

Terms and Conditions of Sale by Auction and Private Treaty

1. INTRODUCTION

- 1.1 HICKMAN-SHEARER LIMITED is a private company limited by shares incorporated and registered in England and Wales with company number 9556189 (**Agent**) whose registered office is at 35 Chequers Court, Brown Street, Salisbury, Wiltshire SP1 2AS
- 1.2 These are the terms and conditions (**Terms**) under which the Agent, acting in its capacity as agent for the seller (**Seller**), sells equipment, plant, machinery and other goods (**Goods**) by auction and private treaty to a buyer (**Buyer**).
- 1.3 Any contract of sale is made directly between the Seller and the Buyer and the Agent shall have no responsibility for the actions or omissions of the Seller, the Buyer or any other party.
- 1.4 It is recommended that Buyers review these Terms carefully as they will, together with any special conditions notified to the Buyer, govern the relationship between the Agent, the Seller and the Buyer.
- 1.5 The Buyer's attention is particularly drawn to clause 10, which sets out the Buyer's liability to the Agent and the Seller, and to clause 12, which sets out the extent of the Agent's and the Seller's liability to the Buyer.

2. FORMATION OF CONTRACT FOR SALE BY PRIVATE TREATY

- 2.1 If the Agent indicates that it is prepared to sell Goods by private treaty, such indication shall constitute an invitation to treat and not an offer to sell.
- 2.2 When the Buyer makes an offer to the Agent to purchase the Goods by private treaty, such offer shall be deemed to be made on these Terms and subject to any special conditions contained in an Acknowledgement, any catalogue, particulars of sale or tender document or otherwise notified by the Agent to the Buyer in writing (**Private Sale Details**).
- 2.3 The Agent may accept an offer verbally or in writing (**Acknowledgement**), at its option, at which point a contract for the sale and purchase of the Goods shall come into existence between the Seller and the Buyer on these Terms and subject to any special conditions contained in the Private Sale Details.
- 2.4 The Buyer shall have no right to cancel a contract formed under this clause 2.

3. FORMATION OF CONTRACT FOR SALE BY AUCTION

- 3.1 If the Agent indicates that it is prepared to sell Goods by auction, such indication shall constitute an invitation to treat and not an offer to sell.
- 3.2 By submitting a bid for the Goods (**Bid**), the Buyer makes an offer to the Agent to purchase the Goods on these Terms and subject to any special conditions contained in the auction catalogue, particulars of sale or otherwise notified by the Agent to potential bidders or specifically to the Buyer in writing (**Auction Sale Details**).
- 3.3 The Agent has complete discretion to refuse any bid.
- 3.4 The Buyer shall be the highest bidder acceptable to the Agent at or above any reserve price at the conclusion of the auction, at which point a contract for the sale and purchase of the Goods on these Terms and subject to any special conditions contained in the auction catalogue or otherwise notified by the Agent to the Buyer in writing shall come into existence between the Seller and the Buyer, subject to the Agent's right to reject Bids and to alter or withdraw Goods from auction under clause 5.

3.5 If any reserve price is not met in a sale by auction, the Agent shall be entitled in its absolute discretion to accept any Bid received which is below the reserve price, in which case the Buyer shall be the person who has submitted that Bid.

3.6 The Buyer shall have no right to cancel a contract formed under this clause 3.

4. THE GOODS

4.1 The Buyer is solely responsible for inspecting and investigating the Goods prior to a sale by auction or private treaty and for satisfying itself on all matters relating to the Goods including as to the description of the Goods and their merchantability, quality, condition and fitness for purpose.

4.2 The Agent and its employees, representatives, agents and subcontractors give no representation or warranty as to the description of the Goods or their merchantability, quality, condition or fitness for purpose.

4.3 Any illustrations, photographs and other images of Goods contained in Private Sale Details, Auction Sale Details, or otherwise, shall be for identification purposes only and shall not be indicative of the accuracy of the description of the Goods or their merchantability, quality, condition or fitness for purpose.

4.4 Any descriptions in Private Sale Details, Auction Sale Details or elsewhere (whether given verbally or in writing) shall be statements of opinion only. All Goods shall be sold subject to any faults, defects and imperfections which may subsist at the time of the sale.

4.5 No Goods shall be sold as new for the purposes of the Consumer Protection Act 1987 and any other product liability legislation.

