

MOODY AUCTIONS LIMITED

Terms and Conditions for the Purchase of Equipment through Auction, Tender or Private Treaty

The Buyer's attention is specifically drawn to clauses 6, 8, 13, 15, and 16

1. GENERAL

The following terms and conditions apply to Buyers offering to purchase Equipment through auction, tender or private treaty and apply to any contract of which these Terms form part to the exclusion of any conditions of order or purchase of the Seller or any other standards, specifications, conditions or particulars of or adopted by the Seller, unless expressly accepted in writing by Moody as part of the contract.

2. INTERPRETATION

2.1 In these Terms, unless the context requires otherwise:

"Affiliated Company" means any company which for the time being is a parent or subsidiary undertaking as defined in the Companies Act 1985 or is a subsidiary of such parent undertaking;

"Auctioneer" means the person duly authorised by Moody to conduct the sale by auction, tender or private treaty;

"Buyer" means the company, firm, body or person which buys the Equipment;

"Buyer's Premium" means the commission due to Moody from the Buyer at the Stated Rate on the Hammer Price together with any Value Added Tax thereon;

"Catalogue" includes any website (www.moodyauctions.com, www.moodybid.com), advertisement, brochure, estimate, price list and other publication;

"Equipment" means the plant and equipment owned by the Seller to be sold at auction or by tender or private treaty by Moody on behalf of the Seller;

"Highest Offer" means the offer from a Buyer which Moody deems to be the best offer and is accepted by Moody on behalf of the Seller;

"Item" means plant and equipment listed for sale;

"Hammer Price" means the price at which an Item is Knocked Down during the auction, or in the case of a sale by tender the price submitted by the Buyer and accepted by the Auctioneer, or in the case of a sale by private treaty the price agreed between Moody and the Buyer;

"Knocked Down" means acceptance by Moody of the best offer which shall be the point at which the Buyer with the best offer enters into a contract with the Seller;

"Legislation" means all statutory acts and regulations including but not limited to the Health and Safety at Work etc Act 1984; The Provision and User of Work Equipment Regulations 1998; Lifting Operations & Lifting Equipment Regulations 1998 (LOLER); Management of Health and Safety at Work Regulations 1999 (Management Regs); Supply of Machinery (Safety) Regulations 1992 (as amended 1994) (SMSR); Electrical Equipment (Safety) Regulations 1994; Electromagnetic Compatibility Regulations 1992; Simple Pressure Vessels (Safety) Regulations 1991 and Gas Appliances (Safety) Regulations 1995;

"Lift-Out Service" means the service provided by Moody to remove items from the Seller's premises to enable the Buyer to collect those items;

"Minimum Reserve Price" means the price agreed between Moody and the Seller as being the reserve price for the Equipment;

"Moody" means Moody Auctions Limited, company number 4055963, whose registered office and contact address is situated at West Carr Road Industrial Estate, Retford, Nottinghamshire, DN22 7SN;

"Seller" means the company, firm, body or person offering the Equipment for sale by auction, tender or private treaty through Moody;

"Stated Rates" means any charges associated with the sale as stated in the Catalogue or as indicated by the Auctioneer or (in the case of a private treaty) as agreed between Moody and the Buyer including but not limited to the Buyer's Premium, rates of commission, expenses and costs relevant to the sale plus Value Added Tax thereon as incurred by Moody;

"Total Amount Due" means the amount due from the Buyer being the Hammer Price in respect of the Item sold together with any Buyer's Premium, Lift Out Service Charge (if applicable), Value Added Tax chargeable and additional charges, interest and expenses due from a defaulting Buyer under any term contained in these Terms in pounds sterling.

2.2 Reference to a clause, paragraph or schedule is to a clause, paragraph or schedule of or to these Terms, unless the context requires otherwise.

2.3 Reference to any gender includes the other genders and words denoting the singular include the plural and vice versa unless the context requires otherwise. Reference to a "person" includes any individual, firm, unincorporated association or body corporate.

2.4 Reference to a statutory provision includes a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it.

2.5 The headings in these Terms are for ease of reference only and shall not affect its construction or interpretation.

3. THE BUYER

The person, firm, body or company whose offer is accepted by Moody shall be the Buyer and any dispute as to any bid shall be settled at Moody's absolute discretion. The Auctioneer may immediately determine the dispute or put up the Item again at the last undisputed bid or withdraw the item.

