

CONDITIONS OF SALE

IN RESPECT OF SALES BY AUCTION (OR PRIVATE TREATY) OF NAKED ACRES AND ENTITLEMENTS.

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CONDITIONS OF SALE

SCHEDULE 1

GLOSSARY AND PROVISIONS

1 Definitions

1.1 In these Conditions unless the context otherwise requires the words and expressions set out on the left hand side of the page shall have the meanings set out opposite them:

“Auctioneer” - the person conducting the Sale and the person by whom that person is employed or on whose behalf that person is conducting the Sale;

“Bidder” - the purchaser or person duly authorised to bid for any Lot(s) as agent for and on behalf of the Purchaser;

“Buyer’s Premium” – the surcharge made by the Auctioneer, and payable by the Purchaser, on all purchases of chattels in the Sale in addition to the Hammer Price (to which is to be added VAT at the rate current at the date of the Sale);

“Commission” – the charges of the Auctioneer payable on the sale of Lots in accordance with Condition 10;

“Conditions” – the standard business terms and conditions of sale set out in these Conditions of Sale together with any special conditions notified by the Auctioneer for a particular Sale either on his website, in the catalogue for the Sale, on the Entry Form or announced before the commencement of the sale of any Lot;

“Enactment” - any statute or statutory provision (whether of the United Kingdom or elsewhere), subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) and any other subordinate legislation made under any such statute or statutory provision;

“End of the Day’s Sale” - the time when the hammer falls on the last Lot in the Sale or the last Lot in that section of the Sale (as the case may be);

“Entry Form” – the form supplied by the Auctioneer to be completed and signed by the Vendor including details of the Lots to be offered for sale at the Sale;

“Hammer Price” – the price at which the Lot is knocked down to the highest Bidder as confirmed by the Auctioneer (excluding any VAT, Commission, Buyer’s Premium or other charges);

“Liquidated Damages” – the ascertained and agreed damages to cover all expenses, depreciation in value and other damages whatsoever;

“Lot” – any Lot which is included in a sale organized by the Auctioneer and offered for sale (whether sold as a single item or as a group of items and numbered accordingly in the catalogue for the Sale) under these Conditions;

“Purchaser” - in relation to any Lot, the person whose bid for that Lot has been accepted by the Auctioneer or, if Condition 7 applies, a purchaser from that person and in either case including the personal representative(s) of such person;

“Reserve Price” – the minimum price notified by the Vendor to the Auctioneer or determined by the Auctioneer prior to the Sale and below which no offer to purchase will be accepted;

“Sale” – a sale by public auction containing one or more Lots organized by the Auctioneer;

“Sale Premises” – the entirety of the building(s) and/or land (as the case may be) used by the Auctioneer to conduct the Sale;

“Take Delivery” – accept a transfer of possession;

“VAT” – the value added tax calculated at the rate payable on the date of the Sale

“Vendor” – the owner and any other person (being a partnership), firm or company other than the Auctioneer who offers a Lot for sale, including the personal representatives of any such person;

“Working Day” – Monday to Friday inclusive in any week subject to the provisions of Condition 2.1 of these Conditions.

1.2 Interpretation

In these Conditions:

- 1.2.1 words signifying the masculine include the feminine and vice versa.
- 1.2.2 words signifying the singular include the plural and vice versa.
- 1.2.3 references to a person include a corporation.
- 1.2.4 references to any Enactment include a reference to:
 - 1.2.4.1 any Enactment which that Enactment has directly or indirectly replaced (whether with or without modification); and,
 - 1.2.4.2 that Enactment as re- enacted, replaced or modified from time to time, whether before, on or after the date of these Conditions.
- 1.2.5 references to a Condition, Schedule or Appendix are to a Condition or part of a Condition, Schedule or the Appendix to these Conditions.
- 1.2.6 the contents table and the descriptive headings to Conditions, Schedules and the Appendix are for convenience only and shall be ignored when interpreting these Conditions; and,
- 1.2.7 the words and phrases “other”, “include”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

The Conditions which follow apply to all sales of new or used machinery, motor vehicles, chattels and other sundry items and/or equipment (but for the avoidance of any doubt EXCLUDING ALL SALES OF LIVESTOCK):

2 Time limits

- 2.1 Time shall be of the essence of all Conditions which contain time limits. Where the time limited for a person to do anything expires on a Sunday, bank or other public holiday, or on the day next following any such day, then such Sunday or bank or other public holiday shall be excluded from the computation of the time.
- 2.2 In the computation of any period of time before or after the Sale or any other event, the day of the Sale or other event, as the case may be, shall be excluded.
- 2.3 Any period of time expressed as a number of days shall be taken to refer to that number of clear days, and similarly for any other period of time.

