



700 W. 48th Street / Hays, KS / 67601 / Phone 785.621.2100 / Fax 785.621.2101 / [www.midkansasautoauction.com](http://www.midkansasautoauction.com)

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TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

PAGES: \_\_\_\_\_ (Including Cover)

If you cannot read this transmission, please call (785)621-2100

For new registrations, please return the following items. Items not complete may result in delays. **"All references to "MKSAA" refer to Mid Kansas Auto Auction, Inc." Thank you.**

- 1) \_\_\_ Completed Dealer Registration Form (pg 2-3)
- 2) \_\_\_ Signed and Completed Titles and Checks Requesting (pg 4)
- 3) \_\_\_ Signed acknowledgments of Terms and Conditions of Sale (pg 13-24)
- 4) \_\_\_ Copy of State Sales Tax ID
- 5) \_\_\_ Copy of Taxpayer Identification Form (EIN #)



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### **Sell Only Registration Form**

Company: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Years in Business: \_\_\_\_\_

E-mail Address: \_\_\_\_\_ Company Website: \_\_\_\_\_

### **Organization Contacts**

Contact Name: \_\_\_\_\_ Position/Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Phone Number: \_\_\_\_\_ Ext: \_\_\_\_\_ Direct Line/Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Position/Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Phone Number: \_\_\_\_\_ Ext: \_\_\_\_\_ Direct Line/Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Position/Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Phone Number: \_\_\_\_\_ Ext: \_\_\_\_\_ Direct Line/Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_



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Contact Name: \_\_\_\_\_ Position/Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Phone Number: \_\_\_\_\_ Ext: \_\_\_\_\_ Direct Line/Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Company Type:     Sole Proprietorship     General Partnership     Limited Partnership  
                           Business Corporation     Limited Liability Company     Unlimited Liability Corp.

<u>Bond Company</u>	<u>Bond Number</u>	<u>Expiration Date</u>

<u>State Tax ID#/Provincial Tax ID#</u>	<u>Issue Date</u>	<u>Expiration Date</u>

Payment Method:     CASH                     CHECKS                     DRAFTS



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### **Titles & Checks Request**

Hold for pick-up

Regular mail (MKSAA assumes no responsibility for titles are lost in regular mail. If a title is lost in the mail, there will be a \$50 charge to apply for a duplicate title.

FedEx

Please charge my A/R account \$27 overnight per FedEx

Please charge my A/R account \$17

Please charge my FedEx account

FedEx Account Number: \_\_\_\_\_

Contact for Payment: \_\_\_\_\_

First Name

Last Name

Phone

\_\_\_\_\_

Email

Contact for Titles: \_\_\_\_\_

First Name

Last Name

Phone

\_\_\_\_\_

Email

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature



### **Policies and Procedures**

1. All dealers must be licensed within their state and registered at MKSAA before doing business.
2. MKSAA is a Dealer Only Sale. Dealers are strictly prohibited from bringing retail customers onto the auction premises. Suspension of auction privileges could result from disregard of this policy.
3. All dealers must have a bid number on sale day before proceeding to the auction lanes. Dealers will be required to wear bidder badges in plain view to verify their credentials.
4. All purchases must be settled on sale day by cash, check, draft, or floor plan. One check for each unit. There will be a \$100.00 fee for any returned check or draft.
5. Sellers have 30 days to produce title. Sale day is the 1st day of the 30-day period. There is a \$25.00 late fee for titles not presented within 30 days. Buyers are cautioned not to sell, repair, or recondition vehicle until the title is received. Buyers returning a vehicle due to late title must inform the auction 24 hours in advance of returning the vehicle. If title is received in those 24 hours, buyer must keep the vehicle.
6. All titles must be in your name, notarized, if required by your state, and be free and clear of any liens.
7. A federal odometer statement must accompany non-conforming titles '85 and newer.
8. All non-highway or previous non-highway titles '85 or newer must be announced.
9. All salvage or rebuilders titles must be announced and sold "AS IS".
10. All units with true mileage unknown, (TMU), must be announced on '85 models and newer.
11. All units 10 yrs. old or older sold with over 125,000 miles are sold "AS IS" or "Power train" only.
12. All diesels are sold "AS IS" on engine only. In the event seller requests green light, blow-by is not arbitrable.
13. We do not guarantee the mileage of any unit sold at this or any auction. Confirmation of mileage is solely the responsibility of the seller.
14. Mileage and other information printed on the windows of any vehicle is for the convenience of the Dealers only. This information is not to be relied upon as complete and/or accurate and is not subject to arbitration.
15. All uni-body, salvage rebuilders, flood units and frame damage units must be announced.
16. Any year change, special ID plate, or assemblies must be announced.
17. MKSAA does not offer, provide or guarantee any express or implied warranty of any unit sold at the auction.
18. Automobiles, drivers, and insurance are the seller's and buyer's sole responsibility, whether on or off the premises of MKSAA. As to all vehicles in transit, whether driver is performing duties for MKSAA or for seller or buyer, insurance will always be the responsibility of the then current invoiced or title owner.
19. We do not guarantee year or model of boats, motorcycles or any foreign units.
20. All vehicles must have payment made before gate passes are issued.
21. All "CALL" or "IF" bids are binding until 5:00p.m. sale day. It is the buyer's responsibility to verify if the vehicle is sold or not sold.
22. Vehicles will be sold within \$100.00 of the highest bid on the floor.
23. No vehicle will be accepted for sale without VIN attached as per Federal and/or State Regulations.



