

## WHIRLEDGE AND NOTT CONDITIONS OF SALE FOR MACHINERY IN ENGLAND AND WALES

July 2010

### 1. Definitions

In these conditions the following terms have the following meanings:

- (i) "Auctioneers" means (name of Firm).
- (ii) "Conditions" means the standard terms and conditions of business set out in this document. Any further specific conditions will be contained in a separate statement of special conditions.
- (iii) "Entry Form" means the form to be completed and signed by the Seller describing the Lot in such form as may be required by the Auctioneers before the Lot will be accepted for sale.
- (iv) "Hammer Price" means the price at which a Lot is knocked down by the Auctioneers to the Buyer exclusive of any Value Added Tax and Buyer's Premium.
- (v) "Lot" means any item offered for sale or sold as a single transaction in accordance with these Conditions.
- (vi) "Buyer" means a person firm or company who purchases any Lot including any person firm or company acting as an agent for such a party in the purchase of that Lot in accordance with the Conditions.
- (vii) "Reserve Price" means the minimum price fixed by the Seller in writing at which any Lot is to be sold at the Sale.
- (viii) "Sale" means a sale of the Lots by auction organised by the Auctioneers.
- (ix) "Saleground" means the venue at which the Sale takes place.
- (x) "Seller" means a person firm or company including any person firm or company acting as an agent for such a party who offers for sale a Lot in accordance with these Conditions.
- (xi) "Vehicle" means any tractor self-propelled machine or other vehicles.
- (xii) "VAT Auctioneers' Scheme" means the scheme for the treatment of Value Added Tax by the Auctioneers made under The Value Added Tax (Special Provisions) Order 1995 SI 1268 (as amended).
- (xiii) "Working Day" means each day calculated from midnight from Monday to Friday inclusive in any week except that a Bank Holiday or other public holiday shall not be a Working Day.

Except where the context otherwise requires:

- words denoting the singular include the plural and vice versa
- words denoting one gender include the other gender
- words denoting persons include both natural and legal persons.

References to any regulation directive statute statutory instrument other legislation or official document include any amendment re-enactment and any other subsequent alteration of that legislation.

### 2. Status of Conditions of Sale

- (i) The Seller has agreed to adhere to these Conditions by signing the Entry Form.
- (ii) Any person attending the Sale is deemed to attend on the understanding that they have read and understood these Conditions and shall make any bid on the basis of these Conditions.
- (iii) The Auctioneers may supplement or supersede these Conditions in whole or part with special conditions applicable to a specific Sale or a specific Lot which will be displayed and/or announced at the start of the Sale.
- (iv) No employee or agent of the Auctioneers has any authority to vary these Conditions.
- (v) Any dispute arising under these Conditions shall be determined in the first instance by the Auctioneers whose ruling shall be binding on the conduct of the auction. If such an issue (save for disputes under 14(xiii) but including any dispute under Clause 19) remains in dispute after the auction it may be referred by the Buyer the Seller or the Auctioneers to arbitration or if the parties

agree independent expert determination within the period of ten working days starting on the date of the Sale by a person agreed between the parties in dispute or failing such agreement by a person appointed by the President of the Central Association of Agricultural Valuers on the application of any of the parties within that time paying such fee as may be charged for that service. The parties agree to meet the professional fees and costs of that person as he shall direct and to be bound by his award both as the matter of the dispute and as to the parties' costs.

- (vi) Any indemnity under these Conditions shall be an indemnity in respect of all actions proceedings and costs including legal costs expenses claims and demands whatever incurred or suffered.

### **3. Entry to the Saleground**

- (i) Any person entering the Saleground does so at their own risk.
- (ii) Any person entering the Saleground must comply with the requirements of all health and safety notices.
- (iii) The Auctioneers reserve the right to refuse admission to any person or entry of any Lot onto the Saleground without giving any reason.

### **4. Auctioneers' Status**

- (i) The parties to the contract of sale are the Seller and Buyer.
- (ii) The Auctioneers sell as agents for the Seller and as such are not responsible for any default of the Seller or Buyer.
- (iii) The Auctioneers shall have discretion as to the description of any item and may take expert advice on any item, whether from a qualified electrician, agricultural engineer or other person, at the Seller's expense to ensure that the item is sold in a professional and legal manner.
- (iv) The Auctioneers may make such announcements or publish such information supplied by a Seller about any Lot as they in their discretion think fit.
- (v) 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.

