

Auction Terms and Conditions

Effective from 16 August 2024

1. Definitions

In these Terms and Conditions, unless the context otherwise requires or implies:

Auctioneer means Pickles Auctions Pty. Limited (ACN 003 417 650) trading as Pickles Auctions.

Auction Sale means a sale of Lots conducted by way of auction, facilitated by the Auctioneer and designated with a Sale Number.

Auction Site means premises at which an Auction Sale is conducted.

Australian Consumer Law means the Australian Consumer Law set out in Schedule Two of the Competition and Consumer Act 2010 (Cth).

Bidder means a registered bidder.

Buyer means the successful Bidder for a Lot, as determined by the Auctioneer.

Damage and Description Disclaimer means the damage and description disclaimer contained within the online listing/advertisement of a Lot.

EPA Authority means a licence, permit or registration within the meaning of the Environment Protection Act 2017 (Vic), as amended from time to time.

GST means the goods and service tax as imposed by the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

Loss means any claim, delay, loss, liability, damage, expense, penalty, outgoing or cost whatsoever and however arising, whether present, unascertained, immediate, future or contingent and includes indirect and consequential losses.

Lot means a Motor Vehicle, Vehicle and any goods available for purchase at an Auction Sale, which are designated with a Lot Number.

Lot Number means the number designated to a Lot in an Auction Sale.

Motor Vehicle means any passenger vehicles, motorcycles or commercial vehicles but excludes Vehicles.

Non PDH Goods means any goods which are not PDH Goods.

PDH Goods means goods which, for the purposes of section 3(1) of the Australian Consumer Law, are a kind ordinarily acquired for personal, domestic or household use or consumption.

Purchase Price means the highest bid accepted by the Auctioneer for a Lot together with any

additional fees and charges charged by the Auctioneer.

Sale Number means the number designated to an Auction Sale.

Seller means the owner of a Lot or the person authorising the Auctioneer to sell that Lot on the owner's behalf.

Taxable Supply has the meaning given to that term by the GST Law.

Tax Invoice means a tax invoice as defined in the GST Act.

Vehicle means any vehicle including salvage or dismantled vehicles, trucks, tracked or earthmoving equipment, machinery, trailers, boats and watercraft but excludes a Motor Vehicle.

WH&S Legislation means the Workplace Health & Safety Act, Regulations and codes of practice which govern occupational health and safety of workers and workplaces in the State in which the Auction Sale takes place.

2. Auction contract particulars

- (a) The Auctioneer is acting as an agent for the Seller.
- (b) The sale contract for the purchase of a Lot is made directly between the Seller and the Buyer.
- (c) The Buyer's registration, these Terms and Conditions and the sale record constitute the entire relationship between the Auctioneer, the Seller and the Buyer.
- (d) If any dispute arises in relation to a Lot, the dispute is between the Buyer and the Seller. The Buyer agrees to release the Auctioneer from any claim, action, tribunal or court proceeding in respect of that Lot and to indemnify the Auctioneer, on a full indemnity basis, from all liability, including all costs incurred by it in relation to any such claim.

3. Bidding for a Lot at the auction

- (a) All Bidders must be 18 years of age or older.
- (b) All Bidders must register for the Auction Sale. Bidders register upon signing in to the Auctioneers website or 'MyPickles Account', verifying their identity.
- (c) Upon registration Bidders agree to be bound by these Terms and Conditions.
- (d) If a person or entity does not register, the Auctioneer may elect in their absolute discretion not to accept their bid.
- (e) A Bidder will be deemed to be bidding on their own behalf unless prior to the sale it disclosed to the Auctioneer that it will be bidding as agent on behalf of a principal and has supplied a copy of a written authority to that effect and any other documents that the Auctioneer requires.
- (f) Subject to any reserve price, and at the sole discretion of the Auctioneer, the highest Bidder who is not in breach of these Terms and Conditions or any other terms set out by the Auctioneer, will be the Buyer.
- (g) The entry of the Buyer's details in the sale book or record by the Auctioneer or its clerk is binding on the Buyer, and is prima facie evidence that the Buyer has agreed to purchase the Lot.