### **Policies and Procedures Continued**

24. Vehicles sold for \$3,000.00 and under are "RED LIGHT-AS IS" and are only subject to arbitration for title discrepancies.
25. "Over the Counter" (OTC) sales are sold "AS IS" and are only subject to arbitration for title discrepancies. All OTC sales must have management approval.
26. Reserve numbers will be taken starting Mondays at noon for the sale to be held Friday of that week.
27. All vehicles remaining from a previous sale are relocated on the lot first and then the reserve numbers are filled in.
28. All out of town dealers with reserve numbers should have their vehicles on the lot by 9:30a.m. on sale day or the reserve number will be given away. Call ahead with special circumstances.
29. Green Light vehicles subject to arbitration must be arbitrated by the end of sale day. Vehicles will not be arbitrated if removed from MKSAA property. Vehicle repair must exceed \$500.00 for any single issue to be eligible for arbitration.
30. All consigned vehicles must have a gate pass before leaving the Auction premises and are subject to trunk inspection. MKSAA will charge Dealer storage fees for all consigned vehicles purchased by Dealer and left on the auction premises for more that 7 days unless prior arrangements are made.
31. Drivetrain, transmission, rear end drive, front wheel drive, 4X4 only subject to mechanical arbitration.
32. Buyers have 7 calendar days to report frame/uni-body damage. Sale day is the first day of the 7-day period. Core Support cannot be arbitrated.
33. All necessary fees related to the diagnosis of issues that met arbitration requirements are the responsibility of the buyer if damage is not found, or if the cost of repair is less than the \$500.00 arbitration floor.
34. Flood damage must be documented and reported within 7 calendar days of sale.
35. Deployed airbags must be reported by end of sale day. Inoperable airbags are not subject to arbitration.
36. Inoperative odometer must be arbitrated before vehicle leaves MKSAA property.
37. Current and one-year old units are the only units subject to arbitration for air conditioning.
38. Electrical accessories such as cruise control, power window, locks, roof, radio, CD player, etc...are not subject to arbitration.
39. Visible damage is not a reason for turn down or arbitration.
40. Missing catalytic converters or emissions equipment are subject to arbitration on sale day only.
41. Vehicles become "AS IS" with no further arbitration when a price adjustment is made.
42. All rejects must be made on the day of sale. **NO EXCEPTIONS!!**
43. If after arbitration the vehicle is returned to the seller for failure to announce one of the required announcement conditions, the seller shall pay seller and buyer fees. Buyers must notify MKSAA of its intent to return any vehicle to the auction 24 hours in advance.
44. Dealers must check their purchases, settle for, or turn in complaint to the Arbitration Department within 1 hour after the end of the day's sale.
45. MKSAA is not obligated to pay for any vehicle for any reason.
46. **ARBITRATION DECISIONS MADE BY ARBITRATION STAFF/MANAGEMENT ARE FINAL!!**



### **Selling Light System**

- GREEN LIGHT:** "Ride and Drive" - Guaranteed by the seller not to have any single mechanical defect (excluding non-arbitrable items) costing more than \$500.00 to repair.
- YELLOW LIGHT:** "Declarations" - Vehicle is sold with pre-announced declarations which are not subject to arbitration.
- RED LIGHT:** "AS IS" - The following vehicles must be announced and sold "AS IS": Vehicles sold for \$3000.00 or less, salvage vehicles, police cars, cabs, municipal vehicles, motorcycles, boats, trailers, recreational vehicles, modified and off-road vehicles. Vehicles sold "AS IS" are sold in their existing condition, with all faults, and without modification. Seller and Auction disclaim all implied warranties, and are relieved from liability for any defects existing in the vehicles.
- WHITE LIGHT:** "Powertrain" Guaranteed by the seller not to have any single mechanical defect costing more \$500 to repair for the following items:
- Motor and all internal components of the motor.
  - Transmission/Transfer Case and all internal components of the transmission or transfer case.
  - Internal components of front and rear differential and axels.



