

- 01** Western Construction Auctions, Inc. ("Auctioneer") hereby grants to the Bidder the right to use the number shown on the Bidder card provided by Auctioneer to Bidder (the "Bid Number") for the purpose of bidding at an auction sale on the date and at the location set forth in the Listing Catalog (the "Auction"), subject to these Terms of Bidding & Sale (the "Terms"). "Bidder," as that term is used herein, means the party whose signature appears on the Bidder's Registration Agreement, a party that bids at the Auction by absentee bid, a party that bids at the Auction online, and any other party that is assigned a Bid Number and uses that Bid Number to bid at the Auction. Any and all rights granted to Bidder pursuant to the Terms may be revoked by Auctioneer at any time in Auctioneer's sole discretion. Auctioneer reserves the right to refuse to accept any bid by any Bidder in Auctioneer's sole discretion. Bidder understands and agrees that the Bidder is responsible for complying with all Terms including but not limited to payment of all purchases by Bidder at the Auction, regardless of whether such purchases were made by Bidder for or on behalf of another party.
- 02** By making a bid, regardless of how such bid is made, Bidder acknowledges that Bidder has received, read, understands, and agrees to comply with and be bound by the Terms.
- 03** The Auction will be conducted by the Auctioneer putting up goods in lots, either as individual goods or as groups of goods (a "Lot"). A Bidder whose bid is accepted by the Auctioneer shall pay for the Lot and remove the Lot from the Auction site pursuant to the Terms. No Bidder shall retract or revoke Bidder's bid for any reason once such Bid is accepted by Auctioneer. All sales of Lots are final.

**ALL GOODS SOLD AT THE AUCTION ARE "AS IS," "WHERE IS," AND "WITH ALL FAULTS." THERE ARE NO GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS. ALL WARRANTIES REGARDING SUCH GOODS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED. SPECIFICALLY, BUT WITHOUT LIMITATION, AUCTIONEER MAKES NO REPRESENTATION OR WARRANTY THAT ANY OF THE GOODS CONFORM TO ANY STANDARD OR REQUIREMENT IN RESPECT TO SAFETY, POLLUTION, OR HAZARDOUS MATERIAL OR CONFORM TO OR COMPLY WITH ANY APPLICABLE LAW OR ARE OF ANY PARTICULAR AGE, YEAR, MAKE, MODEL, CONDITION, OR CONFORM TO ANY SPECIFICATIONS OF OR LITERATURE OR ADVERTISEMENT DESCRIBING THE GOODS. SOME LOTS MAY NOT COMPLY WITH STATE REGULATIONS AND MAY NOT BE REGISTERED OR OPERATED IN THE STATE OF CALIFORNIA. BIDDER IS ALSO NOTIFIED AND AWARE OF THE FOLLOWING:** *"When operated in California, any off road diesel vehicle may be subject to the California Air Resources Board In-Use Off-Road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>."*

- 04** Bidders shall deposit the following amounts with Auctioneer prior to and as a condition of being permitted to bid on any Lot. A refundable deposit in the amount of no less than five hundred dollars (\$500.00) will be required in order to obtain a Bid Number at the Auction. For all international Bidders or out-of-state Bidders, a refundable deposit of no less than five thousand dollars (\$5,000.00) is required to obtain a Bid Number. A refundable deposit of no less than one thousand dollars (\$1,000.00) is required of all online Bidders. Notwithstanding the deposit amounts set forth herein, the Auctioneer reserves the right to decrease or increase the required deposit amount at Auctioneer's sole discretion.
- 05** Bidder shall pay Auctioneer twenty-five percent (25%) of the purchase price of each Lot on the day of the Auction and the balance due by 4:30 P.M. two days following the Auction, unless such day is a legal holiday, in which case payment will be due the following day. All payments shall be by cashier's check, money order, company or personal check accompanied by an irrevocable bank letter of guarantee, or wire transfer payable to Western Construction Auctions, Inc. Bidder shall not be entitled to possession of any Lot purchased by Bidder at the Auction and shall not be entitled to the return of Bidder's deposit until the total purchase price, including any applicable sales or use taxes or any other fees, for all Lots purchased by Bidder at the Auction has been paid in full. In the event Bidder fails to pay for the Lot or Lots purchased as set forth herein, Auctioneer may charge the Bidder interest at the legal rate, which in any event shall not be less than ten percent (10%), per annum on the balance owed, a late fee not less than eighteen percent (18%) per annum of the balance owed, up to twenty-five dollars (\$25.00) per day per Lot for storage fees, up to twenty percent (20%) of the sale price for each Lot for Auctioneer's commissions, and all other fees and expenses Auctioneer incurs in enforcing the Terms or otherwise attempting to collect payment, including but not limited to reasonable attorneys' fees and costs. In addition, if Bidder does not pay the full purchase price for the Lot(s) purchased at the Auction as set

