



## Memphis Auto Auction Auction Rules and Policies In-Lane and Online

### I. General Policies

1. **Fair and Ethical Sale:** The sales made at Memphis Auto Auction are intended to promote fair and ethical treatment to both the Buyer and Seller. If Auction determines that the transaction is not fair and ethical to either party, the Seller and Buyer agree that the Auction may cancel the sale, at its sole discretion. Federal, State, and Local laws supersede these policies where applicable. This provision also applies to any clerical or administrative error made by Auction. Any arbitration conducted at Auction is subject to the Terms and Conditions of the Auction.
2. **Dealer's Auction:** This is a "Licensed Dealers Only" auction. **Retail buyers are prohibited.** All dealers must be registered and approved by the auction before buying or selling vehicles. All dealers conducting business with the auction are required to understand and comply with all auction rules and policies. Failure to comply may result in revocation of auction privileges.
3. **Auction Discretion** - The auction may, at its sole discretion, choose to rescind any sale deemed to be made subject to material misrepresentation or concealment regardless of the cause of such misrepresentation.
4. **ID Cards:** Identification cards issued by the auction are the property of MAA and must be used on all transactions and presented or surrendered to security/auction personnel upon request. Dealers may not use another dealer's card or computer number for ANY reason. All dealers are responsible for MAA cards and purchases by said card, including purchases with lost/stolen cards. Any card believed to be lost or stolen must be reported immediately to Auction Office. Dealers must return card in the event of termination of an authorized representative. In addition, if termination is initiated by dealer, written notification of said termination must be received on dealer letterhead and signed by the owner or dealer principal.
5. **Participant's Release and Waiver of Liability / Assumption of Risk and Indemnity Agreement:** Dealer, its representatives, agents and/or guests acknowledge that there are assumed risks when attending an auto auction that may cause serious injury, and in some cases death, because of the unpredictable nature of motorized vehicles and the inherent dangers of auction personnel and dealers driving vehicles, consigned or owned by the auction, in a densely-populated pedestrian area.

Knowing, or having reason to know, these facts, Dealer, its representatives, agents and/or guests voluntarily assume the risk of danger of injury or death inherent in attendance at the auction and agrees to hold the auction, its employees, and owners harmless in its entirety.

6. **Possession and Risk of Loss:** Until Sold, a vehicle is deemed to be in the possession of the Seller and his risk of loss, even though it is at the Auction. Upon execution of the sales agreement by a Buyer or his agent, the possession and risk of loss transfer from the Seller to the Buyer. The Auction will not be liable for mechanical breakdown of vehicles during or after transport of the vehicle. The Auction will perform due diligence in terms of checking fluids prior to transport, but will not be liable for breakdown outside of Auction negligence.



7. **Price:** Unless announced otherwise, all vehicles are subject to consignor's minimum price or protection. All vehicles will be sold within \$200 of the consignor's price unless marked "FIRM".
8. **Security:** Memphis Auto Auction reserves the right to inspect any package(s) or vehicle(s) entering or leaving the auction premises, at any time.
9. **Storage:** All vehicles remaining on MAA property 5 business days after the sale are subject to: 1) Storage at the auction's normal daily storage rate of \$25 per day; 2) Transportation to owner's place of business at the owner's expense; or 3), Sale at salvage auction to offset fees accrued.

## 10. Auction Role in Sale

- a. The Auction makes no representations or guarantees on any vehicle sold or offered for sale.
  - b. The Auction is not a party to the contract of the sale. The sales contract is between the Seller and Buyer only.
  - c. All vehicles bought or sold on the premises must be processed through the Auction office. Failure to do so will result in suspension of trading privileges at Auction.
  - d. Auction reserves the right to review any audio documentation to verify the accuracy of the sale.
  - e. Any vehicle consigned with the Auction is subject to government inspection, with or without prior notice, by the FBI, State Police, National Auto Theft Bureau, Local Police Authorities, any other governmental agency, or quasi-governmental agency.
11. **Auction VIN Policies:** All vehicles consigned must have a public Vehicle Identification Number (VIN) plate attached to the vehicle in the designated location established by the manufacturer. Those vehicles having a reassigned VIN plate by the State in place of the original VIN plate must be announced or will be subject to sale cancellation or Buyer return. The Auction reserves the right to refuse the sale of any vehicle in which the VIN plate appears altered in any way.

