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## Auction terms and conditions

### Indemnity and Hold Harmless Agreement

shall indemnify, defend and hold harmless South Bay Auto Auction, subsidiaries, affiliates, directors, officers, agents and employees, from and against any liability, loss, damage, cost, expense, claim, suit or demand, including, without limitation, attorneys' fees and other legal cost, 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 SBAA, odometer mileage, odometer mileage statements, breach of DEALER'S warranty of title, or alleged misrepresentations of a DEALER regarding vehicle title, history or condition; and (b) breach by DEALER of any other terms set forth in the Auction Terms and Conditions.

### California Resale Certificate

I am engaged in the business of selling, the following type of tangible personal property:

This certificate is for the purchase from South Bay Auto Auction of the item(s) I have listed in paragraph 5 below.

I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law

Description of property to be purchased for resale: Vehicles

I have read and understand the following:

**For Your Information:** A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of

tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

## Arbitration

NAAA arbitration policy can be found at their website [www.NAAA.com](http://www.NAAA.com)

[http://www.naaa.com/pdfs/arbitration\\_policy/NAAA\\_Arbitration\\_Policy\\_Effective\\_Feb\\_1\\_2016.pdf](http://www.naaa.com/pdfs/arbitration_policy/NAAA_Arbitration_Policy_Effective_Feb_1_2016.pdf)

Although South Bay Auto Auction is a member of the National Auto Auction Association (NAAA) and adopts the majority of the arbitration policies set by them, the following is a clarification of the auction rules and policies **that** may vary from NAAA.

Vehicle must be paid-for in full on the day of the sale before it may arbitrate.

In order to initiate the arbitration of vehicle the buyer must fill out an arbitration form including all items to arbitrate with in the time frame noted.

Arbitration will review only items listed on the arbitration form. In certain cases, the arbitrator may refer to an outside specialty shop for consultation. If this occurs, the party the arbitrator finds against will be responsible for all cost including transportation and arbitration fees.

After reviewing the arbitration's findings both parties will be notified.

Solution to arbitration may be unwinding the sale or adjustments made to the price of the vehicle.

Any bills on cancelled sales must be submitted to arbitration department within 48 hours.

The decision of the arbitrator is final and binding on both parties. Both parties agree to this at time of registering with the auction.

The following items are not arbitratable:

- Navigation system INOP/MISSING/MISSING DVD
- Radios including DVD, CDs
- All glasses
- Power mirrors
- Moon roofs
- Instrument clusters with exception of odometers
- Sliding van doors
- Broken or missing parts(i.e. seats)
- Trim package
- Frame on any altered suspension
- Axle joints, CV joints, driveshaft
- Rack and pinion steering
- Air conditioning

- (EV) Missing/Damaged Charging Cables

Arbitration services shall be performed at the discretion of and pursuant to the arbitration policies of the auction. In order to enter into arbitration, the buyer must give the auction notice of the undisclosed defects, condition or discrepancy within the times specified herein (by 12 noon the day after sale day and in the case of undisclosed frame damage, within 3 business days from sale date. Sale day is day one.) If the buyer fails to give such notice, the auction shall have no duty or obligation to provide arbitration services. It is important for the buyer to present vehicles to arbitration only if they have readily apparent defects, conditions or discrepancies that have not been disclosed. ONLY the arbiter will handle arbitration through the arbitration office. THE AUCTION EXCLUSIVELY HAS THE FINAL DECISION ON ALL ARBITRATIONS.

Arbitration time limit is noon the day after the auction for mechanical conditions and 5:00pm on the 3<sup>rd</sup> business day after sale day (Auction Day is Day 1) for frame. Arbitration time limit for vehicles with PSI performed mechanical and frame will be 5:00pm, 7 business days for mechanical and 10 business days for frame (Auction Day is Day 1). Arbitration must be notified prior to return of vehicle.

Arbitration form at the gate must be filled out completely and signed in order for arbitration to be valid.

Titles: After 45 calendar days of sale date the buyer can notify auction in writing and if auction cannot produce title within 72 hours after this notice, return the vehicle. Car must be at the auction within the 72 hr period. The auction will not be responsible for any expenses incurred on vehicle without title.

1. The Auction guarantee will be in effect until 12 noon day after sale day.
2. All ten (10) year old and older vehicles, vehicles with over 150,000 miles, odometer discrepancies and broken odometers will be sold AS IS unless otherwise announced.
3. Any vehicle sold for a bid amount \$2,500 or less is strictly AS IS including frame damage.
4. If the Auction arbiter determines the buyer's complaints to be without merit, the buyer will be charged an arbitration fee. If the buyer's complaint has merit then the seller will be charged an arbitration fee plus reasonable documented costs of any repair expenses and transportation of the vehicle, not to exceed \$500. Arbitration fee is currently \$230 and subject to change. **Full auction fees will be charged to the consigner on rejected vehicles.**
5. Any deliberate misrepresentation of a vehicle will be grounds for arbitration at the auction's discretion. Deliberate misrepresentation may be grounds for terminating auction privileges.
6. The arbiter may invoke his right to make a judgment call that may differ from published policy.
7. Vehicles placed in arbitration must have a specific problem identified on the arbitration form. Arbitration is not an overall condition check of the vehicle, it is designed to verify or clarify specific problems found by the purchasing dealer.
8. Fleet Lease/ bank sellers from time to time may be granted their own arbitration policies. Please refer to that specific seller's handout for up-to-date arbitration policy.

9. CARFAX or any Vehicle History Provider information is solely decided by arbitration. It is the buyer's responsibility to check. A vehicle may NOT be arbitrated due to any exception, event, odometer reading or any other discrepancy found in CARFAX, AUTOCHECK or any other vehicle history provider. It is the buyer's responsibility to correct any errors with the history provider. Auction may or may not provide assistance in this matter at its sole discretion. Auction may review vehicle history reports to prevent fraud but any arbitration decision based solely on vehicle history reports will be at the sole discretion of the auction. Auction decision(s) will be final and binding on all parties.

**TITLES:** SBAA guarantees title on vehicles sold through the auction. All titles must be free and clear of liens. All dealer consignment titles must be received within 45 days following the sale. All fleet lease/ bank sellers have 45 days to provide the title. After the allowed time frame the buyer has the right to: **(a)** Return the vehicle to the auction for a full refund of the cost of the vehicle, **(b)** buyer fee, **(c)** transport charges, and **(d)** cost of expenses needed to prepare the vehicle for sale, not to exceed \$500. Appropriate receipts must support all expenses claimed, which will be verified by the arbitration department. Any amount exceeding the \$500.00 limit is not eligible for arbitration refund.

SBAA does not accept duplicate title applications or lien satisfied forms.

**Salvage title units** that are announced at auction are sold **AS-IS** and **are not eligible for arbitration for any reason.**

Intentionally misrepresented or altered odometers will be handled on an individual basis. State and federal agencies will be notified and the seller will be banned from the auction.

## GENERAL POLICIES

Please consult the SBAA rules in the event of any conflict. The policies and procedures of the auction where a consignment or sale occurs shall govern the transaction(s).

The Auction is not open to the public, and dealer is strictly prohibited from bringing retail customers into the Auction premises. Violation of this provision will result in immediate and permanent suspension of dealer's privilege of conducting business with SBAA.

**Offers/ "IF" bids:** Once successful high bidder on the auction block is determined the auction has until 5:00 PM on the day after the sale to respond and the buyer will be responsible for the bids until 5:00 PM the day after the sale.

For any offer buyers are responsible to provide us correct phone number for quicker respond.

**PSI request:** PSI can be requested only on the day of the sale till 5:00 PM regardless of being final sale or if sale.

All Consigned Vehicles must have a gate pass before leaving the auction premises and are subject to inspection. SBAA will charge dealer storage fees for all consigned vehicles purchased by dealer and left on the auction premises for more than a certain period of time as determined by SBAA.

Dealer's failure to comply with any or all of the Auction Terms and Conditions or Auction Policies may result in the suspension or termination of dealer's privilege of transacting business with SBAA and its affiliates, as determined solely in the discretion of SBAA.

No one under the age of 18 is permitted on the premises.

SBAA reserves the right to refuse to do business with any dealer at the sole discretion of SBAA management.

