

GENERAL CONDITIONS OF SALE

(As approved by The Royal Institution of Chartered Surveyors)

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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