### **5. Exclusion of Liability**

The Auctioneers shall not be liable for any expense loss claim or proceedings in respect of any loss or damage whatsoever to any property real or personal (including any Lot) nor in any respect of personal injury to or death of any person before or arising out of or in the course of or caused by the Sale except to the extent that the same is due to the negligence of the Auctioneers.

### **6. Seller's Warranties**

The Seller warrants to the Auctioneers and to the Buyer:-

- (i) His identity.
- (ii) That he is the true owner of the Lot or is authorised by the true owner to act as Agent in offering the Lot for sale.
- (iii) That he is able to transfer a good and marketable title to the Lot free from any third party claims liens and encumbrances.
- (iv) That no Lot is subject to a Hire Purchase lease contract hire or any other similar agreement or has been recorded by an insurance company as a write off or as subject to a major insurance claim.
- (v) That all statements on the Entry Form are correct so that the Lot is not misdescribed being aware that providing a false description can be an offence under the Trade Descriptions Act 1968 and the Fraud Act 2006 punishable by a fine or imprisonment.

- (vi) That as far as reasonably practicable he has taken sufficient steps to ensure the Lot is safe and without risk to health and safety and that suitable testing and examination has been arranged and that he indemnifies the Auctioneer against all claims under the Consumer Safety Act 1978 and Part 1 of the Consumer Protection Act 1987.
- (vii) That he has declared in writing 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.
- (viii) That unless previously disclosed to the Auctioneers 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 relating to it which will be transferred to the Buyer.
- (ix) That he will provide all operators' handbooks and instruction manuals in his possession for the Lot.
- (x) That where information required by this Clause has not been provided or the Auctioneers have reason to doubt it the Auctioneer may using his powers under Clause 4(iii) above instruct a suitably qualified person to inspect the items and report on any such matter the cost of which shall be borne by the Seller.
- (xi) That he 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.

## **7. Catalogues and Advertisements**

- (i) The Auctioneers do not guarantee that any Lot described in any catalogue or advertisement will be offered for sale nor that any description therein can be relied upon as accurate. Any illustrations in catalogues are for general identification only.
- (ii) The Auctioneers will not be responsible for any costs incurred by any person in reliance on the description of a Lot in the catalogue and those attending the auction will have no claim against the Auctioneers for their costs should any advertised Lot not be offered at that Sale.

## **8. Withdrawal of a Lot**

In all 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.

## **9. Private Sales**

- (i) Any Lot included by the Seller on an Entry Form and accepted by the Auctioneers onto the Saleground to be offered for sale must be offered for sale by auction and must not be sold privately before the Sale for which it was entered. The Auctioneers shall not be liable for any breach by the Seller of this condition.
- (ii) The Auctioneers' consent is required for the private sale of any Lot after the Sale while it is on the Saleground. That consent may be given on condition that the Sale is booked through the Auctioneers' office subject to these Conditions and in particular that any fee Commission Buyer's Premium charge or expense due under the Entry Form or otherwise apply as though that Lot had been sold by auction at a Hammer Price equal to the price agreed for the private sale.
- (iii) Where a Lot is not sold at the Sale and remains on the Saleground the Auctioneers reserve the right to sell it privately at no less than any Reserve Price set for it without further consultation with the Seller.

## **10. Warranty and Inspection of Lots**

- (i) The Auctioneers' knowledge of the Lots is initially dependent on the information provided by the Seller who has warranted as to its accuracy. The Auctioneer does not carry out exhaustive due diligence on each Lot. The information supplied about Lots is not a representation of fact but a statement of opinion on the basis of the evidence reasonably available. Bidders acknowledge these points and accept responsibility for carrying out inspections and investigations to satisfy themselves as to the Lots in which they may be interested.