5. AGENT'S CONDUCT OF SALE

5.1 The Agent shall be entitled to conduct a sale of Goods by any method it considers appropriate and to impose such special conditions as it sees fit in the circumstances.

5.2 The Agent may in its absolute discretion refuse to admit any person to the premises where the Goods are displayed for inspection (**Premises**).

5.3 The Agent may in its absolute discretion update or amend the Private Sale Details and the Auction Sale Details for any reason at any time prior to the formation of a contract under clause 2 or clause 3.

5.4 The Agent may in its absolute discretion alter or withdraw Goods from sale by private treaty or auction at any time prior to the formation of a contract under clause 2 or clause 3.

5.5 The Agent may in its absolute discretion reject a Bid in a sale by auction at any time prior to the formation of a contract under clause 3.

5.6 The Agent may set a reserve in respect of Goods for sale by auction and reserves the right to submit Bids for Goods on behalf of a third party.

5.7 In the event of a dispute arising between any persons concerning the sale of Goods by auction or private treaty, such dispute shall be determined solely by the Agent in its absolute discretion. The Agent's decision shall be final and binding and the Agent shall be under no obligation to enter into further discussion or correspondence concerning such dispute.

6. PRICE AND PAYMENT

6.1 The price payable by the Buyer for Goods sold by private treaty shall be the price offered by the Buyer and accepted by the Agent in accordance with clause 2, plus any buyer's premium

specified in the Private Sale Details or Auction Sale Details, plus value added tax (if applicable) at the prevailing rate.

- 6.2 The price payable by the Buyer for Goods sold by auction shall be the amount of the Bid, plus any buyer's premium specified in the auction catalogue, plus value added tax (if applicable) at the prevailing rate.
- 6.3 Additional charges may be applicable (e.g. for loading, delivery, disconnection of utilities etc.) as set out in the Private Sale Details or Auction Sale Details (**Additional Charges**).
- 6.4 The Agent shall invoice the Buyer for the Goods, any buyer's premium and any Additional Charges. The Buyer shall pay the invoice in cleared funds in the currency specified in the invoice prior to the collection or removal of the Goods and in any case prior to the latest date for payment as specified in the Private Sale Details, Auction Sale Details or Acknowledgement (**Latest Payment Date**). Time for payment shall be of the essence of the contract.
- 6.5 The Agent reserves the right to refuse payment in cash and shall in no circumstances accept any payment in cash of more than £7,500.
- 6.6 The Agent reserves the right to investigate and identify the source of any funds it receives, to postpone completion of the sale of any Goods at its discretion while it completes its investigations, and to cancel the sale of any Goods.

7. TITLE AND RISK

- 7.1 The Agent is acting as the agent of the Seller only and gives no warranty as to the Seller's title to the Goods.
- 7.2 Legal and equitable title to the Goods shall pass to the Buyer only once the Agent has received full payment in cleared funds of all sums due to the Agent and the Buyer has removed the Goods from the Premises in accordance with clause 8 and clause 9, provided that no Goods shall be released to the Buyer until payment in full has been received.
- 7.3 Title to any intellectual property rights which may subsist in the Goods shall not transfer to the Buyer. Any use by the Buyer of the Goods (including without limitation computer software) shall be subject to the terms of any existing licence or other intellectual property rights in and to such Goods.
- 7.4 All risk in the Goods shall pass to the Buyer from and including the date the contract is formed under clause 2 or clause 3. The Buyer should obtain adequate insurance cover for the Goods from the relevant date as the Agent and the Seller shall have no responsibility for the loss or theft of, or damage to, the Goods after this time.
- 7.5 If after the contract is formed the Buyer, the Seller or the Agent discovers that the Seller does not have title or unencumbered title to the Goods, both the Buyer and the Seller shall be entitled to rescind the contract. In such circumstances, the Seller shall refund any sums paid by the Buyer and neither the Agent nor the Seller shall have any further liability to the Buyer.
- 7.6 If prior to the removal of the Goods a third party claims title to or possession of the Goods, the Seller shall be entitled to rescind the contract and refund any sums paid by the Buyer and neither the Agent nor the Seller shall have any further liability to the Buyer.

8. HEALTH AND SAFETY

- 8.1 The Buyer acknowledges and accepts that certain Goods may contain hazardous or deleterious materials and substances and may be subject to health and safety legislation, including without limitation the Health and Safety Act 1974, the Environmental Protection Act 1990, the Construction (Design and Management) Regulations 2007, the Control of Substances Hazardous to Health Regulations 2002 and the Furniture and Furnishings (Fire) (Safety) Regulations 1988.

