

## Brightwells Limited – General Conditions of Sale

The following terms and conditions with such other terms, conditions and notices as may be set out in any relevant Catalogue and our Terms and Conditions for Online Sales and Special Conditions of Sale, apply to all sales by Brightwells Limited (Brightwells) at auction or to any retail sale (the Conditions). It is the intention of Brightwells that all terms between it and the Seller and the Buyer are contained in the Conditions.

Please read the Conditions carefully before placing any Bid. By placing a Bid at an Auction, You agree to be bound by the Conditions and You acknowledge that they override any terms and conditions which You purport to impose. Your attention is drawn to conditions 5.3, 6.4, 9.4, 29.4 and 35 which set out Our liability.

Any Bids placed by You, and any contract for the purchase of a Lot entered into as a result, is made in accordance with and subject to the Conditions. These terms and conditions should be read in conjunction with our Terms and Conditions for Online Sales and the relevant 'Special Conditions of Sale' that apply to the Lot that You are purchasing. A list of Our various 'Special Conditions of Sale' is contained at the end of this document. Our Terms and Conditions for Online Sales can be found on Our Site.

To the extent of any conflict or inconsistency between Our 'General Conditions of Sale' or Our 'Special Conditions of Sale', the precedence shall be given in the following order:

1. Special Conditions of Sale;
2. General Conditions of Sale.

You should ensure that You have read and have access to a copy of Our Terms and Conditions for Online Sales if You are bidding through Our Site and Our Special Conditions of Sale if these are applicable to the Lot.

All Buyers are deemed to place a Bid on the understanding that they have read and understood these Conditions of Sale.

### 1. Information About Us

- 1.1. We are registered in England and Wales under company number 2052714 and Our registered office address is Easters Court, Leominster, Herefordshire, HR6 0DE. This is also Our main trading address.
- 1.2. Our VAT number is GB133 4722 89.

### 2. Definitions and Interpretation

- 2.1. The following definitions and rules of interpretation shall apply to these Conditions.
  - "Advertisement" means an advert for a specific Lot in the Catalogue.
  - "Auction" means the auction sale in respect of which a Lot is consigned for sale.
  - "Auctioneer(s)" means the representative of Brightwells Ltd conducting the Auction.
  - "Bid" means any bid placed by a Buyer in respect of a Lot.
  - "Buyer" means the person to whom a Lot is knocked down by the Auctioneer or the highest successful bidder.
  - "Buyer's Premium" means the percentage of the Hammer Price together with VAT thereon calculated in accordance with the current charges displayed on the Lot description in the Catalogue.

"Catalogue" means any advertisement, brochure, late entry list, estimate, price list or other publication that may provide information about a Lot or the Auction.

"Conditions" means these general conditions of sale.

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“Condition Report” means any opinions published by Brightwells in relation to the nature or condition of a Lot.

“Commission” means the percentage of the Hammer Price as agreed with the Seller.

“Deposit” means an upfront payment made by the Buyer in respect of an Auction as described in the auction overview details found in the Catalogue.

“Encumbrance” means any encumbrance or security interest of any kind whatsoever including, without limitation, any mortgage, charge, pledge, lien, hypothecation, restriction, right to acquire, right or pre-emption, option, conversion right, third party right or interest, right of set-off or counterclaim, equity, trust, arrangement or any other type of preferential agreement such as retention of title agreement) having similar effect or any other rights exercisable by third parties and Encumbrancer shall be construed accordingly.

“Environmental Disposal Charge” means any fee charged in respect of disposing of an unsold Lot charged by the Environment Agency.

“Expenses” in relation to a sale of any Lot means Brightwells charges and expenses for insurance, storage, illustrations, cataloguing costs, special advertising, packing, freight and any published charges of that lot and any VAT hereon and any encumbrance.

“Force Majeure Event” means any circumstance not within a party’s reasonable control including, without limitation, acts of God, flood, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, war, threats of war, riots, collapse of buildings, fire, explosion and any labour or trade dispute, strike, or industrial action.

“Hammer Price” means the price in pounds sterling which a Lot is knocked down by the Auctioneer.

“Lot” means any item(s) consigned with the view to its or their sale at Auction.

“Lot Entry Form” means the confirmation of entry form completed by the Seller prior to the Auction in respect of any Lots submitted to the Auction.

“Our Site” means [brightwells.com](http://brightwells.com) or [brightwellslive.com](http://brightwellslive.com)

“Private Sale” means an agreement to purchase any Lot following non-sale at the Auction.

“MOD Asset” means the Lot sold by Brightwells on behalf of the UK Ministry of Defence.

“Provisionally Sold” means the allocation by the Auctioneer in accordance with condition 18.

“Purchase Price” means the Hammer Price together with VAT thereon, the Buyer’s Premium and any additional charges or Expenses due from the Buyer.

“Reserve” means the minimum Hammer Price agreed between Brightwells and the Seller at which a Lot may be sold.

“Sale Site” means the Brightwells premises where the Auction is conducted.

“Sale Proceeds” means the net amount due to the Seller being the Hammer Price less the Seller’s commission, any VAT thereon, Expenses and any other amounts due to Brightwells from the Seller.

“Seller” means the person who offers the Lot for sale at the Auction.

“Sellers Commission” means the commission or expenses payable by the Seller in accordance with condition 14.

“Special Conditions of Sale” means the additional conditions that may apply to certain Lots. Please see condition 51.

“VAT” means Value Added Tax applicable in the UK at the prevailing rate from time to time.

- 2.2. In these Conditions of sale, unless the contrary intention appears, words importing the masculine gender shall indicate female and words in the singular shall include the plural and words in the plural include the singular.

- 2.3. Paragraph headings shall not affect the interpretation of these Conditions.

### 3. Brightwells’ status

- 3.1. The Conditions set out the terms on which Brightwells Limited (“We”/“Our”/“Us”) offer Lots for sale on behalf of the Seller at the Auction.

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- 3.2. By bidding in the Auction, You agree that these Conditions shall be contractually binding on You.
- 3.3. We will act as agent for the Seller and will offer Lots for auction on behalf of the Seller. This means that We provide services to the Seller in order to help them sell the Lot and We act as agent in concluding the contract for sale between You and the Seller.
- 3.4. The Contract for Sale, which will be created when any successful Bid for a Lot is made, will be directly between You and the Seller.
- 3.5. We will not be liable for any act or default by the Seller or the Buyer.

## 4. Descriptions of Lots

- 4.1. Our description of any Lot in the Catalogue, along with any Condition Report or other statement made by Us (whether orally or in writing), including but not limited to in relation to the nature, conditions, dimensions, or materials are Our opinion and not to be relied upon as statement of fact.
- 4.2. We do not carry out in-depth research or quality checks of any Lot and all dimensions and weights listed in the Catalogue are approximate only.
- 4.3. We do not provide any guarantee in relation to the nature, condition, dimensions, quantities, volumes, or materials of any Lot.
- 4.4. We may make such announcements or publish such information supplied by the Seller about any Lot as we, in our sole discretion, think fit.
- 4.5. In case of dispute as to the meaning of any description, the decision of the Auctioneer shall be final and binding on all parties.

## 5. Condition of Lot

- 5.1. Every Lot must be taken 'as is', with all faults and imperfections and errors of description (if any).
- 5.2. The condition of the Lot can vary widely due to numerous factors such as age, restoration, repair and wear and tear. Their nature means that they will rarely be in perfect condition.
- 5.3. All Lots are sold 'as is', in the condition that they are in at the time of the Auction, without any representations or warranty or assumption of any liability of any kind as to the condition by Brightwells.
- 5.4. Any reference to the condition of a Lot in the Catalogue will not amount to a full description on condition, and images may not show the condition of a Lot clearly. Colours and shades may look different to how they may look upon physical inspection.
- 5.5. Condition Reports may be available to You to help You evaluate the Lot; however these are for guidance only and should not be relied upon. The Condition Report offers Our opinion only and may not include all faults, defects, alterations etc. For that reason, they should not be used as an alternative to obtaining professional advice.
- 5.6. It is the Buyer's responsibility to request and consider any Condition Report.

## 6. Brightwells' Discretion

- 6.1. Brightwells has the right at its sole discretion to:
  - 6.1.1. refuse admission to their premises or attendance at their auctions by any person;
  - 6.1.2. require any Seller to remove a Lot from the auction premises;
  - 6.1.3. refuse any bid for any Lot;
  - 6.1.4. divide any Lot or to combine two or more Lots;
  - 6.1.5. withdraw any Lot from the Auction; and
  - 6.1.6. in the case of dispute, to put any Lot up for auction again.
- 6.2. The Auctioneers may accept written instructions to bid on behalf of prospective Buyers but any instructions accepted shall be at the risk of the prospective Buyers, who will be deemed to have viewed the Lot(s).

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- 6.3. If Brightwells is notified about the Seller's alleged breach of any of the Conditions before it has remitted the Sale Proceeds to the Seller, it may at its sole discretion, withhold payment until that dispute is resolved. Brightwells may, however, deduct any sums that are due to it from the sum held.
- 6.4. Brightwells cannot accept any responsibility for any Lots not being presented for sale at Auction, nor will Brightwells have any liability for any costs or expenses incurred as a result of an abortive attendance at the Auction. All Buyers are advised to call the office on the afternoon previous to the Auction to confirm whether or not a Lot is expected to appear in the Auction.

## 7. Resale due to faults or non-compliance

- 7.1. On failure of compliance with these Conditions, the Auctioneers may re-sell the Lot or Lots, either by public auction or private contract and the deficiency (if any) with all expenses, shall be made good by the defaulter at this sale, but such defaulter shall not be entitled to any surplus which may arise by such re-sale, which shall remain the property of the Auctioneers.
- 7.2. Such expenses shall be deemed to include the usual Auctioneer's commission on the re-sale and all expenses for porters, advertising, market tolls, carriage, care, storage, keep and otherwise.

