

TERMS AND CONDITIONS

These conditions apply to all sales held by Harrison & Hetherington trading as Borderway Classic Cars in England and Wales to the exclusion of all other Terms & Conditions and no alteration or modification to these conditions will be binding on Borderway Classic Cars unless accepted in writing by them. Your attention is specifically drawn to the notes for intending purchasers' published immediately before the Terms and Conditions of Business in the catalogue.

DEFINITIONS

In these Terms and Conditions the following words and expressions shall unless the context otherwise requires have the following meanings:

The Company - Harrison & Hetherington Ltd trading as Borderway Classic Car Auction
Auctioneer - the representative who actually conducts the sale.

Bidders Registration Form - the form to be completed by each bidder pursuant to Condition 12.5.
The Buyer - the only person whose bid is accepted by the Company to conclude the contract for the purchase of a Lot.

Buyer's Commission - shall have the meaning given in Condition 14.

Catalogue - includes any advertisement, brochure, estimate, price list and other publication generated or published by or on behalf of the Company in relation to the sale.

Contract - the contract formed pursuant to these Conditions between any of the Seller, the Buyer and the Company.

Entry Form - form to be completed by the Seller as to each separate Lot pursuant to Condition 1.1.

Estimated Value - the value given by the Seller in the Entry Form as the Estimated Value of the vehicle and if more than one value is given, the higher of those values.

Expenses in relation to a Lot - the Company's charges and expenses for illustrations, special advertising, packing, freight, transport, storage and any other charges and expenses of that Lot (other than the commission) plus VAT on any of them.

Hammer Price - the price in £ sterling at which a Lot is knocked down by the Company to the Buyer at the fall of the hammer.

Lot - any item or items consigned with a view to its or their sale at auction.

Premises - the place at which the Company is conducting that particular sale.

Reserve - the minimum Hammer Price (if any) agreed between the Company and the Seller at which the Lot may be sold.

The Sale - the auction sale in respect of which the Lot is consigned for sale.

Sale Proceeds - the net amount payable by the Company to the Seller being the Hammer Price less the sum of the commission, the expenses, the entry fee (if not already paid) and the VAT chargeable on any of them.

Seller - the person who offers the Lot for sale whether or not he is the true owner and shall include the Agent as well as the Principal.

Seller's Commission - commission payable by the Seller pursuant to Condition 6.

Entry Fee - for motor cars, motorcycles & registration plates is £75 + VAT inc catalogue entry.
Commission Rates - The current rates are as follows:

Motor Cars	Commission	10% + VAT (minimum £100 + VAT)
	Buyers Premium	10% + VAT (minimum £100 + VAT)
Motorcycles	Commission	10% + VAT (minimum £50 + VAT)
	Buyers Premium	10% + VAT (minimum £50 + VAT)
Automobilia / Motobilia	Commission	10% + VAT (minimum £5 + VAT)
	Buyers Premium	10% + VAT (minimum £5 + VAT)
Registrations	Commission	10% + VAT (minimum £50 + VAT)
	Buyers Premium	10% + VAT (minimum £50 + VAT)

Total Amount Due - the Hammer Price in respect of the Lot sold plus the Buyer's commission and additional charges and expenses due from a defaulting Buyer under these Conditions plus VAT chargeable on any of them expressed in £ sterling.

Usual Charges - the total of the Commissions, Entry Fees and any other reasonable costs and expenses plus VAT payable thereon.

VAT - the UK Value Added Tax at the prevailing rate from time to time.

Vehicles - this includes, where appropriate, incomplete vehicles.

