

GENERAL CONDITIONS OF SALE

1. Application of these General Conditions

- 1.1 In these general conditions the expression "the Auctioneer" includes his employees and agents and any person to whom conduct of the Auction is delegated under clause 5.11 below.
- 1.2 These General Conditions apply to every Auction of Plant and Machinery, Chattels, Trade Stocks and Vehicles conducted by the Auctioneer and to any Lot offered for sale in the Auction whether that Lot includes property fixed to land or not fixed to land or any other personal property.
- 1.3 If these General Conditions have not previously been accepted by a person attending or bidding at an Auction, bidding for any Lot in the Auction shall be deemed to be an acceptance by the Bidder of these General Conditions.
- 1.4 To the extent that these General Conditions are inconsistent with any special conditions set out or referred to in the Auction Catalogue or announced at the Auction, the special conditions shall prevail.
- 1.5 These General Conditions shall be governed construed and enforced in accordance with the law of England, but:-
 - (a) if the Auction is held in Scotland, in accordance with the law of Scotland;
 - (b) if the Auction is held in Northern Ireland, in accordance with the law in Northern Ireland.

2. The Seller's Instructions and Warranties

- 2.1 The Seller warrants that:-
 - (a) to any Lot offered for sale he will be able to pass good and unencumbered title free from third party claims;
 - (b) any Lot offered for sale may lawfully be sold;
 - (c) the premises where the Auction is to be held (if not the Auctioneer's premises) will be safe for that purpose and that it will be lawful to hold the Auction there.
- 2.2 If the Seller's instructions are given by the Seller's agent, the Seller's agent warrants that he has the Seller's authority:-
 - (a) to instruct the Auctioneer;
 - (b) to give the warranties set out in clause 2.1 above;
 - (c) to instruct the Auctioneer to act in accordance with these General Conditions and any special conditions.

3. The Auctioneer's Remuneration

- 3.1 The Auctioneer's remuneration shall be such as has been agreed between the Seller and the Auctioneer.
- 3.2 The Auctioneer may deduct his remuneration from monies received from Buyers before accounting to the Seller for the balance.

4. Bidding on behalf of Another

- 4.1 Unless the Auctioneer has previously acknowledged in writing that the bidder bids as agent on behalf of a named principal, every bidder shall be taken to bid on his own behalf as principal.
- 4.2 If the Auctioneer has earlier acknowledged in writing that the Bidder bids as agent on behalf of a named principal, the Bidder warrants that he has the authority of his principal to make each bid he makes.

5. Conduct of the Auction

- 5.1 The Auctioneer offers each Lot as agent of the Seller and not as principal unless otherwise indicated in the Auction Catalogue.
- 5.2 Any Lot may be subject to a reserve price unless otherwise indicated in the Auction Catalogue.
- 5.3 The Seller or his representative or the Auctioneer on his behalf may bid for any Lot unless otherwise indicated in the Auction Catalogue.
- 5.4 The Auctioneer may at any time before the fall of the hammer withdraw or divide any Lot or combine any Lots.
- 5.5 With the previous consent of the Seller, the Auctioneer may sell any Lot by private sale before or after the Auction.
- 5.6 The Auctioneer may require any Bidder to give his name and address and proof of identity before accepting a bid.
- 5.7 The Auctioneer may reject any bid at his sole discretion and without being required to give a reason.
- 5.8 The Buyer shall be the person who made the highest bid before the fall of the hammer or such other person as the Auctioneer may declare to be Buyer without being required to give a reason.
- 5.9 The Auctioneer may decide whether there is a dispute between Bidders, may summarily determine the dispute or immediately again offer the Lot for sale, in each case without being required to give a reason.
- 5.10 The Auctioneer shall in every other respect decide how the Auction is to be conducted and without being required to give a reason.
- 5.11 The Auctioneer may in his sole discretion delegate to a person whom he believes to be competent the conduct of the Auction in accordance with these General Conditions