- 8.2 The Buyer acknowledges and accepts that Goods may not comply with the relevant health and safety legislation at the time they are sold, may not be suitable for domestic use or may require specialist handling or treatment prior to their removal from the Premises and during their subsequent transfer and use.
- 8.3 The Buyer shall be solely responsible for ensuring at its own expense and risk that it is aware of any relevant health and safety legislation or codes of conduct relating to the Goods and that such legislation or codes (as amended) are complied with in full both during the removal, transfer and subsequent use of the Goods as well as in connection with the disposal of any hazardous materials, substances or other waste from the Goods. The Buyer shall produce evidence of its compliance if requested by the Agent or the Seller.
- 8.4 The Buyer undertakes with the Seller and the Agent that prior to using any of the Goods, it will carry out, or arrange for the carrying out of, such testing and examination as may be necessary to ensure that the Goods are so designed and constructed as to be safe and without risk to health when properly used.
- 8.5 The Buyer agrees and undertakes that it will relieve the Seller and the Agent of any duties pursuant to sections 6(1), 6(1A) and 6(4) of the Health and Safety Act 1974 in respect of the Goods.

9. REMOVAL OF GOODS

- 9.1 The Buyer shall be solely responsible at its own expense and risk for the safe and lawful removal of the Goods from the Premises and their onward transfer.
- 9.2 The Buyer shall contact the Agent to make arrangements for the removal of the Goods and shall effect such removal under the supervision of the Agent during the Agent's normal operating hours by no later than the latest date for collection set out in the Private Sale Details, Auction Sale Details or otherwise notified by the Agent to the Buyer in writing (**Clearance Date**). However, the Agent shall be under no obligation to release the Goods to the Buyer until it has been able to confirm to its satisfaction that it has received full payment for the Goods in cleared funds. The Agent shall release the Goods only to the Buyer or its authorised agent and not to any third party.
- 9.3 Prior to the removal of the Goods, the Buyer shall at its own expense and where reasonably necessary carry out, or procure the carrying out of, a full risk assessment to assess the risk of disconnecting, detaching, dismantling and/or removing the Goods from the Premises. The Buyer shall make the results of such assessment available to the Agent or the Seller on request.
- 9.4 The Buyer shall ensure that the Premises (including any electrical, gas, water, steam, waste or other supply or utility) are left in a safe condition following the removal of the Goods and shall make good any damage caused by it or its employees, representatives, agents or subcontractors in effecting the removal of the Goods.
- 9.5 The Buyer shall not use flame cutters, explosives or any other dangerous equipment, substance or process in connection with the removal of the Goods without the prior written permission of the Agent.
- 9.6 Where the Goods comprise buildings or plant housings, the Buyer shall at its own expense obtain any necessary planning permissions prior to the removal of the Goods. It is the sole responsibility of the Buyer to investigate whether any planning permission is required in relation to the Goods.
- 9.7 The Buyer shall obtain adequate public liability insurance and employer's liability insurance in respect of the removal of the Goods. The Buyer shall if required by the Agent produce evidence that adequate insurance is in place and the Agent shall be under no obligation to release the Goods to the Buyer unless and until the Buyer has provided such evidence.
- 9.8 If the Agent or the Seller has reasonable grounds to believe that damage is likely to be caused to the Premises as a result of the removal of the Goods, the Buyer may be required to deposit such sum by way of deposit as the Agent or the Seller in its absolute discretion considers

reasonable. If the Buyer refuses to deposit the sum requested, the Agent or the Seller shall be entitled to refuse to allow the Buyer to remove the Goods and the Seller shall be deemed to be in default under clause 10.

- 9.9 The Buyer shall indemnify and keep indemnified the Agent and the Seller against all liabilities, costs, claims, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered, incurred or paid by the Agent and/or the Seller arising out of or in connection with the Buyer's removal of the Goods.