CONDITIONS CONCERNING SELLERS AND CONSIGNORS

- An Entry Form in respect of each Lot must be completed fully and accurately, signed and dated by the Seller and accompanied by the Entry Fee, when the Lot is entered. The Company may at any time ratify an incomplete form.
- Any documentation pertaining to the Lot must be sent with the Entry Form to the Company's office, or in any event delivered with the Lot to the Premises. The Contract between the Seller and the Company will be formed when the Company receives a signed Entry Form for the Lot, whether by hand, post, fax, email or by any other means, and whether or not the Entry Fee for that Lot has been paid, and whether or not the Form has been signed by the Company.
- All relevant matters pertaining to the Lot such as a financial encumbrance, serious accident damage or other factors affecting value which are known to the Seller must be stated on the Entry Form. If a sale is lost because of the failure to the Seller to disclose to the Company all information which may reasonably be expected to affect the provenance, title, value or any other aspect of the Lot, the Company will charge and the Seller must pay the stated rates (both to Seller and Buyer) plus VAT.
- The Company shall have absolute discretion whether or not to accept any Lot for sale and shall be entitled to select the auction place, date, catalogue placement and photographs for the Lot.
- The Seller gives the Company full and absolute right to photograph and illustrate any Lot placed in its hands for sale, and to use such photographs and illustrations as are provided by the Seller at any time at its absolute discretion (whether or not in connection with the Sale) with indemnity against copyright infringement.
- The Seller is wholly responsible for the factual accuracy of, and for any judgements or opinions expressed in, the catalogue description of each Lot entered by him, and for any error, misstatement or omission of information in that description. Whether the description has been prepared by the Company or the Seller, a copy of the typed text will be provided to the Seller within a reasonable time prior to the Auction, and unless the Seller reacts with comments or changes prior to the Auction, the Company may treat that description as accepted by the Seller.
- The Seller warrants to the Company and to the Buyer either that he is the true owner of the Lot or that he is duly authorised to sell the Lot by the true owner, and is able to transfer or procure transfer of good and marketable title to the Lot free from a third party claim or encumbrance.
- In the event of an unsettled hire purchase, finance agreement or any other charge or lien affecting the Lot, the Company reserves the right to settle the amount due of such charges not exceeding the Sale Proceeds and if the Sale Proceeds are less than the charges outstanding the Seller will be responsible for the settlement of the balance forthwith.
- Each Lot, in the condition as described on the Entry Form, and with all keys, spare or extra items and documents shall be delivered to the Premises at the expense of the Seller. The Seller of a Lot not held by the Company at the Premises or under its control warrants and undertakes to the Company that the Lot will be made available and in a deliverable state at the time stated by the Company.
- The Seller shall indemnify both the Company, its Employees and Agents, and the Buyer separately, against all payments, costs, expenses, demands or any loss of damage whatsoever and wheresoever incurred or suffered by any of them in respect of any breach of these Conditions on the part of the Seller.
- The Seller shall be entitled, prior to the sale to place a Reserve on any Lot, this being the minimum Hammer Price at which the Company is authorised to sell that Lot and to make its usual changes. A Reserve once placed by the Seller shall not be changed without the consent of the Company.
- The Company may, at its option, sell the Lot at a Hammer Price below the Reserve but in any such case the Sale Proceeds to which the Seller is entitled shall be the same as if the sale had been at Reserve.

