

# **General Terms and Conditions of Autoveiling Nederland B.V. for participants outside of the Netherlands version EU2010.1**

## **Article 1: Introduction**

*These general terms and conditions apply specifically and exclusively to Buyers established outside of the Netherlands but within the European Union. These General Terms and Conditions are specifically declared non-applicable to Dutch participants (Buyers and Sellers).*

Autoveiling Nederland B.V., hereinafter "AVN," is registered in the trade register of the Chamber of Commerce for Brabant East under number 17150026.

The General Terms and Conditions have been filed with the Chamber of Commerce for Brabant East.

AVN offers registered buyers and sellers the opportunity to enter into binding transactions through the websites it operates. AVN accepts no liability excepting where stipulated in these General Terms and Conditions. By signing the registration form, the user consents to the content of these General Terms and Conditions and waives all other General Terms and Conditions. After having received notice of these General Terms and Conditions, any performance binding actions governed by these General Terms and Conditions on websites operated by AVN, or having such actions performed by AVN, constitutes acceptance by the participant of these General Terms and Conditions. These General Terms and Conditions were last amended on and are valid from 16 March 2010.

## **Article 2: Definitions**

Seller	:	The legal or natural person offering a vehicle on a professional basis (sometimes referred to as the "lister").
Vehicle	:	A vehicle offered for auction and not yet assigned an auction number by AVN.
Deposit	:	The amount that the Buyer must pay to Autoveiling Nederland B.V. before the sold vehicle is released. The Buyer must document the deposit by returning the proper documentation to AVN (e.g. upon import of a vehicle).
Membership deposit	:	Deposit that must be paid before the Participant can register.
BPM	:	Dutch <i>Belasting van Personenvoertuigen en Motorrijwielen</i> (Tax on Passenger Cars and Motorcycles) that must be paid for registered passenger vehicles in the Netherlands.
Buyer	:	The Buyer of a vehicle is a legal or natural person acting on a professional basis and established outside of the Netherlands but within the European Union.
Auction (vehicle)	:	A vehicle being offered by AVN, described in the auction listing and assigned an auction number.
Bid	:	The amount in euros being offered on an auctioned vehicle.
Provisional award	:	The situation in which the highest Bid is lower than the Reserve Price specified by the Seller. A provisional award of an auction is not definitive.
Provisional Buyer	:	The Buyer who is the highest bidder on a provisionally awarded auction.
Award	:	The Bid accepted by the Seller and converted into a transaction.
Reserve Price	:	Minimum sale price at which a vehicle may be sold without consultation with the Seller.
Description guarantee	:	The guarantee AVN gives on the description of a vehicle as stated on the Description Form in accordance with article 8 of these General Terms and Conditions and visible on the website.
Payment within three business days	:	An immediate payment by which AVN receives telephone confirmation from the receiving bank of receipt of the amount to the account, or another payment within that time frame that AVN can verify within three business days from the date of invoice by the means available to it at that moment.
Written notice	:	Notice in writing, whether by mail, e-mail or fax, and which the sender is able to verify receipt of by AVN.
Notice within 24 hours	:	Notice by fax, e-mail, or placement on the website within 24 hours after notice is deemed necessary pursuant to these General Terms and Conditions.
Registration form	:	The form a natural or legal person can use to register as a Participant.
User Name	:	Name entered on the registration form as User Name and issued by AVN to log into the websites operated by AVN.
Participant	:	The legal or natural person with a free or paid subscription for the use of the websites operated by AVN. A Participant consents to the General Terms and Conditions of AVN, and AVN consents to the registration of the Participant based on these General Terms and Conditions.
Password	:	Access code consisting of letters and/or numbers that a Participant can use to log in. The Password is assigned to the Participant when the signed Registration Form is received by AVN.
Fees	:	The fees, including the service fees for services provided by AVN to buyers or sellers, and which are listed on the websites operated by AVN. Fees may be listed on either the public or login sections of the site. AVN will communicate any departures from the fees to sellers and buyers by reference on the individual Description Form and/or notice prior to a Buyer's or Seller's participation in an auction.

Listing Fees	:	Costs charged after entering a registration plate number or VIN of a vehicle to be auctioned.
Listing	:	The entering and saving of vehicle information.
Buyer's Fees	:	Fees the Buyer owes after purchasing a vehicle in an auction. These costs may also be referred to as "commission." Buyer's Fees are charged to the Buyer upon the purchase of an auctioned vehicle.
Seller's Fees	:	Fees the Seller owes after selling a vehicle in an auction. These costs may also be referred to as "commission." Seller's Fees are charged to the Seller upon the sale of an auctioned vehicle.
VVE	:	Bureau voor Voertuigdocumentatie en Informatie B.V.
Registration number link	:	When a vehicle is listed, AVN will assign a registration number link. No rights can be derived from this information. The Listing Fees are to be paid by the Seller.
Inspection Report	:	An Inspection Report provides a clear representation of the vehicle's current state.
Storage Yard	:	The location where the cars are collected for autoveiling.eu and from which they are delivered to the Buyer.
Site	:	The website <a href="http://www.autoveiling.eu">www.autoveiling.eu</a> operated by AVN.