4. Pickles Live and Pickles Online Bidding

(a) Bidders bidding via Pickles Live and Pickles Online:

(i) acknowledge that the Auctioneer is not responsible for bids that were not processed due to technical problems and/or delays;

(ii) agree that they will not make any claims against the Auctioneer from any loss or damage arising as a result of the use of the Pickles Live and Pickles Online, including but not limited to, losses resulting from errors or problems on the internet, service or any issues beyond the Auctioneers' control or losses arising from Buyer's use of or inability to use the service;

(iii) acknowledge that the Auctioneer cannot prevent inappropriate use of the system or Bidder information stored in the system; and

(iv) acknowledge that in the event of human error, technology failure or system malfunction which affects Pickles Live and/or Pickles Online, the Auctioneer with authority and on behalf of the Seller has the discretion to do any of the following:

(A) extend the Auction Sale by any time the Auctioneer deems fit; or

(B) suspend the Auction Sale or end the Auction Sale early; or

(C) reschedule the Auction Sale; or

(D) cancel the Auction Sale and/or any Lot(s) sold in the Auction Sale and any bids made by Bidders and refund any amounts paid.

(v) acknowledge and agree that the rights conferred upon and exercisable by the Auctioneer in clause 4(iv)A-D may be exercised at any time, including after the conclusion of the Auction Sale and following the fall of the hammer or referral, and in circumstances where a system generated Tax Invoice has been issued to a Bidder and paid in part or in full.

5. Reserve prices and Seller's bids

(a) The auction of a Lot may be subject to a reserve price specified to the Auctioneer by the Seller.

(b) The Seller reserves its right to bid on a Lot.

(c) Subject to clause 5(d), the Auctioneer may bid for the Seller or for any prospective buyer with or without disclosure and any such bid, if the highest bid, will be sufficiently evidenced if recorded in the Auctioneer's sale book.

(d) In respect of an auction of a Motor Vehicle in the State of Victoria and State of Queensland, the Auctioneer may only make a bid on behalf of the Seller if:

(i) before any bidding starts, the Auctioneer orally declares at the auction of a Lot that the Auctioneer may make a bid on behalf of the Seller; and

(ii) immediately before, or in the process of, making the bid, the Auctioneer states that the bid is being made on behalf of the Seller.

6. Risk falls with the hammer

- (a) All Lots are bid on and purchased on an 'as is, where is' basis.
- (b) The Buyer assumes all risk in relation to a Lot from the fall of the hammer in respect of that Lot, and neither the Auctioneer nor the Seller will be accountable for any deficiency, damage or loss to the Lot which may arise, occur, or become apparent thereafter.
- (c) The Buyer agrees to release and indemnify the Auctioneer and Seller from any claim, action, tribunal or court proceeding in respect of any such deficiency or damage and to indemnify the Auctioneer, on a full indemnity basis, from all liability, including all costs incurred by it in relation to any such claim.

7. Payment upon completion of sale

- (a) The Buyer is not entitled to remove the Lot from the Auction Site until the Purchase Price has been paid in full.
- (b) The Buyer of a Lot must pay the Purchase Price, or a deposit as agreed by the Auctioneer, to the Auctioneer immediately following the fall of the hammer for the Lot.
- (c) If the Buyer pays a deposit, it must pay the balance of the Purchase Price within one (1) day of the fall of the hammer for the Lot or as otherwise specified by the Auctioneer.
- (d) Payment of the above must be in clear funds by electronic funds transfer unless otherwise agreed by the Auctioneer. If payment is made by cheque or credit card and the cheque or credit card payment is dishonoured, challenged or clawed back by the Buyer, their financier or a merchant, the Buyer will be deemed to be in fundamental breach of its obligations pursuant to these Terms and Conditions.
- (e) In the event of late payment the Auctioneer reserves the right to charge the Buyer interest which will accrue at the rate of the lower of 2% of the Purchase Price per month or the highest rate allowed by law.