4. OFFERS AND RESERVES

4.1 The Auctioneer shall have the right to refuse any offer.

4.2 Offers will only be accepted in pounds sterling.

4.3 Moody reserves the right to fix a Minimum Reserved Price for any Item.

4.4 Moody may without giving any reason refuse to accept an offer from any person, firm, body or company.

5. BUYER'S PREMIUM

5.1 The Buyer shall pay to Moody the Buyer's Premium.

6. SAFETY OF PLANT, MACHINERY AND VEHICLES

6.1 It is expressly brought to the Buyer's attention that under current Legislation affecting the safe use of plant, machinery and vehicles (as defined under applicable acts and regulations), Moody and the Auctioneer cannot guarantee that all Equipment sold necessarily complies with the relevant Legislation. Accordingly, the Buyer undertakes not to use any Equipment purchased until satisfied that it complies with the relevant Legislation relating to such Equipment and shall indemnify Moody and the Auctioneer against any failure to observe this undertaking;

6.2 In the case of the sale of vehicles, no vehicle is warranted or held out to be road worthy and no lot is warranted or held out to be merchantable or safe for use or complying with statutory requirements under any Legislation for use, display or movement. Moody or the Auctioneer has no authority to make any warranties and/or representations in connection with the vehicles;

6.3 All Equipment sold is sold as used and is not supplied as new unless the catalogue description clearly states the contrary.

7. COLLECTION, DELIVERY, LIFT-OUT SERVICES AND INSURANCE

7.1 Moody may at their absolute discretion impose a charge for Lift-Out Services for the removal of Items as they see fit. The Lift-Out Services Charge will be clearly displayed against the Item in the Catalogue and once the Item has been Knocked Down will be charged on the Buyer's account. This Lift-Out Service does not include the collection or transportation of Items purchased. The Buyer shall pay Moody the Lift-Out Service Charge prior to title in the Items passing to the Buyer in accordance with these Terms.

7.2 The Buyer shall insure items against damage from the time the items are knocked down.

7.3 In circumstances where Moody proceeds with Lift-Out Services Moody accepts limited liability for damage caused to Items during the Lift-Out Service.

7.4 Subject to the Lift-Out Services, the Buyer shall at his own expense take away the Item purchased.

7.5 In default of 6.4 above the Buyer shall be responsible for any removal and storage costs.

8. PAYMENT BY THE BUYER

8.1 Payment for the Total Amount Due is due to Moody as soon as the Item is Knocked Down and must be made in full within 24 hours. The preferred method of payment is by electronic transfer but payment can also be made by bankers draft, cheque, debit or credit cards (subject to a 3% administration charge). Payments shall be received in pounds sterling and will incorporate VAT at the appropriate rate, and all other applicable taxes, delivery charges and insurance where applicable.

8.2 The Buyer shall if required pay to Moody the notified percentage of the Hammer Price as a deposit on part payment.

8.3 Moody may charge interest on any outstanding payment due at the higher of 4% above the Bank of England base rate or the statutory rate for late payments.

8.4 Moody may, at its absolute discretion, agree to provide credit terms to a Buyer under which the Buyer will be entitled to take possession of items purchased up to any agreed amount in value with payment of the Total Amount Due on a determined future date.

8.5 Any payments by a Buyer to Moody may be applied by Moody towards any sums owing from that Buyer to Moody on any account whatever without regard to any directions of the Buyer, whether express or implied as to how that payment should be applied.

9. OWNERSHIP OF PURCHASE

9.1 The ownership of the Items purchased shall not pass to the Buyer until he has made payment in full (including any interest due) to Moody of the Total Amount Due.

10. WITHDRAWAL OF ITEMS

10.1 Moody may withdraw any item from sale at its own discretion.

11. BUYER'S RESPONSIBILITIES

11.1 All Items shall be at the Buyer's risk once Knocked Down and subject to clause 7 and 13 neither Moody nor its servants or agents shall be responsible for any loss or damage incurred of any kind, whether caused by negligence or otherwise, while under the custody or control of Moody or the Seller.

