

## **GENERAL TERMS AND CONDITIONS OF SALE**

1. These conditions, together with such other terms, conditions and notices as may be set out in any relevant Catalogue, or any separate notice to buyers (together the 'Conditions of Sale'):

(a) govern the entire relationship between 1<sup>st</sup> MA and actual or prospective Buyers including persons reading Catalogues, or otherwise; and

(b) contain 1st MA's and the Seller's entire agreement with the Buyer or prospective Buyer at auction or at any private sale and all other conditions whether express or implied at common law or by statute as are capable of lawful exclusion are hereby excluded.

These Conditions of Sale and all other contents of any Catalogue are subject to amendment by 1st MA by the posting of notices, by oral announcement made by the auctioneer prior to or during the sale, or by way of an agreement in writing signed by the parties concerned.

### **2. Definitions**

In the Conditions of Sale, terms defined below shall have the meanings set forth herein:

(a) "Buyers Premium" means the premium payable to 1st MA by a Buyer under Condition 3 plus VAT thereon

(b) "Catalogue" includes any advertisement, brochure, estimate, price list and other 1st MA or 1st MA Affiliated Company's publication;

(c) "Deficiency" means all handling charges, interest, collection fees, incidental liabilities, costs (including without limitation legal fees and expenses) and storage, removal and insurance fees and with respect to any resale whether by private sale or at public auction any shortfall between the original Hammer Price and the resale Hammer Price, the Expenses of both sales, the Seller's Commission and the Buyer's Premium on both sales and any VAT which may be due;

(d) "Expenses" in relation to the sale of any lot means 1st MA charges and expenses including but not limited to charges and expenses for insurance, Catalogue and other reproductions and illustrations, any customs duties, advertising, packing and shipping costs, reproduction rights fees, costs of testing, searches or enquiries relating to any lot and any applicable VAT;

- (e) "Hammer Price" means the price at which a lot is knocked down by the auctioneer to the Buyer or in the case of a private sale the agreed price, in both instances excluding the Buyer's Premium and any applicable taxes;
- (f) "Seller" means the owner or authorised agent thereof or person in possession of the property consigned, other than 1st MA or 1st MA Affiliated Companies. If there are multiple owners or an agent or possessor, each shall assume all obligations, liabilities, representations, warranties or indemnities on behalf of the Seller set forth in the Conditions of Sale, jointly and severally;
- (g) "Seller's Commission" means the commission payable to 1st MA by a Seller plus applicable VAT;
- (h) "1<sup>st</sup> MA" means 1st Machinery Auctions Limited whose office address is Leofric House, 18B Binley Road, Gosford Green, Coventry CV3 1JN, company number 06807613;
- (i) "1st MA Affiliated Company" means any company other than 1st MA being a subsidiary of 1st MA for the time being within the meaning of section 736 of the Companies Act 1985 or a company with shareholders common to those of 1st MA;
- (j) "Site" means the website [            ] or such other site as may be used by 1<sup>st</sup> MA on which to conduct Online auctions
- (k) "Total Amount Due" means the Hammer Price in respect of the lot sold, together with any Buyer's Premium, VAT chargeable, any customs duties and any additional charges, fees and expenses due from a Buyer or a defaulting Buyer.

### **3. The Buyer**

- (a) By participating in this sale, the Buyer agrees to be bound by the terms of these Conditions of Sale. The highest bidder acknowledged as such by the auctioneer will be the Buyer. In the event of doubt on 1st MA's part as to the validity of any bid, the auctioneer will have absolute discretion to determine the successful bidder, cancel the sale or to re-offer and re-sell the lot and/or to take such other action as the auctioneer deems fit. Any bidder acting for any person who is not bidding shall be jointly and severally liable with that person for satisfaction of all obligations and liabilities hereunder.
- (b) Without any liability to any prospective Buyers:
- (i) 1st MA may alter or withdraw any lot from the auction for any reason up to the moment at which the hammer falls in relation to such lot(s).

(ii) where two or more consecutive lots are similar in quantity and description offer a choice on any subsequent lots to the Buyer at the same price.

(iii) without ascribing any reason therefor refuse to accept any bid.

(c) 1st MA, any 1st MA Affiliated Company, the Seller or any agent acting on its behalf may bid for any lot or lots offered for sale at the auction.