## II. Sale Light System

Auction has a standard light/video display system to describe the condition and/or disclosures related to the vehicle being sold. The system is defined as:

1. **Green Light – "Ride & Drive":** The green light signals that this vehicle is guaranteed under the conditions outlined in the Arbitration Guidelines, Section VII, except for specific disclosures or announcements made prior to the sale.
2. **White Light – "Auction Guarantee or Seller Guarantee":** The white light signals that this vehicle is guaranteed under the conditions outlined in the Arbitration Guidelines, Section VII. Seller guarantees



the lower engine (block, rod, & crank **only**); transmission (automatic); rear-end or final drive; and, drive axle.

**NOT ARBITRATABLE under Auction Guarantee:**

- Engine: Lifters, Cam Bearing, Oil Leaks, or Oil Smoke
- Head or Head Gaskets
- Rear End: U Joints, Wheel Bearings, Grease Leaks, CV Boots
- Front Wheel Drive: Back Lash
- Air Conditioning

3. **Yellow Light – “Announcements”:** This light is an indication to the Buyer that the Auctioneer or Selling Representative has made announcements that qualify/clarify the condition or equipment and limit arbitration of this vehicle. This light can be used in conjunction with any other light.
4. **Red Light – “As-Is”:** Vehicles selling under the red light will only qualify for arbitration under the rules outlined in the Arbitration Guidelines section. Any vehicle sold for \$2500 or less or over 180,000 miles will be considered “As-Is” and will be arbitrated as such.
5. **Blue Light – “Title Attached/Title Unavailable/Title Absent”:** This light is used to announce that the title is not present (auction managed location) at the time of sale. For Auction rules regarding titles, please refer to the Title Arbitration Policy section. If “Title Attached/Title Unavailable/Title Absent” is not announced, a vehicle could be arbitrated for misrepresentation, unless announcement is not required within the region.

### III. Seller Responsibilities:

1. Seller will be held responsible for the accuracy and completeness of all representations or descriptions. This includes handouts, catalogues, vehicle markings, condition information or vehicle listings and verbal or written statements made by Seller, Auction, Auctioneer or Selling Representative at the time of sale. This includes the condition report written by or on behalf of the seller as per the “NAAA Generic Condition Report Position Statement.” The Seller understands that the sale light/video display is binding arbitration representation of vehicle condition, and is therefore responsible for ensuring that their vehicles sell under the correct light in the lane.
2. Mileage announcements are not required on vehicles that are 10 years or older and/or deemed exempt from Odometer and Title disclosure laws unless a mileage discrepancy is known or apparent to the seller. The Seller may represent miles on exempt vehicles. Any disclosures made by the Seller and all known odometer discrepancies are grounds for arbitration.
3. Title discrepancies must be announced including, but not limited to: not actual miles, salvage, theft recovery, stolen vehicle, flood damage, Lemon Law buybacks and trade assist.
4. Announcements are required for any matters that relate to the safety or integrity of the vehicle including but not limited to all requirements under local, state or federal statutes or regulations. Announcements must be made both verbally and disclosed on the auction invoice/sale contract/bill of sale or equivalent document in a physical or online auction environment.



5. The announcement of the presence of warning lights does not exempt a Seller from arbitration responsibilities as defined by the policy. The issue/defect found to be the cause of the light may be arbitrated within the stated time period and dollar amount threshold according to Appendix 1.
6. The availability of a manufacturer's warranty shall not affect a buyer's right to arbitrate a vehicle. Regardless of the warranty coverage in terms of the root cause of the complaint, an announcement may be required.
7. In the event of a successful arbitration by the Buyer, the Seller is responsible for reimbursement of all reasonable documented expenses incurred by the Buyer (excluding profit, commissions and detail charges) on vehicle arbitrated for undisclosed conditions. Reimbursements that qualify under these guidelines will be at the sole discretion of the Auction and will be limited to the reasonable and documented expenses at auction (wholesale) repair cost.
8. Seller will not be paid for vehicles in arbitration until arbitration is settled and vehicles are sold. For arbitrations occurring after the seller has been paid, seller is required to promptly return the payment to the auction if the transaction is voided as a result of arbitration.
9. By selling a vehicle at Memphis Auto Auction and by depositing/cashing the check for the proceeds of the sale, dealer agrees that the vehicle was announced and represented properly at Auction and dealer agrees to abide by the Memphis Auto Auction Rules and Arbitration Policies. Seller endorsement/deposit/cashing of Memphis Auto Auction check(s) constitutes a warranty to Memphis Auto Auction that the motor vehicle is free and clear of all liens and encumbrances, meets all conditions of sale, and state and federal odometer laws

