

# Machinery, Plant and Equipment Sales

## Conditions of Sale - Buyers

### 1. DEFINITIONS

**1.1** In these conditions the following meanings apply unless inconsistent with the context:

“Auctioneers” means Kivells.

“Commission” means the commission charged on the sale of Lots to Sellers and Buyers as notified on Entry Forms, Auctioneers’s website, Catalogue or announced.

“Conditions” means the standard terms and conditions of business set out in this document. Any sale specific conditions will be set out in a separate statement of special conditions as notified on Entry Forms, Auctioneer’s website, Catalogue or announced.

“Lots” means all machinery and all other items sold or intended to be sold in accordance with these conditions and listed on an Entry Form as goods or items.

“Purchaser” / “Buyer” means a person, firm or company that purchases Lots by Auction, Tender or Private Treaty.

“Seller” means a person, firm or company that puts forward Lots intended to be sold at the sale.

“Bidder” means a person, firm or company that makes a bid.

“Entry Form” means the form supplied by the Auctioneers to be completed and signed by the Seller describing the lots to be sold.

“Sale” means a sale of Lots by Auction, Private Treaty or Tender organised by the Auctioneers.

“Hammer Price” means the price at which a lot is knocked down at, net of VAT, Commission, Buyers Premium, Dismantling or Removal costs and any other charges.

“Reserve Price” means the minimum price set by the Seller, in writing, or the Auctioneer that a Lot can be sold for at the sale.

“Sale Day” means the day fixed by the Auctioneers for an auction in which a particular Lot is entered.

“Saleground” means the venue where the Sale is taking place or the Lots are located.

“Auction” means Live or Online and whether conducted independently or simultaneously.

“Buyers Premium” means a Commission payable by The Buyer to the Auctioneer. The Auctioneer, when acting as Agent for The Seller, may also receive commission from The Seller.

“Catalogue” a list of some or all of the lots together with these General Conditions and any Special Conditions.

“Deposit” a sum of money requested by the Auctioneer to permit bidding or allow removal.

“Sale” the sale of any lot by Auction, Private Treaty or Tender.

“VAT” value added tax chargeable under English law.

“Vehicle” any self propelled machine to include Cars, Lorries and Tractors.

“Working Day” means Monday to Friday 8.30 am to 5pm.

**1.2** Except where the context otherwise requires words denoting the singular include the plural and vice versa; words denoting persons include corporations and vice versa.

**1.3** References to any particular legislation or regulation directive include any amendment and updates.

## **2. STATUS OF CONDITIONS OF SALE**

**2.1** Any person attending the Sale is deemed to have read, accepted all and bids on the basis of these Conditions.

**2.2** The Auctioneers may add to or supersede these Conditions in whole or part with special conditions applicable to a specific Sale or Lot which will be in any catalogue, announced at the time of Sale verbally or on The Auctioneer's website.

**2.3** No employee or agent of the Auctioneers has any authority to vary these Conditions.

## **3. DETAILS OF BUYERS**

**3.1** In order to bid all Buyers are required to register before the auction, at the Auctioneers Office or as otherwise advised by The Auctioneers. All Buyers unknown to the Auctioneers will be asked for two forms of identification. The Auctioneers reserve the right to request a deposit ahead of any purchase or during sale proceedings.

## **4. ENTRY TO THE SALEGROUND**

**4.1** Any person entering the Saleground does so at their own risk and must comply with the requirements of all health and safety notices.

**4.2** The Auctioneers reserve the right to refuse admission to any person or vehicle into the Saleground without giving reason.

**4.3** No vehicle will be allowed in the Saleground during the sale without the express permission of the Auctioneers.

**4.4** All persons entering the Saleground are hereby given notice that there are significant risks due to the type and display of lots. Caution should be exercised and children must be fully supervised at all times.

**4.5** Any incidents or accidents on the Saleground should be reported to The Auctioneers office immediately.

**4.6** Permission from the Auctioneers is required ahead of starting powered equipment or machinery.

**4.7** The maximum speed in the Saleground is 5 mph.

## **5. INSPECTION OF LOTS**

**5.1** Buyers should satisfy themselves prior to making bids as to the condition of any Lot and should rely on their own judgement as to whether the Lot accords with its description. All Lots are sold with all faults and imperfections and errors of description. All statements are the Auctioneer's or Seller's opinion and are not statement or representations of facts. Neither the Auctioneers, their servants or agents are responsible for errors of description or for the genuineness or authenticity of any Lot. No warranty is given by the Auctioneers, their servants or agents or by any Seller to any Buyer in respect of any Lot and any express or implied conditions or warranties are excluded to the fullest extent permitted by law.

## **6. PAYMENT AND NON PAYMENT**

**6.1** All Lots must be paid for on the day of the Sale by the Buyer prior to any removal or consolidation unless alternative arrangements have been agreed with the Auctioneers. Any payment is to be by a means approved by the Auctioneers and include the Buyers Commission and VAT.