## 8. Value Added Tax – Sellers (subject to current legislation)

- 8.1. VAT at the rate prevailing on the day of the Auction will be added to the Hammer Price of all Lot(s) bought at any sale in the United Kingdom, the amount will clearly be shown on the Buyer's invoice.
- 8.2. The only exceptions to the provisions of condition 8.1 will be:
  - 8.2.1. 'Zero' rated or 'Exempt' articles; or
  - 8.2.2. if, prior to sale, the Auctioneers hold a signed Seller's declaration stating that he/she is either not registered for UK VAT (unless the Auction is wholly non-margin scheme); or
  - 8.2.3. the items entered by the Seller are eligible for sale under 'second-hand margin scheme' or auctioneers' scheme for UK VAT rules.
- 8.3. Overseas Buyers must pay all VAT chargeable on an invoice under United Kingdom legislation. VAT may be refunded if appropriate upon production of acceptable proof of:
  - 8.3.1. the Buyer not having a place of business in the UK from which taxable supplies are made
  - 8.3.2. export of the specified items; and
  - 8.3.3. registration for VAT of the Buyer outside the UK; and
  - 8.3.4. return of any Commercial and/or UK Customs paperwork or evidence of export within the timeframes set out by HM Government, whether the Buyer is from a European Union State or otherwise.

## 9. Title and Risk

- 9.1. Until sold, each Lot shall be at the Seller's risk and it shall be his duty to preserve the same.
- 9.2. Risk for loss/damage in the Lot shall pass to the Buyer at the point of hammer fall.
- 9.3. Title in the Lot shall remain vested in the Seller or Brightwells (as agent for the Seller) and shall not pass to the Buyer until Brightwells confirms that (a) the Buyer has provided all relevant information as required in accordance with condition 29.5.1; and (b) Brightwells has received full, clear and undisputed payment of all amounts due, even in circumstances where the Lot may have been released.
- 9.4. In the event of the Lots being re-sold before payment being made in full the purchaser shall hold the proceeds of such sale on trust for the Seller (or Brightwells Ltd. as Seller's Agent). Notwithstanding such a lien and the right of possession aforesaid, the Brightwells does not accept any risk as regards any Lot, nor any liability whatever, as to preservation or delivery thereof.
- 9.5. If the Buyer elects to utilise our storage facility, this will be subject to the storage terms set out in condition 32 below.

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- 9.6. In the event that Brightwells allows a Buyer to remove any Lot before payment is made, the Buyer must ensure that title in the Lot remains vested in the Seller (or Brightwells as agent for the Seller) until full payment has been made.
- 9.7. Until payment in full has been made, the Buyer shall undertake to keep the Lot in a good and marketable and readily identifiable condition and not to sell the Lot which remains the property of the Seller. In addition, if not paid for on demand, the Lot shall be returned to the Auction site for resale and shall be dealt with as in condition 7.
- 9.8. In the event of sale by a Buyer before payment has been made in full, the Buyer shall hold the proceeds of such sale on trust for Brightwells (as Agent of the Seller).
- 9.9. In the event of breach of conditions 9.6 to 9.8, the Auctioneers reserve the right to enter on to property of the Buyer, or others to reclaim possession of any Lot.

## **SELLER SPECIFIC CONDITIONS**

**These conditions apply to the Seller only.**

### **10. Entering a Lot**

- 10.1. Before entering a Lot for Auction, the Seller must complete and submit the Lot Entry Form at least 5 business days prior to the Auction. The Seller will be asked to submit and confirm the description provided in the Lot Entry Form. The Seller shall be entitled to make any amendments to the proposed description provided that any amendments must be received by the Auctioneer no later than 2 business days before the start of the Auction.
- 10.2. Brightwells shall be entitled to accept or reject the Lot Entry Form at any time up to 3 business days before the date of the Auction (at which point the Catalogue shall close). The submission of the Lot Entry Form shall act as the offer by the Seller to instruct Brightwells to sell the Lot as its agent. The contract between the Seller and Brightwells shall come into force upon Brightwells written acceptance of the Lot Entry Form and shall be subject to the Conditions.
- 10.3. If Brightwells rejects the Lot Entry Form, the Seller shall be entitled to re-submit the Lot Entry Form with an updated description. The re-submission of the Lot Entry Form shall constitute an offer by the Seller and shall be subject to the provisions of condition 10.2.
- 10.4. No contract shall come into force between Brightwells and the Seller until Brightwells has sent written acknowledgement of the Lot Entry Form.

### **11. Warranty by the Seller**

- 11.1. The Seller warrants to Brightwells that:
  - 11.1.1. the Seller is the owner of the Lot or is properly authorised to sell the Lot by the owner and is able to sell the Lot with full title guarantee free from all encumbrance;
  - 11.1.2. the Seller is able to transfer a good and marketable title to the Lot, free from any third-party claims, liens, and encumbrances and that all entries on the entry form are correct.
  - 11.1.3. the Seller has notified Brightwells in writing of any material alterations to the Lot of which the Seller is aware and of any concerns expressed by third parties in relation to the authenticity, provenance, origin, age, condition, or quality of the Lot and has provided Brightwells with all such information in the Seller's possession; and
  - 11.1.4. the information about the Lot given to Brightwells and statements made about it, including information provided on the Seller entry form, are true and accurate.
- 11.2. The Seller warrants to the Buyer that:
  - 11.2.1. the Seller is the owner of the Lot or is properly authorised to sell the Lot by the owner and is able to sell the Lot with full title guarantee free from all encumbrances; and

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11.2.2. the description included in the Catalogue and any other information provided about the Lot is accurate.

11.3. All warranties or other implied terms which may apply to these Conditions of Sale shall be excluded to the maximum extent permitted by law.

## 12. Seller's indemnity

12.1. The Seller shall indemnify Brightwells, its agents and servants against all losses, expenses or other costs which are caused by the Seller's breach of any obligation of the Seller under the Conditions.

12.2. The Seller shall indemnify Brightwells, its agents and servants against all losses, expenses or other costs which are caused by the Seller's breach of any of the warranties in condition 11.

12.3. The Seller shall indemnify Brightwells, its agents and servants against all losses, expenses or other costs which are incurred by Brightwells as a result of such announcements or publications made in accordance with condition 4.4.

12.4. The Seller shall indemnify the Buyer against all losses, expenses or other costs which are caused by the Seller's breach of any obligation of the Seller under the Conditions.

## 13. Reserves

13.1. The Seller may place a Reserve on any Lot prior to the Auction and once placed by the Seller may not be changed without the written consent of Brightwells. All Lots will be sold without Reserve unless a Reserve has been agreed by Brightwells in writing.

13.2. Such Reserve shall be in writing and the document containing the Reserve will be handed to the Auctioneers not later than one hour prior (or as advised in Our Special Conditions of Sale) to the commencement of the Auction and in the event of the Seller failing to do so, the Lot will be sold without reserve.

13.3. Where a Reserve has been agreed, only the Auctioneer may bid on behalf of the Seller, whilst any third party must not bid on the Seller's behalf. If the Seller makes such bid, then the Auctioneer may knock the Lot down to the Seller without observing any Reserve and the Seller shall pay to Brightwells the Buyer's Premium (if applicable) in addition to the Seller's Commission and Expenses.

13.4. Where a Reserve is agreed but not attained, the Auctioneer may allocate the Lot as being Provisionally Sold and condition 18.1 shall operate

13.5. Where no Reserve has been placed, the Seller may bid either personally, through a third party or through the Auctioneers or agency of any one person.

13.6. If no Reserve has been placed on a Lot, Brightwells shall in no way be held liable should the Lot be purchased for a price below any lowest estimated selling price of the Lot given in any Catalogue.

13.7. The sale is subject to a Reserve, at the discretion of the Seller.

## 14. Commission and expenses

14.1. Brightwells shall be entitled to deduct from the Purchase Price and retain the Commission plus VAT and Expenses and any other sums due from the Seller to Brightwells.

14.2. The Seller acknowledges Brightwells right to retain the Buyer's Premium payable by the Buyer in accordance with condition 27.

## 15. Sellers right to Bid

15.1. The Seller reserves the right to bid either personally, through a third party or through the Auctioneers or agency of any one person in accordance with conditions 13.3 or 13.5.

15.2. The Auctioneers reserve the right to charge full commission on the Reserve price of any Lot so bought in accordance with this condition 15 or condition 13.3.

15.3. In addition to condition 15.2, and for the avoidance of doubt, the Auctioneers reserve the right to charge full commission of the Purchase Price of any Lot If bought in accordance with condition 13.5.



## 16. Photography and Illustrations

The Seller permits Brightwells without payment to photograph and make illustrations of any Lot and to use at its discretion any photograph or illustration of or in respect of a Lot supplied by the Seller, whether or not in conjunction with the Auction. The copyright in all photographs taken and illustrations made of any Lot by or on behalf of Brightwells shall be the absolute property of Brightwells.

## 17. Brightwells' Estimates and Descriptions

- 17.1. Brightwells make no warranty or representation as to the anticipated or likely selling price of any Lot. Any estimate given by Brightwells, whether written or oral and whether or not printed in any Catalogue, as to the estimated selling price of any Lot is a statement of opinion only and may be subject to revision from time to time at Brightwells' sole discretion and should not be relied upon as an indication of the actual selling price. The Seller shall not be allowed to set the Reserve above the lower estimate published in the Catalogue, without the permission of Brightwells and the announcement of a revised estimate to suit this condition at the time of sale.
- 17.2. Brightwells shall not be liable to the Seller for any error or misstatement in, or omission from, the description of any Lot in any Catalogue where:
  - 17.2.1. Brightwells have been provided with such description by the Seller or any person on his behalf; or
  - 17.2.2. Brightwells have provided the Seller with a copy of such description prior to publication of the Catalogue and neither the Seller nor any person on his behalf have notified Brightwells in writing within 7 days of any error or misstatement in or omission from the description.
- 17.3. Brightwells has no duty to the Seller to investigate the accuracy of the description of any Lot provided by or on behalf of the Seller.

## 18. Unsold Lots: Provisional Sales and Buy It Now

- 18.1. Where the Lot has not reached its Reserve and the Auctioneer in his absolute discretion has allocated a Lot as Provisionally Sold to the highest bidder, Brightwells shall take steps to contact the Seller on the day of the Auction and agree with the highest bidder a price for the Lot and conclude a sale between the Seller and the highest bidder as agent for the Seller.
- 18.2. Where the Seller instructs Brightwells to sell the Lot for a fixed price, Brightwells shall allocate the Lot to its "Buy it Now" scheme and use its endeavours to sell the Lot on behalf of the Seller at the price sort by the Seller together with the Buyer's Premium (if applicable) thereon and the Buyer's attention is specifically drawn to the terms contained in the "Buy It Now" Catalogue.
- 18.3. Any sale by Private Sale shall be subject to these Conditions or to commission and expenses as if it had been sold by Auction.
- 18.4. Lots that are unsold may, at the discretion of the Auctioneers, be re-offered at another sale. If Lots are not offered for re-sale at another Auction, the Seller will be asked to remove the unsold Lot immediately. If such Lot is not removed by the Seller, the Auctioneers reserve the right to charge the fees as set out in the auction overview for any Auction. Such charges are in addition to any other removal or storage charges that may be incurred.
- 18.5. Any unsold Lot that fails to attract a Bid of any sort may be automatically disposed of and will attract an Environmental Disposal Charge at the Auctioneers discretion.