6. After the Sale

- 6.1 Upon the Auctioneer declaring any Lot sold, the buyer shall immediately:-
 - (a) give the Auctioneer his name and address and if requested his proof of identity;
 - (b) identify any person on whose behalf he has bought;
 - (c) pay to the Auctioneer if requested a deposit of up to 50 per cent of the price.
- 6.2 Within the time specified in clause 6.3 below, the Buyer shall pay the following sums to the Auctioneer in full:-
 - (a) the balance of the price of all Lots purchased together with any VAT due;
 - (b) the value as summarily determined by the Auctioneer, whose determination shall be final and binding, of all or part of any Lot or of the premises where the Auction is held which has been damaged or destroyed by the Buyer or his principal or agent.
- 6.3 The time for complying with clause 6.2 above shall be the time specified in the Auction catalogue or if no time is specified there, 4pm on the next working day, and in every case time shall be of the essence.
- 6.4 The Auctioneer may at any time in his sole discretion grant the Buyer an extension of time for complying with clause 6.2 above, in which case the Buyer shall pay the Auctioneer in full before moving or removing the Lot the interest on any unpaid sums at a rate of 5 per cent above Bank of Scotland base rate in force from time to time.
- 6.5 Until the Buyer has complied with clause 6.2 above:-
 - (a) title to any Lot bought shall not pass to the Buyer;
 - (b) the Lot shall be at the Buyer's risk;

- (c) the Auctioneer shall have a lien over any Lot bought by the Buyer in the Auction;
- (d) if the Buyer effects or purports to effect a resale or any other disposition of all or part of the Lot, the Buyer shall hold the proceeds of resale or other disposition on trust for the Auctioneer and Seller.

- 6.6 On written request by the Buyer the Auctioneer shall provide a VAT invoice in proper form, if appropriate.

7. Removal of the Lot bought

- 7.1 The Buyer may not remove any Lot he has bought until after the end of the Auction.
- 7.2 The Buyer may not remove any Lot until the Buyer has paid the sums specified in clause 6.2 above in full for every Lot he has bought.
- 7.3 After paying the sums specified in clause 6.2 above, the Buyer must remove the Lot bought by the time specified in the Auction Catalogue or if no time is specified there, 5pm on the next working day, and in every case time shall be of the essence.
- 7.4 The Auctioneer may at any time at his sole discretion and on terms specified by him grant the Buyer an extension of the time specified in clause 7.3 above.
- 7.5 If the Lot bought is or includes a motor vehicle, no warranty is given that the vehicle may safely or lawfully be driven on the road.
- 7.6 When removing any Lot the Buyer:-
 - (a) is responsible for detaching any Lot fixed to land and must do so safely and lawfully and must not use flame cutters, explosives or any other dangerous equipment or process without previous written permission signed by or on behalf of the Auctioneer;
 - (b) must use safe and lawful means of removing the Lot;
 - (c) shall indemnify the Auctioneer and Seller against any loss damage legal or other expenses and any claim arising from the detaching of the Lot or its removal.
 - (d) shall have insurance in respect of such indemnity and shall on request produce to the Auctioneer a receipt for the last premium due or other sufficient evidence that such insurance has been effected and remains in force.

8. Default by the Buyer

- 8.1 If at any time the Buyer has failed either to pay the sums specified in clause 6.2 above in full by the expiry of the time specified in clause 6.3 above (or any extension granted under clause 6.4 above), or to remove any Lot by the time specified in clause 7.3 above (or any extension granted under clause 7.4 above) the Auctioneer may rescind the Sale of that Lot, in which case any deposit shall be forfeit, and that Lot may be resold by auction or privately.
- 8.2 If the Auctioneer has rescinded the sale but the Buyer has removed the Lot bought, the Auctioneer shall be entitled without previous notice to enter upon any premises where he believes the Lot to be and remove it.
- 8.3 If the Auctioneer has rescinded the sale and the Lot has been resold, the Buyer shall make good any deficiency, namely:-
 - (a) the sale price less the resale price;
 - (b) the costs of and incidental to resale.
- 8.4 If because the Buyer has failed to remove any Lot by the time specified in clause 7.3 above (or any extension granted under clause 7.4 above), the Seller 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 Seller for any loss resulting.

