



## CONTRACT BETWEEN SELLER AND AUCTIONEER FOR THE ONLINE SALE OF MACHINERY

(to be read and accepted in conjunction with  
Heards RPS Machinery Conditions of Sale by Online Auction)

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## 1. Definitions

In these conditions the following terms have the following meanings:

- (i) “Auctioneers” means Heard’s RPS LLP.
- (ii) “Commission” means the commission charged on the sale of Lots in accordance with Clause 14 below.
- (iii) “Conditions” means the Auctioneers’ standard terms and conditions of business for machinery as published for the Sale in which the Lot is offered. Any further specific conditions will be contained in a separate statement of special conditions.
- (iv) “Entry Form” means the form to be completed and signed by the Seller describing the Lot in such form as may be required by the Auctioneers before the Lot will be accepted for sale.
- (v) “Hammer Price” means the price at which a Lot is sold by the Auctioneers to the Buyer exclusive of any Value Added Tax and Buyer’s Premium.
- (vi) “Lot” means any item offered for sale or sold as a single transaction in accordance with these Conditions.
- (vii) “Buyer” means a person firm or company who purchases any Lot including any person firm or company acting as an agent for such a party in the purchase of that Lot in accordance with the Conditions.
- (viii) “Reserve Price” means the minimum price fixed by the Seller in writing at which any Lot is to be sold in the Sale.
- (ix) “Sale” means a sale of the Lots by auction organised by the Auctioneers.
- (xi) “Sale Proceeds” means the net amount due to the Seller being the Hammer Price of the Lot sold less Commission and expenses and any other amounts due to the Auctioneers by the Seller in whatever capacity and howsoever arising.
- (xii) “Seller” means a person firm or company including any person firm or company acting as an agent for such a party who offers for sale a Lot in accordance with these Conditions.
- (xiii) “Vehicle” means any tractor self-propelled machine or other vehicles.
- (xiv) “VAT Auctioneers’ Scheme” means the scheme for the treatment of Value Added Tax by the Auctioneers made under The Value Added Tax (Special Provisions) Order 1995 SI 1268 (as amended).



- (xv) “Working Day” means each day being calculated from midnight from Monday to Friday inclusive in any week except that a Bank Holiday or other public holiday shall not be a Working Day.

Except where the context otherwise requires:

- words denoting the singular include the plural and vice versa
- words denoting one gender include the other gender
- words denoting persons include both natural and legal persons.

References to any regulation directive statute statutory instrument or other legislation include any amendment re-enactment and any other subsequent alteration of that legislation.

## **2. Status of this Contract and the Conditions of Sale**

- (i) In signing the Entry Form the Seller accepts the Auctioneers’ Conditions of Sale and the provisions of this Contract for each Lot listed on the Entry Form.
- (ii) No employee or agent of the Auctioneers has any authority to vary these provisions or the Conditions of Sale.
- (iii) Any dispute arising under this Contract or the Conditions of Sale shall be determined in the first instance by the Auctioneers whose ruling shall be binding on the conduct of the auction. If such an issue including any dispute under Clause 16 of this Contract or Clause 18 of the Conditions of Sale remains in dispute after the auction it may be referred by the Buyer the Seller or the Auctioneers to arbitration or if the parties agree to independent expert determination within the period of **ten Working Days** starting on the date of the Sale by a person agreed between the parties in dispute or failing such agreement by a person appointed by the President of the Central Association of Agricultural Valuers on the application of any of the parties within that time paying such fee as may be charged for that service. The parties agree to meet the professional fees and costs of that person as he shall direct and to be bound by his award both as the matter of the dispute and as to the parties’ costs.
- (iv) Any indemnity under this Contract shall be an indemnity in respect of all actions proceedings and costs including legal costs expenses claims and demands whatever incurred or suffered.

## **3. Auctioneers’ Status**

- (i) The parties to the contract of sale of a Lot are the Seller and Buyer. The Auctioneers are instructed to sell as agents for the Seller under the terms of this contract and the Conditions of Sale and as such are not responsible for any default of the Seller or Buyer.



- (ii) The Auctioneers shall have discretion as to the description of any item and may take expert advice on any item, whether from a qualified electrician, agricultural engineer or other person, at the Seller's expense to ensure that the item is sold in a professional and legal manner.
- (iii) The Auctioneers may make such announcements or publish such information supplied by a Seller about any Lot as they in their discretion think fit.
- (iv) The Auctioneers shall have absolute discretion without giving any reason:
  - (a) to refuse any bid
  - (b) to divide any Lot
  - (c) to combine any two or more Lots
  - (d) to withdraw any Lot from the auction, and
  - (e) in case of dispute, to offer any Lot for sale again.

#### **4. Exclusion of Liability**

The Auctioneers shall not be liable for any expense loss claim or proceedings in respect of any loss or damage whatsoever to any property real or personal (including any Lot) nor in any respect of personal injury to or death of any person before or arising out of or in the course of or caused by the Sale except to the extent that the same is due to the negligence of the Auctioneers.