#### **IV. Buyer Responsibilities:**

1. **Prior to placing bids**, the Buyer is responsible for inspecting the vehicle, listening to and reviewing any verbal or written announcements and disclosures made by the Seller, Auction, Auctioneer or Selling Representative. Buyers are also responsible for reviewing all pertinent information available online, including but not limited to: announcements, disclosures, condition reports, pictures and online listings. Buyers are also responsible for observing and understanding the sale lights (Green, White, Yellow, Red, Blue), which identify various sale conditions for the vehicles. Once the vehicle is sold, the Buyer should check the Auction sales receipt or appropriate document to confirm the vehicle price, disclosures and announcements are correct before legibly printing and signing their name or digitally/electronically signing the Auction sales receipt or appropriate document.
2. It is strongly encouraged that a Buyer have a Post Sale Inspection (PSI) performed on all vehicles purchased.
3. Buyer agrees to be liable for any and all work done to a vehicle (including a vehicle purchased as title attached, unavailable or absent) prior to returning the vehicle to Auction except on vehicles arbitrated for undisclosed conditions not detectable through vehicle inspection including but not limited to: not actual miles, salvage, theft recovery, stolen vehicle, flood damage, Lemon Law buybacks and trade assist.
4. The Buyer is financially responsible for any pending sale and assumes all risk of loss until arbitration is final.



5. The Buyer or Buyer's agent (transporter or driver) must document any damage on the gate release prior to removing the vehicle from the Auction or facilitation service provider's location. Auction or facilitation service provider and Seller will not be responsible for any damage not identified on the gate release once the vehicle is removed from the location.
6. The Buyer shall not surrender possession of the vehicle to any claimant, except as required by legal process, nor shall Buyer voluntarily pay or acknowledge the validity of any claim, without the prior approval of Auction. Time is of the essence. Any failure on the part of the Buyer, after becoming aware of said claim, to notify Auction of any claim in a timely manner or failure of the Buyer to cooperate in defending any such claim shall relieve auction and seller of any liability under this policy.
7. A vehicle is not considered returned until received, inspected and approved for return by Auction management. Any vehicle returned must be in the same or better condition as when sold. Any vehicles delivered to and left on Auction premises without Auction approval remain the sole responsibility of the Buyer. Buyer assumes all risk of loss. Vehicles must be returned in a timely manner consistent with Auction direction.
8. Vehicles with over 100 miles from when sold are not eligible for arbitration
9. The Seller/Auction shall not be liable for any vehicle sale or repairs made by the buyer before the title is received by the Buyer. If the title has been mailed from Auction to Buyer, Buyer may not return vehicle. If the Seller presents a valid negotiable title to the Auction within 24 hours from the time that the Buyer notifies the auction of their intent to return the vehicle, then the transaction will stand.
10. Buyer **must pay for each vehicle on the day of the sale** by means pre-approved by the Auction. Payment options include company check, floor plan, or cash. Payment must include bid price, Buyer's Fee, and all other applicable fees and charges. Failure to pay by 12:00 pm on the Friday following Sale Day will result in a \$50 late fee per week per car.
  - a. Auction reserves the right to resell any vehicle not paid in its entirety within 7 days from purchase date. Any deficiency resulting from such sale will be the sole responsibility of the buyer. Auction participation may be suspended or limited until resolution is made.
  - b. Dealer agrees to allow Memphis Auto Auction or its Agents to repossess any unit in which payment has not been made, has been paid by check with insufficient funds, or has had a stop payment placed on the corresponding account.
  - c. **Approved Forms of Payment:**
    - i. **Cash** – Payment must be made by Cashier's Check payable to Memphis Auto Auction, or cash.
    - ii. **Company Check** – Check must be drawn on the buying dealer's business account. One check should be submitted for each vehicle. Check(s) will be deposited when the title is received by Auction.
    - iii. **Floor planning** – The Auction can facilitate payment from several floor planning companies, provided Dealer is approved. Failure to notify Auction by 3:00pm on the



Thursday immediately following the sale date is considered late payment and will be assessed as such (see Section IV, item 11).