3 Statements of fact

Unless otherwise announced all statements of fact made in any sale catalogue or at the time of the Sale regarding any Lot are statements of fact made by the Vendor and not the Auctioneer and the Auctioneer accepts no responsibility for any mis-statements nor for any problems experienced by the Purchaser nor claims by him against the Vendor arising as a result of any such mis-statements.

4 Service of Notices

- 4.1 Notwithstanding anything to the contrary in these Conditions, and save as provided by Condition 4.2, any written notice under any of these Conditions may be served on the person to whom it is to be given either personally, or by leaving it for him at his last known address, or by sending it through the post in a prepaid recorded delivery letter addressed to him there, and any such letter shall be deemed to have been received by him at the time at which it would be delivered in the ordinary course of post.
- 4.2 Any written notice required by any of these Conditions to be given by a Purchaser to a Vendor may be given by such Purchaser to the Auctioneer on the Vendor's behalf, either by leaving it at the office of the Auctioneer, or by sending it through the post in a prepaid recorded delivery letter addressed to the Auctioneer there and any such letter shall be deemed to have been received by the Vendor at the time at which it would be delivered to the Auctioneer in the ordinary course of post.
- 4.3 On receiving any notice under Condition 4.2 the Auctioneer shall, as soon as reasonably practicable, communicate its contents to the Vendor.

4.4 Except as above, all communications and negotiations with reference to any dispute between any Purchaser and Vendor under these Conditions shall take place directly between the Purchaser and the Vendor respectively without involving the Auctioneer.

5 Liability of the Auctioneer

5.1 The Auctioneer acts in all respects only as agent for the Vendor and no Warranty is given by the Auctioneer or his employees or contractors, and none shall be implied, as to title, description or quality of any Lot. Neither the Auctioneer nor his employees or contractors shall be liable to the Purchaser in respect of any defect of title, error of description or imperfection or for any announcement or statement concerning any Lot offered for sale whether made orally or in writing (whether in a sale catalogue, order of sale, advertisement for the Sale or otherwise) and whether given before, during or after the Sale, nor shall he incur any liability in relation to any dispute between a Vendor and Purchaser.

5.2 The Auctioneer shall not be liable:

5.2.1 in any way for any accident which happens to any person while on the Sale Premises, unless it arises out of the Auctioneer's or his employees' or contractors' negligence; nor shall he be liable for any expenses, loss, claim or proceedings in respect of any property real or personal (including all Lots) whether incurred before or after the Sale;

5.2.2 for any persons entering the Sale Premises who do not observe all specific health and safety notices which are displayed; or,

5.2.3 in any way in the event of any interruption, suspension, or cancellation or disturbance to the telephone or on-line auction service nor any loss arising if any of these events occurs.

5.3 The Auctioneer reserves the right to refuse admission to the Sale Premises to any person or to refuse the admission of any Lot into the Sale, without having to state the reason.

6 Entry of Lots for the Sale

6.1 Entries of Lots for sale will not be accepted on the day of the Sale unless the Auctioneer agrees otherwise.

6.2 All Vendors shall properly complete a VAT declaration confirming their status (and VAT registration number where applicable) and deliver it to the Auctioneer prior to the Sale. Vendors, who for the purposes of VAT legislation are registered Vendors operating within the General Margin Scheme, must enter their Lots on the Entry Form and clearly state that they are eligible to sell their Lots under the Auctioneer's scheme and require them to be so treated.

6.3 The Auctioneer reserves the right to charge an entry fee in respect of the entry of any Lot in the Sale.

7 Conduct of Sales

- 7.1 Every Vendor, Bidder and Purchaser shall be deemed to have full knowledge of these Conditions and by taking part in the Sale agrees to be bound by them. These Conditions shall apply to all sales conducted by the Auctioneer on the Sale Premises except where they conflict with any special conditions expressly stated by the Auctioneer in the catalogue or at the time of the Sale as applying to the sale of that Lot, which shall then prevail.
- 7.2 The Auctioneer does not guarantee that every Lot which is entered for sale in any catalogue or advertisement will be forward at the Sale.
- 7.3 If a person who has a Lot for sale sells that Lot privately on the day of Sale and on the Sale Premises, either before it is offered for sale at auction or, if it fails to sell at auction, afterwards, these Conditions shall, so far as applicable, govern that private sale.
- 7.3.1 In the case of a private sale:
- 7.3.1.1 the Vendor and Purchaser shall immediately notify the sale to the Auctioneer and the purchase price shall be payable to the Auctioneer in full as if the sale had taken place at the auction; and,
- 7.3.1.2 the Auctioneer may charge the Commission which would have been payable if the Lot had been sold at auction for the price obtained on the private sale, and if he exercises that right the Auctioneer may deduct the Commission from the purchase price before accounting for it to the Vendor.
- 7.4 If the Vendor fails to comply with the provisions of 7.4.1.1 he shall be liable to pay the Commission.
- 7.5 In the event of any dispute arising with regard to the sale of any Lot or if the Purchaser shall refuse to pay or shall only make partial payment of the purchase price, the Auctioneer may at his sole discretion annul and cancel the sale of that Lot.

