

Machinery, Plant and Equipment Sales – All Types

Live, Online, Timed, Hybrid etc

Conditions of Sale - Sellers

1. DEFINITIONS

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

“Auctioneers” means Kivells.

“Commission” means the commission charged on the sale of Lots to Sellers and Buyers as notified on Entry Forms, The Auctioneers’ website, Kivells Internet Sale Service Host’s website, Special Conditions, Notice to Purchasers, Catalogue or announced.

“Conditions” means the standard terms and conditions of business set out in this document. Any sale specific conditions will be set out in a separate statement of Special Conditions or Notice to Purchasers as notified on Entry Forms, Auctioneer’s website, Kivells Internet Sale Service Host’s website, Catalogue or announced.

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

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

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

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

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

“Sale” means a sale of Lots by Auction, Private Treaty or Tender organised by the Auctioneers to include Online Timed Sales, Live and Webcast sales, Hybrid Sales and any combination of traditional and Online sales.

“Hammer Price” means the price at which a lot is knocked down at, or in the case of online sales when bidding is closed for a lot, net of VAT, Commission, Buyers Premium, Dismantling or Removal costs and any other charges.

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

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

“Saleground” means the venue where the Sale is taking place or some or all of the Lots are located during the sale period to include Kivell’s market sites, any Seller’s premises or storage facility

“Auction” means Live or Online or any combination thereof and whether conducted independently or simultaneously to include Online Timed Sales, Live and Webcast sales, Hybrid Sales and any combination of traditional and Online sales.

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

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

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

“VAT” value added tax chargeable under English law.

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

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

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

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

2. STATUS OF CONDITIONS OF SALE

- 2.1 Any Seller entering Lots in the Sale is deemed to have read, accepted all and sells on the basis of these Conditions.
- 2.2 The Auctioneers may add to or supersede these Conditions in whole or part with Special Conditions or Notice to Purchasers applicable to a specific Sale or Lot, which will be in any catalogue, announced at the time of Sale verbally, on The Auctioneer's and/or Kivells Internet Sale Service Host's website
- 2.3 No employee or agent of the Auctioneers has any authority to vary these Conditions.

3. COMMISSION

- 3.1 Seller shall pay Commission to the Auctioneers at the following rates
 - 10% on any lot up to and including £2000
 - 5% on any single lot over £2,000 and up to a maximum of £30,000
 - Any single lot over £30,000 will be subject to a commission 'cap' of £1500
 - Any single lot over £40,000 will be subject to a commission 'cap' of £2000
- 3.2 A minimum commission of £2 per lot sold.
- 3.3 VAT at the standard rate will be charged on all commissions.
- 3.4 Commission at the rate specified shall be payable by the Seller on all Lots sold privately at the saleground.
- 3.5 The commission is payable from the date of sale and will be deducted from sale proceeds.
- 3.6 The Auctioneers reserve the right to charge The Seller the costs associated with any sale.

4. ENTRY OF LOTS FOR SALE

- 4.1 All lots must be entered on the Auctioneer's "Entry Form" which is to be submitted to the Auctioneers within the dates and timeframes set out on the entry form.
- 4.2 All Lots must be delivered to the Saleground on the dates and timeframe set out in the "Entry Form" or as authorised by the Auctioneers and notified on their website.

5. HEALTH & SAFETY

- 5.1 Any person entering the Saleground does so at their own risk and must comply with the requirements of all health and safety notices and guidelines, the sale Special Notices and Notice to Purchasers and report immediately to the Auctioneers, the Seller or the storage facility manager depending on the location of the lot(s).
- 5.2 The Auctioneers reserve the right to refuse admission to any person or entry of any Lot(s) into the Saleground without giving reason.
- 5.3 All persons entering the Saleground are hereby given notice that there are significant risks to include unloading of machinery, running machinery, movement of machinery, equipment and transport. Caution should be exercised and children must be fully supervised at all times.
- 5.4 Any incidents or accidents on the Saleground should be reported to The Auctioneers office immediately and notify the Seller or the storage facility manager depending on the location of the lot(s)
- 5.5 Permission from the Auctioneers or Seller or storage facility manager, depending where the lots are located, is required ahead of starting powered equipment or machinery.