10. BUYER DEFAULT

- 10.1 If the Buyer fails to make any payment due to the Agent in full by the due date for payment, then without prejudice to any other rights the Agent may have the Agent shall be entitled to charge the Buyer interest on any overdue amount from the due date for payment at a rate of 3% above the base rate of HSBC bank from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer must pay interest together with any overdue amount on demand.
- 10.2 In the event that the Goods are not removed from the Premises by the due date for payment (whether by agreement or otherwise), then without prejudice to any other rights the Agent or the Seller may have the Agent reserves the right to charge the Buyer for its reasonable storage and administration costs until the earlier of the date the Goods are removed by the Buyer or the date the Seller rescinds the contract.
- 10.3 The Seller and/or the Agent may rescind the contract without incurring any liability to the Buyer if:
- 10.3.1 the Buyer fails to pay any sum due by the due date for payment;
 - 10.3.2 the Buyer fails to remove the Goods within the time period permitted;
 - 10.3.3 the Buyer does not comply with its obligations under clause 8 and clause 9 in effecting the removal of the Goods; or
 - 10.3.4 the Buyer removes the Goods without obtaining the prior permission of the Agent.
- 10.4 Without prejudice to any claims the Seller and/or the Agent may have against the Buyer in tort or for breach of contract, or otherwise, if the Seller and/or the Agent rescinds the contract under clause 10.3, then:
- 10.4.1 all sums paid by the Buyer shall be forfeited to the Seller; and
 - 10.4.2 the Seller and/or the Agent shall be entitled to resell the Goods to a third party privately or publicly without accounting to the Buyer in the event of a sale at a higher or lower price than that originally agreed to be paid by the Buyer (in which case the Buyer agrees that any resale price achieved by the Seller and/or the Agent in respect of the Goods is commercially reasonable).
- 10.5 If the Seller and/or the Agent rescinds the contract under clause 10.3, the Buyer shall indemnify and keep indemnified the Agent and the Seller against all liabilities, costs, claims, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered, incurred or paid by the Agent and/or the Seller arising out of or in connection with:
- 10.5.1 the rescission of the contract and the resale of the Goods (including any loss arising out of the resale of the Goods at a lower price than that originally agreed to be paid by the Buyer);

- 10.5.2 the Buyer's failure to remove the Goods within the time period permitted;
- 10.5.3 the Buyer's failure to comply with its obligations under clause 8 in effecting the removal of the Goods; and
- 10.5.4 the Buyer's removal of the Goods without the prior permission of the Agent, provided that any sums forfeited by the Buyer under clause 10.4.1 shall be credited against such liabilities, costs, claims, expenses, damages and losses.

11. WEBSITES

- 11.1 Access to the Agent's website (**Website**) is permitted on a temporary basis and the Agent gives no guarantee that the Website, or any content on it, will always be available or be uninterrupted.
- 11.2 The Buyer and all other users of the Website are responsible for making all arrangements necessary for accessing the Website and the Agent shall not be liable to the Buyer or any other person if for any reason the Website is or becomes unavailable at any time or for any period or if it is not possible to make a Bid.
- 11.3 In addition to the Agent's Website, the Agent may use third party auction websites for the purpose of selling Goods by auction (including without limitation www.bidspotter.co.uk) (Auction Websites). The Auction Websites are owned and operated by third parties whose own terms and conditions and privacy policies will apply to their use. The Agent and the Seller have no control over such Auction Websites (or the terms and conditions and privacy policies governing their use) and consequently neither the Agent nor the Seller shall have any liability to the Buyer or any other person whatsoever in relation to such Auction Websites, including without limitation any unavailability, interruption in service or any other failure to operate.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in these Terms shall limit or exclude the liability of the Agent, the Seller, other members of the Agent's and the Seller's respective groups of companies, third parties connected to the Agent and the Seller and the Agent's and the Seller's directors, employees, subcontractors and agents for:
 - 12.1.1 death or personal injury caused by its or their negligence;
 - 12.1.2 fraud or fraudulent misrepresentation; or
 - 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession), however attention is drawn to clause 7.1.
- 12.2 Subject to clause 12.1, all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity, including without limitation the terms implied by sections 13 to 15 of the Sale of Goods Act 1979, are, to the fullest extent permitted by law, expressly excluded.
- 12.3 Subject to clause 12.1, the liability of the Agent, the Seller, other members of the Agent's and the Seller's respective groups of companies, third parties connected to the Agent and the Seller and the Agent's and the Seller's directors, employees, subcontractors and agents for loss incurred or suffered by the Buyer shall be limited to the price paid by the Buyer for the Goods (or if no price has been paid, the price agreed under clause 2 or clause 3).
- 12.4 Subject to clause 12.1, the Agent, the Seller, other members of the Agent's and the Seller's respective groups of companies, third parties connected to the Agent and the Seller and the Agent's and the Seller's directors, employees, subcontractors and agents shall under no circumstances whatsoever be liable to the Buyer or any other person, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, or otherwise, for any:

