

## Online Auction Terms and Conditions

This document (together with the documents referred to in it) sets out the terms and conditions on which Brightwells Limited 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.

Please read these terms and conditions carefully before placing any Bids through our site.

By logging in to use our site, you agree to be bound by these terms and conditions and you acknowledge that they override any terms and conditions which you purport to impose. Any Bids placed by you, and any contract for the purchase of a Lot made as a result, is made in accordance with and subject to these terms and conditions. These terms and conditions should be read in conjunction with Brightwells' 'General Conditions of Sale' and the relevant 'Special Conditions of Sale' that apply to the item that you are purchasing. A list of our various 'Special Conditions of Sale' is contained at the end of this document. The entirety of this document, our 'Conditions of Sale' and any 'Special Conditions of Sale' will apply to your interactions with Brightwells, any Bids placed through Brightwells online system, and any contracts for sale entered into as a result.

In the case of inconsistency between this document and the 'General Conditions of Sale' and/or the applicable 'Special Conditions of Sale' the provisions of this document will prevail. Where there is any inconsistency between any 'Special Conditions of Sale' and the 'General Conditions of Sale', the former will prevail.

For the purposes of this document, the relevant 'Special Conditions of Sale' are referred to as our 'Conditions of Sale'. You should print a copy of these terms and conditions for future reference.

### Information About Us

1.1 [www.brightwells.com](http://www.brightwells.com) or [www.brightwellslive.com](http://www.brightwellslive.com) is a site operated by Brightwells Limited (we/us).

1.2 We are registered in England and Wales under company number 2052714 and our registered office address is Easters Court, Leominster, Herefordshire, HR6 ODE. This is also our main trading address.

1.3 Our VAT number is GB133 4722 89.

### Service Availability

2.1 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.

2.2 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.

### Your Status

3.1 By logging into our site and placing a Bid, you warrant that:

3.1.1 You are the registered user of the username and password which was allocated to you on registration to use our site;

3.1.2 You are placing a Bid on behalf of a business (be it a sole trader, partnership or limited company) acting in the course of its business;

3.1.3 You are authorised to place Bids on behalf of the business and to legally bind that business;

3.1.4 You are at least 18 years old; and

3.1.5 You have read, and moreover agree to, these terms and conditions.

### How the Contract Is Formed Between You and the Seller

4.1 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.

4.2 Any Bid placed through the online system constitutes an offer to the Auctioneer (as agent of the third party seller ("the Seller")) to buy a Lot.

4.3 Any Bid remains open for acceptance by the Auctioneer until the conclusion of the auction and cannot be withdrawn.

4.4 If your Bid is accepted as the highest bid by the Auctioneer 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.

4.5 If your Bid is accepted as the highest bid by the Auctioneer, 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).

4.6 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 this period, the Bid may be accepted on behalf of the Seller by the Auctioneer or any other representative of Brightwells.

4.7 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.

4.8 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.

4.9 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.

4.10 If our system confirms your Bid has been accepted in accordance with condition 4.4 above, or if a contract is concluded under conditions 4.5 to 4.9 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.

4.11 Irrespective of whether a contract is concluded following Bid Acceptance under condition 4.4 or under conditions 4.5 to 4.9 following a Provisional Sale, you will be liable to make payment of the Online Auction Fee.

### Delivery

5.1 You should note that it is your responsibility to arrange collection of Lots that you have bought. Brightwells may at its discretion offer delivery services in respect of Lots, but this will be subject to (i) availability; and (ii) any terms and conditions imposed by us and/or the relevant courier in respect of the delivery.

5.2 Where terms for delivery are agreed, you will be required to pay for delivery. Unless rates for delivery are individually agreed, delivery charges will be at the rates as advertised on Our Site from time to time.

5.3 For the avoidance of doubt, we do not accept any liability for loss of or damage to any items (including any consequential losses, costs or expenses arising there from) whilst the items are in the custody or control of any third party courier. You are reminded that property in any Lot passes on payment of the purchase price and that you assume all risk for loss/damage from that point.

### Payment of Online Auction Fee

6.1 If you are successful in winning the relevant auction then, in addition to any charges, fees or purchase monies payable under our 'Conditions of Sale', you will be liable to pay a fee an Online Auction Fee.

