

**Power of Attorney**

The undersigned and its subsidiaries, hereby duly appoint MAA, located at 2475 South 59<sup>th</sup> Avenue, Phoenix, AZ 85043, through its authorized employees and agents, to act as our ATTORNEY-IN-FACT to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles consignees by the undersigned to MAA for its auction of the vehicles or pertaining to the purchase of the vehicle by the undersigned, including without limitation, any title, title transfer document, reassignment of odometer disclosure statements as required by federal law.

In consideration of MAA's agreement to execute such documents on behalf of the undersigned from time to time, the undersigned shall indemnify, defend, and hold harmless MAA, its affiliates, subsidiaries, officers, directors, employees, successors, and assigns from and against any and all loss, damages, liability, claims, causes of action, and expense of whatever kind and nature, arising from the execution by MAA or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership if consigned vehicles. Notwithstanding the foregoing, nothing contained herein shall be construed to require the undersigned to indemnify MAA, its affiliates, subsidiaries, officers, directors, employees, successors, and assigns from any loss resulting from any gross negligence or willful misconduct of MAA or its employees or agents.

This Power of Attorney shall be effective as of the date of signing hereof on behalf of the undersigned and continue until full force and effect until terminated by the undersigned in its sole discretion.

This Power of Attorney supersedes any previous authorization to act as agent and attorney-in-fact for the undersigned.

\_\_\_\_\_  
Dealer

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_ County of Residence: \_\_\_\_\_

# PERSONAL GUARANTY

The undersigned, whether one or more, personally guarantee(s) Dealer's payment and performance of the auction Terms and Conditions and all transactions by Dealer taken pursuant thereto.

The undersigned acknowledge(s) that MAA shall have the right to refuse to transact business with the Dealer, to modify or release any and all collateral security, to extend or change time of payment and to settle or compromise with Dealer without notice to the undersigned and without discharging or affecting the liability of the undersigned hereunder. This personal guarantee is to be a continuing guaranty and the undersigned hereby waive(s) notice of acceptance of this guaranty and presentment, demand, protest and any notice of non-payment or dishonor. The undersigned shall be liable as principal debtor(s) and not merely as surety (or sureties), and the bankruptcy or any assignment in favor of creditors of Dealer shall not affect the enforceability of this personal guaranty.

This personal guaranty shall bind the respective heirs, executors, administrators and assigns of the undersigned, and shall insure to the benefit of MAA, its successors, assigns and subrogees.

Where there is more than one signatory to this personal guaranty, each signatory shall jointly and severally liable under this personal guaranty.

IN WITNESS WHEREOF, the undersigned has (have) executed this personal guaranty this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Printed Name of First Owner)

\_\_\_\_\_  
(Witness Printed Name)

\_\_\_\_\_  
(Signature of First Owner)

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Printed Name of Second Owner)

\_\_\_\_\_  
(Witness Printed Name)

\_\_\_\_\_  
(Signature of Second Owner)

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Printed Name of Third Owner)

\_\_\_\_\_  
(Witness Printed Name)

\_\_\_\_\_  
(Signature of Third Owner)

\_\_\_\_\_  
(Witness Signature)

This is to certify that all material, merchandise or goods (including reconditioning of motor vehicles) purchased by the undersigned from or through MAA after \_\_\_\_\_, 20\_\_\_\_ is purchased for the following purpose(s):

- Resale as tangible property.
- To be incorporated as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing or refining.
- To be exported for sale, use or consumption outside the continental limits of the United States
- Other

This certificate shall be considered a part of each order which we shall give. This certificate is to continue in force until revoked. The undersigned is authorized to execute this document for the purchaser named below. Any purchase of reconditioning of a motor vehicle is to recondition that motor vehicle for resale by the purchaser named below who is registered with the \_\_\_\_\_ (indicate state) Department of Revenue as a dealer required to collect sales tax on the retail sales of a motor vehicles.

Purchaser: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Purchaser's applicable State Department of Revenue Certificate Number)

# Metro Auto Auction Terms and Conditions

In consideration of Metro Auto Auction of Phoenix (MAA) allowing an automobile dealer or an automobile dealer's Authorized representative(s), as defined below (in either instance, the "Dealer"), to purchase and sell motor vehicles at MAA's auction facilities (the "Auction"), Dealer, as purchaser or seller, as applicable, agrees to the following terms and conditions.