11.2 Subject to clause 7 the Buyer is responsible for insuring items purchased from the time of the Item being Knocked Down.

11.3 The Buyer is advised to organise insurance to minimise exposure to the risk in 11.1 and 11.2.

12. NON-PAYMENT OR FAILURE TO COLLECT PURCHASES

12.1 If any Item is not paid for in full and taken away in accordance with these Terms, or if there is any other breach by the Buyer of its obligations, Moody as agent for the Seller shall, at its absolute discretion and without prejudice to any other rights it or the Seller may have, be entitled to exercise one or more of the following rights and remedies;

12.2 To proceed against the Buyer for damages for breach of contract which shall include but not be limited to all costs (legal or otherwise), transportation, removal, storage and insurance costs associated with the breach incurred by the Buyer;

12.3 To rescind the sale of that or any other Item sold to the defaulting Buyer;

12.4 To re-sell the Item or cause it to be re-sold and the defaulting Buyer shall pay to Moody any resulting deficiency in the Total Amount Due (after deduction of any part payment and addition of re-sale costs and Moody commission and Buyer's Premium at stated rates) and any surplus shall belong to the Seller;

12.5 To remove, store, and insure the Item(s) at the expense of the defaulting Buyer and in the case of storage, either at the premises of Moody, the Seller or elsewhere;

12.6 To charge interest at a rate not exceeding the higher of 4% above the Bank of England base rate or any statutory rate of interest for late payments on the Total Amount Due to the extent that it remains unpaid;

12.7 To retain that or any other Item(s) of the same Buyer and release any such Item(s) only after payment of the Total Amount Due (including any interest);

12.8 To reject or ignore any future offers made by or on behalf of the defaulting Buyer or to obtain a deposit before accepting any offers in the future;

12.9 To apply any proceeds then due or at any time thereafter becoming due to the defaulting Buyer to the settlement of the Total Amount Due to exercise a lien on any property of the defaulting Buyer which is in the possession of Moody for any purpose and to sell that property;

12.10 To seize any Items or parts thereof which have been removed from Moody, the Seller or any other location;

12.11 Any money deposited in part payment shall be forfeited to the owner of the Item, and may be used to pay out all proper expenses, and the Item may be resold by any appropriate means and the deficiency (if any) arising upon the resale together with the expenses (plus any VAT chargeable thereon) of it shall be due as a debt from the buyer in default upon the first sale.

13. LIABILITY OF MOODY AND SELLERS

13.1 All Items are sold as seen with all faults and imperfections and errors of description. Illustrations and descriptions in Catalogues are for identification only. Any references therein to any faults or imperfections are not purported to be exhaustive. Buyers should satisfy themselves prior to sale as to the condition of each Item and should exercise and rely on their own judgement as to whether the Item accords with its description. Neither the Seller, Moody, its servants or agents are responsible for errors of descriptions or for the genuineness or authenticity of any Item(s) or for any misstatements affecting the Item and no guarantees or warranties whatever is given by Moody, its servants of agents, or any Seller to any Buyer in respect of any Item and any express or implied conditions or warranties are hereby excluded to the fullest extent permitted by law.

13.2 Neither Moody nor the Seller nor the Auctioneer make any representations or warranties, implied or express, as to whether any Item is subject to copyrights, nor whether the Buyer acquires any copyrights including but not limited to reproduction rights, in any Item sold.

13.3 Moody does not exclude liabilities for death or personal injury due to its negligence nor for fraudulent misrepresentations.

13.4 Moody's entire liability to the Buyer shall be as follows:

13.4.1 Financial Limits. Subject to Clause 13.1 and 13.4.2, the liability of Moody for breach of these Terms shall be limited as stated below:

(a) for any breach resulting in direct loss of or damage to tangible property (excluding data and software) of the Buyer, or any series of connected breaches resulting in or contributing to the loss of or damage to the tangible property of the Buyer, shall not exceed £10m;

(b) the aggregate liability of Moody for any breach, in respect of the Lift Out Service and services provided under these Terms, and for all other breaches arising under these Terms other than those governed by Clause 13.4.2(a) above, shall not exceed 100% of the charges paid under these Terms.