6.2 The Online Auction Fee is advertised on Our Site from time to time. Please see the details on the "Auction Overview" section.

6.3 The Online Auction Fee becomes payable upon a contract for sale being concluded under (as relevant) condition 4.4 or 4.5 to 4.9 above.

6.4 The Online Auction Fee is due as the same time as you pay for the Vehicle as provided for by our 'Conditions of Sale'.

6.5 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.

### Our Liability and the Auctioneer's Liability

7.1 The Auctioneer's liability to you is as set out in our 'Conditions of Sale' and 'General Conditions of Sale'.

7.2 You accept that your purchase of any Lot or Lots is being made in accordance with our 'Conditions of Sale' and 'General Conditions of Sale'.

7.3 You acknowledge and confirm we have no liability or obligation whatsoever to you in respect of any representation or statement made by us on our site about the specification, colour 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.

7.4 By placing Bids, you acknowledge and confirm 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.

7.5 Nothing in these terms and conditions limits in any way our liability for death or personal injury caused by our negligence or for fraud or fraudulent misrepresentation.

#### **Written Communications**

8.1 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.

8.2 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.

#### **Notices**

8.3 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.

8.4 Notice will be deemed received and properly served immediately when posted on our website or the following working day after the e-mail containing/giving such notice is sent.

8.5 In proving the service of any notice, it will be sufficient to prove, 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.

#### **Waiver**

9.1 If we fail, at any time, to insist upon strict performance of any of your obligations under any of these terms and conditions (or under our '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.

9.2 A waiver by us of any particular default shall not constitute a waiver of any subsequent default.

9.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with the clause "Written Communications" above.

#### **Severability**

10.1 If any of these terms and conditions is 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.

#### **Entire Agreement**

11.1 These terms and conditions and any document expressly referred to in them represent the entire agreement between us 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 and conditions.

11.2 These terms and conditions and any document expressly referred to in them supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

#### **Exclusion of Claims**

12.1 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.

12.2 The above exclusion shall not apply in the case of any false or untrue statement that was made fraudulently.

12.3 Liability for any claims arising from problems with service availability is excluded as per condition 2.2 above.

#### **Our Right to Vary These Terms and Conditions**

13.1 We have the right to revise and amend these terms and conditions from time to time.

13.2 These terms and conditions 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.**

13.3 You will be subject to our terms and conditions in force at the time that you log in to use Our Site.

13.4 Please note the date at the bottom of this document.

#### **Law and Jurisdiction**

14.1 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.

14.2 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.

15.1 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.

15.2 The relevant 'Special Conditions of Sale' are as follows:

Class of Lot Relevant 'Special Conditions of Sale'

Vehicles & Leisure Special Conditions of Sale – Vehicles

Fine Art Special Conditions of Sale – Fine Art

Plant & Machinery Special Conditions of Sale – Plant & Machinery

Classic Cars Special Conditions of Sale – Classic Vehicles

Version: December 2015

## Special Conditions of Sale

### 1. Directions – postcode HR2 9NH:

From Hereford or South Wales take the A465 (Hereford – Abergavenny Road) and take the B4349/B4352 for Clehonger and Madley. After 4 miles turn left just prior to the “Comet Inn” before Madley village. The sale site is after 1 mile on the left hand side.

From M50 OR A40 Ross spur take the A49. After 7.5 miles after passing through Harewood End take the left turn at Llandinabo for Wormelow. After 2 miles at Wormelow turn right and immediately left following the B4348. This road passes through Much Dewchurch which brings you onto the A465 at Locks Garage. Turn right and after 4 miles take the B4349/B4352 passing through Clehonger and just before Madley turn left at the “Comet Inn”. The sale ground is 1 mile on your left hand side.

From the West Midlands and West Wales approached from the West on the A438 Brecon – Hereford road. LIGHT TRAFFIC ONLY take the Bridge Sollars road (4 miles before Hereford) and proceed into the village of Madley. Turn left and after 1 mile turn right at the “Comet Inn”. The sale ground is after 1 mile on the left hand side.

Please note – There are several villages and residential areas on route, not least Clehonger and Madley as well as on the approach to the sale ground at Stone Street.

Please drive carefully and take care when approaching the site.

