



Dealers Auto Auction of the Southwest

1433 South 19th Avenue
Phoenix, AZ 85009-6522
Phone: (602) 253-7766
Fax: (602) 253-4646
www.daasw.com

DEALERS AUTO AUCTION OF THE SOUTHWEST TERMS AND CONDITIONS

In consideration of Dealers Auto Auction of the Southwest (hereby referred to as "D.A.A.S.W.") allowing an automobile dealer or an automobile dealer's "Authorized Representative(s), hereby referred to as (in either instance as "Dealer") to purchase and sell motor vehicles at D.A.A.S.W. facilities hereby referred to as the "Auction", Dealer, as purchaser or seller, as applicable, agrees to the following terms and conditions hereby referred to as "D.A.A.S.W. Terms and Conditions"):

1. D.A.A.S.W. as Consignee: All vehicles delivered to the Auction by the Dealer for sale at the Auction hereby referred to as ("Consigned Vehicle") are delivered on consignment by Dealer for D.A.A.S.W. to sell to other dealer patrons on behalf of Dealer. D.A.A.S.W. is a service company and does not purchase or sell Consigned Vehicles. D.A.A.S.W. acts as a facilitator who transfers ownership between Dealer and other Dealer(s) at the Auction. D.A.A.S.W. reserves the right to refuse to do business with any Dealer at D.A.A.S.W. sole discretion.
2. Dealer Eligibility and Applicable Rules: By participating as purchaser or seller in any sale at the Auction, Dealer represents that it has provided a legal and legible copy of:
 - a. A Dealer License in one or more states, or under similar laws of a country outside the United States, to sell motor vehicles;
 - b. A State Sales Tax Certificate
 - c. A Federal Tax ID Number
 - d. A Salesman License for each authorized representative of Dealer.
 - e. Be subjected to all the Terms and Conditions contained herein and Policies and Procedures, other applicable auction rules, including but not limited to any D.A.A.S.W. rules, as a condition of doing business at the Auction. Only then Dealer shall be considered registered with D.A.A.S.W.

- f. Dealer's application for registration with D.A.A.S.W. shall constitute:
 - 1. Authorization to D.A.A.S.W. to investigate Dealer's (including its principals) credit history.
 - 2. Authorization to release any information whatsoever regarding Dealer to any automobile auction, subsidiary or other affiliate of D.A.A.S.W., including but not limited to Finance Companies.
 - g. Dealer agrees to execute any documents required by any bank or financial institution to release financial information to D.A.A.S.W.
 - h. While D.A.A.S.W., endeavor to operate according to uniform rules and procedures where possible, the Auction Terms and Conditions, and Policies and Procedures of the auction and NAAA arbitration where a consignment or sale occurs shall govern such transactions.
3. D.A.A.S.W. Identification Card and Bidder Badge:
Upon approval by D.A.A.S.W., of the Dealer Application submitted to D.A.A.S.W., D.A.A.S.W. will open an account for Dealer ("Account") and Dealer shall be issued an identification card ("D.A.A.S.W. Identification Card") , and a bidder badge (D.A.A.S.W. Bidder Badge) authorizing Dealer to purchase and sell Consigned Vehicles at the Auction. Dealer's Application and subsequent use of the D.A.A.S.W. Identification Card, and/or D.A.A.S.W. Bidder Badge at any D.A.A.S.W., customer service counter represents Dealer's agreement to the Auction Terms and Conditions and Policies and Procedures and agreement to pay any amounts due D.A.A.S.W., as a result of such use of the D.A.A.S.W. Identification Card, and/or D.A.A.S.W. Bidder Badge.

4. Sale Procedure: Unless the seller designates the sale as an "if" sale, all sales will be consummated when the auctioneer's hammer falls, with the auctioneer calling out the purchaser's bid badge number and the block clerk recording that sale and all the specific terms thereof. "If" sales shall be final and binding only when the highest bid is accepted by the seller and recorded or a subsequent offer or counteroffer is accepted and recorded. A Dealer, as seller or purchaser, will be bound by the recording of the purchase and sale and the terms thereof, as orally announced to such parties. Audio and/or video recordings of the bidding process will be relied upon in the case of a dispute.
5. Service Fees: Dealer agrees to pay all customary fees and charges of D.A.A.S.W., for services rendered in connection with the purchase and sale of Consigned Vehicles, including, without limitation, seller fees, purchaser fees, entry fees, storage fees, NSF check fees, title attached fees, cleaning fees and other customary fees and charges, each as applicable. Dealer further agrees to reimburse D.A.A.S.W., for all fees and charges paid by D.A.A.S.W., in connection with the transfer of title of Consigned Vehicles.
6. Use of Auction: All purchase and sale transactions originating and/or consummated at the time a Consigned Vehicle is on the Auction premises shall be completed through D.A.A.S.W., with Dealer responsible for the appropriate fees.
7. Payment Terms: All Consigned Vehicles purchased by Dealer must be paid for, and all D.A.A.S.W., transaction fees and charges paid, on day of sale. D.A.A.S.W. may set off from amounts it owes Dealer, whether based on proceeds of sales or otherwise, any amounts Dealer owes D.A.A.S.W. Further, D.A.A.S.W., 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 D.A.A.S.W., have been paid. With each and every payment to D.A.A.S.W., 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 upon which such check or draft is drawn contains

then available funds sufficient 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, D.A.A.S.W., will review Dealer's financial ability and may in its discretion require that any future transactions be strictly cash. Dealer shall not under any circumstance 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 D.A.A.S.W., to collect any moneys owed to D.A.A.S.W., by Dealer.

