



## XLerate Group Terms and Conditions

Updated Effective October 15, 2021

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Welcome to XLerate Group, a leading nationwide automobile auction and remarketing facilitation company. XLerate facilitates transactions between Purchasers and sellers at its Internet-enabled physical and private label remote sales. By participating in any of XLerate Group's auctions or using any of its services, you agree for yourself, your dealership and your **Authorized Representative(s)**, as defined below) (collectively, "**User**") to these Terms and Conditions ("**Terms and Conditions**") as they may be amended from time to time as well as any local auction policies at XLerate Group locations.

1. Services; Applicability of Terms & Conditions. American Auto Auction Group, LLC d/b/a XLerate Group and its auction subsidiaries, which includes the auctions listed at <https://www.XLerategroup.com/>, as it may be amended (collectively "**XLerate Group**") conducts periodic auction sales in-lane, at mobile locations, in-person and/or online or via the internet (collectively "**Sales**") of motor vehicles, including automobiles, motorcycles, recreational vehicles, power equipment, and recreational watercraft (collectively "**Vehicles**"). XLerate Group also provides various other services related to remarketing Vehicles (together with Sale, "**Services**"). User agrees that these Terms and Conditions shall apply to all transactions by which User sells consigned Vehicles ("**Seller**"), by which User purchases consigned Vehicles ("**Purchaser**") or in which User otherwise uses XLerate Group services. XLerate Group complies with the National Auto Auction Association's ("**NAAA**") policies, which are incorporated herein by reference, except where these Terms and Conditions set different rules.
2. Fairness and Courtesy. XLerate Group strives to be fair, ethical and courteous to all of its customers and employees. User agrees that it, and its Authorized Representatives and other employees and agents, will act with fairness and courtesy towards other customers and auction employees while attending Sales. User also agrees to raise any concerns it has about the actions of others privately and professionally with XLerate Group management.
3. Registration. XLerate Group utilizes the AuctionACCESS® registration and credentialing system. User and its Authorized Representatives must complete XLerate Group's AuctionACCESS® registration package, at which time User and each of its Authorized Representative(s) will be issued an AuctionACCESS® number ("**AuctionACCESS® Number**") and/or photographic or digital identification card ("**AuctionACCESS® Card**") authorizing it to buy or sell Vehicles at all XLerate Group physical locations and internet sales. For internet sales, in addition to registering through AuctionACCESS®, User must register through the XLerate Group online system in order to obtain a username and password. Some Sellers may also be required to sign a consignment agreement.
4. Authorized Representatives. User is responsible for all actions, contracts, representations and transactions conducted at XLerate Group by its actual and apparent agents, including specifically those persons designated as such in the registration materials and other documents (such as AuctionACCESS®'s "Dealer Authorization of an Individual" and "Individual Authorization Letter" forms) ("**Authorized Representative(s)**"). Without limitation of the foregoing, User hereby authorizes its Authorized Representatives to take or perform the following actions with respect to Vehicles: (a) purchase and/or sell Vehicles on behalf of User including completion and execution of documents conveying title, including executing the certificate of title, odometer statements, bills of sale and other similar documents in connection with the sale of Vehicles, and/or (b) execute on behalf of User checks in connection with the purchase or sale of Vehicles, and (c) authorize financing purchases using any of User's floorplan lenders. The Authorized Representatives' authority will remain effective and binding on User until revoked by User in writing and submitted according to procedures as required by XLerate Group or AuctionACCESS® from time to time. Accordingly, User guarantees, as principal, all transactions made, or Services purchased, from XLerate Group by its Authorized Representatives, irrespective of any dispute regarding the actual authority to do the specific transaction. No



Authorized Representative shall be under the age of 18 years and neither User nor its Authorized Representative(s) shall bring any person under such age onto the XLERATE Group premises as driver, assistant, observer, or otherwise.

5. Liability for use of AuctionACCESS® Number, AuctionACCESS® Card and/or Username/Password. User is responsible for maintaining the confidentiality and security of its AuctionACCESS® Number, AuctionACCESS® Card and/or online username and password. User and its Authorized Representatives may not share or lend the AuctionACCESS® Number, AuctionACCESS® Card, and/or username and password with anyone. User will be strictly responsible for all actions, omissions, failures to act, and/or transactions conducted in User's name with any AuctionACCESS® Number or AuctionACCESS® Card and/or username or password issued to User or any of its Authorized Representatives, regardless of whether such action, omission, failure to act, and/or transaction was actually approved or authorized by User.
6. Wholesale Only and Representations Regarding Taxes. XLERATE Group's Sales are wholesale only, except for limited and clearly specified exceptions, and so are open only to licensed automobile dealers and other commercial entities entitled to buy and/or sell at wholesale. User both hereby and each time it participates in a Sale, warrants that (a) User is a licensed retail or wholesale dealer of one or more types of Vehicle(s) or a commercial entity that is otherwise legally eligible to purchase or sell Vehicles at wholesale auto auctions and that User is purchasing Vehicles only for resale; (b) User holds the appropriate documentation issued by the sales tax authority of the state, province, or locality of its business, if necessary, which exempts User from the payment of sales or other tax for purchases facilitated by XLERATE Group; and (c) in the event that the property is used for any purpose other than for resale, Purchaser will pay directly to the proper taxing authorities such sale or use tax as may then accrue and be due and payable. User shall not bring any retail customer onto XLERATE Group's premises, or allow them access to XLERATE Group's online platforms. User shall not make retail sales from XLERATE Group's premises. User shall not register individuals to act as its Authorized Representatives unless they are bona fide employees or independent contractors; and User shall produce W-2's or 1099's when requested.
7. Scope of Privileges. User has no duty to do business with XLERATE Group, and XLERATE Group likewise has no duty to provide any services to User. User and XLERATE Group each retains the right to do business with whoever it wants, collectively or separately, on the terms of its choosing and neither shall have any cause of action based on such choices. User acknowledges that it has plentiful other options to buy and sell Vehicles. In particular, XLERATE Group may also suspend or terminate User's (or its Authorized Representatives') privilege to access XLERATE Group's services, or impose penalties, if User breaches its agreement as set out in these Terms and Conditions, the bill of sale on auction transactions or any other agreement with, or obligation to, XLERATE Group. User acknowledges that its participation as Purchaser or Seller, or participation in certain Sales events, may be limited by applicable law, the scope of the User's license, or other rules of eligibility, as may be determined in XLERATE Group's sole discretion.
8. Auction Rules; User Representations. These Terms and Conditions, as may be supplemented or altered by additional requirements imposed by a particular XLERATE Group location at which User conducts a transaction, (collectively, "**Auction Rules**") shall govern User's attendance and participation at Sales and be deemed part of the bill of sale agreement of all Vehicle transactions at the Sale. The relationship between XLERATE Group and User is terminable at will by either party, with or without prior notice, and termination by either party shall not relieve either party of its obligations arising before the termination. XLERATE Group reserves the right to refuse to or terminate doing business with any User, and to place additional conditions or restrictions upon any User's activities at the Sale, including but not limited to, limiting or barring access to one or more XLERATE Group locations. By participating in a Sale, User represents that it is: (a) registered with XLERATE Group, in addition to AuctionACCESS® and (b) subject to the Terms and Conditions contained herein and other applicable Auction Rules. Failure of User and/or Authorized Representative(s) to comply with any or all of the Terms and Conditions set forth herein may result in the suspension or termination of User's and/or Authorized Representative's privileges of transacting business with XLERATE Group.
9. Third Party Remarketing. If User consigns a Vehicle to XLERATE Group for sale which has been consigned to User by a third party, User will be fully responsible for all aspects of that transaction, including duties as