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**Power of Attorney**  
(Agency)

Indemnity and Hold Harmless Agreement

\_\_\_\_\_, (HEREINAFTER CALLED "CUSTOMER"), WHOSE PRINCIPAL PLACE OF BUSINESS IS AT \_\_\_\_\_, HEREBY APPOINTS MID KANSAS AUTO AUCTION, INC., 700 W. 48TH STREET, HAYS, KS 67601 AND ITS SUBSIDIARIES, AFFILIATES AND ASSIGNS AND THEIR RESPECTIVE DESIGNEES (HEREINAFTER CALLED "MKSAA"), INCLUDING BUT NOT LIMITED TO THOSE LISTED ON EXHIBIT A HERETO, AS CUSTOMER'S AGENT WITH FULL AND COMPLETE AUTHORITY TO COMPLETE AND/OR SIGN ODOMETER DISCLOSURE STATEMENTS, TITLE DOCUMENTS, AUCTION INVOICES, CHECKS, DRAFTS, DIRECT FINANCING FORMS, OR ANY OTHER DOCUMENTS, AUCTION INVOICES, CHECKS, DRAFTS, DIRECT DISCRETION, AND ON CUSTOMER'S BEHALF, WITH REGARD TO SERVICES PROVIDED BY MKSAA TO CUSTOMER, INCLUDING BUT NOT LIMITED TO SERVICES RELATED TO ANY AND ALL MOTOR VEHICLES OWNED, SOLD, PURCHASED, STORED, INSPECTED, SERVICED, AND/OR CONDITIONED BY OR FOR CUSTOMER AT AUCTION CONDUCTED BY MKSAA.

CUSTOMER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS MKSAA, ITS AFFILIATES AND ASSIGNS, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, OWNERS, AGENTS AND REPRESENTATIVES FROM ALL LOSSES DAMAGES INCURRED BY MKSAA AS A RESULT OF, OR RELATED IN ANY WAY TO MKSAA ACTING AS CUSTOMER'S AGENT PURSUANT TO THIS AGREEMENT, INCLUDING INDEMNIFICATION FOR ALL SUCH LOSSES OR DAMAGES, INCLUDING ANY EXPENSES, COSTS AND REASONABLE ATTORNEY'S FEES INCURRED BY MKSAA RELATED IN ANY WAY TO SUCH LOSSES OR DAMAGES ARE CAUSED BY MKSAA'S OWN GROSS NEGLIGENCE.

AGREED TO AND ACCEPTED BY: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of the notary officer), personally appeared \_\_\_\_\_ (signatory), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) is /are subscribed to the within instrument and acknowledged to me the he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) acted, executed the instrument.  
WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (SEAL)

My Commission Expires: \_\_\_\_\_





## Terms and Conditions

Updated: August 16, 2016

Thank you for choosing Mid Kansas Auto Auction, Inc. (MKSAA). By attending a MKSAA auction or using any of MKSAA's services, whether at out location or online, you agree, for yourself, your organization, and all your authorized representatives, ("you"), to adhere to the listed terms and conditions, as amended from time to time by MKSAA at its sole discretion:

1. These terms and conditions are being made with MKSAA(also referred to herein as "we", "our" and /or "us") and are in addition to, and not in lieu of, any other agreements. MKSAA may amend these terms any time by posting an amended version at its website, which shall become effective on the date of posting.
2. Accuracy of Information. You certify and agree that all registration and representative information you have provided to us, in the registration packet and in any other manner is true, correct, and complete. You agree to notify us in the event of any changes within your organization in writing, via mail, fax, email, or in person.
3. Fairness and Courtesy. You and all representatives of your organization agree to conduct yourself in an ethical, courteous, and fair manner while participating in our auction. Should you have issues or concerns with the behavior of our personnel or other customers while attending any MKSAA auction that cannot be resolved quickly and civilly on your own you will discuss with our management.
4. Dealer Only. Our sales are dealer-only wholesale auctions. Open only to registered and approved customers of MKSAA. You agree not to bring any actual or retail buyers to the MKSAA facility or to negotiate or perform any retail transactions on our property. You further agree not to appoint any representatives to act on your behalf who are not bona fide agents of your dealership. You also represent to us that your wholesale transactions with us are exempt from any state sales or other taxes and agree that you are responsible to pay any such taxes on your related or subsequent transactions. You agree to hold harmless and indemnify MKSAA from and against any such taxes.
5. Bidding. All units are sold with reserve, unless announced otherwise. The auctioneer may bid up to the reserve. Seller bidding and use of shells are strictly prohibited. Bidders should remain aware and satisfy themselves as to a unit's condition and value before bidding and bring any incidents of improper bidding to managements' attention immediately at the close of bidding on a unit. Otherwise, participants ratify the auction of the unit.
6. Terms of Sale. You agree to the following terms of sale for each vehicle you buy or sell through MKSAA ("the Vehicle"), as well as MKSAA's vehicle arbitration policy:
  - a. Buyer is the transferee and agrees to purchase the Vehicle: Seller is the transferor and agrees to sell the Vehicle. MKSAA is merely the auctioneer or facilitator in the transaction and expressly disclaims any and all express and/or implied warranties or any other matters with respect to a Vehicle's condition, odometer reading and/or title; other than those warranties in our limited title guarantee set forth below. You acknowledge and agree that you are a reputable commercial party and agree to satisfy yourself as to the condition and value of a Vehicle and the terms of any bid before



