

General Terms and Conditions

General Terms & Conditions of AUTOonline GmbH Informationssysteme (as at May 2009).

PART 1: GENERAL PROVISIONS

Section 1 Scope of the T&C

1. The following General Terms & Conditions ("GT&C") set out the basic principles of the business relationship between AUTOonline GmbH Informationssysteme ("AUTOonline") and the users of the online platform provided by AUTOonline in Germany under www.autoonline.de (1.) for marketing accident damaged vehicles and used vehicles ("salvage exchange") as well as (2.) the marketing of fleet vehicles ("fleet marketing platform"). Both the salvage exchange and the fleet marketing platform shall subsequently be individually referred to just as "platform" or jointly as "platforms".

2. AUTOonline provides the platforms on which the users, after successful registration and in accordance with these GT&C, can advertise vehicles or bid on advertised vehicles for the duration of this usage agreement. AUTOonline itself does not become a contracting party in the contracts about the purchase of vehicles via this platform, but simply provides the platforms as a service provider.

3. By entering into a separate agreement the users may participate in international trade - as described in part 4 of these GT&C - and/or use the services of AUTOonline Operations GmbH & Co. KG ("AUTOonline Operations") for the sale and purchase of vehicles offered on the platforms, as described in part 5 of these GT&C.

4. Users of the platform are

a. people who use the salvage exchange and/or the fleet marketing platform to offer vehicles for sales (subsequently referred to as "vendors").

b. people who use the salvage exchange and/or the fleet marketing platform to purchase vehicles offered there (subsequently referred to as "bidders" or "buyers"). These GT&C only apply vis-à-vis businesses as defined in section 310 (1) of the German Civil Code (BGB). For vendors who are not businesses in the sense of section 310 (1) and who use the platforms, special conditions apply.

5. In addition to the rules of participation agreed between AUTOonline and the users of the platforms, these GT&C contain further provisions which shall also apply to any contracts of sale arising from the use of the salvage exchange or the fleet marketing platform and concluded between the relevant buyer and vendor ("used car sales contract").

6. Diverging, contrary or supplementary Terms & Conditions shall not form part of the contract with AUTOonline, unless AUTOonline has explicitly agreed to them in writing. AUTOonline hereby explicitly objects to any counter-acknowledgment of contractual partners referring to their own Terms & Conditions.

7. These GT&C are divided into the following parts:

Part 1: General provisions (sections 1-8)

Part 2: The procedure on the platforms (9-11)

- Description of procedure
- Special obligations of the vendor
- Special obligations of the bidder

Part 3: Provisions applying to purchase contracts for used cars (sections 12-13)

Part 4: Special provisions for international trading (sections 14-18)

Part 5: Special provisions for commissioning AUTOonline Operations GmbH & Co. KG (section 19)

Part 6: Final provisions (sections 20-22).

Section 2 Admission to the marketing platforms, suspension and cancellation

1. Use of the platforms is dependent on the user's proper registration, stating truthfully all information required on the registration form, and on a written authorisation by AUTOonline. Additionally the following restrictions apply:

a. Only certified automobile recyclers, garages, car dealerships and the automotive trades can be admitted to the salvage exchange and the fleet marketing platform.

b. On the fleet marketing platform fleet operators, banks, vehicle manufacturers and importers, leasing companies, authorities, owned fleets, and official receivers etc. can be admitted as vendors.

2. The user is obliged to immediately inform AUTOonline about changes in any of the information requested upon registration. Furthermore AUTOonline is entitled to review the information at any time and to refuse an application for admission without stating reasons.

3. Even after admission of a user AUTOonline may impose the following sanctions if there is an indication that the user might violate laws or these GT&C or the rights of a third party or any other legitimate interests of AUTOonline or other users:

- deletion of vehicles being offered on the platforms or of bids for vehicles, being submitted on the platforms
- temporary suspension of the user
- final suspension of the user and cancellation of the usage agreement without notice. When deciding on the appropriate measures AUTOonline will take into account the legitimate interests of the affected user. In case of a final suspension the user is not entitled to have access to the platforms restored. Once a user has been suspended he is not allowed to use the platforms under a different name or to register anew.