8 Reserve prices, order of sale and bidding

- 8.1 The Auctioneer reserves on behalf of himself, his firm, and the Vendor the following rights:
- 8.1.1 to fix a Reserve Price;
- 8.1.2 to bid on behalf of the Vendor up to the value of the Reserve Price;
- 8.1.3 to rearrange, consolidate or withdraw any Lots or to vary the order of the Sale; and,
- 8.1.4 without giving any reason, to refuse to accept the bids of any person.

- 8.2 A Vendor who wishes to fix a Reserve Price on any Lot owned by him shall notify the Auctioneer in writing, at least one hour before the sale of that Lot, failing which the Auctioneer may sell the Lot to the highest Bidder.
- 8.3 The Auctioneer may refuse to accept bids from a Vendor for a Lot owned by him and a Vendor shall not bid for a Lot owned by him using any agent other than the Auctioneer.
- 8.4 No person may advance on the previous bid less than the sum named from time to time by the Auctioneer.
- 8.5 No bid may be retracted once made.
- 8.6 The person making the highest bid accepted by the Auctioneer shall be the Purchaser.
- 8.7 If a dispute arises as to any bidding, then, at the discretion of the Auctioneer, either:
- 8.7.1 the relevant Lot shall immediately be offered for sale again; or,
- 8.7.2 the Auctioneer shall determine the dispute, and his decision shall be final and binding on all parties.
- 8.8 For the avoidance of any doubt, the above Conditions apply whether bidding is by telephone, or on line, in the same way as if the Bidder is present at the Sale.
- 8.9 Where a Purchaser wishes to bid by telephone or on line the following additional conditions shall apply:
- 8.9.1 if the Purchaser is not already known to the Auctioneer he shall provide such personal information as the Auctioneer may require for identification, security and financial purposes (i.e. bank card details) as well as two telephone numbers; and,
- 8.9.2 the bank card details provided will be used by the Auctioneer to pay the purchase price and other charges on or before the End of the Day's Sale.

9 Buyers Premium

After notifying Bidders by written notice displayed at the place of the Sale and by clear announcement at the start of the day's Sale the Auctioneer may charge a Purchaser a Buyers Premium (plus Value Added Tax) in addition to the Hammer Price.

10 Terms of business

- 10.1 The Auctioneer shall ensure that his trading terms are clearly communicated to all Vendors and Purchasers by being displayed at the Sale Premises and that they include:

- 10.1.1 an obligation on the Auctioneer to pay to the Vendor within an agreed time, the net proceeds of sale (ie the price paid by the Purchaser less the Commission and any other deductions) for each Lot; and,
- 10.1.2 full details of the rates of Commission charged by the Auctioneer.
- 10.2 If the Auctioneer charges a Buyer's Premium this will be clearly communicated to all prospective Purchasers before the Sale begins.
- 10.3 All sale monies paid to the Auctioneer shall be the property of the Auctioneer and are not held in trust for the Vendor except where a variation to this procedure has been notified to the Vendor in writing prior to the Sale. In such cases monies held by the Auctioneer shall be held in a separate and identifiable Clients' Account until payment is made to the Vendor.
- 10.4 The Auctioneer shall have the right to withhold payment to the Vendor of the proceeds of sale of a Lot if he has reasonable grounds for believing that the sale is not 'bona fide'.
- 10.5 The Auctioneer shall be entitled before making payment of the proceeds of a sale to a Vendor to deduct from those monies any debt unsettled and due from the Vendor to the Auctioneer.
- 10.6 The Auctioneer shall not account for VAT to a VAT registered Vendor until a properly completed VAT declaration confirming the status and VAT registration number of the Vendor has been delivered to the Auctioneer.