transferor under the federal and state odometer laws, as if it were the owner. User must announce "3<sup>rd</sup> Party Seller" on all such vehicles consistent with NAAA requirements.

10. Electronic Signature & Effect of Notice. User agrees that its agreement approval of these Terms & Conditions, and any other documents such as bills of sale, by electronic means shall be deemed to satisfy the requirements of the Electronic Signatures in Global and National Commerce Act and state electronic transactions or commerce laws relating to the validity and enforceability of electronic signatures on contracts. Accordingly, use of User's and its Authorized Representative's AuctionACCESS<sup>®</sup> Number or AuctionACCESS<sup>®</sup> Card ( in-lane or online) to attend a Sale, consign a Vehicle, bid, sell, purchase or otherwise do business with XLerate Group constitutes a signature on any resulting bill of sale, odometer statement, or other contract, agreement, representation or document the same as if such documents had been signed by hand. You agree that any use of your AuctionACCESS<sup>®</sup> Number or AuctionACCESS<sup>®</sup> Card in circumstances approving any transaction or document shall constitute your signature the same as a handwritten signature on such transactional (such as a bill of sale) or other documents and be binding on the Authorized Representative and User. XLerate Group may document such binding agreements or approvals on electronic or paper copies of such records, including by printing the Authorized Representative's or User's name or noting Signature On File or similar method on such records. User further agrees that it will have ratified any transaction with or through XLerate Group unless it has disputed such transaction in writing within 24 hours of receiving notice of it.
  
11. XLerate Group as Consignee/Subrogation. XLerate Group is a service company and generally does not take title to, purchase or sell Vehicles. That is, it is not the transferor of Vehicles sold through its Sales -- the Seller noted on the bill of sale is. Instead, XLerate Group facilitates the exchange of Vehicles between Seller and Purchaser at the Sale. All Vehicles offered for sale at Sales by Seller are deemed consigned and are offered for sale by XLerate Group on Seller's behalf. XLerate Group, at its sole discretion, reserves the right to refuse to accept or to remove from an XLerate Group location any Vehicles to be offered for sale. In any Vehicle purchase transaction, XLerate Group shall not be deemed or considered the Vehicle's transferor or transferee under any circumstances (including under the federal and state odometer laws or otherwise), except where XLerate Group has specifically identified itself as Seller or Purchaser on the bill of sale. XLerate Group otherwise is a party to the bill of sale only to the extent expressly set forth therein (including these Terms and Conditions which are expressly incorporated into each bill of sale). Upon paying Seller the purchase price (net of fees) as set out on the bill of sale, XLerate Group shall have the right to be subrogated to the rights of the Seller under the bill of sale, including the right to collect from Purchaser the purchase price (plus any fees) as noted on the bill of sale, or to reclaim, repossess and resell the Vehicle if Purchaser does not pay timely. Upon delivering the purchased Vehicle to the Purchaser, XLerate Group shall have the right to be subrogated to the rights of the Purchaser under the bill of sale.
  
12. Service Fees. User agrees to pay all fees and charges of XLerate Group for services rendered by it, including but not limited to, Purchaser and Seller fees, penalties for failure to comply with various policies or provisions, or certain convenience features, each as applicable ("**Fees**"). XLerate Group, in its sole discretion and at any time, may prospectively add, delete, or change some or all of the Fees, as applicable. Also, XLerate Group reserves the right to and may have arrangements with certain Users that result in reduced Fees, the payment of discounts/rebates associated with the sales of Vehicles, and/or market assessments in the form of premium fees. The purchase price of the Vehicle plus all applicable Fees payable by Purchaser in connection with the transaction is the "**Total Due.**"
  
