

Terms and conditions for used vehicles

A. General

1. Via the trading platform www.auto1.com, used vehicles are sold exclusively to car dealers. The operator of the trading platform is AUTO1 European Auctions GmbH & Co. KG¹, Bergmannstr. 72, 10961 Berlin, Germany (Local Court [*Amtsgericht*] of Charlottenburg, commercial-register no. HRA 52288 B, hereinafter "**AUTO1 European Auctions KG**²"). For every purchase agreement entered into via the portal, AUTO1 European Auctions KG collects an auction fee ("**Auction Fee**"). AUTO1 European Auctions KG is a company within the AUTO1 Group GmbH, Bergmannstr. 72, 10961 Berlin (Local Court [*Amtsgericht*] of Charlottenburg, commercial-register no. HRB 143662 B, hereinafter "**AUTO1 Group GmbH**³"). The Owner and the seller of the vehicles offered via the portal is AUTO1 European Cars B.V.⁴, Overschiestraat 57, 1062 HN Amsterdam, The Netherlands, or companies affiliated with (hereinafter the "**Seller**").
2. In order to be eligible as buyer, an entity/person must have been registered on the portal as a dealer (hereinafter the "**Dealer**" or, if used in the plural, "Dealers"). The terms & conditions of use of the portal ("General terms and conditions regarding the use of the services of AUTO1 GmbH that are accessible via the website www.auto1.com") shall apply.
3. The Seller and the Dealer expressly agree that the agreement between the Seller and the Dealer is entered into exclusively on the basis of these terms and conditions of sale (hereinafter the "T&Cs of Sale"), regardless of any other general terms & conditions of the Dealer. The Seller does not accept any other terms & conditions – in particular conflicting terms & conditions, or terms & conditions that deviate from these T&Cs of Sale –, not even to the extent that individual provisions contained therein are not contained in these T&Cs of Sale. The acceptance of any other terms & conditions shall require the Seller's express written consent.
4. Dealers accept the binding legal nature of these T&Cs of Sale upon their initial registration on the dealer portal www.auto1.com. The Seller reserves the right to modify these T&Cs of Sale at any time and without giving reasons.
5. These T&Cs of Sale have been uploaded in printable format on the dealer portal www.auto1.com. They can be retrieved and saved at any time, in the version as amended from time to time, from the homepage www.auto1.com.

B. Entering into an agreement

¹ A ›GmbH & Co. KG‹ is a Kommanditgesellschaft or KG (a limited partnership) with a Gesellschaft mit beschränkter Haftung or GmbH (›company with limited liability‹) as general partner under German law.

² ›KG‹ is short for ›Kommanditgesellschaft‹ (a limited partnership under German law).

³ ›GmbH‹ is short for ›Gesellschaft mit beschränkter Haftung‹ (a company with limited liability under German law).

⁴ ›BV‹ is short for ›besloten vennootschap met beperkte aansprakelijkheid‹ (a private company with limited liability under Dutch law).

1. The portal lists, without exception, used vehicles owned by the Seller. The portal is divided into the categories "Instant Purchase", "24h Auction", "Customer Auction", and "Last Chance". The vehicles listed and their descriptions shall not constitute an offer to enter into a purchase agreement but rather merely a call for the Dealer to make such an offer (known as an *invitatio ad offerendum*).
2. The Dealer calls up the individual vehicles in the respective categories and, where interested, makes an offer in accordance with the provisions of the respective category by stating a purchase price for the vehicle in question. Doing so shall constitute a binding offer on the part of the Dealer to enter into a purchase agreement with the Seller. Dealers shall be bound, during and after the end of each bid-submission period, by the offer made by them for a period of 14 days.
3. Rights and obligations under the purchase agreement that has been concluded shall be subject to the current T&Cs of Sale as applicable at the time the agreement is entered into. The risk regarding the vehicle sold shall transfer to the Dealer at the time at which the purchase agreement is entered into.
4. The transfer of rights and obligations of the Dealer under a purchase agreement shall require the prior written consent of the Seller.
5. The purchase agreement between the Seller and the Dealer is concluded once the Seller has accepted the offer. The Dealer will be notified without delay, typically within one working day, by way of a purchase confirmation sent by e-mail of the fact that the purchase agreement has been concluded. Upon receipt (*Zugang*), by the Dealer, of the purchase confirmation, the consequences – as set out below – attached to the conclusion of the agreement shall take effect.

