

## VENDORS' AUCTION CONDITIONS OF SALE

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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 03550928 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 Lots;
<b>Commission</b>	a sum equal to 12% of the Hammer Price;
<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 items sold or intended to be sold in accordance with these Conditions;
<b>Official Entry Form</b>	the form to be completed by the Vendor, as referred to in clause 6.1 which is to accompany any Lots submitted to the Auction for sale;
<b>Plant Passport</b>	the documentation required in order to move those plants as stipulated by the Animal & Plant Health Agency (or its successors or assigns) from time to time;
<b>Proceeds of Sale</b>	the amount payable by the Auction to the Vendor as calculated in accordance with clause 11;
<b>Registration</b>	the registration process as referred to in clause 4;
<b>Sale</b>	means the sale of the Lots by auction from time to time organised by the Auction;

<b>VAT</b>	means Value Added Tax or any equivalent or replacement tax;
<b>VAT Registration Form</b>	the VAT Registration Form required to be completed by the Vendor as referred to in clause 4.1.2;
<b>Vendor</b>	means the person, firm or company who puts forward any Lot intended to be sold at a Sale;
<b>Vendor Application Form</b>	the form to be completed by the Vendor as referred to in clause 4.1.1;
<b>Vendor Card</b>	the Vendor card available at the Auction's reception;
<b>Vendor Number</b>	the unique number assigned to each Vendor in accordance with clause 4.2.

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 SALE**

2.1 All Vendors are deemed to submit Lots for sale to the Auction 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 On completion of Registration by the Vendor, a contract which shall be subject to these Conditions shall exist between the Vendor and the Auction.

3. **AUCTION'S STATUS**

- 3.1 The Auction sells as agent 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 Buyer.

4. **REGISTRATION**

- 4.1 Prior to submitting a Lot to the Auction a Vendor who has not previously registered must complete the following forms:
  - 4.1.1 Vendor Application Form; and
  - 4.1.2 VAT Registration Form.
- 4.2 On receipt of the forms referred to in clause 4.1, the Auction shall provide the Vendor with a Vendor Number which must be stated on all paperwork which accompanies any Lot submitted for sale.
- 4.3 The Vendor shall ensure that all details provided at Registration remain accurate and up to date.

5. **VENDOR'S WARRANTY**

- 5.1 The Vendor at all times warrants and represents that:
  - 5.1.1 all Lots submitted to a Sale are free from all pests and disease which, without prejudice to the forgoing, shall include Xyella Fastidiosa;
  - 5.1.2 all Lots submitted for sale are free from all liens, charges and encumbrances;
  - 5.1.3 it has complied with the provisions of all regulations from time to time in force relating to plant health and disease and pest control;
  - 5.1.4 it has complied with all relevant regulation as to quality, size, grading, labelling and Plant Passports from time to time;
  - 5.1.5 all Lots are accurately described;
  - 5.1.6 all information provided in respect of the Lots is accurate in all material respects; and
  - 5.1.7 they shall not personally, or by an agent, bid for any Lots submitted by them.

## 6. **SUBMISSION OF LOTS**

- 6.1 Vendors must complete an Official Entry Form in respect of any Lot submitted to the Auction for sale which must be submitted prior to the Sale in which they are to be offered for sale.
- 6.2 The Auction may, in its absolute discretion accept the submission of Lots once the relevant Sale has commenced but shall have no liability to the Vendor if, for whatever reason, it is unable to do so.
- 6.3 Any Lot to be sold must be consigned to the Auction Hall by the deadline as communicated by the Auction to the Vendor. Failure to consign a Lot by the aforementioned deadline will result in the Lot not being offered for sale.
- 6.4 Each Lot consigned to the Auction Hall must be clearly labelled with:
- 6.4.1 the Vendor Number;
  - 6.4.2 plant variety;
  - 6.4.3 Lot count or weight;
  - 6.4.4 a delivery note or Vendor Card;
  - 6.4.5 any reserve or guide price; and
  - 6.4.6 where applicable, the relevant details relating to a Plant Passport.
- 6.5 The Auction may, in its absolute discretion, describe any Lot in any way they consider appropriate.
- 6.6 Should the Auction rely on and use the description provided by the Vendor, the Auction shall not in any way be responsible or liable for any misdescription of the Vendor's goods or any claim by a Buyer which may, as a result of such misdescription, arise.
- 6.7 The Auction reserves the right before or during a Sale to group together any Lots belonging to the same Vendor or to split up or withdraw any Lot, in its absolute discretion and without reason.