**6.2** All cash transactions must be in £GB pounds and the Auctioneers will not accept more than the equivalent at the time of the Sale £GB pounds of fifteen thousand euros at any one Sale in order to comply with the Money Laundering Regulations 2007.

**6.3** Should a Buyer default on a payment the Auctioneers reserve the right to re-sell the Lot and to charge the Buyer for any reasonable expenses and loss incurred by reason of the failure of the Buyer to complete the purchase and to retain any profit that may arise from that resale. If the price achieved on resale is less than Hammer Price together with any expenses arising the deficit shall be due as a debt from the original Buyer of the Lot.

**6.4** The Auctioneers reserve the right to charge the Buyer interest on any payment outstanding from three Working Days after the day of the Sale together with any reasonable debt recovery charges as prescribed for commercial debts by the Late Payment of Commercial Debts (Interest) Act 1998 as amended.

**6.5** If the Auctioneers have paid the Seller the Sale Proceeds due for a Lot before the Buyer has paid the Auctioneers in full for the Lot then the Auctioneers shall have a lien on the Lot until the outstanding amount is paid by the Buyer to the Auctioneers.

**6.6** In the event of any sale by the Buyer of a Lot before full payment has been made the Buyer shall hold the proceeds of such sale on trust for the Auctioneers to discharge the lien referred to above.

## **7. AUCTIONEERS' RIGHT TO ANNUL SALES**

**7.1** In the event of any dispute or refusal to pay or of non-payment on the part of the Buyer, the Auctioneers may, entirely at their discretion, annul and cancel the sale of such Lot or Lots.

## **8. BUYERS COMMISSION/PREMIUM**

**8.1** All Lots will be subject to a Buyers Commission / Premium whether sold by auction, by private treaty or tender.

**8.2** VAT at the standard rate will be charged on all commissions.

**8.3** Buyer shall pay Commission to the Auctioneers at the following rates:-

- 10% on any single lot up to and including £2000
- 5% on any single lot over £2000

**8.4** Commission at the rate specified shall be Payable by the Buyer on all Lots sold privately at the Saleground.

## **9. VALUE ADDED TAX ON PURCHASE PRICE AND BUYERS COMMISSION / PREMIUM**

**9.1** Where applicable VAT at the statutory prescribed rate will be charged in addition to the bid price.

**9.2** Purchasers from overseas European Union member states shall supply the Auctioneer with their VAT / FISCAL number at the time of purchase to enable the Auctioneer to invoice purchased lots correctly. In the event of non-compliance with this condition the Auctioneer will charge VAT at the prescribed UK standard rate in addition to the hammer price of all relevant lots.

**9.3** Overseas purchasers from non European Union countries will be required to pay a "Deposit" equal to the United Kingdom standard rate of VAT in addition to the hammer price. Provided that within three months of the date of the sale, such overseas purchaser delivers to the Auctioneer an appropriate Bill of Lading or Certificate of Shipment as proof of export, the 'VAT Deposit' will be remitted to the vendor.

**9.4** VAT will be charged on the buyer's commission / premium.

## **10. RESERVE PRICE AND BIDDING**

**10.1** The Auctioneers and/or the Seller reserve the right to set a Reserve Price for any Lot and withdraw that lot in the event that the highest bid does not meet the reserve.

**10.2** The Seller may bid for any Lot either personally or through the Auctioneers or through any other person only up to the reserve price and may withdraw any Lot at any time before the sale of such Lot.

**10.3** The Auctioneers may without giving any reason refuse to accept bidding off any person. In the case of a dispute as to any bid, the auctioneers may forthwith determine the dispute or put up the Lot again or withdraw the Lot.

**10.4** Bids shall be made exclusive of any VAT or Commission/Buyers Premium, Dismantling or Removal costs which may apply.

**10.5** The Auctioneers shall have absolute discretion without giving any reason:

- (a) to refuse any bid
- (b) to divide any Lot
- (c) to combine any two or more Lots
- (d) to withdraw any Lot from the auction, and
- (e) in case of dispute, to offer any Lot for sale again.

## **11. AUCTIONEERS AS AGENT FOR SELLER**

**11.1** The parties to the contract of sale are the Seller and Purchaser.

**11.2** The Auctioneers sell as Agent for the Seller and as such are not responsible for any default by the Seller or Purchaser.

## **12. RISK**

**12.1** Once the hammer falls on the Lot any risk and responsibilities immediately pass to the Buyer. The Buyer is advised to effect insurance immediately.

### **13. REMOVAL OF LOTS FROM SALEGROUND**

**13.1** Lots may not be removed from the Saleground without a pass for the removal of Lots. Passes can be obtained from the Auctioneers office. All Lots must be checked out by the Security Staff.

**13.2** All Lots purchased must be cleared from the Saleground within the timeframe and the dates set out in the Special Conditions of Sale, or as notified by any Auctioneers announcement either verbally or on the Auctioneers website unless alternative arrangements have been made with the auctioneers.

