

TERMS AND CONDITIONS FOR VENDORS

at **BCA AUTOAUKTIONEN GmbH**
Floßhafenstraße 5, 41460 Neuss

A. General Provisions

I. Sales Events, Legal Force of the Terms and Conditions

BCA Autoauktionen GmbH (hereinafter called BCA) is an auction house in which used vehicles and used accessories are bought and sold at auction and other services are rendered in this connection. These terms and conditions for vendors (hereinafter called terms and conditions for vendors) are applicable for all deliveries (hereinafter called "sales"). They apply in particular to the legal relationships between BCA and the vendor, as well as to the legal relationships between vendor and buyer. The vendor recognises the legal force of these terms and conditions on his initial registration at BCA or when a sales contract is concluded. Any changes will be brought to the attention of the vendors.

II. Legal Status of BCA

BCA sells vehicles/accessories at auction as an agent and on its own account. BCA collects the purchase price plus auction fees on its own behalf. The vendor assigns all rights from the sales contract concluded with the buyer to BCA which are required for the collection of the sales price claim and any possible rescission of the sales contract. BCA herewith accepts the assignment.

III. Registration as Vendor

1. The vendor has to register in order to deliver a vehicle to BCA.

Only entrepreneurs according to § 14 BGB (German Civil Code) are authorized as vendors. The vendor has to sign up in writing and register before a vehicle is sold. The vendor is exclusively entitled to sell vehicles for his company but not for his private use. Every entrepreneur has to prove hereby his entrepreneurial status.

a. When vendors are based within a European Union state, the following documents are always required as proof:

- Copy of the business registration
- For entrepreneurs registered in the trade register, a trade register excerpt
- Notification of a valid VAT identification number issued to you
- A possible representative requires a written power of attorney from the vendor

b. For companies based outside the Federal Republic of Germany the following evidence is in addition required:

- In each case certified translations of the above-mentioned foreign-language documents in the German national language

c. For companies based outside a European Union state the following documents are always required as evidence:

- A certificate issued by the relevant tax office about his entrepreneurial status
 - the date of issue of this certificate should not be older than twelve (12) months.
 - After expiration of this term an up-dated certificate is to be presented to BCA.

- The certificate must contain the following details:
 - Address of the relevant tax authority
 - Full name and registered address of the company
 - Details about the type of entrepreneurial activities
 - Information about VAT liability, tax number

2. The vendor receives his authorisation from BCA with the acceptance of his registration and then receives a personal customer number.

3. BCA has the right to refuse and/or withdraw authorisation without giving any reasons. Authorisation will in particular be refused and/or withdrawn if

- False details are given in the registration form
- BCA services are abused
- The rights of third parties are violated
- Damage to, impairment of the functional capability of BCA services
- Default/non-fulfilment of sales contracts
- Legal disputes
- Breaches of the terms and conditions
- Objections to these and/or modified terms and conditions
- Insolvency or conciliation proceedings concerning the assets of the buyer/vendor or in the case of a rejection of insolvency proceedings due to lack of assets

4. BCA can make a further request for evidence of trade activity at any time.

The vendor shall inform BCA without delay in text format of data changes and a revocation of a granted power of attorney which arise after his registration.

IV. Blocking

In the presence of one of the reasons given in A. IV. BCA furthermore reserves the right to also block the vendor from other BCA sales – also throughout Europe.

V. De-registration

The vendor has at all times the right to de-register at BCA in text format with immediate effect.

VI. Revocation

Insofar as BCA services have not yet been made use of, the vendor can furthermore revoke his registration in writing in text format within two weeks.

VII. Utilisation of Services

The vendor may only utilise BCA services in a manner which is in accordance with the intended use. BCA can extend or limit its services at any time.

VIII. Data Protection/Use of Stored Data

1. BCA is entitled to collect, to store, to process and to use personal data for its own internal purposes.

In doing so, BCA will in particular observe the provisions of the (German) Federal Data Protection Act and the (German) Telemedia Act.

2. BCA is in particular entitled to the data and details for sales

- to use and publish within the scope of the use of BCA services by the buyer insofar as this is required for the utilisation of these services
- to forward them to the parties of the sales contract insofar as BCA deems this to be necessary
- to pass on to third parties insofar as this is proven necessary for safeguarding the legitimate interests of third parties or to be in the public interest, e.g. if it serves the clarification of a misuse of the auction house or the general assertion of legal rights
- in other cases after obtaining the approval of the vendor that it be forwarded
- sales data, i.e. vehicle data, bidding increments and vehicle prices to be used anonymously

3. Should the vendor withdraw his registration, he has the right to the deletion of the personal, stored data, unless BCA still requires these for processing contracts.

