

## BCA BUYER APP

### TERMS OF USE

This page (together with any documents referred to on it) tells you the terms of use on which you may make use of the BCA Buyer App (the "**App**"). Please read these terms of use carefully before you start to use our App. By accessing the App, you indicate that you accept these terms of use and that you agree to abide by them. If you do not agree to these terms of use, do not use the App.

We are British Car Auctions Limited ("**we**", "**our**", "**us**" or "**BCA**"), incorporated and registered in the England and Wales, whose registered office is at Headway House, Crosby Way, Farnham, GU9 7XG. Our Company registration number is 00438886.

In these terms of use, references to "**you**" is a reference to the person or legal entity that has downloaded the App. If a legal entity has downloaded the App, you must procure that any users of the App use it in accordance with these terms of use.

**Acceptable use.** You may use the App only for lawful purposes. You may not use the App in any way that breaches any applicable local, national or international law or regulation or to send, knowingly receive, upload, download, use or re-use any material which does not comply with our content standards below. You also agree not to access without authority, interfere with, damage or disrupt any part of our App or any network or equipment used in the provision of the App. You agree that you will:

- not rent, lease, sub-license, loan, provide, or otherwise make available, the App or the services available through the App in any form, in whole or in part, to any person without prior written consent from us;
- not translate, merge, adapt, vary, alter or modify, the whole or any part of the App, nor permit the App or the services available through the App or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the App as permitted in these terms;
- not copy the App, or any services available through the App, except as part of the normal use of the App or where it is necessary for the purpose of back-up or operational security;
- not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the App or the services available through the App nor attempt to do any such things;
- not use the App or the services available through the App in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App or any operating system;
- not infringe our intellectual property rights or those of any third party in relation to your use of the App;
- not use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users;

- not collect or harvest any information or data from the App or our systems or attempt to decipher any transmissions to or from the servers running any services available through the App; and
- comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the App.

**Content standards.** These content standards apply to any and all material which you contribute to or upload on the App (the "**Contributions**"), and to any interactive services associated with it. You must comply with the spirit of the following standards as well as the letter. The standards apply to each part of any Contributions as well as to its whole. Contributions must be accurate (where they state facts), be genuinely held (where they state opinions) and comply with applicable law in the UK and in any country from which they are posted. Contributions must not:

- contain any material which is defamatory of any person, obscene, offensive, hateful or inflammatory, promote sexually explicit material or promote violence or promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- infringe any copyright, database right, trade mark or other right of ours or any other person;
- be likely to deceive any person or be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence or promote any illegal activity;
- be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety or be likely to harass, upset, embarrass, alarm or annoy any other person;
- be used to impersonate any person, or to misrepresent your identity or affiliation with any person or give the impression that they emanate from us, if this is not the case; or
- advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.

**Authorised Users.** We will issue each authorised user with a unique User ID and password which will be used to access the App. You must notify us of any leavers and, accordingly, we will disable the access for that user. You shall ensure that each authorised user is made aware that he or she must keep a secure password for his or her use of the App and that each authorised user keeps his or her password confidential.

**Intellectual property.** We are the owner of or the licensee of all intellectual property rights in the App and the services provided through the App, and in the material published on it (excluding your Contributions). Those works are protected by copyright laws and treaties around the world. All such rights are reserved. You may not copy, reproduce, republish, download, post, broadcast, transmit, make available to the public, or otherwise use any content on our App in any way other than such use as is expressly permitted by us.

Any material you upload to our App or data that we collect from the App will be considered non-confidential and non-proprietary, and you acknowledge and agree that we have the right to use, copy, distribute, sell and disclose to third parties any such material or data for any purpose related to our business. To the extent that such material is protected by intellectual property rights, you grant us a perpetual, worldwide, royalty-free licence to use, copy, modify, distribute, sell and disclose to third parties any such material or data for any purpose related to our business.

BCA shall indemnify you against any claim made against you for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with your use of the App, provided that: (a) we are given prompt notice of any such claim; (b) you provide reasonable co-operation to us in the defence and settlement of such claim; and (c) we are given sole authority to defend or settle the claim. In the defence or settlement of the claim, we may obtain for you the right to continue using the App, replace or modify the App so that it becomes non-infringing or, if such remedies are not reasonably available, terminate your use of the App without notice and without liability to you. In no event shall BCA, its employees, agents and sub-contractors be liable to you under this paragraph to the extent that the alleged infringement is based on: a modification of the App by anyone other than BCA, the use of the App by you or the authorised users in a manner contrary to the instructions given to you by us, or use of the App by you or the authorised users after notice of the alleged or actual infringement from BCA or any appropriate authority. This paragraph states your sole and exclusive rights and remedies, and BCA's entire obligations and liability, for any intellectual property right infringement.