- bidding or selling. You further agree to look to the counter-party Buyer or Seller (as applicable) in such a transaction, and not MKSAA, for any legal claims falling outside your rights under the MKSAA Arbitration Policies.
- b. Any adjustments or rejections must be raised the day of sale and resolved prior to settlement. Vehicles must be paid for on the day of purchase, or the sale may be considered null and void at MKSAA's discretion.
  - c. Vehicles shall be removed from MKSAA's premises no later than the sixth (6th) day following that date of sale, and thereafter, MKSAA may charge a reasonable daily storage fee of up to \$25 per say should any Vehicle be left on MKSAA's property.
  - d. **Buyer will not receive title to a Vehicle until approved funds are secured. Buyer grants MKSAA a security interest in each Vehicle to secure payment of the purchase price and of any other debt owing from Buyer to MKSAA or its affiliates. You agree that MKSAA may resell any Vehicle, if retained or repossessed, at any regular Dealers Only auction.**
  - e. Buyer agrees: (i) to purchase the applicable Vehicle for the purchase price established by the auctioneer and shown on the bill of sale; (ii) before settling for such Vehicle, to check the serial and/or engine numbers on Vehicle and to check the actual condition of such Vehicle with its description and with the announcements and Seller disclosures, if any; (iii) not to resell such Vehicle until good funds have been transmitted to MKSAA; (iv) upon making settlement, regardless of payment method, to consider the sale a fully consummated cash transaction for present consideration; (v) that no stop payment of any Buyer check to MKSAA shall be honored; (vi) **that any stop payment order of a check/draft or giving a check/draft which is returned unpaid shall be deemed to be evidence of fraud existing at the time of payment and shall be construed as an intent to defraud in order to obtain the Vehicle and/or its title;** (vii) that MKSAA may deposit any check or draft immediately upon receiving it, regardless of whether such Vehicle's certificate of title has been submitted by Seller or whether Buyer has asked MKSAA to hold payment; (viii) buyer must notify MKSAA immediately of any claim of defects associated with the vehicle, and Seller is solely responsible for those claims, (ix) that Buyer will comply with Subsection 6(c) above with respect to removal of Vehicles from MKSAA's premises and payment of daily storage fees; and (x) Buyer is responsible for their own transportation of all purchased vehicles.
  - f. You represent to MKSAA that you are a licensed motor vehicle dealer in good standing or otherwise authorized to sell or buy on a commercial wholesale basis in the relevant jurisdiction(s).
  - g. Seller represents and promises that Seller is the true and lawful owner of the Vehicle being sold; that the Vehicle is free from all liens and encumbrances; that Seller has good right and full power and authority to sell and transfer title to the Vehicle; and that Seller will warrant and defend the Vehicle against the claims and demands of all persona whom so ever **and shall hold harmless and indemnify MKSAA from and against any claims regarding title to the Vehicle.**
  - h. You agree that any amounts owing to MKSAA may be deducted from any proceeds due to you and that MKSAA may stop payment or refuse to authorize payment on any check or draft to you pursuant to this right of setoff. MKSAA may hold any of your property in



MKSAA's possession for a reasonable period of time pending any odometer fraud, VIN-switch, or similar investigation.

- i. Seller acknowledges responsibility for completion and execution of the required odometer mileage statement pertaining to any Vehicle on the invoice for such Vehicle and /or on the certificate of title for such Vehicle.
- j. Upon payment to Seller, MKSAA shall be subrogated to all of Seller and Buyer's respective rights, and Seller and Buyer agree to promptly take any action or sign any document deemed necessary, in MKSAA's sole discretion upon MKSAA's request, to secure such rights and do nothing to prejudice them.
- k. Limited Title Guarantee. Upon full payment by Buyer and upon delivery of the certificate of title of the Vehicle to Buyer, MKSAA will guarantee title to be free and clear of liens and encumbrances as of such delivery as, and only as, follows:
  - i. This limited guarantee shall last for a period of four (4) years from the date of sale and applies only to stolen Vehicles and mortgage liens. **The amount of MKSAA's liability under this limited guarantee of title shall never exceed the auction sale price of the Vehicle** and shall be reduced by deducting from said sale price two percent (2%) on the first of each month following the date of sale, with all liability of MKSAA expiring and terminating on the first day of the 48th month after that date.
  - ii. MKSAA's limited guarantee of title is expressly limited to Buyer of the applicable Vehicle and is not negotiable or transferable. The limited guarantee shall be void if the purchase price for the Vehicle is not paid by Buyer, and it does not protect against defects in the title known to Buyer whether or not listed as exceptions on the face of the invoice for such Vehicle.
  - iii. Whenever any claim is made by any person against the title of any Vehicle, whether by sit or otherwise, Buyer must, within five (5) days after becoming aware of said claim, notify MKSAA, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss. Failure to satisfy these conditions shall void MKSAA's liability under this limited guarantee.
  - iv. Buyer shall not surrender possession of any Vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, in each case without the prior written approval of MKSAA.
  - v. On payment of any claim under this limited guarantee, Buyer will return the applicable Vehicle to MKSAA, if and as requested, and execute all necessary documentation subrogating its right to recover against Seller, or others, to MKSAA.
- m. Disclaimers and Indemnification.
  - i. You agree that MKSAA is neither responsible for odometer mileage on any Vehicle nor for the information contained in the odometer mileage statement which Seller, as Transferor, is required to complete and deliver, and Buyer, as Transferee, is required to acknowledge.
  - ii. You agree that all representations or disclosures concerning any Vehicle are solely the responsibility of Seller, whether made on the block, before the sale, or