#### **4. The Buyer's premium**

The Buyer will pay to 1st MA a Buyer's premium on the Hammer Price plus VAT for goods purchased through any means.. The Buyer agrees that 1st MA when acting as agent for the Seller may also receive commission from the Seller.

#### **5. Value Added Tax (VAT)**

The Buyer shall pay any VAT, which may be due on any amounts owed by the Buyer under the Conditions of Sale at the rates prevailing on the day of the auction.

Non-EC Purchasers: VAT will be charged at the UK prevailing rate. Upon receipt of a copy of the bill of lading as proof of export, the VAT will be refunded on the hammer price. VAT will not be refunded unless proof of export is provided within 3 months from the date of the sale. VAT will not be refunded on the Buyer's premium.

Companies Registered in an EC Member State: - VAT will be charged at the UK prevailing rate. Upon receipt of a copy of the bill of lading as proof of export, the VAT will be refunded on the hammer price. VAT will not be refunded unless proof of export is provided within 3 months from the date of the sale. 1st MA will also require the customer's VAT number shown on company headed paper in order to zero rate the supply. VAT will not be refunded directly by 1st MA on the Buyer's premium but maybe retrieved by the Buyer through a European VAT recovery company.

#### **6.. Payment**

(a) The Buyer shall make payment to 1st MA of the Total Amount Due in cleared funds on the day of the sale;

(b) All payments must be made in pounds sterling unless otherwise agreed in advance by 1<sup>st</sup> MA;

(c) Accepted forms of payment are electronic bank transfer, banker's draft and debit card. 1<sup>st</sup> MA does not accept payment by cheque or credit card .

(d) If 1st MA does not receive payment in accordance with Clauses 6 (a), (b) and (c) above within 10 working days after the sale then it reserves the right to exercise any of the rights and remedies set out in Clause 12 below.

#### **7. Ownership of lots purchased**

The ownership of the lot purchased will not pass to the Buyer until the Buyer has paid 1st MA in full the Total Amount Due and 1st MA has applied such payment to the lot and each such lot has been removed from the premises in its entirety.

#### **8. Collection of lots purchased**

(a) At the Buyer's sole cost and expense, the Buyer shall collect the lot purchased from the premises at which they are sold (or stored) not later than the time and date specified in the Catalogue and/or notice to purchasers and this condition shall be of the essence of the contract, but not before payment to 1st MA of the Total Amount Due and subject to Condition 9.

(b) Packing and handling of purchased lots is at the entire risk and expense of the Buyer. 1st MA is not responsible for acts or omissions by packers or shippers of purchased lots, whether or not such persons or entities are recommended by 1st MA.

(c) Access for the purpose of removal of lot(s) will be given only in normal business hours.

(d) It is a condition of sale that, where hold down bolts or studs and Grouting surrounding machinery is exposed by buyers removing that machinery, the floor will be left with out protrusions and flush with floor level, rubbish will be disposed of and the floor swept.

(e) All personnel intending to operate lifting/ moving equipment on site must first produce to the 1st MA supervisor, current operating licenses, current equipment certificates and proof of all relevant insurances. They will be expected to work to the The Sellers, 1st MA and current Health & Safety regulations and may be ordered off the site at any time for breach of these regulations.

#### **9. Supervision of and damage caused by removal of lots purchased**

(a) The Buyer will only remove sold lots from the premises at which they are sold or stored by previous arrangement with, and subject to the supervision of 1<sup>st</sup> MA or its appointed representative(s). Any disconnection of any lot from the main electricity supply shall be undertaken by a fully qualified electrician at a point below the junction box.

(b) If, in 1<sup>st</sup> MA's opinion, removal of any lot or part thereof will be likely to cause damage to the said premises or any other damage 1<sup>st</sup> MA may by notice to the Buyer rescind the sale of such lot or permit the removal thereof from the premises subject to such conditions as it may think fit to impose pursuant Condition 9(c).