- Where no Reserve has been placed on the Lot the Company shall in no way be liable should the Lot be purchased for a price below the lowest estimated selling price. In any event, any written or oral estimate of likely selling price given by the Company is an expression of opinion only and may not be relied upon by the Seller nor give rise to any claim.
- Where a Reserve has been placed, only the Company may bid on that Lot on behalf of the Seller. Should the Seller buy in his own Lot, the Seller must pay the Company its stated rates (both Seller and Buyer) before the Lot is removed.
- The Seller may be notified to the Company to withdraw the Lot from the Auction. If the Seller does so he shall be liable to pay the Company the stated rate of the Seller's and Buyer's commission calculated on the estimated value of the Lot that the Company would have received had the Lot been sold for the estimated value. For the purposes of this clause the estimated value shall be the higher of:
 - The Seller's estimate of value as previously notified to the Company or if more than one figure the highest figure or if none;
 - The stated estimate in the catalogue or if more than one figure is given the highest figure or if none;
 - The Company's reasonable estimate of its value;
 - plus VAT on such fee in either case and expenses;
- In the event that the Seller withdraws the Lot from the Auction the Seller shall arrange for the collection/removal of the Lot at his own expense within 2 working days after the date of withdrawal provided that the Seller may not collect the Lot unless or until any withdrawal fee payable under Conditions 5.1 shall have been paid in full and any storage charges have been met by the Seller.
- The Seller authorises the Company to deduct from the Hammer Price commission at the Stated Rate subject to the relevant minimum commission for each Lot, plus Expenses and VAT on both. The Seller acknowledges the Company's right to charge and retain the Buyer's Premium also in accordance with Condition 14.
- The Seller of a Lot which is a road going means of transport warrants and undertakes to the Company that, as at the date of the Sale, either:
 - The Lot will be VAT paid in the EU and registered in the UK, will be lawfully usable on the public road, complying with the provisions of current Road Traffic Legislation and all relevant regulations made thereunder and any statutory modifications thereof, and there is or will be in force an MOT Certificate required in relation to such use; or (alternatively)
 - The Seller has notified the Company that the Lot does not meet these requirements, and cannot legally be used on the road.
- The Seller hereby agrees to indemnify the Company, its Agents and Employees against all claims, liability or damage and all related costs and expenses arising out of the proper execution by the Company of their obligations to the Seller under these Conditions, and in particular against any liability or claim which may be incurred by the Company as a result of any defect in the Lot, whether proving dangerous to human life or health or otherwise giving rise to a claim against the Company, or as a result of any default by the Seller or any breach of any of the warranties or undertakings herein by the Seller.
- Where any Lot fails to sell, the Company shall notify the Seller accordingly. The Seller shall make arrangements either for the Company to re-offer that Lot for sale, or forthwith to collect the Lot and to pay the Expenses. If such arrangements are not made:
 - by 3pm on the day following the date of the Sale, the Seller shall be responsible for the costs of any removal, storage and other expenses related to that Lot;
 - within 3 months after formal notification by the Company to the Seller, the Company shall have the right (pursuant to the Torts (interference with Goods) Act 1977 (or any legislation that re-enacts or replaces it) to sell the Lot by private treaty or at public auction without reserve and to deduct from the Hammer Price or price received any sum owing to the Company including (without limitation) removal, storage and insurance expenses, the Expenses of both auctions, Commission at the Stated Rate on the sale and all other reasonable expenses, before remitting the balance to the Seller, or if he cannot be traced, placing it in a bank account in the name of the Company on behalf of the Seller.
- Where a Lot is sold, the Company initiate payment, by bank transfer, of the Sale Proceeds to the Seller 3 working days after the Company has received in cleared funds the Total Amount Due from the Buyer. Should no bank details be provided by the seller, the Company will effect payment by sending its cheque, drawn in favour of the Seller, 8 working days after receipt of cleared funds, by first class mail at the Seller's risk.
- If before the Total Amount Due is paid by the Buyer (whether or not because the Company has given credit terms to the Buyer) the Company pays to the Seller an amount equal to the net Sale Proceeds, title in the Lot shall pass from the Seller to the Company.
- In the case of overseas Sellers, the Sale Proceeds will be paid to the Seller either in Sterling or in such other currency available to the Company as may have been agreed in writing between the Seller and the Company before the date of the Sale. The Company shall calculate the rate of exchange for the Sale Proceeds by reference to the spot rate of exchange quoted at the close of business on the date of the Sale, whichever is more favourable to the Company.
- If the Company receives notice of any dispute related to a sold Lot before the Sale Proceeds have been remitted to the Seller, the Company may withhold payment from the Seller until it thinks fit or until the Dispute is resolved, whichever is the earlier.
- The Company retains the right to withhold partial or total payment for any Lot if items committed to the Sale by the Seller and sold as part of the Lot, including any relevant documents, have not been delivered by the Seller.
- If the Buyer fails to pay the Company the total Amount Due within 21 days after the Sale, the Company will notify the Seller and take the Seller's instructions as to the appropriate course of action. So far as in the Company's opinion it is practicable, the Company will at the Seller's expense assist the Seller to recover the Total Amount Due from the Buyer, but the Company shall be under no obligation to institute proceedings in its own name.
- If circumstances outside the Company's control do not permit the Company to take instructions from the Seller, the Seller hereby authorises the Company at the Seller's expense, to agree special terms for payment of the Total Amount Due to remove, store and insure the Lot sold; to settle claims made against the Buyer or the Seller on such terms as the Company shall in its absolute discretion think fit; to take such steps as are necessary to collect the monies due by the Buyer to the Seller, and if necessary to rescind the sale and refund money to the Buyer.