- otherwise, and you acknowledge and agree that MKSAA has made no representations or disclosures whatsoever about any Vehicle.
- iii. MKSAA is merely performing an auction service and expressly disclaims all express and/or implied warranties as to merchantability, fitness, or any other matter whatsoever, other than the limited title guarantee set forth above.
  - iv. You agrees, jointly and severally with any Buyer or Seller (as the case may be), to indemnify and hold MKSAA harmless from and against any and all liability, loss, cost, damage, or expense, including attorneys' fees, which are in any way related to or may otherwise arise, either directly or indirectly, from any Vehicle, including, but not limited to, the purchase or sale of any Vehicle, any matters relating to odometer mileage or odometer mileage statements, any damage or condition disclosures or lack thereof, and/or any damage caused by transporters or other agents of either Buyer or Seller.
  - v. If MKSAA is required to make or defend a claim, related in any way to a Vehicle or Vehicle transaction, from or against either Seller or Buyer or an agent, employee, insurer, or bonding company of either, then MKSAA shall recover, in addition to the amount of the claim and the costs incurred in the claim, reasonable attorneys' fees in an amount not less than twenty-five percent (25%) of the amount of the claim, regardless of whether suit is filed, including appellate and bankruptcy fees and costs. Interest shall accrue on the unpaid balance of any such claim at the rate of one and one-half percent (1.5%) per month, or the highest rate permitted by law, whichever is greater.
- n. You acknowledge and agree that nay Vehicle is purchased for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased by you for resale. In the event that any Vehicles used for any purpose other than for resale, you will pay directly to the proper taxing authorities such as sales or use tax as may then be accrued and become payable. As a Buyer, you further certify that you hold a retail sales tax registration certificate, license, or other permit, issued by sales tax registration certificate, license, or other permit, issued by the sales taxing authority of your state, county, and/or country, as appropriate.
  - o. MKSAA RESERVES THE RIGHT TO VOID, INWIND, OR CANCEL ANY TRANSACTION IN ITS SOLE DISCRETION.
7. Vehicle Arbitration Rules. You agree and acknowledge that: (a) you have received and read a copy of our prevailing National Auto Auction Association Arbitration Policy, including any MKSAA addendums, which are available at [www.mksaa.com](http://www.mksaa.com); (b) you understand and are bound by the MKSAA Arbitration Policies, which may be amended by MKSAA from time to time, when participating in any transactions at MKSAA; and (c) any dispute arising from the purchase or sale of a vehicle through MKSAA will be resolved in accordance with the MKSAA Arbitration Policies, which are incorporated herein by reference and as may be amended from time to time by posting MKSAA's website, and our decision as arbitrator shall be final and binding upon you with respect to any transaction.
8. Payments. Payments for goods or services must be made by the registered customer purchasing those goods or services or a pre-established direct floor planner acting on that customer's behalf. Although we retain the discretion to make appropriate exceptions, other third-party payments generally will not be accepted. Payment s must be made in good funds



and in a form acceptable to MKSAA. MKSAA reserves the right, in its sole discretion, to change the forms and types of payment that are accepted by MKSAA. In addition to any other rights MKSAA may have, you agree to pay a late fee of one percent (1%) on any unpaid obligations to MKSAA, subject to a \$25 minimum and \$100 maximum. A late fee will be applied if vehicle has not been paid for by 5:00p.m. on the sixth (6th) calendar day after sale (sale date is considered the first day). MKSAA may waive the fee in its sole discretion.

