

## Application form for the use of "Swiss Crash Cars" as a purchaser

Company \_\_\_\_\_

Owner / authorised  
signatory \_\_\_\_\_

Street / no. \_\_\_\_\_

Postcode / town / country \_\_\_\_\_

Telephone (business) \_\_\_\_\_

Mobile no. \_\_\_\_\_

Fax \_\_\_\_\_

E-mail \_\_\_\_\_

EU tax number \_\_\_\_\_  
(applies only to applicants domiciled in the EU)

The applicant has received and read the General Terms and Conditions of Business for the Use of "Swiss Crash Cars" (version 08.2014) and by signing this form declares its agreement to them. The applicant acknowledges that Xpert decides at its discretion whether or not to accept an application and that it is not required to justify its decision.

The user contract is concluded upon issue of the personal identification data (user name and password) and the code card and the applicant is then authorised to make use of "Swiss Crash Cars".

The use of "Swiss Crash Cars" is free of charge. In the event of a purchase, the fees and taxes as per the General Terms and Conditions of Business shall be incurred in addition to the purchase price.

Place, date \_\_\_\_\_  
Signature / Company stamp

The following documents must be enclosed with this application form:

- Certified excerpt from the commercial register (not older than 6 months)
- Certified excerpt from the debt collection register (not older than 1 month, applies only to applicants domiciled in Switzerland)
- Residence certificate of the owner / authorised signatory (only for login as purchaser with place of residence in Switzerland)

Please submit to: XpertCenter AG, Wölflistrasse 5, 3006 Bern

## General Terms and Conditions of Business for the Use of "Swiss Crash Cars"

### Part 1: General provisions

#### 1. Subject matter of the user contract

- 1.1. Together with the application form for purchasers and the advertising agreement for advertisers, the following General Terms and Conditions of Business (hereinafter "GTC") govern usage of the "Swiss Crash Cars" web-based platform (hereinafter "SCC") intended for the sale of accident vehicles or vehicle parts (hereinafter "Objects") to professional buyers domiciled in Switzerland or abroad (hereinafter "Purchasers").
- 1.2. These GTC also contain provisions for the purchase contract arising between the Purchasers and Sellers of Objects (hereinafter "Advertisers" or "Sellers") through the use of SCC.
- 1.3. Advertisers and Sellers are hereinafter referred to jointly as "Users".
- 1.4. SCC is operated by XpertCenter AG (hereinafter "Xpert") with head office in Berne, Switzerland.

#### 2. Conclusion and duration of the user contract

- 2.1. By signing the application form for Purchasers or the advertising agreement for Advertisers, the Users agree to be bound by these GTC.
- 2.2. The user contract enters into force upon dispatch by Xpert of the personal identification data (user name and password) and TAN code card and is concluded for an indefinite period of time.
- 2.3. This agreement can be terminated in writing by either party subject to a notice period of one (1) month to the end of a calendar month.

### Part 2: Use of SCC

#### 3. Issue and blocking of access

- 3.1. Access to SCC is available only to commercial users and must be requested from Xpert. Xpert decides at its discretion whether or not to grant access to SCC and is not required to justify a refusal.
- 3.2. Xpert is entitled at any time to block access to SCC either partially or in full without advance notice.
- 3.3. The User can ask Xpert to block its access at any time. Blocking shall only be lifted upon written request.

#### 4. Access to SCC

- 4.1. Use of SCC is subject to entry of a user name and password (personal identification data) and a code as per the TAN code card.
- 4.2. Users identifying themselves with these identification data are deemed by Xpert to be legitimate. Xpert and SCC shall accept bids and other legally binding communications from the User without carrying out any further authorisation checks.
- 4.3. Access to SCC can be blocked by Xpert if a user repeatedly infringes the General Terms and Conditions. Reference is also made in this context to sections 7.3, 13.4 and 15.4 of these GTC.