(c) The Buyer will be responsible for all damage that it, its carriers or its agents may do to the property of any third party (and in particular to the Seller's premises) in removing the lot(s) it has purchased. Should 1<sup>st</sup> MA consider such damage likely to occur, it may require the Buyer to deposit with 1<sup>st</sup> MA such sum of money as 1<sup>st</sup> MA may require as security for the cost of making good such damage. Should the Buyer refuse to deposit such monies, 1<sup>st</sup> MA may refuse the Buyer access to the premises for the purpose of collecting all or any of the lot(s) it has purchased or rescind the sale of such lot(s) pursuant to Condition 9(b).

#### **10. Third party claims**

Should any third party claim possession of or title to all or part of a lot prior to its removal from the said premises, 1<sup>st</sup> MA reserves the right to rescind the sale thereof or to permit the removal thereof from the Seller's premises subject to such conditions as it may see fit to impose.

#### **11. Transfer of risk**

Risk of loss and damage to any lot purchased shall pass to the Buyer upon the fall of the hammer. The Buyer is advised to effect any insurance it may consider necessary. Any duty of 1<sup>st</sup> MA and/or the Seller to deliver lots shall be deemed performed upon the fall of the hammer even if a lot is subsequently damaged and/or part thereof has been lost.

#### **12. Remedies for non- payment or failure to collect purchases**

If the Total Amount Due is not paid on any lot or the Buyer fails to collect the lot in each case in accordance with the Conditions of Sale the Buyer will be in default and 1st MA, as agent of the Seller or for itself, as appropriate, 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 rights and remedies:

- (a) proceed against the Buyer for damages for breach of contract;
- (b) cancel or rescind the sale of that or any other lots sold to the defaulting Buyer at the same or any other auction, retaining as compensation all payments made by the Buyer referable to any losses, costs or expenses incurred by the Seller or 1st MA as a result of the Buyer's default;
- (c) re-sell the lot or cause it to be re-sold by 1st MA or any 1st MA Affiliated Company by public auction or private sale, and hold the Buyer liable for the Deficiency. The defaulting Buyer hereby agrees that any resale price at public auction shall be deemed commercially reasonable;
- (d) hold the Buyer liable for the Total Amount Due and the Deficiency;

(e) reduce the Total Amount Due or the Deficiency or any other amounts the Buyer owes to 1st MA or any 1st MA Affiliated Company by:

(i) any proceeds of sale then due to or thereafter becoming due to the Buyer from 1st MA or any 1st MA Affiliated Company; or

(ii) any payment made by the Buyer to 1st MA or any 1st MA Affiliated Company, whether or not intended to reduce the Buyer's obligation hereunder;

(f) until payment of all outstanding amounts due to 1st MA or any 1st MA Affiliated Company have been made in full, exercise a lien on any property of the defaulting Buyer which is in the possession of 1st MA or any 1st MA Affiliated Company for any purpose and to sell the same;

(g) charge the Buyer a minimum handling charge payable to 1st MA by the Buyer of one per cent (1%) plus VAT of the Total Amount Due per month commencing on the seventh day after the sale and for each successive month or any part thereof;

(h) insure, remove and store the lot either at 1st MA' premises or elsewhere at the sole risk and expense of the defaulting Buyer;

(i) charge the Buyer interest at a rate not exceeding five per cent (5%) above the base rate of 1<sup>st</sup> MA's bankers per month on the Total Amount Due to the extent it remains unpaid for more than seven days after the date of the auction.

(j) hold the Buyer liable to indemnify 1st MA against any loss or damage suffered by 1st MA which directly or indirectly is attributable to the nature of any plant, equipment or machinery of that lot or any other lots whether through breakage rust, decay, desiccation, leakage, wastage, inherent or latent defect or vice or natural deterioration.