1. **Announcements.** The following must be announced regardless of which light a vehicle is sold under (\*excluding "AS-IS"):
  - (a) \* mechanical / electrical problems;
  - (b) \* slugged engine;
  - (c) \* cracked or repaired block;
  - (d) \* vehicles not equipped with air conditioning (calendar year or newer);
  - (e) \* paintwork (3 panels or more) current model year and newer (bumpers not included);
  - (f) \* fuel conversion;
  - (g) \* non-original engine (excl. items replaced under manufacturer warranty) calendar year up to 4 years old;
  - (h) \* voided factory warranty;
  - (i) logo or decal misrepresentation;
  - (j) bio-hazard vehicles (both cleaned and contaminated), as required by law;
  - (k) frame/unibody damage (existing, altered, or repaired) per NAAA policy;
  - (l) floor damage as determined by auction inspection;
  - (m) state-issued VIN plates, incl. kit vehicles;
  - (n) taxis, livery vehicles, police cars, government vehicles that are calendar year and up to 4 years old;
  - (o) previous Canadian that are calendar year and up to 4 years old;
  - (p) Lemon Law/Manufacturer's Buyback;
  - (q) vehicles being sold with no title (bill of sale only);
  - (r) not actual miles/inoperative odometer;
  - (s) salvage vehicles, reconstructed vehicles, theft recovery vehicles, and stolen vehicles (incl. history);
  - (t) gray market vehicles;
  - (u) insurance and/or salvage titles (including history);
  - (v) vehicles being sold with a CO, MSO
  - (w) pending state or local DMV fees or taxes over \$100 due on vehicle (if required by state);
  - (x) any state required damage disclosure; and
  - (y) flood damage history (discovered by DMV or insurance company records).

All selling announcements shall be made by auctioneer only, and all representations by the seller must be announced through the auctioneer. **It is the seller's obligation to fairly represent the vehicle and to**

**correct any errors made by the auctioneer as to “announce conditions.”** It is the purchaser’s obligation to watch lights and listen to “announced conditions.”

1. **Complaints.** All complaints and rejections must be handled through the arbitration office within the acceptable arbitration period as set forth in the NAAA Arbitration Policy Matrix. Incorporated herein by reference. Both buyer and seller must await the decision of the arbitration office before leaving the auction premises.
2. **“AS-IS”.** Vehicles sold “AS-IS” are not subject to arbitration except for those listed in Section 1 (l) – (y), subject to the arbitration period as set forth in the NAAA Arbitration Policy Matrix, incorporated herein by reference.

The sale of any vehicle that has been arbitrated becomes an “AS-IS” transaction. Purchase transactions not occurring at the block also shall be “AS-IS” transactions unless guaranteed by the seller in writing.

**SEE AUCTION POLICY – “AS-IS” DOLLAR AMOUNT, MODEL, YEARS, AND MILEAGE IS SUBJECT TO AUCTION POLICY.**

3. **Finality of Arbitration.** No future arbitration will be permitted for any reason, with the exception of only the following (sale day is day one):
  - a. fuel conversion reported within 7 days;
  - b. non-original engine (excludes items replaced under manufacturer warranty) – calendar year and up to 4 years old reported within 7 days;
  - c. voided factory warranty reported within 7 days;
  - d. frame/unibody damage (existing, altered or repaired) per NAAA policy reported in 7 days;
  - e. flood damage as determined by auction inspection reported within 7 days;
  - f. state issued VIN plates, incl. kit vehicles reported within 7 days;
  - g. taxi, delivery vehicles, police cars, government vehicles that are calendar year and up to 4 years old reported within 7 days;
  - h. previous Canadian that are calendar year and up to 4 years old (unless state or local law supersede) reported within 7 days;
  - i. Lemon law / Manufacturer’s Buyback reported within 7 days;
  - j. vehicles being sold with no title (bill of sale only) reported within 7 days;
  - k. all broken odometers must be arbitrated within 7 days;
  - l. salvage vehicles, reconstructed vehicles, theft recovery vehicles and stolen vehicles (including history) reported in 7 days;
  - m. gray market vehicles reported within 7 days;
  - n. insurance and/or salvage titles (including history) reported within 7 days;
  - o. vehicles being sold with a CO, MSO or repo affidavit title (if required by state law) reported within 7 days after receipt of title;