9. Liabilities and Indemnities

- 9.1 The Auctioneer warrants that he believes that the Seller of each Lot is able to pass good title, and if the Seller is not able to do so, the Auctioneer shall use his reasonable endeavours to assist the Buyer in obtaining good title and in pursuing any remedies the Buyer might have against the Seller, but the Auctioneer shall not be bound to initiate litigation and shall not be under any other obligation to the Buyer.
- 9.2 Every Lot is sold as seen and where lying. The Purchaser will be deemed to have carefully inspected, prior to bidding, any Lot he intends to purchase.
- 9.3 No Lot is sold as comprising or including any new goods.
- 9.4 The Auctioneer neither has nor professes any expert or other knowledge of any Lot sold and is hereby excluded any liability the Auctioneer might otherwise incur and any right or immunity the Buyer might otherwise possess in respect of any conditions warranties or representations relating to the condition of any Lot sold or the merchantable quality of the Lot or its fitness for the particular or any purpose for which it is or may be required whether such conditions warranties or representations are expressed or implied in the Auction Catalogue or are the subject of oral or written statements made by or on behalf of the Auctioneer or any other person before or in the course of the Auction.
- 9.5 No liability shall attach to the Auctioneer either in contract or in tort for loss, injury or damage legal or other expenses sustained by the Seller, any Bidder, the Buyer or any other person by reason of:-
 - (a) any defect in any Lot sold, whether or not such defect be latent or apparent on examination;
 - (b) any defect or danger of the premises where the Auction is held;
 - (c) any alleged failure of the Auctioneer to properly advertise the Auction or to seek or obtain expert legal advice with regard to any Lot offered for sale or its reserve price;
 - (d) any act or omission of the Auctioneer in the conduct of the Auction or after the Auction;
 - (e) any act or omission of any person other than the Auctioneer.
- 9.6 The Seller shall indemnify the Auctioneer in respect of any claims made by another or third party for any loss injury damage or legal or other expenses referred to in clause 9.5 above.
- 9.7 The Auctioneer shall not be liable to indemnify the Seller or any Bidder or the Buyer in respect of any claims made by another or third party for any loss injury damage or legal or other expenses referred to in clause 9.5 above.
- 9.8 Clauses 9.3 to 9.7 shall not be valid insofar as prohibited by statute.
- 9.9 In no circumstances shall the Auctioneers be liable for any consequential damage.

10. Waiver

- 10.1 No indulgence shown by the Auctioneer shall prevent the Auctioneer or the Seller from subsequently insisting upon their respective rights and remedies.
- Prospective export purchasers must declare their intention to export at point of registration and complete a separate registration form available from Clarke Fussells office. A VAT deposit equal to the amount of VAT payable may be taken and held by Clarke Fussells until satisfactory proof of export is received.



**CLARKE
Fussells**

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SPECIAL NOTES & CONDITIONS

(to be read in conjunction with the General Conditions of Sale)

VIEWING Strictly by appointment with the Auctioneers.

REGISTRATION Prospective purchasers must register and obtain a buyer's number when entering the site on Sale Day in order to be a successful bidder. **A REQUIREMENT OF SUCH REGISTRATION WILL BE PHOTOGRAPHIC AND PROOF OF ABILITY TO PAY FOR POTENTIAL PURCHASES, (PASSPORT, DRIVING LICENCE).** The Auctioneers reserve the right to refuse admission.

Persons under the age of 16 will not be allowed on site. Please note that as an industrial site, the premises may have hazardous areas and attendees must exercise due caution when walking around. Smoking is prohibited everywhere on site.

PAYMENT:

ALL INVOICES MUST BE SETTLED IN FULL PRIOR TO COLLECTION.