C. Utilization of services

1. The Seller makes electronic services (tools) available for purposes of the swift processing and fulfilment of the individual purchase agreements. The Dealer shall be under an obligation to use these services for payment, collection, transportation, complaints and other matters.
2. In this context, Dealers shall be obliged to keep their data up to date, for example to adjust in the system without delay any change of address.

D. Payment

1. The Dealer shall be under an obligation to pay the full purchase price for the vehicle without deduction. Details are set out in the respective purchase confirmation, which in addition to the purchase price may also contain additional fees and costs for vehicle-related services used by the Dealer, e.g. for transport, transmission of vehicle documents (hereinafter referred to as "**Fees**") and an Auction Fee (hereinafter referred to as "**Auction Fee**"). The purchase price as well as possible Fees and the Auction Fee shall be due immediately. The purchase price shall be paid immediately after the purchase agreement has been entered into and the purchase confirmation has been sent; payment shall be effected by way of bank transfer to the account specified in the purchase confirmation. The Dealer can also pay the purchase price for the vehicle to the AUTO1 Group GmbH with discharging effect towards the Seller. The Dealer shall be considered to enter into default

(*Verzug*) pursuant to sect. 286 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) (hereinafter “BGB”) after three working days from the Dealer having received the payment demands included in the purchase confirmation.

2. In addition to being obliged to pay the purchase price, the Dealer shall also be obliged to pay an Auction Fee. AUTO1 European Auctions KG will invoice the Dealer separately for this Auction Fee. The payment of the Auction Fee shall be subject to the same provisions as that of the purchase price. The Dealer may also pay the Auction Fee to AUTO1 Group GmbH with discharging effect towards AUTO1 European Auctions KG.
3. If the Dealer has made use of vehicle-related services or has not objected to the provision of these services, he is obliged to pay the Fees for these services. The vehicle-related services shall be invoiced separately to the Dealer by AUTO1 Group GmbH. The amount of these (optional) Fees is set out in the Current Price List (see point D. 6.) and shall be subject to the same regulations as that of the purchase price.
4. The Dealer shall neither be permitted to offset nor to exercise any retention rights against the respective contractual partner’s claims unless these claims have been expressly accepted by the respective contractual partner or have been established in court in a final and binding way (*rechtskräftig*). In particular, Dealers shall not be entitled to refuse payment on the grounds that they (i) have other actual claims against the Seller under other purchase agreements that were entered into or (ii) merely allege that they have such claims.
5. In the event that the Dealer is in default of payment (*Zahlungsverzug*), the Seller may withdraw from the purchase agreement after the default of payment has occurred. After withdrawal has been declared – such withdrawal may also be declared by sending a reversal entry to the Dealer – the Seller will release the vehicles for resale. The Dealer shall be obliged to pay to the Seller a lump sum of 5 % of the purchase price, at least EUR 250.00 (net), per vehicle for the additional processing costs incurred owing to the withdrawal and resale, unless the Dealer proves that no or only minimal costs were incurred in this regard. Possible diminished proceeds realized during resale will be asserted as damages against the Dealer, invoiced and charged against the handling costs. If the merchant does not pay this invoice within five working days, the seller will automatically initiate legal dunning proceedings against the merchant. The Seller expressly reserves the right to assert further damages claims arising from the default of payment.
6. The Fees mentioned under D. are listed in the Current Price List as amended from time to time. The [Current Price List](#) can be viewed on the website at any time and has been uploaded there in printable format.
7. Sect. 288(5) BGB shall apply.