- p. pending state or local DMV fees or taxes over \$100 due on vehicle (if required by state) reported within 7 days after receipt of title;
  - q. any state required damage disclosure reported within 7 days after receipt of title;
  - r. Flood damaged history (discovered by DMV or insurance company records) reported within 120 days.
  - s. Items (a) – (c) are not subject to arbitration for vehicles sold “AS-IS.” Item (k) must be reported to purchaser prior to leaving the auction premises, or will be addressed via the depreciation formula as described in the NAAA Arbitration Policy, incorporated herein by reference. Transactions for Items (k) – (n) can be rescinded if arbitrated within the stated time limits; however, arbitrations initiated after the stated time period will be addressed via the depreciation formula described in the NAAA Arbitration Policy, incorporated herein by reference.
2. **Return of Vehicle to Buyer.** If after arbitration the vehicle is returned to the seller for failure to announce one of the conditions listed in (a) through (g) above, seller shall pay sell and buy fees. Buyer must notify South Bay Auto Auction of its intent to arbitrate and return any vehicles to the auction 24 hours in advance. South Bay Auto Auction may approve or deny buyer’s request to arbitrate and return the vehicle. If approved for arbitration, the buyer must follow all directions by the auction relative to returning the vehicle or the arbitration request will not be recognized by the auction. Return of the vehicle to the auction does not negate the buyer’s financial obligations under the pending sale and 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 once the vehicle is in the possession of the buyer and pending arbitration.
  3. **Visible Defects.** Visible defects are not subject to arbitration (e.g. body damage, glass, lowered, lifted, etc.)
  4. **Inoperative Gauges.** Vehicles with inoperative gauges or lights except for odometers as set forth above are not subject to arbitration.
  5. **Arbitration Decisions.** South Bay Auto Auction’s arbitration manager will make the final decision on all arbitrations.
  6. **Payment for Vehicles.** Auction is not a party to the contract of sale. The sales contract is between the seller and buyer only. South Bay Auto Auction is not obligated to pay for any vehicle for any reason.
  7. **Stolen Vehicles.** Seller shall settle all stolen vehicles sold through the auction at the purchase price less 2% per month for every month from the date of sale.
  8. **Window Information.** Mileage and other information printed on the windows of any vehicle are for the convenience of the dealer only. This information is not to be relied upon as complete and/or accurate and is not subject for arbitration.
  9. **Additional Details.** Refer to the NAAA Arbitration Policy for additional details.

10. **Non-Runner Vehicles.** Non-runner vehicles are strictly AS-IS including odometer, salvage, and total loss.

## SELLING LIGHT SYSTEM



### RIDE AND DRIVE

Vehicle is guaranteed by the seller under the conditions as outlined in the Disclosure/Discovery Requirements section of the BAAA Arbitration Policy, incorporated herein by reference.



### ANNOUNCEMENTS

Vehicles are sold with pre-announced announcements that clarify the condition or equipment and limit arbitration of this vehicle.



### AS-IS

Vehicles selling under the red light will only qualify for arbitration under the conditions as outlined in the Disclosure/Discovery Requirements section of the NAAA Arbitration Policy, incorporated herein by reference. ("AS-IS dollar amount, model year, and mileage is subject to SBAA policy.)

## Vehicle Payment & Release Policies

Payment for any vehicle awarded is due within **3 working days\*** (auction day plus 2 working days). Payment for any Out of Country vehicle awarded is due within 5 working days\* (auction day plus 4 working days.)

Payment for Offer / "If" bid is due within **3 working days\*** (day offer is finalized plus 2 working days).

Vehicles not paid within specified timeframe will be subject to a onetime **Late Payment Processing Fee\*** plus a range of **Late Payment Fee\*** per day/per vehicle (regardless of the title availability). **See attached Fee Tier Schedule.**

In the event a vehicle is not paid within **14 days** from the date of sale, dealer agrees that South Bay Auto Auction (SBAA) may, in its sole and absolute discretion, cancel the sale, re-list the vehicle for sale, and dealer shall be responsible to pay the difference between the original sale price and the resale price, plus any collection costs, including court costs and reasonable attorney's fees. Dealers causing excessive vehicles to be re-listed are subject to suspension or revocation of their bidding privileges.

**Accounts receivable (A/R)** represents money owed by dealers to the SBAA on the sale of vehicles and all auction related services such as: Auction Assignment Fee, Post Sale Inspection Fee, Arbitration Fee, Transportation Fee, Title Registration Fee, KSR Fee, Collection Fee and Storage Fee. Dealer is responsible to pay for the service related A/R's in **30 days** from the date of service completion. In the event of A/R aging more than **30 days**, dealer will be subject to suspension or revocation of their bidding privileges, and SBAA will retain the right to collect the outstanding account balances by claiming against the dealer's Bond.