- (ii) Where the Seller has declared any health and safety issues regarding a Lot or the Auctioneers have become aware of any such issues details of the matter will be available to Bidders at the Auctioneers' office on the Saleground.
- (iii) It will be for Bidders to satisfy themselves as to health and safety matters. Bidders including the Buyer acknowledge that Lots have generally been used and many are of an age and type which means that they are not in perfect condition. As such they may not comply with current health and safety legislation and may have faults not expressly referred to in the catalogue or the other information that may be available on individual Lots from the Auctioneers.
- (iv) The Buyer must satisfy himself prior to bidding for a Lot as to its condition and should exercise and rely on his own judgement as to whether the Lot accords with its description. The Auctioneers shall have no liability for the accuracy of the description of any Lot. Unless otherwise stated no warranty is given by the Auctioneers to the Buyer in respect of any Lot and any express or implied conditions or warranties are excluded to the fullest extent permitted by law. It is the Buyer's responsibility to check the Lot and ensure that its subsequent use is compliant and that identified health and safety concerns are rectified.
- (v) If a Lot is described at the time of the Sale as in "working order" that Lot is understood to have no defect which renders it incapable of the reasonable work for which it is intended.
- (vi) A Lot including any electrical item will have been inspected by an electrician. Where electrical equipment is sold without specific instructions for its use it is the responsibility of the Buyer to seek independent advice as to its safe operation. The Auctioneers shall have no liability for the safe operation of the item by the Buyer.

## **11. Vehicles and Trailers**

- (i) All express and implied conditions and warranties relating to any vehicle are excluded so far as the law allows.
- (ii) Bidders are advised that if a vehicle is described as unroadworthy it is illegal for it to be used on the road in Great Britain unless it is put into roadworthy condition.
- (iii) Any reference to the year of a motor vehicle refers to the year in which it was first registered in the United Kingdom.
- (iv) A person on becoming the Buyer of any vehicle or trailer is forthwith responsible for complying with all legal requirements as to the roadworthiness construction and use of such vehicle or trailer and for obtaining all certificates permits or other authorisations necessary before such vehicle or trailer can be used on the road. If the vehicle or trailer is not roadworthy it is the Buyer's responsibility to ensure its removal from the Saleground in a safe manner and if it is thereafter to be used on the road to put it into roadworthy condition.
- (v) The Buyer warrants that he has third party liability insurance for his use of the vehicle or trailer.
- (vii) Following the sale of any vehicle the Auctioneers shall not pay over the Sale Proceeds to the Seller until the Seller has given to the Auctioneers the V5C registration book for that vehicle a signed declaration that the registration book is lost or a declaration of non-registration or the Buyer confirms that he has now obtained a V5C document for the vehicle.

## **12. Reserve Price**

The Seller shall be entitled to place a Reserve Price on any Lot prior to the Sale being the minimum amount for which the Lot may be sold.

## **13. Bidding**

- (i) No person may bid without warranting their identity to the Auctioneers.
- (ii) Any person intending to bid as an agent for a potential Buyer must notify the Auctioneers in advance of the Sale and confirm the arrangements for payment of the goods to the satisfaction of the Auctioneers.
- (iii) The Auctioneers may accept written instructions to bid on behalf of any prospective Buyer but with no liability in the case of any error arising out of such instructions. Any instructions accepted shall

be at the risk of the prospective Buyers who will be deemed to have viewed the Lot. The Auctioneers accept no responsibility in connection with the commissioning of their staff to bid for a Lot. It is the responsibility of the Bidder to ascertain if he has been successful.

- (iv) The Auctioneers may at their discretion make arrangements to receive bids over the telephone or otherwise from prospective Buyers not physically present at the Sale. Where such a facility is offered prospective Buyers wishing to use it must register with the Auctioneers in advance of the Sale. The Auctioneers accept no liability in relation to telecommunications facilities and connections nor to the means by which such prospective Buyers may seek to communicate with the Auctioneers.
- (v) Bids shall be made exclusive of any VAT and Buyer's Premium which may apply.
- (vi) The Auctioneers may refuse to accept the bidding of any person without giving any reason.
- (vii) No Seller shall bid for any Lot that he has entered into the Sale save where the Seller has set a Reserve Price for a Lot in accordance with Clause 12 in which case bids may only be made on behalf of the Seller for that Lot by the Auctioneers and then only provided that the Auctioneers had announced at the start of the Sale that they may be bidding on behalf of the Seller.
- (viii) Where the Lot is offered for sale on the dissolution of a partnership Clause 13(vii) does not apply.
- (ix) The person who makes the highest bid acceptable to the Auctioneers shall be the Buyer on the fall of the hammer.
- (x) A Bidder is deemed to have inspected any Lot for which he is bidding and if successful in that bidding agrees to take it with all faults and imperfections and to be responsible for ensuring its subsequent compliance with the law.
- (xi) The Buyer warrants that he is able to pay in accordance with these Conditions.
- (xii) In the event of a dispute between two or more bidders as to which is the Buyer the dispute shall be settled at the absolute discretion of the Auctioneers.
- (xiii) Transfers of purchases will only be recognised at the sole discretion of the Auctioneers.