## 7. **RESERVE AND GUIDE PRICES:**

- 7.1 The Vendor is entitled to place, prior to any Sale, a reserve price on any Lot being the minimum Hammer Price at which the Lot is to be sold.

- 7.2 Reserve prices must, at the Auction's discretion, be reasonable and the Auction reserves the right to decline to any Lot for sale if it considers its reserve price to be unreasonable.
- 7.3 Once the Auction has accepted a Lot with a reserve price, the reserve price cannot be changed without the Auction's consent.
- 7.4 The Auction, at all times, reserves the right to exercise their discretion and sell any Lot for a price up to 10% less than its reserve price.
- 7.5 The Vendor is entitled to place, prior to any Sale, a guide price on any Lot being an indication to the Auction as to the Lots expected Hammer Price.
- 7.6 The Auction shall not be bound by any guide price and shall have no liability to the Vendor, whatsoever, in the event that any Lot is sold at a Hammer Price less than its guide price.

## **8. REFUSAL OF ACCEPTANCE OF LOTS**

- 8.1 The Auction shall refuse acceptance of any Lots which:
- 8.1.1 are submitted in non-compliance with clause 6.3; OR
  - 8.1.2 in the opinion of the Auction are "topped up" or improperly packed.
- 8.2 Further, the Auction reserves the right to refuse acceptance of any Lot without reason.
- 8.3 Any Lot rejected by the Auction pursuant to clause 8.1 or 8.2 must be removed by the Vendor within twenty-four (24) hours of notification of rejection by the Auction. If the Vendor is unable to remove the Lot, they shall be liable to reimburse all resulting and reasonably incurred costs of the Auction which shall include, but not be limited to, the costs of storage, insurance and/or any transportation.
- 8.4 In the event that any Lot which is in non-compliance with clause 8.1 is sold, the Auction may cancel the sale and may re-sell or refuse to sell as, in their absolute discretion, they see fit.

## **9. WITHDRAWAL OF A LOT**

- 9.1 The withdrawal of any Lot by the Vendor must be made in writing to the Auction and received by the Auction not less than one clear working day prior to the Sale.
- 9.2 The Auction is not obliged to acknowledge any withdrawal made by the Vendor which is not in compliance with clause 9.1.

9.3 In the event of the sale of any Lot following non-compliant withdrawal (as referred to in clause 9.2) the Vendor shall be bound by the sale and shall be bound to pay the Commission to the Auction as set out in clause 11, below.

## 10. **UNSOLD LOTS**

10.1 If any Lot is unsold the Auction, in its absolute discretion, may:

10.1.1 re-offer it for sale at future Sales;

10.1.2 sell by private treaty; or

10.1.3 deem the Lot unsaleable;

10.2 Any unsold Lot which the Auction deems unsaleable is to be removed, by the Vendor, from the Auction Hall within twenty-four (24) hours of notification of non-sale by the Auction. If the Vendor is unable to remove the Lot, they shall be liable to reimburse all resulting and reasonably incurred costs of the Auction which shall include the costs of storage, insurance and/or transportation.

10.3 Any Lot sold by private treaty shall be treated as if it had been sold at the relevant Sale and the Auction shall be entitled to Commission as if it had been sold at the relevant Sale.