13. Payment Terms. Purchaser shall pay to XLerate Group the Total Due in cash or certified check on Sale day unless approved to pay by company check. A company check, direct floorplan or ACH for the Total Due is due to XLerate Group on sale day on all non-cash sales. When the Seller delivers the certificate of title to XLerate Group on a Vehicle announced blue light (Title Attached), XLerate Group will deposit the Purchaser's company check. User may not pay with a personal check. With respect to the Total Due or other Fees which may become due from User, XLerate Group may (a) set-off any amounts payable to XLerate Group from amounts



it owes User, (b) retain possession of any Vehicles owned or controlled by User, (c) withhold title documents until all amounts owed by User to XLerate Group have been paid in good funds, (d) cancel the transaction to which the amount owed relates, and/or (e) charge interest on any past due payments at the rate of one and one half (1.5%) percent per month, calculated in U.S. dollars, or the maximum rate allowed by law, whichever is less. At its discretion, XLerate Group may invoice User for Fees separately from the bill of sale on a particular Vehicle rather than posting it to the Vehicle. User shall not under any circumstances stop payment on an instrument, refuse to honor an instrument or withdraw an instrument. User represents and warrants, regardless of whether User is the drawer of the check, draft, or Electronic Funds Transfer (“EFT”) that, at the time of issuance and at the time such instrument is or was presented for payment, the account upon which such instrument is drawn contains then available funds sufficient for payment of that instrument. Any instrument withdrawn or 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, a service charge up to the maximum amount allowed by law will be imposed and must be paid immediately. XLerate Group may review Purchaser’s financial position and, may at its sole discretion, impose whatever purchase or payment restrictions XLerate Group may deem necessary to protect XLerate Group’s interest, which may include but is not limited to, requiring that all purchases be made in cash or certified funds. These rights set forth above will be in addition to and not exclusive of any other remedy available to XLerate Group, whether at law or in equity. User shall pay all legal costs, including, without limitation, attorney fees, court costs and other expenses necessary for XLerate Group to collect any monies owed by User.

14. Storage Fees. XLerate Group locations may set time limits for the removal of customers’ Vehicles and may charge storage fees of \$ 25 per day for each of User’s Vehicles not removed timely. User agrees that XLerate Group (1) shall acquire a lien on any Vehicles for unpaid storage, as provided by law, (2) may refuse to release any Vehicle to User while fees are unpaid, and (3) may be authorized to resell the Vehicle to recover storage fees, as provided by law.
15. Set-off. XLerate Group is comprised of separate, affiliated auctions and companies. Without regard to the doctrine of mutuality of obligation, User agrees that any funds, monetary obligations or consigned Vehicles owing to it from any of the affiliates comprising XLerate Group or its affiliate XL Funding may be set off against any debt owed by User to any of the affiliates comprising XLerate Group or its affiliate XL Funding.
16. Financial Information Representations. User represents and warrants that the financial and other factual information presented to XLerate Group is true, complete and accurate. User authorizes a review of User’s credit history and any other history deemed necessary by XLerate Group, including, without limitation, User’s lending institution accounts. User shall notify XLerate Group immediately of any change of its principal financial lending institutions; or any other material changes in information provided to XLerate Group.
17. Grant of Security Interest and Rights upon Default. In order to secure final payment of any indebtedness whatsoever owing by User to XLerate Group , including but not limited to the Total Due on each purchased Vehicle, User hereby grants to XLerate Group a security interest in its Vehicle inventory, whether consigned or purchased, together with all additions, accessions, accessories and replacements, and proceeds thereof. XLerate Group is hereby authorized to file a financing statement on User, or to permit its affiliate, XL Funding, to do so as its agent.
18. Vehicle Identification Numbers. No Vehicles will be offered for sale without a proper Vehicle identification number plate. XLerate Group reserves the right to refuse to sell (a) any Vehicle on which the Vehicle identification number plate appears in any way altered or (b) any Vehicle not originally manufactured for sale in the United States (European or Canadian conversions). Those vehicles having a reassigned VIN plate by the State in place of the original VIN plate must be announced or will be subject to sale cancellation or Purchaser return.
19. Seller’s Duty to Deliver Certificate of Title; Payment to Seller. Unless the Blue Light announcement of “Title Attached” is made at the time of an inlane or simulcast sale, an in-lane or Simulcast Seller must deliver the certificate of title to the XLerate Group location holding the sale by the day of sale. On blue light sales, the



Seller must deliver the certificate of title within 30 calendar days unless applicable State law specifies a different time period (refer to local XLerate Group location for local requirements) or the XLerate Group location has extended the time period due to announced DMV delays in processing titles. XLerate Group is not obligated to pay Seller until Seller has delivered a negotiable certificate of title, made out to Purchaser as transferee; no title made out in the name of the XLerate Group location will be accepted. If Seller does not deliver the certificate of title timely, Purchaser shall be entitled to return the Vehicle (in as good or better condition than when purchased, with no more than 300 additional miles on the odometer, at XLerate Group's discretion) for a refund of no more than the sale price. XLerate Group's decision as to the effect of deteriorated condition and excessive miles on the amount of the refund is final. If, after 90 calendar days, Seller has not produced negotiable title and Purchaser has not returned the Vehicle, no auction title guarantee shall apply and XLerate Group shall have no duty to produce the certificate of title to the Purchaser and shall have no duty to pay Seller. Sales on OVE, OpenLane and SmartAuction are subject to the rules of those platforms as to certificates of title.