8. Removal of a Lot from the Auction Site

- (a) An Auction Sale will be deemed complete for a Lot at the fall of the hammer or following referral for that Lot, irrespective of whether the other Lots in the Auction Sale have sold.
- (b) Subject to clause 7, the Buyer must remove the Lot from the Auction Site within one (1) day of the completion of the Auction Sale or as otherwise specified by the Auctioneer.
- (c) If the Buyer does not remove the Lot in accordance with clause 8(b), storage fees will be charged in accordance with clause 23 and:
 - (i) the Auctioneer or Seller may remove the Lot from the Auction Site and store it in an alternate location, for which the Buyer is required to pay all costs incurred by the Auctioneer or the Seller in relation to the relocation and/or storage of the Lot, prior to collecting the Lot; and/or
 - (ii) if the Lot remains uncollected and 50% of the Lots hammer price is reached in accrued (unpaid) storage fees, the Auctioneer is entitled to sell the Lot in an unreserved auction to recover the storage fees. After the deduction of any applicable auction fees, the remaining balance will be remitted to the Buyer that failed to collect the Lot.

(d) The Buyer will be strictly liable for any damage to the Auction Site, Lot or other goods, caused by the removal of any Lot from the Auction Site.

9. Title of the Lot

(a) The Seller represents and warrants to the Buyer and the Auctioneer that:

(i) it has good title to the Lot;

(ii) it has proper authority to sell the Lot; and

(iii) there are no undisclosed encumbrances, liens or security interests (as defined in the Personal Property Securities Act 2010 (Cth)) over the Lot, at the time of delivery of a Lot.

(b) The Seller acknowledges that the Auctioneer relies on this representation and warranty in auctioning the Lot on behalf of the Seller.

(c) The Buyer acknowledges that it is its responsibility to conduct a search of the register of encumbered vehicles or the Personal Property Securities Register (as applicable) and that search must be undertaken no earlier than the day prior to the day it bids for the Lot to ensure that there is no undisclosed encumbrance over the Lot.

(d) Except in respect of the sale of Motor Vehicles in the State of Queensland where the Seller is not a motor dealer or other auctioneer, the Buyer acknowledges that the warranty provided at clause 9(a) is given by the Seller and not by the Auctioneer.

(e) In respect of the sale of Motor Vehicles in the State of Queensland where the Seller is not a motor dealer or other auctioneer, the Auctioneer provides guarantee of title at the time that the property passes to the Buyer. This guarantee does not pass or extend to any third parties or to any subsequent buyer or successor in title.

(f) If, subsequent to the fall of the hammer but before the delivery of a Lot, the Auctioneer becomes aware that the Seller does not have good title to the Lot sold, it has the discretion to cancel the sale of that Lot and refund to the Buyer any moneys paid. The Buyer agrees that it will not make a claim against the Auctioneer in such an instance. If it does so, it agrees to indemnify the Auctioneer from any, and all, costs, on a full indemnity basis that the Auctioneer incurs as a result.

(g) Title in any Lot does not pass until the Purchase Price (and if applicable, any other Governmental charges or fees payable pursuant to these Terms and Conditions, including, but not limited to any taxes, levies, duties, imposts, deductions and charges) has been paid in full.

(h) Any guarantee made by the Seller or Auctioneer under this clause 9 is in addition to and is not intended to replace or detract from any rights or remedies a Buyer may have under the Australian Consumer Law or any other applicable laws.

10. Rights reserved

(a) The Auctioneer and/or Seller reserve their right to withdraw any Lot or Lots listed in an Auction Sale;

(b) The Auctioneer reserves its rights:

- (i) to offer for sale part only of any Lot listed in an Auction Sale;
- (ii) to offer two or more separate Lots listed in an Auction Sale for sale together as one Lot and if that Lot is not sold, to offer those Lots for auction as separate Lots;
- (iii) to refuse any person admission to, or eject them from the Auction Site;
- (iv) to not disclose the existence and/or quantum of the reserve price (if any) of a Lot prior to the close of bidding or withdrawal of the Lot;
- (v) in the event that any Buyer successfully bids for more than one Lot at the Auction Sale:
 - (A) to allocate any monies received from that Buyer between the Lots as it sees fit; and
 - (B) to regard the sale of multiple Lots as interdependent and treat default under a contract for either Lot as default under all such contracts.
- (vi) to (whether or not a Lot has been knocked down as sold) in its sole discretion resubmit it for sale by auction at the Auction Sale in progress or as soon as practicable thereafter; and
- (vii) to offer and sell a Lot that is not sold at an Auction Sale immediately thereafter by private agreement. Any such private agreement is also subject to these conditions unless otherwise agreed in writing by the Auctioneer. *

