act 1979 and the Consumer Rights Act 2015; and
- 5.1.5 where relevant, the seller has complied with all requirements, legal or otherwise, relating to any export or import of the Vehicle to the country where it is marked as listed for sale on the C&C website (the “**country of listing**”), and all duties in respect of the export or import have been paid and, so far as the seller is aware, all relevant parties have complied with such requirements in the past.

6. DESCRIPTION AND QUALITY OF THE VEHICLE

- 6.1 All Vehicles are sold and purchased ‘as seen’, meaning a Vehicle is sold and purchased for what it is and with all its faults, if any.
- 6.2 Any estimate or description given, whether written or oral, is deemed a statement of opinion made by the seller to the best of their ability and not a representation of fact.
- 6.3 The buyer acknowledges that C&C has no duty to the buyer to investigate the accuracy of the description of any Vehicle provided by or on behalf of the seller.
- 6.4 Any illustrations or photography of the Vehicle are given for guidance only and must not be relied upon by the buyer in any manner whatsoever.
- 6.5 Neither the seller nor C&C make or give and do not agree to make or give any contract promise, undertaking, obligation, guarantee, warranty or representation of fact, or undertake a duty of care in relation to:
 - 6.5.1 the satisfactory quality;
 - 6.5.2 fitness for purpose; or
 - 6.5.3 roadworthiness of the Vehicle.
- 6.6 The buyer acknowledges that online auctions carry a higher degree of risk than in person auctions. Without assuming any duty of care towards bidders, C&C encourages bidders to contact sellers through the listing period to seek any reassurance that they might need as to the status of the Vehicle.

7. TITLE AND RISK

- 7.1 Title to and risk in the Vehicle shall pass from the seller to the buyer as follows:
 - 7.1.1 if the buyer is a Consumer, at the time the buyer or their agent (including a transport contractor) comes into physical possession of the Vehicle; or
 - 7.1.2 in all other circumstances, at the point in time the Escrow Agent receives the Sale Price in cleared funds from the buyer.

7.2 Subject to clause 10.2, until title to and risk in the Vehicle passes to the buyer the seller shall:

7.2.1 store the Vehicle in a safe location and ensure the Vehicle is kept in the same condition as advertised on the Site; and

7.2.2 keep the Vehicle insured for the full price of the Vehicle against all risks with a reputable insurer.

8. PAYMENT AND RELEASE OF SALE PRICE

8.1 Unless otherwise agreed in writing between C&C (on the seller's behalf) and the buyer, the buyer shall pay the Sale Price in pounds sterling, by bank transfer, to the Escrow Agent in cleared funds on or before the seventh Business Day following the Auction Close. Time will be of the essence for these purposes.

8.2 The seller irrevocably authorises C&C to instruct the Escrow Agent to withhold an amount equal to the Commission from the Sale Price before it is released to the seller in accordance with this clause 8 and to pay the Commission to C&C.

8.3 C&C shall instruct the Escrow Agent to release the Net Sale Price to the Registered Bank Account of the seller no later than close of business of the Business Day following the day on which a Delivery Confirmation (as defined in Clause 10) has been given by each of the seller and the buyer.

8.4 For the purposes of Clause 8.3, if a buyer does not give a Delivery Confirmation, C&C shall be permitted to deem such a Delivery Confirmation to have been given by a buyer 10 (ten) Business Days following the date on which the seller gave the Delivery Confirmation unless the buyer, having been given reasonable opportunity to do so, reasonably establishes to the satisfaction of C&C that Delivery has not occurred.

9. BUYER'S FAILURE TO PAY

9.1 If the buyer has not complied with clause 8.1, the seller shall be entitled to exercise one or more of the following rights:

9.1.1 to terminate the Sale Contract with immediate effect;

9.1.2 to retain possession of the Vehicle and hold the buyer liable for any associated expenses in relation to the buyer's breach, including expenses attributable to reasonable storage costs and insurance premiums;

9.1.3 to take legal proceedings against the buyer for any sum due under the Sale Contract and/or damages for breach of contract; or

9.1.4 to be paid interest on any monies due at the annual rate of 5% per annum above the base lending rate of the Bank of England from time to time to be calculated on a daily basis from the date upon which such monies become payable until the date of actual payment.