forth herein, Auctioneer may, in Auctioneer's sole discretion and without notice to Bidder, charge some or all amounts owed by Bidder to Bidder's credit card, including amounts owed by Bidder from previous auctions, and/or may resell the Lot(s) purchased by Bidder at a subsequent auction without reserve or at a private or public sale and bidder's deposit shall be forfeited to Auctioneer and not refunded. Bidder agrees that such forfeited deposit may not be disputed for any reason to the credit card authorizing company. Bidder is responsible for and shall reimburse Auctioneer for all expenses associated with reselling such Lot(s) including but not limited to transportation costs, repair costs, appraisal fees, and Auctioneer fees or commissions

- 06** Bidder shall remove all Lots purchased from the Auction site no later than 4:30 P.M. five (5) days following the Auction, except that no Lot shall be allowed to be removed from the Auction site until dusk on the day of the Auction. Upon the acceptance of a bid on a Lot, the Lot shall become the sole responsibility of Bidder and Bidder shall bear all risk of loss regarding the Lot. Loading assistance may be provided by Auctioneer as a courtesy; however, Bidder assumes all risk, responsibility, and expense for loading and removal of Lots from the Auction site. Bidder shall use prudence in effecting such removal and agrees to obtain adequate and appropriate insurance coverage for any required dismantling, rigging, or hot cutting of Lots. Auctioneer shall not be responsible for loss, damage, or theft of any Lot purchased. Any loss, damage, or theft does not in any way relieve Bidder from paying the full purchase price for any Lot. In the event Bidder fails to remove the Lot(s) purchased at the Auction by the date and time set forth above, Auctioneer may charge Bidder up to twenty five dollars (\$25.00) per day for storage fees. Property shall be deemed abandoned and Auctioneer shall have the right to resell Property in any manner without notice to Bidder. Bidder is responsible for and shall reimburse Auctioneer for all expenses associated with reselling such Lot(s) including but not limited to transportation costs, repair costs, appraisal fees, and auctioneer fees or commissions. Any proceeds Auctioneer receives from such sale in excess of such storage fees and expenses shall be paid to Bidder. If, however, such sale proceeds are insufficient to pay for such storage fees or if Auctioneer is unable to resell the Lot(s) after making a reasonable attempt to do so, Auctioneer may charge Bidder's credit card for all accrued and future storage fees.
- 07** Bidder expressly authorizes Auctioneer to charge any and all amounts owed by Bidder to Auctioneer to Bidder's credit card, including without limitation all amounts owed by Bidder from the Auction and any prior auction. If Auctioneer charges Bidder's credit card for any amounts owed Auctioneer by Bidder, an administrative fee will be added to the amount charged. Any payment received from Bidder, and any proceeds received from the resale of Bidder's Lot(s) may, in Auctioneer's sole discretion, be first applied to prior outstanding amounts due Auctioneer by Bidder. Nothing contained in the Terms shall be deemed or construed in any way to limit Auctioneer's rights or remedies against Bidder. All of Auctioneer's rights and remedies are cumulative, and the Terms shall not limit or preclude Auctioneer from taking additional action against Bidder or from seeking additional relief from Bidder to which Auctioneer may be entitled. All such rights and remedies are expressly reserved by Auctioneer.
- 08** Bidder acknowledges that, prior to bidding on any goods, Bidder had an opportunity to conduct an inspection of the goods to Bidder's satisfaction and either conducted such an inspection or voluntarily decided not to conduct such an inspection. Bidder further acknowledges that Bidder did not rely on any representations or statements made by Auctioneer or any of Auctioneer's employees or agents about the goods in deciding to bid on any goods. Bidder agrees to make any repairs to the goods purchased which are necessary to put the goods into good and safe operating condition and assumes all risk for and liability for damage or injury arising out of the operation of such goods.
- 09** Bidder, whether an individual or acting as a principal, agent, employee, officer, or director of a corporation, limited liability company, partnership, or other entity, jointly and severally agrees to:
- (a) defend, indemnify, and save harmless Auctioneer, Auctioneer's consignors, and their respective officers, directors, employees, agents, attorneys, and its consignors against and/or from any and all actions, causes of action, suits, damages, costs, expenses, including but not limited to reasonable attorneys' fees, and losses of any nature, including injury and death, arising from the Bidder's, Auctioneer's, or Auctioneer's consignor's acts or omissions or the purchase or use of any of the goods purchased at the Auction, or the attendance or participation of Bidder, or Bidder's agents, officers, directors, or employees, at the Auction and/or on the Auction site whether before, during, or after the Auction; and