CONDITIONS CONCERNING THE BUYER

- Any motor vehicle is sold as a collector's item and not as a means of transport. Buyers are specifically warned that any vehicle sold as such may well have had parts replaced and paint renewed or be made up of parts from other vehicles the condition of which may be difficult to establish. The Company has to rely on information as to the date, condition and authenticity provided by the Seller and does not provide its own description, and does not and cannot undertake its own inspection of vehicles or other Lot and it is the responsibility of the Buyer to ensure that the Lot conforms to the description in the catalogue.
- The Buyer shall be the person making the highest bid at or over Reserve (if any) that is accepted by the Company, and the Contract shall be concluded at the fall of the hammer. The Company shall have the absolute discretion to settle any dispute related to bidding at the Sale. All sales are deemed not to be sales in the course of a business, unless notified to the contrary.
- Every bidder shall be deemed to act as principal unless the Company has, prior to the auction date, acknowledged (either by acceptance of the Bidder's Registration Form which discloses the true principal, or otherwise in writing that the bidder is acting as agent on behalf of a disclosed principal.
- The Company may in its absolute discretion refuse to accept any bid, advance the bidding as it may decide, withdraw or divide any Lot, combine any two or more Lots, and in the case of dispute may put up any Lot for auction again.
- A prospective bidder should register his intention to bid for a Lot by completing fully and signing a Bidder's Registration Form prior to executing his bid. If this has not been completed before the fall of the hammer, the Buyer shall forthwith complete the Bidder's Registration Form. The Bidder shall also provide photographic identification. Failure to do so shall not invalidate the sale, unless the Company, in its absolute discretion, so decides.
- Any bid which fails to reach the Reserve may be submitted by the Company to the Seller and if the Seller accepts that bid, the Lot will be deemed to have been sold to the Buyer at the sum bid at the fall of the hammer and the normal Terms and Conditions will apply to that sale.