11 Value Added Tax (VAT)

- 11.1 VAT at the statutorily prescribed rate will be charged in addition to the Hammer Price on all Lots, save that the Auctioneer may elect to operate the statutory Auctioneer's Margin Scheme in respect of Lots offered on behalf of VAT non registered Vendors.
- 11.2 Purchasers from 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 applicable at the date of the Sale in addition to the Hammer Price of all relevant Lots.
- 11.3 Overseas Purchasers from non European Union countries will be required to pay a "VAT Deposit" equal to the United Kingdom standard rate of VAT applicable at the date of the Sale 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 refunded to the Purchaser, failing which the "VAT Deposit" will be remitted to the Vendor.

12 Liability of Vendors and Purchasers for documentation

- 12.1 Where under any Enactment a Lot must be accompanied by any documentation:
- 12.1.1 the Vendor shall be responsible for delivering to the Auctioneer all relevant documents and shall indemnify the Auctioneer against any claim by the Purchaser resulting from false or incorrectly completed documents and in the event of the Vendor's non delivery to the Auctioneer of any such documentation the Auctioneer shall refuse to accept such Lot for sale; and,
- 12.1.2 the Purchaser shall be responsible for obtaining from the Auctioneer or from the Vendor, as the case may be, all documentation to which he is entitled and shall indemnify the Auctioneer against any claim from any person resulting from the Purchaser's failure to do so.
- 12.2 If the Purchaser believes that any documentation is false or incorrectly completed he shall notify the Auctioneer by telephone or email (confirmed by notice in writing posted first class to the Auctioneer and supported by an officially authorised certificate) before the end of normal business hours on the second day after the day of the Sale.
- 12.3 Where any Enactment requires the Auctioneer to give information to any statutory or other authority or any other organization the Auctioneer may use any documentation or other information in his possession to supply any information that is so required.

13 Disclosure of owner's name: sale for disclosed principal

- 13.1 Each Lot shall be entered for sale in its owner's name and if required the owner's name as given to the Auctioneer shall be declared by him, when the Lot is offered for sale.
- 13.2 Whether or not a Purchaser requires disclosure of the owner's name the Auctioneer shall for all purposes be deemed to sell as agent for a disclosed principal.

14 Warranties by the Vendor

- 14.1 All Lots are accepted for sale by the Auctioneer on condition that the Vendor warrants his right to sell the same. The Vendor shall indemnify the Auctioneer and the Purchaser against all actions, costs, proceedings, claims, demands, charges and expenses which they may sustain or incur by reason of any defect in the Vendor's title or arising from the false or incorrect completion of any documents.

15 Principal and agent: joint and several liability: bids by agents

- 15.1 Where a Lot is offered for sale by a person in his own name but he is actually acting as an agent he shall, if so required by the Auctioneer, be bound to disclose the name and address of his principal and in such a case both the principal and the agent shall be jointly and severally liable and any steps authorised by these Conditions or by the general law may be taken against either or both of them.
- 15.2 Any person intending to bid for any Lot as an agent shall inform the Auctioneer before the sale of such Lot begins and shall, if required by the Auctioneer, disclose the name and address of his principal.
- 15.3 Subject to Condition 15.4, in all cases where a person whose bid is accepted is actually acting as an agent, whether or not he has disclosed that fact, he and his principal shall be deemed to be and shall remain jointly and severally liable and:
- 15.3.1 any steps or proceedings authorised by these Conditions or the general law may be taken or commenced against either or both of them; and,
- 15.3.2 no steps taken or proceedings commenced against the principal or the agent shall be deemed to operate as an election discharging the other from liability unless such steps or proceedings result in a final satisfied judgment.
- 15.4 Condition 15.3 shall not apply if before the commencement of the Sale the person acting as an agent informs the Auctioneer that he intends to bid as a principal, in which case he will be deemed to be solely liable.

16 Name of Purchaser: payment of purchase money: transfer of title

- 16.1 The Purchaser shall give his name and address (and proof of identity if required) to the Auctioneer when requested to do so.
- 16.2 The Purchaser shall pay the purchase price (and, if charged, the appropriate VAT and Buyers Premium) for each Lot that he bids for successfully at the Sale to the Auctioneer as soon after the fall of the hammer as the Auctioneer may require. Any time allowed for payment in respect of any purchase shall not be construed as a waiver of the right to require earlier payment on any subsequent purchase.
- 16.3 The Purchaser shall not make any set-off or other plea for non payment of the purchase price and shall be liable to the Auctioneer for any unpaid purchase price whether or not the Lot he successfully bid for has been delivered.

