

MALCOLM HARRISON AUCTIONS LIMITED
TERMS AND CONDITIONS OF BUSINESS FOR THE SALE OF GOODS AT AUCTION

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply unless the context requires otherwise.
Auction: a sale at which MHA acting as agent for the Vendor offers for sale and/or sells the Goods submitted by the Vendor as Lots free from all Encumbrances.
Auction Contract: an agreement between the Vendor and MHA which incorporates the terms of this Contract.
Auction Premises: the premises at which an Auction takes place under the terms of this Contract.
Buyer: the individual, company or organisation that is the highest bidder and purchases a Lot at Auction.
Contract: means any contract between the Vendor and MHA (including an Auction Contract) incorporating these terms and conditions of business.
Encumbrance: any mortgage, charge (fixed or floating), contract for hire purchase (or similar) pledge, lien, guarantee, trust, right of set off or any other third party interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind howsoever created or arising or any other agreement or arrangement having similar effect.
Entry Form: the documentation completed by the Vendor for the submission of Goods as Lots for sale in a forthcoming Auction.
Goods: the items described in the Entry Form as submitted by the Vendor for entry as a Lot in an Auction.
Intellectual Property: any patent, copyright, registered design, unregistered design right, trade mark or other intellectual property in respect of the Goods.
Liability: liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and/or any other losses and/or liabilities.
Hammer Price: in relation to any Lots, the highest bid accepted by the Auctioneer and paid by the Buyer to MHA as selling agent for the Vendor.
MHA: Malcolm Harrison Auctions Limited a company incorporated and registered in England and Wales with company number 05032924 whose registered office is at Tadgedale Quarry, Muckleston Road, Loggheards, Market Drayton, Shropshire TF9 4D.

Provisional Bid: the highest bid made by a potential Buyer which has not met the Reserve Price stipulated by the Vendor and provisionally accepted by the Auctioneer pending confirmation from the Vendor.
Reserve Price: the lowest price that a Vendor is prepared to sell a Lot for.
Sale Proceeds: the Hammer Price less the Commission payable to MHA and any other costs and/or charges properly incurred by MHA under this Contract or any other agreement with the Vendor.
Total Loss: Goods which in the reasonable opinion of the Vendor's insurers have been declared as damaged beyond repair or sold a salvage or otherwise recognised as a total loss on HPI or similar recognised register.
Vendor: the individual, company or organisation that has engaged MHA to act as selling agent to facilitate the sale of Goods on behalf of the Vendor.

1.2 A reference to a statute or statutory provision (including all subordinate legislation) is a reference to it as amended, extended or re-enacted from time to time.
1.3 A reference to writing or written includes faxes but not e-mail.

2. APPOINTMENT

2.1 The Vendor hereby appoints MHA as its agent to promote and sell the Goods at Auction on behalf of the Vendor on the terms of this Contract.
2.2 The Vendor shall not sell the Goods nor solicit any orders for the Goods from a Buyer once the Goods are listed as Lots for Auction.
2.3 MHA shall not be liable for a Buyer's failure to pay for Goods or to perform under the relevant sale contract.
3. SALE OF PRODUCTS
3.1 Sales of all Lots by MHA on behalf of the Vendor shall be on MHA's standard terms and conditions of sale as varied from time to time or on such other terms and conditions as MHA may at any time specify in writing.
3.2 This contract shall come into effect upon MHA's acceptance of a completed Entry Form or Auction Contract incorporating these conditions from the Vendor.
3.3 MHA shall not make or give any representations, warranties or other promises concerning the Lots.
3.4 MHA shall not become the owner of any Goods entered for sale at Auction by the Vendor.
4. RISK AND TITLE
4.1 Risk in the Goods shall remain with the Vendor until collection of the Goods by the Buyer.
4.2 Subject to clause 4.3 the Vendor shall retain title and ownership of the Goods until MHA has received a full in cash or cleared funds all of the sums due from the Buyer in relation to the Goods.
4.3 Unless otherwise stated in an Auction contract, until title and ownership of the Goods has passed to the Buyer:
4.3.1 MHA shall hold the Goods at the Auction Premises on a fiduciary basis as the Vendor's bailee; and
4.3.2 the Vendor shall keep the Goods insured against all normal risks.
4.4 MHA shall be under no obligation to investigate and/or ascertain the Vendor's title to the Goods and shall have no Liability for the Vendor's failure to provide clear title to the Goods.