- 12.4.1 loss of income or revenue;
- 12.4.2 loss of business or business opportunity;
- 12.4.3 loss of profits;
- 12.4.4 loss of contracts;
- 12.4.5 loss of anticipated savings;
- 12.4.6 loss of, or corruption or damage to, information or data;
- 12.4.7 loss of or damage to goodwill;
- 12.4.8 loss arising from third party claims;
- 12.4.9 wasted management or office time; and
- 12.4.10 indirect, special or consequential loss,

arising under or in connection with these Terms and/or the sale of any Goods, provided that nothing in this clause 12.4 shall prevent claims for loss of or damage to the Buyer's or any other person's tangible property or any other claims for direct financial loss that are not excluded by any of the categories set out above.

13. DATA PROTECTION

The Agent may need as an independent controller to process personal data of the Buyer's personnel or staff (**Contact Data**) in order to (i) administer and manage a contract for the sale and purchase of Goods, (ii) comply with its obligations under these Terms, (iii) respond to or raise enquiries in relation to a contract for the sale and purchase of Goods, and (iv) comply with its regulatory obligations. The Agent will ensure that its use and sharing of the Contact Data will comply with UK data protection legislation. The words "personal data", "controller" and "processing" used in this paragraph have the meanings given to them in the Data Protection Act 2018.

14. INTELLECTUAL PROPERTY

- 14.1 In this clause Intellectual Property Rights means all patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 14.2 All Intellectual Property Rights in and to the Website, the Sale Particulars, the Auction Particulars, any catalogues or advertising materials issued by the Agent and any photographs, illustrations or other images of the Goods (Intellectual Property) are and shall remain the property of the Agent or the Seller or their licensors.
- 14.3 The Buyer shall not copy, reproduce, alter, adapt, modify, translate or deface the Intellectual Property, in whole or in part and for any purpose, without the prior written permission of the Agent.

15. EVENTS BEYOND THE REASONABLE CONTROL OF THE AGENT

The Agent and the Seller shall not be liable to the Buyer for any failure in the performance of its or their obligations caused by factors beyond its or their reasonable control.

16. NOTICES

- 16.1 Any notice required to be given under or in connection with these Terms shall be in writing and in English and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or by email, but not by fax. The Agent's address and email address shall be as set out in the Private Sale Details or the Auction Sale Details and the Buyer's address and email address shall be as notified to the Agent in writing.

16.2 Notices shall be deemed to have been received at the time the notice is left at the proper address if delivered by hand, at 9.00 am on the second working day after posting if delivered by pre-paid first-class post or other next working day delivery service, or at 9.00 am on the next working day after transmission if delivered by email.

16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17. STATUS OF THESE TERMS

17.1 Subject to any variation agreed under clause 18, any sale of Goods to the Buyer by auction or private treaty shall be on these Terms to the exclusion of all other terms and conditions, including any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

17.2 The Buyer acknowledges and agrees that it has not relied on any statement, promise or representation made or given by, or on behalf of, the Agent or the Seller which is not set out in these Terms, save that nothing in these Terms shall exclude or limit the Agent's or the Seller's liability for fraudulent misrepresentation.

17.3 Clauses which expressly or by implication survive termination of the contract shall continue in full force and effect.

17.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

18. VARIATION

18.1 The Agent may in its absolute discretion vary these Terms or any special conditions incorporated into a contract at any time and for any reason. Such amendments shall be posted on the Website and shall be effective immediately provided that such amendments shall not affect any contract already concluded under clause 2 or clause 3.

18.2 Except as set out in these Terms, no other variation of these Terms, including the introduction of any additional terms and conditions, shall be effective unless agreed in writing signed by the Agent.

19. SEVERANCE

If any term of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant term shall be deemed deleted. Any modification to or deletion of a term under this clause shall not affect the validity and enforceability of the rest of these Terms.

20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. THIRD PARTIES

Except as expressly provided in these Terms, no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms. The Agent may rescind or vary the terms of these Terms without the permission of any third party.

205. LAW AND JURISDICTION

Any contract for the sale and purchase of the Goods subject to these Terms shall be governed by English law and both parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to resolve any dispute or claim arising out of or in connection with the contract (including non-contractual disputes or claims).