## 19. Insurance

- 19.1. The Lot shall at all times remain at the risk of the Seller until ownership of the Lot passes from the Seller under these Conditions. The Seller shall insure such Lot and in the event of a Lot not being sold, the existing insurance must be maintained.
- 19.2. Brightwells will not be responsible for any damage to or the loss or the destruction of a Lot unless caused by the negligence of Brightwells, its employees or agents in the ordinary course of their duties to Brightwells and the Seller will indemnify Brightwells against all claims and proceedings brought against Brightwells in respect of any loss or damage to the Lot.

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- 19.3. Brightwells will not be liable for any injury, loss or damage caused by any Lot unless caused by the negligence of Brightwells, its employees or agents in the ordinary course of their duties to Brightwells or by the Seller who will indemnify Brightwells against all claims and proceedings brought against Brightwells in respect of such injury, loss, or damage.

## 20. Payment of Sale Proceeds

- 20.1. Where the Lot is not subject to any Encumbrance, Brightwells shall pay the Sale Proceeds to the Seller not later than 28 days after the date on which the Buyer collects the Lot, providing that the Purchase Price and all other fees has been received in full by Brightwells. Where the Lot is subject to any Encumbrance Brightwells shall discharge such of the Encumbrance from the Sale Proceeds and shall pay the net Sale Proceeds
- 20.2. (if any) to the Seller not later than 28 days from the date on which Brightwells receives a certificate of discharge from the Encumbrancer.
- 20.3. Unless an alternative method of payment has been agreed by Brightwells in writing, payment shall be made by sending to the Seller a cheque drawn on Brightwells' bank account by first class post at the Seller's risk.
- 20.4. If the Purchase Price has not been received in full by Brightwells within the time specified in Condition 20.1, Brightwells will pay the Sale Proceeds to the Seller within 5 business days after the date on which the Purchase Price is received in clear funds from the Buyer.
- 20.5. If the Buyer fails to pay the Purchase Price within 14 days of the Auction, Brightwells will notify the Seller who may instruct Brightwells as to the appropriate course of action. Brightwells will endeavour to assist the Seller, but Brightwells shall be under no obligation to institute proceedings in its own name.
- 20.6. In the absence of any written instructions from the Seller to Brightwells within 7 days of Brightwells having notified the Seller under 20.4 above then Brightwells shall be entitled to do any of the following:
- 20.6.1. to agree terms for the payment of the Purchase Price;
  - 20.6.2. to remove, store and insure the Lot;
  - 20.6.3. to settle claims and/or proceedings made by or against the Buyer on such terms as Brightwells shall at its absolute discretion think fit;
  - 20.6.4. to take such steps as Brightwells shall at its absolute discretion consider necessary to collect the monies due from the Buyer;
  - 20.6.5. where appropriate to rescind the sale and refund any monies to the Buyer;
  - 20.6.6. to offer the Lot for re-sale, by Auction or Private Sale, with or without Reserve;
  - 20.6.7. where appropriate to rescind the contract with the Buyer and to purchase the Lot itself. If it does so, property in the Lot shall pass to Brightwells on its election and Brightwells shall remit the Purchase Price to the Seller within fourteen days of its election less the commission and Expenses or sums due to Brightwells which would have been payable had the contract not been rescinded; and
  - 20.6.8. to appoint a solicitor and/or other agent to pursue any of the courses of action referred to in subparagraphs 20.5.1 to 20.5.3 above and the Seller authorises Brightwells to take any of the courses referred to in this Condition, including the issue and prosecution of proceedings on the Seller's behalf.
- 20.7. Any monies recovered by and paid to Brightwells in consequence of Brightwells taking one or more of the steps referred to in condition 20.5 shall be applied to the payment of:
- 20.7.1. legal or other costs incurred by Brightwells in connection with such steps;
  - 20.7.2. expenses;
  - 20.7.3. the Buyer's Premium (if applicable) and the Seller's Commission on the sale of the Lot; and then
  - 20.7.4. any balance remaining shall be paid by Brightwells to the Seller (or, if appropriate, the Buyer).
- In the event that there shall be a shortfall, such shortfall shall be made good by the Seller to Brightwells on demand.



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- 20.8. In the event that within 7 days of receipt of the notice referred to in condition 20.5, the Seller informs Brightwells that he/she wishes to take re-delivery of the Lot, he/she shall be entitled to do so but only upon prior payment of all commissions earned by Brightwells on the sale of the Lot together with Expenses and all legal and other costs incurred by Brightwells so as to provide Brightwells with a full indemnity.
- 20.9. Brightwells may withhold any monies due to the Seller and rescind the sale if, in Brightwells' opinion, the Buyer is not believed to be a bona fide Buyer and incapable of
- 20.10. making a contract. This could include but is not limited to, not being sound of mind, being in collusion with the Seller or under the influence of drugs or drink.
- 20.11. Any monies held by Brightwells shall be held in the designated Brightwells Ltd Client Account. No interest shall accrue on any sums held in this account.

## 21. Withdrawal Fees

- 21.1. The Seller may by notice in writing to Brightwells withdraw the Lot from the Auction. If the Seller does so prior to the publication of the Catalogue, he/she shall be liable to pay Brightwells an amount equal to the Commission Brightwells would have received from the Seller or 7.5% of the estimated value or Reserve (if applicable) of the Lot, whichever is the higher.
- 21.2. The estimated value referred to in condition 21.1 shall be the higher of:
  - 21.2.1. the Seller's estimate of value as previously notified to Brightwells or, if more than one figure, the highest figure; or, if none
  - 21.2.2. the value estimated in the Catalogue, or if more than one figure is given, the highest figure; plus, in either case VAT on such fee and expenses.
- 21.3. A fee equal to the commission referred to in 21.1 above plus an amount equivalent to the Buyer's Commission and VAT and Expenses will be charged if the Lot is withdrawn after a Catalogue referring to the Lot shall have been published.
- 21.4. In the event that the Seller withdraws the Lot from the Auction, the Seller shall arrange for collection and removal of the Lot at the Seller's own expense, within 2 business days after the date of withdrawal, provided that the Seller may not collect the Lot unless and until any withdrawal fee payable under conditions 21.1 and 21.3 shall have been paid in full. In any event, if a Lot is withdrawn Brightwells reserves the right to charge storage fees in accordance with condition 22.3.
- 21.5. If Brightwells has reasonable cause for believing that either the Seller is in breach of any one or more of the warranties set out in condition 11 or Brightwells and/or the Seller may be restrained by order of any court or other competent authority from selling the Lot, Brightwells may by giving notice in writing to the Seller decline to sell the Lot and conditions 21.1 to 21.4 above shall apply as if the notice from Brightwells were a withdrawal of the Lot by the Seller.
- 21.6. The Seller shall reimburse to Brightwells any legal or other costs reasonably incurred by it in investigating any claim concerning the ownership of a Lot and/or the Seller's right to sell the Lot, the accuracy of the description of the Lot contained in the Catalogue or in defending any claim relating thereto and Brightwells shall be entitled to withhold the amount of such costs from any payment due to be made to the Seller in accordance with condition 20.
- 21.7. Brightwells may set off any monies due to it from the Seller, including without limitation withdrawal fees and any costs incurred by it under condition 21 against any Sale Proceeds due to the Seller in respect of the same or any other Lot deposited with Brightwells by the Seller.

## 22. Removal and Storage

- 22.1. The Seller shall arrange for the removal of any unsold Lot by noon on the third day following the Auction or by such other time as agreed by Brightwells.
- 22.2. To remove an unsold Lot, the Seller should obtain a 'Not Sold' pass from the sales office before removing the Lot from the Auctioneer site.

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- 22.3. Failure to remove any unsold lot pursuant to condition 22.1 above will entitle Brightwells to charge the Seller for any removal, storage, insurance, and other expenses. Current storage charges will be available on request of the Seller.
- 22.4. If within 28 days after the Auction the Seller fails to give instructions to Brightwells regarding the disposal of the lot, Brightwells shall have the exclusive right to sell the Lot by Private Sale and to deduct from the sale price any sums owing to Brightwells or by Auction without reserve and to deduct from the Purchase Price any sums owing to Brightwells.

## 23. Self-Billing

- 23.1. Would all Sellers please note that Brightwells will raise a self-billing tax invoice for the proceeds of any Lots sold in this or any other sale held by us. It is a H.M Revenue & Customs requirement that this is the only tax invoice raised for those items.
- 23.2. We must have the Seller's VAT registration number (where appropriate) together with the Seller's name and address for inclusion on any self-billing tax invoice raised by Us.
- 23.3. The Seller must notify Us immediately if their VAT registration number is cancelled, or if they are issued with a new VAT registration number.
- 23.4. Any Seller not agreeing to this system of self-billing tax invoices being raised by Us must notify Us prior to the commencement of the Auction. Regrettably, We can only operate with a self-billing system in place, and therefore will not sell the goods of any Seller who is unable to accept this system.

## BUYER SPECIFIC CONDITIONS

**These conditions apply to the Buyer only.**

## 24. Identity of the Buyer

- 24.1. Except where specified in our Auction details, when registering to bid at any of our Auctions, you register as a trade buyer and not as a consumer for the purpose of the Auction unless otherwise specified at point of registration.
- 24.2. You will be asked to complete a registration form and submit specified identification documents before the Auction, failure to complete the registration form and provide appropriate identification means that We may not be able to accept Your Bid.
- 24.3. By registering with Brightwells, you agree that any information that you provide may be verified by a third party provider of compliance databases, subject to the terms of our Privacy Policy.
- 24.4. In addition to the registration form, prospective Buyers may also be asked to pay a Deposit as requested by the Auctioneer.
- 24.5. We reserve the right to remove or withdraw any registered Buyer from an Auction and prevent such Buyer from submitting any Bids at Our sole discretion.

