

## **GENERAL CONDITIONS OF SALE**

### **Relating to Sales by Online Auction**

#### **1. Conditions**

These conditions together with any specialised conditions ('Special Conditions'), are the only terms and conditions subject to which Hawbery King Valuers and Auctioneers Ltd as agents for the Vendor ('Vendor') will sell goods to a purchaser ('The Buyer') and all other conditions and warranties whether expressed or implied (as are capable of unlawful exclusion) are hereby excluded. If there is any inconsistency between any of these conditions and any Special Conditions, the Special Conditions shall prevail.

By making a bid for any Lot, the person making the bid bids upon and agrees to be bound by these conditions, and further warrants that he has due authority and capacity to make the bid and binds both himself and any employer or principal to honour any contract resulting therefrom. Any bid shall be deemed to be an offer by the Buyer (a term used herein as including the bidder and any principal or employer of the bidder) to purchase any Lot tendered upon these conditions alone.

#### **2. Auctioneer as Agent**

The Auctioneers offer any Lot for sale as agent for and on behalf of the person or party from or through whom instructions for the sale have been received ('The Vendor') and not on the Auctioneers own behalf. The Auctioneer shall not be held responsible for any action or default on the part of either the Vendor or the Buyer.

#### **3. Conduct of Sale / Resolution of Disputes**

Each lot shall be sold to the highest bidder save in exceptional circumstances and in the event of any dispute arising between bidders the Auctioneer may summarily determine the dispute or immediately again offer the Lot for sale, in each case without being required to give a reason. No bid may be withdrawn after the fall of the hammer. Immediately after the fall of the hammer the Buyer may be required to pay the Auctioneer in cash or in whatever form the Auctioneer may agree 25% of the price of each Lot which they have purchased and supply the Auctioneer with whatever information the latter may require in respect of identification of the Buyer and his authority to bid. Deposits paid hereunder shall be held by the Auctioneer as a general deposit for all Lots purchased by the Buyer at the sale and any associated sales as specified in the Special Condition of Sale forming part of the catalogue.

The Auctioneer shall regulate the bidding in such manner as it may think fit, and without prejudice to the generality of the forgoing the Auctioneer may without reason refuse to accept any bid or may itself bid for a Lot on behalf of any third party. Additionally, the Auctioneer may bid on behalf of the Vendor or accept bids from the Vendor or his agent.

#### **4. Descriptions and Condition**

The Auctioneer has used its best endeavours to ensure that the description of each Lot appearing in this catalogue is accurate. The Buyer acknowledges that it is the responsibility to inspect each and every Lot and rely upon its own inspection and assessment and should make use of the period set aside for viewing to undertake this assessment.

All conditions and warranties as to the condition, quality, description or fitness for any purpose whatsoever of any Lots sold by the Auctioneer are hereby expressly excluded. All Lots are sold as seen with all faults and imperfections. Neither the Auctioneer nor the Vendor will be bound by or liable for any representation of any kind whatsoever, whensoever or howsoever made. Neither the Auctioneer nor the Vendor shall be liable for any loss or damage whether caused by negligence or otherwise of either or both of their servants or agents and without prejudice to the generality of the forgoing neither the Auctioneer nor the Vendor shall be liable for any loss of profit, business or production or similar or other loss whether direct or indirect or consequential, however caused. In the circumstances any potential buyer should rely solely and exclusively upon its own inspection of any Lot and should not treat statements made in sale particulars by the Vendor and/or Auctioneer either as representations of or facts to be relied upon. No vehicle is warranted or held up to be road worth / track worthy and no Lot is warranted or held up to be merchantable or safe for use or complying with the Health and Safety at Work etc. Act 1974 or any other act or statutory requirements for use, display or movement. The Auctioneer, his servants and agents have no authority to make such representations. NB. A sale by auction is not a consumer sale – Sale of Goods Act 1983 Section 55(7) and Unfair Contract Terms Act 1977 Section 12(2).