9.2 If the buyer has not complied with clause 8.1, the buyer hereby irrevocably authorises C&C to charge their Registered Credit Card with an amount equal to the Commission. If the Commission is successfully charged to the buyer in accordance with this clause, the seller shall only be entitled under clause 9.1.3 to sue for the Net Sale Price rather than the Sale Price, although nothing in this clause 9.2 is intended to limit the other sums which may be due to the seller under the Sale Contract.

10. DELIVERY

10.1 Following the Auction Close, and subject to the buyer having complied with its obligation to pay the Sale Price, the buyer shall be responsible for organising the logistics of Delivery of the Vehicle to the buyer and the seller agrees to use its reasonable endeavours to facilitate such Delivery. The parties agree to allow C&C to share their contact details for such purpose. The Delivery shall be entirely at the buyer's expense.

10.2 Unless agreed otherwise with the seller, where the buyer and the seller are both based in the same country, the buyer shall organise and complete Delivery of the Vehicle within two weeks of Auction Close, and where the buyer and the seller are based in different countries, the buyer shall organise and complete Delivery of the Vehicle within three weeks of Auction Close. For the purposes of this clause, England, Scotland and Wales (only) shall be deemed to be the same country. If the buyer or its agent (such as a transport contractor) does not collect the Vehicle within such timeframes, the seller, acting reasonably, shall be permitted to transfer the Vehicle to a third party secure storage facility and to re-charge to the buyer the seller's reasonable and actually-incurred costs of transportation of the Vehicle to such facility, storage costs at such facility and insurance costs of the Vehicle for such transportation and subsequent storage, such charges not to exceed £100 per week. The seller shall give the buyer reasonable notice of its intention to exercise its rights under this clause 10.2 and shall keep the buyer informed of any action taken so that the buyer can adjust its collection plans.

10.3 For the purposes of clause 8.4, the seller may confirm Delivery once the Vehicle has been transferred to the third party storage facility and C&C shall be permitted to deem that Delivery has taken place as set out in clause 8.4 unless the buyer reasonably establishes to the satisfaction of C&C that it has been prevented from collecting the Vehicle or provides other reasonable explanation for why Delivery has not yet taken place.

10.4 Each of the seller and buyer shall give C&C written notice of successful Delivery via the Site ("**Delivery Confirmation**").

11. EXPORT LICENCE

11.1 The buyer shall be responsible for determining whether or not an export licence is required to export a Vehicle from the country of listing and for obtaining and paying

costs of any licences necessary to export any Vehicle from the country of listing and/or import it into any other country, and for payment of any import duty that may be levied by the country of import.

- 11.2 Neither the seller nor C&C gives or makes any warranty or representation of any kind with regards to whether or not any Vehicle can be exported or imported or the issuance of an export or import licence and/or permit for any Vehicle.

12. NO RIGHT TO CANCEL

Since the seller is not a Trader, the buyer has no statutory right to cancel the Sale Contract within a “cooling off” period of time from collection.

13. SELLER’S LIABILITY

13.1 Where the buyer is a Trader:

13.1.1 the seller will not be liable for any breach of any term that the Vehicle will correspond with any description applied to it on the Site by or on behalf of the seller, whether implied by the Sale of Goods Act 1979 or otherwise;

13.1.2 the seller will not be liable (whether in negligence, other tort, breach of contract or statutory duty or in restitution or under the Misrepresentation Act 1967, or in any other way) for any lack of conformity with, or inaccuracy, error or omission in any description of the Vehicle or any entry or estimate in relation to the Vehicle made by or on behalf of the seller and whether made prior to or during the auction;

13.1.3 the seller will not be liable for any loss of business, profits, revenue or income or for loss of reputation or disruption to business for any indirect losses or consequential damages of any kind, irrespective in any case of the nature or damage alleged to be suffered and irrespective of whether the said loss or damage is reasonably foreseeable or is caused by or claimed in respect of any negligence, other tort, breach of contract, statutory duty, restitutionary claim or otherwise; and

13.1.4 in any circumstances where the seller is liable to the buyer in respect of the Vehicle, or any act, omission, statement, representation relating to the Sale Contract or its performance (whether in damages, for an indemnity or contribution, or for a restitutionary remedy) liability will be limited to a sum which will not exceed the Net Sale Price.