## **5. Due diligence of the User**

- 5.1. The User undertakes to keep its personal identification data and the TAN code card confidential and to protect them appropriately against misuse by unauthorised parties.
- 5.2. If there are reasonable grounds for suspecting that unauthorised third parties have gained knowledge of the personal identification data or TAN code card then the password must be altered immediately and/or access must be blocked.

## **6. Right of use**

- 6.1. Upon issue of the personal identification data (user name and password) and the TAN code card by Xpert the User shall be authorised to make use of SCC. The Advertiser shall accordingly be entitled to advertise Objects for sale on SCC and the Purchaser to submit bids for the purchase of advertised Objects.
- 6.2. Xpert reserves the right to change the contents of SCC at any time and/or to adapt them to technical or legal developments.
- 6.3. The User may only make use of SCC in accordance with the terms and conditions contained herein. All other forms of use and all use by other persons is prohibited.
- 6.4. While Xpert endeavours to ensure the greatest possible system security for the User, there shall be no entitlement to permanent and unrestricted access and disruptions or system shutdowns can occur in particular due to service or maintenance work. However, Xpert shall endeavour to carry out scheduled service and maintenance work outside normal working hours and to inform Users of this.

## **7. Costs of SCC**

- 7.1. The use of SCC is free of charge for the Purchaser. The Advertiser shall pay Xpert the sum agreed in the advertising agreement.
- 7.2. In the event of a purchase, the taxes and fees specified in the GTC shall be accrued by the Purchaser and Seller.
- 7.3. If access to SCC has been blocked by Xpert, renewed activation is only possible subject to the payment of a processing fee amounting to CHF 100.

## **Part 3: Operation of SCC**

### **8. Submission of bids**

- 8.1. The Advertiser advertises the Object for sale on SCC and specifies a deadline for the submission of bids. The Seller undertakes to provide truthful, non-misleading and honest details about the Object for sale.
- 8.2. After logging onto SCC, the Purchaser sees the Objects advertised and the respective bid deadlines. The Purchaser shall not be specially notified of new advertisements (e.g. by e-mail).
- 8.3. The Purchaser can submit a binding purchase offer for an Object within the specified period for the submission of bids and amend this bid several times. A negative bid can also be submitted. This comprises the disposal costs to be paid by the Seller to the Purchaser. The bid can only be validly entered in the input mask provided on SCC for this purpose. Bids submitted in other forms, in particular by e-mail, shall be invalid and disregarded.
- 8.4. No further bids may be submitted after the bid deadline.

## **9. Commitment to bid and withdrawal**

- 9.1. All Purchasers shall remain bound to their last bid for three weeks (21 days) following expiry of the bid deadline. Should the highest bidder or second highest bidder withdraw from its purchase offer during this period then it shall be liable for payment of the difference between its and the next lowest bid or the sale price ultimately achieved by the Seller.
- 9.2. The Purchaser can withdraw from its purchase offer without financial consequences in the following cases:
  - a. The Seller is unable to produce the cancelled registration document (original or duplicate) within 21 days following expiry of the bid deadline;
  - b. The purchased Object cannot be collected within 30 days following expiry of the bid deadline due to circumstances outside the sphere of influence of the Purchaser and Seller.

## **10. Conclusion of purchase contract and applicable law**

- 10.1. The Seller is not obliged to sell the Object to the highest bidder following expiry of the bid deadline. The sale takes place through the explicit acceptance of the bid by the Seller by means of dispatch of the invoice.
- 10.2. The Object shall remain the property of the Seller until payment has been made in full.
- 10.3. Swiss law shall apply to all disputes arising between the contracting parties in connection with the bid and purchase to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