## terms of bidding & sale

- (b) pay the purchase price, Auctioneer's fees and/or commissions, any applicable Department of Motor Vehicles (DMV) fees, and taxes due on all Lots purchased by Bidder at the Auction.
- 10** The Terms shall be governed by and interpreted under the laws of the State of California. Any action or proceeding filed by Auctioneer or Bidder for the enforcement or interpretation of these Terms or otherwise arising out of or relating to these Terms or the Auction shall be filed in the State of California, County of Riverside. Bidder agrees that these Terms were entered into and performed in California and that the exclusive venue for any such action or proceeding lies within Riverside County, California. Bidder further agrees that Bidder is subject to the jurisdiction of the State of California and waives any objection that it is not subject to such jurisdiction or that Riverside County is an inconvenient or improper forum.
- 11** Bidder acknowledges that an auction site is a potentially dangerous place. Flammable, noxious, corrosive, and pressurized substances are present, heavy equipment is being operated, and electric circuits may be live. **Every person at the Auction site at any time shall be there at his or her own risk** without notice of the condition of the premises and the activities thereon and Bidder shall so advise his agents and employees. No person shall have any claim against Auctioneer, its officers, directors, agents, employees, principals, or attorneys for any injuries, damages, or loss of any kind, which may occur from any cause whatsoever while on the Auction site. All persons enter the Auction site at their own risk.
- 12** If the Bidder registered at the Auction under multiple Bid Numbers, all purchases under all Bid Numbers shall be subject to the Terms. If a Bidder possesses multiple Bid Numbers, all invoices must be paid in full as set forth herein.
- 13** Auctioneer, at any time, and at its sole discretion, without notice or liability to Bidder may: (a) withdraw or cancel the sale of any Lot, or (b) offer any Lots in groups
- 14** No Bidder shall bid on any Lot: (a) of which Bidder is the consignor or owner of the goods put up for auction; or (b) as agent, or associate, or on behalf of the consignor or owner of such goods. If it is determined that a consignor, owner, agent, or anyone else has bid on any Lot on behalf of a consignor or owner of the Lot, a charge of not less than twenty percent (20%) of the purchase price shall be charged to Bidder plus any other fees which may apply to release the Lot(s) to the consignor or owner.
- 15** Any dispute arising as to any bidding shall be settled by Auctioneer at its sole discretion and Auctioneer may put the Lot(s) in dispute up for sale again.
- 16** Auctioneer will deliver or make available to Bidder, at Auctioneer's option, title to all Lots purchased free and clear of any liens or encumbrances within forty-five (45) days following receipt of full payment for all Lots purchased by Bidder. Partial payments will not allow title processing to begin. Title processing will begin only after full and complete payment for all Lots purchased has been made and funds have cleared. Title Documents will be prepared only in the state in which the Auction occurs. A document preparation fee of not less than fifty-five dollars (\$55.00) per Lot will be charged, in addition to all other amounts due hereunder, whether the Lot is comprised of one or more goods and irrespective of Bidder's use or intended use of the Lot. Sales tax will be assessed and collected on document processing fees unless legal exemption documentation is provided at the time of sale. If for any reason, Auctioneer is unable to make available or deliver clear title to any Lot, Auctioneer's sole liability shall be the return of monies paid for the Lot by Bidder. Bidder expressly waives any and all claims for any damages or loss whatsoever against Auctioneer for Auctioneer's failure or inability to obtain clear title for the Lot(s) purchased. Any such Lot(s) shall be returned or surrendered upon demand by Auctioneer to the location of purchase at Bidder's sole expense, as a condition to Auctioneer's obligation to return such monies.