11. Warranties and consumer guarantees

- (a) The Buyer acknowledges that the consumer guarantees stipulated in sections 54, 55, 56, 57, 58 and 59 of the Australian Consumer Law do not apply to the sale of goods by auction. As a result, the Auctioneer and the Seller make no warranties and give no guarantees regarding:
 - (i) the goods being of acceptable quality;
 - (ii) the goods being fit for any disclosed purpose or any purpose for which the supplier represents they are fit;
 - (iii) the goods matching their description or corresponding to any sample or demonstration model;
 - (iv) the availability of repairs or spare parts for the goods; or
 - (v) express warranties in respect of the goods made by the manufacturer being complied with.
- (b) If the goods forming part of a Lot are:
 - (i) PDH Goods; or
 - (ii) Non PDH Goods and the purchase price of the Lot is \$100,000 or less (or such other amount specified in or prescribed under section 3 of the Australian Consumer Law from time to time);
then certain guarantees may apply in respect such goods purchased by that Buyer including (without limitation):
 - (iii) guarantees as to title to the Lot passing to the Buyer;

- (iv) guarantees regarding the Buyer having undisturbed possession of the Lot; and
- (v) guarantees regarding the Lot being free from undisclosed encumbrances.

(c) Nothing in this clause 11 or clause 12 (or any other provision of these Terms and Conditions) should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law, or the liability of the Auctioneer or the Seller for failing to comply with these provisions of the Australian Consumer Law or the right of a consumer to make a claim in respect of these guarantees or under any other provision of the Australian Consumer Law.

12. Limitation of liability

Where the Buyer suffers Loss as a result of its purchase of any Lot and:

- (a) the goods forming part of a Lot are Non PDH Goods with a purchase price of more than \$100,000; or
- (b) the Buyer suffers the Loss other than as a result of any breach by the Seller or the Auctioneer of the consumer guarantee or other similar provision of the Australian Consumer Law,

then, subject to any other laws which may apply and may not be excluded, or in respect of which liability cannot be limited by these Terms and Conditions, the Seller and the Auctioneer will not be liable for any such Loss suffered by the Buyer. This clause applies even if the Seller and/or the Auctioneer knew or ought to have known that the relevant Loss would be suffered.

13. Finance

The Buyer expressly acknowledges and warrants to the Auctioneer and to the Seller that prior to making an offer for a Lot or successfully negotiating the purchase of a Lot by private agreement, that it has the either cash resources immediately available to complete the purchase or has obtained approval for financial assistance on reasonable terms which are satisfactory to the Buyer.

14. Default

- (a) If the Buyer is in default of any of its obligations under these Terms and Conditions or any interdependent or separate agreement with the Auctioneer or Seller:
 - (i) The Auctioneer and/or the Seller may:
 - (A) cancel and rescind the sale of a Lot or Lots;
 - (B) forfeit any monies paid by the Buyer in consideration of a Lot or Lots;
 - (C) without notice to the Buyer, resell the Lot or Lots in any manner upon such terms and conditions as it may think proper and recover all losses, costs and expenses incurred from any such resale from the Buyer by way of damages, whether or not that amount exceeds the Purchase Price that was to be paid by the Buyer for the Lot or Lots (and including all legal costs) and the amount of any commission lost on the original sale as the result of the Buyer's default and the cost of advertising in respect of any such resale; and
 - (D) recover damages from the Buyer on an indemnity basis.

(b) If the Seller defaults on the delivery of a Lot or Lots, or part thereof, the Seller must refund any money which the Buyer had paid to the Auctioneer on account of its purchase.