UNLESS AGREED PRIOR IN WRITING THE ACCEPTABLE METHODS OF PAYMENT ARE AS FOLLOWS:

Cheque payment - Only with prior approval and if accompanied by a bank guarantee letter.

Bank Transfer - Same-day 'Chaps' transfer ONLY. We do not accept BACS.

Debit/Credit card - Please note there is a 3% fee on credit card payments. We do not accept American Express.

Cash - Payment in cash may be paid directly into our account. Due to money laundering regulations cash payments will only be accepted up to a maximum of £1,000. **WE WILL NOT ACCEPT CASH ON COLLECTION.**

Please note that export purchasers will be required to lodge a deposit prior to bidding.

Purchasers wishing to pay by Telegraphic Transfer/Chaps should remit funds to Bank of Scotland Sort Code 12-05-77 Account No. 06 04 07 60 in the name of Clarke Fussells Partnership. Transfers must be actioned before 11.30 am to ensure funds are received that day.

V.A.T. V.A.T. will be added to sale bills at the appropriate rate.

Prospective export purchasers must declare their intention to export at point of registration and complete a separate registration form available from Clarke Fussells office. A VAT deposit equal to the amount of VAT payable will be taken and held by Clarke Fussells until satisfactory proof of export is received.

CONSULTANCY/SERVICE CHARGE Consultancy/service charge of 17.5% plus V.A.T. will be added to purchasers bills. The consultancy/service charge will relate to any sales which might take place prior to the auction, during the auction and after the auction and indeed to any Private Treaty Sales of items not included in the auction. A 17.5% fee is payable against the cost of any services or goods supplied by Clarke Fussells.

DEPOSITS The Auctioneer reserves the right to take deposit of up to 50% at Point of Sale. Purchasers are reminded to leave a deposit on sale day. Payment in full must be made within 24 hours of the sale.

BUYING INSTRUCTIONS For the convenience of customers who are unable to attend the sale, the Auctioneers will arrange to bid on their behalf on receipt of written instructions prior to the sale as to the Lots and limit of bids on the understanding that no responsibility whatsoever is to rest on the Auctioneers (See Absent Bidders Order Form at the front of the catalogue). **If prospective purchasers wish to make telephone bids this can be arranged but they must inform the Auctioneers well in advance of the sale in order to make arrangements, again it is on the understanding that no responsibility rests with the Auctioneers. We recommend that you should not bid unless you have viewed the lots as no refunds given.** Digital images will be presented for guidance only.

REMOVAL All Lots are to be removed at a date and time agreed with the Auctioneers. All collections must be pre-arranged. No vehicle will be allowed on site without an appointment. Any costs relating to disconnection and/or loading assistance will be charged to the purchaser prior to removal.

SITE PROCEDURE The Vendor or Clarke Fussells are not liable for, nor accept any responsibility for any injury, loss or damage to persons or property sustained whilst on site. Video cameras will operate throughout the sale process, to protect the purchaser, auctioneer and vendor in the event of future disputes.

In case of a fire alarm all visitors and contractors are to exit buildings and report to the Muster Point, or as directed by the Auctioneer or his staff.

All visitors and contractors vehicles can be subject to search whilst on site.

All visitors and contractors are reminded that they are responsible for their own safety on site and enter at their own risk and should take the precaution of wearing protective clothing if appropriate.

No smoking on site. Food and Drink is only to be consumed in designated areas.

Areas of High Risk or No Entry will be marked accordingly. Any persons found within these areas can be asked to leave site.

HEALTH & SAFETY LEGISLATION AND CONSTRUCTION, DESIGN AND MANAGEMENT REGULATIONS 1994.

Purchasers should be aware of the above and comply as appropriate, they should attend at the beginning of the auction to hear the Auctioneers opening announcements regarding formal requirements it is also important that all purchasers/contractors comply with site rules, site procedures and Health & Safety Regulations.

Purchasers are deemed to have listened to the Auctioneers opening announcements which may include amendments and/or additions to the Conditions of Sale.