#### **14. Payment by Buyers**

- (i) Unless otherwise agreed with the Auctioneers the Buyer shall pay the Auctioneers in full on the day of the Sale for the Lot purchased together with any charges Buyer's Premium or other payment due under these Conditions before removing that Lot from the Saleground.
- (ii) That payment is to be by a means approved by the Auctioneers.
- (iii) Where the Buyer offers cash in settlement the Auctioneers will not accept more than the equivalent at the time of the Sale in pounds sterling of fifteen thousand euros for transactions at any one Sale in order to comply with the Money Laundering Regulations 2007.
- (iv) Where a Buyer defaults on a payment the Auctioneers reserve the right to re-sell the Lot and to charge the Buyer for any expenses and loss incurred by reason of the failure of the Buyer to complete his purchase and to retain any profit that may arise from that resale.
- (v) The Auctioneers reserve the right to charge the Buyer interest on any payment outstanding from five Working Days after the day of the Sale together with any reasonable debt recovery charges such rates and charges for all transactions to be those prescribed for commercial debts by the Late Payment of Commercial Debts (Interest) Act 1998 as amended.
- (vi) If the Auctioneers have paid the Seller the Sale Proceeds due for a Lot before the Buyer has paid the Auctioneers in full for the Lot then the Auctioneers shall have a lien on the Lot until the outstanding amount is paid by the Buyer to the Auctioneers.
- (vii) In the event of any sale by the Buyer of a Lot before full payment has been made the Buyer shall hold the proceeds of such sale on trust for the Auctioneers to discharge the lien referred to at Clause 14(vi).

#### **15. Responsibility for Lots**

From the fall of the hammer for a Lot that Lot is the liability of the Buyer who is responsible for its safe use any damage to it and for complying with all legal requirements.

**16. Buyer's Premium**

Where the Auctioneers state before the Sale in the catalogue or special conditions a Buyer's Premium together with Value Added Tax may be charged to Buyers calculated on the basis of the Hammer Price at a rate to be stated in that announcement.

**17. Value Added Tax**

- (i) The Seller will be responsible for accounting for any Value Added Tax on the Sale of a Lot.
- (ii) The Seller must state to the Auctioneers whether he is registered for Value Added Tax and if registered his Value Added Tax registration number and whether he operates under a flat rate scheme or any VAT Margin Scheme. If he is not registered for Value Added Tax the Seller hereby confirms that he has instructed the Auctioneers to arrange on his behalf the auction or sale of the Lots he has entered.
- (iii) The Auctioneers will not account to the Seller for any Value Added Tax without the information required by Clause 17(ii).
- (iv) The Auctioneers will add Value Added Tax at the appropriate rate to the Hammer Price of a Lot.
- (v) If a Lot is zero rated exempt or where the Seller operates the flat rate scheme for Value Added Tax purposes the Auctioneers will state this at the time of Sale.
- (vi) Where the Seller does not advise the Auctioneers of the appropriate rate of or status for VAT of a Lot the Auctioneer will apply the rate or status that appears appropriate from the information available to them and will not accept liability for any errors.
- (vii) Where a Lot is sold on behalf of a Seller who is not registered for Value Added Tax the Lot will be sold under the VAT Auctioneers' Scheme unless written instructions are given to the Auctioneers to the contrary.
- (viii) Where a Seller is registered for Value Added Tax and is trading goods under the general Margin Scheme and would like to offer a Lot for sale under the VAT Auctioneers' Margin Scheme the Lot must be included on a separate Entry Form making it clear that the Lot is to be sold under the respective schemes.
- (ix) The Auctioneers require Buyers from countries in the European Union who are registered for Value Added Tax to supply the Auctioneers with their VAT number or equivalent fiscal number and other relevant information so that the Lots purchased may be invoiced without Value Added Tax. Where this information is not made available or where the Buyer is not VAT registered, VAT will be charged at the appropriate UK rate in addition to the Hammer Price of the Lot. This amount will not be recoverable. It is the responsibility of such a Buyer to ensure that he or his haulier completes and signs a "collection certificate" at the Auctioneers' office on collection of the Lot purchased so that Value Added Tax is not charged at the standard UK rate and be irrecoverable.
- (ix) Buyers from countries outside the European Union will be required to pay a VAT deposit equivalent to the standard UK rate of VAT on the Lot which will be refunded if within three months of "the time of supply" the Auctioneers are supplied with a satisfactory Bill of Lading or Certificate of Shipment as proof of shipment of the Lot outside the European Union, failing which the VAT deposit will be paid over to Her Majesty's Revenue and Customs.