- 16.4 If the Purchaser fails to pay for any Lot when required to do so by the Auctioneer and he is not entitled to return the Lot under any of these Conditions, the Auctioneer may, by notice in writing to the Purchaser, rescind the sale to him at which point in time the Lot shall be deemed to be resold to and become the property of the Auctioneer who shall be responsible to the Vendor for the amount for which the Lot was sold to the Purchaser less the applicable charges.
- 16.5 Until the Purchaser makes payment in full to the Auctioneer, the Purchaser shall keep the Lot in good, marketable, and readily identifiable condition and shall not re-sell it.
- 16.6 In the event of a re-sale by a Purchaser before payment has been made in full to the Auctioneer the Purchaser shall hold the proceeds of such re-sale on trust for the Auctioneer (as agent of the Vendor).
- 16.7 Although the risk in any Lot may have passed to the Purchaser, title to the Lot will remain with the Vendor until the Purchaser has paid the purchase price for that Lot in full into the Auctioneer's bank account within the timescale from the End of the Day's Sale to do so set out in the Auctioneer's terms of business.
- If the title to the Lot does not pass to the Purchaser within the relevant timescale allowed for payment in this Condition the Vendor may then, but only then, recover possession of the Lot from the Purchaser and the Vendor or the Auctioneer may enter on the Purchaser's premises (or such other premises where the Lot is held) in order to do so.
- 16.8 If the Auctioneer accounts to the Vendor for the purchase price for a Lot (less the applicable charges) before the Purchaser has made payment in full to the Auctioneer the Auctioneer shall be entitled to any rights in that Lot which the Vendor may have under Condition 16.7.

17 Sales of Lots by a Purchaser

If the Purchaser of that Lot sells it to another person and notifies the Auctioneer of the name and address of that person then that person shall be treated as the Purchaser of the Lot and shall be entitled to all the rights, and be subject to all the obligations, of the original Purchaser under these Conditions but this will not affect the right of the Vendor, or the Auctioneer as agent for the Vendor, to hold the original Purchaser liable if the subsequent Purchaser fails to fulfil any of those obligations.

18 Responsibility for Lots before and after the Sale

- 18.1 All Lots are at the risk of the Vendor before the Sale and it shall be his duty to preserve them.
- 18.2 On the fall of the hammer each Lot is at the risk of the Purchaser.
- 18.3 The Auctioneer shall have no liability to notify the Vendor if any Lot is not sold.
- 18.4 If the Auctioneer expressly agrees to take charge of any Lot after the Sale or to forward it to its destination he shall be liable for any failure to fulfil this obligation which is due to his or his employees' or contractors' negligence, but otherwise he shall have no liability or obligation for the safe custody of any Lot after the Sale

SCHEDULE 2

WARRANTY RIGHTS AND RETURN OF LOTS

19 Vendor's warranty to the Auctioneer

- 19.1 His identity.
- 19.2 That he is competent to transfer a good and marketable title to his Lots free from any third party claims, liens, and charges, and that, unless otherwise stated in writing, all details on the Entry Form are correct; and,
 - 19.2.1 that no Lot is subject to any lease agreement or any other similar agreement;
 - 19.2.2 that the Auctioneer may make such announcements or publish such information supplied by the Vendor as he in his absolute discretion thinks fit; and,
 - 19.2.3 that he will fully and effectually indemnify the Auctioneer in respect of any Warranty that is found to have been made by the Auctioneer as a result of such announcements or publications.

20 Inspection of Lot

- 20.2 Neither the Auctioneer, his employees or contractors are responsible for errors of description or for the correctness or authenticity of any Lot.
- 20.3 Unless otherwise specifically stated by the Auctioneer at the time of sale no Warranty is given or shall be implied by the Auctioneer, his employees or contractors nor by any Vendor to any Purchaser in respect of any Lot.

21 Complaints procedure

- 21.1 If any Purchaser shall dispute the accuracy of any description or shall make a claim for Breach of Warranty he shall notify the Auctioneer as soon as is practicable after the Sale but in any event no later than midday on the third working day following the day of Sale.
- 21.2 On receipt of such notification of a complaint the Auctioneer shall immediately notify the Vendor in writing of the complaint and of its nature.

22 Default

- 22.1 If a Purchaser fails to perform any of his obligations under these Conditions the Auctioneer may decide in his sole discretion that the Lot in respect of which the failure is made to be resold by public or private sale without warranty or reserve and without notice to the Purchaser.

22.2 If on such resale a lower price is obtained for any Lot than was obtained at the Sale, the Purchaser shall be liable to the Auctioneer for the difference in price together with all associated resale costs and expenses incurred on the resale.