### 2. Delivery & loading:

Important Note - Brightwells Ltd operate a secure site system.

Sale week - from the Monday preceeding the sale up to and including the Monday following the sale the site is open from 8am to 4pm. (Saturday 10am to 2pm – Sunday Closed)

On sale day – Delivery of lifting and non lifting items from 7.30am to 8.30am (very limited access).

Loading - Sale of equipment in our lifting area will take place at 10am to approximately 11.30am. Once the auction has moved from this area, loading will be allowed in this secure area using our designated teleports only. No public allowed. Collection of driven equipment, light sundries and trailers will take place during the sale but strictly under Brightwells Security supervision. Please note payment is essential before removal. Uncleared lots may attract a storage charge at the auctioneers discretion. Charges will be made for any uncleared rubbish. Part lots at the relevant cost at time of removal.

**3. Registration:** All Purchasers not holding a Permanent Buyer's Number must register before bidding. All Non-Security Card holders are requested to bring identification. Non-registered purchasers will not have bids accepted. Identification must be by Drivers Licence, Passport etc., plus a Utility Bill or Address Document. We have full debit card facilities on site for non account holders to pay

**4. Security:** The responsibility of all Lots remains with the Vendor until the fall of the hammer and the Purchaser thereafter. No Lots may be collected until a pass has been obtained from the Auctioneers Office. All lots are the purchaser's responsibility at the fall of the hammer.

**5. Payment:** All items purchased shall be paid for on the day of the sale immediately at the conclusion of the Auction. All purchasers who do not regularly trade with the Auctioneers should make one of the following arrangements for payment prior to purchase. The Auctioneers reserve the right should a bonafide purchaser not be found to cancel the sale and return the Lot(s) to the Vendor.

i) Arrange to pay by Debit Card.

ii) Arrange with your Bank Manager for the issue of a guaranteed cheque to be brought with you.

iii) Bring a letter to each auction from your bank addressed to Brightwells Limited confirming the amount up to which cheques can be accepted. The letter should include the following:

- a) Date of Auction
- b) Yours account number
- c) Your account name
- d) Amount of limit of cheques
- e) Authorised bank signature

iv) Ask your bank to contact us, Telephone 01568 - 611166 -Brightwells Limited, Easters Court, Leominster, Herefordshire HR6 ODE, confirming that you will be attending the sale and that cheques can be accepted up to an agreed limit.

**6. Power take off drive shafts:** All pto drive shafts and control boxes or other detachable items must be securely attached to the machine. If none of these are evident then the purchaser must assume that they are not available and included in the sale. The Auctioneers take no responsibility for any parts, PTOs missing or any other damage to or loss of the machine whilst on the premises. (See also No 12 on the Special Conditions of Sale).

**7. Reserves:** Vendors are reminded that any reserve prices must be handed to the Auctioneers IN WRITING not later than one hour before the sale commences (i.e. 9.00 a.m.). The Auctioneers will not be responsible for any reserve not dealt with in this manner. Alterations to reserves should only be made in writing.

**8. Presentation of lots:** The Auctioneers cannot accept any responsibility for any Lots not being presented for sale at the Auction. Nor can they entertain any claim for expenses incurred in abortive attendance at the sale. We will be pleased to advise whether or not a lot is forward on the site, if you telephone the office on the afternoon previous to the sale.

**9. Notice to all vendors:** Before leaving the sale site please check with the office that your Lots are sold. If any items remain unsold you must obtain a “Not Sold” Pass from the Sales office before removing your Lots from the Auction Site. It is important to remember that Security of Lots is the Vendors responsibility until sold.

**10. Insurance:** Vendors and Buyers Please Note: The responsibility to insure any lot Pre Sale or Post sale on a “not sold lot” falls with the vendor (seller) and any existing insurance must be maintained until the fall of the hammer. Once the hammer has fallen or the sale agreed post auction (in the case of lots sold “subject”) the responsibility to insure the lot falls with the buyer who should inform his Insurance Company immediately. Messrs Brightwells (The Auctioneers) will take no responsibility for the insurance of any lot whether pre or post auction – whether delivered prior to the date of sale, on the date of sale or post sale, or any date thereafter.