If you intend to pay through a flooring company it is your responsibility to complete the process and have the payment made within the same time period.

If your arrangement with the flooring company takes longer than this time period, you will be charged the late fees.



Buyers may pay for vehicles by:

1. **Cash**
2. **Certified, cashier's or bank checks**
3. **Floor plan source approved by South Bay Auto Auction (SBAA) such as Automotive Finance Corporation (AFC), Dealers Services Corporation (DSC), Auto-Use, etc.**
4. **Business check (see next page)**
  - **Buyers must have a banking reference completed by Dealer Registration Department before writing checks.**
  - **Checks must be imprinted with the dealership's name and address.**
  - **Dealer must write in dollar amount.**
  - **Checks must be made payable to SBAA per each vehicle separately.**

Restitution of any checks returned to SBAA for any reason will need to be received within **2 working days\*** in form of Certified, Cashier's or Bank Checks. **SBAA will cancel dealer's check writing privileges upon receiving NSF check notification from the bank.** Any check returned for NSF will be subject to **SBAA's NSF processing fee\***, and any and all collection costs including but not limited to collection agency fees and/or attorney fee and court costs. **SBAA does not accept personal or third party checks.**

**Buyer shall acquire no title to vehicle purchased or any right to sell or offer same for sale until payment is received by SBAA.**

**Vehicle Release** - Vehicles must be picked up within **5 working days\*** (auction day plus 4 working days). If not picked up within specified timeframe will be subject to a **Storage Fee\* per day/per vehicle** (regardless of the title availability) **See attached Fee Schedule.** Vehicles can only be picked up during SBAA Gate assigned hours. SBAA urges successful dealers to pick up their vehicles immediately after the sale to avoid storage fees. Vehicles remaining at SBAA's premises for **30 days\*** may be considered abandoned under the law and will be sold. SBAA will not recognize any claim for theft or damage, in whole or in part, after the vehicle has been awarded.

I understand and agree to abide by the above policies.

**First Name:** \_\_\_\_\_ **Last Name:** \_\_\_\_\_

**Auction Access:** \_\_\_\_\_ **Dealership Name:** \_\_\_\_\_

**Last 4# SSN:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

**Dealer Signature:** \_\_\_\_\_ **Signed Date:** \_\_\_\_\_

**\*Fees and grace periods are subject to change by SBAA with prior notice**

LATE PAYMENT FEE	
Effective 02/07/2011	
<b>LATE PAYMENT FEE TIERS PER UNIT</b>	
SALE \$ AMOUNT OF VEHICLE	LATE PAYMENT FEE PER DAY LATE
0-\$5,000	\$15/DAY
\$5,001-\$10,000	\$20/DAY
\$10,001-\$15,000	\$30/DAY
\$15,001-\$20,000	\$40/DAY
\$20,001-\$25,000	\$50/DAY
<b>LATE PAYMENT PROCESSING FEE PER UNIT \$25 ( 1 TIME FEE )</b>	
INCREMENT OF <b>\$10/DAY</b> FOR EVERY <b>\$5,000</b> INCREMENT IN SALE PRICE	
(STORAGE FEE WILL BE CHARGED SEPERATELY IF UNIT NOT PICKED UP IN TIME. THIS CHARGE IS ONLY FOR PAYING LATE.)	
All Final sales payments are due in 48 hours (COB Wed.) - All Conditional sales payments are due in 72 hours (COB Thu).	
Regardless of Title availability after applying \$25 Late payment processing fee	

STORAGE FEE
Effective 02/07/2011
STORAGE FEE WILL BE CHARGED ON ALL UNITS NOT PICKED UP WITHIN 5 WORKING DAYS (AUCTION DAY PLUS 4 WORKING DAYS), BY FRIDAY REGARDLESS OF WHETHER THE SALE AMOUNT WAS PAID IN TIME OR NOT.
<b>\$15/DAY</b> PER UNIT FOR LIGHT TRUCKS & CARS
<b>\$30/DAY</b> PER UNIT FOR RVS/BOATS/HEAVYDUTY
Regardless of Title availability

RETURN CHECK FEE: \$100
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