9. **ACH Authorization.** You agree that, if you designate a bank account for payment of amounts you owe us, including, but not limited to, by adding a bank account to your online profile, we may use such account information to initiate an ACH debit to your bank account for such amounts owed. Additionally, you agree that, if any ACH debit we initiate to your bank account is returned unpaid, we may debit your account for a returned item fee in the maximum amount permitted under applicable state law. You agree that any authorizations we initiate to your bank account must comply with applicable law and NACHA Operating Rules. This authorization is in addition to, and does not terminate, any other authorization for electronic or ACH payments that we have on file or that you provide us in the future.
10. **Electronic Signatures.** You acknowledge and agree that you and we may, from time to time, find it expedient to utilize electronic signature(s), acknowledgement(s), consent(s), time, find it expedient to utilize electronic signature(s), acknowledgement(s), consent(s), "click-through(s)," or other approval(s), direct or indirect, for access to auctions, bills of sale, receipts, titles, and other documents or disclosures necessary or incidental to the transaction of business at MKSAA, whether online, in emails, at the check-in desk, on the auction block, at security, or otherwise, which makes your business with us easier, faster, and more efficient. To that end, you agree that any such forms of approval from you shall be effective and binding upon you, in the same manner as a handwritten signature, where circumstances indicate your intent to be bound and/or we choose to rely on such approval(s). Regardless of whether your consent or approval was given, or in what form, you agree that you will be deemed to have ratified and transaction that you do not dispute in writing within 24 hours of confirmation by MKSAA.
11. **Transportation of Vehicles.** We may, from time to time in our discretion, transport or arrange via third parties to transport vehicles belonging to you at your request and/or as deemed necessary or desirable by us. In such cases, we are not liable for theft, conversion, loss, injuries, damage, claims, expenses (including legal fees), suits, or demands related to such vehicles (collectively, "Transportation Claims"), howsoever caused and to whoever caused. Such vehicles are being transported for you and at your request, and you assume all risks associated with the transportation of your vehicles. You further acknowledge and agree that your only claim or remedy for Transportation Claims, if any, shall be to and against the third-party carrier, its insurer, your own insurer, or the third-party that caused the alleged damage, and not or against MKSAA.
12. **Off-Site Sales.** For any vehicles physically located away from a MKSAA facility when auctioned online, the seller shall have three (3) business days, inclusive of the sale date, to make the vehicle available to the buyer. The risk of loss or damage to the vehicle shall shift from the seller to the buyer upon the earlier of (i) actual pick-up by the buyer or its agent; or (ii) two (2) business days after seller truthfully notifies the buyer the vehicle is available for pick-up at the location stated in the sale listing.



13. Storage of Vehicles. Unless expressly agreed to the contrary in a writing signed by us, we are not a bailee of your property, consigned or otherwise. If you leave your vehicles or other property unattended on our premises, regardless of the reason, you are solely responsible for any and all damage, theft, or loss relating to such property, including any damage caused by weather conditions, regardless of our knowledge or involvement, and we may charge you storage fees as provided above in Section 6.
14. Safety and Assumption of Risk. Like all auto auctions, our various facilities are busy places with many vehicles, customers, and personnel moving around the premises at all times, particularly during sales events. **You understand and acknowledge that the movement of vehicles, equipment, and individuals at our facilities constitutes an open and obvious condition and that MKSAA is not obligated to warn you of such conditions.** You agree to obey posted signs and follow any warnings you receive from our personnel, particularly as they relate to safety and security issues. You also agree to use extreme care while on our premises to avoid injury to yourself and others, both in moving vehicles on and off the premises and in traversing any sale lanes, parking lots, and offices on foot and otherwise. By entering our private premises, you assume the risk of injury.
15. Bound by Representatives. You are responsible for and bound by the actions of, and transactions entered into by, your actual and appointed representatives, including (i) all persons who, from time to time, submit a completed individual Authorization Letter to MKSAA, signed by or for you; and (ii) any other person authorized by you in writing, verbally, or otherwise to represent you at or with MKSAA. You are responsible for monitoring your appointed representatives and agree to inform us immediately, in writing, of any unauthorized use of same. If you are checking in or logging in as a representative for a dealership other than you own, you agree that you are a duly appointed and authorized representative for that dealership and have authority to bind that dealership to any actions or transactions you conduct.
16. No Right to Do Business. You have no obligation to do business with us. Likewise, you agree and acknowledge that we have no obligation to do business with you. We reserve the right to cease doing business with you or anyone else, at any time, for any reason or no reason, in our sole discretion, collectively or separately among our affiliates; and you shall have no right, remedy, or cause of action for same. You acknowledge and agree that there are numerous sources, other than MKSAA, for you to acquire and sell used motor vehicles.
17. Information Sharing. You authorize us to pull, gather, obtain, receive, share, disseminate, and disclose financial, credit, and transactional information about you in our discretion, including, without limitation, consumer reports, credit histories and limits, buy and sell histories, check information, collateral location and status, and eligibility status (for purposes of this paragraph, "Your Information"), from and with credit bureaus, financial institutions, trade creditors, affiliates and third parties, including without limitation Auction ACCESS, Auction Insurance Agency, other auction companies, marketing partners, and other customers, for any reason we deem necessary, including, without limitation, assessing your credit worthiness, collecting any outstanding debt you may owe now or in the future, and obtaining inter-creditor, subordination, or similar agreements related to you; and you hereby ratify any such prior acts. The information sharing authorized herein is in addition to any information sharing authorized in any MKSAA privacy policy.



