

# CONDITIONS OF SALE

## DEFINITIONS and GLOSSARY

Where these Definitions and Glossary are incorporated, the following words and phrases used have (unless the context otherwise requires) the meanings given to them below. The Glossary is to assist you to understand words and phrases which have a specific legal meaning with which you may not be familiar.

### LIST OF DEFINITIONS

- "Auctioneer" Clarke Fussells, including its employees and agents.
- "Bidder" a person who has completed a Bidding Form.
- "Bidding Form" our Bidding Registration Form, our Absentee Bidding Form or our Telephone Bidding Form.
- "Business" includes any trade, Business and profession.
- "Buyer" the person to whom a Lot is knocked down by the Auctioneer.
- "Buyer's Premium" the sum calculated on the Hammer Price and the Lift Out Charge, at the rates stated in the Catalogue.
- "Catalogue" the Catalogue relating to the relevant Sale, including any representation of the Catalogue published on our Website.
- "Clarke Fussells" means Clarke Fussells Limited (Company Number 07667289) whose registered office is situated at 499 Bath Road, Saltford, Bristol, BS31 3HQ.
- "Commission" the Commission payable by the Seller to Clarke Fussells calculated at the rates stated in the Contract Form.
- "Conditions of Sale" the conditions set out herein.
- "Consumer" a natural person who is acting for the relevant purpose outside his trade, Business or profession.
- "Contract Form" the Contract Form, or vehicle Entry form, as applicable, signed by or on behalf of the Seller listing the Lots to be offered for sale.
- "Description" any statement or representation in any way descriptive of the Lot, including any statement or representation relating to its condition, style, age, suitability, quality, size, capacity, value, estimated selling price (including the Hammer Price).
- "Entry" a written statement in the Catalogue identifying the Lot and its Lot number which may contain a Description and illustration(s) relating to the Lot.
- "Estimate" a statement of our opinion of the range within which the hammer is likely to fall.
- "Expenses" charges and Expenses paid or payable by Clarke Fussells in respect of the Lot including legal Expenses, banking charges and Expenses incurred as a result of an electronic transfer of money, charges and Expenses for loss and damage cover, insurance, Catalogue and other reproductions and illustrations, any customs duties, advertising, packing or shipping costs, reproductions rights' fees, taxes, levies, costs of testing, searches or enquiries, preparation of the Lot for Sale, storage charges, removal charges, removal charges or costs of collection from the Seller as the Seller's agents or from a defaulting Buyer, plus VAT if applicable.
- "Hammer Price" the price in the currency in which the Sale is conducted at which a Lot is knocked down by the Auctioneer.
- "Lift Out Charge", the amount set by Clarke Fussells representing the cost of the removal of the Lot, plus any ancillary costs/charges.
- "Lot" any item consigned to Clarke Fussells with a view to its Sale at auction or by private treaty (and reference to any Lot will include, unless the context otherwise requires, reference to individual items comprised in a group of two or more items offered for Sale as one Lot), to include third party items which Clarke Fussells at its absolute discretion reserve the right to introduce into any Sale.
- "Purchase Price" the aggregate of the Hammer Price, the buyer's premium, the Lift Out Charge and VAT.
- "Reserve" the minimum price at which a Lot may be sold (whether at auction or by private treaty).
- "Sale" the auction Sale at which a Lot is to be offered for Sale by Clarke Fussells.
- "Sale Proceeds" the net amount due to the Seller from the Sale of a Lot, being the Hammer Price less the Commission, any VAT chargeable thereon, Expenses and any other amount due to us in whatever capacity and howsoever arising.
- "Seller" the person who offers the Lot for Sale named on the Contract Form. Where the person so named identifies on the form another person as acting as his agent, or where the person named on the Contract Form acts as an agent for a principal (whether such agency is disclosed to Clarke Fussells or not), "Seller" includes both the agent and the principal who shall be jointly and severally liable as such.
- "Terrorism" means any act or threatened act of terrorism, whether any person is acting alone or on behalf of or in connection with any organisation(s) and/or government(s), committed for political, religious or ideological or similar purposes including, but not limited to, the intention to influence any government and/or put the public or any section of the public into fear.
- "VAT" value added tax at the prevailing rate at the date of the Sale in the United Kingdom.
- "Website" Clarke Fussells Website.
- "Without Reserve" where there is no minimum price at which a Lot may be sold (whether at auction or by private treaty).