**At no time will Counter Checks be considered an acceptable form of payment.**

- d. Buyer guarantees sufficient funds are available and will remain on deposit at Buyer's bank to cover all checks and drafts. Until payment and receipt of title, the Buyer shall acquire neither title to the vehicle nor any right to sell or offer for sale. Any dealer refusing to honor a check to MAA will be placed on hold immediately and reported to Auction Insurance Agency. MAA will prosecute for any unresolved insufficient funds or stop payment items. A \$100 fee will be assessed on all returned checks; however, a \$200 fee will be assessed on all returned checks if that check was submitted as a "Float Sale" payment. If payment is not made within 24 hours of communication with the dealer, late fees will commence the following business day and continue as specified under Section IV, item 11. Additionally:
  - Buyer privileges will be restricted; and
  - Buyer privileges of a repeated abuser of the check policy will be revoked.

**11. IF Sales/Conditional Sales**

- a. All offers, including "IF" sales are subject to the Seller's approval. However, an "IF" Buyer shall have the first right to purchase the vehicle at the seller's minimum or counter offer price. The time limit on "IF" sales is 3:00 p.m. on sale day. ***It is the buyer's responsibility to verify whether or not the sale has been approved by the seller.*** The auction is not responsible for contacting the buyer with the decision of the "IF" sale.
- b. All "IF" sales are binding and may not be cancelled or withdrawn prior to 3:00 p.m. on sale day or after the Seller's acceptance.
- c. Once Seller declines the original offer from Buyer, either completely or by making a counteroffer, Buyer is no longer obligated to purchase the vehicle. Buyer may accept the Seller's counteroffer, decline the Seller's counteroffer, or make a counter offer, in turn, back to Seller.

**12. Lot Sales/Outside Sales**

- a. Any sale in which the Auctioneer does not state the selling price of the vehicle or "sell under the hammer" is considered a "LOT SALE". Reasonable offers will be accepted after the sale, provided the vehicle has been offered on the Auction Block.
- b. All "LOT SALES" are conditional until the Buyer signs the block ticket or appropriate documents for the vehicle signifying they have inspected and accepted the vehicle. Until the appropriate document is signed, the sale is not binding on either party
- c. Sellers may guarantee Lot Sales, but must do so in writing. Vehicles sold after crossing the block are still subject to the announced conditions noted on the Auction sales receipt. These transactions are subject to the terms noted in the Disclosure/Discovery section of the policies.



- d. Buyers are cautioned to inspect "Lot Sale" vehicles very carefully and verify announced conditions before purchasing.

## V. Title Arbitration Policy:

1. All titles submitted by Seller must be in Seller's company name on title or on a properly executed reassignment form. The Seller guarantees the title of vehicles that are sold through the Auction. This guarantee of the title warrants that title shall be marketable and free and clear of all liens and encumbrances. This includes any brand (such as "salvage") noted upon the current or any prior certificate of title unless such encumbrances were announced at the time the vehicle is sold through Auction and for a period of four (4) years from the date of sale. Seller's liability under the title guarantee shall never exceed the Auction sale price (the "maximum amount") of the vehicle, and this maximum amount shall be reduced by two percent (2%) per month following the Auction sale date. All liability under this title guarantee shall expire and terminate four (4) years after Auction sale date. Auction will not be responsible for any expenses incurred on vehicles returned for late title.
2. Seller warrants, represents and guarantees possession and conveyance of a certificate of title, properly executed, valid in the state where the transaction is occurring and clear of all liens and encumbrances (except current year DMV fees in California), and seller warrants and will defend the title against the claims and demands of all persons whatsoever.
3. Seller will ensure that the title must be reassigned directly to Buyer. Any title assigned directly to facilitating auction will not be accepted.
4. Seller will not be paid for vehicles until a transferable title is received.
5. Auction accepts no responsibility for non-title vehicles sold without title. Seller must announce the vehicle being sold with a bill of sale only and that there is no title to transfer. All non-title vehicles and equipment will be sold "As-Is".
6. If the title problem is due to a clerical or coding error, or incomplete documentation, Auction shall be given reasonable time after receiving notice to have the error corrected.
7. Application of other documents related to a duplicate title will not be accepted, unless announced as such or if allowed by the appropriate jurisdiction.
8. Foreign titles, such as Canadian titles, are unacceptable. Vehicle must be legal to sell in the United States
9. Seller has up to a maximum of 28 calendar days for title to be received by Auction **[sale day is day one (1)]**. After the 28th calendar day, it is the Buyer's option to return the vehicle or to wait a reasonable period of time for the title. If, after 90 calendar days, Seller has not produced negotiable title and Buyer has not returned the vehicle, this title guarantee shall not apply and Auction shall have no duty to produce the certificate of title to the Buyer and shall have no duty to pay Seller.
10. Vehicles lacking a properly assigned title or reassignment to transfer a title at time of sale must sell "Title Attached/Title Unavailable/Title Absent", with the blue light on.