13.4.2 Moody shall not be liable to the Buyer for:

(a) loss of profits, or of business, or of revenue, or of goodwill or of anticipated savings; and/or

(b) indirect, punitive or consequential loss or damage.

13.5 The Seller's entire liability to the Buyer shall be as follows:

13.5.1 The Seller does not exclude or limit liability to the Buyer for death or personal injury caused by the Seller's negligence; and

13.5.2 Any claim against the Seller shall be limited to the Total Amount Due by the Buyer.

14. MOODY'S STATUS

Moody acts as agent for the Seller (except where it is stated wholly or partly to own any Item as principal) and as such is not responsible for any default by Seller or Buyer.

15. REPRESENTATIONS AND CATALOGUE DESCRIPTIONS

15.1 Any representation or statement by Moody in any Catalogue as to authorship, attribution, genuineness, origin, date, age, provenance, condition, Minimum Reserve Price or estimated selling price is a statement of opinion only. Every person interested should exercise and rely on his own judgement as to such matters and neither Moody nor its servants or agents are responsible for the correctness or validity of such opinions.

15.2 Buyers shall be deemed to have accepted that warranties or guarantees appearing in the catalogue have been specifically authorised by the Seller, and Moody and the Auctioneer disclaim all liability arising there from in accordance with clause 13 and to the maximum extent permitted by law.

16. HEALTH AND SAFETY AT WORK ACT 1974

16.1 It is expressly brought to the Buyer's attention that at the time of sale any items of Equipment contained in the lot may not necessarily comply with the Health and Safety at Work Act 1974 or any other Legislation governing the use of that Equipment in a working environment.

16.2 A Buyer of any such Equipment is hereunder required to ensure that the use of the same at a place of work within the United Kingdom does not contravene such relevant Legislation applicable thereto;

16.3 Certain types of Equipment or main service installations could contain blue and white asbestos, dangerous chemicals etc, which if not handled correctly during their removal from the site could be in breach of the Health and Safety at Work Act 1974, or any other current Legislation covering the use of such substances in a working environment;

16.4 All buyers must comply with all current Legislation, including the Water Industry Act 1991 in relation to the removal/disposal of waste/trade effluent including hazardous waste and may be required to satisfy Moody in relation to their disposal/removal procedures. Where waste materials are removed all work must be undertaken by an approved and licensed contractor;

16.5 The Buyer undertakes to comply with section 6(8) of the Health and Safety at Work Act 1974 by completing and executing the registration form prior to the auction;

16.6 By providing the undertaking the Buyer hereby relieves the Seller, auctioneers or Moody of their duties under the Legislation and indemnifies them against any cost, damage, legal or other expenses in respect of any claim arising out of such Legislation.

17. RESCISSION BY SELLER

In the event of the Seller after the sale not being able to give a good and sufficient title to or delivery of any Item or part thereof before its removal, or if in the Seller's opinion the removal of any Item will endanger or permanently damage any building or other property, the Seller may by written notice to the Buyer of such Item, deliver to him or his agent or send by post to his place of abode or business last known to Moody, the Seller's rescission of sale of such Item and repay the Buyer any deposit or purchase money paid in respect thereof. Subject to clause 13, Moody excludes all liability to the Buyer in such circumstances.

18. CONFIDENTIALITY

18.1 Each of the parties to these Terms undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other which it has obtained or received as a result of discussions leading up to the entering into of these Terms or which it has obtained during the course of these Terms except any information which is:

18.1.1 trivial or obvious;

18.1.2 already in its possession other than as a result of a breach of this clause 18; or

18.1.3 in the public domain other than as a result of a breach of this clause 18.

18.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this clause 18 by its employees, agents and subcontractors.