5. VENDOR'S UNDERTAKINGS

5.1 The Vendor (acting by its representative) warrants, represents and undertakes that:
5.1.1 it has full authority to enter into this Contract;
5.1.2 any Goods which are a Total Loss have been declared as such on the Entry Form;
5.1.3 it has good and marketable title to the Goods and that the Goods are beneficially and legally owned by the Vendor;
5.1.4 it shall pass on all and any documentation (including full details of any Encumbrances) in its possession in relation to the Goods to MHA upon request.
5.1.5 any documentation supplied with the Goods is correct and relevant to the Goods entered for Auction by the Vendor;
5.1.6 where the Goods are vehicles:
(a) they are fitted with a registration number and this, together with the chassis number corresponds to the entries in the vehicle registration document and/or other documents of title;
(b) the year registered for Goods (or otherwise the year of manufacture for plant and trailers) is correctly stated on the Entry Form;
(c) the odometer reading if stated on the Entry Form to be accurate, is accurate and true;
5.1.7 where the Goods are plant, they are fitted with a manufacturer's plate together with the serial number stamped on the Goods, which correspond with all documents of title;
5.1.8 where the Goods are trailers, they are fitted with a ministry plate and chassis plate and the numbers provided here correspond with all documents of title;
5.1.9 the Entry Form has been completed accurately and correctly;
5.1.10 the Vendor has not and shall not knowingly or recklessly make any representations, written or oral regarding the working order of the Goods;
5.1.11 there are no Encumbrances over the Goods and the Vendor has not agreed to create any Encumbrances over the Goods (or any part of them) (unless otherwise expressly declared in accordance with clause 5.3);
5.1.12 the Vendor shall not create or agree to create any Encumbrance over any Goods between the date of completion of the Entry Form and the date that title and ownership passes to the Buyer pursuant to clause 4.2;
5.1.13 in the event that MHA notifies it of a Provisional Bid in accordance with clause 8 below, it shall not seek to remove the Lot that is subject to the Provisional Bid from the Auction and conclude or attempt to conclude a private sale with the prospective Buyer.
5.2 MHA shall not be liable in any way for any warranties, representations and undertakings or guarantees given by the Vendor to MHA or the Buyer of any Lots and Liability for any such warranties, representations, undertakings and guarantees shall remain absolutely with the Vendor.
5.3 If any Goods are subject to an existing Encumbrance, contrary to the provisions of clause 5.1.11 above, the Vendor undertakes to provide MHA with full details of the Encumbrance including but not limited to details in relation to finance, full contact details of any third parties and settlement figures in relation to any sums outstanding.
5.4 MHA shall use all reasonable endeavours to settle any sums outstanding in relation to any Encumbrance that it is aware of at the date of the Auction under the terms of this Contract using the Sale Proceeds on behalf of the Vendor and the Vendor gives MHA full authority to do so under this Contract.

6. INDEMNITY

6.1 The Vendor shall indemnify and keep indemnified MHA against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs on a full indemnity basis) and any other losses or liabilities which MHA may incur as a result of:
6.1.1 any breach of contract;
6.1.2 any tortious act or omission;
6.1.3 breach of statutory duty;
6.1.4 the Vendor's failure to provide good and clear title to the Goods; and/or
6.1.5 the Vendor's failure to provide complete and accurate information pursuant to clause 5.3;
6.1.6 any other liability which MHA may incur as a result of acting with reasonable care and skill within the scope of its authority under this Contract as selling agent for the Vendor.