#### **5. Alterations**

- (a) The Vendor and/or the Auctioneer reserve the right to withdraw, consolidate or divide all or any of the Lots described in this catalogue and in the 'Added Lots List' at any time prior to the fall of the Auctioneer's hammer.
- (b) The Auctioneer reserves the right to correct any clerical, administrative or typographical errors made by itself and/or employees, Agents, Servants and others at any time.

#### **6. Risk and Title**

- (a) The title to any Lot shall remain vested in the Vendor until the full sale price for that or any other lot purchased by the Buyer, together with any storage and interest charges have been paid to the Auctioneer by way of cleared funds but the risk of damage to or loss of the Lot(s) or part Lot(s) by whatsoever cause and in whatsoever circumstances shall be transferred to the Buyer at the fall of the hammer.
- (b) Notwithstanding (a) above, the title to any Lot shall remain in the Vendor until such Lot has been removed from the premises in its entirety.
- (c) The Auctioneer warrants that he will only sell Lots which he believes to be owned by the Vendor or to which the Vendor will be able to pass a good title but should it transpire that the Vendors title to any Lot is defective or that the Vendor cannot pass good title to the Buyer, the Auctioneer shall be under no obligation to the Buyer other than to use its reasonable endeavours (short of litigation) to procure the transfer of a good title to the Buyer and to assist the Buyer in exercising any remedies that it may have against the Vendor.
- (d) Should the Vendor and/or Auctioneer receive a claim from a third party to title or possession of any Lot(s) and/or part of a Lot(s) prior to clearance of those Lots the Auctioneer reserves the right to rescind the Contract for the sale of those Lot(s) and/or part of a Lot(s) and to deal with the Lot(s) and/or part of a Lot(s) as they see fit and to refund to the Buyer any money paid by the Buyer for those Lot(s) and/or part of a Lot(s). The Buyer shall have no recourse against the Vendor nor Auctioneer for loss or damages, consequential or otherwise as a result of the contract for the sale of a Lot(s) and/or part of a Lot(s) being so rescinded.
- (e) If before title passes to the Buyer under these conditions, the Buyer nevertheless purports to sell or otherwise dispose of the Lot or any other interest therein, the Buyer shall hold the proceeds of such sale or other disposition upon trust for the Auctioneer and the Vendor jointly until title passes to the Buyer under these conditions, if at all, and in the meantime the Buyer shall not deal with, charge or dispose of such proceeds except with the written consent of the Vendor and/or Auctioneer.

#### **7. Conduct of Removals**

- (a) The Buyer is responsible for the complete removal of all Lots purchased at the sale at their risk and must provide their own labour and equipment to carry out those removals in a safe and lawful manner within the removal period set aside in the catalogue. Flame cutting, the use of explosives or any other potentially hazardous or inflammatory process shall not be permissible at the site without the written consent of the Vendor and/or the Auctioneer.
- (b) The Auctioneer requires that all equipment used by the Buyer, his agent or contractors for lifting and transporting heavy Lots which have been purchased at the Auction shall be covered by valid insurance, registration documents, driving and test certificates. This is especially the case for craneage, forklifts and all lifting equipment. The Auctioneers will have the right to inspect such documents and refuse the Buyer access to the site in the event that in the opinion of the Auctioneer, the documentation is insufficient.
- (c) Should the Auctioneer consider any damage is likely to occur, it may require the Buyer to deposit such sum of money with the Auctioneer by way of security for the costs of making good the damage caused by the removal of a Lot, as the Auctioneer may require. Should the Buyer refuse to deposit such monies, the Auctioneer may refuse the Buyer access to the premises for the purpose of collecting all or any of the Lots purchased, or rescind the sale of such Lot pursuant to Clause 8.
- (d) The Buyer hereby undertakes to ensure that any Lot it purchases will be used, moved or displayed whether at the site or elsewhere, only when it has ensured that such movement and/or display is lawful and safe.

