

**THOMAS HIRCHAK COMPANY WILLISTON AUTO AUCTIONS  
TERMS AND CONDITIONS OF SALE**

NAME \_\_\_\_\_ BIDDER'S NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_ PHONE (     ) \_\_\_\_\_

**NOTE TO THE BIDDER:** This is a legally binding agreement. Please read it thoroughly. If you have any questions, please bring them to the attention of the staff before bidding. Please sign at each X.

**1. LIMITATIONS AND DISCLAIMERS:**

(A) Each lot is consigned to Thomas Hirschak Company (hereinafter referred to as THCo) by the Seller shown on the Bill of Sale. Seller is the disclosed principal of THCo, and THCo acts as the exclusive agent of Seller. Each lot is sold "AS-IS, WHERE-IS", with all faults and defects, and with all errors of description. Buyer understands that: (1) any and all information concerning any lot is provided by Seller; (2) THCo does not make any representations or express any opinions of its own concerning any lot; (3) THCo does not examine any lot or any component of any lot, research the title documents for the lot or verify any information provided by the Seller, nor does THCo undertake any duty to do any of the foregoing for the benefit of the Buyer or anyone else. Buyer acknowledges that THCo's only duty toward Buyer is to release the lot and the title documents "AS-IS, WHERE-IS", upon full performance by Buyer under this Agreement and at times specified in this Agreement. Except with regard to such duty, Buyer hereby waives and releases THCo from and against any claim, demand, liability or expense on any kind arising out of our relation to any lot, expressly including without limitation any assertions of negligence (including negligent misrepresentation) or any breach of warranty. Buyer agrees not to join THCo as a defendant in any action or proceeding arising directly or indirectly out of the condition of the lot or any alleged representations concerning the lot, and further agrees to look solely to the Seller with respect to such matters.

(B) THCo disclaims all warranties, expressed or implied, concerning the lot, including the warranties of merchantability or fitness for any particular purpose(s). Buyer represents that the amounts bid for any lot are based solely on buyer's own independent inspection and evaluation of the lot. As a material inducement to this agreement: (1) Buyer has undertaken to make its own examination of any lot before bidding; and (2) assumes all risk of any non-conformities in any lot. Buyer further acknowledges that it has not relied upon any assumptions regarding THCo's knowledge concerning the lot or the Seller nor upon any representations by THCo, including without limitation any representations as to condition, year or age, serial or identification number, make, model, mileage, equipment, genuineness or authenticity, originality, previous use or ownership, manufacturing or restoration processes of any lot or any component of any lot.

(C) All statements contained in any catalogs, brochures or advertisements of any type pertaining to the sale, including without limitation any statements concerning condition, genuineness or authenticity, origin or provenance, previous use of ownership, manufacturing or restoration processes, year or age, serial number, make, model or mileage of any lot or of any component of any lot, are either expressions of opinion or are for ease of identification only, and they are not to be relied upon by Buyer as representations of fact. Buyer assumes all risks associated with any nonconformity if any lot or any component of any lot and, as a condition of Buyer's participation in this Auction, Buyer represents that it will conduct any inspections and examination necessary to satisfy itself of all material facts before making any bid.

(D) Neither THCo or Seller, or any agent, employee or representative of THCo or Seller has given or authorized any other person to give any affirmation, representation, warranty or guarantee concerning any lot. In any event, THCo acts solely as Seller's agent, and THCo assumes no liability for any affirmations, representations, warranties or guarantees made by Seller to Buyer.

(E) All sales are with reserve unless a lot is explicitly offered without reserve. THCo hereby gives notice that it has the liberty to make, procure and receive bids on the Seller's behalf. The auctioneer and/or the consignor reserves the right to advance the bid until the reserve is met.

(F) All sales are subject to Buyer's Premium which will be added to the final bid price to determine the total purchase price. Please refer to the schedule of Buyer's Fees. Bidder understands that they must pay a sum equal to that shown on the Buyer's Fee Schedule for any vehicle or article purchased at this Auction, prior to this Auction, or after this Auction, and that this fee will automatically be included in the final purchase price and is payable without relief to THCo.

(G) All sales are subject to the "Light System" which is noted on your catalog and successful bid receipt. Please refer to the description of Light System.

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**2. PAYMENT:**

(A) Buyer shall be required to place a minimum 25% deposit of the total purchase price on each lot at the time the Auctioneers pronounces it sold, in form approved by THCo prior to bidding. Balance of payment shall be due and payable in cash or certified funds at THCo Williston, Vermont office no later than 5:00PM on the Tuesday following the Saturday Auctions and 5pm Friday following the Wednesday Auctions. All lots are sold subject to the posted buyer's fees.