4. The data/pictures placed at BCA's disposal may not be used by the vendor without BCA's consent.

5. Vendors are prohibited from using the contact data and addresses as well as other contents which are on BCA's website for commercial advertising.

IX. Fees

All fees such as sales, auction sales, auction purchases, cancellation, demurrage, export and default processing fees as well as all other fees for further BCA services can be seen in the currently valid price list. These price lists are to be found at all BCA auction centres and all locations where BCA carries out sales, on the BCA website in a printable form or can be sent out on request.

This does not apply to possible transport costs. These must be separately requested.

B. Sales Conditions

I. Description of Vehicle

1. Accuracy and Completeness of Details

The vendor must describe the vehicle being put on the market correctly and completely. He must state truthfully all characteristics and features as well as faults which are regarded as being essential for a purchase decision in transactions. For this purpose he will receive a sales form from BCA in which he has to fill in all the foreseen, required data and details, or he has the possibility to transfer these details electronically, provided that this has been agreed upon with BCA.

The vehicle data fundamentally consists of the following details. The vendor assures the accuracy and completeness of the vehicle data which consists of the following details:

- Vehicle identification number (FIN-No.)
- Make and model
- Date of first registration
- Mileage
- Number of owners
- Previous use/origin of the vehicle
- Re-import
- Features
- Description of condition
- Minimum price
- Details about standard or differential taxation
- Details of previous damage
- Details of existing accident damage
- Details about technical, unobvious faults such as for example:
 - Faulty cylinder head gaskets
 - Faulty turbo charger
 - Gearbox damage
 - etc.

b. The vendor must specify accident/previous damage as well as technical faults in detail and comprehensively, in the case of accident damage, as far as this is known, the estimated repair costs. He must guarantee that the vehicle is in running order and roadworthy. Should the vehicle not be in running order and/or roadworthy, he must expressly state this in the delivery form.

c. BCA is at all times entitled to exclude a vehicle from auctions if BCA should determine that the details given by the vendor do not correspond with the actual state of the vehicle. BCA does not however have a duty of review with respect to the accuracy and completeness of details given by the vendor about the vehicle, in particular also with respect to accident/previous damage, from which a liability for damages could possibly be justified. The description and/or photos of the vehicle/accessories should not contain any advertising for other vehicles or other accessories.

d. The vendor assures that he is entitled to freely dispose of the vehicle/accessories offered and that they are not burdened with the rights of a third party. Should a claim for damages be made to BCA by a third party due to a delivered vehicle, e.g. due to an infringement of commercial protection rights, the vendor will exempt BCA from all costs which are incurred for BCA from this because the details given by the vendor about the vehicle were incorrect and/or the vehicle/accessories were not free from third party rights. This also includes the costs for legal proceedings.

e. The vendor explicitly declares his acceptance of these terms and conditions and agrees that the sales form which he filled in will be handed over on request of the buyer by BCA as his legal contractual partner in the event of a complaint.

II. Liability/ Insurance of Vehicles

Vehicles sold to BCA will not be parked on roofed surfaces. Special protection from damage caused by natural forces, accidental destruction, theft and/or criminal damage does not exist. A liability for BCA can only come into question in cases of gross negligence or wilful intent.

III. Vehicle and Vehicle Documents

1. The vendor must deliver the vehicle and the keys and accessories belonging to it to BCA three (3) days before the respective auction date, namely on working days between 8.30 a.m. and 5 p.m.

2. Before the auction, the vendor must hand over the registration certificate II and the de-registration certificate to BCA. If the vendor does not have the registration certificate II available, he must give BCA a clearance certificate from the Federal German Motor Transport Authority / a German Vehicle Registration Office. In the case of vehicles coming from abroad, the corresponding foreign registration and de-registration certificates as well as the COC document must be handed over.

3. If the vehicle documents have still not been handed over to BCA before the auction, BCA will point out in the auction catalogue for the auction day that the documents are missing. In this case the vendor/seller must hand in the relevant vehicle documents without delay after the sale of the vehicle at auction. BCA will then correspondingly pass them on to the buyer. Should damage be caused to the buyer and/or BCA due to a delayed handover, the vendor/seller shall be liable for this.

IV. Costs for Taking Back a Delivery

If the vendor or BCA take a vehicle / accessory out of the auction again due to one of the reasons listed in point I.1c, BCA will charge the vendor a cancellation as well as a sales fee, as well as any other costs incurred such as for example de-registration, processing etc. which he either ordered or which were necessary for the auction.

V. Submitting your Own or Multiple Bids is not Permissible

During the course of an auction the vendor is not permitted to submit a bid himself or even indirectly through a third party for a vehicle/accessory put into the auction by himself. Furthermore, he is not permitted to offer a vehicle / accessory simultaneously in another sale. In the case of a violation against this, BCA is entitled to block the vendor and the vendor has to make good any possible damage caused.

