

All entries of Lots for sale and all purchases are subject to these conditions of entry and sale. All Purchasers and Sellers agree that these terms and conditions are binding upon them and are strongly advised to read these terms and conditions before entering a Lot for sale, bidding or purchasing.

## TERMS AND CONDITIONS

### AGREED TERMS

#### 1. INTERPRETATION

##### 1.1 Definitions:

**Auction:** a sale of Lot (s) listed on the Auctioneer's Website that ends at the Closing Time in which Bidders bid competitively to purchase Lot(s); each Lot is sold to the highest Bidder at the Closing Time.

**Auction Overview:** The Auction Overview on the Website.

**Auctioneer:** New England Associates LLP of Unit 4, Anglo African Industrial Park, Union Road, Oldbury, West Midlands, B69 3EX and registered at Companies House with company number OC364247

**Bidder:** the party making, attempting to make or considering making a bid for a Lot.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Buyer's Premium:** 15% of the Hammer Price or such other percentage stated in the Auction Overview.

**Closing Time:** the Closing Time shall be the End Time subject to any Overtime Bidding, being the time at which the Hammer Price is fixed, after which no further bids can be made.

**Contract:** the contract for purchase formed between the Purchaser and the Seller at the Closing Time.

**Collection Location:** The address for collection as stipulated by the Seller.

**Delivery Date:** the date on which a Lot shall be delivered or made available for collection as stipulated in the Notice to Purchasers or as agreed between the parties.

**Delivery Location:** the address for delivery agreed between the Purchaser and the Seller.

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**Encumbrances:** any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement.

**End Time:** the initial end time for a particular Lot(s) as stated on the Website.

**Hammer Price:** the amount of the highest bid for a Lot accepted at the Closing Time.

**Lift Out Charge:** the Seller's cost for dismantling or removing Lots from the Seller's premises.

**Lots:** any item listed with the Auctioneer for sale by third party Sellers.

**Notice to Purchaser:** the Notice to Purchaser on the Website in respect of a particular Lot.

**Overtime Bidding:** where a Bidder places a bid for a particular Lot in the final 10 minutes prior to the End Time then the End Time shall be extended by a further ten minutes, further bids shall not extend the End Time further unless placed in the final 10 minutes.

**Price:** the total of the Hammer Price the Buyer's Premium any Lift Out Charges, and any other expenses.

**Purchased Lot:** a lot purchased by a purchaser in accordance with these Terms and Conditions.

**Purchaser:** the Bidder who makes the highest bid for a Lot which is accepted at the Closing Time.

**Reserve:** a price below which a Lot will not be sold.

**Records:** all documents of title and certificates for the lawful operation and use of, and all service documents, and relating to the Lot.

**Seller:** the third party selling a Lot/Lots.

**Seller's Terms:** any terms and conditions stipulated by the Seller, as stated in the Notice to Purchasers.

**Software:** the computer programs required for the use of any Lots.

**Specification:** the specification for the Lots set out in the Auction Overview and the Notice to Purchaser.

**Storage Charge:** any expenses incurred by the Seller or Auctioneer for storage of a Lot where the Purchaser has failed to collect or take delivery on the Delivery Date.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994.

**Website:** [www.newengland.co.uk](http://www.newengland.co.uk)

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## 1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) a **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England & Wales.
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (d) a reference to **writing** or **written** includes faxes and emails.
- (e) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (f) clauses and paragraph headings shall not affect the interpretation of these Terms and Conditions

## 2. ACCEPTANCE OF LOTS INTO THE AUCTION & TERMS BETWEEN THE AUCTIONEER AND THE SELLER

2.1 The Auctioneer shall have absolute discretion as to whether to accept any Lots into the Auction.

2.2 The Seller shall submit to the Auctioneer an entry form setting out the nature of the items to be included in the Lot together with such information as the Auctioneer may from time to time request.