### Article 3: Registration

Before performing transactions on websites operated by AVN, buyers and sellers must register as participants. Registered Participants are also responsible for actions performed by their personnel with the user name and password issued to the Participant. Executives of legal person participants and natural person participants must be of majority age or granted limited legal capacity by means of a declaration provided upon registration. The information required by AVN for registration must be entered completely and truthfully on the registration form and signed by a person with signature authority as evidenced by an extract from the register of the Chamber of Commerce. The following documents must be provided to AVN:

- Extract from the trade register in the country in which the Participant is established
- Photocopy of a valid form of identification (recognised as such in Europe) of the company's legal representative.
- Valid VAT number and declaration of authenticity
- Proof of authorisation issued to the bidder in written form, signed by the company's legal representative

Before the registration becomes definitive, the Participant must pay a Membership Deposit of €1,000 to AVN. This amount must be received by AVN via bank transfer within one week after the membership application. The Membership Deposit will be refunded to the Participant upon cancellation of the agreement or after X transactions/after a total of €xx in transactions in the Participant's name. AVN also reserves the right to require a Membership Deposit of €1,000 for the use of services of AVN. This amount will be refunded upon cancellation or after a certain number of transactions.

By completing and sending the registration form, potential buyers and sellers declare that they are familiar with and consent to the General Terms and Conditions of AVN.

Cancellation of the membership must be effected in writing, in observance of a two-month notice period. If no notice of cancellation is received, or if the two-month notice period is not observed, the membership is tacitly renewed for a further period of one year at the applicable rates and conditions. AVN is authorised to unilaterally adjust the membership fee. A Participant that does not consent to the announced price increase may terminate participation within a month after AVN's announcement of the price change. AVN will provide Participants with a user name and password. User names and passwords may not be transferred to a third party. In the event of suspicion that unauthorised persons have gained access to login information, participants are requested to change their login information in the personal menu. Communicating any information concerning the services of AVN that is in any way detrimental (in the broadest sense of the word) to AVN is not permitted. AVN is authorised to exclude participants from further participation, without giving reasons and without refund. AVN may also accept a Participant under non-standard conditions. AVN is entitled to compensation of losses resulting from the Participant's violation of these General Terms and Conditions, up to a maximum of the amount of the purchase price of the losses suffered.

### Article 4: Privacy

AVN respects all privacy laws governing the data it manages, and makes every effort to protect this data. AVN will treat the data as confidential and only use it for purposes within its own organisation or for external publications with a connection to AVN's business activities. Participants consent in advance to use as described above. A Participant is at all times entitled to view and correct any personal data or to have any personal data deleted from the database. If a Participant abuses data administered by AVN or if a Participant abuses data of other participants, AVN reserves the right to impose a penalty of €12,500 per violation and to exclude the violator from further participation pursuant to article 3 of these General Terms and Conditions.

### Article 5: Sales (auction procedure)

Autoveiling.eu uses the Bid or Buy Auction principle. In addition to the option to bid on a Vehicle, buyers may also purchase the vehicle immediately.

The amounts stated in the auction are exclusive of commission and transport costs. Individual auctions will state whether bids are inclusive of VAT and/or BPM.

AVN offers a Description Guarantee on each auction. This means that all bids and the ultimate purchase of the vehicle are based on the Description Form completed by the Seller, in combination with the listing on [autoveiling.eu](http://autoveiling.eu). AVN offers the Buyer a Description Guarantee on the Auction up to and including the moment that the vehicle leaves the storage yard and/or has been loaded for transport. Until that time, the Seller is the owner of the vehicle, and as such is responsible for the financial

coverage/insurance of the auctioned vehicle, even if the vehicle has already been cleared by AVN or the Buyer. AVN is always entitled to revise a transaction and/or dissolve a purchase contract without stating reasons.

#### **Article 6: Contracting a sale**

The Seller completes the Description Form and sends it, with photos of the car, to AVN. AVN then evaluates the information and classifies the car.

The bidder issues a Bid. If that Bid is the highest, then after the end of the auction the car will be shown on the Buyer's account page and the Buyer will be listed as provisional buyer. This Bid is valid for two business days after closing of the auction in question, and is irrevocable.