#### **5. Seller's Warranties**

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

- (i) His identity.
- (ii) That he is the true owner of the Lot or is authorised by the true owner to act as Agent in offering the Lot for sale.
- (iii) That he is able to transfer a good and marketable title to the Lot free from any third party claims liens and encumbrances.
- (iv) That no Lot is subject to a Hire Purchase lease contract hire or any other similar agreement or has been recorded by an insurance company as a write off or as subject to a major insurance claim.
- (v) That all statements on the Entry Form are correct so that the Lot is not misdescribed being aware that providing a false description can be an offence under the Trade Descriptions Act 1968 and the Fraud Act 2006 punishable by a fine or imprisonment.



- (vi) That as far as reasonably practicable he has taken sufficient steps to ensure the Lot is safe and without risk to health and safety and that suitable testing and examination has been arranged and that he indemnifies the Auctioneer against all claims under the Consumer Safety Act 1978 and Part 1 of the Consumer Protection Act 1987.
- (vii) That he has declared in writing on the Entry Form any risk posed by the Lot to health and safety so that it is clear to the Auctioneer and prospective Buyers.
- (viii) That unless previously disclosed to the Auctioneers any vehicle entered is in a roadworthy condition and complies with regulations made under section 41 of the Road Traffic Act 1988 and has the benefit of any unexpired vehicle excise licence and any current MOT certificate relating to it which will be transferred to the Buyer.
- (ix) That he will provide all operators' handbooks and instruction manuals held in his possession for the Lot.
- (x) That where information required by this Clause has not been provided or the Auctioneers have reason to doubt it the Auctioneer may using his powers under Clause 3(iii) above instruct a suitably qualified person to inspect the items and report on any such matter the cost of which shall be borne by the Seller.
- (xi) That he 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 warranties.

## **6. Catalogues and Advertisements**

The Auctioneers do not guarantee that any Lot described in any catalogue or advertisement will be offered for sale nor that any description therein can be relied upon as accurate. Any illustrations in catalogues are for general identification only.

## **7. Entry of a Lot**

- (i) The Auctioneers shall specify the terms on which any Lot may be entered for the Sale.
- (ii) The Auctioneer's Entry Form must be fully completed by the Seller prior to the Sale for each Lot entered for the Sale. Where the Auctioneers have completed the Entry Form on behalf of the Seller the Seller shall be deemed to have read and checked that Entry Form and the information given therein before signing it.
- (iii) No electrical item will be offered for Sale without a current electrician's safety certificate the cost of which shall be borne by the Seller.



- (iv) The Seller must submit all vehicle registration documents and any relevant MOT test certificates as agreed with the Auctioneer no later than **two days** before the Sale
- (v) By completing the Entry Form for a Lot the Seller accepts that the Lot is subject to any entry fee Commission and other expenses and charges set out in these Conditions and/or on the Entry Form.

## **8. Withdrawal of a Lot**

In all cases where a Lot once entered is not offered for sale on the Seller's instructions the Auctioneers shall be indemnified by the Seller for all expenses incurred in relation thereto and against all claims from third parties that may arise.

## **9. Private Sales**

- (i) Any Lot included by the Seller on an Entry Form and accepted by the Auctioneers to be offered for sale must be offered for sale by auction and must not be sold privately before the Sale. The Auctioneers shall not be liable for any breach by the Seller of this condition.

## **10. Warranty and Inspection of Lots**

- (i) The Auctioneers' knowledge of the Lots is initially dependent on the information provided by the Seller who has warranted as to its accuracy. The Auctioneer does not carry out exhaustive due diligence on each Lot. The information supplied about Lots is not a representation of fact but a statement of opinion on the basis of the evidence reasonably available to them.
- (ii) If a Lot is described at the time of the Sale as in "working order" that Lot is understood to have no defect which renders it incapable of the reasonable work for which it is intended.
- (iii) Where the Seller has declared any health and safety issues regarding a Lot or the Auctioneers have become aware of any such issues details of the matter will be available to Bidders in the Lot description for that sale on the website. It will also be for Bidders to satisfy themselves as to health and safety matters and the Buyer to take them into account in his use of the Lot after purchase.

## **11. Reserve Price**

- (i) The Seller shall be entitled to place a Reserve Price on any Lot prior to the Sale being the minimum amount for which the Lot may be sold.



- (ii) Such a Reserve Price shall be advised to the Auctioneers in writing no later than **two Working Days** before (or as advised in the special conditions) the start of the Sale and without such a Reserve Price the Lot will be offered for sale without a Reserve Price. Unless given in person to the Auctioneer or stated on the Entry Form, any such instruction shall not be binding unless the auctioneer has confirmed his receipt of it in writing.

## **12. Bidding**

- (i) No Seller shall bid for any Lot that he has entered into the Sale save that where the Seller has set a Reserve Price for a Lot in accordance with clause 11 in which case bids may only be made on behalf of the Seller for that Lot by the Auctioneers.
- (ii) Where the Lot is offered for sale on the dissolution of a partnership clause 12(i) does not apply.
- (iii) The person who makes the highest bid acceptable to the Auctioneers shall be the Buyer at the time of sale.