### **13. Liability of 1st MA, any 1st MA Affiliated Company and Sellers**

- (a) All goods are sold "AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT RECOURSE". Illustrations, pictures or videos posted in the Catalogue or on the Site are for the convenience of the buyers only.
- (b) 1<sup>st</sup> MA has used its reasonable endeavours to ensure that the description of each lot(s) appearing in the Catalogue or on the Site are accurate, but the Buyer relies upon such description at its own risk.
- (c) Buyers should satisfy themselves prior to the sale as to the condition of the lot and should exercise and rely on their judgment as to whether the lot accords with its description at their own risk.
- (d) Subject to the obligations accepted by 1<sup>st</sup> MA under these Conditions of Sale neither the Seller nor 1<sup>st</sup> MA nor any of its employees or agents are responsible for errors of description or for the genuineness or authenticity of any lot and no warranty whatever is given by 1<sup>st</sup> MA or its employees or agents or the seller to the Buyer in respect of any lot and any express or implied conditions or warranties are hereby excluded to the greatest extent permitted by law.
- (e) Notwithstanding anything contained in the Conditions of Sale, any claim against 1st MA, its servants or agents, or any 1st MA Affiliated Company, its servants or agents, by the Buyer shall be limited to the Hammer Price and Buyer's Premium actually paid by the Buyer to 1st MA with regard to that lot.
- (f) 1st MA sells as agent for the Seller (except where it wholly or partly owns any lot as principal) and as such is not responsible for any default by the Seller.
- (g) Where the Buyer loads any item of plant, machinery or equipment contained in a lot or lots to remove it from the site, 1st MA shall be under no liability whatsoever to the Buyer or any third party for any damage however so caused by the removal and the Buyer shall be responsible for and indemnify 1st MA against any damage or loss which 1st MA may suffer or incur in respect of loss, damage or injury suffered by the Buyer's employees or any third party arising from the removal of the plant, machinery or equipment.
- (h) Neither the Seller nor 1st MA recommend any other organisation or represent the competence of any other organisation representatives or advertising literature of which is at or about the auction premises by reason of the fact of the Seller or 1st MA have allowed such representation or literature to be available or distributed at the auction premises.

(i) 1<sup>st</sup> MA shall not be liable for any loss, expense, cost, claim or damage caused to the Buyer as a result of accessing and using the website of 1<sup>st</sup> MA or any linked site.

#### **14. Health and Safety at Work Etc Act 1974**

It is expressly brought to the Buyer's attention that at the time of sale any item of plant machinery or equipment contained in the lot(s) may not necessarily comply with the Health and Safety at Work Etc Act 1974 or any other act or acts or regulations thereunder governing the use of that plant machinery or equipment in a working environment. Buyers of any such plant machinery or equipment are hereby required to ensure at their own expense that its use at a place of work within the United Kingdom does not contravene such relevant act or regulation thereunder applicable thereto.

#### **15. Toxic Chemicals and Dangerous Substances**

(a) It is expressly brought to the attention of Buyers (actual or prospective) that goods within lots could contain hazardous materials or dangerous chemicals which if not handled correctly during their removal from the site could be in breach of the Health and Safety at Work Etc Act 1974, Control of Substances Hazardous to Health Regulations 1988 or any other current legislation covering the use of such substances in a working environment.

(b) The Buyer must at its own expense comply with all current legislation and regulations in relation to the removal/disposal of waste including hazardous waste and may be required to satisfy 1st MA in relation to their disposal/removal procedures. Where waste materials are removed all work must be undertaken by an approved and licensed contractor at the Buyer's expense.

#### **16. Telephone and absentee bids**

1st MA may if so instructed execute bids on behalf of prospective Buyers. Neither 1st MA nor its servants or agents are responsible for any neglect or default relating to bids made in connection with absentee or telephone bids, including, without limitation, any telecommunications errors or failures.

#### **18.. Estimates**

1st MA makes no representations or warranties as to the anticipated selling price of any item of property. No estimates anywhere made by 1st MA, its servants or agents, whether in writing or orally, may be relied upon as a prediction of the actual selling price. Estimates in Catalogues, receipts and elsewhere are subject to revision by 1st MA from time to time in the exercise of its sole discretion.

#### **20. Representations and statements**



Any representation or statement by 1st MA in any Catalogue, condition report or elsewhere and whether oral or in writing as to authenticity, genuineness, origin, date, age, provenance, condition, reserve price or estimated selling price is a statement of opinion only and not of fact. Neither 1st MA nor its servants, officers, directors or employees are responsible for the correctness or such opinions, whether orally or in writing.

## **21 Notices, Choice of Law and Venue**

(a) Any notice by 1st MA to a Buyer or prospective Buyer may be given by first class post, airmail, facsimile or hand-delivery either to such person directly, or at the last address known to 1st MA, or any representative or agent acting on his behalf at his last address known to 1st MA and if so given shall be deemed to have been duly received by the addressee 48 hours after posting or 24 hours after sending by facsimile or hand-delivery.