- 17** Internet bidders will be charged no less than a three percent (2%) buyer's premium in addition to all other fees charged by Auctioneer.
- 18** There will be no less than a ten percent (10%) buyer's premium for all lots selling under \$2500.00. Sales tax will be assessed and collected on buyer's premium amounts unless legal exemption documentation is provided at the time of sale.
- 19** Lot Purchase Fees will apply to Purchases of all Lots selling over \$2500.00. Lot Purchase Fees will be assessed on a per Lot basis and the fee amounts are printed in the Listing Catalog. Sales tax will be assessed and collected on Lot Purchase Fees unless legal exemption documentation is provided at the time of the sale.
- 20** The Listing Catalog has been prepared as a guide only, based on information from sources believed to be reliable and from the consignor(s) of the Lot(s); however, its accuracy cannot be guaranteed or warranted. No sale shall be invalidated nor shall Auctioneer, its officers, directors, employees, agents, or attorneys be liable as a result of defects or inaccuracies in the Listing Catalog.
- 21** Auctioneer will make every effort to provide Bidder with information that is deemed to be accurate but in no way guarantees the accuracy of the information. Any clerking error or omission, printing error or omission, serial numbers or description discrepancies including make, model or year, fuel type, engine type or any other error or omission made by Auctioneer shall not invalidate any sale of any Lot. Bidder acknowledges that it is Bidder's sole responsibility to verify make, model, year, fuel type, serial number or any other information that a Bidder deems necessary and Bidder has satisfied all inquiries prior to any bidding.
- 22** If Bidder claims a tax exemption based on goods being shipped out of state for use out of state, then the goods must be delivered to and shipped by a third party common carrier from the Auction site. Bidder shall provide necessary documentation to effect such exemption. In such case, Bidder shall arrange and assume all risks and costs associated therewith.
- 23** If any provision of the Terms is held to be void or unenforceable, the remaining provisions shall remain valid and enforceable and shall be construed in such a manner as to achieve their original purposes in full compliance with all applicable laws and regulations.
- 24** Bidder may not assign any of the Terms without the prior written consent of Auctioneer. Any assignment or attempted assignment in violation of this provision is void.
- 25** The Terms are binding on and shall inure to the benefit of Auctioneer's and Bidder's respective successors and permitted assigns.
- 26** In the event either Auctioneer or Bidder files any action or other proceeding to enforce or interpret the terms of the Terms, the prevailing party in any such action or proceeding shall be entitled to recovery its reasonable attorneys' fees and costs in connection therewith from the non-prevailing party.
- 27** The Terms may not be modified by Bidder without Auctioneer's prior written consent.
- 28** The Auction may be recorded via digital audio and/or video recording. Should audio or video recordings become inaudible or damaged, the recorded results transcribed by the auctioneer clerk shall become the sole determining factor on the final lot price if a dispute arises over the sale price of a lot.
- 29** THERE IS NO COOLING-OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION. California law does not provide for a "cooling-off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you changed your mind, decide the vehicle cost too much or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or the legal cause, such as fraud.. However, California law does require a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than \$40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply for the sale of motorcycles or any off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option for agreement details.

### "BIDDER'S REGISTRATION AGREEMENT"

BY USING THE BID NUMBER APPEARING HEREON AT THE AUCTION, THE BIDDER ACKNOWLEDGES THAT BIDDER HAS RECEIVED, READ, UNDERSTANDS AND AGREES TO BE BOUND BY THE "TERMS OF BIDDING AND SALE" (\*TERMS\*) PRINTED IN THE LISTING CATALOG.