2.3 It is a fundamental condition of the agreement between the Auctioneer and the Seller that the Seller warrants and undertakes that:

- (a) it has full legal and beneficial title to the items to be included in the Lot and can sell the items free from all Encumbrances;
- (b) each and every answer in the entry form is true, accurate and complete and all information provided by the Seller to the Auctioneer in whatever format is true, accurate and complete.

2.4 If an entry form does not contain a reserve price the Auctioneer is entitled to sell the Lot without reserve.

2.5 The Seller agrees to indemnify the Auctioneer against all liabilities, costs, 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

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(calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Auctioneer arising out of or in connection with:

- (a) any breach of the warranties contained in clause 2.3;
- (b) the Seller's breach or negligent performance or non-performance of the Contract;
- (c) the enforcement of this agreement;
- (d) any claim made against the Auctioneer by a third party arising out of or in connection with the provision of the services or the sale of the Lots, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Seller, its employees, agents or subcontractors;
- (e) any claim made against the Auctioneer by a third party for death, personal injury or damage to property arising out of or in connection with defective Lots.

### **3. CONDUCT OF THE AUCTION**

- 3.1 The Auctioneer may at its absolute discretion, without having to give reasons, refuse to accept any bid and may regulate the bidding as it sees fit.
- 3.2 The Auctioneer may withdraw a Lot from sale at any time up to the Closing Time.
- 3.3 The Bidder that places the highest accepted bid shall be the Purchaser of a particular Lot. If there is a dispute, the Auctioneer shall have absolute discretion to determine the dispute including re-offering the disputed Lot for sale.
- 3.4 All Auctions shall have a stipulated End Time which shall be subject to 10 minute extensions in the event of any Overtime Bidding. Overtime Bidding may continue indefinitely unless any time limits for Overtime Bidding have been stipulated by the Seller or the Auctioneer. Once Overtime Bidding has commenced the Closing Time shall be determined accordingly.
- 3.5 A Bidder must submit a bid for an entire Lot and each Lot constitutes a separate sale. The Auctioneer shall however have an absolute discretion to divide any Lot, to combine any two or more Lots, or to withdraw any Lot from the auction without giving any reason (including after the Closing Time).
- 3.6 Subject to clause 3.3 to 3.6 the contract for the sale of the Lot is formed at the Closing Time.

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3.7 All Lots are offered for sale subject to any Reserve. Where a Lot has a reserve price it will not be sold unless the highest bid is equal to or higher than the reserve price at the Closing Time. The Auctioneer is not obliged to state that a Lot has a reserve price (unless the Lot is withdrawn from the Auction because it has not reached its reserved price) or what that reserve price is.

3.8 The Purchaser cannot cancel a purchase of a Lot after the Closing Time.

#### **4. SOLD AS SEEN**

4.1 The details and pictures of the Lots in the Specification are given only for the purposes of identification. The Contract is not one for sale by description.

4.2 Lots are sold "as seen" with any faults (if any). Neither representations nor warranties are given as to the quality, condition, state or description of the Lots, or their fitness or suitability for any purpose. All implied statutory or common law terms, conditions and warranties as to the Lots are excluded to the fullest extent permitted by law.

4.3 Neither representations nor warranties are made in respect of the the availability, quality, timeliness, performance or fitness for a particular purpose of any of the Lots available, to the full extent permitted by law.

#### **5. SOFTWARE**

5.1 Software shall not be deemed to be included in any particular Lot unless specifically stated otherwise in the Specification and only in so far as the licences to such Software are assignable.

5.2 Where any necessary Software requires a licence for its use with a particular Lot, it shall be the absolute responsibility of the Purchaser to ensure that all necessary licences for the use of the Software are in place.

5.3 Neither the Seller nor Auctioneer warrants that the use of any Software under this clause will be uninterrupted or error-free.

#### **6. ASSIGNMENT OF SOFTWARE LICENCES**

6.1 Where the licences to any Software are capable of being assigned it shall be the absolute responsibility of the Purchaser to arrange for and deal with such an assignment and the Purchaser shall be liable to pay any costs incurred by the Seller or the Auctioneer in respect of such an assignment.