**11. Private treaty sales:** Any goods bought privately after the auction must be paid for through our office – delivery of the same cannot be obtained otherwise and it is an offence not to report the transaction. The Auctioneers reserve the right to charge either party, the commission where a private sale has taken place.

**12. VAT:** at the standard rate will be added to the purchase price of all Lots, which is 20% of the purchase price. VAT is chargeable on all lots in the sale regardless of whether or not the vendor is VAT registered. In addition all charges and Indemnity/ Buyers premium will be subject to VAT. In the case of overseas Purchasers from EC countries, they will be required to supply the Auctioneers with their VAT/fiscal number and other relevant information requested in order that the items may be invoiced at zero rate for VAT purposes. Where this information is not made available or where the Purchaser 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.

a) It is the responsibility of overseas purchasers 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.

b) In the case of overseas Purchasers from Non EC countries, 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 Purchaser if the Auctioneers receive within three months of “the time of supply” a satisfactory Bill of Loading or Certificate of Shipment as proof of shipment of the lots outside the EC, failing which the VAT deposit will be paid over to Customs & Excise as VAT. New Overseas Purchasers are asked to contact our accounts office at least two days prior to the sale in order to deal with their requirements.

c) All overseas purchasers must produce a valid VAT number of the named purchaser on the invoice to be shown on the invoice. VAT is only refundable on goods bought, not for the VAT charged on services for purchasers within the EU.

**13. Notice to all purchasers & vendors:** The Low Voltage electrical equipment (safety) Regulations 1994. The supply of electrical equipment that is in need of reconditioning or repairs to someone who carries on a business of repairing and reconditioning electrical equipment is excluded from the 1994 Regulations by virtue of the Act. Similarly the sale of articles as scrap is also excluded.

14. The auctioneers reserve the right to refuse entries of any goods they consider not to be in a saleable condition. If lots or part lots are left on site, the auctioneer reserves the right to withhold payment or make charges. No tyres, glass or breakable items will be accepted.

## Health and Safety

15. All persons whether Vendors, Purchasers or others are required to follow our Health & Safety procedures when unloading on site. They will supply and be equipped as necessary with suitable and adequate equipment and will hold the necessary operators and equipment licences for vehicles, hoists, cranes and loaders and for the equipment such as chains, straps, hooks etc., be responsible for any loss, damage or injury caused. Brightwells reserve the right to prohibit use of any lifting equipment that is not considered to sufficiently strong, stable and suitable for the proposed use: that is not positioned or installed to prevent the risk of injury, e.g. from the equipment or the load falling or striking people or is not visibly marked with any appropriate information e.g. Safe working loads. Accessories, e.g., slings, clamps etc, should be similarly marked.

16. No vehicles will remain on the site after unloading.

17. **Whilst** the Auctioneers and Vendor have made every effort to ensure safety on site. All persons attend at their own risk. Children under school leaving age must be accompanied by an Adult and supervised at all times. First Aid kits are located in the sales office. If you require first aid then please make yourself known at the office and a member of staff who is

trained in first aid will be called upon to assist you. All persons must be aware that Plant Machinery and other equipment have inherent dangers and must take care at all times. No engines to be started, Booms or Jibs raised or any other operation to take place without the presence of the Vendor. Do not climb on the equipment and keep to the designated Sale Areas. Please ask our staff if in any doubt. Health & Safety procedures will be observed at all times by all persons on site.

**18. Substituted lots:** Purchasers should be aware that if there is a not forward lot, the auctioneers may put another lot in place of the original lot. The purchaser must take care to check that the lot corresponds with the catalogue and if in any doubt please ask a member of staff. The Catalogue is for guidance purposes only.

**19. Sale proceeds:** Clients' monies paid to us will be held in Brightwells Ltd Clients' Auction Sales Account at Barclays Bank plc, Hereford Branch. Clients will not be entitled to any interest on balances in this account

**20. Subject bids:** A purchaser shall be bound to stand by a subject bid until the bid is confirmed by the Vendor or 6pm on the Day of Sale, whichever is the sooner.

# Conditions of Sale - Plant, Machinery & HGV Madley

All Lots are sold subject to our Conditions of Sale and Entry, a copy of which is available on site, or by request.