## 25. The bidding process

- 25.1. The Buyer shall be the highest bidder at the Hammer Price. Any dispute as to any bid shall be settled by the Auctioneer at his absolute discretion.
- 25.2. No Bid shall be retracted once submitted by the Buyer. All bidding increments will be regulated by the Auctioneer.
- 25.3. Any Bid remains open for acceptance by the Auctioneer until the conclusion of the Auction and cannot be withdrawn.
- 25.4. All accepted Bids are subject to the Buyer satisfying our identity clearance requirements.
- 25.5. If Your Bid is accepted as the highest bid by the Auctioneer or Your Bid is the highest Bid when the Lot closes and the Reserve (if any) has been met, the Auctioneer will accept Your Bid on behalf of the Seller, thus forming a contract between Yourself and the Seller.

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- 25.6. Where a Lot is allocated as Provisionally Sold, Your Bid will remain open for acceptance until 16:00 on the following day of business for the Auctioneer, or longer if agreed in writing between Us and the Buyer ("the Standing On Period") following the conclusion of the Auction. During this period, the Bid may be accepted on behalf of the Seller by the Auctioneer or any other representative of Brightwells.
- 25.7. During the Standing On Period, We shall take steps to contact the Seller and to ascertain whether they are willing to accept the Bid notwithstanding that it does not meet the Reserve. Following confirmation from the Seller, We will notify You by email whether the Bid has been accepted or rejected by the Seller.
- 25.8. Your Bid will be deemed to have been rejected by the Seller if You are not given notice within the Standing On Period that it has been accepted.
- 25.9. Where You are notified within the Standing On Period that Your Bid has been accepted, a contract for the sale of the Lot will be formed between You and the Seller.

## 26. Erroneous bids

- 26.1. If a mistake is made when placing a Bid, or if in its reasonable discretion Brightwells or the Auctioneer believes an erroneous bid has been placed, Brightwells in its sole discretion, shall be entitled to take the erroneous bid out.
- 26.2. If in Brightwells sole discretion a bid is removed, the Auctioneer may invite the bidder to submit a corrected Bid.
- 26.3. If Brightwells, in its sole discretion, decides to remove an erroneous bid, the Lot shall be sold to the person that has submitted the next highest Bid. If no other Bids were made, and the erroneous bidder does not wish to make a corrected Bid, the Lot will be deemed unsold.

## 27. Buyer's Premium

- 27.1. The Buyer shall pay Brightwells the Buyer's Premium (as applicable) and the Buyer acknowledges that Brightwells may also receive the Seller's Commission due to Brightwells under condition 14.
- 27.2. The Buyer's Premium for each Lot sold at our Auction shall be in the Lot description in the catalogue.

## 28. Value Added Tax – Buyers (subject to current legislation)

- 28.1. VAT at the standard rate shall be applied to the Hammer Price for all Lots, regardless of whether or not the Seller is VAT registered.
- 28.2. VAT payable by the Buyer on the Hammer Price may be refundable by H.M. Revenue & Customs on proof of export, or other documentation as required by H.M. Revenue & Customs. Brightwells makes no warranties in this regard.
- 28.3. Certain Lots are sold subject to VAT on the Hammer Price and where the Lot is so identified in the detailed Lot information the Buyer's Premium (if applicable) will be calculated as a percentage of the Hammer Price.
- 28.4. In the case of an overseas Buyer, the Buyer must provide Brightwells with their VAT/fiscal number and other relevant information as requested in order that the Lot may be invoiced at zero rate for VAT purposes.
- 28.5. Where the information required under condition 28.4 is not made available or where the Buyer is not VAT registered, VAT at the standard UK rate will be charged in addition to the Purchase Price of all relevant Lots. This amount will not be recoverable.
- 28.6. It is the responsibility of overseas Buyer from EC countries to ensure that they or their haulier complete and sign a "collection certificate" at the Auctioneers office on collection of goods purchased. Failure to do so will result in VAT becoming payable at the standard UK rate and this VAT will not be recoverable.
- 28.7. In the case of overseas Buyers, they will be required to pay a VAT deposit equivalent to the standard UK rate of VAT. Such amount will be refunded to the overseas Buyer if the Auctioneers receive, within 3 months of receipt of payment in cleared funds, a satisfactory Bill of Lading or Certificate of Shipment as proof of shipment of the Lots, failing which the VAT deposit will be paid over to H.M Revenue & Customs as VAT.

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- 28.8. New overseas Buyers are asked to contact our accounts office at least 2 days prior to the Auction in order to deal with their requirements.
- 28.9. All overseas Buyers must produce a valid VAT number of the named Buyer on the invoice.

## 29. Contract For Sale

- 29.1. Save where the Auctioneer declares a Lot Provisionally Sold, a contract of sale is made between the Seller and the Buyer on the acceptance of a bid by the fall of the Auctioneer's hammer.
- 29.2. Risk in the Lot shall pass to the Buyer at the point the contract of sale is made, and the Buyer should make arrangements to insure the Lot from such time.
- 29.3. Where a Lot is Provisionally Sold the mechanism in condition 25 shall apply and the contract for sale shall be made in accordance with condition 25.9.
- 29.4. Brightwells is not a party to the contract of sale and has no liability for any act or default by the Seller or the Buyer.
- 29.5. Immediately after a Lot is sold, the Buyer shall:-
  - 29.5.1. give to Brightwells his name and address and, if so requested, proof of identity if he/she has not already done so; and
  - 29.5.2. pay to Brightwells the Purchase Price.

## 30. Payment

- 30.1. Brightwells may request that all potential Buyers pay a Deposit before the Auction. Any Deposit paid can be used to satisfy the Purchase Price for the successful Bid or returned to the Buyer following conclusion of the Auction.
- 30.2. All Buyers must pay the Purchase Price to the Auctioneer immediately on the fall of the hammer, unless credit terms have been agreed with Brightwells in writing before the Auction.
- 30.3. Full payment for all Lots must be made to Brightwells in pounds' sterling or the currency in which the Auction was conducted. Brightwells' preferred method of payment is by means of bank transfer, however cash (subject to the prior approval by an authorised director of Brightwells and compliance with anti-money laundering regulations), debit card, cheque, or bankers draft may also be accepted at the discretion of Brightwells. Where the Buyer wishes to pay by bank transfer, the Lot will not be released until the payment has been received in cleared funds into Brightwells' account. Cash payments are subject to a limit of £7,500 for all purchases made in the Auction. Total cash payments to Brightwells from any Buyer cannot exceed a Sterling equivalent of EUR 9,999 in any single or series of related or linked transactions within a 90-day rolling period. Where the Buyer wishes to pay by cheque or bankers draft and Brightwells has agreed that the Buyer may do so, the Lot will not be released until the cheque / bankers draft has been cleared in full.
- 30.4. No Lot may be collected or delivered until the Purchase Price has been received in full and cleared funds and a pass has been granted by the Auctioneer.

## 31. Delivery

- 31.1. It is the Buyer's responsibility to arrange collection of Lots. The Buyer shall, at his own expense, remove the Lot purchased by noon on the third day following the Auction or  
  
by such other time as agreed by Brightwells, but not before payment in full to Brightwells of the Purchase Price whether in respect of this or any other Lot and payment is confirmed by the Auctioneer or their clerk.
- 31.2. Brightwells may, at its discretion offer delivery services in respect of Lots or may assist the Buyer in arranging haulage or delivery of Lots, but this will be subject to (i) availability; and (ii) any terms and conditions imposed by the relevant courier in respect of the delivery.
- 31.3. Where terms for delivery are agreed, the Buyer will be required to pay for delivery and all costs associated with delivery. Unless rates for delivery are individually agreed, delivery charges will be at the rates as advertised by Us time to time.

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- 31.4. For the avoidance of doubt, Brightwells does not accept any liability for loss of or damage to any Lots (including any consequential losses, costs or expenses arising there from) whilst the Lots are in the custody or control of any third-party courier.
- 31.5. The Buyer shall be responsible for all removals, storage, insurance, and other charges on any Lot not taken away at the day and time specified in condition 31.1, unless storage facility has been agreed with Brightwells.

## 32. Storage

- 32.1. Provided that the Purchase Price for Lots are paid for in full and clear funds by the payment deadline, Brightwells will store the Lots free of charge until noon on the third day following the Auction, at which time the Lots will be shipped at the Buyers expense in accordance with condition 31.
- 32.2. Please note that if collection of the purchased Lot is permitted and You fail to collect it within the period agreed by Brightwells, We reserve the right to take the actions in accordance with condition 34 below.
- 32.3. If the Buyer requests to store any Lots at Brightwells' premises beyond the period set out in condition 32.1, then Brightwells will charge its usual storage fees which are available from Brightwells upon request by the Buyer. Such storage shall be subject to a separate written agreement between the Buyer and Brightwells.

## 33. Export

- 33.1. Buyers making a purchase for export warrant and acknowledge that they must comply with all regulations and export requirements.
- 33.2. If any export licence, or similar, is required by the successful Buyer, that sale shall not be conditional upon such licence and Brightwells shall not rescind any sale if such licence is not obtained.
- 33.3. Brightwells may assist in preparing export paperwork, however Brightwells shall not be liable for any import or export charges incurred in connection with any Lot.
- 33.4. The Buyer shall indemnify the Auctioneers against any liability, costs, claims, losses, or damages that may arise as a result of the Buyer's failure to comply with export regulations and requirements.

## 34. Non-payment or Failure to Collect

- 34.1. If the Purchase Price is not paid in full in accordance with condition 30 above then Brightwells, as the agent of the Seller, shall at its absolute discretion and without prejudice to any other rights it may have, be entitled to exercise one or more of the following remedies:
  - 34.1.1. to charge interest at a rate not exceeding 4% per month above the Bank of England's base rate from time to time, but at 4% for any period when that base rate is below 0%. per month on the total amount due after the date and time referred to in condition 31.1;
  - 34.1.2. to remove, store (either at Brightwells' premises or elsewhere) and insure the Lot at the expense of the defaulting Buyer;
  - 34.1.3. to retain that or any Lot sold to the same Buyer at the same or any other auction and to release it only after payment of the total amount due;
  - 34.1.4. to reject or disregard any bid or bids made by or on behalf of the defaulting Buyer at any future auction or to require payment of a Deposit before any future bid made by or on behalf of that Buyer; and
  - 34.1.5. to apply any money due or to become due to the defaulting Buyer in or towards settlement of the total amount due and to exercise a lien on any property of the defaulting Buyer which is in Brightwells' possession for any purpose.
- 34.2. If the Buyer fails to make payment within 7 days after the date and time referred to in condition 31.1, Brightwells shall at its absolute discretion and without prejudice to any other rights it may have, be entitled to exercise one or more of the following additional remedies:
  - 34.2.1. to proceed against the Buyer for damages for breach of contract;

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- 34.2.2. to cancel the sale of that or any other Lot sold to the defaulting Buyer at the same or any other auction notwithstanding the total amount due in respect of such other Lot shall have been paid; and
- 34.2.3. to re-sell the Lot or cause it to be re sold by public auction or Private Sale, and, if this results in a lower price being obtained, the defaulting Buyer shall pay to Brightwells any deficiency, together with re-sale costs and costs incurred in connection with the Buyer's failure to make payment and any surplus shall belong to the Seller.
- 34.3. If the Lot is not taken away on the date and time referred to in condition 31.1, whether or not the Purchase Price has been paid, Brightwells shall remove, store (either at Brightwells' premises or elsewhere) and insure the Lot at the expense of the defaulting Buyer and only release the Lot after payment of the total amount due.
- 34.4. If the Buyer has paid for and fails to collect the Lot within 14 days after the date and time referred to in condition 31.1, Brightwells shall at its absolute discretion and without prejudice to any other rights it may have, be entitled to exercise one or more of the following additional remedies:
  - 34.4.1. to cancel the sale of the Lot; and/ or
  - 34.4.2. to re-sell the Lot or cause it to be re-sold by public auction or Private Sale and to set off the total amount due in respect of that Lot against the sale proceeds and any surplus shall belong to the defaulting Buyer.