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6.2 Neither the Auctioneer or Seller shall be liable for any breaches of the terms and conditions of any Software licences by the Purchaser after assignment.

**7. USE OF WEBSITE**

7.1 The images displayed on the Website are for illustrative purposes only. Although the Auctioneer and the Seller may have made every effort to display the colours accurately, the Auctioneer and the Seller cannot guarantee that a device's display of the colours accurately reflects the colour of the Lots themselves. Lots may vary slightly from those images.

7.2 The Auctioneer endeavours to ensure that all information and other material on the Website is correct and accurate at the time of publication, but does not accept liability for any errors or omissions on the Website.

7.3 The Auctioneer will use reasonable efforts to correct any errors or omissions as soon as practicable after being notified of any such errors or omissions.

7.4 The Auctioneer shall not be liable for any claims or losses of any nature arising directly or indirectly from any inability by you to access the Website due to any technical difficulties.

**8. THE CONTRACT OF SALE**

8.1 The Contract for sale is between the Seller and the Purchaser. The Auctioneer is not party to the Contract and is not liable for any breach of the Contract either by the Seller or the Purchaser.

8.2 These terms and conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**9. RIGHT TO INSPECT**

The Purchaser acknowledges that, before the Closing Time of the Auction

- (a) the Seller has given the Purchaser a reasonable opportunity to inspect the Lots; and
- (b) the Purchaser has satisfied itself as to the quality and condition of the Lots.

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**10. PRICE AND PAYMENT**

10.1 The Purchaser shall pay the Price and any VAT immediately on receipt of the invoice. The time for payment is of the essence.

10.2 Payment shall be made:

- (a) in cleared funds to the bank account nominated in writing by the Auctioneer;
- (b) by cheque provided that the Purchaser informed the Auctioneer before the Closing Time that the Purchaser wishes to pay by cheque.
- (c) by cash up to the maximum sum of £7500.00.

10.3 The Price excludes amounts in respect of VAT, which the Purchaser shall additionally be liable to pay the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and

10.4 If the Purchaser fails to make any payment under these Terms and Conditions by the due date for payment, then the Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of National Westminster PLC's from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

10.5 The Auctioneer shall not be obliged to pay the Hammer Price or Lift Out Charges to the Seller unless the Auctioneer has received the Price from the Purchaser in accordance with this clause 10

**11. COLLECTION & DELIVERY**

11.1 The Auctioneer shall not be responsible for collection or delivery.

11.2 Delivery and collection shall be in accordance with the Seller's Terms, and if the Seller does not have any terms relating to delivery or collection, the following conditions apply to their fullest extent.

11.3 If the Purchaser fails to take delivery of a Purchased Lot when due the Seller and/or the Auctioneer may charge the Storage Charge

11.4 Where the Purchaser is not collecting, the Delivery Date is approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Purchased Lot that is caused by:

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- (a) events, circumstances or causes beyond its reasonable control; or
- (b) the Purchaser's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the sale of the Purchased Lot.

- 11.5 Where it has been agreed the Purchaser shall collect the Purchased Lots from the Collection Location the Purchaser shall do so within the stated number of working days as set out in the Notice to Purchasers or such other time that the Seller notifies the Purchaser that the Lots are ready for collection.
- 11.6 All collections must be made in accordance with the terms in the Notice To Purchaser.
- 11.7 No Purchased Lots will be delivered or released for collection until payment for the Price along with any Storage Charges has been received.
- 11.8 Some Lots may require a method statement and risk assessment before collection or delivery.
- 11.9 The Purchaser must remove the Purchased Lot in compliance with all relevant legislation, regulations, codes of practice, guidance, orders, rules and other requirements of any relevant government or governmental agency or authority whether Parliamentary, statutory, parochial or local including (without limitation) in compliance with the Health and Safety at Work etc Act 1974, the Environmental Protection Act 1990, The Construction (Design and Management) Regulations 2007, Control of Substances Hazardous to Health Regulations 2002 (COSHH), and the Road Vehicle (Construction and Use) Regulations 1986 and any subsequent amendments thereof and all other health and safety and environmental legislation in existence at the time of the Sale. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by the Purchaser shall be to the best industry practice;
- 11.10 The Auctioneer or Seller shall be able to halt the collection or delivery of any Purchased Lot in its absolute discretion if it is deemed that the collection or delivery is being carried out in an unsatisfactory and / or unsafe manner
- 11.11 Purchasers or contactors operating on behalf of Purchasers may at any time be asked to provide copies of relevant insurance cover and licenses for operating equipment.
- 11.12 The Purchaser agrees to insure against and to indemnify the Auctioneer and the Seller against any and all claims arising in respect of injury or damage to person or property, whether real or personal, caused by or in connection with the acts or omissions of the Purchaser, whether caused by themselves, their servants or agents or their principals or employees.