(B) Should I default upon my purchase in any manner, I agree to pay THCo the full sum equal to 25% of the total purchase price, this sum due and payable without relief. I agree to pay any court costs, attorney fees, collection cost, storage, etc., incurred by the THCo and/or the Seller. This in no way releases the Buyer from any and all financial responsibility regarding said purchase.

(C) Buyer will be required to pay all applicable taxes or fees levied by any authority unless THCo receives satisfactory exemption, to be determined in THCo's sole discretion.

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**3. PASSING OF TITLE:**

(A) Upon the Auctioneer’s call of “SOLD”, the title of the offered lot will pass to the highest bidder acknowledged by the Auctioneer, subject to the conditions set forth herein, and such bidder thereupon (a) assumes full risk and responsibility therefore and neither the Seller nor the Auctioneers shall be responsible for the loss of, or any damage to any article due to theft, fire, breakage or any cause whatsoever, however occasioned, (b) will sign a confirmation of purchase thereof, and (c) will thereupon pay the full deposit thereof. All property must be removed from our premises by the Purchaser at their expense not later than the first Thursday at 5:00PM following the Saturday Auctions and the first Friday at 5:00PM following the Wednesday Auctions. If it is not so removed, a handling charge of \$10.00 per day per lot will be payable by the purchaser, until it is removed. After 30 days, THCo may dispose of the property as it sees fit. Purchaser hereby waives all requirements of notice, advertisement and disposition of proceeds required by law, and releases THCo from any liability whatsoever in connection with such disposal of property.

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(B) Vehicles/Lots, titles and/or bills of sales will only be released in the case of cash purchases. In all other cases, Vehicles/Lots and/or bills of sales will only be released after all other forms of payment (cashier checks, traveler checks, money orders and company and personal checks accompanied with a “Bank Letter of Guarantee”) have cleared THCo bank account.

(C) THCo catalogs every lot based on information provided by the Consignor/Seller, but does not independently verify that information. Every lot is sold “AS-IS, WHERE-IS” and no refund or credits shall be issued. All sales are made without recourse. Purchaser has relied entirely and solely upon his own examination of the article being purchased, and further acknowledges that the article is sold in “AS-IS, WHERE-IS” condition and without any warranty of merchantability, fitness for the intended use and without any warranty whatsoever, express or implied.

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**4. REMEDIES:**

(A) In the event that buyer breaches these terms and conditions of sale or fails to consummate the sale for any reason, Seller and THCo, in addition to and not in lieu of any rights available at law or in equity, may: (1) compel specific performance and hold buyer liable for the purchase price, (2) resell any lot by public or private auction for the buyer’s account and risk, after 15 days written notice to Buyer at Buyers last known address, and hold Buyer liable for all damages, including the difference between price paid and resale price, THCo’s full commission on the bid price, all costs of resale (including commissions), and consequential damages; (3) retain the lot and hold buyer liable for the difference between the purchase price and the fair market value, and/or (4) cancel the sale and retain all payments made by the buyer as liquidated damages.

(B) Buyer’s sole and exclusive remedy shall be an action for actual damages against Seller. Buyer shall have no right to revoke acceptance of any lot after the fall of the hammer and Buyer shall have no right to maintain any action for consequential damages.

(C) Title Attached: In the event THCo cannot deliver title to Buyer within a reasonable period of time following the Auction, THCo’s sole responsibility shall be return of any deposit and purchase money received for the lot, provided it is returned to THCo in condition as purchased.

**5. COMMISSIONS:**

Buyer agrees that if it acquires or if any related entity or person acquires, within one (1) day of the Auction date or so long as it is on THCo’s lot, any lot consigned to the THCo Auction that is not sold through the Auction for any reason (such as a sale or an after sale) buyer will be obligated jointly and severally with the seller for the immediate payment to THCo of a commission in the amount of the total buyer’s fee and seller’s fees as scheduled for the Auction, based on the selling price of the lot. All yards sales must go through the Auction office.

**6. BUYER’S FEES:** Lots selling for less than 500.00 = 50.00; 500.00 to 999.00 = 75.00; 1,000.00 to 1,999.00 = 90.00; 2,000.00 to 4,999.00 = 100.00; 5,000.00 to 6,999.00 = 110.00; 7,000 to 9,999.00 = 130.00; 10,000 to 11,999.00 = 150.00; 12,000.00 to 19,999.00 = 175.00; 20,000.00 to 29,999.00 = 225.00; 30,000.00 to 39,999.00 = 325.00, 40,000.00 to 49,999.00 = 425.00; 50,000.00 & over = 600.00.

**7. CONDITIONS OF THE SALE:**

The above stated Terms and Conditions of Sale cannot be altered except in writing by THCo.

**I have read, understand and accept all Terms and Conditions of Sale.**

X \_\_\_\_\_

(Signature)

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(Date)