- 5.6 The maximum speed in the Saleground is 5 mph.
- 5.7 Certain types of plant and machinery and ancillary equipment can contain hazardous materials, chemicals, etc. In the event The Auctioneers accept the Lot as suitable for sale The Seller must ensure that the loading and transport of any Lot containing such hazardous materials, chemicals, etc. to and from the Saleground is carried out in accordance with the Health and Safety at Work Act 1974 and Control of Substances Hazardous to Health Regulations 1988 (COSHH) and any other relevant Act of Parliament, Regulations or relevant Legislation covering such substances.
- 5.8 For the avoidance of doubt for lots located at the Seller's Saleground or storage facilities, the Seller is responsible for overseeing any viewing, for overseeing the safe removal of lots and for the display of appropriate Health and Safety signage unless other arrangements have been mutually agreed with The Auctioneers. The Seller warrants that the premises he selects as his Saleground will be safe and lawful for that purpose and the lots insured at that Saleground.

6. RISK AND MISCELLANEOUS

- 6.1 The Seller is responsible for insuring his lots and all risks relating thereto to include loss or damage until the hammer falls/ the lots are sold online whereupon the risk and responsibilities pass to the Buyer.
- 6.2 Unless otherwise agreed by the Auctioneers no entries can be accepted on the day of the Sale or in the case of a timed online sale when the catalogue goes live.
- 6.3 All Reserve Prices must be set out in writing on the Entry Form otherwise no responsibility can be accepted by the Auctioneers for errors in respect to Reserve Prices.
- 6.4 All Lots brought into the Saleground and offered for sale by The Auctioneers must not be sold privately before the Sale. In the event that any private transactions take place following a Sale whilst the Lots remain in the Saleground such sales must be notified to the Auctioneers. Such transactions will be treated as a sale of the Lots by the Auctioneers.
- 6.5 If a Lot remains unsold following the Sale Day and remains in the Kivells Market Saleground the Auctioneers reserve the right to sell such Lot at the reserve price without further consultation with the Seller. The Auctioneers also reserve the right to sell any unsold unreserved lots remaining in The Kivells Market Saleground after the sale without further consultation with the Seller. Lots located at The Sellers Saleground or at storage facility, remaining unsold, may be sold on a provisional basis subject to acceptance from the Sellers.
- 6.6 Following the sale of any vehicles, tractors and other self-propelled machines the Auctioneers shall not pay over the net purchase price to the Seller until such time as the Seller has given to the Auctioneers the V5 registration document for such lots if the Seller has stated on the entry form that the registration document will be supplied.
- 6.7 The Auctioneers reserve the right to annul and cancel any sale to include cases where the Seller has stated on the entry form that the V5 registration document is supplied and the V5 document must be handed to the Auctioneers on or before the sale day.
- 6.8 In the event the sale instruction is cancelled, the Seller will be responsible for any cost of transport incurred in the Lot(s) being transferred to or from the Saleground or any other location and any other reasonable costs relating to the cancellation.

7. RESERVE PRICE AND BIDDING

- 7.1 The Auctioneers and their Internet Sale Service providers shall not be liable for any break in connection and the Bidders ability to bid online. The Auctioneers cannot guarantee that the service will be continuous without interruptions.

- 7.2 The Auctioneers and/or the Seller reserve the right to set a Reserve Price for any Lot and withdraw that lot in the event that the highest bid does not meet the reserve.
- 7.3 The Seller may bid for any Lot either personally or through the Auctioneers or through any other person only up to the reserve price.
- 7.4 The Auctioneers may without giving any reason refuse to accept bidding off any person. In the case of a dispute as to any bid, the auctioneers may forthwith determine the dispute or put up the Lot again or withdraw the Lot.
- 7.5 Bids shall be made exclusive of any VAT or Commission/Buyers Premium, Dismantling or Removal costs and any other costs which may apply.
- 7.6 The Auctioneers shall have absolute discretion without giving any reason:
- (a) to refuse any bid
 - (b) to divide any Lot
 - (c) to combine any two or more Lots
 - (d) to withdraw any Lot from the auction, and
 - (e) in case of dispute, to offer any Lot for sale again.
 - (f) to postpone, cancel or extend an online auction or any sale type beyond any stated closing time.
 - (g) to extend the closing time on individual lots
 - (h) to alter bidding increments
 - (i) to accept bids subject to Sellers approval
 - (j) in respect of bids below reserves consider the highest bid with the Seller who at its sole discretion may accept, reject or negotiate.
- 7.7 No bid may be retracted without the consent of the Auctioneer. Highest bids will be treated as valid bids even if the reserve is not initially met. This allows Sellers to consider their position and may give the highest bidder a further opportunity to buy.