### GLOSSARY

The following expressions have specific legal meanings with which you may not be familiar. The following glossary is intended to give you an understanding of those expressions but is not intended to limit their legal meanings:

"bailee": a person to whom goods are entrusted.

"indemnity": an obligation to put the person who has the benefit of the indemnity in the same position in which he would have been, had the circumstances giving rise to the indemnity not arisen and the expression "indemnify" is construed accordingly.

"knocked down": when a Lot is sold to a Bidder, indicated by the fall of the hammer at the Sale.

"lien": a right for the person who has possession of the Lot to retain possession of it.

"risk": the possibility that a Lot may be lost, damaged, destroyed, stolen, or deteriorate in condition or value.

"title": the legal and equitable right to the ownership of a Lot.

"tort": a legal wrong done to someone to whom the wrong doer has a duty of care.

Under the terms of this agreement we act as agent.

We will offer the Lot for sale on the terms set out herein. Definitions and a Glossary of words and phrases used by us in this agreement and in the associated documents are set out and are incorporated into this agreement.

These conditions are subject to alteration by us before the sale of your Lot, but we will only alter them in a way which is reasonable as between you and us.

## 1 APPLICATION OF THESE CONDITIONS

These 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.

## 2 PRE-CONTRACT STATEMENTS AND REPRESENTATIONS AND THE CONTRACT FORM

2.1 Any Description of a Lot is for the purposes of identification only and is not to be relied on.

2.2 We do not make or give and do not agree to make or give any contractual promise, undertaking, obligation, guarantee, warranty, representation of fact in relation to any Description of the Lot or any Estimate in relation to it, nor of the accuracy or completeness of any Description or Estimate which may have been made by us or on our behalf or by or on behalf of the Seller (whether made orally or in writing, including in the Catalogue or on Clarke Fussells' Website, or by conduct, or otherwise), and whether made before or after this agreement or prior to or during the Sale. No such Description or Estimate is incorporated into this agreement between you and us. Any such Description or Estimate, if made by us or on our behalf, was (unless Clarke Fussell itself sells the Lot as principal) made as agent on behalf of the Seller.

2.3 All Bidders should ensure that they have thoroughly inspected the Lots prior to the auction and in particular will need to be satisfied that the Lots are satisfactory in relation to health and safety laws. For the avoidance of doubt Clarke Fussells do not give and do not agree to make any contractual promise, undertaking, obligation, guarantee, warranty, representation of fact in relation to Lots being compliant for health and safety purposes.

## 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 the Buyer before accounting to the Seller for the balance.

3.3 Unless otherwise stated in this agreement, all sums payable to the Auctioneer will be subject to VAT at the appropriate rate and VAT will be payable on all such sums.

3.4 Any sum due but unpaid on the due date will bear interest (after as well as before judgement or order) at the annual rate of 5% per annum above the base lending rate of Bank of Scotland Plc from time to time to be calculated on a daily basis from the date the sum became due until payment.

3.5 Time will be of the essence in relation to the payment of any sums payable to the Auctioneer.

## 4 THE SELLER'S UNDERTAKINGS TO US

4.1 When Clarke Fussells are selling the Lot on behalf of a Seller as agent, the Seller undertakes to us that:

4.1.1 the Seller is the owner of the Lot or, if the Seller is not the owner of the Lot (whether or not the Seller has notified us that the Seller is acting as an agent for a principal), the Seller is duly authorised by the owner of the Lot to sell it;

4.1.2 save as disclosed to us in writing, the Seller sells the Lot with full title guarantee free from all liens, charges, encumbrances and third party claims;

4.1.3 the Seller is legally entitled to sell the Lot and the Seller is legally capable of conferring on the Buyer quiet possession of the Lot and that in the event our selling the Lot, the Sale will conform in every respect with the terms implied by the Sale of Goods Act 1979, Sections 12(1) and 12(2);

4.1.4 the Seller has complied with all requirements, legal or otherwise, relating to any export or import of the Lot, all duties and taxes in respect of the export or import of the Lot have (unless otherwise agreed in writing with us) been paid and, so far as the Seller and any principal for whom the Seller acts in relation to the Lot are aware, all third parties have complied with such requirements in the past;