15. General law

(a) The proper law governing the interpretation and enforcement of these conditions including all substantive rights and obligations hereunder and the manner mode and method of performance is the law of the State in which the Auction Sale took place.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State in, Australia where the Auction Sale took place and to courts competent to hear appeals from those courts.

(c) All rights and remedies available to the parties against each other under the general law are subject to these conditions.

(d) If any of the conditions in these Terms and Conditions are to any extent held by any court of competent jurisdiction to be invalid or unenforceable, those Terms and Conditions are to be severed and the remaining conditions will not be affected thereby, and will remain in full force and effect.

(e) The Auctioneer and/or Seller does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.

16. Further special conditions

The Auctioneer may prior to the commencement, or during an Auction Sale, announce further special conditions applying to that Auction Sale or a particular item put up for auction in which event such further special condition or conditions will be deemed to be incorporated into and form part of these Terms and Conditions.

17. Goods and Services Tax (GST)

(a) The Seller will elect whether the Purchase Price of the goods is inclusive or exclusive of GST. If applicable, GST will be added to all charges and fees payable.

(b) If the whole or any part of the Purchase Price of a Lot is consideration for a taxable supply, the Buyer must pay to the Seller via the Auctioneer, an amount equal to the GST amount applicable to the Purchase Price. The Auctioneer will provide to the Buyer (if applicable) a tax invoice at that time.

18. Auction of used Motor Vehicles, Vehicles and other goods

(a) The Buyer acknowledges that:

(i) the Auctioneer is unable to, and does not carry out detailed inspections of the Lots offered for sale, including structural, mechanical, electrical, hydraulic or underbody inspections, Lots are inspected by cursory external walk around^;

(ii) the information that the Auctioneer has in relation to each Lot is information provided to the Auctioneer by the Seller of each Lot (including, in the case of Motor Vehicles and Vehicles, any

inspection, condition, pre-auction reports or other information as to the condition of the Motor Vehicle and/or Vehicle)^^^;

(iii) the information provided by the Seller in relation to each Lot is not guaranteed by the Auctioneer;

(iv) it must satisfy itself as to the condition, description and state of repair of the Lot prior to the commencement of an Auction Sale;

(v) in the case of Motor Vehicles and Vehicles, it may not rely on the category in which a Motor Vehicle and/or Vehicle is sold as a representation as to the condition or registrability of the Motor Vehicle and/or Vehicle;

(vi) it is the Buyer's responsibility to perform a search of the Written Off Vehicles Register (WOVR) prior to the commencement of an Auction Sale to satisfy itself as to the WOVR status and condition of the Motor Vehicle and/or Vehicle and all the codes used to record the Motor Vehicle and/or Vehicle on the WOVR;

(vii) the Damage and Description Disclaimer forms part of these Terms and Conditions; and

(viii) if a dispute arises in relation to this information, the Buyer will exclude and indemnify the Auctioneer from any such dispute (including costs on a full indemnity basis for any costs incurred by the Auctioneer in relation to such dispute).

19. Auction of used plant and equipment

The Buyer acknowledges that:

(a) The WH&S Legislation imposes obligations in respect of safety for workers arising out of the design manufacture and supply of plant and equipment (Plant) for use in a workplace.

(b) The Auctioneer and the Seller have warned prospective buyers that no Plant is being offered for sale for use in any workplace and it is the Buyer's or user's responsibility to ensure that if the Plant is to be so used it is brought to a standard necessary to comply with the WH&S Legislation before being used for this purpose and testing and examination is carried out to ensure it is safe and fit for use in a workplace.

(c) In so far as it is readily available, information prepared by the designer or manufacturer of the Plant and any records kept by previous owners of the Plant that were required to be kept under the WH&S Legislation (Information and/or Records) is made available upon request to prospective buyers and will be provided to the Buyer.

(d) Where no such Information and/or Records are available, no liability for the absence of same is assumed by the Auctioneer and/or the Seller.

(e) It is the responsibility of the Buyer to ensure that the Buyer seek to ascertain the Information and/or Records.

(f) Safety inspections of all Plant purchased at auction must be performed by the Buyer as breaches of the WH&S Legislation carry very heavy penalties in the interest of health and safety for workers.