1. **MAA as consignee:** All vehicles delivered to MAA by dealer for sale at the auction ("consigned vehicle") are delivered on consignment by dealer for MAA to sell to other automobile dealers on behalf of the consigning Dealer. MAA is strictly a service company and does not purchase or sell consigned vehicles. MAA simply facilitates transfers of ownership between Dealer and other automobile dealers. MAA reserves the right to refuse to do business with anyone at MAA's sole discretion.

2. **Eligibility of Dealer:** By participating as a purchaser or seller in at anytime at any sale at MAA, Dealer represents that it is: (a) licensed as a motor vehicle dealer in one or more states or in a country that has similar laws, to sell motor vehicles. (b) Is a customer in good standing with MAA, (c) subject to all terms and conditions set forth by MAA. Dealer's registration constitutes (1) authorization to perform any necessary credit checks on the business entity and any and all Officers or Owners of said entity.

3. **Sale Procedures:** All sales will be considered consummated when the auctioneer declares the vehicle "sold" unless said auctioneer declares the sale an "if" sale. When the selling dealers agrees to the sell the vehicle for the "if" price, the deal is then consummated and binding to both buyer and seller. If the price is negotiated and then accepted by "buyer" and "seller" the deal is binding to both parties.

4. **Disputes:** If a dispute arises between a "Buyer" and a "Seller", a "Buyer" and "Auction" or a "Seller" and "Auction", it may be necessary to review the audio/video recording of the transaction. If an audio/video tape is not available for any reason, the dispute will be resolved by auction management and the decision of said management will be binding.

5. **Fees:** Dealer agrees to pay for all fees published and not published set forth by auction. Those fees include but are not limited to seller fees, buyer fees, NSF charges, storage fees, title fees, no sale fees, detail fees and any other usual and customary fees associated with doing business at MAA.

6. **Auction Use:** Dealer unconditionally agrees to adhere to all rules set forth by the auction. Dealer agrees to never sell a vehicle to another dealer, agent or representative of "Dealer" by circumventing the auction process. This practice is also referred to "selling outside the fence" or "bypassing the fees". If a dealer engages in this practice, it will result in the immediate suspension of all buying and selling privileges.

7. **Payment Terms:** All transactions must be paid for on the day of sale. MAA may elect to subtract from the selling dealer's proceeds, any and all fees due whether associated with the vehicle sold or any other vehicle sold at Auction by Dealer. Further, MAA may retain possession of any vehicles owned or controlled by Dealer and/or withhold title documents until all NSF checks, related service charges or any other amounts owed by dealer to MAA have been paid. With each and every payment to MAA by check or draft, by or on behalf of dealer, Dealer represents, and warrants (regardless of whether Dealer is the drawer of the check or draft) that, at the time of issuance of the check or draft and at the time such check or draft may be presented for payment, the account on which such check or draft is drawn contains sufficient funds for payment of that check or draft. Any checks and/or drafts returned for non-sufficient funds ("NSF") must be settled and replaced immediately with cash or certified funds to prevent collection action. Upon return of any NSF check or draft, a service charge will be imposed and must be paid. Thereafter, MAA will review the Dealer's financial ability and may in its discretion require that any future transactions be strictly cash. DEALER SHALL NOT UNDER ANY CIRCUMSTANCES STOP PAYMENT ON A CHECK OR REFUSE TO HONOR A DRAFT. Dealer shall pay all legal costs, including without limitation, attorney fees and court costs, necessary for MAA to collect any monies owed to MAA by dealer.

8. **Security Interest:** In order to secure final payment of any indebtedness owing to MAA arising out of the sale of a consigned vehicle purchased by Dealer at the Auction, Dealer hereby grants to MAA a security interest (including a purchase money security interest where applicable) in any such Consigned Vehicle, together with all additions, accessions, accessories and replacements and proceeds thereof, which security interest shall continue until all funds are collected with respect to such sale.

Dealer authorizes MAA to prepare and file a financing statement for such Consigned Vehicle without the Dealer's signature being required thereon. If requested, Dealer agrees to sign any such financing statement in person at the Auction.