4.1.5 the Seller has notified us in writing of any material alterations to the Lot and provided us accurately with all information (including any concerns expressed by third parties relating to the Lot) in relation to the Lot, or any Description of it, of which the Seller is aware or which is in the Seller's possession or of which any principal for whom the Seller acts in relation to the Lot is aware or possesses;

4.1.6 the Seller has notified us of all information of which the Seller is aware or reasonably ought to be aware relating to the present or past ownerships or use of the Lot (including any association of the Lot with persons or events of note);

4.1.7 in so far as the Seller or any principal may become aware of any information (including any concerns expressed by third parties) in relation to the Lot, or any Description of it, after this agreement has been made, the Seller will promptly inform us of it;

4.1.8 unless the Seller notifies us in writing to the contrary at the time the Lot is delivered to us, there are no restrictions, (whether copyright or otherwise), affecting the Lot or our rights to photograph or illustrate the Lot, or reproduce (in any manner and in any media) photographs or illustrations or any text of any information or Description of, about or relating to the Lot provided by the Seller or on the Seller's behalf.

4.2 The Seller authorises us to give to the Buyer on its behalf the undertakings or information referred to at paragraphs 4.1.1 to 4.1.8.

## 5 INDEMNITIES FROM THE SELLER

5.1 The Seller agrees to indemnify us against all claims, proceedings, liabilities, costs, Expenses and losses arising from:

5.1.1 any actual or alleged breach of any undertaking or obligation by the Seller to us, whether by act or omission or otherwise;

5.1.2 any injury, loss or damage caused to any person by the Seller;

5.1.3 our exercising any of our rights, powers and/or duties under paragraphs 7.1 or 7.4;

5.1.4 our receiving or recovering (or seeking to recover where you have authorised us to do so) the Purchase Price, where our costs and Expenses are not otherwise recouped by us;

5.1.5 the Seller's fraud and our exercising any of our rights or powers under paragraph 15 in the event of fraud;

5.1.6 without prejudice to paragraph 5.1.1, any error, misdescription or omission in any Description of the Lot or any Estimate in relation to it, so long as it was not caused by a breach of our duty to you under this agreement to exercise reasonable skill and care.

## 6 CATALOGUE & MARKETING

6.1 We will publish an Entry about the Lot in the Catalogue for the Sale. This may be by insert after publication of the Catalogue. The Entry may also at our discretion be published on our Website but we are under no obligation to do so.

6.2 The Entry will contain an Estimate and an expression of our opinion in relation to the Lot. We may at our discretion include photograph(s) and/or illustration(s) of the Lot in the Entry, but we are not under any obligation to do so.

6.3 Any Entry or any marketing or promotional material may be revised either orally or in writing from time to time (including during the Sale) at our discretion.

6.4 The copyright in the text and the photographs and illustrations of the Lot contained in the Entry or the Catalogue or on our Website or in any marketing or promotional material belongs to us.

## 7 OUR RIGHT TO REFUSE TO SELL AND OTHER RESPONSES FOR CAUSE

7.1 If we have reasonable cause for believing that:

7.1.1 we and/or the Seller may be or are restrained by order of the court or other competent authority in respect of the Lot, or may be or are otherwise not legally entitled to sell the Lot; or

7.1.2 the Seller is in breach of any of the undertakings set out in paragraph 4; or

7.1.3 the information about the Lot given to us by the Seller or on the Seller's behalf is inaccurate or misleading in any material respect;

7.2 We will give the Seller written notice of any decision under paragraph 7.1 and of the reason for it as soon as practicable after making our decision to refuse to sell the Lot in question.

7.3 In addition to our right to refuse to sell the Lot under paragraph 7.1, we may, refuse to sell any Lot for any reason.

7.4 Whenever it becomes apparent to us that the Lot is the subject of a claim by someone other than the Seller (or that such a claim can reasonably be expected to be made), we may, at our absolute discretion, deal with the Lot in any manner which appears to us to recognise the legitimate interests of ourselves and the other parties involved and lawfully protect our position and our legitimate interests. Without prejudice to the generality of this discretion and by way of example, we may:

7.4.1 refuse to sell the Lot; and/or

7.4.2 retain the Lot to investigate any question raised or reasonably expected by us to be raised in relation to it; and/or

7.4.3 deliver the Lot to a person other than the Seller; and/or

7.4.4 bring proceedings or seek any other order of any court, mediator, arbitrator or government body at the cost of the Seller; and/or

7.4.5 require a further indemnity (beyond those set out in paragraph 5) and/or security from the Seller in return for pursuing a course of action agreed to by the Seller.