- 13.2 Nothing set out in clause 13.1 shall be construed as excluding or restricting (whether directly or indirectly) any person’s liability or excluding or restricting any person’s rights or remedies in respect of (i) fraud, or (ii) death or personal injury caused by the seller’s negligence (or any person under the seller’s control or for whom the seller is legally responsible), or (iii) any other liability to the extent the same may not be excluded or restricted as a matter of law.

14. C&c'S LIABILITY

- 14.1 Where the buyer is a Trader, C&C will not be liable to the buyer in any circumstances in respect of the Vehicle, the entry into and performance or non-performance of the Sale Contract or the Commission.
- 14.2 Where the buyer is a Consumer, C&C will not be liable whether in negligence, other tort, breach of contract, statutory duty, in restitution or under the Misrepresentation Act 1967, or in any other way, for lack of conformity with or any inaccuracy, error, misdescription or omission in any description or any estimate of the Vehicle in respect of it, made by the seller or on the seller's behalf or by or on behalf of C&C (whether made in writing, orally, or by conduct or otherwise) and whether made before or after these terms and conditions or prior to or during the sale.
- 14.3 Where the buyer is a Consumer and where C&C is liable to a buyer, C&C's liability will be capped at an amount equal to the Commission irrespective of the nature, volume or source of any loss or damage alleged to be suffered or sum claimed as due, and irrespective of whether the liability arises from negligence, other tort, breach of contract, statutory duty, bailee's duty, a restitutionary claim or otherwise.
- 14.4 Nothing set out in this clause 14 will be construed as excluding or restricting (whether directly or indirectly) any person's liability or excluding or restricting any person's rights or remedies in respect of (i) fraud, or (ii) death or personal injury, or (iii) any other liability to the extent the same may not be excluded or restricted as a matter of law.

15. APPLICABLE TERMS AND HIERARCHY

- 15.1 These terms and conditions apply in addition to the terms and conditions of the C&C website (www.carandclassic.co.uk and www.carandclassic.com) ("Website Terms") which are available to view on those websites. The Website Terms contain, amongst other things, conditions relating to the use of information that appears across the C&C website (including the Site). To the extent that there is any inconsistency between these terms and conditions and the Website Terms, for matters relating to or arising from use of the Site, these terms and conditions shall prevail.
- 15.2 The consignment process, rights and obligations of each seller are set out in the Seller Terms and Conditions which shall apply between the seller and C&C in addition to these terms and conditions.
- 15.3 These terms and conditions and the other terms and conditions mentioned in this clause apply to the exclusion of any other terms that the buyer or seller may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 15.4 These terms and conditions and the other terms and conditions mentioned in this clause constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties,

representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions.

