



**PALM BEACH 2008 TERMS AND CONDITIONS OF SALE**

This Bidder Agreement ("Agreement") is made between Barrett-Jackson Auction Co. LLC ("Barrett-Jackson") and the person or entity submitting this Bidder Agreement as listed on the reverse side of this Agreement ("Buyer").

**1. LIMITATIONS AND DISCLAIMERS:**

(A) Each Lot is consigned to Barrett-Jackson by the seller shown on the Consignment Agreement ("Seller"). Each Lot is sold "AS IS - WHERE IS", with all faults and defects, and with all errors of description. Buyer understands that (i) any and all information concerning any Lot is provided by Seller; (ii) Barrett-Jackson does not make any representations or express any opinions of its own concerning any Lot; and (iii) Barrett-Jackson does not examine any Lot or any component of any Lot, research the title documents or the provenance of the Lot or verify any information provided by Seller, nor does Barrett-Jackson undertake any duty to do any of the foregoing for the benefit of Buyer or anyone else. Buyer acknowledges that Barrett-Jackson's only duty toward Buyer is to transfer the Lot to Buyer "AS-IS - WHERE IS", upon full performance by Buyer under this Agreement and at the times specified in this Agreement. Except with regard to such duty, Buyer hereby waives and releases Barrett-Jackson from and against any claim, demand, liability, or expense of any kind arising out of or related to the Lot, expressly including without limitation any assertions of negligence (including negligent misrepresentation) or breach of warranty. Buyer agrees not to join Barrett-Jackson 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 Seller with respect to such matters. If Buyer fails to comply with this provision, Buyer agrees to reimburse Barrett-Jackson for all costs, expenses and fees, including attorney fees, in defense of such claims.

(B) Barrett-Jackson disclaims all warranties, express 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 that Lot. As a material inducement to this agreement: (i) Buyer has undertaken to make his own examination of any Lot before bidding; and (ii) assumes all risk of any non-conformities in any Lot. Buyer further acknowledges that he has not relied upon any assumptions regarding Barrett-Jackson's knowledge concerning the Lot or the Seller nor upon any oral or written representations by Barrett-Jackson, 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. Finally, Buyer acknowledges that his invocation of the mediation provisions set forth in Section 4(B) below does not create any warranties, express or implied, and that Barrett-Jackson shall have no liability to Buyer or Seller as a result of its facilitation of any mediation.

(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 or 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 of any Lot or any component of any Lot and, as a condition of Buyer's participation in the auction, Buyer represents that he will conduct any inspections and examination necessary to satisfy himself of all material facts before making any bid.

(D) Neither Barrett-Jackson, nor Seller, nor any agent, employee or representative of Barrett-Jackson or Seller, has given or authorized any other person to give any oral or written affirmation, representation, warranty or guarantee concerning any Lot. In any event, Barrett-Jackson assumes no liability for any affirmations, representations, warranties or guarantees made by Seller to Buyer.

**2. COMMISSIONS AND FEES:**

(A) A BUYER'S PREMIUM OF 10% OF FINAL BID PRICE IS PAYABLE BY THE BUYERS OF ALL VEHICLE LOTS (15% for Automobilia Lots). Buyer understands and agrees that he must pay the sum equal to 10% for any vehicle Lot or 15% for any Automobilia Lot purchased at this auction, that this fee will be automatically included in the final settlement figure, and that he will be subject to applicable taxes and license fees.

(B) Buyer will be required to pay all applicable taxes, license fees, or other fees levied by any authority, unless Barrett-Jackson receives satisfactory proof of exemption (to be determined in Barrett-Jackson's sole discretion). There are no refunds once Barrett-Jackson has paid taxes and license fees (typically two weeks).

(C) Buyer agrees that if he acquires or if any related entity or person acquires, within 60 days after the auction date, any Lot consigned to the Barrett-Jackson auction that is not sold through the auction for any reason Buyer will be obligated jointly and severally, with the Seller, for the immediate payment to Barrett-Jackson of a commission in the amount of 18% of the sale price of the Lot.

**3. PAYMENT:**

(A) Buyer shall bring a bank reference and a copy of Buyer's signature, certified by that bank. Buyer agrees to pay for all Lots on the day of sale in U.S. currency, certified check or cashier's check. Personal checks may be accepted, at Barrett-Jackson's sole discretion, but only if accompanied by irrevocable bank letter of guaranty in favor of Barrett-Jackson stipulating Buyer's credit limit on the day of the sale. There shall be no deviation from this provision without the prior written consent of Seller and Barrett-Jackson. Buyer hereby authorizes Barrett-Jackson to recover lost commissions due to them should Buyer default, and charge this amount to Buyer's American Express, Discover, Visa or MasterCard.

(B) Should Buyer default upon the purchase in any manner, for any reason, Buyer agrees to pay Barrett-Jackson the full sum of both the Buyer's premium (10% of sale price) and Seller's commission (8% of sale price). This sum is due and payable without relief. Buyer also agrees to pay any court cost, attorney fees, storage, etc., incurred by Seller or Barrett-Jackson. This in no way releases Buyer from any and all financial responsibility regarding said purchase.

**4. PASSING OF TITLE:**

(A) Upon the fall of the Auctioneer's hammer, title of the offered Lot will pass to the highest Bidder acknowledged by the Auctioneer, subject to the conditions set forth herein, and at such time Buyer: (i) assumes full risk and responsibility for the Lot and neither Barrett-Jackson nor its agents shall be responsible for the loss of, or any damage to, any article due to theft, fire, breakage or any cause whatsoever; (ii) will sign a Contract of Sale confirming purchase of the Lot; and (iii) will pay the full purchase price plus applicable commission.

(B) All property must be removed from Barrett-Jackson's premises by Buyer not later than 72 hours following the completion of the sale. If any Lot is not removed, a handling charge of 1% of the purchase price will be payable by the Buyer per month, until it's removed, with minimum of 5% for

any property not removed within 60 days after the sale. After 90 days, Barrett-Jackson may dispose of the property. BUYER HEREBY WAIVES ALL REQUIREMENTS OF NOTICE, ADVERTISEMENT AND DISPOSITION OF PROCEEDS REQUIRED BY LAW, AND RELEASES BARRETT-JACKSON FROM ANY LIABILITY WHATSOEVER IN CONNECTION WITH SUCH DISPOSAL.

(C) Lots, titles and/or bills of sale will only be released in the case of cash purchases. In all other cases release will be made only after payment (cashier's checks, traveler's checks, money orders and company and personal checks, even if you have submitted a "Letter of Guaranty") has cleared Barrett-Jackson's bank account. The title and/or bill of sale will be delivered to Buyer at the time settlement is made with Seller (typically within 21 business days from the date of sale).

(D) If Buyer or Buyer's representative drives a vehicle on auction site, all applicable Arizona Motor Vehicle Laws must be adhered to.

**5. REMEDIES:**

(A) In the event Buyer breaches these terms and conditions of sale or fails to consummate the sale for any reason, Barrett-Jackson may, in addition to and not in lieu of any rights available at law or in equity, and at its sole discretion: (i) compel specific performance and hold Buyer liable for the bid price and associated commissions; (ii) resell any Lot by public or private auction for Buyer's account and risk, after 15 days' written notice to Buyer at Buyer's last known address, and hold Buyer liable for all damages, including the difference between the bid price and resale price, Barrett-Jackson's full commission on the bid price, all costs for resale (including commissions), and consequential damages; or (iii) cancel the sale and retain all payments made by Buyer, including any advance deposits, as liquidated damages and not as a penalty.