4. AUTOonline may impose the sanctions mentioned in section 3 in particular in the following circumstances:

- Users of the salvage exchange circumvent the provisions of section 2 (1a) through buyers using a vendor to advertise accident vehicles or vendors advertising accident cars on behalf of buyers,
 - Deliberate or grossly negligent inducement to advertise incorrect details on the part of the vendor
 - Delay of more than 2 weeks in the payment of the user fee
 - Delay of the user to pay contractual penalties or liquidated damages to AUTOonline
 - Repeated delays in the processing, especially delivery, payment and collection of the vehicles and items sold through the platforms,
 - Non-existence or lapse of admission requirements
 - Misuse of user ID and/or password
 - Violation of applicable laws or rights of a third party, where this affects the interests of AUTOonline, in particular with regard to the integrity and reliability of the trade on the platforms
 - Repeated non-adherence to the obligations under section 12.2 of the GT&C
 - Initiation of insolvency proceedings or refusal to initiate such proceedings due to insufficient assets, and cessation of business
 - Use of the marketing platform outside the parameters of its intended purpose
 - Establishment and operation of a marketing platform in direct or indirect competition with AUTOonline.
- AUTOonline explicitly reserves the right to claim damages in case of any violation of these Terms & Conditions.
5. The user may cancel this usage agreement at any time. Such cancellation requires a notice in writing.
6. AUTOonline is entitled to cancel this usage agreement at any time and in writing, with a notice of fourteen days effective at the end of the month. This does not affect the right of suspension.

Section 3 Users' rights of use

1. Upon admission to the salvage exchange or the fleet marketing platform the user is issued with the required software or access to the relevant website for the area he is authorised for. AUTOonline grants the user a non-transferable simple usage right for this for the duration of the reciprocal business relationship, restricted to the purposes of the proper use of the services of AUTOonline in accordance with the regulations.
2. It is strictly prohibited to pass on the AUTOonline user ID and access information to a third party without written permission from AUTOonline; any contravention will result in immediate suspension of the user. AUTOonline also reserves the right to claim damages in such cases. Each user is responsible for ensuring the non-disclosure of his access information.
3. AUTOonline does not grant rights to copyright or other proprietary rights. This includes in particular all present and future offers, the software and the relevant documentation and instructions.
4. The AUTOonline logo and the associated claims "Every car's a winner" and "The VALUE Experts" may only be used with prior written agreement by AUTOonline and within the limits specified.
5. AUTOonline endeavours to ensure maximum possible system security. However, the users' entitlement to utilization of the platforms is restricted to the present state of technology. In addition there may be delays or system failures, especially during maintenance on the server or the software used by AUTOonline. AUTOonline therefore limits its services at times, where this is necessary in order to ensure the security of the server or to carry out maintenance work. In such cases AUTOonline will endeavour to take into account the legitimate interests of the platform users, e.g. by carrying out maintenance work outside the usual core business hours or by AUTOonline notifying the users in advance and in a suitable fashion. In case of an unforeseen system failure, the principles for the handling of AUTOonline system failures also apply. However, the above provision does not affect AUTOonline's limitation of liability as set out in section 8.

Section 4 Legal position of AUTOonline with regard to the marketed goods

1. The contracting parties take note of the fact that the vehicles, accessories and other goods offered for sale on the platforms are not property of AUTOonline.
2. AUTOonline does not become a partner in the purchase contracts for vehicles, accessories or other goods offered on the platforms. AUTOonline does not issue statements on the sale or purchase of vehicles in its own name.
3. As AUTOonline is at no time the owner of the vehicles or items for auction, AUTOonline accepts no responsibility for the state and condition of these vehicles or items. AUTOonline does not subject these vehicles or items to any technical and/or visual inspection. The description of the vehicle's/item's condition is based entirely on information provided by the vendor.

Section 5 Prices

Usage of the salvage exchange and/or the fleet marketing platform is subject to the payment of usage fees set out in a separate price list. The user will be charged the prices valid on the day of use plus the relevant statutory VAT/sales tax applicable at the time.