8. AUCTIONEERS AS AGENT FOR SELLER

- 8.1 The Auctioneers sell as Agent for the Seller and as such are not responsible for any default by the Seller or Purchaser.
- 8.2 In the event that a purchaser fails to pay the purchase price for the Lot in accordance with these Conditions and the Auctioneers have previously advanced to the Seller of such Lot an amount representing the net purchase price the Seller shall forthwith, at the request of the Auctioneers, assign all and any of his rights against the Purchaser in respect of the unpaid purchase price to the Auctioneers and shall execute such documents as may be required by the Auctioneers to give effect to such assignment and further, shall give all reasonable co-operation to the Auctioneers in any action, claim or proceedings brought or threatened by the Auctioneers against the Purchaser.

9. REMOVAL OF LOTS FROM SALEGROUND

- 9.1 All Lots whether sold or unsold may not be removed from the Saleground without a removal pass or written confirmation from The Auctioneers that payment has been made. All Lots must be checked out by the Auctioneers staff, The Seller or the storage facility manager, depending on where the lots are located. Any person entering the Saleground does so at their own risk and must comply with the requirements of all health and safety notices and guidelines, Special Notices, the sale Notice to Purchasers and report immediately to the Auctioneers, the Seller or the storage facility manager depending on the location of the lot(s).
- 9.2 All Lots remaining unsold which the Auctioneers have requested the Seller to collect, must be cleared from the Saleground within the timeframe and on the dates set out in The Entry Form, the Special Conditions of Sale, The Notice to Purchasers, any Auctioneers announcement either verbally or on The

Auctioneer's website or Kivells Internet Sale Service Host's website unless the Auctioneers expressly agree otherwise.

- 9.3** Any Lot which (without the express written consent of the Auctioneers) has not been collected within 10 working days, or otherwise stated, from the "Sale day" will be deemed to be abandoned and the auctioneers will be entitled to dispose of such abandoned Lots at their unfettered discretion. Any monies arising from such disposal(s) and storage will be paid to and retained by the Auctioneers.

10. TITLE AND WARRANTYS

- 10.1** The Seller warrants that the lots entered for the Sale are entirely their property and are not subject to any hire purchase, lease, contract hire agreement or any other contract, and that they shall abide by the Standard Terms and Conditions of Business and Special Conditions shown on the entry form, on The Auctioneer's website and in correspondence...

- 10.2** The Seller warrants that they are the owner of and entitled to have possession of and to sell the lots. The Seller further warrants that all the information supplied by them or their agents is accurate and agree to indemnify any purchaser against any liability howsoever arising in respect of the Auctioneer and purchaser receiving the lots at Auction or in respect of any inaccuracies in the above information and against all costs and expenses incurred by the Purchaser and Auctioneer in dealing with any claim arising in that respect.

- 10.3** The Seller certifies that they have notified the Auctioneers in writing if any of the Lots entered have been recorded by any insurance company as a write-off or have been subject to a major insurance claim.

- 10.4** The Seller warrants that as far as reasonably practicable, given the age, condition and usage of the Lot, that they have taken adequate steps to ensure the Lot is safe and without risk to health and safety and that they indemnify the Auctioneer against all claims under the Consumer Safety Act 1978 and Part 1 of the Consumer Protection Act 1987.

- 10.5** Declared on the Entry Form any risk posed by the Lot to health and safety so that it is clear to the Auctioneer and prospective Buyers.

- 10.6** That unless disclosed on the Entry Form any vehicle entered is in a roadworthy condition and complies with regulations made under section 41 of the Road Traffic Act 1988 and has the benefit of any unexpired vehicle excise licence and any current MOT certificate which will be transferred to the Buyer.

- 10.7** That they will endeavour to provide all operators' handbooks and instruction manuals in their possession for the Lot.

- 10.8** In cases where a Lot once entered is not offered for sale on the Seller's instructions the Auctioneers shall be indemnified by the Seller for all expenses incurred in relation thereto and against all claims from third parties that may arise.

- 10.9** In cases where the Auctioneers have reason to doubt any information or any required information is not forthcoming the Auctioneers may instruct a suitably qualified person to inspect and report on the lot the cost of which shall be borne by the Seller.

- 10.10** That they will indemnify the Auctioneers their servants and agents and the Buyer against any loss or damage suffered by them in consequence of any breach of the above warranties.

11. VAT

- 11.1** All sellers shall properly complete a VAT declaration confirming their status, VAT registration number (where applicable) and deliver it to the auctioneers prior to the sale. Sellers, who for the purposes of VAT legislation are registered as operating within the General Margin Scheme, must enter their

goods on the appropriate entry form of the Auctioneers and clearly state that they are eligible to sell their entries under the auctioneer's scheme and require their lots to be so treated.

12. GOVERNING LAW AND JURISDICTION

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