7.5 We will not exercise the rights under paragraph 7.4:

7.5.1 unless we believe that there exists a serious prospect of a good arguable case in favour of the claim; or

7.5.2 where the claim is a legitimate claim to the possession of the Lot by a Buyer of the Lot.

7.6 The rights under paragraph 7.4 are without prejudice to our rights to refuse to sell the Lot set out in paragraphs 7.1 and 7.3 and we may exercise them in addition to or in substitution for those rights and notwithstanding the exercise of our rights any Expenses shall remain due and payable to us on demand.

7.7 The rights under paragraph 7.4 may be exercised at any time during which we have actual or constructive possession of the Lot, or at any time after such possession, where the cessation of such possession has occurred by reason of any decision, order or ruling of any court, mediator, arbitrator or government body.

## 8 CONDUCT OF THE AUCTION

8.1 The Auctioneer offers each lot as agent of the Seller and not as principal unless otherwise indicated in the Catalogue.

8.2 Clarke Fussells reserve the right to introduce equipment from third parties to any Sale.

8.3 Any Lot may be subject to a reserve price unless otherwise indicated in the Catalogue.

8.4 The Seller or his representative or the Auctioneer on his behalf may bid for any Lot unless otherwise indicated in the Catalogue.

8.5 The Auctioneer may at any time before the fall of the hammer withdraw or divide any Lot or combine any Lot.

8.6 With the previous consent of the Seller (if required), the Auctioneer may sell any Lot by private sale before or after the auction.

8.7 The Auctioneer may require any Bidder to give his name and address and proof of identity before accepting a bid.

8.8 The Auctioneer may reject any bid at its sole discretion and without being required to give a reason.

8.9 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 the Buyer without being required to give a reason.

## 9 AFTER THE SALE

9.1 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 up to 50% of the Purchase Price;

9.2 Within the time specified in clause 9.3 below, the Buyer shall pay the following sums to the Auctioneer in full:-

- (a) the balance of the Purchase 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.

9.3 The time for complying with clause 9.2 above shall be the time specified in the Catalogue or if no time is specified in the Catalogue, 4pm on the next working day, and in every case time shall be of the essence.

9.4 The Auctioneer may at any time in its sole discretion grant the Buyer an extension of time complying with clause 9.2 above, in which case the Buyer shall pay the Auctioneer in full before removing the Lot.

9.5 Title to the Lot will only pass to the Buyer on receipt by us in cleared funds of the full Purchase Price. Once the Buyer has paid the Purchase Price and all other sums due to us, we will release the Lot to the Buyer.

9.6 Unless otherwise agreed in writing between the Seller and us, we may at our discretion pay the Sale Proceeds to the Seller before receipt of the Purchase Price, and, on our doing so, title in the Lot will pass to us and the Seller's right to payment of the Purchase Price will pass to us together with any right of action which the Seller may have against the Buyer for non-payment.

9.7 If before the Sale Proceeds have been distributed to the Seller the Buyer or any other person makes a claim against either the Seller or us in relation to the Lot, we may withhold distribution of the Sale Proceeds to the Seller until such time as the claim has been resolved. In that event we will transfer the Sale Proceeds into a separate interest bearing account with our bank.

9.8 If the Buyer fails or refuses to pay the Purchase Price for the Lot to us in accordance with his obligations to do so, we will notify the Seller of this as soon as practicable.

## 10 COLLECTION OF THE LOT

10.1 Subject to any power of the Seller or us to refuse to release the Lot to the Buyer, once the Buyer has paid to us, in cleared funds, everything due, we will release the Lot to the Buyer.

10.2 You must collect and remove the Lot at your own expense by the date and time specified in the Catalogue, or if no date is specified, by 5pm on the next working day after the Sale.

10.3 We may at any time at our sole discretion and on terms specified grant the Buyer an extension of time specified in clause 10.2.

10.4 The Buyer will be wholly responsible for packing, handling and transport of the Lot on collection and for complying with all import or export regulations in connection with the Lot.