## 20. Arbitration.

- a. Policies. XLerate Group offers an arbitration service which is governed by the National Auto Auction Association's January 15, 2021 Arbitration Policy (the "**NAAA Arbitration Policy**", which can be found at [https://www.naaa.com/Policy/Policy\\_PDFs/2021\\_Arbitration\\_Policy\\_Effective\\_Effective\\_1\\_15\\_2021/NAAA\\_Arbitration\\_Policy\\_1\\_15\\_2021.pdf](https://www.naaa.com/Policy/Policy_PDFs/2021_Arbitration_Policy_Effective_Effective_1_15_2021/NAAA_Arbitration_Policy_1_15_2021.pdf)), as amended from time to time and supplemented and completed by the policies and procedures in this section (the "**XLerate Arbitration Policy**") to resolve disputes between Purchasers and Sellers. If there is any conflict between the terms of the XLerate Arbitration Policy and the terms of the NAAA Arbitration Policy, the terms of the XLerate Arbitration Policy prevail. Individual XLerate Group auctions may have their own policies supplementing the XLerate Arbitration Policy and will control according to their terms.
- b. Individual XLerate Group auctions may set limits on the mileage, model years or auction sale price of Vehicles ineligible for arbitration.
- c. XLerate Group's Right to Void Transaction. As the auction, and in order to be fair to all parties, XLerate Group reserves the right to void any transaction which it deems, in its sole discretion, to be unfair or unethical.
- d. Seller Obligations. As set out more fully in the NAAA Arbitration Policy, Seller shall fairly represent its Vehicle and correct any erroneous disclosed conditions. Seller is responsible for the accuracy and completeness of all disclosures regardless of whether relying on inspection companies, electronic data vehicle history report, or any other source.
- e. Purchaser Duties. As set out more fully in the NAAA Arbitration Policy, before bidding on a Vehicle, User is required to know the arbitration rules in place for the Vehicle. User should also inspect the Vehicle well, review all disclosed information and photographs, listen to all auctioneer announcements, and purchase a PSI when in any doubt.
- f. Standards of Disclosure. See NAAA Arbitration Policy.
- g. Conflicts Between Disclosures. Data regarding the description, condition, or history of a Vehicle may originate from several sources which may be inconsistent. Unless otherwise stated, when resolving such inconsistencies, auctioneer announcements on the block will take control, followed by the following sources of disclosure in order of priority: (1) Specific disclosures in "Announcements" section of Vehicle Detail Page, (2) Damage or conditions clearly visible in the lanes (for in-lane purchases) or in photographs of Vehicle on Vehicle Detail Page, (3) Disclosures in a condition report, (4) Disclosures in "options" section of Vehicle Details Page.
- h. Arbitration Period. XLerate Group follows the NAAA Arbitration Policy which sets firm deadlines for submitting arbitration claims (unless stated otherwise in the XLerate Arbitration Policy). The



arbitration period may be longer if Purchaser purchases a Post-Sale Inspection (See below for further details). Purchasers should be diligent and prompt in inspecting and researching purchases within the specific arbitration period. Time is of the essence in the performance of User's duties under these Terms and Conditions, including the NAAA Arbitration Policy.

- i. PSI or Seller Certification Required for Arbitration of Simulcast Purchases after Sale Day. For purchases on Simulcast, mechanical arbitration is limited to Sale day only unless Purchaser has purchased a PSI or the Vehicle is certified by the Seller pursuant to NAAA's Wholesale Certification Standard (see [https://www.naaa.com/certification/pdf/certification\\_broFINAL.pdf](https://www.naaa.com/certification/pdf/certification_broFINAL.pdf)).
- j. Upstream Sales Through OVE, OpenLane & Similar Third-Party Services. When the Seller agrees, a Vehicle may be offered for sale by XLerate Group on OVE, OpenLane or a similar third party online selling platform subject to arbitration with the Seller under NAAA Arbitration Policy (with OVE Addendum for OVE) and this XLerate Group Arbitration Policy (for OpenLane). Vehicles offered for sale by XLerate Group on SmartAuction, however, are subject only to SmartAuction's arbitration policies.
- k. Arbitration Process.
  - i. Payment. Making an arbitration claim does not delay Purchaser's duty to pay the Total Due timely.
  - ii. Making an Arbitration Claim. An arbitration Claim must be made timely with the XLerate Group location where the Vehicle was purchased and per the instructions of XLerate Group's arbitration department ("**Arbitrator**").
  - iii. Claim Review. XLerate Group will review only those issues identified in the timely-filed claim, but may communicate with Purchaser and/or Seller, to learn more about the claim. XLerate Group may refer the Vehicle to a mechanic, inspector or other external source such as a specialty shop or authorized mechanic's shop for consultation as appropriate. Any mechanical consultation expenses incurred in the claim review may be the responsibility of the losing party, in the discretion of the Arbitrator.
  - iv. Decision. Prior to ruling on the claim, the Arbitrator may attempt to mediate an agreed settlement. If none is reached, the Arbitrator will make a decision using available information. Arbitrator is not bound by electronic vehicle data histories. Arbitrator may permit either party to perform a third party inspection or repair, upon any terms Arbitrator finds just. Arbitrator's final decisions may include, at the sole discretion of the Arbitrator, the following: (1) voiding the transaction and refunding the full or partial purchase price, (2) repairing the problem at Seller's expense at XLerate Group's wholesale repair costs, (3) repairing the problem and allocate costs between Purchaser and Seller, (4) requiring partial or full reimbursement of the following direct costs: reasonable transportation costs, reconditioning and/or repair costs (excluding profit, commissions, and detail charges) or (5) finding that Seller has no liability or only partial liability. The decision of the Arbitrator is final and binding on Purchaser and Seller. Upon payment of applicable amounts and/or implementation of the Arbitrator's decision, Purchaser and Seller are deemed to release each other from all claims and demands regarding the transaction that was the subject matter of the claim.
  - v. Fees & Set-off. XLerate Group may charge Seller a Fee and/or offset and deduct arbitration amounts owed from any amounts payable by XLerate Group to Seller. XLerate Group may withhold or offset all or part of any refund or remedy to Purchaser if any transferred title is not returned, Purchaser has past due amounts owed to XLerate Group, and/or XLerate Group determines the Vehicle's condition deteriorated while in the Purchaser's possession.
  - vi. Return of Vehicle. If Arbitrator determines that the sale should be cancelled, Purchaser will follow all directions given by XLerate Group regarding return of the Vehicle. A Vehicle is not considered returned until received, inspected and approved for return by XLerate



Group. A returned Vehicle must be accompanied by a valid certificate of title and in at least as good condition as when it was sold. XLerate Group may charge User an excess mileage fee for returned Vehicles with more than 300 miles accumulated on the odometer between the time the odometer reading is recorded at the Sale and the return date. Purchaser must give XLerate Group at least 24 hours advance notice of any Vehicle it is returning unless the Arbitrator orders the return. Pending final arbitration decision and proper return of the Vehicle, Purchaser remains liable for any re-sale loss on the Vehicle and assumes all risk of loss.