E. Collection

1. It shall be the Dealer’s own responsibility to collect the sold vehicle at the respective location of the vehicle. The Seller reserves the right to move the vehicle, within the scope of the internal logistics and until it is collected by the Dealer, to the logistics center that is closest to the current location of the vehicle. Usually, upon conclusion

of the agreement and after registration for the collection of the vehicle, the Seller will provide to the Dealer all information necessary for such collection; this information will include, in particular, the location, business hours and earliest collection date (the notice that the vehicle is ready for collection, hereinafter the "**Collection Notice**"). The registration for the collection must be notified at least 24 hours in advance. A collection without registration is not possible.

2. Within three working days after receiving the Collection Notice, the Dealer shall collect the purchased vehicle from the location specified in the Collection Notice.
3. If the Dealer fails to meet this obligation, the Seller will charge a storage fee of EUR 15.00 per day and vehicle plus value added tax / sales tax. The Dealer shall pay this storage fee to the Seller unless the Dealer proves that no or only minimal costs were incurred in this regard. The Seller reserves the right not to release the vehicle to the Dealer until the storage fee incurred has been paid in full.
4. The Seller shall grant the Dealer access to the business premises or the location in question, respectively, as is necessary for the collection of the sold vehicle.
5. When collecting the vehicle themselves, Dealers shall be obliged to inspect the vehicle for damage as well as for any missing accessories. Should there be any damage or missing accessories, then the Dealer shall note this down as early as on the documentary proof of handover of the vehicle. The general terms & conditions of the respective logistic center shall apply. Notwithstanding the above, the Dealer shall be under an obligation to notify the Seller of any such defects in accordance with clause I. 1. of the T&Cs of Sale.
6. Force majeure or disruptions of operations that occur at the Seller's premises or at the logistic center e.g. owing to riots, strike, etc. which temporarily prevent the Seller through no fault of its own to make the vehicle available or deliver it, shall extend the delivery/performance time by the duration of the impediment plus a reasonable lead time of one week.

F. Transport

1. The dealer can also have the seller commission a transport company to do the collection. In that case, the Dealer will be invoiced for the respective costs.
2. If the Dealer instructs the Seller to organize transport by an external transport company, then this is done entirely at the risk and cost of the Dealer. The Seller will invoice the Dealer for the transport costs on behalf of the carrier. The Seller has been authorized by the carrier to collect payment. The Dealer shall be under an obligation to fully pay the transport costs invoiced by the Seller within 3 days. If the Dealer fails to pay these, then the Seller shall have an unlimited retention right in relation to the vehicle until all payment obligations have been met in full.
3. Should any damage occur to the vehicle in the context of the transport commissioned by the Dealer, then solely the transport company shall be liable for such damage. The Dealer shall be under an obligation to note down all visible damage and missing accessories on the consignment note or the CMR consignment note, respectively. The general terms & conditions of the respective transport company shall apply.

G. Retention of title (*Eigentumsvorbehalt*)

1. The Seller undertakes to hand over to the Dealer, following the complete fulfilment of the obligations under the purchase agreement on the part of the Dealer, the vehicle along with accessories, where applicable as well as the registration documents pertaining to the vehicle. Until all obligations under the purchase agreement have been fully met by the Dealer, title to the sold vehicle as well as all associated rights shall remain with the Seller.
2. For the duration of the retention of title, the Seller shall have the right to retain the vehicle documents, in particular registration certificate part II (Fahrzeugbrief or 'vehicle-title document').
3. For the duration of the retention of title, the Dealer undertakes to take due care when handling the sold vehicle.