10.5 The Buyer will be wholly responsible for any removal, storage, or other charges for any Lot not removed in accordance with paragraph 10.2, payable at our current rates, and any Expenses we incur all of which must be paid by the Buyer on demand and in any event before any collection of the Lot by the Buyer or on behalf of the Buyer.

10.6 All Lots are subject to a lift out charge which is non negotiable.

## 11 STORING THE LOT

We agree to store the Lot until the earlier of the removal of the Lot by the Buyer or until the time and date set out in the Catalogue (or if no date is specified, by 5pm on the next working day after the Sale). If you have not paid for the Lot in accordance with clause 9, and the Lot is moved to any third party's premises, the Lot will be held by such third party strictly to Clarke Fussells' order and we will retain a lien over the Lot until we have been paid in full in accordance with clause 9.

## 12 RESPONSIBILITY FOR THE LOT

12.1 Only on the payment of the Purchase Price to us will title in the Lot pass to the Buyer. However under the Contract for Sale, the risk in the Lot passes to the Buyer when it was knocked down to the Buyer.

12.2 The Buyer is advised to obtain insurance in respect of the Lot as soon as possible after the Sale.

## 13 FAILURE BY THE BUYER TO PAY OR TO REMOVE THE LOT AND PART PAYMENTS

13.1 If all sums payable to us are not so paid in full at the time they are due and/or the Lot is not removed in accordance with this agreement, we will without further notice to the Buyer be entitled to exercise one or more of the following rights (without prejudice to any rights we may exercise on behalf of the Seller):

13.1.1 to terminate this agreement immediately for the Buyer's breach of contract;

13.1.2 to retain possession of the Lot;

13.1.3 to remove, and/or store the Lot at the Buyer's expense;

13.1.4 to take legal proceedings against the Buyer for payment of any sums payable to us by the Buyer (including the Purchase Price) and/or damages for breach of contract;

13.1.5 to be paid interest on any monies due to us (after as well as before judgement or order) at the annual rate of 5% per annum above the base lending rate of Bank of Scotland Plc from time to time to be calculated on a daily basis from the date upon which such monies become payable until the date of actual payment;

13.1.6 to repossess the Lot (or any part thereof) which has not become the property of the Buyer, and for this purpose (unless the Buyer buys the Lot as a Consumer) you hereby grant an irrevocable licence to us, by ourselves, our servants or agents, to enter upon all or any of your premises (with or without vehicles) during normal business hours to take possession of any Lot or part thereof;

13.1.7 to sell the Lot Without Reserve by auction, private treaty or any other means on giving the Buyer written notice of our intention to do so;

13.1.8 to retain possession of any of the Buyer's other property in our possession for any purpose (including, without limitation, other goods sold to you or with us for sale) until all sums due to us have been paid in full;

13.1.9 to apply any monies received from the Buyer for any purpose whether at the time of your default or at any time thereafter in payment or part payment of any sums due to us by the Buyer under this agreement;

13.1.10 on three months' written notice to sell, Without Reserve, any of the Buyer's other property in our possession or under our control for any purpose (including other goods sold to you or with us for sale) and to apply any monies due to you as a result of such sale in payment or part payment of any amounts owed to us;

13.1.11 refuse to allow the Buyer to register for a future Sale or to reject a bid from the Buyer at any future Sale or to require the Buyer to pay a deposit before any bid is accepted by us at any future Sale in which case we will be entitled to apply such deposit in payment or part payment, as the case may be, of the Purchase Price of any Lot of which you are the Buyer.

13.2 The Buyer agrees to indemnify us against all legal and other costs, all losses and all other expenses (whether or not court proceedings will have been issued) incurred by us as a result of our taking steps under this clause 13 on a full indemnity basis together with interest thereon (after as well as before judgement or order) at the rate specified in clause 13.1.5 from the date upon which we become liable to pay the same until payment by you.

## 14 AUTHORITY TO SELL OR DISPOSE OF AN UNSOLD LOT

14.1 If the Lot is unsold at the Sale, we may for a period of at least 21 days following the Sale enter into an agreement to sell the Lot (at auction or by private treaty) upon such terms and conditions as we may reasonably consider appropriate. Subject to paragraph 14.2 below, the minimum Sale Proceeds from such a Sale will (if a Reserve has been agreed with or accepted by us) be not less than

the Sale Proceeds would have been if the Lot had been sold at the Reserve. Subject to paragraph 14.2 below, in the case where the Contract Form states that we are given "discretion" in relation to the Reserve then we may agree to sell the Lot at up to 50% less than the Reserve, and the Sale Proceeds from such a Sale will be not less than the Sale Proceeds would have been if the Lot had been sold for an amount equal to 50% of the Reserve.