## **11. Taxes, fees and customs formalities**

- 11.1. All bids shall be exclusive of value added tax. Following acceptance of the bid by the Seller, value added tax (hereinafter "VAT") shall be levied on the purchase price to the extent that this is due in individual cases.
- 11.2. In addition to the purchase price and VAT if applicable, Purchasers domiciled abroad shall pay Xpert the following fees:
  - a. Handling fee covering transport of the purchased Object to Studen, 30 days' parking fees, on-site services in Studen, procurement of proof of origin if required by the Swiss or foreign customs authorities;
  - b. Auction charge.
- 11.3. Purchasers domiciled in Switzerland shall settle any parking fees, tow-away and/or recovery costs on site. The corresponding documents/receipts must then be sent to the Seller within 30 days following receipt of the invoice. In this case the Seller shall fully reimburse these costs as long as the Purchaser has no outstanding payments for which reminders have been issued or otherwise be entitled to retain them. For documents/receipts submitted following expiry of the above-mentioned deadline, repayment shall not be made until the Seller has received the sum due from the party obliged to pay. Parking fees shall be paid by the Seller for at most five working days following the acceptance of the bid. Any further parking fees must be borne entirely by the Purchaser.
- 11.4. The current fees as per section 11.2 GTC shall be displayed to the Purchaser prior to submission of a bid on SCC. Xpert is entitled to adjust the fees to prevailing circumstances at any time. The Users shall be notified in advance of such changes in an appropriate manner – generally speaking online.
- 11.5. Any bank fees for transfer of the total amount payable shall be borne by the Purchaser.
- 11.6. The Purchaser shall be responsible for procurement of the necessary export documentation and settling the associated costs for Purchasers domiciled abroad.
- 11.7. Procurement of the requisite import documentation and settlement of the associated costs shall normally be the responsibility of the Purchaser. However, if a Purchaser domiciled in

Switzerland purchases an Object not registered or imported in Switzerland then the Purchaser shall procure the requisite import documentation and bear the costs arising from this.

## **12. No guarantee for Objects**

- 12.1. The documentation of damage including potentially non-visible damage is provided in good faith. Any repair costs quoted may be based on an estimate or incomplete calculation and can therefore differ from the actual repair costs incurred.
- 12.2. The Purchaser must bear in mind any uncertainties concerning the condition of the Object or potential damage to the Object when submitting a bid.
- 12.3. The Seller bears no liability for any lack of conformity of the purchased Object. This exclusion shall not apply if the Seller has explicitly promised the Purchaser or fraudulently concealed specific features of the purchased Object.

## **13. Collection of the purchased Object**

- 13.1. Upon acceptance of the bid by the Seller, the latter shall inform the Purchaser of the formalities concerning collection of the purchased Object. Subject to the settlement of any advance payment, the Seller shall notify the Purchaser of the location of the Object (section 15.3).
- 13.2. The Purchaser shall collect the purchased Object from this location within the period specified. Following expiry of this deadline it shall bear any parking fees or other costs incurred.
- 13.3. The Purchaser shall use the collection certificate issued to it by Xpert to identify itself on site as the Purchaser of the Object. The location shall be notified by Xpert in advance of collection of the purchased Object. Any costs incurred from empty trips and the like due to the collection certificate being forgotten shall be borne by the Purchaser.
- 13.4. If the Purchaser repeatedly misses set deadlines for the collection of Objects, its access to SCC shall be blocked. Reference is also made in this context to section 7.3 GTC.

## **14. Inspection and notification of defects**

- 14.1. The Purchaser shall inspect the purchased Object upon collection.
- 14.2. The Purchaser shall notify the company Team Consulting immediately by telephone of any optical defects. Should it not be possible to make contact by telephone or latent defects appear then all defects must be notified to Team Consulting in writing or by e-mail within five days following collection. The defects must be documented with photos and the accuracy of statements confirmed by the location manager wherever possible. To the extent that these deadlines are not met, the purchased Object shall be deemed approved and the rights of the Purchaser due to lack of conformity shall be forfeited.
- 14.3. If the Object is collected from the company Cotra AG in Studen then by way of amendment to section 14.2 the Purchaser must notify all optical defects on site to the employee responsible. Failing this, the purchased Object shall be deemed approved in the case of these defects and the rights of the Purchaser due to lack of conformity shall be forfeited.
- 14.4. In the case of notification of defects, the Purchaser may not make changes of any kind to the purchased Object except for the avoidance of an increase in damage in order to uphold its obligation to minimise loss.