18. Contributions to MKSAA. You agree and acknowledge that by submitting ideas, suggestions, concepts, documents, and/or proposals ("Suggestions") to MKSAA, that: (a) you have all necessary rights to share such Suggestions with MKSAA and that the Suggestions are not subject to restrictions by third parties; (b) MKSAA is free to use and /or share such Suggestions as it sees fit; (c) MKSAA may have already conceived, contemplated, or developed something similar to the Suggestions; (d) MKSAA may incorporate the Suggestions into its products and services, now or in the future, and MKSAA does and will own such products and services; and (d) MKSAA is not obligated to you in any way for such Suggestions or the use thereof.
19. Limited Power of Attorney. For value received, you hereby irrevocably appoint MKSAA to be your agent and attorney-in-fact with full and complete authority to, on your behalf, take all steps, do all things, and authenticate, sign, e-sign, or otherwise acknowledge any and all documents (including applications for duplicates), sales invoices and transportation instructions/orders, in each case as deemed necessary, incidental, desirable, or expedient by us, in our sole judgment, to any and all documents, including but not limited to odometer disclosure statements, title documents (including applications for duplicates), sales invoices and transportation instructions/orders, in each case as deemed necessary, incidental, desirable, or expedient by us, in our sole judgment, to any goods and /or services provided by us to you and/or to assist us with our efforts to collect payment for such goods and /or services. You will also sign any separate power of attorney document(s) covering the foregoing activities and authority that MKSAA may request from time to time in its sole discretion.
20. DISCLAIMER OF WARRANTIES. UNLESS OTHERWISE SPECIFICALLY SET FORTH HEREIN OR IN A MORE SPECIFIC AGREEMENT YOU MAY HAVE OR MAKE WITH MKSAA, ALL PRODUCTS AND SERVICES PROVIDED TO YOU BY MKSAA ARE ON AN "AS-IS" BASIS. MKSAA CANNOT AND DOES NOT WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY PRODUCTS OR SERVICES PROVIDED TO YOU BY MKSAA, AND CANNOT GUARANTEE THAT ANY SERVICES PROVIDED TO YOU WILL BE ERROR FREE, OR CONTINUOUSLY AVAILABLE, OR THAT SUCH SERVICES WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.
21. INDEMNIFICATION. YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS MKSAA, ITS SUCCESSORS AND ASSIGNS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, MEMBERS, REPRESENTATIVES, BORROWED SERVANTS, VOLUNTEERS, INDEPENDENT CONTRACTORS AND AGENTS ("THE MKSAA PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, CAUSES OF ACTION, DEBTS, OR LIABILITIES, INCLUDING ATTORNEYS' FEES. ARISING OUT OF OR RELATING TO (A) ANY PERSONAL INJURY OR PROPERTY DAMAGE THAT YOU MAY OF CAUSE, EITHER SOLELY BY YOUR OWN ACTIONS OR JOINTLY WITH OTHERS (INCLUDING MKSAA), TO MKSAA, ANY PERSONNEL OR CUSTOMERS OF MKSAA, OR ANY THIRD PARTIES, OR THE PROPERTY OF ANY OF THE FOREGOING; (B) THE BREACH OR ALLEGED BREACH OF ANY AGREEMENT OR OBLIGATION HEREUNDER OR UNDER ANY OTHER AGREEMENT OR OBLIGATION HEREUNDER OR UNDER ANY OTHER AGREEMENT THAT YOU MAY HAVE WITH MKSAA; (C) ANY TRANSPORTATION CLAIMS; (D) ANY ACTIONS THAT A MKSAA REPRESENTATIVE MAY TAKE AS YOUR AGENT, REPRESENTATIVE, OR ATTORNEY-IN-FACT, PURSUANT TO SECTION 20 HEREOF OR OTHERWISE; (E) YOUR USE OF ANY PRODUCTS OR SERVICES OF MKSAA; AND