1. The highest bidder shall be the buyer, subject to the right of the Auctioneers to reject any biddings they may think fit and subject to the right of the Vendor to bid. If any dispute arises as to the highest bidding, such dispute shall be finally settled by the Auctioneers, or at their option the Lot in dispute may be resold.

2. No bidding shall be retracted. The biddings will be regulated by the Auctioneers.

3. Every Lot must be taken to with all faults and mis-descriptions, (if any). Until sold, each Lot shall be at the Vendor's risk and it shall be his duty to preserve the same. After the fall of the hammer such risk and duty shall devolve upon the Purchaser.

The Auctioneers, on behalf of themselves and the Vendor, shall have a lien on each Lot for the purchase money thereof until actual payment. No Lot shall be removed from the place of sale until the sale has been concluded and a PASS obtained from the Auctioneers, or their Clerk. Notwithstanding such lien and the right of possession aforesaid, the Auctioneers will not undertake any risk as regards any Lot, nor any liability whatever, as to preservation, or delivery thereof.

**4. Substituted lots:** Purchasers should be aware that if there is a not forward lot the Auctioneers may put another lot in place of the original lot. The purchaser must take care to check that the lot corresponds with the catalogue and if in any doubt please ask a member of staff. The catalogue is for guidance purposes only.

5. All private vehicles parked at the Sale are at the owner's sole risk. Whilst security is in place, be aware of the security of your own vehicle and possessions.

6. 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. Such expenses shall be deemed to include the usual Auctioneers commission on the re-sale and all expenses for porters, advertising, market tolls, carriage, care, keep and otherwise.

7. Value Added Tax at the Standard Rate will be added to the purchase price of all items bought at this Sale by purchasers in the United Kingdom, (this includes Northern Ireland) and the amount will clearly be shown on the purchaser's Account.

**8. All Road Traffic Acts:** Sellers are responsible by law to declare if a vehicle is not roadworthy and if any Manufacturer Safety Recall Notices are incomplete for the vehicle at the point of sale. Any disputes raised by the Purchasers will need to be resolved by a third party chosen by the Auctioneers and will be at the Purchasers expense, unless the vehicle is deemed mis-described, in which case any outstanding expenses will be due to settled by the Seller. Purchasers must raise disputes against roadworthiness before leaving the site. The Auctioneers are not responsible for checking roadworthiness or the Safety Recall status of a lot.

For vehicles offered for sale on behalf of the UK MOD as a surplus Military asset: The prospective buyer must familiarise themselves of its roadworthy condition (SOLD AS SEEN) and ensure that its continued use complies with up to date highways regulations; Previously MOD granted crown exemptions are not transferable and its continued use will be subject to the appropriate approval; The absence of any official approval may make it illegal to be operate on public roads; The vehicle may need alteration or

modification to make it lawful for civilian use.

9. Warranties: All lots sold as seen with no warranties expressed or implied given in any way.

10. The Vendor reserves the right to bid. All reserve prices must be presented in writing, or sent to the Auctioneers Office prior to the sale, otherwise no responsibility can be accepted for errors.

**11. Hire purchase:** The Auctioneers must be notified on the entry form of any item to be offered for sale which is the subject of any Hire Purchase, Leasing or other Finance Agreement

**12. Liability:** Both the Auctioneers and the Landlords cannot be held responsible for any accident, loss or damage from any cause whatever to persons, or property which may occur whilst on the Sale Ground. All Lots are at the Vendor's risk until sold and the Purchaser's risk immediately at the fall of the Auctioneer's hammer. Please take note of all guidance signs and instructions given on the site.

**13. Insurance:** Please see number 10 in Auctioneers Notes.

**14. Security:** Whilst maintaining security staff on site, items left on the Sale Ground both before and after the Sale remains the responsibility of the owner.

**15. Vehicle documents:** Entries of vehicles which by Law must be licensed for use on the Public Highway MUST be accompanied by the relevant Log Books, Certificates, or MOT, plating and ownership transfer where available. The Auctioneers will not release documents on the day of sale. All documents supplied to the auctioneers will be completed correctly, with the DVLA being informed of the new keeper's details. It is also the responsibility of the purchaser to inform the DVLA of the details. If any vehicles are sold without a V5 document the vendor remains liable for any penalties issued by the DVLA.