## MISCELLANEOUS CONDITIONS

### 35. Liability of Brightwells and the Seller

- 35.1. Brightwells gives no warranty in relation to any statement made, or information given, by Us or Our representatives or employees, including the Auctioneer, about any Lot.
- 35.2. All warranties or other implied terms which may apply to these Conditions of Sale shall be excluded to the maximum extent permitted by law.
- 35.3. The warranties given by the Seller in condition 11, are made by the Seller in their own capacity and Brightwells does not have any liability to the Buyer in respect of these warranties.
- 35.4. Brightwells does not give any representation, warranty, or guarantee or assume any liability of any kind in respect of any lot with regard to merchantability, fitness for a particular purpose, description, size, quality, condition, attribution, authenticity, rarity, importance, medium, provenance, exhibition history, literature, or historical relevance.
- 35.5. In bidding for any Lot, the Buyer acknowledges that he/she does not rely on any representation made to him by Brightwells, its employees or agents unless such representation has been confirmed by Brightwells in writing prior to the Auction.
- 35.6. Nothing in these Conditions shall limit Brightwells liability for (a) fraud or fraudulent misrepresentation; or (b) for death or personal injury caused by Our negligence.
- 35.7. Subject to condition 35.6, Brightwells total liability to the Buyer or to the Seller shall not exceed the Purchase Price paid, or payable, by the Buyer.
- 35.8. Notwithstanding anything contained within these Conditions of Sale, Brightwells shall not be liable to the Buyer or the Seller for any of the following excluded types of loss: indirect or consequential loss or damages, loss of profit, loss of sales, interruption of business, loss of agreements or contracts, loss of anticipated savings or loss of use or corruption of software, data, or information.
- 35.9. For avoidance of doubt, any MOD Asset is sold as a collector's item and not as a means of transport. Buyers are specifically warned that any MOD Asset sold may well have had parts replaced and paint renewed or be made up of parts from other vehicles the condition of which may be difficult to establish. Brightwells has to rely on information as to date, condition and authenticity provided by Sellers and does not, and cannot, undertake its own inspection of vehicles or other Lots to establish whether the vehicle or other



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Lot conforms to the description in the catalogue. It is the responsibility of the Buyer to carry out such inspection as he/she thinks necessary.

- 35.10. No warranty is given by Brightwells as to the accuracy of the description of any Lot in any Catalogue or any announcement made by the Auctioneer or as to the age, authenticity, suitability, provenance, attribution, origin, condition, fitness for purpose, merchantable or satisfactory quality of any Lot or roadworthiness of any MOD Asset.

## **36. Absentee / Commission Bids**

- 36.1. Whilst the interest of prospective buyers is best served by attendance at the Auction, Brightwells will if so instructed execute bids on behalf of prospective bidders provided that Brightwells is in receipt of a Deposit as specified in auction overview.
- 36.2. Brightwells, its agents or employees shall not be responsible for any default relating to telephone, email or other absentee bids including without limitation any telecommunications fault or failure.
- 36.3. The Buyer acknowledges the right of Brightwells to record any telephone bids.
- 36.4. Please be aware that Our absentee bidding service is a free service, and We are not responsible to the Buyer for any error (human or otherwise), omission or breakdown in these services.

## **37. Private Sales**

- 37.1. All Private Sales made on the day of the Auction must be booked through the Auctioneers.
- 37.2. The Auctioneers reserve rights at their option to:
- 37.2.1. treat as void any Private Sale made by a Seller of any Lot which he/she shall have entered for sale by the Auctioneers, and which has been received at the sale by them or on their behalf; or
- 37.2.2. to charge and reserve from such Seller their appropriate commission upon any such sale.

## **38. Royal Institution of Chartered Surveyors Rules of Conduct**

- 38.1. This market / Auction sale is not required to comply with RICS Members Accounts Regulations.
- 38.2. No monies paid to this sale are covered by any scheme for the protection of clients' money operated by the Royal Institution of Chartered Surveyors.
- 38.3. A more detailed explanation can be obtained in writing from the RICS Regulations Department, Surveyor Court, Westwood Way, Coventry CV4 9JE.

## **39. Health & Safety and Owners Risk**

- 39.1. All persons entering Brightwells premises do so at their own risk.
- 39.2. All persons entering the Brightwells premises must take notice of all specific health and safety notices on display at individual sites. If in doubt, please consult the Safety Officer/Auctioneer in charge.
- 39.3. Neither the Sellers nor the Auctioneers will be responsible for any accident, or damage from any cause whatever to persons, or property which may occur on the Brightwells site at any time during the removal of Lots, except where this is caused by the Auctioneers or Seller's negligence.
- 39.4. Vehicles parked at the Brightwells premises are at the owner's risk.
- 39.5. All objects and possessions are brought onto the Sale Site entirely at the owner's risk and unattended baggage and objects will be removed or destroyed as the Auctioneers think fit.

## **40. Personal Information, Privacy and Data Protection**

- 40.1. We will hold and process Your personal information in accordance with the terms of Our Privacy Policy.
- 40.2. In order to get Your purchase shipped to You, We provide certain personal information about You to the relevant courier company, including Your name, delivery address, phone number and details of the Lots that You have purchased.
- 40.3. Brightwells, will treat this information as private and confidential and will only use it for the purpose of providing shipping services necessary to get Your Lots delivered to You.

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- 40.4. Brightwells is committed to responsible data management, complies with applicable data protection legislation, and employs industry standard practices to protect the security of Your data.
- 40.5. By arranging for shipping of Your Lots, You consent to the disclosure of personal information to the relevant courier company as described in this condition.
- 40.6. Card and other payment information is collected and processed directly by a third-party service provider ("Payment Service Provider") and not by Brightwells. We provide the following information to the Payment Service Provider to enable payment to be processed: (i) name; (ii) billing address; and (iii) transaction amount. The Payment Service Provider may undertake fraud prevention reviews prior to processing any payment or as part of the payment process. The information submitted and used for processing payments is as below:
  - name and contact details including shipping and billing addresses;
  - credit or Debit Card information;
  - total transaction value; and
  - Your IP Address from which You are checking out from.
- 40.7. Brightwells does not have access to or retain any credit card or other payment information details.

## 41. Additional Charges

- 41.1. The Auctioneers reserve the right to levy additional charges where appropriate.
- 41.2. These may include but are not limited to: commission, levies, toll charges, offering fees, transfer fees, haulage costs, contra accounts, advertising costs, sundries, Buyer's
- 41.3. premium, and other charges appropriate to individual sales. Please ask for a confirmation of rates prior to the Auction if You require clarification.

## 42. Agents

- 42.1. Save as provided in condition 42.2 below, in all cases where a person whose bid is accepted is in fact acting as an agent, whether or not he/she has disclosed this fact, he and his principal shall be deemed to be and remain jointly and severally liable on the contract, and no steps taken or proceedings commenced against the principal or the agent shall be deemed to operate as an election discharging the other from liability unless such steps or proceedings result in a final satisfied judgment.
- 42.2. Save as aforesaid, the agent and his principal shall be deemed to be jointly and severally liable on the Contract For Sale and any steps authorised by these Conditions, or the general law may be taken against either or both of them, whether the existence or identity of the principal was disclosed or not.
- 42.3. Condition 42.1 and 42.2 above shall not apply if, before the commencement of the Auction, the agent informs the Auctioneers that he/she intends to contract as a principal, in which case the agent will be deemed to be personally and solely liable on the contract.

## 43. Force Majeure

- 43.1. If either Party is affected by Force Majeure, it shall promptly notify the other Party of the nature and extent of the circumstances in question.
- 43.2. Notwithstanding any other provision of this Agreement, neither Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party provided that the Party affected by the Force Majeure must use reasonable endeavours to make alternative arrangements to overcome the Force Majeure event, and the time for performance of that obligation shall be extended accordingly.

## 44. Written Communications

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- 44.1. Applicable laws require that some of the information or communications We send to You should be in writing. When using Our Site, You accept that communication with Us (and the Auctioneer) will be mainly electronic. We (and/ or the Auctioneer) will contact You by email at the email address You provided when You registered with Our Site or by posting notices on Our Site.
- 44.2. For contractual purposes, You agree to electronic means of communication and You acknowledge that all contracts, notices, information and other communications that We provide to You electronically comply with any legal requirement that such communications be in writing.

## 45. Notices

- 45.1. All e-mail notices given by Us (and the Auctioneer) to You will be sent to You at the email address You provided to Us when registering to use Our Site.
- 45.2. Notice will be deemed received and properly served immediately when posted on Our Site or the following working day after the e-mail containing/giving such notice is sent.
- 45.3. In proving the service of any notice, it will be sufficient in the case of an email, that such e-mail was sent to the e-mail address specified by You when You registered to use Our
- 45.4. Site, or in the case of notices posted on Our Site, by the production of a copy of the cached page showing the notice.

## 46. Waiver

- 46.1. If We fail, at any time, to insist upon strict performance of any of Your obligations under any of these Terms (or under Our 'Special Conditions of Sale' or 'Online Conditions of Sale'), or if We fail to exercise any of the rights or remedies to which We are entitled, this shall not constitute a waiver of such rights or remedies and shall not relieve You from compliance with such obligations.
- 46.2. A waiver by Us of any default shall not constitute a waiver of any subsequent default.
- 46.3. No waiver by Us of any of these Terms (or under Our 'Special Conditions of Sale' or 'Online Conditions of Sale') shall be effective unless it is expressly stated to be a waiver and is communicated to You in writing in accordance with condition 44 above.