## 11. **COMMISSION AND PAYMENT OF PROCEEDS OF SALE**

11.1 On sale of the any Lot, and in accordance with this clause, the Auction shall pay to the Vendor the Proceeds of Sale which shall be the Hammer Price from which will be deducted:

11.1.1 the Commission; and

11.1.2 if applicable, VAT.

11.2 Payment of the Proceeds of Sale shall (unless otherwise advised) either be paid:

11.2.1 by BACS on the Monday or Tuesday two (2) weeks following the Sale;  
or

11.2.2 by cash, which shall be available for collection from the Auction Hall on the Friday following the sale and between the times of 1.00pm and 4.00pm.

11.3 In the event of non-payment for a Lot by a Buyer, the Auction shall have no obligation to pay to the Vendor the Proceeds of Sale.

11.4 In the event of non-payment for a Lot by a Buyer and the Proceeds of Sale have already been paid to the Vendor, on receipt of notice from the Auction, the Vendor shall immediately re-pay the Proceeds of Sale to the Auction.

11.5 The Auction shall, in addition to any other right or remedy available to it, have a lien over the Hammer Price and any property of the Vendor held by the Auction, for the Commission and all other fees, costs and expenses charges under or in connection with the contract.

## 12. **RISK IN LOTS**

12.1 Risk in a Lot shall remain with the Vendor until the fall of the hammer, at which point the Lot shall be at the risk of the Buyer.

## 13. **INDEMNITY**

13.1 The Vendor shall keep the Auction indemnified against, and covenant to pay the Auction, a sum equal to 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 (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Auction resulting from:

13.1.1 the Vendor's breach of the warranties contained in clause 5; and/ or

13.1.2 the Vendor's failure to comply with the terms of clause 6.

## 14. **LIMITATION OF LIABILITY**

14.1 This clause 14 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:

14.1.1 any breach of these Conditions however arising;

14.1.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.

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

14.2.1 death or personal injury resulting from negligence;

14.2.2 fraud or fraudulent misrepresentation; or

14.2.3 any other liability which cannot be excluded or limited by applicable law.



14.3 Without prejudice to clause 14.2, the Auction shall not under any circumstances whatever be liable to the Vendor (or any Buyer), whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

14.3.1 loss of profit;

14.3.2 loss of goodwill;

14.3.3 loss of business;

14.3.4 loss of business opportunity;

14.3.5 loss of anticipated saving; or

14.3.6 special, indirect or consequential damage,

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

14.4 Without prejudice to clause 14.2 or clause 14.3, 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.

## 15. **NOTICES**

15.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

15.1.1 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

15.1.2 sent by email to:

15.1.2.1 the Auction at MikeKnight@spaldingauction.co.uk

15.1.2.2 to the Vendor at the address set out in the Vendor Application Form.

15.2 Any notice shall be deemed to have been received:

15.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- 15.2.2 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.
- 15.2.3 if sent by email, at 9.00 am on the next working day after transmission.
- 15.3 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.
16. **FORCE MAJEURE**
- 16.1 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 results from a Force Majeure Event.
17. **COMPLAINTS HANDLING PROCEDURE**
- 17.1 All complaints should initially be made in writing and addressed to the General Manager, Spalding Auction, Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 3YR.
- 17.2 If the Auction is unable to satisfactorily resolve the Vendor's complaint, they may refer it to the Royal Institute of Chartered Surveyors Dispute Resolution Service, contact details for which are available from the Auction on request.
18. **GENERAL**
- 18.1 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.
- 18.2 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.3 This 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.
- 18.4 Each party acknowledges that in entering into this 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 this Contract.

- 18.5 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 18.6 Nothing in these Conditions shall limit or exclude liability for fraud.
- 18.7 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.
- 18.8 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 this Contract.
- 18.9 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 this Contract.
- 18.10 The Vendor 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 this Contract.
- 18.11 This 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.
- 18.12 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 this Contract or its subject matter or formation.