14.2 Where a Lot has not sold at the Sale and we believe that it could be sold if the Reserve were reduced we will write to the Seller setting out our suggestion as to a new Reserve. If the Seller does not object to the new Reserve suggested by us within ten days of the date of our letter then the Reserve will be reduced accordingly. If the Seller objects to the new Reserve within the above time period then the Reserve will remain unchanged and our authority to sell the Lot in accordance with these conditions shall continue.

14.3 We will, unless agreed otherwise, be entitled to Commission on the Sale of the Lot under paragraph 14.1 and we are entitled to charge a Buyer's Premium plus VAT to any Buyer of any Lot on any such Sale.

14.4 If an unsold Lot has no monetary value, the Seller authorises us to dispose of it in such manner as we think fit. We will give the Seller seven days notice of such disposal to allow the Seller to collect it if you wish.

## 15 FRAUD

In the event of any fraud by the Seller or on behalf of the Seller which has induced the Buyer to purchase the Lot, we will be entitled at our discretion and irrespective of whether we are personally liable to the Buyer to act in any reasonable manner which appears to us to be best calculated to compensate the Buyer (which may include but is not limited to repurchasing the Lot from the Buyer) and, so long as we ourselves were not also fraudulent with the Seller, the Seller will indemnify us under the provisions in paragraph 5.1.5. The Seller authorises us to carry out such tests and processes on a Lot as we consider necessary to establish whether this paragraph applies.

## 16 LIMITS ON OUR LIABILITY

16.1 Clarke Fussells warrants that it believes the Seller of each Lot is able to pass good title, and if the Seller is not able to do so, Clarke Fussells shall use its reasonable endeavours to assist the Buyer in obtaining good title and in pursuing any remedies the Buyer might have against the Seller, but Clarke Fussells shall not be bound to initiate litigation and shall not be under any obligation to the Buyer.

16.2 Clarke Fussells neither has nor professes any expert or other knowledge of any Lot sold and is hereby excluded from any liability that it 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 Catalogue or are the subject of oral or written statements made by or on behalf of Clarke Fussells or any other person before or in the course of the Sale.

16.3 Clarke Fussells will not be liable for any injury, loss or damage caused by, arising out of or in any way related to the Lot after the fall of the Auctioneer's hammer in respect of the Lot.

16.4, Clarke Fussells will not be liable (whether in negligence, other tort, breach of contract or statutory duty or in restitution or in any other way) whether as a result of an act or an omission, whether before or after this agreement, for any lack of conformity with or inaccuracy, error or misdescription or omission in any Description of a Lot or any opinion, Entry or Estimate in respect of it (whether made in writing, including in the Catalogue, or on our Website, or orally or by conduct or otherwise)

16.5 Every Lot is sold as seen and where lying. A Buyer will be deemed to have carefully inspected any Lot he intends to purchase prior to bidding.

16.6 No liability shall attach to Clarke Fussells either in contract or in tort for loss, injury or damage 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 act or omission of the Auctioneer in the conduct of the Sale or after the Sale;
- (d) any act or omission of any person other than the Auctioneer.

16.7 Nothing set out above will be construed as excluding or restricting (whether directly or indirectly) any person's liability or excluding or restricting any person's rights or remedies in respect of (i) fraud, or (ii) death or personal injury caused by our

negligence (or any person under our control or for whom we are legally responsible), or (iii) acts or omissions for which we are liable under the Occupiers Liability Act 1957, or (iv) any other liability to the extent the same may not be excluded or restricted as a matter of law.

16.8 In no circumstances will Clarke Fussells be liable for any consequential damage or loss.

## 17 MISCELLANEOUS

17.1 Our failure or delay in enforcing or exercising any power or right under this agreement will not operate or be deemed to operate as a waiver of our rights under it except to the extent of any express waiver given to you in writing. Any such waiver will not affect our ability subsequently to enforce any right arising under this agreement.