**16. Banking arrangements:** Prospective purchasers unknown to the Auctioneers should make the necessary arrangements with both their Banks and the Auctioneers at least 48 HOURS prior to the Sale. No cheques will be accepted unless arrangements have been made with the Auctioneers prior to the Sale.

**17. Conditions of sale:** All entrants will be deemed to have read and agree to abide by both the Auctioneers' Conditions of Sale (available for inspection in the Sale Office) AND the Supplementary Conditions, (copies available on request).

**18. Reservation of title:** If the Auctioneers do not demand payment from the Purchaser but allow him to remove the Lot from the Sale, then the purchaser shall ensure that the title in the Lot remains vested in Brightwells Limited until payment in full has been made. Until payment in full has been made the purchaser 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 Brightwells Limited. In the event of the sale before payment has been made in full the purchaser shall hold the proceeds of such sale on trust for Brightwells Limited.

**19. Health & Safety at Work Act 1974:** Purchasers are reminded that Lots sold at these Sales may not immediately comply with the Health & Safety at Work Act 1974. Purchasers must comply with all Legal requirements regarding the safe use of any Lots purchased at the Sale.

**20. Trades Descriptions Act 1968:** Vendors are reminded that it is a criminal offence to falsely describe any Lots under the Terms of the Trades Descriptions Act 1968.



**21. Subject sales:** At the Auctioneers discretion when a lot has not exceeded the reserve the Auctioneer may sell a lot "Subject to the Owner/ Vendor consent". The Purchaser is then bound to stand by this bid and the Auctioneers office will submit the bid to the Vendor as soon as is reasonably possible. The Purchaser must stand by this bid until confirmed or until 6pm on the Day of Sale whichever is the sooner.

## **General Conditions of Sale**

### **1. Definition of Auctioneer and Agent's Status**

1.1 Brightwells Ltd. (hereinafter called "the Auctioneers") sell as agents for the Seller (except where they are stated wholly or partly to own any Lot as principal) and

1.1.2 the parties to the contract of sale are the Seller and the Buyer and the Auctioneers as such are not responsible for any default by Seller or Buyer.

1.2 The Auctioneers means any employee or agent of Brightwells Ltd. who at the relevant time has the authority to conduct an auction or sale.

### **2. Confirmation of Ownership**

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

2.1.1 that he is the true owner of the Lot or is properly authorised to sell the Lot by the true owner.

2.1.2 and 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.

2.2 The Seller will indemnify the Auctioneers, their servants and agents and the Buyer against any loss or damage suffered by them in consequence of any breach of the above warranty on the part of the seller.

2.3 The Auctioneers may make such announcements or publish such information supplied by a Seller about any Lot as they in their discretion think fit.

2.3.1 and the Seller will indemnify the Auctioneers if any warranty is found to have been made by the Auctioneers as a result of such announcements or publications.

### **3. Auctioneers Right to Split or Amalgamate Lots, to Refuse Admission & Bids**

The Auctioneers shall have the right at their discretion to:

3.1 refuse admission to their premises or attendance at their auctions by any person

3.1.1 require any Seller to remove a Lot from the auction premises or to remove the Lot themselves (if the Seller refuses so to do) and recover the costs from the Seller.

3.2 The Auctioneers have absolute discretion without giving any reason to refuse any bid, to divide any Lot, to combine any two or more Lots, to withdraw any Lot from the auction and in case of dispute put up any Lot for auction again.

3.3 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).

### **4. Faults & Descriptions, Responsibility of Lots**

4.1 Every Lot must be taken to with all faults and imperfections and errors of description (if any).

4.2 Until sold, each Lot shall be at the Seller's risk and it shall be his duty to preserve the same.

4.3 After the fall of the hammer such risk and duty shall devolve upon the Buyer.

4.4 Title in all Lots remains vested in the Seller or Brightwells Ltd. (as the Seller's Agent) until payment in full has been made. 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).

4.5 No Lot shall be removed from the place of sale until the sale has been concluded, full payment made and pass obtained from the Auctioneers or their Clerk.

4.6 Notwithstanding such a lien and the right of possession aforesaid, the Auctioneers do not accept any risk as regards any Lot, nor any liability whatever, as to preservation or delivery thereof.