**13.3** Any Lot which (without the express written consent of the Auctioneers) has not been collected within 10 working days from the day on which it was sold will be deemed to be abandoned and the auctioneers will be entitled to dispose of such abandoned Lots at their unfettered discretion. Any monies arising from such disposal(s) will be paid to and retained by the Auctioneers.

**13.4** The Buyer undertakes to comply with all Health and Safety regulations in loading and transporting any Lot from the Saleground.

**13.5** The buyer has no right to anything other than what is described in the auction catalogue.

### **14. EXCLUSION OF LIABILITY**

**14.1** The Auctioneers shall not be liable for any expense, loss, claim or proceedings in any respect of any loss or damage whatsoever to any property real or personal (including all Lots which remain at the Sellers risk until risk passes to the Buyer) whether incurred before, during or after the Sale.

**14.2** The Auctioneers shall not be liable for any expense, loss, claim or proceedings in respect of personal injury to or death of any person arising out of or in the course of or caused by the Sale, except to the extent that the same is due to the negligence of the Auctioneers, their servants or agents. In the event The Seller or The Auctioneer gives assistance to the Buyer in connection with any removal, such assistance is given entirely at the Buyer's risk

**14.3** The Buyer will indemnify and keep indemnified the Seller and The Auctioneer against all liability, loss, damage, injury or death howsoever and by whomsoever caused to the Saleground or anything or person therein or thereupon arising from or in the course of the removal of the Lots.

**14.4** All lots sold shall be the sole responsibility and at the risk of the Buyer from the fall of the hammer/acceptance of the highest bid, even if the Seller or the Auctioneer move the Lots from the Saleground. The Buyer will indemnify and keep indemnified the Seller and the Auctioneer against all liability, loss, damage, injury or death howsoever and by whomsoever caused to the Saleground or anything or person therein or thereupon arising from or in the course of the removal of the Lots.

### **15. INSPECTION OF LOTS**

**15.1** All Lots are sold with all faults and imperfections and errors of description. Buyers should satisfy themselves prior to the sale of the Lots as to the condition of each Lot and should exercise and rely on their own judgement as to whether the Lot accords with its description. Neither the Auctioneers, their servants or agents are responsible for errors of description or for the genuineness or authenticity of any Lot. No warranty is given by the Auctioneers, their servants or agents or by any Seller to any Buyer in respect of any Lot and any express or implied conditions or warranties are excluded to the fullest extent permitted by law.

## **16. COMPLIANCE WITH ROAD TRAFFIC ACTS AND HEALTH & SAFETY AT WORK ACT 1974**

**16.1** The Buyer of any vehicle or trailer is responsible for complying with all legal requirements as to the construction and the use of such vehicle or trailer and for obtaining all certificates, permits or other authorisations necessary before such vehicle or trailer can be used on the road.

**16.2** The Buyer of any Lot is responsible for complying with all legal requirements as to the safe use of the Lot purchased at the Sale and shall ensure compliance with all relevant legislation relating to the safe use of Lot. It should be assumed that all lots are used and are of an age and type that means they are not in perfect working order. They may not comply with current health and safety legislation and may have faults not expressly referred to in the catalogue or the other information that may be available from the Auctioneers.

**16.3** The Auctioneer and the Seller do not represent any Lot sold by Auction as being in a condition which makes them suitable for domestic use. Despite the above, should Buyers intend to supply any Lots for domestic use, they should ensure that the Lots comply with the requirements of the Furniture and Furnishings (Fire Safety) Regulations 1988 or any other similar law.

**16.4** Certain types of plant and machinery and ancillary equipment can contain hazardous materials, chemicals, etc. Buyers must ensure that the removal of any Lot containing such hazardous materials, chemicals, etc. from the Saleground is carried out in accordance with the Health and Safety at Work Act 1974 and Control of Substances Hazardous to Health Regulations 1988 (COSHH) and any other relevant Act of Parliament, Regulations or relevant Legislation covering such substances.

## **17. RESERVATION OF TITLE**

**17.1** If the Auctioneers allow the Buyer to remove the Lot from the Saleground before the Buyer has made full payment for the Lot then title to the Lot shall remain vested in the Seller.

**17.2** If the Auctioneers pay the Seller the price of the Lot before the Buyer has paid the price to the Auctioneers, title to the Lot shall pass to the Auctioneers and shall remain with the Auctioneers until full payment has been made by the Buyer to the Auctioneers, when title shall pass to the Buyer.

**17.3** The Buyer shall until payment has been made in full keep the Lot in good marketable condition and readily identified and shall indemnify the Seller or the Auctioneers as the case may be for any damage.

**17.4** Ahead of any transfer of ownership to the Buyer, the Seller or the Auctioneers (as the case may be) including the Auctioneers acting as agents for the Seller, shall have the right to enter upon the Buyer's property or any storage facility for the purposes of recovering the Lot.

## **18. GOVERNING LAW AND JURISDICTION**

**18.1** All contracts entered into between the Purchaser and Seller and between either of them and the Auctioneers on the basis of these standard terms and condition of business are governed by the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts.