

## BUYERS' AUCTION CONDITIONS OF PURCHASE

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## 1. DEFINITIONS AND INTERPRETATION

<b>Auction</b>	Spalding Auction Limited a company registered in England and Wales with registered company number [NUMBER] and whose registered address is at Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 3YR and, where the context requires, shall include an employee of the Auction who at the relevant time has the authority to conduct an auction sale;
<b>Auction Hall</b>	means the venue at which the Sale takes place;
<b>Buyer</b>	means the person, firm or company who buys any Lot;
<b>Buyer's Premium</b>	a sum equal to 7.5% of the Hammer Price;
<b>Buyer's Registration Form</b>	the Buyer's registration form as referred to in clause 4.1;
<b>Conditions</b>	means the terms and conditions as set out in this document;
<b>Force Majeure Event</b>	an event or circumstance beyond a party's reasonable control.
<b>Hammer Price</b>	means the price reached by a Lot on the fall of the hammer;
<b>Lot</b>	means any item sold or intended to be sold in accordance with these Conditions;
<b>Purchase Price</b>	the purchase price of any Lot as calculated in accordance with clause 7.1;
<b>Registration</b>	the registration process as referred to in clause 4;
<b>Sale</b>	means the sale of any Lot by auction from time to time organised by the Auction;
<b>Unique Buyer's Name</b>	the unique name assigned to a Buyer in accordance with clause 4.1;
<b>VAT</b>	means Value Added Tax or any equivalent or replacement tax;

**Vendor** means the person, firm or company who puts forward any Lot intended to be sold at a Sale.

- 1.1 Except where the context otherwise requires: words denoting the singular include the plural and vice versa; words denoting one gender include all genders; and words denoting persons include corporations.
- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.3 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. **CONDITIONS OF PURCHASE**

- 2.1 All persons attending the Sale in any capacity are deemed to attend on the understanding that they have read and understood these Conditions which have been made available as follows:
  - 2.1.1 on the Auction's website: [www.spaldingauction.co.uk](http://www.spaldingauction.co.uk)
  - 2.1.2 displayed in the Auction Hall; and
  - 2.1.3 issued at Registration.
- 2.2 The Conditions may be supplemented or superseded by special conditions applicable to specific sales.
- 2.3 These Conditions, the sale of the Lots and the Buyer's participation in the Sale are on the basis that the Buyer is acting wholly or mainly in the course of the Buyer's trade, business, craft or profession.
- 2.4 On Registration by the Buyer a contract, which shall be subject to these Conditions, shall exist between the Vendor and the Auction.

## 3. **AUCTION STATUS**

- 3.1 The Auction sells as agents for the Vendor.
- 3.2 The parties to the contract of sale are the Vendor and the Buyer. The Auction shall have no liability, whatsoever, for any default by the Vendor.

#### 4. **REGISTRATION**

- 4.1 Prior to bidding at the auction, any Buyer who has not previously undertaken Registration must register at the reception of the Auction Hall and complete a Buyer's Registration Form.
- 4.2 On receipt of a Buyer's Registration Form, the Auction shall provide the Buyer with a Unique Buyer's Name which is to be used by the Buyer when making any purchase at a Sale.
- 4.3 The Buyer shall ensure that all details provided at Registration remain accurate and up to date including notifying the Auction in the event of de-registration for VAT.

#### 5. **BIDDING**

- 5.1 The Buyer shall be the person who makes the highest bid acceptable to the Auction (**Successful Bid**).
- 5.2 In the event of a dispute between two or more bidders as to which place the Successful Bid, the dispute shall be settled at the absolute discretion of the Auction.
- 5.3 No bid may be retracted and the bidding increments are at the sole discretion of the Auction.
- 5.4 Any Lot must be inspected by the Buyer, and all bids made are on the understanding that the Lot has been inspected and is purchased with all faults and imperfections.
- 5.5 The Auction may accept written or verbal instructions to bid on behalf of a prospective Buyer but any instructions accepted shall be at the risk of the prospective Buyer, who will have been deemed to have viewed the Lot, and the Auction accepts no responsibility in connection with the commissioning of their staff to bid for any Lot. In the event of Successful Bid by the Auction the Buyer shall be notified as soon as reasonably practicable.
- 5.6 The Auction may, without giving any reason, refuse to accept the bidding of any person.
- 5.7 The Auction may, without giving any reason, withdraw any Lot from a Sale at any time either prior to, or during, a Sale.
- 5.8 If the Buyer's bid is the Successful Bid, the Buyer must:
  - 5.8.1 present their Unique Buyer's Name to the Auction; and