If the Bid is accepted by the Seller, then under the Seller's responsibility AVN will award the auction to the Buyer, upon which the provisional Buyer becomes the definitive Buyer. At this moment, the purchase contract between the Seller and the Buyer is contracted.

A provisional Buyer is obliged to maintain the winning Bid for a period of three business days after the end of the auction. The Seller cannot withdraw the auction for the vehicle within this period of three business days. If the Buyer or the Seller fails to meet the obligations under the purchase contract, AVN is authorised to impose a penalty of 10% of the amount of the purchase contract, with a minimum of €1,000 (excluding VAT). In addition, AVN is authorised to exclude the user from further participation. AVN is authorised to dissolve a purchase contract without stating reasons.

#### **Article 7: Conditions of inspections**

If AVN has inspected the vehicle, AVN will give a Description Guarantee only on the parts of the car inspected by AVN. If AVN is prevented by the circumstances under which inspections can be carried out (including but not limited to weather or the state of cleanliness of the car), then the lister waives AVN's obligation to issue a Description Guarantee. The lister is responsible for any changes in the state of the vehicle occurring after the moment of inspection by AVN but before the transfer of ownership.

#### **Article 8: Payment**

The definitive or pro forma invoice for the auction will appear online in the Buyer's Purchasing Menu immediately after the award of the auction. This invoice must be paid by bank transfer to an AVN bank account within three days after the invoice appears in the Buyer's Purchasing Menu. As soon as the full payment is received, AVN will order the transportation of the vehicle to the fixed collection address within the Netherlands, which will be notified to the buyer. The payment period for non-vehicle invoices of AVN is 14 days, excepting where agreed otherwise. Upon failure to make payment, the Buyer is immediately in default and AVN is authorised to charge on all direct and indirect costs of interest and collection to the Buyer without notice of breach. The interest charged is equal to statutory interest plus 3%. In addition, AVN is authorised to claim the deposit paid.

#### **Article 9: Transfer, transport and complaints**

The Buyer or the person receiving the vehicle is obliged to verify whether the vehicle in question corresponds to the description as provided in the Description Form. If the vehicle is as described, then upon loading of the car, the Buyer is deemed to have accepted the vehicle. AVN will register the vehicle in the system as "approved." After this approval, the transaction is definitive and irrevocable, and complaints are no longer permitted.

The Buyer is entitled to expect that the photos and text of a vehicle description are correct. If upon collection, the vehicle found at the collection address is different from that described in the Description Form, the Buyer is authorised to register the vehicle as rejected. By doing this, the Buyer is invoking the Description Guarantee. Claims are handled based on the mandatory arbitration between the Buyer and the Seller by AVN. AVN's ruling in this arbitration is binding. For body damage and technical damage, a deductible applies. This deductible is published by AVN on the public or login sections of the websites it operates. If a different deductible amount is listed in the Description Form, that other amount applies.

Technical damage refers exclusively to failures in the engine, gearbox, clutch, brakes, steering system, transmission and air conditioner pump. Parts subject to wear-and-tear and which must be frequently replaced, including but not limited to brake blocks, brake discs, exhaust components, suspension blocks, engine supports, support brackets and shock absorbers are not subject to reimbursement. At a minimum, the Dutch vehicle inspection standard (APK) applies. Any technical damage to an APK-related component falling within the APK standard results in summary rejection. Claims lower than the deductible and/or not qualified as technical damage will not be accepted.

ANV reserves the right to evaluate claims on the basis of the principle of reasonableness and fairness, in consideration of the claim in relation to age, mileage and percentage of the purchase price. Under no circumstances may a claim exceed 20% of the purchase price. A Buyer cannot derive any rights from automatically generated information on a Description Form, but only from what is noted in the vehicle description by AVN or the lister independently. In the event of a contradiction between the text and the photos, the photos are binding.

In the event a vehicle is rejected, there are two possible options for resolving the situation:

- 1) AVN can resolve the issue on the spot as agreed between the Buyer and the Seller. Any financial consideration will be settled by means of separate invoices. For Dutch buyers for which AVN is arranging transport, the Description Guarantee expires 24 hours after the vehicle's delivery to the Buyer, this at the discretion of AVN.
- 2) AVN may elect to reverse the transaction, in which case the Buyer will be refunded the amount paid and the auctioned vehicle will be returned to the Seller.