- vii. XLerate Group reserves the right to deny or limit arbitration rights if Vehicle has been transported outside the United States.

21. Post-Sale Inspections. Post-Sale Inspections ("PSI") are available for purchase by Purchasers only on Green Light Vehicles and only on Sale day (at time of sale for online purchases) to confirm solely the following representations about a purchased Vehicle (automobiles and passenger trucks only): motor, transmission, differential (except Jeep), visible structural damage (e.g. frame), flood, odometer verification, prior Canadian unit, prior salvage unit, salvage title, and any single non-wearable item whose repair requires parts and labor totaling over \$600 (at XLerate Group's wholesale repair costs). Accordingly, items such as wear-able items, non-standard OEM base equipment and Advanced Driver Assist Systems are not inspected as part of a PSI. XLerate Group draws its conclusions on a good faith basis for each PSI solely from observation of the Vehicle's state as-is at the time it is inspected, data and guidance, and limited, low-speed driving and provides no information on conditions not subject to visible inspection. The criteria applied are those found in the NAAA Arbitration Policy and its repair and replacement threshold applicable to in-lane transactions. A PSI is neither insurance nor a guarantee by XLerate Group. Important further details of the PSI rules and caps may be found in local auction policies.

- a. For in-lane and simulcast purchases, if a Vehicle either (i) fails the PSI or (ii) the Vehicle passes the PSI but is timely returned for alleged defects covered by the foregoing inspected representations, XLerate Group will permit arbitration between Purchaser and Seller, as set out in the preceding section, of the foregoing representations on eligible Vehicles if a claim for arbitration is made timely within writing 7 or 14 days (Sale Day is day 1) depending on what PSI fee the Purchaser pays. Additionally, if a Vehicle fails the PSI and notice is given timely under this PSI policy, the Purchaser may elect to unwind the transaction and the auction will require the Seller to return the sale price less any sale or other fees owing to XLerate Group.
- b. The following Vehicles are not eligible for PSI's unless specified in local Auction Rules. If a PSI is nonetheless performed on an ineligible Vehicle, it is not eligible for arbitration as set out above.
  - i. Non-passenger cars and trucks, such as heavy trucks, RVs, trailers, motorcycles, etc.;
  - ii. As-Is Vehicles of any kind (whether announced under a Red Light or deemed As-Is under XLerate Group or NAAA policy),
  - iii. Vehicles with branded titles of any kind,
  - iv. sales price or estimated MMR below or above limits set by local auction location,
  - v. mileage over the limit set by local auction location
  - vi. Vehicles older than the limit set by local auction location
  - vii. TMU or miles exempt,
  - viii. Vehicles that have been removed from the XLerate Group auction location after sale,
  - ix. exotic or homemade Vehicles as identified in local auction policy
  - x. Vehicles with major modifications,
  - xi. vehicles with annual production below 4,000 units, and
  - xii. any other Vehicles ineligible under local auction policies or NAAA Arbitration Policy.
- c. The XLerate Group location's determination whether a Vehicle passes or fails the PSI is final. Vehicles that fail a PSI must be repaired or the conditions announced if re-run at Sale by the Seller.
- d. The right to arbitrate under a PSI is non-transferable and void if the Vehicle is resold during the warranty period. XLerate Group will make the final decision whether the Vehicle passes or fails the PSI (and so is eligible for arbitration).



- e. Vehicles submitted to arbitration under a PSI must have 300 miles or less accumulated on the odometer between the time the odometer reading is recorded at the Sale and the claim date and be in as good or better condition than when purchased.
  - f. In the event of a valid claim for a covered defect that was not identified by the PSI, XLerate Group reserves the right to repurchase or repair at its wholesale repair costs and will reimburse only direct expenses incurred by the Purchaser on vehicles arbitrated. The amount of reimbursement that qualifies under these guidelines will be at the sole discretion of XLerate Group and will be limited to reasonable and documented expenses at its wholesale repair cost. If the vehicle must be returned, Purchaser will follow the rules set out above in section 20 for arbitrated vehicles.
  - g. A Purchaser can also purchase a limited structural damage or mechanical inspection, or both, for a fee set by the XLerate Group location where the Vehicle was purchased at locations offering this service; but this inspection does not extend the time for arbitration or have the other rights associated with a PSI. As-Is Vehicles of any kind (whether announced under a Red Light or deemed As-Is under XLerate Group or NAAA policy) are eligible only for this non-arbitrable inspection.
  - h. XLerate Group reserves the right to modify this policy and to refuse to offer a PSI on any Vehicle at its discretion.
22. Disclaimer of Vehicle Representations and Warranties & Seller Representations. XLERATE GROUP IS NOT RESPONSIBLE FOR, NOR DOES IT REPRESENT OR WARRANT (A) THE ACCURACY OF ODOMETER MILEAGE, (B) THE INFORMATION CONTAINED IN THE ODOMETER MILEAGE STATEMENT, (C) WARRANTIES OF TITLE (EXCEPT THE LIMITED WARRANTY OF TITLE HEREIN), MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (D) LICENSE PLATES, (E) VEHICLE SERVICE OR MAINTENANCE HISTORY, (F) INFORMATION CONTAINED IN VEHICLE HISTORY REPORTS, (G) VEHICLE CONDITION OR CONDITION REPORTS, (H) YEAR THE VEHICLE WAS MANUFACTURED, (I) THE ACCURACY OF ANY MARKET INFORMATION, (J) MILEAGE AND OTHER INFORMATION PRINTED ON THE WINDOWS, (K) THE DESCRIPTION OF THE VEHICLE, (L) EQUIPMENT AND OPTIONS FOR THE VEHICLE, (M) AVAILABILITY OR VALIDITY OF FACTORY WARRANTY, (N) FITNESS OF VEHICLE FOR EXPORT, AND (O) ANY AND ALL REPRESENTATIONS AND WARRANTIES MADE BY OR ON BEHALF OF THE SELLER. AS SELLER, USER IS RESPONSIBLE FOR ALL REPRESENTATIONS CONCERNING THE VEHICLE, INCLUDING WITHOUT LIMITATION THOSE SET OUT IN (A)-(O) ABOVE. AS PURCHASER, USER IS RESPONSIBLE FOR REVIEWING ALL DISCLOSURES, ANNOUNCEMENTS AND INFORMATION RELATIVE TO A VEHICLE'S CONDITION PRIOR TO BIDDING.
23. Seller's Title Representations and Warranty. User warrants, represents and guarantees: (i) that it is the true and lawful owner – or is authorized to act for the true and lawful owner -- of any Vehicle it consigns for sale, and (ii) that it possesses and will convey a certificate of title, properly executed, valid in the state where the transaction is occurring and clear of all liens and encumbrances (except current year DMV penalties and fees in California). User will warrant and defend any Vehicle it sells at a Sale against the claims and demands of all persons whomsoever and to reimburse XLerate Group for any liabilities or expenses it incurs under its Limited Warranty as to Title, below. User further acknowledges that XLerate Group has assumed no responsibility to investigate Seller's title or to otherwise identify defects in Seller's title or title documents and makes no warranty regarding title or title documents other than as specifically stated in the following paragraph.
24. Limited Warranty as to Title. Upon full payment by Purchaser and upon delivery of the certificate of title of Vehicle to Purchaser, XLerate Group warrants title to the Vehicle to be free and clear of liens and encumbrances as, and only as, follows:
- i. This limited warranty of title applies only to stolen Vehicles and title liens. It does not cover merely technical defects which can be removed by execution of paperwork by prior owners without monetary payment.
  - ii. This limited warranty will last for a period of four (4) years from the date of sale. The amount of XLerate Group's liability under this limited warranty of title will never exceed the price of the Vehicle in this auction transaction and will be reduced by deducting from said sale price two percent (2%) on the first of





each month following the date of sale until the date of payment, with all liability of XLerate Group expiring and terminating on the first day of the 48th month after that date.

- iii. XLerate Group's limited warranty of title is expressly limited to User as the auction Purchaser of the Vehicle and is not negotiable or transferable. It does not protect against defects in the title known to Purchaser whether or not listed as exceptions on the face of the bill of sale. Purchaser agrees and understands that, if Purchaser retails a Vehicle prior to receiving clean title, Purchaser does so at Purchaser's peril, and Purchaser agrees that, to avail himself or herself of this title guarantee, Purchaser must unwind the sale to its customer and return the Vehicle to XLerate Group. If Purchaser refuses to unwind the sale to its customer and return the Vehicle to XLerate Group, this title guarantee is null and void, and XLerate Group will have no further responsibility to Purchaser.
  - iv. Whenever any claim is made by any person against the title of any Vehicle, whether by suit or otherwise, Purchaser must notify XLerate Group within five days, giving full particulars of the claim, and cooperate fully in defending any legal action and in taking any other steps to minimize possible loss. Failure to satisfy these conditions will void XLerate Group's liability under this limited warranty.
  - v. Without the prior written approval of XLerate Group, User will neither surrender possession of any Vehicle (unless required by legal process) nor voluntarily pay or acknowledge the validity of a claim.
  - vi. If XLerate Group agrees to pay a claim under this limited warranty of title, Purchaser will return the applicable Vehicle to XLerate Group and execute all necessary documents subrogating to XLerate Group its right to recover against the Seller, or others.
25. Risk of Loss; Delivery of Vehicle and Title. Risk of loss passes to the Purchaser when the hammer falls. Once User successfully bids upon a Vehicle, it is liable for all expenditures, mileage, wear, damage (including transportation damage), and all other losses to it. XLerate Group is not liable for any expense incurred by User in the event title is not delivered. XLerate Group is obligated to deliver the certificate of title only upon receiving payment in good funds. User assumes all risk of loss related to or arising from certificates of title or related documents lost, destroyed, or erroneously completed by the governmental agency processing a title, or any title lost in transit. If the Vehicle is to be exported, User is responsible for verifying that the Vehicle it purchased satisfies all export requirements of the originating country and all import requirements of the destination country. XLerate Group is not the importer or exporter, and is not responsible for supplying export or import documentation. In the event a Vehicle does not meet export requirements, User is responsible for all auction fees and any loss incurred on the resale of such Vehicle.
26. Routed Export Transactions. Any and all vehicle purchases that become export transactions shall be "routed export transactions" under section 30.3(e) of the Foreign Trade Regulations (15 C.F.R. § 30.3(e)), in which the Purchaser is acting as the Foreign Principal Party in Interest ("FPPI"). As the FPPI, the Purchaser will authorize a U.S. forwarding agent to facilitate the export of such vehicles from the United States and prepare and file any required Electronic Export Information ("EEI"). The Purchaser or its forwarding agent shall provide XLerate Group with a copy of this authorization if requested by XLerate Group pursuant to section 30.3(e)(2) (15 C.F.R. § 30.3(e)(2)). XLerate Group shall release the vehicles purchased by the FPPI through the XLerate Group's auction facilities to the FPPI's U.S. Forwarding Agent in the United States.

FPPI agrees that neither XLerate Group nor the consignors who sell vehicles through the XLerate Group's auction facilities will be the exporter under the Export Administration Regulations ("EAR") in such routed export transactions. The FPPI also acknowledges that vehicles purchased through the XLerate Group's auction facilities could, potentially, be subject to export licensing requirements. The FPPI agrees to undertake, with respect to vehicles purchased through the XLerate Group's auction facilities, the following responsibilities: (1) to determine any applicable export license requirements; (2) to obtain any required export license and/or any other required export authorization; (3) to carry out any customs formalities for the export of the vehicles; and (4) to authorize the U.S. Forwarding Agent, who will be the exporter for EAR purposes, to act on behalf of the FPPI in connection with the exportation of such vehicles and to prepare and file the EEI and any required export license applications.



27. Indemnification. USER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS XLERATE GROUP AND ITS SUBSIDIARIES, AFFILIATES, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND AS NECESSARY, OTHER USERS, 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, DIRECTLY OR INDIRECTLY, WITH ANY ALLEGED ACTION BY USER, ANY CLAIM OF BREACH OF WARRANTY OR BY A BREACH BY USER OF ANY OF THESE TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ALL CLAIMS, ALLEGATIONS, AND DEMANDS WHATSOEVER CHALLENGING THE VALIDITY OF SELLER'S TITLE OR TITLE DOCUMENTS.
28. Assumption of Risk and Adherence to Safety. USER ACKNOWLEDGES THERE IS A CERTAIN AMOUNT OF RISK INHERENT IN AUCTION ACTIVITY INCLUDING SERIOUS INJURY OR DEATH. KNOWING, OR HAVING REASON TO KNOW THESE FACTS, USER APPRECIATES SAID RISK; AND VOLUNTARILY ACCEPTS AND ASSUMES SAID RISK. USER ACKNOWLEDGES HIS/HER RESPONSIBILITY TO BECOME FAMILIAR WITH XLERATE GROUP'S POSTED AND COMMUNICATED SAFETY MEASURES AND TO STRICTLY OBEY AND ADHERE TO SUCH MEASURES AT ALL TIMES WHILE ON XLERATE GROUP'S PREMISES. USER SHALL BE ALERT, AWARE AND ACT IN A SAFE MANNER AT ALL TIMES. USER IS A LIMITED LICENSEE ON ALL XLERATE GROUP'S PREMISES, BUT SAID LICENSE DOES NOT EXTEND TO NON-COMMON AREAS OF THE PREMISES, OR WHERE ACCESS IS SPECIFICALLY LIMITED TO CERTAIN PERSONS OR PERSONNEL.
29. Release of Liability and Indemnification. BY ASSUMING THE RISK, USER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND RELEASES ITS RIGHTS (IF ANY) TO RECOVER FROM XLERATE GROUP, ITS DIRECTORS, OFFICERS, AGENTS EMPLOYEES, REPRESENTATIVES, SUBSIDIARIES, AND AFFILIATES ANY AND ALL DAMAGES, LOSSES, LIABILITIES, COST OR EXPENSES AND CLAIMS THEREOF, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, OR FORESEEN OR UNFORESEEN, THROUGH NEGLIGENCE OR OTHERWISE, WHICH MAY ARRIVE FROM, OR BE RELATED TO, BODILY INJURY, PROPERTY DAMAGE, OR OTHER OCCURRENCE ON XLERATE GROUP'S PREMISES. USER, IF A CALIFORNIA RESIDENT, WAIVES THE BENEFITS OF CALIFORNIA CIVIL CODE §1542, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." FURTHERMORE, USER AGREES TO INDEMNIFY, DEFEND, AND HOLD XLERATE GROUP HARMLESS FROM ANY AND ALL DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES, ARISING FROM CLAIMS MADE BY USER OR USER'S AUTHORIZED REPRESENTATIVES OF ANY INJURY OR PROPERTY DAMAGE OCCURRING ON XLERATE GROUP'S PREMISES EXCEPT AS PROVIDED IN SECTION 31 WHEN THE BASIS OF THE CLAIM IS THE ALLEGED PERSONAL INJURY OR DEATH OF USER OR ITS AUTHORIZED REPRESENTATIVE, AND THIS RELEASE WOULD BE PROHIBITED BY LAW OF THE STATE OF THE SALE AT WHICH THE ALLEGED INJURY OR DEATH OCCURRED, THIS PROVISION WILL NOT APPLY TO BAR RECOVERY OR TO REQUIRE USER'S INDEMNIFICATION OF XLERATE GROUP WHERE IT IS ESTABLISHED BY A COURT OF COMPETENT JURISDICTION THAT XLERATE GROUP'S NEGLIGENCE OR INTENTIONALLY TORTIOUS ACT WAS THE SOLE AND PROXIMATE CAUSE OF THE INJURY OR DEATH. IT IS OTHERWISE THE INTENT OF THE PARTIES THAT THIS PROVISION BE ENFORCED TO THE FULLEST EXTENT OF APPLICABLE LAW.
30. Limitation of Damages. NEITHER USER NOR XLERATE GROUP WILL BE LIABLE TO THE OTHER FOR (A) ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGE OR LOST PROFITS THAT RESULT FROM OR ARE RELATED TO (I) THE SALE, DISTRIBUTION OR USE OF, OR THE INABILITY TO USE, ANY VEHICLE OR (II) THE SERVICES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) EXEMPLARY OR PUNITIVE DAMAGES.
31. Xlerate Group Auto Liability Coverage. Notwithstanding release of liability terms above, Xlerate Group agrees to provide primary auto liability coverage for User while Xlerate Group employees or its designees operate non-owned User vehicles whether on the premises or over the road.
32. Records/Compliance with Laws. User will maintain legally required records concerning all aspects of any transaction. All business practices, acts and operations of User in connection with the Xlerate Group will be in compliance with all applicable federal, state and local laws and regulations.



33. User Information and Rights to Collect and Share. Subject to applicable law, User authorizes XLerate Group to investigate, gather, pull, receive, verify, share, and disclose financial, credit, and transactional information about User and its Vehicles in its discretion, including, without limitation, consumer reports, credit histories and limits, baning information, buy and sell histories, check information, collateral location and status, condition and recall information, and eligibility status ("**User Information**") from and with credit bureaus, financial institutions, trade creditors, affiliates and third parties, including without limitation AuctionACCESS®, insurance companies, other auction companies, marketing partners, and other customers, for any reason XLerate Group deems necessary, including, without limitation, assessing User's creditworthiness, collecting any outstanding debt, and negotiating intercreditor, subordination, or similar agreements; and User hereby ratifies any such prior acts. You understand that we may not verify this information and will disclose the information on an "as is" basis, and we will not be liable for any errors or omissions in the information. This authorization is in addition to any information sharing authorized in any XLerate Group privacy policy. You may opt out of allowing your consumer report (if any) to be shared or disseminated or disclosed for marketing purposes by objecting in writing to: XLerate Group, Attn: Chief Financial Officer, Three Meridian Plaza, 10333 N Meridian St, Ste 200, Carmel, IN 46290.
34. Consent to Communications. User grants XLerate Group and its agents authorization to contact User via any means, including without limitation email, text, fax, phone, artificial and pre-recorded phone messages for any purpose at any phone number, address, email address, social media, website or other means or address associated with User. You may opt out of receiving automatic, artificial or pre-recorded voice messages to your residential or cell phone numbers by opting out in writing to: XLerate Group, Attn: Chief Financial Officer, Three Meridian Plaza, 10333 N Meridian St, Ste 200, Carmel, IN 46290.
35. All Auctions are With Reserve; No Shill Bidding. All auctions at XLerate Group locations are with reserve, and the Seller reserves the right to bid through the auctioneer. Price boosting, shill bidding, or any similar other activity in which a User on its own or in concert with other bidders attempts to artificially inflate or decrease the selling price of a Vehicle, is strictly prohibited. Neither User nor any of its Authorized Users, or agents may directly or indirectly bid on any Vehicles consigned by User to the XLerate Group auction for the purposes of attempting to increase the sale price. "Self dealing" at the auction is also strictly prohibited. For purpose of this Agreement, "self-dealing" means activities by any person or entity selling or purchasing at auction in which both the Seller and Purchaser are the same or substantially-related entities, and/or share Authorized Representatives or principals, where the XLerate Group auction determines in its sole discretion that the intent and/or the result of such dealing is an artificial manipulation of the auction process to create an unfair advantage or disadvantage or to impose undue risk upon the XLerate Group or others. Notwithstanding the prohibitions set forth in this section, User understands that such activity by others is beyond the control of XLerate Group, which assumes no duty to prevent or discover such activity, and is not responsible to Purchaser or Seller for such activity by third parties. In the event User and/or its representatives are found to be engaged in such activities, XLerate Group, in its sole discretion, may suspend or permanently revoke User's purchasing/selling privileges at XLerate Group Sales regardless of whether User benefited from such activities.
36. "If" Bids. XLerate Group's auctioneers may decide to accept an "If" bid when the Seller is absent. Such an "If" bid will be binding on the bidder as a firm offer until 5 p.m. the business day following that Sale as determined by the Xlerate Group location in its discretion. Purchasers are required to sign the bill of sale on all "If" bids at the time the bid is taken, on the block or online for simulcast bids. Phone call bids (or any bid in which the Purchaser has not signed the bill of sale in-lane or online) will not be treated as firm offers and no sales agreement will be final until Purchaser confirms its bid after the Seller's acceptance. All "If" transactions are considered T/A (blue light) unless otherwise announced.
37. Off the Block Sales. If User sells or purchases a no-sale Vehicle off the block (a) Seller and Purchaser must sign a bill of sale (i.e. there is no enforceable agreement until the bill of sale is signed and delivered to XLerate Group), (b) the sale will be Red Light (As-Is) (unless Seller and Purchaser explicitly agree otherwise) and all other announcements in-lane will apply, and (c) normal buy and sell fees will be due to XLerate Group. Otherwise, off the block sales are prohibited on XLerate Group premises.



38. Changes to Terms and Conditions. XLerate Group, at its sole discretion, may amend these Terms and Conditions and other Auction Rules (“**Auction Policies**”) by posting them on its website at [Xlerategroup.com](http://Xlerategroup.com) without otherwise sending notice to User. The amended Auction Policies will be effective immediately upon posting to the XLerate Group’s website and User’s continued access and use of its AuctionACCESS® Number, AuctionACCESS® Card, or username and password with XLerate Group following such amendment and will constitute full acceptance of any such changes.
39. Choice of Law, Venue. These Terms & Conditions, and any other contract between User and XLerate Group shall be governed by the laws of Indiana, where XLerate Group maintains its corporate office. Any claim brought against XLerate Group by User may be filed only in the state or federal courts of Indiana sitting in Hamilton County, Indiana.
40. Miscellaneous. No waiver of these Terms and Conditions provisions shall be effective unless in writing and signed by XLerate Group. Any action waiving XLerate Group’s rights as to one instance or transaction shall not operate as a waiver of that right upon future instances or transactions. These Terms and Conditions may not be modified orally. If any term or section of these Terms and Conditions is held invalid or unenforceable, the remainder of these Terms and Conditions shall remain effective. Time is of the essence in the performance of User’s duties under these Terms and Conditions.