17.2 If any party is prevented from performing that party's respective obligations under these terms and conditions by circumstances beyond its reasonable control or if performance of its obligations would by reason of such circumstances give rise to a significantly increased financial cost to it, that party will not, for so long as such circumstances prevail, be required to perform such obligations. This paragraph does not apply to the obligations imposed on you by paragraphs 3, 4, or 5 .

17.3 Any notice or other communication to be given under this agreement must be in writing and may be delivered by hand or sent by first class post or air mail or fax transmission, to the address or fax number of the relevant party given in the Contract Form (unless notice of any change of address is given in writing). It is the responsibility of the sender of the notice or communication to ensure that it is received in a legible form within any applicable time period.

17.4 If any term or any part of any term of this agreement is held to be unenforceable or invalid, such unenforceability or invalidity will not affect the enforceability and invalidity of the remaining terms or the remainder of the relevant term.

17.5 In the event of a dispute between Clarke Fussells and a Buyer or Seller, the Buyer/Seller hereby agrees to refrain from publicising or causing to be publicised or circulated any details of the dispute, until a finding by a court of competent jurisdiction.

17.6 The headings used in this agreement are for convenience only and will not affect their interpretation.

17.7 In this agreement "including" means "including, without limitation".

17.8 References to the singular will include reference to the plural (and vice versa) and reference to any one gender will include reference to the other genders.

17.9 Reference to a numbered paragraph is to a paragraph of this agreement.

17.10 Save as expressly provided in paragraph 15.12 nothing in this agreement confers (or purports to confer) on any person who is not a party to this agreement any benefit conferred by, or the right to enforce any term of, this agreement.

17.11 Where this agreement confers an immunity from, and/or an exclusion or restriction of, the responsibility and/or liability of Clarke Fussells, this agreement will also operate in favour and for the benefit of Clarke Fussells' holding company and the subsidiaries of such holding company and the successors and assigns of Clarke Fussells and of such companies and of any officer, employee and agent of Clarke Fussells and such companies, each of whom will be entitled to rely on the relevant immunity and/or exclusion and/or restriction within and for the purposes of Contracts (Rights of Third Parties) Act 1999, which enables the benefit of a contract to be extended to a person who is not a party to the contract, and generally at law.

17.12 These terms and conditions are made for the benefit of the parties to them and are not intended to benefit or be enforced by anyone else. All the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby expressly excluded with regards to the Buyer and Seller.

17.13 This agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

## 18 GOVERNING LAW AND DISPUTE RESOLUTION

18.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

18.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

# ONLINE BIDDING TERMS AND CONDITIONS

## IMPORTANT:

These terms and conditions apply to all online bidding at auction sales conducted by or in conjunction with Clarke Fussells ("Online Bidding"). By registering to participate in a Clarke Fussells auction sale (a "Sale") via Online Bidding, you expressly agree to these terms and conditions.

These Online Bidding Terms and Conditions are supplemental, meaning that they shall apply in addition to the general Conditions of Sale and other terms and conditions applicable to bidders and buyers participating in the subject Sale (collectively, the "Bid Conditions") and shall be deemed incorporated by reference and made a part of the Bid Conditions for such Sale. The general Bid Conditions are published in the catalogue for the Sale (the "Catalogue") and/or on our web site, among other places. Additional information applicable to the Sale may also be set out in the Catalogue, on our web site, and/or in a notice displayed at the Sale venue, and it is your responsibility to review that information. Please be aware that announcements affecting the Sale may also be made orally before and during the Sale without prior notice. In registering to bid at any Sale, you agree to the applicable Bid Conditions.

References herein to "you" and "your" mean the person or entity registering to bid or bidding in a Sale via the Online Bidding service.

## 1 REGISTRATION

1.1 Before you can bid via Online Bidding, you must register to bid online. Please note that you must be registered at least 24 hours prior to the start of any Sale or you may not be able to bid online in that Sale.

1.2 Once you have registered you should keep your account details strictly confidential and you must not permit any third party to use or access your account on your behalf or otherwise. You will be liable for any and all bids made via your account.

## 2 ONLINE BIDDING PROCESS

2.1 Once you have successfully registered for Online Bidding in a Sale, you will be eligible to bid online at that Sale.

2.2 During a Sale, you can bid for a lot by clicking the Bid button. Each bid shall be final and binding as soon as you click the Bid button.