Section 6 Payment

1. Unless otherwise agreed all invoices issued by AUTOonline are payable with fourteen (14) days from date of invoice, without any deductions. In case of late payment the statutory provisions for such cases apply.

2. In case of objections against an invoice from AUTOonline such objections must be lodged in writing, addressed to AUTOonline.
3. Users are only entitled to offset counter-claims against AUTOonline if such claims have been finally and non-appealably established or are undisputed.

Section 7 Data protection

The procedure used for the marketing platforms and the administration of data are executed in accordance with the data protection regulations. The users know and agree that any data entered by them as well as bids submitted may be disseminated, used, transferred and stored for commercial purposes, provided such handling falls within the scope of general data administration and is handled properly and professionally. Both, users of the platform and AUTOonline, will treat all data with the greatest degree of confidence objectively possible.

Section 8 Liability

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

PART 2: THE PROCEDURES ON THE PLATFORMS / CONCLUSION OF PURCHASE CONTRACTS / SPECIAL OBLIGATIONS OF VENDORS AND BIDDERS

Section 9 General rules for the platforms / Conclusion of purchase contracts

1. The vendor advertises the vehicles, parts, accessories or other items for disposal on the platform, as per contractual agreement with AUTOonline.
2. The vendor or, upon his request, AUTOonline determine the bid deadline for the vehicle to be offered.
3. The bidder is bound by the offer submitted a. for three weeks on the salvage exchange, b. for three working days on the fleet marketing platform (working days are Mondays to Fridays, except national bank holidays) after the end of the bid or bidding deadline for the relevant vehicle, unless shorter or longer deadlines were individually agreed upon as an exception.
4. Registered bidders can see the bid rounds after logging onto the platform. The bidder agrees in advance to any further, additional announcements in a different, suitable format (e.g. e-mail, post, telephone) issued by AUTOonline or an authorised third party.
5. On the fleet marketing platform the vendor determines in his profile whether he wants to offer the vehicles for sale to all buyers using the fleet marketing platform or only to a select group of buyers.
6. The bidder calls up the offers and submits a bid for a vehicle he might be interested in. By submitting a bid the bidder makes a binding purchase offer to the unknown owner or vendor authorised to dispose of the vehicle.
7. After expiry of the bid deadline the vendor can call up the highest bids for the vehicle advertised by him. The vendor simply takes note of them. The used car sales contract is not concluded until the offer has been explicitly accepted, following a review of this offer by the owner or vendor, where the latter is authorised to dispose of the vehicle. Neither vendor nor owner are under any obligation to accept the purchase offer at the amount bid.

Section 10 Special obligations of the vendor

1. The vendor guarantees the timely submission of complete and correct details for the vehicles or other goods for sale; all such details shall be sent to AUTOonline before the item is advertised. The details provided must also include all traffic engineering-related features as well as any existing defects (technical and optical). Accident damaged cars shall be marked separately. In order to achieve the maximum sales price AUTOonline further advises the vendor to arrange for a description of the vehicle's condition by an independent expert. AUTOonline accepts no responsibility for the details provided by the offeror or vendor.
2. The vendor shall provide AUTOonline with at least 4 (at least 1 of the interior) photographs, accompanied by a detailed current description of the vehicle's condition and all relevant vehicle details (e.g. date of first registration etc.), to be provided in a digital format (e.g. Excel or Word file).
3. The vendor assures both AUTOonline and the buyer that the vehicle is not encumbered with third-party rights. The vendor guarantees that he is authorised to advertise the vehicles on the platforms; this also includes the authority to use the photographs for the advertisements on the platform.

4. Where a third party makes claims against AUTOonline in connection with the offer of a vehicle, in particular due to an inappropriate vehicle description or the non-existence of the authorisation mentioned in point 3 above or because of any other breach of warranty or duties by the vendor in connection with the offering or sale of a vehicle, the vendor agrees a priori to fully indemnify AUTOonline against such claims.