H. Defects (*Mängel*)

1. Any claims for defects shall be excluded in relation to the sale of vehicles to Dealers. There shall be no claims for defects of quality, in particular, if the defect or damage is attributable to normal wear and tear. This exclusion shall also apply to defects which occur between conclusion of the purchase agreement and handover of the vehicle to the Dealer or to a carrier instructed by or for the Dealer.
2. Vehicle data which are listed in the vehicle description under "Vehicle data according to identification number (FIN)" (Fahrzeugdaten laut Identifikationsnummer) will be made available to us by third party suppliers (DAT). The liability for the correctness of these data is excluded, in particular this does not constitute an agreement about the constitution of the goods.
3. The exclusion in H, Nr. 1 and H, Nr. 2 shall not apply in case of fraudulent intent (*Arglist*) and in relation to damages claims that are based on a breach, caused either by gross negligence (*grob fahrlässig*) or intentionally (*vorsätzlich*), of obligations on the part of the Seller or (i) 'persons employed in performing a contractual obligation for whom the Seller is vicariously liable' (*Erfüllungsgehilfen*) (hereinafter the "Vicarious Agents") or (ii) servants in a master-servant relationship for whom the Seller is generally liable (*Verrichtungsgehilfen*) (hereinafter the "Servants") as well as in case of an injury to life, body or health.

Claims on the part of the Dealer shall become time-barred (*verjähren*) after one year from handover of the vehicle to the Dealer or to a carrier instructed by or for the Dealer.

5. If, in special exceptional cases, the purchase agreement is reversed and if the Seller takes the vehicle back from the Dealer in the course of this reversal, the Dealer will be charged compensation for use, if during the period since it was sold to the Dealer, the vehicle was used for more than 100 km (approx. 62 miles). The Seller will offset the compensation for use against the purchase price to be repaid. The Dealer shall be deemed to have agreed to such an offset.
6. The Dealer refrains from charging possible storage or other processing fees.

7. A reversal of the transaction shall be effected as follows: The Dealer shall be under an obligation to send a current photograph of the mileage to the Seller, to return the vehicle documents obtained, any spare keys and accessories obtained by the Dealer and to move the vehicle to the nearest site of the Seller. As of the date the Seller informed the Dealer of the rescission the Dealer has to meet this obligation on or before the 3rd working day for national shipment/transport or on or before the 5th working day for international shipment/transport. If the Dealer fails to meet this obligation, the Seller will charge a fee of EUR 15.00 (net) per day plus value added tax / sales tax, unless the Dealer proves that no or only minimal costs were incurred in this regard. Following receipt of the vehicle documents obtained, any spare keys, accessories obtained by the Dealer and the vehicle, the Seller shall repay to the Dealer the purchase price and the auction fee, less, where applicable, the compensation for use and the fee.

I. Complaint

1. The Dealer must inspect the sold vehicle without delay after taking possession and, if a defect becomes apparent, must note down all damage on the consignment note resp. the documentary proof of handover of the vehicle and notify the Seller of such defect via the electronic services without delay, i.e. within one working day after taking possession. Any later notifications of defect as well as any notifications of defect issued face to face or over the telephone will not be taken into account. If the Dealer fails to issue such notification, then the goods shall be deemed to have been approved unless the defect is such that it was not noticeable during the inspection. The dealer is not entitled to claim any obvious defect present at the time of delivery or collection which are not noted on the consignment note or the proof of handover of the vehicle.
2. If such a defect which was not noticeable when the vehicle was taken into possession becomes apparent at a later point in time, then the Dealer must notify the Seller accordingly within one working day after its discovery. Otherwise the vehicle shall be deemed to have been approved in respect of the defect, too. This shall not apply to the extent that the Seller or its Vicarious Agents and/or Servants have fraudulently concealed the defect.
3. The Dealer shall issue the notification of defects via the electronic services made available by the Seller. Therein, the Dealer shall upload the respective requested evidence regarding the defect. If the Dealer fails to provide the required evidence in this regard within 7 days, then the goods shall be deemed to have been approved, and the complaint will be rejected.
4. The Seller will examine the defects set out in the written notification of defects and notify the Dealer in writing about the outcome of the examination of the complaint.