11. Vehicles lacking lien release or a valid repossession affidavit for a repossessed vehicle (where allowed by law) must be sold "Title Attached/Title Unavailable/Title Absent", with the blue light on.
12. In regard to defect in title, and any matter relating to odometer mileage, odometer statements, or damage disclosure statements: Seller and Buyer agree to indemnify and hold harmless the Auction from any liability, loss cost, damage or expense, including attorney fees which may arise either directly or indirectly from the sale and purchase of the consigned vehicle including but not limited to title services provided.
13. Whenever any claim is made by any person against the title of a vehicle, whether by suit or otherwise, the Buyer, after becoming aware of said claim, shall immediately notify the Auction. This involves giving full particulars of claim, cooperating fully in defending any legal action, and in taking other steps to minimize possible loss.
14. Auction will not be responsible for titles mailed from Auction and not received by the Buyer. Buyer has the choice of alternative delivery method and will pay Auction for such services.
15. Seller will be responsible for the buy and sell fee plus reasonable transportation expenses to and from the Buyer's dealership to Auction on vehicles returned for "no title".
16. Seller has 28 days (with Sale Day being Day 1) to produce a valid title. A late title fee of \$25 will be assessed at Noon on the day following Sale Day. An additional late title fee of \$25 will be assessed on the 21<sup>st</sup> day and every 7 calendar days thereafter. All expenses to obtain the title will be charged to the Seller.

## **VI. Previous Canadian and/or Grey Market Vehicles:**

1. A "Previous Canadian" disclosure is required for any vehicle (regardless of manufacturing origin) having been registered in a Canadian Province. Additional announcements may be required as well due to the use in Canada (i.e. full or partial voided warranty, foreign title, etc.).
2. Any vehicle not originally built to U.S. specifications, can, under certain circumstances, be imported through a registered importer who modifies the vehicle to comply with U.S. equipment and safety regulations (DOT & NHTSA) and then certifies it as compliant, and an independent commercial importer who modifies the vehicle to comply with U.S. emissions regulations and then certifies it as compliant can be sold at auction. Only vehicles properly converted to U.S. specifications can be sold and must be announced as such.
3. **Required Conversion**
  - a. All other vehicles imported must be imported through a Registered Importer. Registered Importers are required to post a bond with the U.S. Department of Transportation and/or NHTSA. All vehicles imported through a Registered Importer must have:
    - i. U.S. Safety Standard Certification Label that identifies the Registered Importer
    - ii. Valid U.S. Title
    - iii. Meet ALL Federal D.O.T./E.P.A Mandated Guidelines
    - iv. Documentation must be provided at any time by seller





- v. Cleared the mandated “wait” time
- b. All vehicles, whether imported by a Manufacturer or a Registered Importer, must show miles per hour on the speedometer and miles traveled on the odometer. Title 49, United States Code, Chapter 327 Section 32704, allows replacement of odometers without a doorframe sticker if the conversion from kilometers to miles can be done without changing the distance traveled by the vehicle; therefore, replacement of an odometer under these circumstances does not have to be announced by the Seller.

## VII. Arbitration Guidelines:

Vehicles that have any of the defects outlined in Appendix I that are not disclosed by the seller or announced at the time of sale must be reported to Auction within the time frame noted below in order to be eligible for arbitration. Vehicles must be returned to Auction in the same or better condition than when purchased with no more than 100 miles.