- Where a Lot is illustrated by a photograph, in the case of a vehicle with registration number visible, that number will not be transferred with the vehicle to the Buyer unless the registration particulars appear in the written part of the description and the transfer has been authorised by the Seller. If the vehicle is sold to the Buyer before the formalities of the allocation of a different registration number to that vehicle are completed with the DVLA, the Buyer accepts that he will take all steps necessary to co-operate with either the Seller or the Company to have the number re-transferred to the Seller or as may be, and will take no steps to register the vehicle with the number in his name.
- Whilst the interests of prospective Buyers are best served by personal attendance at the Sale, the Companies will if so instructed executive bids on their behalf. Neither the Company nor its Employers or Agents will be responsible for any error or default in doing so or in failing altogether to do so. Where the Company executes bids on behalf of an absent bidder, each Lot will be bought as cheaply as is allowed by other bids and any relevant Reserve.
- The Buyer shall pay to the Company in respect of each Lot the Buyer's Commission calculated on the Hammer Price at the stated rates as set out above.
- Where a Lot is described in the Catalogue or announced at the time of Sale as being subject to VAT on import, VAT will be payable in addition to the Hammer Price (which VAT may or may not be refundable by HM Customs & Excise on proof of export).
- Upon the sale of a Lot, the Buyer shall:
- Unless he has already done so, complete a Bidder's Registration Form as in Condition 12.5 above;
- Pay to the Company the total amount due, at latest by midday on the day after the Sale, notwithstanding that where the Buyer wishes to export the Lot, an export licence may be required which must be obtained by the Buyer at his own cost.
- Accept that any payments received by the Company from a Buyer may be applied by the Company towards any sums owing from that Buyer to the Company on any account whatsoever, without regard to any directions of the Buyer or his agent, whether express or implied.
- Until the total amount due has been received by the Company:
 - title in a Lot shall not pass to the Buyer but the risk shall;
 - no lot may be taken away by or on behalf of the Buyer.
- The Buyer shall be responsible for any removal, storage and insurance charges and any other Expenses on any Lot not paid for and taken away by 3pm on the day following the day of the sale.
- If a Buyer fails either to pay for or to take away any Lot, the Company may without further notice to the Buyer, at its discretion and without prejudice to any other rights or remedies it may have, exercise one or more of the following rights or remedies, as may be relevant, in relation to any and all remedies for non-payment that the Company may choose to exercise. The Buyer will pay to the Company all legal and other costs borne by it on a full indemnity basis.
- To charge interest at a rate not exceeding 3% per month over base rate on so much of the total amount due as remains unpaid after the date and time referred to in condition 16.3 for the first two months. After that period of time to charge interest at a rate not exceeding 1.75% per month over base rate on so much of the total amount due as remains unpaid after the date and time referred to in condition 16.3.
- To issue proceedings against the Buyer for payment of the total amount due and/or for damages for breach of contract. If the Seller decides to sell the Lot elsewhere, the Company may proceed against the Buyer for the Commission which it would have earned both from the Seller and the Buyer together with VAT on both had the Buyer paid for the Lot in accordance with these Conditions.
- To rescind the sale of that or any other Lots sold to the same Buyer at this or any other Sale, in respect of which title has not passed.
- To resell the Lot or cause it to be resold by public or private sale, such that any deficiency in the total amount due resulting from such resale (after giving credit for any payment) together with the full costs incurred in connection with the Lots shall be paid to the Company by the Buyer, any surplus in excess of the Sale Proceeds of that resale shall belong to the Seller.
- To store the Lot at the sole expense of the Buyer and to release the Lot only after payment in full of the total amount due, together with the accrued cost of the removal, storage and insurance and all other expenses incurred in connection with the Lot.
- To retain that or any other Lot sold to the Buyer at the same or any other auction and to release the same only after payment of the total amount due.
- To apply by way of set-off any Sale Proceeds of any Lot then due or at any time thereafter becoming due to the Buyer towards settlement of the total amount due and expenses and the Company shall be entitled to a lien on any property of the Buyer which is in the Company's possession for any purpose.
- To reject or ignore any bids made by or on behalf of the defaulting Buyer at any future sales or insist upon a cash deposit before accepting any bids in future.
- All Lots are offered as seen with all faults and defects without any guarantee or warranty attaching thereto as to condition, roadworthiness or otherwise and with all faults and defects whether apparent upon examination or not.
- In any event, neither the Seller nor the Company shall be liable for any indirect or consequential loss whatsoever, and the maximum liability of the Company together with its Employees and Agents, in the event of any claim against them arising from the sale of any Lot shall be limited to the Hammer Price plus Buyer's Premium in respect of that Lot.

GENERAL CONDITIONS

- The Company in all respects acts and will be treated as agent for the Seller (except where the Company is expressly stated to be selling as principal) and is not responsible for any default by the Seller or the Buyer to the other party.
- The Company shall have the right, as its sole discretion, without assigning any reason, to refuse any person admission to its Premises or attendance at any of its Sales, or to view any Lot.
- Any notice by the Company to a Seller, consignee, prospective bidder or Buyer may be given by hand delivery, by first class mail or by airmail or by fax or E-mail; and if so given shall be deemed (unless shown to have been received earlier) to have been duly received by the addressee 36 hours after posting in the case of first class mail or airmail and 6 hours after transmission in the case of fax or email. In all cases it shall be sufficient for such notice to be delivered to the last known address of the recipient.
- The copyright in all written matter and illustrations relating to Lots shall remain at all times the absolute property of the Company, and any person wishing to use such materials, or any part of them, shall require the prior written consent of the Company.
- If any Condition or part of a condition in these Terms shall be held to be invalid or unenforceable, the validity or enforceability of the remaining Conditions will not thereby be affected.
- These Conditions shall be governed by and construed in accordance with English Law. All transactions to which these Conditions apply and all matters connected therewith shall also be governed by English Law. Each of the Company, the Seller, the Buyer and any bidder hereby submits to non-exclusive jurisdiction of the courts of England and Wales.