9. **Warranties Regarding Title:** Dealer covenants, guarantees and warrants that with respect to each Consigned Vehicle by Dealer for sale through MAA (a) title to Consigned Vehicle will be transferred valid and free from all defects, liens and encumbrances, (b) Dealer has the right and power to sell and transfer title to the Consigned Vehicle; and (c) Dealer will defend the title against all claims and demands of any person.

10. **Vehicle Identification Numbers:** No Consigned Vehicles will be offered for sale without a proper vehicle identification plate. MAA reserves the right to refuse to sell any Consigned Vehicle on which the vehicle identification number plate appears marred or in any way altered or any Consigned Vehicle not originally manufactured for sale in the United States.

11. **Auction Procedure:** Consigned Vehicles shall be sold in accordance with the Auction's Policies and Procedures, a current written description of which Dealer acknowledges was provided to Dealer with these Auction Terms and Conditions, and which are incorporated herein by reference and made part of the Auction Terms and Conditions as if set forth herein in full.

12. **No Warranties by MAA:** MAA is neither responsible for the accuracy of the odometer mileage on the Consigned Vehicle nor the information contained in the odometer mileage statement. MAA does not make or guarantee any warranty, express or implied, including, without limitation, warranties of title, merchantability or fitness for a particular purpose, plates, service policy, vehicle history or condition, year of manufacture or mileage with respect to any Consigned Vehicle. MAA, furthermore, disclaims the accuracy of any market information provided to the Dealer through its computerized system or otherwise, which market information is provided as a courtesy to the Dealer.

13. **Delivery of Vehicle:** Delivery of a Consigned Vehicle purchased by Dealer at the Auction to the possession of Dealer before: (a) final payment is received by MAA; or (b) a valid certificate of title for the Consigned Vehicle has been delivered to Dealer, is solely for the convenience of Dealer, and no title or ownership interest is conveyed or is intended to be conveyed to Dealer until both of these conditions have been met. Dealer is liable for all expenditures or any mileage on or damage to, a Consigned Vehicle occurring after the Consigned Vehicle is purchased by and delivered into Dealer's possession but before title is conveyed to Dealer. Neither MAA nor the selling Dealer shall be liable for any cost of repairs or other costs incurred by purchasing Dealer in the event title is not delivered and the purchasing Dealer returns the Consigned Vehicle. MAA shall not be liable for titles mailed and not received by the Dealer.

14. **Risk of Loss:** MAA shall not be liable nor responsible for acts of God, fire, theft, collision, vandalism, or any other damage sustained by any Consigned Vehicle while on or off the Auction's premises. Dealer shall maintain such insurance on vehicles in MAA's possession as Dealer in its sole discretion shall determine, it being understood that MAA assumes no liability for the loss or damage incurred while vehicles are in the possession of MAA.

15. **Indemnity** DEALER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS MAA, ITS PARTNERS AND PARTNERS AFFILIATES, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY LIABILITY, LOSS, DAMAGE, COST, EXPENSE, CLAIM, SUIT OR DEMAND, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND OTHER LEGAL COSTS, RESULTING FROM, ARISING OUT OF OR CONNECTED WITH, DIRECTLY OR INDIRECTLY, ANY OF THE FOLLOWING: (A) PURCHASE AND SALE OF CONSIGNED VEHICLES, INCLUDING, WITHOUT LIMITATION, TITLE SERVICES PROVIDED BY MAA, ODOMETER MILEAGE, ODOMETER MILEAGE STATEMENTS, BREACH OF DEALERS'S WARRANTY OF TITLE, OR ALLEGED MISREPRESENTATIONS OF A DEALER REGARDING VEHICLE TITLE, HISTORY, OR CONDITION; AND (B) BREACH BY DEALER OF ANY OTHER OF THESE AUCTION TERMS AND CONDITIONS.

16. **Dealer's Representation Regarding Taxes:** Dealer certifies that Dealer holds a certificate, license or other permit, issued by the State tax authority of the state or province, and if necessary locality, of Dealer's automobile business or businesses which certificate license or period exempts Dealer from payment of sales tax with respect to the purchase of Consigned Vehicles and bears the numbers set forth in the Dealer Application. Any Consigned Vehicles purchased by Dealer at the Auction are purchased for resale in the form of tangible personal property in the regular course of business and are the sort usually purchased by the Dealer for resale. In the event that the property is used for any purpose other than for resale, Dealer will pay directly to the proper taxing authorities such sale or use tax and may then accrue and be due and payable.