8. Security Interest: In order to secure final payment of any indebtedness owing to D.A.A.S.W., arising out of the sale of a Consigned Vehicle purchased by Dealer at the Auction, Dealer hereby grants to D.A.A.S.W., 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 D.A.A.S.W., to prepare and file a financing statement for such Consigned Vehicle without Dealer's signature being required thereon. If requested, Dealer agrees to sign any such financing statement in person at the Auction. D.A.A.S.W. security interest in any vehicles is assignable to any auction, including but not limited to, D.A.A.S.W.
9. Warranties Regarding Title: Dealer covenants, guarantees and warrants that with respect to each Consigned Vehicle consigned by Dealer for sale through D.A.A.S.W.:
 - a. Title to the 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.
 - c. Dealer will defend 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 number plate. D.A.A.S.W., 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 (European or Canadian conversions).
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, and if not referred to in Auction Terms and Conditions or Policies and Procedures, then NAAA arbitration policies as if set forth herein in full.
12. No Warranties by D.A.A.S.W.: D.A.A.S.W., is neither responsible for the accuracy of odometer mileage on the Consigned Vehicle nor the information contained in the odometer mileage statement. D.A.A.S.W. 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. D.A.A.S.W., furthermore, disclaims the accuracy of any market information provided to Dealer through its computerized system or otherwise, which market information is provided as a courtesy to Dealer.
13. Delivery of Vehicle: No delivery of a Consigned Vehicle purchased by Dealer at the Auction to the possession of the Dealer before the following:
 - a. Final payment is received by D.A.A.S.W.
 - b. A valid certificate of title for the Consigned Vehicle has been delivered to Dealer.

This 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 D.A.A.S.W., 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. D.A.A.S.W. shall not be liable for titles mailed and not received by the Dealer.

14. Risk of Loss: D.A.A.S.W., 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 premises. Dealer shall maintain such insurance on vehicles in D.A.A.S.W. possession as Dealer in its sole discretion shall determine, it being understood that D.A.A.S.W., assumes no liability for loss or damage incurred while vehicles are in the possession of D.A.A.S.W.
15. Indemnity: Dealer shall indemnify, defend and hold harmless D.A.A.S.W., its parent company, 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 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 D.A.A.S.W., odometer mileage, odometer mileage statements, breach of Dealer's warranty of title, or alleged misrepresentations of a Dealer regarding vehicle title, history, or condition
 - b. Breach by Dealer of any other of these Auction Terms and Conditions or Policies and Procedures.
16. Dealer's Representations Regarding Taxes: Dealer certifies that Dealer holds a certificate, license or other permit, issued by the sales tax authority of the state or province, and if necessary locality, of Dealer's automobile business or businesses which certificate, license or permit exempts Dealer from the payment of sales tax with respect to the purchase of Consigned Vehicles and bears the number or 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 of 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 as may then accrue and be due and payable.

17. Dealer's Representations 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 and any other history deemed necessary by D.A.A.S.W., including, without limitation, Dealer's lending institution accounts listed in the Dealer Application. Dealer shall notify D.A.A.S.W., immediately of:
 - a. Any change of its principal financial lending Institutions.
 - b. Any other material changes in the financial or other information contained in the Dealer Application, including, without limitation, a change of ownership interest(s) in the Dealer whereby more than 10% of such interest is transferred by sale, purchase, gift, assignment or otherwise.
18. Authorized Representatives: 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 connection with the sale of all Consigned Vehicles.
 - 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 D.A.A.S.W. New or additional representatives of Dealer must be authorized by Dealer in writing delivered in advance to D.A.A.S.W. Dealer guarantees, as principal, all transactions made at the Auction by Dealer's Authorized Representatives. No Authorized Representative shall be under the age of eighteen (18) years and neither Dealer nor its Authorized Representative(s) shall bring any person under such age onto the Auction premises as driver, assistant, and observer or otherwise.

19. Changes to Auction Terms and Conditions: These Auction Terms and Conditions are subject to change without notice. Use of the D.A.A.S.W. Identification Card or completion of other business transactions through D.A.A.S.W., 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 an authorized D.A.A.S.W. manager. 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 and assigns of Dealer and inure to the benefit of D.A.A.S.W., and its successors, assigns and subrogees. These Auction Terms and Conditions and any and all agreements or authorizations executed by Dealer or D.A.A.S.W., in connection herewith shall be governed by and interpreted in accordance with NAAA Arbitration Policy and the substantive laws of the State of Arizona without resort to principles of conflicts of laws. By execution of these Auction Terms and Conditions, Dealer submits to the personal exclusive jurisdiction of the courts of the State of Arizona and to venue in the Circuit and Superior Courts of Maricopa County, Arizona and the federal courts of the United States, sitting in Arizona for the adjudication of any matters arising under or in connection with these Auction Terms and Conditions and Policies and Procedures. Any action initiated by Dealer against D.A.A.S.W., relating to these Auction Terms and Conditions shall be filed and conducted in said Courts. D.A.A.S.W. may bring any suit against Dealer under or related to these Auction Terms and Conditions or Policies and Procedures in any Court of competent jurisdiction.