VI. Conditional Sale and Representation of the Vendor

If the highest bid lies below the minimum price laid down by the vendor, BCA can accept this bid with the reservation that the vendor agrees. If BCA accepts such a bid, the auctioneer expressly declares that the acceptance is effected subject to reservation. In the case of such a conditional purchase the buyer is bound to his bid for a period of two working days after the auction. BCA thereupon informs the vendor about this offer. Should the vendor accept this highest bid, the sales contract will be declared as without reservation by BCA and buyer's final bid will be accepted. If consent is withheld, no sales contract will be concluded with the vendor. In the event of a dispute the vendor must prove the non-issuance of consent. The vendor must nominate in text form a person authorized to represent him at BCA who inter alia is also entitled to decide about a lowering of the minimum price.

VII. Contractual Relationship

When the auctioneer concludes bidding a sales contract between the vendor and buyer is concluded. At the same time the vendor's purchase price claim against the buyer is handed over to BCA by way of assignment.

VIII. Vendor's Invoicing

1. **After the sale has been effected, the vendor issues an invoice to BCA for the auctioned vehicle/ accessory. Fees which the vendor has to pay BCA should not be offset in such invoices.**
2. **The vendor is prohibited from charging BCA and/or the buyer for fees and/or commission.**
3. **BCA arranges for the payment of this invoice to the account given by the vendor in the country in which he has stated that he has his registered office at the latest six (6) bank business days after payment of the purchase price and all accrued fees by the buyer.** BCA is entitled to deduct the accrued fees when transferring the purchase price to the vendor. If BCA has to effect the transfer abroad, the fees accrued for this must be borne by the vendor. These can also be deducted.
4. **The vendor agrees that the vehicles delivered by him to BCA and sold by BCA will be pledged as security to the respective creditor bank within the scope of purchase financings, pending payment of the relevant purchase price to the vendor.**

IX. Non-Payment of the Buyer

1. **BCA will carry out invoicing to the buyer and debt collection for the vendor, but not bear the debt collection risk.** In the event that the buyer refuses payment and acceptance of the vehicle, BCA is entitled, due to the assignment of claims, to rescind from the sales contract and demand damages on grounds of non-fulfilment.
2. **In this case the BCA invoice to the vendor will be cancelled via the entry fee and the vendor fees and the vendor decides whether the vehicle should be re-entered for sale or withdrawn.**
3. **Should BCA rescind from a sales contract for a vehicle/accessory and have already made payment to the vendor, the property and claim for damages for the auctioned vehicle/accessory will be passed on to BCA and BCA will, in this case, auction it again.** Irrespective hereof the vendor continues to be liable for the accuracy of the vehicle data and details for this vehicle which he submitted to BCA.

X. Non-Sale of Vehicle

1. **Insofar as the vehicle/accessory has not been sold at auction and is to be placed once again in an auction, BCA will charge the vendor again for the fees resulting from this.**
2. **The vendor undertakes to collect a vehicle/accessory which has not been sold at auction, insofar as it has not been placed again in a further auction, by the end of the third (3rd) bank working day after the auction at the latest at his own expense and risk.** This means that the vehicle is to be removed from BCA premises (including customer car park). A safekeeping contract for the vehicle will not be concluded in this case. Should the vendor not fulfil this obligation, BCA can charge demurrage as of the third working day after the auction and/or have the vehicle towed away and recovered at the expense of the vendor. The amount of demurrage can be seen in the currently valid BCA price list. The buyer is entitled to prove that no damages were incurred to this amount for BCA. Concerning this, the burden of proof is on him, mere assertions are insufficient here.
3. **When collecting the vehicle the vendor undertakes to make complaints in writing about faults as well as missing accessories without delay. Clause 377 HGB applies for the punctuality of the complaint.**

XI. Compensation for Rescinded Transactions

Should the sales contract between the vendor and buyer be rescinded due to missing vehicle registration certificate II/clearance certificate, incorrect details from the vendor or because the vehicle/accessory is not free of any rights of third parties, the vendor must pay BCA the delivery, auction and sales fees as well as any other damages including loss of profits. In the case of a rescinded sales contract, the provisions in X.2. apply accordingly.