## **13. Responsibility for Lots**

- (i) Until sold each Lot remains entirely the responsibility of the Seller. The Auctioneers accept no liability for any Lot and will not provide insurance cover for any Lot.
- (ii) It is the responsibility of the Seller to ascertain whether his Lots have sold at the Sale and the Auctioneers shall be under no liability to notify the Seller if Lots are not sold.

## **14. Auctioneers' Commission**

- (i) The Auctioneer will be entitled to charge the Seller commission as a percentage of the Hammer Price for any Lot at the rate specified on the entry form for his services ("Commission") together with such entry fees expenses and other charges both due under these Conditions and as may also have been agreed with the Seller ("Charges"). The Commission and Charges shall be subject to VAT at the appropriate rate or rates.
- (ii) Any Lot included on the Entry Form by the Seller which is purchased by the Seller or on his behalf will be subject to charges and commission in accordance with these Conditions.

## **15. Value Added Tax**

- (i) The Seller will be responsible for accounting for any Value Added Tax on the Sale of a Lot.



- (ii) The Seller must state to the Auctioneers whether he is registered for Value Added Tax and if registered his Value Added Tax registration number and whether he operates under a flat rate scheme or any Value Added Tax Margin Scheme. If he is not registered for Value Added Tax the Seller hereby confirms that he has instructed the Auctioneers to arrange on his behalf the auction or sale of the Lots he has entered.
- (iii) The Auctioneers will not account to the Seller for any Value Added Tax without the information required by Clause 15(ii).
- (iv) Where a Lot is sold on behalf of a Seller who is not registered for Value Added Tax the Lot will be sold under the VAT Auctioneers' Scheme unless written instructions are given to the Auctioneers to the contrary.
- (v) Where a Seller is registered for Value Added Tax and is trading goods under the general margin scheme and would like to offer a Lot for sale under the VAT Auctioneers' Margin Scheme the Lot must be included on a separate Entry Form making it clear that the Lot is to be sold under the respective schemes.
- (vi) Where the Seller does not advise the Auctioneers of the appropriate rate of or status for VAT of a Lot the Auctioneer will apply the rate or status that appears appropriate from the information available to them and will not accept liability for any errors.

## **16. Notification of a Defective Lot**

- (i) Where a Buyer alleges a breach of any warranty for a Lot for which he has paid he shall notify the Auctioneers in writing clearly stating details of the alleged breach as soon as practicable and no later than 1 p.m. on the **third Working Day** after the day the Lot was purchased and in any event before the Lot is removed from the United Kingdom.
- (ii) The Buyer shall make the Lot available for inspection in the United Kingdom by the Seller the Auctioneers and the duly appointed agents of either within **five Working Days** following the day on which the notification of the defective Lot is received.
- (iii) If the complaint is against the Seller the Auctioneers will notify the Seller of the alleged breach as soon as reasonably practicable and in the event of continuing disagreement any dispute will be handled under clause 2(iii). The Auctioneers' obligation to account to the Seller for the Sale shall be suspended until they are satisfied that the dispute has been settled.



## **17. Resale due to Failure to Comply with these Conditions**

Where a Lot has been sold to a Buyer who then fails to comply with the Conditions the Auctioneers may without prejudice to any other rights they may have resell that Lot either by public auction or private contract. If the price achieved on resale is less than Hammer Price together with any expenses arising the deficit shall be due as a debt from the original Buyer of the Lot.

## **18. Auctioneers' Right to Annul a Sale of a Lot**

Before making payment to the Seller in the event of any dispute or refusal to pay on the part of the Buyer the Auctioneers may entirely at their discretion annul and cancel the sale of such a Lot or Lots.

## **19. Payment to Sellers**

- (i) Subject to Clauses 19(iii) 19(iv) and 19(v) the Auctioneers shall issue payment of the Sale Proceeds for a Lot to the Seller within **ten** Working Days of the payment for that Lot by the Buyer resulting in cleared funds in the Auctioneers' bank.
- (ii) Monies received from Buyers will be held by the Auctioneers in a separate identifiable Clients' Account.
- (iii) Should there be notification by the Buyer of a defective Lot or Lots pursuant to Clause 16 then the procedure set out in that Clause shall be followed and the sale proceeds dealt with accordingly.
- (iv) Notwithstanding Clause 19(i) in the event of any debt of the Seller being owed to the Auctioneers the latter shall have the right to set off such debt against the sale proceeds.
- (v) Following the sale of any vehicle the Auctioneers shall not pay over the Sale Proceeds to the Seller until the Seller has given to the Auctioneers the V5C registration book for that vehicle a signed declaration that the registration book is lost or a declaration of non-registration or the Buyer confirms that he has now obtained a V5C document for the vehicle.

## **20. Applicable Law**

These Conditions shall be governed by and construed in accordance with the law of England and Wales. All transactions to which these Conditions apply and all connected matters shall also be governed by the law of England and Wales.