## 47. Severability

If any of these Terms are determined by any competent authority to be invalid, unlawful, or unenforceable to any extent, such term, condition, or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## 48. Entire Agreement

These Conditions, along with the Special Conditions and Online Terms and Conditions and any document expressly referred to in them, represent the entire agreement between Us and You, and in the event of a contract of sale being entered, between You and the Seller, in relation to the subject matter contemplated by these Terms.

## 49. Our Right to Vary These Terms and Conditions

- 49.1. We have the right to revise and amend these Terms from time to time.
- 49.2. These Terms may be varied or amended either by the giving of notice by email, or by the posting of updated terms and conditions on Our Site.
- 49.3. You will be subject to Our Terms in force at the time that You log in to use Our Site.

## 50. Law and Jurisdiction

- 50.1. Your use of Our Site and contracts for the purchase of Lots entered into through Our Site and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by English and Welsh law.

- 50.2. Any dispute or claim arising out of or in connection with such contracts or their formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## 51. Special Conditions of Sale

- 51.1. Specific classes of Lot are subject to particular 'Special Conditions of Sale' which apply in addition to the provisions of Our 'General Conditions of Sale'.
- 51.2. The relevant 'Special Conditions of Sale' are as follows:
- 4x4s, Cars & Vans Special Conditions of Sale – Motor Vehicles
  - Wine Special Conditions of Sale – Wine
  - Plant & Machinery Special Conditions of Sale – Plant & Machinery
  - Classic Motoring Special Conditions of Sale – Classic Vehicles
  - Fodder Sales Special Conditions of Sale – Fodder
  - H.M. MoD Assets Special Conditions of Sale – Ex Ministry of Defence Assets

### **Brightwells Limited – Special Conditions of Sale** **4x4s, Cars and Vans**

The following terms and conditions apply to any sale in our 4x4s, Cars and Vans (Vehicles) auctions only, and shall be in addition to our General Conditions of Sale and our Terms and Conditions for Online Sales (collectively the 'Conditions').

Please read the Conditions carefully before placing any Bid. By placing a Bid at an Auction, You agree to be bound by Our Conditions and You acknowledge that they override any terms and conditions which You purport to impose. The Buyer's attention is particularly drawn to paragraph 6.

Any Bids placed by You, and any contract for the purchase of a Lot entered into as a result, is made in accordance with and subject to the Conditions.

To the extent of any conflict or inconsistency between Our 'General Conditions of Sale' or Our 'Special Conditions of Sale', the precedence shall be given in the following order:

1. These Special Conditions of Sale;
2. General Conditions of Sale.

You should ensure that You have read and have access to a copy of Our Terms and Conditions for Online Sales if You are bidding through Our Site and Our General Conditions of Sale, as applicable.

All Buyers are deemed to place a Bid on the understanding that they have read and understood Our Conditions of Sale.

## 1. Definitions

- 1.1 All phrases, expressions and terms defined in Our General Conditions of Sale or Our Terms and Conditions for Online Sales and used in these Special Conditions shall have the meaning set out in Our General Conditions of Sale or Our Terms and Conditions for Online Sales.
- 1.2 In these Special Conditions:  
"Buyer's Premium" means the percentage of the Hammer Price together with VAT thereon calculated in accordance with the current charges displayed on the Lot description in the Catalogue. For sales of 4x4s, Cars and Vans pursuant to these Special Terms and Conditions, the Buyer's Premium shall include an additional fee in respect of the Indemnity Scheme.

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“Motor Vehicle” means any 4x4, Car, Van, Motorcycle, Trailer, Caravan or other items included or proposed to be included in a sale of motor vehicles.

“Indemnity Scheme” means the indemnity scheme adopted by Brightwells in respect of our Plant & Machinery and 4x4s, Cars and Vans auctions.

## 2. Description of Motor Vehicles

- 2.1 The Catalogue contains details about each Motor Vehicle. The description contained in the Catalogue, which may be online, is given on behalf of the Seller, from information supplied by the Seller for which Brightwells is not responsible. Mileage is correct at time of cataloguing.
- 2.2 Photographs, Illustrations and diagrams contained in the Catalogue are for identification purposes only. They may not show the true condition and colour, (which may be inaccurately reproduced) of the Motor Vehicle.
- 2.3 Any potential Bidder must satisfy themselves as to each and every aspect of the Motor Vehicle, including, but not limited to, its condition, history, background, authenticity, age, quality and roadworthiness. No description of a Motor Vehicle carries with it an implication that it is fit for any particular purpose.
- 2.4 Motor Vehicles are sold to the Buyer on an "as is" basis, with all faults and imperfections.
- 2.5 Due to the nature of second-hand vehicles, the actual condition of a Motor Vehicle may not be as good as its outward appearance suggests. In particular, parts may have been replaced or renewed. Given the age of some Lots, no assumption should be made with regard to any aspect of their condition and the Buyer should carry out his/her own due diligence in respect of any Motor Vehicle.
- 2.6 Any person who physically interferes with, scratches or damages the Lot in any way (before or after the Auction) will be held liable for the loss so caused.
- 2.7 The Seller is responsible for delivering the Motor Vehicle in a presentable condition. If additional cleaning is required, it will be charged for by Brightwells to the Seller.

## 3. Motor Vehicle Registration Numbers

- 3.1 If the Seller wishes to sell the Motor Vehicle but to retain the right to the registration number of the Motor Vehicle it is the Seller's Responsibility to notify Brightwells in writing.
- 3.2 It shall be the Seller's responsibility to complete the retention documentation prior to sale and offer the Motor Vehicle with a new V5C and allocated registration from the DVLA prior to the Motor Vehicle being sold at the Auction.

## 4. Seller's warranty

- 4.1 The Seller warrants to Brightwells that unless Brightwells is notified in writing, the Motor Vehicle may lawfully be used on a road and complies with all statutory provisions and that there is in force any test certificate required by law in relation to such use.
- 4.2 The Seller warrants to Brightwells that if the Motor Vehicle cannot lawfully be used on a road, he/she shall notify Brightwells. The Seller must notify Brightwells of this fact before the Lot is advertised in the Catalogue.
- 4.3 The Seller warrants to Brightwells and the Buyer that the information about the Lot given to Brightwells, and statements made about it, are true and not misleading.
- 4.4 The Seller warrants that he/she has notified (or will before the Auction notify) Brightwells in writing of any material alterations to the Motor Vehicle of which the Seller is aware and of any concerns expressed by third parties in relation to the age, condition or quality of the Motor Vehicle and has provided Brightwells with all such information in the Seller's possession or control.
- 4.5 In the event that a Motor Vehicle which is discovered not to be in the state in which the Seller represented to Brightwells that it was, Brightwells may at its absolute discretion whether before or after the Lot has sold, carry out such work to the Motor Vehicle as is necessary to put into the state that the Seller

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represented it to be and shall deduct the cost of such work from any sums due to the Seller. If such costs exceed the sums due to the Seller, Brightwells shall invoice the Seller for any deficit in the costs incurred.

## 5. Responsibility for Motor Vehicle purchased

It shall be the responsibility of the Buyer to ensure that any Motor Vehicle purchased at Auction complies with the appropriate statute or regulation for driving, using or transporting it and for ensuring that any necessary test certificate is in force.

## 6. Liability

- 6.1 Buyers are specifically warned that any Motor Vehicle sold as such may well have had parts replaced and paint renewed or be made up of parts from other vehicles the condition of which may be difficult to establish. Brightwells has to rely on information as to date, condition and authenticity provided by Sellers and does not, and cannot, undertake its own inspection of vehicles or other Lots to establish whether the vehicle or other Lot conforms to the description in the catalogue. It is the responsibility of the Buyer to carry out such inspection as he/she thinks necessary.
- 6.2 No warranty is given by Brightwells as to the accuracy of the description of any Lot in any Catalogue or any announcement made by the Auctioneer or as to the age, authenticity, suitability, provenance, attribution, origin, condition, fitness for purpose, merchantable or satisfactory quality of any Lot or roadworthiness of any Motor Vehicle.
- 6.3 The Seller shall compensate Brightwells and the Buyer in full for all losses, expenses and other costs which are caused by the Seller's breach of any obligation of the Seller under the Conditions.

## 7. Indemnity Scheme

- 7.1 Brightwells operate a buyer protection Indemnity Scheme on all sales of Motor Vehicles sold in our 4x4, Car and Van Auctions. Details of the Indemnity Scheme are available from the Auctioneer.
- 7.2 All Buyers are required to pay the amount of the Buyer's Premium in addition to the Hammer Price of any Lot to benefit from the cover of the Indemnity Scheme.
- 7.3 The Buyer's Premium shall be added to Hammer Price and is payable by the Buyer immediately upon completion of the sale in accordance with our General Conditions of Sale.
- 7.4 Details of the Indemnity Scheme are available from the Auctioneer.

## 8. Payment of Sale Proceeds

Brightwells reserves the right not to remit the Sale Proceeds to the Seller unless the Seller has deposited with Brightwells the V5 or V5C registration document in the case of a UK registered vehicle or, in the case of a non-UK registered vehicle, the appropriate documents of title relevant and appropriate to the country of registration of the vehicle, and any other documentation relating to the vehicle in the Seller's possession or control which he/she agreed with Brightwells to supply.



## Brightwells Limited – Terms and Conditions for Online Auctions

This document (together with the documents referred to in it) sets out the terms and conditions on which Brightwells Limited (“Brightwells”) provides facilities for the placing of online bids (“Bids”) for Lots which are listed on our websites [www.brightwells.com](http://www.brightwells.com) or [www.brightwellslive.com](http://www.brightwellslive.com) (“Our Site”) and which are being auctioned at one of the Brightwells auction centres (“these Terms”).

Please read these Terms carefully before placing any Bids through Our Site. By registering an account and logging in to use Our Site, You agree to be bound by these Terms and You acknowledge that they override any terms and conditions which You purport to impose. Your attention is drawn to condition 12 which sets out Our liability to You.