Unless specifically excluded purchasers of lots will be required to make good holes or voids exposed by the removal of lots.

FINAL REMOVAL ALL LOTS MUST BE REMOVED WITHIN TWO WEEKS OF THE CLOSE OF THE SALE. (UNLESS OTHERWISE STATED). TIME OF REMOVAL SHALL BE OF THE ESSENCE. Lots remaining on site after this date will incur further charges on the buyer at a rate of 5% above Bank of Scotland base rates per day. You are at risk of losing these goods if not collected by the above date and if we have to put people on site after the removal date the purchaser will be charged for this.

All lots are at the purchasers risk from the fall of the hammer. Purchasers should insure against all risks. No lots whatsoever may be removed on the day of sale.

INSURANCE The Auctioneers remind prospective bidders of Condition 7 of the Conditions of Sale. Any buyers of fixed plant or their duly appointed contractors **MUST** consult with the Auctioneers duly appointed representative, prior to commencing removal. Written consent to commence dismantling will be required. It should also be noted that all dismantling contractors working on site must be insured for at least two million pounds (£2,000,000) public liability cover and proof of cover must be produced before work commences.

BUYER'S RESPONSIBILITY FOR LOTS PURCHASED The buyer will be responsible for loss or damage to lots purchased, all lots shall be at the buyer's risk from the fall of the hammer and neither Clarke Fussells nor its servants or agents shall be responsible for any loss or damage of any kind, whether caused by negligence or otherwise whilst in its custody or under its control. The Purchaser or his Contractor will also ensure that employers liability cover in the sum of **TEN MILLION POUNDS (£10,000,000)** is in place. **CONTENTS** All items in, under, over and around any lot in this catalogue are not included with such lot unless stated in the catalogue description or by the Auctioneer.

ELECTRICITY All electric motors are 3-phase unless otherwise stated and machinery is to be disconnected from the machine side of the isolator switch which must be left with the buildings.

Purchasers are responsible for ensuring that all portable appliances have a current P.A.T. before use.

RESERVES Where applicable, Lots will be offered subject to reserve prices.

REFRESHMENTS Light refreshments will be available on Sale Day.

GENERAL All lots sold with any and all such faults and imperfections as they may have and neither the Auctioneer nor the Seller gives any warranty or makes any representation as to their condition, quality or fitness for purpose. Any and all implied terms as to condition, quality or fitness for purpose of any Lot are excluded. It is the Buyer's own responsibility to satisfy himself as to the condition, quality and fitness for purpose of any Lot prior to bidding for such Lot. Neither the Auctioneer nor the Seller nor any of their employees or representatives has any authority to make or give any representation or warranty in relation to any Lot. Any statement by the Auctioneers as to any Lot is a statement of opinion only.

The Purchaser further undertakes to indemnify and hold harmless the Vendor, its subsidiaries, employees and agents against any loss, damage, claim, or expense (whether direct or consequential) howsoever arising out of the use of the Equipment in its present state or condition or as altered or modified in any way, except insofar as such loss, damage, claim or expense arises in respect of death or personal injury directly attributable to the negligence of the Vendor, its subsidiaries, employees or agents.

Purchasers are reminded that under current Health & Safety Legislation effecting the safe use of machinery, the Vendors/Agents/Auctioneers cannot guarantee that all lots sold necessarily comply with the relevant legislation accordingly the purchaser undertakes not to use any lots purchased until satisfied that it complies with the relevant Acts and Regulations relating to such machines and implements and to indemnify the Vendors/Agents/ Auctioneers against any failure to observe this undertaking. Section 6 Health & Safety at Work etc., Act 1974 (as amended) is a relevant Act relating to Safety and the purchaser should accept this note as a notification of such Legislation and other relevant Legislation. The Vendors/ Agents/Auctioneers can require the purchaser to confirm their awareness and willingness to indemnify the Vendors/Agents/Auctioneers against any claims arising out of the relevant Acts by signing a separate form(s).