**No warranties.** We do not warrant that your use of the App will be uninterrupted or error-free. We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the App may be subject to limitations, delays and other problems inherent in the use of such communications facilities. All conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these terms of use or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

**Personal Data.** You have sole responsibility for the legality, reliability, integrity, accuracy and quality of any personal data that you upload to the App (the "Customer Data"). The nature and purpose of the processing is set out in the description of the services provided through the App.

To the extent that we process any Customer Data on your behalf, we will:

- taking into account the nature of processing, take all measures required pursuant to applicable data protection laws;
- not permit any processing of Customer Data by any agent or subcontractor or other third party ("Sub-Processor") unless we have given you the opportunity to reject that Sub-Processor and provided that we enter into an agreement that contains obligations on the Sub-Processor that are no less onerous than the data protection obligations in these terms of use. Sub-Processors used by us at the date you download the App are deemed accepted by you if you do not reject within 10 days;

- only process the Customer Data on your instructions which are deemed to be processing that is necessary to provide the services through the App;
- not transfer any Customer Data to countries outside the European Economic Area (EEA) unless we have appropriate measures in place in accordance with applicable data protection laws or where we are required to transfer the Customer Data by the laws of the member states of the EU or EU law;
- ensure that access to the Customer Data is limited to BCA's personnel and authorised Sub-Processors who need access to it to supply and manage the App;
- taking into account the nature of the processing, provide assistance to you (at your sole cost) by appropriate technical and organisational measures, insofar as this is possible, in relation to any request from any data subject for: access, rectification or erasure of their Customer Data, or any objection to processing;
- notify you without undue delay if any of the Customer Data has been disclosed in breach of our data protection obligations; and
- provide such assistance (at your sole cost) as you may reasonably require in relation to the need to undertake a data protection impact assessment in accordance with applicable data protection laws and any approval of the Information Commissioner or other data protection supervisory authority to any processing of Customer Data.

#### **Liability and Indemnity.**

BCA's total aggregate liability shall be limited to £1,000.00 for any one claim in respect of any losses, damages, costs, expenses and other liabilities, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with these terms of use. We shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty or otherwise arising under or in connection with these terms of use for indirect or consequential loss, or for any loss of profit, revenue, savings, data, contract, goodwill or business.

Nothing in these terms of use shall limit or exclude our liability in respect of (i) death or personal injury caused by our negligence, or that of our employees, agents or sub-contractors (as applicable); (ii) fraud or fraudulent misrepresentation by us or our employees; or (iii) any other act or omission, liability for which may not be limited under law.

You shall defend, indemnify and hold harmless BCA against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any improper use by you or the authorised users of the App in breach of these terms of use.

**Suspension and termination.** We may suspend or end your rights to use the App at any time by contacting you if you have broken these terms in a serious way. If what you have done can be put right we will give you a reasonable opportunity to do so.

If we end your rights to use the App:

- you must stop all activities authorised by these terms, including your use of the App;

- you must delete or remove the App from all devices in your possession and immediately destroy all copies of the App which you have and confirm to us that you have done this; and
- we may remotely access your devices and remove the App from them and cease providing you with access to the services available through the App.

**General.**

- Please be aware that internet transmissions are never completely private or secure and that any message or information you send using the App or any Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- **Back-up content and data used with the App.** We recommend that you back up any content and data used in connection with the App, to protect yourself in case of problems with the App or services provided through the App.
- **Update to the App.** From time to time we may automatically update the App to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively we may ask you to update the App for these reasons. If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the App.
- **Links to other websites.** The App may contain links to other independent websites which are not provided by us. Such independent sites are not under our control, and we are not responsible for and have not checked and approved their content or their privacy policies (if any). You will need to make your own independent judgement about whether to use any such independent sites, including whether to buy any products or services offered by them.
- **Changes to these terms.** We may revise these terms of use at any time by amending this page. You are expected to check this page from time to time to take notice of any changes we make, as they are binding on you.
- **Transfer of rights.** We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract. You may only transfer your rights or your obligations under these terms to another person if we agree in writing. You may not otherwise transfer the App to someone else or other legal entity, whether for money, for anything else or for free. If you sell any device on which the App is installed, you must remove the App from it.
- **Rights of third parties.** This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- **Waiver. Even if we delay in enforcing this contract,** we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

- **Force majeure.** We will not be liable for delays caused by an event outside of our control. If our provision of the App or any services available through the App is delayed by an event outside our control then, if feasible, we will contact you as soon as we can to let you know and we will take steps to minimise the effect of the delay.
- **Governing law and jurisdiction.** These terms of use and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The English courts will have jurisdiction over any claim arising from, or related to, the use of our App and the services provided through the App.

**Support.** If you have any problems using the App, please contact us at 0344 875 3480.