Section 11 Special obligations of the bidder

1. The bidder accepts that a main feature of underlying business model of the platform is the fact that the vehicles advertised thereon are largely sold without any liability for material defects. The bidder is therefore obliged to implement this himself by incorporating this non-warranty clause in his bid - as set out in section 12 - or accepting a non-warranty clause, as used by the vendor.
2. The bidder further accepts that he submits an offer for the vehicles offered on the platforms to a vendor unknown to him and thus expresses that the person of the contractual partner is of no relevance to him. The vendor may therefore also be AUTOonline Operations GmbH & Co. KG, if commissioned by a vendor in accordance with section for the purchase and resale of a vehicle offered on the platform. If a vehicle, for which the bidder has submitted a bid, was initially bought by AUTOonline Operations and then subsequently resold by AUTOonline Operations to the bidder at the price bid by him, this resale is subject to the Terms & Conditions of AUTOonline Operations. They can be found on the internet at www.autoonline.com or via the following link.
3. Provided a contract of sale was concluded in line with the above-mentioned provisions, the buyer is also obliged vis-à-vis AUTOonline to collect the vehicle from the location specified, at his expense and without delay, but no later than one week after conclusion of the sales contract. In case the bidder purchases a vehicle from AUTOonline Operations he pledges to AUTOonline to collect the relevant vehicle from the location specified by AUTOonline Operations, after he has paid the purchase price for the vehicle to AUTOonline Operations and the money has been received there. The vehicle must always be collected from the location where the vendor is keeping it.
4. Since the participating vendors are always very keen on having the vehicle collected from their premises within that same time span, AUTOonline is entitled to collect the vehicle for the buyer, should he be delayed in his duty to collect the vehicle, and to settle the payment of the purchase price on behalf of the buyer, should his payment be delayed. However, in this case the buyer is under obligation to AUTOonline to collect the vehicle at his expense and without delay and to reimburse AUTOonline the purchase price and any expenses that may have been incurred.

PART 3: PROVISIONS FOR USED CAR SALES CONTRACTS

Section 12 Non-warranty clause

1. The vehicles offered on the platforms are exclusively used cars, offered for sale to commercial buyers. Unless the relevant vendor does not stipulate otherwise for individual vehicles, all vehicles offered for sale on the platforms are sold without any warranty. However, this does not apply to claims for compensation under liability for material defects caused by a grossly negligent or intentional violation of the vendor's obligations, or for claims resulting from injuries to life, limb or health.
2. The buyer is obliged to address any complaints about a vehicle purchased by him to AUTOonline in the first instance, thus giving AUTOonline the opportunity to check if any problems can be resolved simply and quickly. However, AUTO-online is not authorised to receive any declarations for the vendor. The buyer must therefore address reprimands, statements or any other communication in connection with a used car sales contract directly at the vendor.

Section 13 Deregistration and removal of adhesive film

The buyer is obliged to deregister the vehicle at his expense within three working days of concluding the sales contract. If necessary the buyer will also remove any lettering on the vehicle, such as adhesive films, within this time limit and at his expense. Upon request by the vendor the buyer must furnish appropriate proof.

PART 4: INTERNATIONAL TRADE - SPECIAL PROVISIONS

Section 14 Participation in international trade

1. In various countries companies that have corporate ties to AUTOonline (subsequently referred to as "AUTOonline subsidiary") operate marketing platforms that are comparable to the salvage exchange and/or the fleet marketing platform (subsequently referred to as "foreign platforms").
2. If a user concludes an agreement with AUTOonline about his participation in "international trade", AUTOonline will enable this user
 - a) if he is a vendor to also use these platforms for the purpose of selling to separately qualified bidders of the foreign platforms (subsequently referred to as "international sales procedure"), and
 - b) if he is a bidder to use the foreign platforms involved in international trade to bid on vehicles offered there for international trade (subsequently referred to as "international bidding procedure").
3. Both the international sales procedure and the international bidding procedure (subsequently jointly referred to as "international trade") are subject to the special provisions below. In case of conflict these overrule the provisions set out in part 2 of these T & C.