In the case of the sale of vehicles, no vehicle is warranted or held out to be roadworthy and no lot is warranted or held out to be merchantable or safe for use for complying with statutory requirements for use, display or movement. The Vendors/Agents/Auctioneers have no authority to make representations.

All goods sold are sold as used and are not supplied as new unless the catalogue description clearly states to the contrary.

HAZARDOUS MATERIALS & SUBSTANCES If any hazardous materials or substances are to be removed or disposed of then such disposal will be the responsibility of the purchaser, but in accordance with all current Environmental Legislation and the Vendors procedures and audit requirements.

ORDER OF REMOVAL Buyers should co-operate regarding order of removal in order to comply with the clearance date. If it transpires that a purchaser makes no effort to commence dismantling and the particular item of plant is preventing other buyers from removing equipment, then the Auctioneer reserves the right to insist that removal take place immediately notwithstanding the final clearance date.

If in the event the purchaser does not comply, then the Auctioneer reserves the right to arrange for the removal of the lot or lots and charge any attendant costs to the purchaser.

INSOLVENCY, DEATH & IMPRISONMENT If before title to any lot has passed to the Purchaser, the Purchaser, being an individual, dies, is imprisoned or enters into a composition or arrangement for the benefit of his creditors or has a Bankruptcy Order made against him, or being a body corporate, has a Receiver or a Receiver and Manager appointed or goes into administration, liquidation or enters into an arrangement for the

benefit of its creditors, then in all such cases the contract for sale for such lot may be, at the Agents/Auctioneers' discretion, rescinded without notice to the said Purchaser. Upon rescission, any deposit paid by the Purchaser shall be forfeited and the Agents/Auctioneers shall be entitled to exercise the rights set out in these conditions of sale on the basis of default by the Purchaser.

We as agents are informed that the vendor can give good title but, for the avoidance of doubt we can only give as good a title as the vendor holds.

CLADDING Cladding taken off buildings for removal of plant & equipment will have to be replaced, unless otherwise specified by the Auctioneer.

CONDITIONAL SALES Please note the Auctioneer reserves the right to effect conditional sales on certain lots.

The Auctioneer reserves the right to rescind the sale of lot(s) if purchasers or their contractors fail to provide a satisfactory Method Statement in accordance with current Health & Safety Regulations(or if their transport arrangements are considered unsuitable).

COMPLIANCE WITH LAWS, REGULATIONS AND PLANNING Purchasers or their Removal Contractors are responsible for applying for relevant planning permissions (if appropriate) with reference to the removal of building structures and plant housings.

Purchasers or their Contractors shall at all times comply with all orders, regulations, requirements and rules of any authority whether Parliamentary, statutory, parochial or local and in particular shall comply with all requirements applicable to the employment by them of labour or otherwise affecting the work.

The Purchasers or their Contractors shall in addition and without prejudice to the generality of the foregoing conform to the regulations and bye-laws of local authorities and shall pay all fees and charges arising under the said regulations and bye-laws in respect of the Work.

DOCUMENTS The Vendors/Agents/Auctioneers reserve the right to remove any documents they may require from the lot prior to the sale or at any later date.

UNSOLD LOTS If any lot or item is unsold and has to be dismantled & lowered to allow the removal of any other lot, then such dismantling & lowering shall be the responsibility of the purchaser of the relevant Lot(s) or Item(s).

PIPEWORK Disconnect as marked or as directed.

ELECTRIC CABLE/PALLETS Electric cable and pallets are not included with the sale of any lots unless otherwise indicated.

SOFTWARE Title to computer Software is not transferred and use is subject to any licence or copyright restrictions and user conditions. The Vendors/Agents/Auctioneers reserve the right to erase any private or sensitive information prior to delivery or at any later date.

WARNING

It is a criminal offence to form a ring at auction or to induce another to abstain from bidding.

NB: Must be read in conjunction with the General Terms and Conditions.



**CLARKE
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