20. Cancellation

(a) Notwithstanding any other clause in these Terms and Conditions, the Auctioneer with authority and on behalf of the Seller, has the right to cancel and rescind any Auction Sale and/or any Lot(s) sold from an Auction Sale.

(b) The Auctioneer may exercise the right referred to a clause 20(a) at any time before collection of the Lot(s), including after the conclusion of the Auction Sale and following the fall of the hammer or referral, and in circumstances where a system generated Tax Invoice has been issued to a Buyer and paid in part or in full. If the Auctioneer exercises this right on behalf of the Seller, the Auctioneer will refund to the Buyer the Purchase Price and any part thereof that the Buyer has paid.

(c) The rights conferred to a Buyer pursuant to clauses 6, 7, 8 and 9 do not apply in circumstances where the Auctioneer has exercised any right on behalf of the Seller pursuant to clause 20(a).

(d) If a dispute arises in relation to this clause 20, the Buyer will exclude and indemnify the Auctioneer and Seller from any such dispute (including costs on a full indemnity basis for any costs incurred by the Auctioneer and Seller in relation to such dispute).

21. Salvage auction vehicles or non-mobile lots

(a) The Auctioneer does not accept any responsibility or liability for damage sustained to Lots (either before, during or after an Auction Sale) through the use of forklifts or other equipment to load, unload and shift salvage, damaged and/or non-mobile Lots.

(b) If a dispute arises in relation to this clause, the Buyer will exclude and indemnify the Auctioneer from any such dispute (including costs on a full indemnity basis for any costs incurred by the Auctioneer in relation to such dispute).

22. EPA Authority required for purchasing statutory write-offs

(a) This clause 22 applies where the Buyer resides or operates in the State of Victoria.

(b) The Buyer of any statutory write-off warrants to the Auctioneer and Seller that it has a current valid EPA Authority that it can produce to the Auctioneer upon request.

(c) The Buyer acknowledges, that if the Buyer has:

(i) purchased a statutory write-off; and

(ii) resides or operates in the State of Victoria; and

(iii) does not have a current valid EPA Authority or does not provide a copy of same to the Auctioneer upon request:

(A) the Buyer will not be permitted to collect the purchased statutory write-off, even if the Purchase Price has been paid in full; and

(B) the Auctioneer has the right to cancel the purchase transaction, and the Auctioneer will refund to the Buyer the Purchase Price and any part thereof that the Buyer has paid, less any

administrative fees.

23. Processing fees

- [ACT: Canberra](#)
- [NSW: Belmore](#)
- [NSW: Dubbo](#)
- [NSW: Milperra](#)
- [NSW: Newcastle](#)
- [NSW: Tamworth](#)
- [NSW: Wagga Wagga](#)
- [NT: Alice Springs](#)
- [NT: Darwin](#)
- [QLD: Acacia Ridge](#)
- [QLD: Archerfield](#)
- [QLD: Eagle Farm](#)
- [QLD: Brendale](#)
- [QLD: Geebung](#)
- [QLD: Townsville](#)
- [QLD: Rockhampton](#)
- [SA: Salisbury Plain](#)
- [SA: Pennington](#)
- [TAS: Hobart](#)
- [VIC: Altona](#)
- [VIC: Sunshine](#)
- [VIC: Tullamarine](#)
- [WA: Perth](#)

24. Severability

If any part of these Terms and Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, then that term, clause or part thereof will be excluded from these Terms and Conditions and the remainder of these Terms and Conditions will continue with full force and effect.

Applicable from 16 August 2024

The following amendments and or additions to the Terms and Conditions apply only to sales of Lots

in an Auction Sale where the Seller is Western Australia State Fleet.

* This clause 10 does not apply to Lots sold where Western Australia State Fleet is the Seller

^ this clause 18(a) (i) has no application to Lots sold where Western Australia State Fleet is the Seller

^^ this clause 18(a) (ii) has no application to Lots sold where Western Australia State Fleet is the Seller

Agent for the Seller:

Pickles Auctions Pty. Limited

Trading as

Pickles Auctions

Level 6, 130 Pitt Street, Sydney NSW 2000

Telephone: 1300 052 392