2.3 The current bid will be displayed on your screen during the Sale. In the event of a tie during a live sale between a bid placed by you online and any other identical bid(s) (including bids made in person at the Sale, telephone bids, absentee bids, and other online bids), it will be at the Auctioneer's discretion as to which bid shall be accepted.

2.4 You can either bid on a lot in accordance with the bidding increments displayed on your screen during the Sale, or you can enter a proxy bid for the lot in excess of the next bidding increment and an auction assistant will bid on your behalf at the lowest level possible, subject to any reserve and other bids made for the lot.

2.5 You acknowledge that you are bidding in a live or timed auction and you agree that each bid submitted as provided in these terms and conditions is irrevocable and cannot be amended or corrected, even if submitted in error and notified to us. You accept full liability for all bids submitted via your Online Bidding account (including the liability to pay in full and on time in accordance with the Bid Conditions for any lot that is the subject of a successful bid submitted from your account).

2.6 Please note that Clarke Fussells reserves the right to reject a registration to bid online, withdraw its permission for you to use Online Bidding, or terminate an Online Bidding account, for any reason at any time prior to, during or after a Sale.

## 3 AFTER THE SALE

3.1 You will be notified in writing if you have been successful in your bidding.

3.2 Clarke Fussells reserve the right to accept a bid that you have made within 48 hours from completion of the auction, even though that bid may not meet the reserve or may not have been accepted at the time of the sale.

3.3 You agree to pay for and collect any lot that is the subject of a successful bid submitted by you or from your Online Bidding account, in accordance with the Bid Conditions.

## 4 USE OF THE ONLINE BIDDING SERVICE AND LIMITATIONS OF CLARKE FUSSELLS' LIABILITY

4.1 Lots are available for inspection prior to any Sale, and it is for you to satisfy yourself as to each and every aspect of a lot. You are strongly advised to examine in person any lot on which you may bid or have it examined on your behalf before any Sale.

4.2 If you choose to use the Online Bidding service, you do so entirely at your own risk. Access to and use of Online Bidding is dependent upon, among other things, the availability of the internet and the speed and quality of internet connections, and we therefore encourage bidders to attend live Sales in person whenever possible.

4.3 The content displayed via the Online Bidding service may contain inaccuracies and typographical errors and we do not warrant the accuracy or completeness of the content or that any defects will be corrected. Any reliance on any such content, advice, statement, or other information shall be at your sole risk. We reserve the right, in our sole discretion, to correct any errors or omissions in any portion of the Online Bidding service and to make any changes to the features, functionality or content of the Online Bidding service at any time.

4.4 Access to the Online Bidding service is made available as a convenience and on a temporary basis, and we reserve the right to suspend or terminate any aspect or feature of the Online Bidding service (including the Online Bidding service in its entirety) at any time, with or without notice. Without limiting the foregoing, we may suspend access to Online Bidding to carry out scheduled or unscheduled maintenance or for any other reason at any time.

4.5 We accept no liability for any failure or delay in executing Bids or any errors contained in Bids placed via the Online Bidding service.

4.6 Clarke Fussells and its suppliers provide the Online Bidding service and the Clarke Fussells website "as is" and without any warranty or condition, expressed, implied or statutory. Without limiting the foregoing, we accept no liability for any failures, delays or errors caused by interruptions in the availability of the Online Bidding service or our website or any errors or defects in their content or functionality, any software and/or hardware defects (whether yours or ours) and/or any internet connection problems (whether yours or ours), and we do not represent or warrant that the Online Bidding Service or the website will be error-free, free of viruses or other harmful components, or that any defects will be corrected.

## 5 CHANGES TO THESE TERMS AND CONDITIONS

We may from time to time make changes to these terms and conditions. Any changes will be posted on our website and we will endeavour to notify you of the same by means of a notice and link to the revised terms on our website. Please review these terms and conditions regularly to ensure you are aware of any changes made by us. If you use Online Bidding after changes have been made and posted, you shall be deemed to have agreed to such changes. If you do not agree to such changes, you should not make any subsequent use of the Online Bidding service.

## 6 GOVERNING LAW, ETC.

These Online Bidding Terms and Conditions shall be governed by, and construed in accordance with, the laws that govern the general Bid Conditions in respect of the applicable Sale as specified therein, and by the other terms and conditions as are set forth in such Bid Conditions.

This agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.