17. **Dealers Representation Regarding Financial Information:** Dealer further represents and warrants that the financial and other factual information contained in the Dealer Application is true, complete and accurate. Dealer authorizes an investigation of Dealer's credit history deemed necessary by MAA, including without limitation, Dealer's lending institution accounts listed in the Dealer Application. Dealer shall notify MAA immediately of (a) any change of its principal financial lending Institution, (b) any other material changes in the financial or other information contained in the Dealer Application, including , without limitation, a change in ownership interest(s) whereby more than 10% of such interest is transferred by sale, purchase, gift, assignment or otherwise

18. **Authorized Representative(s):** Dealer authorizes the person(s) designated in the Dealer Application as "Authorized Representative(s)" to take or perform the following actions with respect to Consigned Vehicles: (a) purchase and/or sell Consigned Vehicles and complete and execute on behalf of Dealer Papers conveying title, including endorsement of the certificate of title, odometer statements, bills of sale and other similar documents in the connection with the sale of all Consigned Vehicles; and/or (b) complete and execute on behalf of Dealer checks and/or drafts in connection with the purchase or sale of Consigned Vehicles. The authority of the Authorized Representatives shall continue in full force and effect until terminated by Dealer in writing actually received by MAA. New or additional representatives of Dealer must be authorized by Dealer in writing delivered in advance to MAA. Dealer guarantees, as principal, all transactions made at the Auction by Dealer's Authorized Representatives. No Authorized Representative(s) shall be under the age of eighteen (18) years and neither the Dealer or the authorized representative shall bring any person under such age onto the Auction premises as drivers , assistant, observer or otherwise. Further, Dealer and Dealer's authorized representative(s) shall not bring into Auction any person(s) not authorized by Auction or any potential retail customer and fully understands that by doing so will result in the suspension of all buying and selling privileges at Auction.

19. **Changes in Auction Terms and Conditions:** These Auction Terms and Conditions are subject to change upon written notice to dealer. Use of the MAA dealer card or similar card approved by MAA, completion of other transactions through MAA subsequent to delivery by mail or other means to Dealer's place of business of such written notice shall be evidence of Dealer's acceptance of any changes to these Auction Terms and Conditions. Further, Dealer is subject to all other terms and conditions communicated in writing to Dealer, including, without limitation, Terms and Conditions posted conspicuously on bulletin boards or other signs located on the Auction premises.

20. **Miscellaneous:** No waiver of the provisions hereof shall be effective unless in writing and signed by MAA. If any term, provision or section of these Auction Terms and Conditions is held invalid or unenforceable, under any statute or court decision or any governmental rule or regulation, the remainder of these Auction Terms and Conditions shall remain effective. These Auction Terms and Conditions shall bind the respective heirs, executors, administrators, successors, assigns and subrogees, These Auction Terms and Conditions and any and all agreements or authorizations executed by Dealer or MAA in connection herewith shall be governed and interpreted in accordance with the substantive laws of the state of Arizona without resort to principles or conflicts of laws. By execution of these Auction Terms and Conditions, Dealer submits to the personal exclusive jurisdiction of the courts of Maricopa County, Arizona and the federal courts of the United States of America, sitting in Arizona for the adjudication of any matters arising under or in connection with these Auction Terms and Conditions. Any action initiated by Dealer against MAA relating to these Auction Terms and Conditions shall be filed and conducted in said Courts. MAA may bring suit against Dealer under or related to these Auction Terms and Conditions in any Court of competent jurisdiction.

IN WITNESS WHEREOF, Dealer, or Dealer's duly authorized representative(s) has (have) executed these Terms and Conditions this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(If a sole proprietorship)

\_\_\_\_\_  
(Printed Name of Dealer)

\_\_\_\_\_  
(Signature of Dealer)

(If a corporation, partnership, LLC or some entity other than a sole proprietorship)

ATTEST:

\_\_\_\_\_  
(Printed Name of Corporation, Etc.)

By: \_\_\_\_\_

By:

(Signature of witness)

(Signature of Officer, Etc.)

\_\_\_\_\_  
(Printed Name and Title of Officer, Etc.)