**18. Notification of a Defective Lot**

- (i) Where a Buyer alleges a breach of any warranty for a Lot for which he has paid he shall notify the Auctioneers in writing clearly stating details of the alleged breach as soon as practicable and no later than 1 p.m. on the third Working Day after the day the Lot was purchased and in any event before the Lot is removed from the United Kingdom.
- (ii) The Buyer shall make the Lot available for inspection in the United Kingdom by the Seller the Auctioneers and the duly appointed agents of either within five Working Days following the day on which the notification of the defective Lot is received.
- (iii) If there is a complaint against the Auctioneers it will be handled under the complaints procedure established by the Auctioneers to handle formal complaints made against their business.

- (iv) If the complaint is against the Seller the Auctioneers will notify the Seller of the alleged breach as soon as reasonably practicable and in the event of continuing disagreement any dispute will be handled under Clause 2(v). The Auctioneers' obligation to account to the Seller for the Sale shall be suspended until they are satisfied that the dispute has been settled.

## **19. Resale due to Failure to Comply with these Conditions**

- (i) Where a Lot has been sold to a Buyer who then fails to comply with the Conditions the Auctioneers may without prejudice to any other rights they may have resell that Lot either by public auction or private contract. If the price achieved on resale is less than Hammer Price together with any expenses arising the deficit shall be due as a debt from the original Buyer of the Lot.
- (ii) The defaulter shall not be entitled to any part of the proceeds which may arise by such re-sale which shall remain the property of the Auctioneers.
- (iii) Expenses due from the defaulter shall be deemed to include the Auctioneers' commission on the re-sale and all other expenses that would be due on a Sale under these Conditions.

## **20. Auctioneers' Right to Annul a Sale of a Lot**

Before making payment to the Seller in the event of any dispute or refusal to pay on the part of the Buyer the Auctioneers may entirely at their discretion annul and cancel the sale of such a Lot or Lots.

## **21. Removal of Lots from the Saleground**

- (i) No Lot whether sold or unsold may be removed from the Saleground without the written authority of the Auctioneers. Passes for such removal must be obtained from the Auctioneers' offices and each Lot will be checked out by the Auctioneers or their duly authorised representative. The Auctioneers accept no liability for Lots while on the Saleground whether sold or unsold.
- (ii) Where the Saleground is in the permanent occupation of the Auctioneers any Lot which (without the express written consent of the Auctioneers) has not been collected within six calendar months from the day on which it was sold or last offered for sale or such other period as shall have been announced in the special conditions will be deemed to be abandoned. The Auctioneers will then be entitled to dispose of such an abandoned Lot at their unfettered discretion. For the avoidance of doubt, any monies arising from such a disposal will be paid to and retained by the Auctioneers. The Auctioneers may make a charge for handling and storage of the Lot if it remains on the Saleground more than three Working Days after the Sale.
- (iii) Where the Saleground is not in the permanent occupation of the Auctioneers the Auctioneers are entitled to dispose of any Lot which (without express written consent of the Auctioneers) has not been collected within five Working Days from the day on which it was sold or last offered for sale or such period as shall have been announced in the special conditions. For the avoidance of doubt any monies arising from such a disposal will be paid to and retained by the Auctioneers.

## **22. Applicable Law**

These Conditions shall be governed by and construed in accordance with the law of England and Wales. All transactions to which these Conditions apply and all connected matters shall also be governed by the law of England and Wales.