### **5. Resale due to Faults or Compliance**

5.1 On failure of compliance with the 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.

5.1.1 Such expenses shall be deemed to include the usual Auctioneers commission on the re-sale and all expenses for porters, advertising, market tolls, carriage, care, storage, keep and otherwise.

### **6. V.A.T. (Subject to current legislation)**

6.1 Value Added Tax at the Rate prevailing on the day of the sale will be added to the purchase price of all items bought at any sale in the United Kingdom, the amount will clearly be shown on the Buyer's invoice.

6.2 The only exceptions to the provisions of Clause 6.1 will be:

6.2.1 'Zero' rated or 'Exempt' articles,

6.2.2 or if prior to sale the Auctioneers hold a signed Seller's declaration stating that he is either not registered for V.A.T. (unless the sale is wholly non-margin scheme).

6.2.3 or that items entered by him are eligible for sale under 'second-hand margin scheme for V.A.T. rules.

6.3 Overseas Buyers must pay all V.A.T. chargeable on an invoice under United Kingdom legislation. V.A.T. may be refunded if appropriate upon production of acceptable proof of:

(a) export of the items and

(b) registration for V.A.T. of the Buyer within another E.U. State, where items have been dispatched to that E.U. State.

### **7. Self-Billing**

7.1 Would all Sellers please note that we (Brightwells Ltd.) will raise a self billing tax invoice for the proceeds of any goods in this or any other sale held by us. It is a Customs & Excise requirement that this is the only tax invoice raised for those items.

7.2 We must have your V.A.T. registration number (where appropriate) together with your name and address for inclusion on any self billing tax invoice raised by ourselves.

7.3 You must notify us immediately if your V.A.T. registration number is cancelled, or if you are issued with a new V.A.T. registration number.

7.4 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 sale. 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.

### **8. No Biddings Retracted**

8.1 No bidding shall be retracted. The bidding increments will be regulated by the Auctioneers

### **9. Payment**

9.1 All Buyers must declare their names and addresses, (and produce proof of identity) and to pay to the Auctioneers the amount of the purchase money in cash, immediately on the fall of the hammer, and in default of which the Lot or Lots shall be offered again and re-sold, at the Auctioneers' discretion.

9.2 Under no circumstances may any Lot be removed without first obtaining a pass from the Auctioneers.

9.3 The Auctioneers may at their absolute discretion, agree to accept payment by such other means or such other manner than is provided for in 9.1 as they see fit.

### **10. Owners Risk**

10.1 Neither the Sellers nor the Auctioneers will be responsible for any accident, or damage to life or limb prior to or during the progress of the Sale, or at any time during the removal of Lots.

10.2 Vehicles parked at the Sale are at the owner's risk.

10.3 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.

### **11. Highest Bidder**

11.1 The Buyer shall be the highest bidder.

11.2 In the event of a dispute between two or more bidders as to which is the Buyer, the dispute shall be settled at the absolute discretion of the Auctioneers.

### **12. Sellers Right to Bid**

12.1 The Seller reserves the right to bid, however, no Seller may bid for any of his/her own Lots, except through the Auctioneers.

12.2 The Auctioneers reserve the right to charge full commission on the reserve price of any Lot so bought in.

### 13. Reserves

13.1 The Seller shall be entitled prior to the auction to place a reserve price on any Lot, being the minimum amount for which the Lot shall be sold.

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 special conditions) to the commencement of the auction and in the event of the Seller failing so to do the Lot will be sold without reserve.

13.3 The Auctioneers reserve the right to sell any lot at 10% less than the reserve price.

13.4 Where a reserve price has been placed only the Auctioneers may bid on behalf of the Seller, whilst any third party may not bid on the Seller's behalf.

13.5 Any Lot bought in by the Seller in excess of the reserve price will be subject to full commission charges.

### 14. Reservation of Title

14.1 If the Auctioneers do not demand payment from the Buyer but allow him to remove the Lot from the sale then the Buyer shall ensure that the title in the Lot remains vested in the Seller (or Brightwells Ltd. as Agents of the Seller) until payment in full has been made. If the Seller has been paid, but the goods not paid for the title remains with Brightwells Ltd. until full payment has been made.

14.2 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 5.1.

14.3 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 Ltd. (as Agent of the Seller).