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- 11.13 In the absence of an agreement to deliver the Purchased Lots, the Purchaser at its own expense shall disconnect, dismantle and remove the Purchased Lots from the Seller's premises. Further the Purchaser will be responsible for ensuring compliance with all regulations in force from time to time including the obtaining of any required export licence if it is the Purchaser's intention to export Purchased Lots out of the UK.
- 11.14 The Purchaser hereby agrees to indemnify the Auctioneer and the Seller for any costs the Auctioneer or the Seller incur as a result of any breach by the Purchaser of this clause
- 11.15 The Seller shall deliver or make available the Purchased Lots and Records to the Purchaser at the Collection Location on the Delivery Date
- 11.16 Delivery is completed on the completion of unloading of Lots at the Delivery Location.
- 11.17 Upon collection or delivery of Lots to the Purchaser, the Purchaser shall sign an acknowledgement of receipt in the agreed form of the Seller or the Auctioneer.

**12. TITLE AND RISK**

- 12.1 The risk of damage to or loss of the Purchased Lots shall pass to the Purchaser once the Price is paid and accepted by the Auctioneer.
- 12.2 The title to each Purchased Lot shall pass to the Purchaser only on payment in full of the Price.

**13. MANUFACTURER'S WARRANTIES**

- 13.1 Any warranties provided by the original manufacturer or any of the previous sellers shall only be assignable to the Purchaser in so far as they are subsisting and capable of being assigned.
- 13.2 To the extent that the benefit of any warranties made by the manufacturer or previous sellers of the Purchased Lot to the Seller can be assigned to the Purchaser, the Seller shall, if requested by the Purchaser and at cost of the Purchaser, assign them to the Purchaser.

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**14. LIMITATION OF LIABILITY**

14.1 Nothing in this agreement shall limit or exclude the Seller's or Auctioneer's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

14.2 Subject to clause 14.1:

- (a) the Seller and the Auctioneer shall under no circumstances be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the agreement; and
- (b) the Seller's and Auctioneer's total liability to the Purchaser for all other losses arising under or in connection with these Terms and Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the Price.

**15. GENERAL**

15.1 **Changes to These Terms and Conditions.** The Auctioneers reserve the right from time to time make changes to these Terms and Conditions. All Bidders should review these terms and conditions regularly to ensure that changes are noted. If a Bidder make a bid after changes have been made and posted, that Bidder shall be deemed to have agreed to such changes.

15.2 **Data Protection.** The Auctioneer will use Personal Data (as defined in the Data Protection Act 1998) in order to perform its obligations under these terms and conditions. The Purchaser hereby authorises and consents to Personal Data being provided to the Seller

15.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.3(a).
- (b) Each party may disclose the other party's confidential information:

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- (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

**15.4 Entire agreement.**

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**15.5 Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

**15.6 Severance.** If any provision or part-provision of the agreement 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 provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement.

**15.7 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier.

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- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.8 **Third party rights.** No one other than the Seller, the Purchaser and the Auctioneer in respect of a particular Lot shall have any right to enforce any of its terms.

15.9 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

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