XII. Vendor's Liability

1. **The risk of accidental loss or accidental deterioration shall be borne by the vendor until the vehicle is passed on to the bidder/buyer, thereafter the risk of the accidental loss or accidental deterioration shall be transferred to the buyer.** BCA does not bear this risk at any time, see A. II. and B. VII. below.
2. **If a sales contract which has already been concluded has to be rescinded, the risk of the accidental loss or the accidental deterioration after transfer of the vehicle is passed back to the vendor.**

XIII. Transport and Return Transport

The vendor has the following possibilities for transport to BCA and for return transport of a vehicle/accessory which has not been sold at auction:

1. Commissioning a haulage company:

- a. **BCA commissions the haulage company.** The transport contract is concluded between BCA and the vendor, invoicing is carried out by BCA. In the case of transit damage or similar the vendor can approach BCA as his contractual partner. In the relationship BCA and haulage company the haulage conditions of the haulage company apply, which will also apply in the case of recourse between the vendor and BCA.
- b. **Arranging a haulage company by BCA and invoicing by the haulage company to the vendor:** In the case of damage in transit or similar the vendor can contact the haulage company as his contractual partner directly. In this case also the haulage conditions of the haulage company apply.
- c. **The vendor himself commissions a haulage company**

2. Customer collects the vehicle himself if it is not sold:

- a. **Documents which are necessary for collecting the vehicle:**
 - When collecting the vehicle/accessory yourself, the following must be shown:
 - ID-card/passport
 - When being collected by third parties:
 - ID-card/passport
 - Power of attorney from the vendor

C. Liability for Material Defects

- I. **Liability for material defects is excluded. Vehicles and accessories will come under the hammer in the state in which they are at the point in time of the acceptance of the bid.**
- II. **The exclusion of liability for material defects does not apply in the case of bad faith and for damage based on injury to life, body or health, which are based on a negligent breach of duty by BCA or an intentional or negligent breach of duty by a vicarious agent of BCA / the vendor. This furthermore does not apply to other damage caused by grossly negligent breach of duty by BCA or by an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of BCA.**
- III. **BCA is obliged to give the buyer the contact details of the vendor insofar as he should request in writing that he requires the name of the vendor.**

D. Liability

I. Liability when Utilising the BCA Services

1. **BCA does not accept liability for damage which vendors sustain in connection with the utilisation of BCA services, in particular not for damage resulting from bids issued not being or not arriving on time or not being taken into account at BCA due to technical defects.** The same applies to damage which is sustained due to vehicles/accessories not being accurate or not being described accurately (e.g. temporary failure of monitors in the auction rooms). Insofar as maintenance work and updates or similar being required, BCA reserves the right to put a temporary out-of-order setting on its website and its system.
2. **BCA is liable to vendors only for intent and gross negligence as well as for breach of cardinal duties in accordance with § 307 Section 2 No. 2 BGB (German Civil Code).** Further liability is excluded. This exclusion does not apply to damage which is based on the injury of life, body or health which are based on a negligent breach of duty by BCA or an intentional or negligent breach of duty by a legal representative or vicarious agent of BCA.

II. Vendor's Liability

Participants and visitors at a BCA sales event are liable for damages which they culpably cause on BCA Autoauktionen GmbH premises.

III. Manufacturer's Warranty

Existing manufacturer's warranties will not be affected by the sales.

E. Final Provisions

I. Place of Fulfilment/Court of Jurisdiction

The present terms and conditions are subject to German law.

II. Place of Fulfilment/Court of Jurisdiction

The present terms and conditions are subject to German law. Place of fulfilment and exclusive court of jurisdiction is Neuss. This also applies for persons who do not have a general court of jurisdiction in Germany, or for persons who have moved their place of residence / registered office and habitual place of residence outside Germany since concluding a sales contract or whose place of residence /registered office and habitual place of residence is unknown at the point in time at which legal proceedings are instigated. The United Nations agreement about the international purchase of goods (UN sales law /CISG and the provisions of private international law) do not apply. The contractual and auction language is German. If documents in other languages are used (e.g. contracts, terms and conditions, business correspondence), these only serve as information. The German version will be applicable.

III. Severability Clause

Should one of the afore-mentioned clauses be invalid, this shall not affect the validity of these conditions in their entirety. The invalid clause shall be replaced with a provision that comes closest to the original meaning and economic purpose of the invalid clause.

IV. Rules of the House

1. **BCA is entitled to refuse persons access to the auction centres or from participating in auctions without giving any reasons.**
2. **Trading with third parties on BCA premises is not permitted. In the event of a violation BCA is entitled to withdraw the authorisation of the person and/or companies concerned.**
3. **The consumption of alcoholic beverages on the premises of the BCA auction centres is not permitted.**
4. **The rules of the road traffic act apply on BCA premises.**

5. Minors are only permitted to access BCA premises when accompanied by a parent or legal guardian.
6. As a matter of principle parking on the marked BCA customer parking spaces is only permitted on weekdays from 7.30 a.m. until 6 p.m.
The parking of vehicles which do not have valid license plates in the customer car park, for example by the vendor before an auction or by the buyer of purchased vehicles after an auction, is not permitted.
In the event of a violation of these parking regulations BCA is entitled to have the vehicles towed away at the owner's expense.