Section 15 Special provisions for the international trade

1. With regard to the advertising period of the vehicles offered for international trade on the (national) platforms and on the foreign platforms the separate deadline specified thereon applies to the submission of bids. Please note that this may not be same as the usual deadline applicable to national trade.
2. Vehicles sold to a foreign buyer on the platforms as part of the international trade must be collected from the buyer at his own expense from the location specified by the vendor.

Section 16 Special provisions for vendors in participating in the international sales procedure

1. The vendor is obliged, as a matter of principle, to deregister vehicles sold via the international sales procedure on the platform, at his own expense, before collection by the foreign buyer and to have the documents required for the handover of the car ready at the time of collection. Different provisions only apply if a foreign platform on which an international sales procedure is carried out expressly stipulates different regulations.
2. The vendor is obliged to absorb the costs of storage or accommodation of a vehicle sold in international trade for a period of two weeks from the conclusion of the used car sales contract.

Section 17 Special admission requirements for bidders in the international bidding procedure

1. The international trade is based in particular on the reliability of the bidder, both in terms of submitting bids in the international bidding procedure and in the settlement of the purchase contracts concluded in the international trade. Therefore only bidders who have proven their reliability to AUTOonline in a suitable manner (e.g. by means of reliable participation in national trade on the platforms or other comparable trading activities). In addition the bidder must be solvent in order to be admitted to the international trade. AUTOonline reserves the right to request from the bidder suitable proof of the required degree of solvency at any time.
2. Incorrect information about or a lapse of the special admission requirements stated in point 1, entitle AUTOonline to revoke admission to the international trade and to suspend and/or cancel the usage agreement for international trade.

Section 18 Special obligations for bidders in the international bidding procedure - Contractual penalty for delayed collection / Lump-sum payment for expenses in case of a failed purchase contract

1. The bidder accepts that the vehicles offered in the international bidding procedure and identified for him as such will be offered on the relevant foreign platform and that the submission and acceptance of bids and the conclusion of used car sales contracts are governed by the provisions of the relevant foreign platform. This also applies to the availability of each foreign platform. Upon conclusion of the agreement on participation in the international trade or upon submission of a bid for a vehicle, which is offered in the international trade on a foreign platform, the bidder bindingly accepts the provisions of the relevant foreign platform.
2. Unless agreed differently in individual cases, the buyer is obliged to pay the purchase prices of the vehicle bought in the international trade before its collection and solely via bank transfer. The payment must be made early enough to ensure it is received in the account specified by the vendor no later than five bank working days (Monday to Friday) from conclusion of the used car sales contract.
3. Furthermore the buyer is obliged to collect the vehicle purchased in the international trade with two weeks of concluding the used car sales contract. Collection must be made at the buyer's own expenses, from the location specified by the vendor.
4. If the buyer violates his obligations arising from section 18 (2) or section 18 (3) AUTOonline is entitled to charge the buyer a contractual penalty of 0.3% of the net purchase price, up to a maximum of 5% of the net purchase price for each day that one of the deadlines set in these sections is exceeded. Any further damages to be claimed remain unaffected by the claim of this contractual penalty. Claims for damages by the vendor vis-à-vis the buyer, resulting from a violation of the obligations specified in section 18 (2) or section 18 (3), also remain unaffected by the contractual penalty set out above.
5. If the bidder violates his obligations under these Terms & Conditions (including the Special provisions for international trade) and the used car sales contract can therefore not be concluded or fails terminally (e.g. because of a justified rescission by the vendor), higher expenses arise for AUTOonline, in particular by AUTOonline trying to find a new buyer for the vehicle. In such a case AUTOonline is entitled to demand from the bidder a lump sum payment of 100 EUR (in words: one hundred EUR) for these expenses. However, the bidder has the right to prove that in individual cases these expenses did not arise at all or were much lower than this lump sum. Further claims for damages by AUTOonline based on the company's own rights or assigned rights remain unaffected by the claim of this lump sum payment.
6. If the bidder violates his obligations under these Terms & Conditions (including the Special provisions for international trade) and the used car sales contract can therefore not be concluded or fails terminally (e.g. because of a justified rescission by the vendor) and the vendor accepts the offer of another bidder, AUTOonline will usually reimburse the vendor any difference between the original offer by the bidder and that of the other bidder, so the vendor ultimately receives the purchase price he would have received if the buyer had not violated his obligations. In such a case the bidder is obliged to immediately reimburse AUTOonline the difference, after a request by AUTOonline.