16. GENERAL

- 16.1 **Force majeure.** No party shall be in breach of these terms and conditions or be liable for delay in performing, or failure to perform, any of its obligations under these terms and conditions if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Sale Contract by giving 7 days' written notice to the affected party.
- 16.2 **Rights and remedies.** Except as expressly provided in these terms and conditions, rights and remedies provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.
- 16.3 **No partnership.** Nothing in these terms and conditions is intended to, or shall be deemed to establish any partnership or joint venture between any of the parties. Subject to the agency relationship between seller and C&C, each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 16.4 **Further assurance.** Each party shall use all reasonable endeavours to procure that any necessary third party shall execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to these terms and conditions.
- 16.5 **Assignment.** The buyer or seller shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these terms and conditions.
- 16.6 **Anti-Money Laundering.** Bidders and buyers agree to provide all information and assistance reasonably requested by C&C to comply with C&C's anti-money laundering processes and to comply with any and all anti-money laundering laws and regulations in force which apply to this contract or to the parties.
- 16.7 **Amendments to terms.** These terms and conditions may be updated and amended from time to time by C&C. C&C reserves the right to update or correct any typographical errors or non-material clauses at any time, which changes shall be immediately effective for C&C and all sellers, buyers and bidders. Any material changes shall be notified to sellers, buyers and bidders by way of a notification when accessing the Site, and sellers, buyers and bidders shall be asked to approve such changes as a condition to accessing the website. All such material changes shall, unless otherwise stated, take effect from the date on which the seller, buyer or bidder (as the case may be) approves such changes on the C&C website.

- 16.8 **Amendments to a Sale Contract.** No amendment of a Sale Contract shall be effective unless it is in writing and signed by the buyer and the seller (or their authorised representatives) and no amendment to the Sale Price, the Commission or the payment arrangements shall be effective unless agreed in writing by C&C.
- 16.9 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 16.9.1 constitute a waiver of that or any other right or remedy; nor
- 16.9.2 prevent or restrict the further exercise of that or any other right or remedy.
- 16.10 **Severance.** If any provision or part-provision of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms and conditions.
- 16.11 **Notices.** Any notices to be given by any party to another shall be given via C&C as follows:
- 16.11.1 a notice shall be deemed to have been received if sent to support@carandclassic.co.uk or to C&C's registered office as set out in clause 1.1 and:
- (a) if delivered personally, when left at C&C's registered office;
- (b) if sent by pre-paid first class post or other next working day delivery service on the second Business Day after posting; or
- (c) if sent by email, one Business Day after transmission. set out in clause 12.4.
- 16.11.2 Each party hereby authorises C&C to use the details set out in their user accounts to forward any such notices and shall hold C&C harmless in respect of any failure to deliver any such notices unless C&C have been negligent in their processing of such notices.
- 16.12 **Third party rights.** No one other than the seller, buyer/bidder and C&C shall have any right to enforce any of the terms set out herein.
- 16.13 **Governing law.** These terms and conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.14 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms and conditions or its subject matter or formation.

17. DEFINITIONS

17.1 The following definitions and rules of interpretation apply in these terms and conditions:

“Business Day”	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
“Commission”	the greater of (i) £500 plus VAT and (ii) 5% (five per cent) of the Sale Price plus VAT.
“Consumer”	has the meaning set out in the Consumer Rights Act 2015 (as amended from time to time).
“Delivery”	the transfer of physical possession of the Vehicle to the buyer in a manner agreed between the buyer and seller.
“Escrow Agent”	a third party professional payments handling company instructed by C&C to handle monies received and paid under the Sale Contract.
“Force Majeure Event”	an event or circumstance beyond a party's reasonable control.
“Net Sale Price”	the Sale Price less Commission.
“Registered Bank Account”	the seller's bank account registered from time to time against the seller's account with C&C.
“Registered Credit Card”	the credit card registered from time to time against the seller's account with C&C.
“Reserve Price”	the minimum selling price of the Vehicle as determined by the seller.
“Sale Price”	the value of the Winning Bid.

“Site” C&C’s car auction website,
<https://www.carandclassic.co.uk/auctions>

“Trader” has the meaning set out in the Consumer Rights Act 2015 (as amended from time to time).

“Vehicle” seller’s vehicle for sale on the Site.

“Winning Bid” the highest bid for the purchase of the Vehicle at Auction Close provided such bid is equal to or exceeds the Reserve Price (if any).

17.2 Clause headings shall not affect the interpretation of these terms and conditions.

17.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

17.4 A reference to any party shall include that party’s personal representatives, successors and permitted assigns.

17.5 A reference to **writing** or **written** includes email.

17.6 References to clauses are to the clauses of these terms and conditions.

17.7 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.