## **15. Collection of purchase price**

- 15.1. The invoice amount including any VAT and fees shall be settled by the Purchaser within the period specified in the invoice. The Purchaser can commission Xpert with the collection of payment.

- 15.2. Where collection is carried out by Xpert, debt recovery proceedings shall be initiated by Xpert on behalf of the Purchaser following expiry of the reminder period. The judicial collection of the outstanding invoice amount shall then lie with the Purchaser.
- 15.3. Advance payment shall apply to Objects with a sale price in excess of CHF 7,000 (excluding VAT and fees). In this case the Purchaser shall only be notified of the location of the purchased Object and issued the collection certificate following receipt of the invoice amount.
- 15.4. Should the Purchaser fail to make payment despite being reminded then its access to SCC can be blocked together with the issue of the second reminder. This blocking shall remain in place until full settlement of all outstanding invoices. Reference is also made in this context to section 7.3 GTC.

#### **16. Offsetting prohibition**

- 16.1. The Purchaser is not permitted to offset claims against the Seller (such as paid parking fees, tow-away and/or recovery costs as per section 11.3 GTC) with outstanding invoices from the purchase of Objects.

### **Part 4: Final provisions**

#### **17. Data protection**

- 17.1. Both parties undertake to respect the provisions for the protection of personal data (in particular those of the Swiss Data Protection Act (hereinafter "DPA")). To the extent that personal data within the meaning of the DPA are processed, the parties undertake to comply with the statutory provisions governing data protection and security and to take all necessary measures in this regard.
- 17.2. The User grants Xpert the right to record, store and if necessary evaluate all login data, accesses, transactions, mutations and movements of the User.
- 17.3. By providing its data, the User authorises Xpert to process this data for marketing purposes and for existing and future customer relations, as well as for purposes explicitly stated when the data were collected or obviously connected with the provision of data.
- 17.4. Data transmitted by e-mail shall be conveyed in an unencrypted manner.

#### **18. Liability**

- 18.1. Xpert shall only bear liability for damages arising directly due to wilful or grossly negligent acts by Xpert. Liability for minor negligence is expressly excluded.
- 18.2. Xpert is not obliged to check the Objects advertised on SCC and in particular assumes no responsibility whatsoever for:
  - a. the truthful and otherwise correct configuration of the Objects advertised;
  - b. the quality, safety, legality or availability of the Objects advertised;
  - c. the ability, power and will of the Users with regard to the tending of bids, purchase, delivery, payment and other aspects of contract fulfilment.
- 18.3. Xpert furthermore accepts no liability for either direct or indirect damages arising from transmission errors, technical faults or downtimes, disruption, network overload or illegal intrusion or access by third parties, failure to spot errors in legitimisation, careless handling of personal identification data, access blocking, insufficient security and/or operability of the hardware and software deployed by the User or from other reasons associated with the use of SSC.
- 18.4. The User is aware of the fact that despite all precautionary and safety measures, data transmitted via the Internet cannot be entirely protected against intrusion by third parties and

that errors or time delays/disruptions can occur. In this respect Xpert assumes no liability for the accuracy and completeness of the data displayed, electronically transmitted or printed.

- 18.5. It is the User's responsibility to familiarise itself with the requisite security precautions concerning the hardware and software that it uses and to take appropriate measures in this regard (firewall, virus protection etc.).

## **19. Applicable law and place of jurisdiction**

- 19.1. This user contract shall be governed by Swiss law. **The exclusive place of jurisdiction shall be Berne, Switzerland.**
- 19.2. The parties shall undertake to achieve an amicable settlement before bringing a case before the courts.

## **20. Changes to the General Terms and Conditions of Business**

- 20.1. Xpert reserves the right to make changes to these General Terms and Conditions of Business at any time. Changes shall be notified to the Users in an appropriate manner – generally speaking online. Upon initial use of SCC following notification of the changes these shall be deemed accepted without reservation by the User. An objection to changes to the General Terms and Conditions of Business shall constitute termination of the agreement and hence of access to SCC.