The vendor is not entitled to receive a reimbursement of any price difference; this is at the sole discretion of AUTOonline.

PART 5: SPECIAL PROVISIONS FOR COMMISSIONING AUTOONLINE OPERATIONS GMBH & CO. KG

Section 19 Separate commissioning of AUTOonline Operations / Separate notice

1. A vendor has the option, after concluding a separate agreement with AUTOonline Operations GmbH & Co. KG (subsequently referred to as "AUTOonline Operations"), to involve this company in the procedure on the platforms and/or the settlement of the used car sales contracts concluded. However, this always requires the vendor to conclude a separate agreement with AUTOonline Operations, to which the GT&C of AUTOonline Operations apply.
2. At present AUTOonline Operations is primarily commissioned in order to relieve the offeror/vendor - in international trade or for money collection reasons - by buying the advertised vehicles in the short term by order and for account of AUTOonline Operations and immediately resell them to the bidder with the highest bid. Details can be found in the GT&C of AUTOonline Operations. From the bidder's perspective the commissioning of AUTOonline Operations by a vendor largely means that the bidder buys not directly from the vendor but from AUTOonline Operations, who as such takes on the role of an intermediary in order to collect the money on behalf of the vendor or to simply the international trade. For the bidder the commissioning of AUTOonline Operations by a vendor does not involve any charges. The commissioning of AUTOonline Operations by a vendor is simply done to speed up the process or facilitate the settlement. The purchase price that the bidder has to pay to AUTOonline Operations is the same as his bid for the vehicle. As already mentioned in section 11.2 of these GT&C the resale of the vehicle by AUTOonline Operations to the bidder is subject to the Terms & Conditions of AUTOonline Operations. They can be found on the internet at www.autoonline.com or via the following link. The obligations of the bidder, arising from the present GT&C of AUTOonline and in particular section 18 of these GT&C, apply irrespective of whether the bidder purchases a vehicle in the international trade directly from the vendor or from AUTOonline Operations.
3. A user commissioning the services of AUTOonline Operations in the context of using the platforms undertakes to point this out in a suitable manner when applicable, both in the layout of his offer on the platforms and in his later correspondence.

PART 6: FINAL PROVISIONS

Section 20 Modifications of the Terms & Conditions

AUTOonline will notify the user of any future changes or revised versions of the GT&C. These will become part of the usage agreement existing between the user and AUTOonline, provided the user does not explicitly object in writing to the validity of the amended or revised GT&C within three weeks of receipt of a notification from AUTOonline. Any omission of such objection by the user is therefore considered as agreement to the modification of the existing usage agreement. In its notice about the amended or revised GT&C AUTOonline will once again inform the user about the significance of not objecting.

Section 21 Place of performance and jurisdiction

1. These Terms & Conditions and the entire legal relations between AUTOonline and the users shall be governed by German law. Any application of the UN Convention on Contracts for the International Sale of Goods (CISG) is precluded.
2. The place of performance for services owed by AUTOonline is Neuss (Germany). Neuss shall also be the exclusive place of jurisdiction for any present and future claims resulting from business relations with merchants entered in the commercial register; this includes claims based on cheques or a bill of exchange. The same place of jurisdiction applies if the customer has no general, domestic place of jurisdiction, has moved his place of residence or his habitual abode abroad or if his place of residence or habitual abode is unknown at the time of bringing an action.

Section 22 Final provisions, severability clause

In the event that any individual provisions contained in these Terms & Conditions shall be deemed invalid or unenforceable or incomplete, this shall have no bearing upon the validity of the remaining provisions.