- (F) ANY LIABILITY OR OBLIGATION, INCLUDING ANY CAUSED IN PART BY A MKSAA REP, YOUR PRESENCE AT ANY PREMISES OWNED OR OPERATED BY MKSAA, OR THE PRVISION OF PRODUCTS SERVICES TO YOU BY MKSAA.
22. WAIVER AND RELEASE OF LIABILITY. YOU HEREBY WAIVE ANY CLAIM OR CAUE OF ACTION THAT YOU MAY HAVE, EITHER NOW OR IN THE FUTURE, AGAINST ANY MKSAA PARTY, AND HEREBY RELEASE THE MKSAA PARTIES FROM ANY AND ALL LIABILITY UNDER SUCH CLAIM OR CAUSE OF ACTION, IN EACH CASE TO THE EXTENT SUCH CLAIM OR CAUSE OF THE ACTION ARISES FROM OR RELATES TO (A) YOUR ENTITLEMENT TO THE PROTECTION OF ANY CONSUMER PROTECTION STATUTE; (B) ANYH BIDDING OR DISCLOSURE ISSUES THAT MAY OCCUR AT A SALE OR AUCTION CONDUCTED BY US, SUBJECT TO YOUR LIMITED RIGHTS UNDER THE MKSAA ARBITRATION POLICIES; (C) ANY TRANSPORTATION CLAIM; (D) ANY DAMAGE TO YOUR VEHICLES OR OTHER PROPERTY LEFT OR STORED ON ANY PREMISES OWNED OR OPERATED BY MKSAA, REGARDLESS OF COMPENSATION PAID TO US FOR SUCH STORAGE; (E) ANY PERSONAL INJURY OR OTHER PROPERTY DAMAGE SUFFERED WHILE ON OR AROUND ANY PREMISES OWNED OR OPERATED BY MKSAA; AND (F) ANY ACTIONS TAKEN BY A MKSAA PARTY AS YOUR AGENT, REPRESENTATIVE, OR ATTORNEY-IN-FACT, PURSUANT TO SECTION 20 HEREOF OR AS MAY OTHERWISE BE AUTHORIZED.
23. LIMITATIONS OF LIABILITY. UNDER NO CIRCUMSTANCES WILL THE MKSAA PARTIES BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITAION, DAMAGES FOR LOST REVENUES OR PROFITS, OR DAMAGES FOR LOSS OF BUSINESS), EVEN IF ONE OR MORE OF THE MKSAA PARTIES ARE ADVISED BEFOREHAND OF THE OSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT THE AGGREGATE LIABILITY OF THE MKDAA PARTIES, COLLECTIVELY, TO YOU IN CONNECTION WITH ANY CLAIMS OR CAUSES OF ACTION THAT YOU MAY ASSERT, SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY YOU TO MKSAA FOR THE PRODUCT(S) OR SERVICE(S) AT ISSUE DURING TEH TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LAST EVENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION BEING ASSERTED. BECAUSE SOME STATES/JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OF THESE LIMITATIONS MAY NOT APPLY TO YOU.
24. Choice of Law and Consent to Jurisdiction. These terms and conditions shall be governed by the internal laws of the State of Kansas (U.S.A), where MKSAA maintains its headquarters, adn without regard to Kansas's internal conflicts of law analysis. You agree that the exclusive jurisdiction and venue for such claims and disputes shall exist in the district court of Ellis County, Kansas. You further agree and acknowledge that you may not sue MKSAA in any jurisdiction or venue except Ellis County, Kansas.
25. Individual Guaranty. By entering our private facilities and /or using our services, you personally guarantee full payment and performance of all the obligations you participate in incurring to MKSAA, whether personally or as a representative of another entity, despite the fact that you may be participating in a representative capacity. The principal debtor is (i) any Vehicle Buyer or Seller for whom you (a) are a registered owner or (b) consent to MKSAA bill(s) of sale, and (ii) any customer for whom you order a product or service from us. Liability under this general guaranty is in addition to your dealership's liability and is joint and several





- with the dealership's liability. This is a general guaranty of payment and performance and not merely a guaranty of collection.
26. **Communications.** You hereby expressly authorize us to communicate with you via facsimile transmissions, email, telephonic transmissions, both to a residential telephone line and/or cell phone, including text messaging, using an automatic telephone dialing system or an artificial or prerecorded voice message, and/or any other forms of communication, for any purpose, including general business matters, account information, marketing materials, collection, and/or any other communication needs. Such express permission shall extend to any and all of the contact information that you have provided to us herein or otherwise, including physical and email addresses, phone numbers, fax numbers, etc., and to such other addresses, phone numbers, email addresses, online chat, social media platforms, etc. that you may provide to us, or that we may obtain from any third party at a later date.
  27. **No Commitment to Lend.** Neither these terms and conditions nor any other request by you to us shall constitute a commitment by us to lend funds to you or to take any other action. We may approve any request for floor plan or other financing in sole discretion, with or without notice to you.
  28. **Understanding of Terms and Conditions.** You acknowledge and agree that you understand these terms and conditions and that you have sought the help of an attorney and /or translator as you deem necessary to understand it. The parties hereto agree that this agreement, and all correspondence and all documentation relating to this agreement, be written in the English language.
  29. **Severability.** In the event that any provision in this agreement is determined to be legally unenforceable, the parties agree that the unenforceable provision shall be severed, and the remaining provisions of these terms and conditions shall remain in full force and effect.
  30. **Electronic Approval.** You hereby acknowledge and agree that these terms and conditions are being executed both in your individual capacity and in your capacity as an authorized representative for Dealer and that the approval of this document, if by e-signature, shall be deemed to satisfy all requirements imposed on electronic or digital signatures under the Electronic Signatures in Global and national Commerce Act (the "E-Sign Act"), 15 U.S.C. 7001(a) *et seq.*, state electronic transactions acts, and any other similar laws relating to the validity or enforceability of electronic or digital signatures. You further acknowledge and agree that these terms and conditions may be approved by affixing to this agreement an electronic or digital signature, which shall for all purposes be deemed effective to constitute the valid signature of the party affixing such electronic or digital signature.



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I have read, understand, and agree to the foregoing MKSAA Terms and Conditions, which are also available at [www.mksaa.com](http://www.mksaa.com):

IN WITNESS WHEREOF, Dealer, or Dealer's duly authorized representatives, has (have) executed this Terms and Conditions this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
(If a sole proprietorship)

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

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

(If a corporation, partnership, limited liability company or some entity other than a sole proprietorship)

Attest:

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

By: \_\_\_\_\_  
(Signature of Witness)

By: \_\_\_\_\_  
(Signature of Officer, Etc.)

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