#### **8. Accident, Damage or Loss**

The Buyer agrees to insure against and to indemnify the Auctioneer and the Vendor against any and all claims arising in respect of injury or damage to persons or property including property belonging to the Vendor and other Buyers and third parties whether real or personal caused by or in connection with the acts or omissions of the Buyer whether caused by himself, his servants, agents his principal or employer. BUYERS MUST INSURE AGAINST THESE RISKS.

If, in the Auctioneer's opinion, removal of any Lot or part thereof will be likely to cause damage to the premises, or any other damage, which the Buyer is either unable or unwilling to rectify, the Auctioneer may by notice to the Buyer rescind the sale of such Lot or permit the removal thereof from the premises to proceed subject to such conditions as it may think fit to impose pursuant to Clause 7(c).

Except in respect of death or personal injury, caused by the Vendor or Vendor's agents (including the Auctioneer) negligence, the Vendor or Vendor's agents shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any loss or damage (including loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Vendor, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Buyer.

Should a Buyer, by himself, his agents or servants cause damage in any way to the site buildings, structures or damage to or loss of any goods, fixtures and fittings, machinery or Lot thereat the Auctioneer shall be entitled to exercise a lien in respect of any and all Lots purchased by the Buyer until such damage or loss has been paid for in full, whether or not the Lot(s) or any of them have been paid for in full, such loss and damage to be assessed by the Auctioneer (Assessed Sum) whose decision shall be final and unchallengeable. The 'Assessed Sum' shall be paid by the Buyer upon receipt of an invoice from the Auctioneer and such payment shall be made forthwith, time being of the essence. In the event of non payment of the 'Assessed Sum' the Auctioneer shall have the right to sell any goods over which a lien has been exercised and use the proceeds to settle the amount noted in the 'Assessed Sum' and may pursue the Buyer for any deficiency.

The Buyer shall indemnify the Vendor and/or Auctioneer against any loss and/or damage suffered by the Vendor and/or Auctioneer which directly or indirectly is attributable to the nature of the plant, equipment, machinery or stock acquired by the Buyer whether through breakage, rust, decay, desiccation, leakage, wastage, inherent or latent defect or elemental deterioration.

The Vendor and the Auctioneer hereby severally exclude liability for any accident or injury, however arising, sustained by the person or persons who may attend the premises for the purposes of attending the view, sale or collection days or on any other business except in respect of death or personal injury caused by the Vendor and/or Auctioneer's negligence.

**9. Default by the Buyer**

Upon failure for whatsoever reason:

- (i) to pay a deposit in full as required by the Auctioneer under Clause 3; or
- (ii) to pay the purchase price in full by way of cleared funds by the payment deadline; or
- (iii) to remove any Lot from the premises in its entirety by the specified deadline for clearance.

The Vendor and/or Auctioneer will be entitled to rescind the contract forthwith without incurring any liabilities to the Buyer and, without prejudice to any claims of the Vendor and/or the Auctioneer against the Buyer arising from the breach of contract or otherwise, upon rescission the following conditions apply:

- (a) All monies deposited by the Buyer in part payment will be forfeited and may be used to settle the Vendor and/or the Auctioneer's expenses referred to in paragraph (d) below;
- (b) If the Lot(s) has/have been removed by the Buyer without the authority of the Auctioneer, the Vendor and/or the Auctioneer, including their servants or agents may enter the premises of the Buyer to recover such goods;
- (c) Lots may be resold or otherwise disposed of by the Auctioneer in such manner as they feel appropriate at their sole discretion and any deficiency arising upon the resale or disposal together with expenses incurred, shall be due as a debt from the Buyer. Neither the Auctioneer nor the Vendor shall be liable to account to the Buyer in the event of a resale at a higher price than the price contracted to be paid by the Buyer;
- (d) The Buyer will be responsible for the specified time for final clearance, for all losses and expenses incurred by the Vendor and/or Auctioneer including storage, security and removal and clearance expenses, the cost of reselling or disposing of uncleared Lots, and sales commission including buyers premium in respect of the original sale.
- (e) If because the Buyer has failed to remove any lot by the time specified in clause 9(iii) above (or in any written extension granted by the Vendor and/or Auctioneer) the Vendor is unable to give vacant possession on disposing of or relinquishing any interest in the premises from which the Lot should have been removed, the Buyer shall compensate the Vendor for any loss resulting.