(b) ALL DISPUTES RELATING TO THESE CONDITIONS OF SALE BETWEEN PARTICIPANTS AND 1<sup>st</sup> MA SHALL BE EXCLUSIVELY GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF ENGLAND.

PARTICIPANTS AND 1<sup>st</sup> MA HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE ENGLISH COURTS OVER ANY CLAIMS, DISPUTE OR MATTER ARISING UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THEIR ENFORCEABILITY. (c) Participants irrevocably consent to any process in any legal action or proceedings arising out of or in connection with these Terms and Conditions or its enforceability being served in accordance with the provisions of these Terms and Conditions relating to the service of notices.

(d) Nothing contained in these Terms and Conditions shall affect the right to serve process in any other manner permitted by the laws of the country in which service is to be effected.

(e) If a sale consists of real property in a country outside England and Wales, the Participants and 1<sup>st</sup> MA and/or, where applicable, the Auctioneer agree, at their own cost, to do all things and execute all contracting deeds, assignments, instruments, transfers and other documents as may be necessary or desirable to give full effect to the transaction in that country.

(f) Any dispute or difference arising out of any transaction to which the Conditions of Sale apply and all matters connected therewith shall, at the election of 1st MA, be referred to arbitration or otherwise to litigation to be conducted in either event in London, England. Each actual or prospective Buyer agrees to appoint irrevocably an

agent for service of process in England immediately upon receipt of a request from 1st MA to do so.

(g) These Conditions of Sale are drawn up in the English language. If these Conditions of Sale are translated into another language, the English language text prevails.

## **22. Conditions specific to On Line Auctions**

22.1 By participating in an Online Auction the Buyer consents to be bound by these Conditions of Sale in addition to those set out above.

22.2 1<sup>st</sup> MA may at its discretion or upon the instruction of the seller:

22.2.1 alter or withdraw all or any lots up to the moment at which such lot(s) are indicated as "SOLD" (the "Announcement of Sale");

22.2.2 where a reserve has been placed on any lot, withdraw that lot in the event that the highest bid price at the end of the Online Auction does not meet the reserve;

22.2.3 bid for any lot or lots offered for sale at the Online Auction on its own account or on behalf of a third party; and/or

22.2.4 combine (including in bulk), sub-divide or amend a lot or lots as the Auctioneer deems appropriate.

22.2.5 1<sup>st</sup> MA, or an Associated Auctioneer may participate as sellers in Online Auctions from time to time.

22.2.6 Buyers agree that 1<sup>st</sup> MA and/or, where applicable, the Auctioneer may at any time and from time to time without notice: (i) discontinue an Online Auction either temporarily or permanently; or (ii) extend an Online Auction beyond the period indicated on the Site.

22.3 Subject to the reserve price (if any) being met, each lot shall be sold to the highest bidder. All sales are final. In the event of any dispute arising between buyers such dispute shall be dealt with in such manner as 1<sup>st</sup> MA may in its absolute discretion determine. 1stMA reserves the right to resell any lot in dispute by putting it up for auction again. 1stMA reserves the right to rescind any sale for any reason in which case the buyer's sole remedy shall be the refund of the amount of the purchase price and any Buyer's Premium actually paid.

The completion of a sale shall be indicated on the Site by showing the item as "SOLD" online - if an Online Auction for a lot closes without the lot being sold, it will show as "CLOSED", if a lot is withdrawn, it will show as "WITHDRAWN". In addition

an email will be sent to the successful bidder, an invoice will be emailed and a hard copy invoice dispatched within 24 hours.

22.4 Bidding shall be regulated by 1<sup>st</sup> MA in such manner as it may think fit and, without prejudice to the generality of the foregoing, 1<sup>st</sup> MA may without ascribing any reason therefore, refuse to accept any bid or may facilitate automatic bids on behalf of buyers during the Online Auction process.

22.5 The Site will show a separate Notice to Purchasers for each Online Auction which will stipulate a payment date ("Payment Date") for each lot in an Online Auction and the date by which the goods will have to be removed by the successful buyer ("Clearance Date" or "Removal Date") and certain other terms and conditions which form part of these Terms and Conditions. Cleared funds must be received before the goods can be released.