7. COMMISSION AND PAYMENTS

7.1 The Vendor shall pay to MHA a commission equal to an agreed percentage of the Hammer Price as set out in the Entry Form or Auction Contract of all Lots for which MHA concludes a sale contract on behalf of the Vendor pursuant to this Contract.
7.2 Commission shall become due to MHA as soon as and to the extent that the Buyer pays the Hammer Price in respect of the sale of the relevant Lots.
7.3 Upon receipt of payment of the Hammer Price from the Buyer, MHA shall deduct the Commission due and account to the Vendor for the Sale Proceeds:
7.3.1 within 21 days of receipt of such payment, subject to the provisions of clause 7.4;
7.3.2 upon receipt of any outstanding documentation (including full details of any Encumbrances) in its possession in relation to the Goods that has not already been provided to MHA; whichever is the later.
7.4 MHA reserves the right to deduct from the Sale Proceeds any transport, storage, costs in relation to obtaining duplicate documentation or other costs and/or charges incurred in performing its obligations under this Contract or any other agreement.
7.5 In the absence of contrary agreement, commission shall be paid to MHA in pounds sterling.
7.6 If a Lot is exported to a Buyer outside of the EU MHA shall account to the Vendor for VAT reimbursed by HM Revenue and Customs, quarterly upon receipt. The Vendor shall be responsible for providing MHA with a valid VAT receipt in order to qualify for a claim for VAT paid under the provisions of this clause.
7.7 MHA shall not be liable for a Buyer's failure to pay for a Lot for which it has been the successful bidder.
7.8 If any dispute arises as to the amount of commission payable by the Vendor to MHA, the same shall be referred to MHA's auditors for settlement and their certificate shall be final and binding on both parties.
7.9 MHA shall collect and hold as trustee in a separate bank account (in the name of MHA but designated as a trust account for the Vendor's benefit all monies due to the Vendor in respect of sales of Lots on behalf of the Vendor and shall transfer the same to the Vendor pursuant to clause 7.3

8. PROVISIONAL BIDS

8.1 If MHA receives a Provisional Bid, it shall notify the Vendor as soon as is reasonably practicable following the Auction and the Vendor shall confirm with MHA whether or not it wishes to conclude the sale with the Buyer who has provided a Provisional Bid.
8.2 If the Vendor accepts a Provisional Bid, then upon acceptance:
8.2.1 MHA shall notify the prospective Buyer as soon as reasonably practicable; and

8.2.2 the sale of Lots shall be treated as a normal sale under the terms and conditions of this Contract and the parties shall proceed to arrange for the conclusion of the sale and payments in accordance with clause 7 above.

8.3 If the Vendor declines the Provisional Bid, MHA shall notify the prospective Buyer as soon as reasonably practicable and the Vendor may at its option re-enter the Lot for a subsequent Auction.

9. ADVERTISING AND PROMOTION

9.1 MHA shall:
9.1.1 be responsible for the advertising and promotion of the Lots sold at Auction;
9.1.2 shall not make any written statement as to the quality, condition or manufacture of the Goods under any circumstances.

10. COMPLIANCE WITH LAWS AND REGULATIONS

10.1 The Vendor warrants to MHA that the Goods entered for sale may at the date of this Contract be lawfully sold in the United Kingdom.
10.2 The Vendor shall be responsible for obtaining any licences, registrations, permits or approvals necessary or advisable for the importation and sale of the Goods in the United Kingdom.

11. ANTI-BRIBERY

The Vendor shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

12. LIMITATIONS ON LIABILITY

12.1 MHA shall have no Liability to the Vendor if the Hammer Price for the Lot has not been paid in full by the Buyer by the due date for payment.
12.2 MHA shall have no Liability for any loss or damage howsoever arising to any of the Goods whilst held at the premises of MHA.
12.3 MHA shall have no Liability to the Vendor for any damage, loss, liability or expenses for any Goods in transit.
12.4 MHA shall have no Liability to the Vendor to the extent that the Vendor is covered by any policy of insurance and the Vendor shall ensure that its insurers waive any rights of subrogation they may have against MHA.
12.5 MHA shall have no Liability to the Vendor for any:
12.5.1 consequential losses;
12.5.2 loss of profits and/or damage to goodwill;
12.5.3 economic and/or other similar losses;
12.5.4 special damages and indirect losses; and/or
12.5.5 business interruption, loss of business, contract, opportunity and/or production.
12.6 The Vendor shall be under a duty to mitigate any loss, damage, costs and/or expenses that it may suffer.
12.7 The Vendor shall give MHA a reasonable opportunity to remedy any matter for which MHA is liable before the Vendor incurs any costs and/or expenses in remedying the matter itself. If the Vendor does not do so, MHA shall have no Liability to the Vendor.
12.8 Nothing in this Contract shall exclude MHA's liability for death or personal injury due to its negligence or any liability which is due to MHA's fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
12.9 Nothing in this Contract shall exclude or limit any statutory rights of the Vendor which may not be excluded or limited in the event that the Vendor is acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent, have no force or effect.