14.4 In the event of breach of conditions, the Auctioneers reserve the right to enter on to property of the Buyer, or others to reclaim possession of any Lot.

### 15. Private Sales

15.1 All private sales made on the day of the sale must be booked through the Auctioneers.

15.2 The Auctioneers reserve rights at their option to:

15.2.1 treat as void any private sale made by a Seller of any Lot which he shall have entered for sale by the Auctioneers and which has been received at the sale by them or on their behalf or

15.2.2 to charge and reserve from such Seller their appropriate commission upon any such sale.

### 16. Warranty

In case of dispute as to the meaning of any description or warranty the decision of the Auctioneers shall be final and binding on all parties.

### 17. Interpretation

17.1 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.

18. All Buyers are deemed to bid on the understanding that they have read and understood these Conditions of Sale.

### 19. Royal Institution of Chartered Surveyors Rules of Conduct 2007

19.1 This market is not required to comply with Rule 8 of the RICS Rules of Conduct (Clients' Money).

NO monies paid to this market are covered by any scheme for the protection of clients' money operated by the Royal Institution of Chartered Surveyors.

A more detailed explanation can be obtained in writing from: The RICS Regulation Department, Surveyor Court, Westwood Way, Coventry CV4 9JE.

### 20. Health & Safety & Risk

20.1 All persons entering the Sale Site do so at their own risk.

20.2 All persons entering the Sale Site 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.

### 21. Commission Bid

21.1 Commission bids will be faithfully executed when received in writing at least one hour prior to sale, on condition that the Lots have been viewed by the intending Buyer or his Authorised Agent and the Buyer agrees to take with all faults and misdescriptions. Whilst any Lot will be purchased as other bids and reserves allow, the Auctioneers will accept no responsibility if a commission bid is not executed.

21.2 All Lots bought on commission must be paid for immediately, regardless of whether or not they have been collected.

21.3 A deposit may be requested at the time of placing a commission bid.

### 22. Additional Charges

22.1 The Auctioneers reserve the right to levy additional charges where appropriate. These may include: Commission, Levies, Tolls, Offering Fees, Transfer Fees, Haulage, Contra Accounts, Advertising, Sundries, Buyers Premium, Indemnity and other charges appropriate to individual sales. Please ask for a confirmation of rates PRIOR TO SALE if you require clarification.

### 23.1 Agents

Save as provided in 23.1.2 below, in all cases where a person whose bid is accepted is in fact acting

as an agent, whether or not he 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.

23.1.1 Save as aforesaid, the agent and his principal shall be deemed to be jointly and severally liable on the contract 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.

23.1.2 Conditions 23.1 and 23.1.1 above shall not apply if before the commencement of the sale the agent informs the auctioneers that he intends to contract as a principal, in which case the agent will be deemed to be personally and solely liable on the contract.

### 23.2 Export

Buyers making a purchase for export must comply with all regulations and export requirements and indemnify the Auctioneers against any liability.

### 23.3 Catalogues and Advertisements

The Auctioneers cannot guarantee that any Lot described in any Catalogue or Advertisement will arrive for Sale, nor that any description therein contained can be relied upon as accurate. All Lots should be inspected by the Buyer who bids on the understanding that he has inspected (or is deemed to have inspected) the Lot and agrees to take with all faults and imperfections.

### 23.4 Disposal of Not Sold Lots

Any Lot that fails to attract a minimum bid (as applicable) will be disposed of by the Auctioneers and any costs will be payable by the Seller. If the Seller wishes to retain and remove the Lot, this must be done by the end of the sale day and on condition that all relevant charges and fees have been paid to the Auctioneers.

### 24. Please Note

24.1 These are only the General Conditions of Sale and the Special Conditions appropriate should also be referred to by all Sellers and Buyers.

24.2 In certain circumstances, Special Conditions may detail additional, more specific requirements than the General Conditions. In these cases the Special Conditions take precedence over the General Conditions.

24.3 Livestock Sales will use the General Conditions of Sale for Cattle, Calves, Sheep and Pigs (2009) as recommended by the L.A.A., (subject to update) together with additional Special Conditions.

24.4 Special regulations may be in place to complement General and Special Conditions such as MOD and Breed Society regulations.

24.5 No refunds will be given for catalogue orders/subscriptions.

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