**10. Governing Law**

These conditions and any Special Conditions of sale shall be construed in accordance with and governed by English Law, save in respect of sales in Scotland and Northern Ireland which shall be construed in accordance with and governed by Scottish and Northern Ireland Law respectively.

**11. Dangerous Substances**

It is expressly brought to the Buyers attention (successful or otherwise) that certain types of plant and/or main service installations could contain blue or white asbestos, dangerous chemicals etc. which if not handled correctly during the removal from the site could be in breach of the Health and Safety etc. Act 1974 sections 2-9, or any other current legislation regulating the use of such substances in a working environment. The Buyer shall ensure that it complies with current health and safety regulations and employ specialist licensed contractors where necessary.

**12. Entry to Sale Site**

The Auctioneer reserves the right to control admission to the sale site, grounds and buildings and to refuse access to any party without being required to state a reason.

**13. Furniture and Furnishings (Fire Safety) Regulations 1988**

All Lots sold which may fall within the scope of this Act are sold on the basis that the Vendor does not offer them for sale as being in a condition suitable for domestic use. Buyers should therefore ensure that such Lots or part Lots comply with the above Regulations prior to supplying them for domestic use.

**14. Indivisible Loads**

Successful Buyers must obtain the necessary permission (ie. Police, Ministry of Transport, Local Authority) to transport off site long/wide loads within sufficient time prior to the commencement of clearance of those items, in order to comply with the deadline for clearance as stated in the catalogue or as specifically agreed in writing by the Auctioneer and/or Vendor.

**15. Delay in or Non Delivery of Lots**

Neither the Vendor nor Auctioneer shall be responsible for a delay or failure to deliver Lots to a Buyer due to factors outside the control of the Vendor or its agents (including the Auctioneer) such as industrial action, strike, power failure, act of God or other obstacle to normal delivery. Neither the Vendor nor Auctioneer shall be required to expend monies or take legal action to overcome such obstacles to normal delivery.

**16. Insolvency**

If before title to any Lot has passed to the Buyer thereof, being an individual, dies, enters into a composition or arrangement for the benefit of his creditors or has a Receiving Order in Bankruptcy made against it or, being a body corporate, has a Receiver, Administrator or Administrator Receiver appointed or enters into liquidation or enters into a composition or an arrangement for the benefit of its creditors, then the contract for sale of such Lot shall be automatically and without notice rescinded unless the Auctioneer elects otherwise within 2 working days of receipt of written notice of such an event. Such notice to be despatched by Recorded Delivery post to the offices of the Auctioneer as stated in the catalogue and noted below at Item 19. Upon rescission, any deposit paid by the Buyer shall be forfeit and the Auctioneer shall be entitled to resell the goods without any right of compensation to the Buyer and make good any losses occasioned by the Vendor out of proceeds. Any shortfall shall be a debt due to the Vendor by the Buyer.

**17. The Consumer Protection Act 1987**

No Lots in this sale are offered for sale as new.

**18. Oil/Liquid/Waste Removal**

Any fluids, sediments and solids in Lots and/or remaining on/in machines at the time of purchase are the responsibility of the Buyer and must be removed from site in their entirety to conform with 'COSHH' (Control of Substances Hazardous to Health) Regulations. Where waste materials are removed all work must be undertaken by an approved and licensed contractor.

**19. Address for Notices**

Hawbery King (Valuers & Auctioneers) Ltd,  
Unit 12 Hertford Industrial Estate,  
Caxton Hill,  
Hertford,  
Herts  
SG13 7NF