19. DURATION AND TERMINATION

19.1 Either party may terminate these Terms immediately by notice to the other party if any of the following events occurs:

19.1.1 that the other party has committed a breach of these Terms which, in the case of a breach capable of remedy, has not been remedied within 30 days of the receipt by the other of such notice specifying the breach and requiring its remedy;

19.1.2 an order is made or a resolution is passed for the winding-up of the other party except in the case of a voluntary winding-up for the purposes of a scheme of reconstruction or amalgamation, the terms of which shall previously have been approved in writing by the other party;

19.1.3 an administrative order is made or a petition for such an order is presented in respect of the other party;

19.1.4 a receiver (which expression shall include an administrative receiver) is appointed in respect of the other party or any of the other party's assets;

19.1.5 the other party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

19.1.6 any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 in respect of the other party;

19.1.7 the other party ceases, or threatens to cease, to carry on business; and

19.1.8 any event analogous to those described in this clause occurs in relation to the other party in any jurisdiction in which that other party is incorporated or resident or carries on business.

19.2 On termination of these Terms for any reason and, subject as otherwise provided in these Terms to any rights or obligations which have accrued before termination, neither party shall have any further obligation to the other under these Terms.

20. FORCE MAJEURE

20.1 Subject to clause 20.2, neither party shall be liable to the other or be deemed to be in breach of these Terms by reason of any delay in performing, or failure to perform, any of its obligations under these Terms if the delay or failure was beyond that party's reasonable control (including, without limitation, any strike, lockout or other industrial action, act of God, war or threat of war, accidental or malicious damage, or prohibition or restriction by governments or other legal authority).

20.2 The Seller shall not be relieved under clause 18.1 in circumstances where the Seller is in breach of clause 13.

20.3 A party claiming to be unable to perform its obligations under these Terms (either on time or at all) in any of the circumstances set out in clause 20.1 must immediately notify the other party of the nature and extent of the circumstances in question.

20.4 This clause 20 shall cease to apply when such circumstances have ceased to have effect on the performance of these Terms.

21. ENTIRE AGREEMENT

21.1 These Terms constitute the entire agreement between the parties in connection with its subject matter.

21.2 No party has relied on any representation or promise except as expressly set out in these Terms.

22. WAIVER OF RIGHTS BASED ON MISREPRESENTATION

22.1 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in these Terms (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.

22.2 Each party unconditionally waives any rights it may have to seek to rescind these Terms on the basis of any statement made by the other (whether made carelessly or not) whether or not such statement is set out or referred to in these Terms unless such statement was made fraudulently.

23. ASSIGNMENT

The Buyer shall not, without the prior written consent of Moody, assign, transfer, charge or deal in any other similar manner with these Terms or its rights or any part of them under these Terms, or purport to do any of the same, nor subcontract any or all of its obligations under these Terms.

24. NO PARTNERSHIP

Nothing in these Terms shall create, or be deemed to create, a partnership between the parties.

25. INVALIDITY

The invalidity, illegality or unenforceability of any provision of these Terms shall not affect the other provisions.

26. AMENDMENT AND WAIVER

26.1 No variation of these Terms shall be effective unless it is made in writing, refers specifically to these Terms and is signed by the parties.

26.2 No waiver of any term, provision or condition of these Terms shall be effective except to the extent made in writing and signed by the waiving party.

26.3 No omission or delay on the part of any party in exercising any right, power or privilege under these Terms shall operate as a waiver by it or of any right to exercise it in future or of any other of its rights under these Terms.

27. THIRD PARTY RIGHTS

A person who is not party to these Terms shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms. This clause does not affect any right or remedy of a Moody Affiliated Company to pursue its rights under these Terms against the Seller or the Seller's agents, representatives, affiliates, employees or any person which exists or is available otherwise than pursuant to that Act.

28. LAW AND JURISDICTION

28.1 These Terms shall be governed by and construed in all respects in accordance with English law.

28.2 The parties submit to the exclusive jurisdiction of the English courts and agree that in respect of proceedings in England or in any other jurisdiction, process may be served on either of them in the manner specified for notices in clause 29.

28.3 The rights set out in this clause 28 are in addition to any other manner of service permitted by law.

29. NOTICES

29.1 Any notice or other communication to be given under these Terms must be in writing and may be delivered or sent by prepaid first class letter post or facsimile transmission to the party to be served at that party's last-known address.

29.2 Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting; and if sent by facsimile transmission, at the time of transmission.

30. SURVIVORSHIP

These Terms shall, as to any of its provisions remaining to be performed in whole or in part or capable of having effect following termination, remain in full force and effect despite termination.



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