5.8.2 proceed to the payment office immediately and make payment for the Lot in accordance with clause 7 at which point the Buyer will be provided with an invoice for the Lot.

## 6. **WARRANTY AND INSPECTION OF LOTS**

6.1 A Lot is sold with all faults and imperfections and errors of description. The Buyer should satisfy themselves prior to the Sale as to the condition of the Lot and should exercise and rely on their own judgment as to whether the Lot accords with its description. The Auction, their servants or agents, shall have no responsibility for errors in description.

6.2 No warranty is given by the Auction or their servants or agents, or by any Vendor, to any Buyer in respect of any Lot. In particular, no warranty is given that Lots are free from pests or disease (which, for the avoidance of doubt includes *Xylella Fastidiosa*).

6.3 Any express or implied conditions or warranties are excluded to the fullest extent by law.

## 7. **PRICE AND PAYMENT**

7.1 On making a Successful Bid, the Buyer shall pay to the Auction the Purchase Price of the Lots being:

7.1.1 the Hammer Price;

7.1.2 the Buyer's Premium;

7.1.3 any other amounts due in respect of packaging and/or containers; and

7.1.4 any taxes or levies including VAT due on the amounts listed in clauses 7.1.1 to 7.1.3.

7.2 Payment is to be made by the following forms of payment:

7.2.1 cash;

7.2.2 debit card;

7.2.3 credit card which is subject to addition charge of 3% of the Purchase Price;

7.2.4 cheque (subject to clause 7.3);

- 7.3 Payment by cheque is dependent on the Buyer completing a status enquiry form to submit to the Buyer's bank. Further, two trade references will be required from businesses the Buyer would normally pay by cheque.
- 7.4 All payments shall, unless otherwise agreed by the Auction, be paid in full and in cleared funds without any set-off, counterclaim, deduction or withholding.
- 7.5 Notwithstanding clause 7.4, the Auction may, in its absolute discretion, allow the Buyer to make purchases on account. If this is the case, the Buyer will have been informed of this and the terms of such account in writing by the Auction.

## 8. **TITLE AND RISK IN LOTS**

- 8.1 Risk in the Lot shall pass to the Buyer immediately on the fall of the hammer.
- 8.2 Title to the Lot shall not pass to the Buyer until payment in full is received (in cash or cleared funds) for the Lot, in which case the Vendor's title to the Lot shall pass at the time of payment of all such sums. No Lot may be removed from the Auction Hall until the Auction receives payment as described in this clause and the Buyer presents a valid invoice as referred to in clause 5.8.2, above.
- 8.3 Once title to the Lot has passed to the Buyer, the Buyer must remove the Lot from the Auction Hall immediately and in all circumstances within forty-eight (48) hours of the time of the Sale.

## 9. **REMEDIES FOR NON-PAYMENT OR FAILURE TO COLLECT LOTS**

- 9.1 If any Lot is not paid for in full and removed from the Auction Hall in accordance with these Conditions or if there is any other breach of these Conditions, the Auction, as agent for the Vendor and on their own behalf, shall in their absolute discretion and without prejudice to any other right or remedy it may have, be entitled to exercise one or more of the following rights and remedies:
- 9.1.1 to bring a claim against the Buyer for breach of contract;
  - 9.1.2 to rescind the sale of the Lot sold by the Auction to the Buyer;
  - 9.1.3 to resell the Lot (by auction or by private treaty) in which case the Buyer shall be responsible for any resulting deficiency in the total amount due (after crediting any part payment and additional any resale costs) and any surplus so arising shall belong to the Vendor;
  - 9.1.4 to remove, store and insure the Lot at the Buyer's expense and, in the case of storage, either at the Auction's premises or elsewhere;