(B) Before Buyer may initiate any legal proceeding arising out of or relating to any sale occurring as a result of this Agreement, including, but not limited to issues related to Seller's representations or statements concerning condition, genuineness or authenticity, origin or provenance, previous use or ownership, manufacturing or restoration processes, year or age, serial number, make, model or mileage, or any other representation made regarding any Lot, Buyer shall submit to a mediation with Seller to be facilitated by Barrett-Jackson or its designee. Barrett-Jackson or its designee will facilitate this mediation in good faith in an effort to resolve any such dispute. If the parties are unable to reach an agreed resolution, or if Barrett-Jackson in its sole discretion determines this effort to be unsuccessful, Seller and Buyer may thereafter resolve their dispute through appropriate legal channels. If Buyer avails himself of this mediation provision, Buyer must obtain a Request for Mediation form from Barrett-Jackson and submit the completed form in accordance with the instructions contained therein to begin the mediation process. The Request for Mediation form must be submitted within 30 days from the date of purchase of the vehicle or Buyer shall be deemed to have waived and forfeited the opportunity to request mediation.

(C) Buyer acknowledges that Barrett-Jackson may have an interest in commissions resulting from the resolution of a dispute through this mediation process. Buyer hereby waives any potential or actual conflict of interest inherent in such a mediation process and agrees to defend (using counsel reasonably acceptable to Barrett-Jackson), indemnify and hold Barrett-Jackson harmless for, from and against any claims, demands, actions, judgments, liabilities, losses or expenses (including attorney fees) arising from or related to Barrett-Jackson's mediation of any dispute arising out of or relating to this Agreement, excepting only those matters arising out of Barrett-Jackson's willful misconduct.

(D) Notwithstanding the foregoing, and in the event the mediation referenced in section 4(B) is unsuccessful, 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.

(E) Buyer's invocation of the mediation provisions of this Agreement shall not create any warranty or any other liability between Barrett-Jackson and Buyer. As stated in section 1(B) above, Barrett-Jackson expressly disclaims all warranties, express or implied, concerning the Lot, including the warranties of merchantability or fitness for any particular purpose(s).

(F) In the event of any dispute between Buyer and Barrett-Jackson arising out of or related to this Agreement or its subject matter, Buyer's claim for damages shall be limited exclusively to actual damages, and shall not include consequential damages, or incidental or other special damages.

(G) This Agreement, and any action arising out of or based on it or its subject matter, shall be governed by Arizona law excluding its conflicts of law rules. Buyer agrees that the state and federal courts located in Maricopa County, Arizona shall have exclusive jurisdiction over any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement or its subject matter, and Buyer hereby waives any objection to venue laid therein. Buyer further agrees that the state and federal courts located in Maricopa County, Arizona shall have personal jurisdiction over Buyer for the purposes of any action described above.

**6. ENTIRE AGREEMENT:**

This Agreement and any Contract of Sale which may be delivered to Buyer contain the entire agreement between the Buyer and Barrett-Jackson pertaining to the subject matter described herein. Any terms proposed by Buyer orally or in writing which add to, vary from or conflict with this Agreement shall be void, and the Agreement shall constitute the complete and exclusive statement of the agreement between the parties and may be modified only by written instrument executed by the authorized representatives of both Buyer and Barrett-Jackson and which expressly modifies the Agreement.

**7. ASSIGNMENT:**

This Agreement, and any and all rights, obligations, claims or causes of action arising from it or its subject matter, may not be assigned to or acquired by any other person or entity without Barrett-Jackson's prior written authorization.

**8. SEVERABILITY:**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law: (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this agreement; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement; and (iv) in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and this Agreement shall be deemed reformed accordingly.

**9. APPEARANCE RELEASE:**

By completing this Bidder Agreement, Buyer hereby acknowledges he has given Barrett-Jackson permission to use his likeness for television, video screens, still photography and/or any other visual/audio recording. Buyer hereby waives all residual rights or claims that might arise from use of his picture or likeness for any purpose at any future date. Entry into the auction site constitutes acceptance of the above terms and conditions.

**Office Use:**

Last name, First initial: \_\_\_\_\_ Bidder # \_\_\_\_\_

Lot Number(s) Purchased \_\_\_\_\_ Year / Make / Model \_\_\_\_\_ Price \_\_\_\_\_

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