J. Data protection and provision of information

1. We refer to the data protection statement. The forwarding of the data to the European subsidiaries of AUTO1 Group GmbH shall be permissible. If Dealers retract their registration for the portal, then they shall have a right for the stored data to be deleted unless AUTO1 European Auctions KG or a subsidiary of AUTO1 Group GmbH still requires the data for purposes of contract implementation.

2. The Seller shall be entitled to collect, store and process personal data and to use it for the Seller's own purposes. In doing so, the Seller will in particular comply with the provisions of the German Federal Data Protection Act (*Bundesdatenschutzgesetz – BDSG*) and the German Telemedia Act (*Telemediengesetz – TMG*).
3. The Seller shall be entitled to pass personal data of the Dealer and/or the Dealer's Vicarious Agents on to law enforcement agencies, regulatory authorities, other authorities or authorized third parties on the basis of a request for information in connection with investigation proceedings or with a suspicion regarding a criminal offense, an unlawful act or other acts which may result in legal liability on the part of the Seller, the Dealer or any other authorized third party.

K. Miscellaneous

1. The contracting parties and the subject of the agreement shall be recorded in the form of an order confirmation for purposes of documentation. Handwritten modifications or supplements of the purchase confirmation shall be invalid. The Seller may make changes to the websites, sets of regulations as well as these T&Cs of Sale at any time.
2. If any of these T&Cs of Sale is or becomes invalid, void or – for any reason whatsoever – unenforceable, then such provision shall be deemed to be severable and shall not affect the validity and enforceability of all remaining provisions.
3. The business relationship shall be subject to the T&Cs of Sale in the version applicable at the time at which the respective individual purchase agreement is entered into.
4. All agreements, legal relationships and business connections that are subject to these T&Cs of Sale as well as the associated and resulting claims shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
5. The exclusive place of jurisdiction for all current and future claims arising from the business connection shall be the district court of Tempelhof-Kreuzberg, Berlin, or the superior court of this court, should the material competence lie with the latter. The Seller shall be entitled to also sue the respective contractual partner at the latter's general place of jurisdiction.

Annex

Examples of defects covered by the exclusion of claims pursuant to clause H are:

- vehicles that have been marked as vehicles that were involved in an accident (this shall also include economic total losses)
- vehicles with a mileage in excess of 150,000 km (approx. 93,200 miles)
- vehicles older than 10 years, with normal wear and tear
- visible defects and damage, such as, in particular:
 - small paint scratches
 - small dents
 - missing antennas

- scratches to the aluminum rims
- soiled interior (including smells)
- flat/damaged tires
- small damage caused by the impact of stones on the windscreen (including outside of the field of vision)
- missing operating manual, radio code cards for the vehicle
- missing navigation CDs, DVDs, hard drives or modules or memory card for navigation devices
- missing luggage-compartment cover or parcel shelf
- missing spare tire, breakdown kit, Tirefit kit or vehicle tool kit
- missing remote controls (e.g. for engine-independent heating, radio or similar)
- missing component keys (tow bar, trailer hitch, roof rack, etc.)
- blown light bulbs, LED, Xenon / Xenon bulbs
- technical defects to wearing parts, such as, in particular:
 - exhaust system (e.g. particle filter, muffler, catalytic converter)
 - Airco Fluid (air-conditioning-system fluid)
 - shock absorbers
 - broken springs
 - transverse control arms, axial control arms and bushings
 - wheel bearings
 - strut bearings
 - battery
 - seeping-out of fluids (e.g. motor oil, coolant, transmission oil, etc.)
 - wiper blades
 - seals
- for vehicles that have been marked "SPECIAL OFFER - Highest bid wins"

(Version as at August 2018)