Any Bids placed by You, and any contract for the purchase of a Lot entered into as a result, is made in accordance with and subject to these Terms. These Terms should be read in conjunction with Brightwells’ ‘General Conditions of Sale’ and the relevant ‘Special Conditions of Sale’ that apply to the Lot that You are purchasing. A list of Our various ‘Special Conditions of Sale’ is contained at the end of this document, Our General Conditions of Sale can be found on Our Site. The entirety of this document, Our ‘General Conditions of Sale’ and any ‘Special Conditions of Sale’ will apply to Your interactions with Brightwells, any Bids placed through Our Site, and any contracts for sale entered into as a result.

To the extent of any conflict or inconsistency between these Terms in respect of online sales ONLY, Our ‘General Conditions of Sale’ or Our ‘Special Conditions of Sale’, the precedence shall be given in the following order:

1. Special Conditions of Sale;
2. Online Auctions Conditions of Sale;
3. The General Conditions of Sale.

You should ensure that You have read and have access to a copy of Our General Conditions of Sale and Our Special Conditions of Sale before placing a Bid.

### 1. Information About Us

- 1.1. [www.brightwells.com](http://www.brightwells.com) or [www.brightwellslive.com](http://www.brightwellslive.com) (whichever is applicable) is a site operated by Brightwells Limited.
- 1.2. We are registered in England and Wales under company number 2052714 and Our registered office address is Easters Court, Leominster, Herefordshire, HR6 0DE. This is also Our main trading address.
- 1.3. Our VAT number is GB133 4722 89

### 2. Definitions and Interpretation

- 2.1. In these Terms, expressions defined in Our General Conditions of Sale and used in these Terms have the meaning set out in the General Conditions of Sale.
- 2.2. The rules of interpretation set out in the Agreement apply to this deed.
- 2.3. The following definitions shall apply to these Terms:
  - “General Conditions of Sale” means Our General Conditions of Sale for all auctions. These are available on Our Site.
  - “Online Auction Fee” means the fee payable by the Buyer in accordance with condition 11.
  - “You/Your” means reference to the Buyer.

### 3. Brightwells’ Status

- 3.1. These Terms set out the terms on which Brightwells Limited (“We”/“Our”/“Us”) offer Lots for sale on behalf of the Seller via Our Site.

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- 3.2. By registering and/or bidding in the Auction, You agree that these Terms shall be contractually binding on You.
- 3.3. We will act as agent for the Seller and will offer Lots for auction on behalf of the Seller. This means that We provide services to the Seller in order to help them sell the Lot and We act as agent in concluding the contract for sale between You and the Seller.
- 3.4. The contract for sale, which will be created when any successful Bid for a Lot is made, will be directly between You and the Seller.
- 3.5. We will not be liable for any act or default by the Seller or the Buyer.

## 4. Descriptions of Lots

- 4.1. Our description of any Lot in the Catalogue, along with any Condition Report or other statement made by Us (whether orally or in writing), including but not limited to in relation to the nature, conditions, dimensions or materials are Our opinion and not to be relied upon as statement of fact.
- 4.2. We do not carry out in-depth research or quality checks of any Lot and all dimensions and weights listed in the Catalogue are approximate only.
- 4.3. We do not provide any guarantee in relation to the nature, condition, dimensions, or materials of any Lot.

## 5. Condition of Lot

- 5.1. The condition of the Lot can vary widely due to numerous factors such as age, restoration, repair and wear and tear. Their nature means that they will rarely be in perfect condition.
- 5.2. All Lots are sold 'as is', in the condition that they are in at the time of the Auction, without any representations or warranty or assumption of any liability of any kind as to the condition by Brightwells.
- 5.3. Any reference to the condition of a Lot in the Catalogue will not amount to a full description on condition, and images may not show the condition of a Lot clearly. Colours and shades may look different on the screen to how they may look upon physical inspection.
- 5.4. Condition Reports may be available to You to help You evaluate the Lot, however these are for guidance only and should not be relied upon. The Condition Report offers Our opinion only and may not include all faults, defects, alterations etc. For that reason, they should not be used as an alternative to obtaining professional advice.
- 5.5. It is the Buyer's responsibility to request and consider any Condition Report.

## 6. Registering to Bid

- 6.1. If You have not previously Bid or registered on Our Site, You will need to create an account following the instructions provided at [www.brightwellslive.com](http://www.brightwellslive.com) and provide any required information and/or complete any necessary forms. In order to register and Bid in online-only sales, You must be at least 18 years old. For certain other online-only sales, We may require You to meet a different minimum age.
- 6.2. If You have an existing Brightwells Live account, You can sign into the online-only sale with Your existing username and password and then subsequently register for the Auction (if You have multiple accounts, You will need to select the account under which You wish to transact).
- 6.3. If You are a returning bidder who has not bought anything from any of Our salerooms in the last two years or if You want to spend more than on previous occasions, We may, at Our discretion ask You for updated information. If You have any questions, please contact Us.
- 6.4. You will need to give Us enough time to process and approve Your registration. We may, at Our discretion, decline to permit You to register as a bidder.
- 6.5. By registering on Our Site, you agree that any information that you provide may be verified by a third party provider of compliance databases, subject to the terms of our Privacy Policy.

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- 6.6. When registering to bid You may also be asked to pay a deposit. If a deposit is required, this must be paid at the time of registration for the Auction. Any deposit paid can be used to satisfy the Purchase Price for any successful Bid on a Lot, or returned to You following conclusion of the Auction.
- 6.7. All Lots will be invoiced to the registered address that is confirmed when registering to Bid in the Auction
- 6.8. If, in Our opinion You do not satisfy Our bidder identification and registration procedures, including, but not limited to, completing any anti-money laundering and/or anti-terrorism financing checks, We may refuse to register You as a bidder or refuse to permit Your participation in the Auction and if You make a successful Bid, We may cancel the contract for sale between You and the Seller.
- 6.9. Brightwells reserves the right, in Our absolute discretion, to:
  - 6.9.1. reject Your registration to Bid;
  - 6.9.2. reject, revoke, or refuse to accept a Bid (even those that may have been previously accepted);
  - 6.9.3. withdraw or divide any Lot or combine 2 or more Lots;
  - 6.9.4. whether during or after the Auction, to restart or continue the bidding even if the bidding has finished; or
  - 6.9.5. in the case of error or dispute and whether during or after the Auction, to continue the bidding, determine the successful bidder, cancel the Auction of the Lot, or re-offer and re-sell any Lot.If any dispute relating to bidding arises during or after the Auction, Brightwells' decision in exercise of this option is final.
- 6.10. Brightwells reserves the right to disable or deactivate Your account at any time during the Auction.

## 7. Service availability

- 7.1. Your use of Our Site is subject at all times to Our Terms of Website Use and Our Privacy Policy. By logging into Our Site, You agree to be bound by and consent to Our Terms of Website Use and Our Privacy Policy.
- 7.2. We do not guarantee that Your access to Our site or that Your placing of Bids will be uninterrupted, without delay, secure or error free. Our Site is provided on an "as is" basis and we exclude all liability whatsoever arising out of or in connection with Your inability to access Our Site, place Bids or win any auctions.
- 7.3. Broadband or other internet capacity constraints, corporate firewalls and other technical problems beyond Our reasonable control may create difficulties for some users including (but not limited to) accessing sales and maintaining continuity of such access.
- 7.4. Brightwells will not be responsible to You for errors or failures to execute Bids placed on the internet or on Your mobile device, including, without limitation to errors or failures caused by: (i) any loss of connection; (ii) a breakdown or problems with the online bidding software; and/or (iii) a breakdown or problems with any internet connection, computer, mobile device, or system.
- 7.5. Execution of online and mobile internet Bids is a free service (unless otherwise stated in the Auction Catalogue) and Brightwells does not accept liability for Your or Our failure to access Our Site or to execute an online or mobile internet Bid or for errors or omissions in connection with this activity. In addition, We will not be responsible for any errors that may occur in the quality of digital images.

## 8. How the Contract is formed between You and the Seller – the bidding process

- 8.1. Once You have placed a Bid, Our online system will indicate whether it has been registered. We do not guarantee that any Bids placed online will be registered, and are not responsible for any failure of communication, whether from You to Us or vice versa, as a result of IT problems/failure or factors outside of Our control.
- 8.2. Any Bid placed through the online system constitutes an offer to the Auctioneer (as agent of the Seller) to buy a Lot.

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- 8.3. Any Bid remains open for acceptance by the Auctioneer until the conclusion of the Auction and cannot be withdrawn.
- 8.4. All accepted Bids are subject to the Buyer satisfying our identity clearance requirements.
- 8.5. If Your Bid is accepted as the highest Bid by the Auctioneer or Your Bid is the highest Bid when the Lot closes and the Reserve (if any) has been met, the Auctioneer will accept Your Bid on behalf of the Seller, thus concluding a contract between Yourself and the Seller. Confirmation of such acceptance ("Bid Acceptance") will be highlighted on the online screen. We do not accept responsibility for notifying You of the result of Your Bids unless You are successful, and You should check as soon as possible after the Auction to get details of the outcome of Your Bid.
- 8.6. If Your Bid is accepted as the highest Bid by the Auctioneer or Your Bid is the highest Bid when the Lot closes, but the Reserve has not been met (i.e. Your Bid is lower than the Reserve) the Auctioneer may at his absolute discretion allocate the Lot as Provisionally Sold. You will be informed if the Lot has been allocated as Provisionally Sold by the online screen (for the avoidance of doubt, the online screen will make clear if You are the successful bidder).
- 8.7. Where a Lot is allocated as Provisionally Sold, Your Bid will remain open for acceptance for a further 24 hours ("the Standing On Period") following the conclusion of the Auction. During the Standing On Period, the Bid may be accepted on behalf of the Seller or by the Auctioneer or any other representative of Brightwells.
- 8.8. During the Standing On Period, We shall take steps to contact the Seller and to ascertain whether they are willing to accept the Bid notwithstanding that it does not meet the Reserve. Following confirmation from the Seller, We will notify You by email whether the Bid has been accepted or rejected by the Seller.
- 8.9. Your Bid will be deemed to have been rejected by the Seller if You are not given notice within the Standing On Period that it has been accepted.
- 8.10. Where You are notified within the Standing On Period that Your Bid has been accepted, a contract for the sale of the Lot will be formed between You and the Seller.
- 8.11. If Our Site confirms Your Bid has been accepted in accordance with condition 8.5 above, or if a contract is concluded under conditions 8.6 to 8.10 following a Provisional Sale, You will become the 'Buyer' as defined by Our 'Conditions of Sale'. The relevant provisions of the 'Conditions of Sale' will apply to the contract for sale between You and the Seller, as well as Your obligations to Us and vice versa.
- 8.12. Irrespective of whether a contract is concluded following Bid Acceptance under condition 8.5 or under conditions 8.6 to 8.10 following a Provisional Sale, You will be liable to make payment of the Online Auction Fee.