- 9.1.5 to charge interest at a rate of 5% per annum over National Westminster Bank's base rate on the total amount due to the extent that it remains unpaid for more than two (2) working days after the Sale;
- 9.1.6 to retain any other Lots sold to the Buyer until the Buyer pays the total amount due;
- 9.1.7 to reject or ignore bids from the Buyer or the Buyer's agent at future auctions or to impose conditions before any such bids shall be accepted; and/or
- 9.1.8 to apply any proceeds of sale of other Lots due, or that in the future become due, to towards the settlement of the total amount due and to exercise a lien (that is, a right to retain possession of) any Buyer's property in the Auction's possession until the debt is satisfied.

## 10. **LIMITATION OF LIABILITY**

10.1 This clause 10 sets out the entire financial liability of the Auction (including any liability for the acts or omissions of its respective employees, agents and subcontractors) for:

- 10.1.1 any breach of these Conditions however arising;
- 10.1.2 any use made or resale of the Lot by the Buyer; and
- 10.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.

10.2 Nothing in these Conditions shall limit or exclude the Auction's liability for:

- 10.2.1 death or personal injury resulting from negligence;
- 10.2.2 fraud or fraudulent misrepresentation; or
- 10.2.3 any other liability which cannot be excluded or limited by applicable law.

10.3 Without prejudice to clause 10.2, the Auction shall not under any circumstances whatever be liable to the Buyer (or the Vendor), whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- 10.3.1 loss of profit;
- 10.3.2 loss of goodwill;
- 10.3.3 loss of business;

- 10.3.4 loss of business opportunity;
- 10.3.5 loss of anticipated saving; or
- 10.3.6 special, indirect or consequential damage,

suffered by any other party that arises under or in connection with these Conditions.

- 10.4 Without prejudice to clause 10.2 or clause 10.3, the Auction's total liability for all other losses arising under or in connection with these Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the Hammer Price of the Lot to which the contract relates.
- 10.5 The Buyer acknowledges that the Vendor has given the Buyer a reasonable opportunity to inspect the Lot, and the Buyer has satisfied itself as to the quality and condition of the Lot.

## 11. **NOTICES**

- 11.1 Any notice given to a party under or in connection with the contract shall be in writing and shall be:
  - 11.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 11.1.2 sent by email to:
    - 11.1.2.1 the Auction at MikeKnight@spaldingauction.co.uk
    - 11.1.2.2 to the Buyer at the address set out in the New Buyers Registration Form.
- 11.2 Any notice shall be deemed to have been received:
  - 11.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 11.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service.
  - 11.2.3 if sent by email, at 9.00 am on the next working day after transmission.
- 11.3 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.



12. **FORCE MAJEURE**

12.1 The Auction shall not be in breach of the contract nor liable for delay in performing, or failure to perform, any of its obligations under the contract if such delay or failure result from a Force Majeure Event.

13. **COMPLAINTS HANDLING PROCEDURE**

13.1 All complaints should initially be made in writing and addressed to the General Manager, Spalding Auction, Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 37R.

13.2 If the Auction is unable to satisfactorily resolve the Buyer's complaint, the Buyer may refer it to the Royal Institute of Chartered Surveyors Resolution Service, contact details for which are available from the Auction on request.

14. **GENERAL**

14.1 A person who is not a party to a contractual relationship under these Conditions shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

14.2 No variation of the contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.3 The contract 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.

14.4 Each party acknowledges that in entering into the contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.

14.5 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.

14.6 Nothing in these Conditions shall limit or exclude liability for fraud.

14.7 No failure or delay by a party to exercise any right or remedy provided under this Contract 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.

- 14.8 If any provision or part-provision of this contract 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 contract.
- 14.9 The Auction may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the contract.
- 14.10 The Buyer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the contract.
- 14.11 The contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the contract or its subject matter or formation.