### 1. **Time Period**

Refer to Appendix I for arbitration time periods. Sale day is Day 1. Arbitration shall end at the close of business as determined by each Auction on the last calendar day in the time period.

### 2. **Process**

Any single mechanical defect that has a repair cost of \$500 or more is subject to arbitration on Green Light vehicles, and on the components covered under a White Light Guarantee. Each vehicle transaction is allowed one chance at arbitration. The arbitrator will inspect only the defect that is on the arbitration form/documents. Repair costs will be determined by the Auction and will reflect the auction cost to repair. If price adjustment is made and accepted, vehicle becomes “As-Is” property of the Buyer, and is not subject to any further arbitration. **The auction management makes the binding decision upon both the Buyer and Seller on all arbitration matters.**

### 3. **Fees**

Auction reserves the right to assess an arbitration fee to the Buyer. If the arbitration is valid, Auction reserves the right to assess an arbitration fee to the Seller in addition to any charges associated with the arbitration.

### 4. **Payment in Arbitration**

Seller will not be paid for vehicles in arbitration unless or until arbitration is settled, and vehicles are sold. For arbitrations occurring after the seller has been paid, seller is required to promptly return the payment to the auction if the transaction is voided as a result of arbitration.

### 5. **Third Party Review**

If, after review, Auction and Buyer are not satisfied with the initial findings, Auction may send a unit to a third party for final inspection. If the third party arbitrator’s decision confirms the auction’s findings, Buyer will be responsible for the purchase, as well as, any charges incurred for the inspection, including transportation to and from the auction. If the third party arbitrator’s decision conflicts with Auction’s findings, the Buyer will be released from the sale and will not be responsible for charges incurred.

### 6. **Not subject to arbitration:**



# Arbitration Policy

Effective Date: August 10, 2016

- a. Vehicles exceeding 20 model years, with the exception of trailers, RV's and watercraft, which cannot be arbitrated if they exceed 10 model years.
- b. Kit vehicle, homemade vehicles, or modified vehicles are sold "As-Is" and cannot be arbitrated for odometer, structural issues, warranty books or model year.
- c. Inherent Conditions: No arbitration can be based on conditions that are inherent or typical to a particular model or manufacturer (i.e. Jeep rear differential noise). Manufacturer warranty guidelines will be used where applicable to determine whether the condition is inherent.
- d. Manual Transmissions: Vehicles with standard (full or partial shift) transmissions cannot be arbitrated for manual clutch assemblies unless the defect will not allow a safe test drive.
- e. Wearable Items: Auction will not arbitrate vehicles for wearable items. For purposes of this policy wearable items are defined as parts of the vehicle that the manufacturer recognizes the need for replacement/adjustment during the expected life of the vehicle driven the average miles per model year (15K). These items are normally identified in the Owner's Manual for routine check and replacement and would include, but are not limited to: Tires, wipers, brake pads, shoes, rotors, belts, hoses, lubricants/fluids, timing belts/chains, bulbs, filters, shocks & struts.
- f. Unsafe Vehicles: The Auction reserves the right to reject any vehicle that management judges to be unsafe.
- g. All units purchased through the MAA Salvage/In-Op sale are purchased "As Is - Where Is" with no expectations as to the integrity of the frame or odometer. **NO vehicle will be arbitrated for Frame Damage or Odometer Discrepancies when purchased from the Salvage/In-Op Sale.** Unannounced Title Brands pertaining to the vehicle (not the odometer) MUST be announced, however, or will be considered grounds for arbitration (i.e. Flood, Salvage, Lemon Law, Rental/For Hire, Reconstructed, Stolen Vehicle, etc.)
- h. Vehicles may not be arbitrated based solely upon information provided in Electronic Data Vehicle Histories (EDVH) or printed EDVH reports. Auction and Seller are not bound by information listed in EDVH. Examples of EDVH include Carfax AutoCheck, NMVTIS, etc. The facilitating Auction may investigate vehicle history based on information found in EDVH for information that may impact arbitration.
- i. Auction is not bound by vehicle grades or other types of scoring systems placed upon the vehicle. Buyers may only arbitrate a vehicle based upon damage or defects that were present at the time of the sale of the vehicle.
- j. Vehicles with more than 100 miles from time of sale.