13. DURATION AND TERMINATION

13.1 MHA may terminate this Contract without liability to the Vendor immediately by giving notice to the Vendor if:
13.1.1 the Vendor commits a material breach of any term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so; or
13.1.2 the Vendor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 288 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply; or
13.1.3 the Vendor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Vendor with one or more other companies or the solvent reconstruction of the Vendor; or
13.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Vendor other than for the sole purpose of a scheme for a solvent amalgamation of the Vendor with one or more other companies or the solvent reconstruction of the Vendor; or
13.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Vendor; or
13.1.6 a floating charge holder over the assets of the Vendor has become entitled to appoint or has appointed an administrative receiver; or
13.1.7 a person becomes entitled to appoint a receiver over the assets of the Vendor or a receiver is appointed over the assets of the Vendor; or
13.1.8 the Vendor, being an individual, is the subject of a bankruptcy petition or order; or
13.1.9 a creditor or encumbrancer of the Vendor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Vendor's assets and such attachment or process is not discharged within 14 days; or
13.1.10 any event occurs, or proceeding is taken, with respect to the Vendor if any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.1 to clause 13.1.9 (inclusive); or
13.1.11 the Vendor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the Vendor's business; or
13.1.12 there is a change of Control of the Vendor.
14. EFFECTS OF TERMINATION
14.1 Termination of this Contract, however caused, shall be without prejudice to any rights or obligations accrued at the date of termination.
14.2 Unless expressly provided in this Contract and subject to any rights or obligations accrued prior to termination, neither party shall have any further obligation to the other under this Contract.

15. FORCE MAJEURE

Either party shall have no liability to the other for any delay in performance of this Contract to the extent that such delay is due to any events outside the effected parties reasonable control including but not limited to acts of god, war, floor, fire, labour disputes, subcontractor delays, strikes, lockouts, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If a party is affected by any such event then time for performance of this Contract shall be extended for a period equal to the period that such event or events delayed such performance.
16. EXTINGUISHING AGREEMENT
16.1 This Contract constitutes the entire agreement between the parties and supercedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter.
16.2 Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy in respect of, any representation or warranty (whether made negligently or innocently) that is not set out in this Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Contract (whether made innocently or negligently) shall be for breach of contract.

16.3 Nothing in this clause shall limit or exclude any liability for fraud.

17. VARIATION

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
18. ASSIGNMENT AND OTHER DEALINGS PROHIBITED
The Vendor shall not assign, transfer, charge or deal in any other manner with this Contract or its rights under it or part of it, or purport to do any of the same, nor sub-contract nor appoint sub-agents or delegates of any or all of its obligations under this Contract.

19. WAIVER

No failure or delay by MHA to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

20. SEVERANCE

20.1 If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.
20.2 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

21. THIRD PARTY RIGHTS

21.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
21.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any person that is not party to this Contract.

22. NOTICES

22.1 Any notice required to be given under this Contract shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party delivered to receive the notice at the address specified by each of the parties.
22.2 Any notice shall be deemed to have been duly received:
22.2.1 if delivered personally, when left at the address and for the contract referred to in this clause; or
22.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day (a business day being Monday to Friday inclusive) after posting; or
22.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
22.3 A notice required to be given under this Contract shall not be validly given if sent by e-mail.
22.4 The provision of this clause 22 shall not apply to the service of any proceedings or other documents in any legal action.
23. GOVERNING LAW AND JURISDICTION
23.1 This Contract and any dispute or claim arising out of or in accordance with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
23.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
This Contract has been entered into on the date stated on the Entry Form.