22.6 Unless otherwise provided for in the Notice to Purchasers for the Online Auction in question, immediately after the Announcement of the Sale, the successful buyer shall pay the purchase price. Buyers shall pay by electronic funds transfer or bankers draft or hereby expressly authorise 1<sup>st</sup> MA to charge Buyer's debit card for the amount. Unless otherwise provided for in the Notice to Buyers, the successful Buyer shall pay the full purchase price of the lot (including in addition Buyer's Premium and any value added tax or the equivalent or similar sales taxes) to 1<sup>st</sup> MA on behalf of the seller (in cleared funds) on or before the Payment Date. More information about the applicable taxes may be given in the Notice to Purchasers for the Online Auction in question, however, buyers should seek their own tax advice. The Buyer agrees that invoices may be issued in electronic form by email.

22.7 Any bank charges in respect of conversion or transfer of monies shall be met by the buyer. If goods are exported, tax refunds or zero rating may apply, tax refunds (if any) will be made by 1<sup>st</sup> MA, subject to receipt of (i) satisfactory proof of export by the buyer; (ii) the corresponding amount of tax refund from the relevant tax authority or the seller and (iii) the relevant tax forms (if applicable).

22.8 By placing a Bid on a lot, the buyer represents, warrants and undertakes that it has the authority and capacity to enter such Bid and close the transaction and that

any Bid that it makes constitutes an irrevocable offer to buy the lot in question for the full amount of the Bid.

22.9 Upon the Announcement of Sale the buyer shall assume all risks in and relating to such lots. The duty of 1<sup>st</sup> MA and/or the seller to make lots available shall be deemed performed upon Announcement of Sale even if a lot is subsequently damaged and/or part thereof has been lost.

22.10 Property and title in each lot shall not pass to the Buyer until:

22.10.1 full payment therefore has been received or (where payment or part payment is made by cheque) until the cheque(s) in question have been cleared; and

22.10.2 each such lot has been removed from the seller's premises in its entirety.

22.11 In addition to clause 13 above 1<sup>st</sup> MA shall have no liability for any loss, claim, cost, expense, damages or liability which a buyer may incur through use of the Site, nor relating to any information contained on the Site or any website linked thereto nor for anything downloaded from the Site or any linked site.

### **23. Miscellaneous**

(a) The headings in the Conditions of Sale do not form part of the Conditions of Sale, but are for convenience only.

(b) In the event that any provisions of the Conditions of Sale should be held unenforceable for any reason, the remaining portions hereof shall remain in full force and effect.

(c) No act, failure to act or partial act by 1st MA shall be deemed a waiver of any of its rights hereunder.

(d) The singular includes the plural and vice versa where the context permits.

(e) The Conditions of Sale shall not be assignable by the Buyer without the prior written agreement of 1st MA.

(f) Where terms have special meanings ascribed to them, a glossary may appear before Lot 1 in the Catalogue of the auction.

(g) Any waiver by 1st MA of a breach of any provision of the Conditions of Sale shall not be considered as a waiver of any subsequent breach of the same or any other provision.

## **PAYMENTS FOR SUCCESSFUL BIDS**

On the completion of the auction, if you have succeeded in winning an item you will receive email notification. Payment for any won items is due immediately. An invoice will be automatically emailed to you the winning bidder and a hard copy will be dispatched within 24 hours.

We accept the following payment methods:

**Electronic bank transfer – CHAPS same day payment or BACS**

**Bankers Draft**

**WE DO NOT ACCEPT CREDIT CARDS OR CHEQUES**

**We insist on cleared funds prior to the release of goods**

## **PAYMENT OF SALES TAX (V.A.T. )**

Payment of vat ( sales tax) at current UK rate of 17.5% will apply on both the hammer price and buyers premium on any items purchased. With regard to overseas customers, if good are to be exported out of the UK, VAT can be refunded on the hammer price, subject to 1st Machinery Auctions receiving sufficient proof of export. This refund is also subject to the goods leaving the UK within 3 months of the auctions end date. Exporters must be aware that VAT on the buyers premium will not be refunded as it is categorised by HM Customs and Exise as a " service charge" within the UK.