## 9. Withdrawal of Lots

Brightwells' reserves the right, at Our complete discretion, to withdraw any Lot from the Auction, whether prior to or during the Auction, and shall have no liability whatsoever with regard to such withdrawal.

## 10. Title and Risk

- 10.1. Risk for loss/damage in the Lot shall pass to You at the point the contract for sale is concluded in accordance with condition 8.
- 10.2. Title in the Lot shall not pass to You until Brightwells confirms that (a) You have met all bidder identification and registration requirements; and (b) it has received full, clear, and undisputed payment of all amounts due, even in circumstances where We have released the Lot to You.
- 10.3. If You elect to utilise Our storage facility, this will be subject to the storage terms set out in Our General Conditions of Sale.

## **11. Payment of Online Auction Fee**

- 11.1. If You are successful in bidding for the relevant Lot, in addition to any charges, fees or purchase monies payable under Our 'General Conditions of Sale', You will be liable to pay the Online Auction Fee.
- 11.2. The Online Auction Fee is advertised on Our Site from time to time. Please see the details on the "Auction Overview" section of each Auction page.
- 11.3. The Online Auction Fee becomes payable upon a contract for sale being concluded under (as relevant) condition 8.5 or 8.6 to 8.10 above.
- 11.4. The Online Auction Fee is due at the same time that You are liable to pay for the Lot, as provided for by Our 'General Conditions of Sale'.
- 11.5. We reserve the right to change Our Online Auction Fee from time to time. Any changes will be advertised on Our Website and will only apply to auctions that commence on the day after the change in Online Auction Fee was first advertised.

## **12. Our Liability**

- 12.1. Our liability to You is as set out in Our 'General Conditions of Sale'.
- 12.2. You accept that Your purchase of any Lot or Lots is being made in accordance with the Terms and Our 'Conditions of Sale' and 'General Conditions of Sale'.
- 12.3. You acknowledge and confirm that We have no liability or obligation whatsoever to You in respect of any representation or statement made by Us on Our Site about the
- 12.4. specification, colour, volume, quantity, or condition (together "Details") of the Lots listed therein. All such Details are provided for information purposes only. All Lots are available for inspection prior to the commencement of the Auction, and You should satisfy Yourself as to the Details of the relevant Lot prior to placing any Bids.
- 12.5. By placing Bids, You acknowledge and confirm that You accept that the Auction is being operated by the Auctioneer and that We accept no liability whatsoever for the actions or omissions of that Auctioneer.
- 12.6. Nothing in these Terms limits in any way Our liability for death or personal injury caused by Our negligence or for fraud or fraudulent misrepresentation.

## **13. Right to Cancel if You are a Consumer – Applies to Buyers in Classic Motoring Auctions ONLY**

- 13.1. If You are a consumer, in accordance with the EU Consumer Rights Directive and habitually reside in the European Union and the Seller is not a consumer (as identified in the Catalogue), You have the right to cancel the contract for the purchase of a Lot, within 14 calendar days without giving any reason.
- 13.2. The cancellation period will expire after 14 calendar days from the day on which You, or a third party (other than the carrier and indicated by You) acquires, physical possession of the Lot.
- 13.3. To exercise the right to cancel You must inform Brightwells, which is offering to sell the Lot as agent for the Seller, of Your decision to cancel this contract by a clear statement (e.g. a letter sent by post or e-mail). You may use the model cancellation forms available on Our Website, but it is not obligatory. To meet the cancellation deadline, it is sufficient for You to send Your communication concerning Your exercise of the right to cancel before the cancellation period has expired.
- 13.4. For the avoidance of doubt, the above conditions 13.1 - 13.3 apply to Classic Motoring Auctions ONLY and do not apply to Our other Auctions where Buyers must register as a trade buyer acting in the course of their trade, and not as a consumer ("Trade Auctions"). For such Trade Auctions, the Buyer agrees to the terms described therein at the point of registration. Trade Auctions include but are not exclusive to: 4x4s, Cars and Vans; Wine; Plant & Machinery; Fodder; H.M. MoD Assets.

## **14. Effects of cancellation – Applies to Buyers in Classic Motoring Auctions ONLY**

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- 14.1. If You cancel the contract, We will reimburse to You all payments received from You, including the costs of delivery but not any extra costs arising if You chose a type of delivery other than the least expensive type of standard delivery offered by Us; or any import duties We incur as a result of You returning the Lot to Us.
- 14.2. If You cancel the Contract, You must return the Lot and all other parts, documentation or items provided as part of the Lot, in the same condition as received. We may make a deduction from the reimbursement for loss in value of any Lots supplied, if the loss is the result of any unnecessary handling by You.
- 14.3. We will make the reimbursement without undue delay, and not later than:
  - 14.3.1. 14 calendar days after the day We receive back from You any Lot supplied; or
  - 14.3.2. (if earlier) 14 calendar days after the day You provide evidence that You have returned the Lot.
- 14.4. We will make the reimbursement using the same means of payment as You used for the initial transaction, unless You have expressly agreed otherwise; in any event, You will not incur any fees as a result of the reimbursement. We may withhold

reimbursement until We have received the Lot back, or You have supplied evidence of having sent back the Lot, whichever is earliest.

- 14.5. You shall send back the Lot or return it over to Us at such address as We may specify for the purpose, without undue delay and, in any event, not later than 14 calendar days from the day after on which You communicate Your cancellation from these Terms to Us. The deadline is met if You send back the Lot before the period of 14 calendar days has expired. You will have to bear the direct costs of returning the Lot. If We arranged for the Lot to be delivered, We estimate that the cost returning the Lot by the same means is likely to be similar to the cost of delivery, but it is not possible for Us to be more accurate as to this cost. You are only liable for any diminished value of the Lot resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the Lot.
- 14.6. For the avoidance of doubt, the above conditions 14.1 - 14.5 apply to Classic Motoring Auctions ONLY and do not apply to Our other Auctions where Buyers must register as a trade buyer acting in the course of their trade, and not as a consumer ("Trade Auctions"). For such Trade Auctions, the Buyer agrees to the terms described therein at the point of registration. Trade Auctions include but are not exclusive to: 4x4s, Cars and Vans; Wine; Plant & Machinery; Fodder; H.M. MoD Assets.

## 15. Written Communications

- 15.1. Applicable laws require that some of the information or communications We send to You should be in writing. When using Our Site, You accept that communication with Us (and the Auctioneer) will be mainly electronic. We (and/ or the Auctioneer) will contact You by email at the email address You provided when You registered with Our Site or by posting notices on Our Site.
- 15.2. For contractual purposes, You agree to electronic means of communication and You acknowledge that all contracts, notices, information and other communications that We provide to You electronically comply with any legal requirement that such communications be in writing.

## 16. Notices

- 16.1. All e-mail notices given by Us (and the Auctioneer) to You will be sent to You at the email address You provided to Us when registering to use Our Site.
- 16.2. Notice will be deemed received and properly served immediately when posted on Our Site or the following working day after the e-mail containing/giving such notice is sent.
- 16.3. In proving the service of any notice, it will be sufficient in the case of an email, that such e-mail was sent to the e-mail address specified by You when You registered to use Our Site, or in the case of notices posted on Our Site, by the production of a copy of the cached page showing the notice.



## 17. Waiver

- 17.1. If We fail, at any time, to insist upon strict performance of any of Your obligations under any of these Terms (or under Our 'Special Conditions of Sale' or 'General Conditions of Sale'), or if We fail to exercise any of the rights or remedies to which We are entitled, this shall not constitute a waiver of such rights or remedies and shall not relieve You from compliance with such obligations.
- 17.2. A waiver by Us of any particular default shall not constitute a waiver of any subsequent default.
- 17.3. No waiver by Us of any of these Terms (or under Our 'Special Conditions of Sale' or 'General Conditions of Sale') shall be effective unless it is expressly stated to be a waiver and is communicated to You in writing in accordance with condition 16 above.

## 18. Severability

If any of these Terms are determined by any competent authority to be invalid, unlawful, or unenforceable to any extent, such term, condition, or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## 19. Entire Agreement

- 19.1. These Terms, and any document expressly referred to in them, represent the entire agreement between Us and You, and in the event of a contract of sale being entered, between You and the Seller, in relation to the subject matter contemplated by these Terms.
- 19.2. These Terms, and any document expressly referred to in them, supersede any prior agreement, understanding or arrangement between Us, whether oral or in writing.

## 20. Exclusion of Claims

- 20.1. You shall not have any claim for misrepresentation, either against Us or the Seller, in respect of any false or untrue statement made by Us, either acting as principal or as agent for the Seller.
- 20.2. The above exclusion in condition 20.1 shall not apply in the case of any false or untrue statement that was made fraudulently.
- 20.3. Liability for any claims arising from problems with service availability is excluded as per condition 7 above, and as per Our General Conditions of Sale.

## 21. Our Right to Vary These Terms and Conditions

- 21.1. We have the right to revise and amend these Terms from time to time.
- 21.2. These Terms may be varied or amended either by the giving of notice by email, or by the posting of updated terms and conditions on Our Site.
- 21.3. You will be subject to Our Terms in force at the time that You log in to use Our Site.
- 21.4. Please note the date at the bottom of this document.

## 22. Law and Jurisdiction

- 22.1. Your use of Our Site and contracts for the purchase of Lots entered into through Our Site and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by English law.
- 22.2. Any dispute or claim arising out of or in connection with such contracts or their formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## 23. Special Conditions of Sale

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- 23.1. As set out above, specific classes of Lot are subject to particular 'Special Conditions of Sale' which apply in addition to the provisions of this document and Our 'General Conditions of Sale'. Whilst the use of Our Site is primarily governed by the contents of this document, any contract for sale/purchase that You enter into through Our Site will be subject to the relevant 'Special Conditions of Sale' and Our 'General Conditions of Sale' in addition.
- 23.2. The relevant 'Special Conditions of Sale' are as follows:
- 4x4s, Cars & Vans Special Conditions of Sale – Motor Vehicles
  - Wine Special Conditions of Sale – Wine
  - Plant & Machinery Special Conditions of Sale – Plant & Machinery
  - Classic Motoring Special Conditions of Sale – Classic Vehicles
  - Fodder Sales Special Conditions of Sale – Fodder
  - H.M. MoD Assets Special Conditions of Sale – Ex Ministry of Defence Assets