AVN is entitled, but not required, to have the basis and amount of a claim evaluated by an independent expert, either at its own initiative or that of the Buyer or Seller. Buyers and Sellers agree in advance to accept the assessment and the amounts specified in the expert's report. The party in the wrong, according to the expert's report, is obliged to pay the costs of the assessment. Compensation of damage repair will be based on the Buyer's cost and/or at market-standard rates. Consequential loss such as loss of interest and diagnostic period is not subject to reimbursement. The Buyer is obliged to perform a transaction so as to in no way compromise either AVN's or the Seller's accreditation with the Dutch RDW (Government Road Transport Agency). Any consequences of injudicious use of auctioned cars, penalties and/or compromising AVN's and/or the Buyer's RDW accreditation will be recovered from the Buyer. By signing and/or accepting these General Terms and Conditions, the Buyer indemnifies AVN and/or the Buyer from all liability in this area. For the purposes of this clause, acceptance of these General Terms and Conditions refers to the performance of binding actions after publication of these General Terms and Conditions on the public or login sections of websites operated by AVN.

Any rejection must also contain or be accompanied by the following information: Notation on the inspection form of the extra damages as compared to the specified damages, and the net costs for the remedy of the fault.

At the moment of loading of the vehicle or the moment that the vehicle leaves the storage yard, the right to the Description Guarantee expires.

For auctions explicitly designated by AVN as no-claim auctions (which may include liquidation sales and the like), the following further conditions also apply: The purchase contract will not contain any conditions, warranties or other terms, whether stated or implied, based on law, custom or any other basis, in regard to year of the car, condition, specifications, suitability, odometer reading, source, capacity for a specific purpose, saleability or compliance with road legislation.

#### **Article 10: Rights and obligations of AVN**

AVN will grant buyers and sellers access to the websites it operates and use of its services at the rates applicable within AVN. Although AVN will endeavour to provide unrestricted access to the system, AVN cannot guarantee such unrestricted access. In the event of force majeure, the obligations of AVN are suspended until further notice. Force majeure is defined as a situation over which, by reasonable standards, are beyond the control of AVN, such as a power failure. The websites of AVN are subject to change (in the broadest sense of the word) without notice, at AVN's discretion. Changes may include (but are not limited to) taking the system down for the purposes of maintenance or to remedy an issue. In the event of force majeure, AVN will replace the auctions affected by the situation of force majeure at no extra cost.

#### **Article 11: Intangible rights**

All rights in regard to the auction applications, conditions, descriptions, data, knowledge, logos, trademark rights and other intellectual property rights accrue to AVN. Any form of imitation and/or forgery is prohibited. Participants must only use the websites operated by AVN for purposes as described in article 1 of these General Terms and Conditions.

#### **Article 12: Rights and obligations of buyers and sellers**

Use of the websites operated by AVN is at the expense and risk of the user. The Participant will act in accordance with the General Terms and Conditions. The Participant must also refrain from actions that may inflict damage on AVN or third parties, including (but not limited to) providing inaccurate information, infringement on intellectual property rights, posting or distributing any form of pornography, violating the privacy of AVN, or any actions that would impede access to or the functionality of the websites operated by AVN.

A Seller must at all times be authorised to sell the vehicle offered for auction. Additionally, the Seller is obliged to notify AVN if any vehicle offered for auction has previously been subjected to heavy use, including (but not limited to) use as a police vehicle, ambulance, taxi or driver training vehicle, or has suffered severe damage or been declared a total loss by an insurer. The Seller is also obliged to notify AVN of the correct odometer reading and/or any discrepancies in this regard. The Seller must enter the correct registration number of VIN. If the Seller fails to meet these conditions, AVN and the Buyer are entitled to compensation. A Seller is obliged to check all descriptions prior to auction.

#### **Article 13: Liability of AVN**

The purchase and sale of vehicles on websites operated by AVN is entirely at the risk of the Buyer and Seller. AVN is not liable for incorrect information provided, in any form whatsoever, excepting in cases of intent or gross negligence on the part of AVN. AVN reserves the right to refuse and/or temporarily or permanently delete poorly described vehicles or poor and unclear photos, as deemed so by AVN. Likewise, AVN is not liable for actions of sellers or buyers, or damage to an auctioned vehicle caused by the transporter or third parties. AVN explicitly rejects all liability not described in these General Terms and Conditions, and by signing these General Terms and Conditions the parties accept this rejection of liability.

#### **Article 14: Applicability of General Terms and Conditions**

These General Terms and Conditions apply to all forms of services by AVN and all other communication conducted under AVN's responsibility in the presence of Participants with place of establishment outside of the Netherlands. These General Terms and Conditions are subject to change at any time. AVN does not warrant the absence of printing and/or typographical errors. After any change to these terms and conditions, participants are authorised to cancel their participation within a month after the change. Cancellation must be effected in writing.

In the event of differences between translations of these General Terms and Conditions and the Dutch text of these terms and conditions, the Dutch text prevails.

**Article 15: Disputes**

In the event of a dispute, all contracts, offers and actions of AVN are governed by Dutch law. The District Court of 's-Hertogenbosch is the court competent to adjudicate any disputes.