

MOODY AUCTIONS LIMITED

Terms and Conditions for the Purchase of Equipment through Auction or Private Treaty The Buyer's attention is specifically drawn to clauses 4.10, 5, 6, 8.2, 9 and 10.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions (conditions).

Affiliate: in relation to a body corporate, any subsidiary or holding company of such body corporate, and any subsidiary of any such holding company for the time being.

Auctioneer: the person duly authorised by Moody to conduct the sale by auction or private treaty.

Buyer: the person, firm or company who buys the Item.

Buyer's Premium: the commission due to Moody by the Buyer at the Stated Rate on the Hammer Price.

Catalogue: includes any website (www.moodybid.com, www.moodyauctions.com), advertisement, brochure, estimate, price list and other publication in connection with an auction or private treaty conducted by Moody for the sale of the Equipment.

Equipment: the plant and equipment owned by the Seller to be sold at auction or by private treaty by Moody on behalf of the Seller and listed for sale in the Catalogue.

Hammer Price: the price at which an Item is Knocked Down during the auction or the price agreed between Moody and the Buyer in a sale by private treaty.

Internet Auction Service: where available, a service operated by Moody (or its nominee contracted to provide the Internet Auction Service) to enable a potential Buyer to attend or view an auction or private treaty and place offers to purchase Items using internet access, live webcast, online bidding, by telephone and/or any analogous format (as the case may be).

Item: an item of Equipment.

Knocked Down: acceptance by Moody of the best offer from a Buyer to purchase an Item.

Legislation: all statutory acts and regulations relating to the use, operation, removal, transportation and disposal of any Equipment including but not limited to the Health and Safety at Work etc Act 1974; Water Industry Act 1991; The Provision and User of Work Equipment Regulations 1998; Lifting Operations & Lifting Equipment Regulations 1998; Management of Health and Safety at Work Regulations 1999; Supply of Machinery (Safety) Regulations 1992 (as amended); Electrical Equipment (Safety) Regulations 1994; Electromagnetic Compatibility Regulations 1992; Simple Pressure Vessels (Safety) Regulations 1991 and Gas Appliances (Safety) Regulations 1995.

Lift-Out Service: the service provided by Moody to remove Item from the Seller's premises to enable the Buyer to collect the Item (which, for the avoidance of doubt, does not include any collection or transportation costs unless otherwise agreed by Moody in writing).

Lift-Out Service Charges: charges payable to Moody by the Buyer for the provision of a Lift-Out Service.

Minimum Reserve Price: the price (if any) agreed between Moody and the Seller as being the reserve price for each Item.

Moody: Moody Auctions Limited (CRN: 4055963) whose registered office is at West Carr Road Industrial Estate, Retford, Nottinghamshire, DN22 7SN.

Seller: the company, firm, body or person offering the Equipment for sale by an auction or private treaty conducted by Moody.

Stated Rates: any charges associated with the sale of the Equipment as stated in the Catalogue or as indicated by Moody and/or the Auctioneer including but not limited to rates of commission, expenses and costs incurred by Moody which are relevant to such sale.

Technical Problems: any problem, error, failure, difficulty, unavailability of service, malfunction, access or other limitation, incompatibility of software, availability of internet connection and/or other act or omission that interrupt or prevent Moody or its nominee from providing an Internet Auction Service.

Total Amount Due: the amount due from the Buyer being the aggregate of the Hammer Price in respect of the Item sold, the Buyer's Premium and any Lift-Out Service Charges (if applicable) plus (in each case) any applicable VAT.

VAT: value added tax chargeable under English law for the time being and any similar tax.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension or re-enactment.

1.3 Words in the singular include the plural and in the plural include the singular.

A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF CONDITIONS

2.1 These conditions apply to any auction or private treaty conducted by Moody on behalf of the Seller (including but not limited to any contract in connection with the Buyer purchasing (and/or offering to purchase) an Item through such auction or private treaty) to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply), standards, specifications or particulars save as otherwise agreed in writing by Moody.

2.2 The issue of any Catalogue and/or attendance at auction or private treaty conducted by Moody on behalf of the Seller is only on the basis that the Buyer (or potential Buyer) accepts and agrees to be bound by these conditions to the exclusion of any other terms or conditions in connection with the Catalogue and conduct of the auction or private treaty.

3. MOODY'S STATUS

3.1 Moody is an agent for the Seller (except where Moody is stated to own, wholly or partly, any Item as principal) and Moody has the authority to prepare the Catalogue from the information supplied by the Seller, offer each Item for sale, sell each Item and receive and hold monies paid by the Buyer in connection with the purchase of an Item.

3.2 The Buyer and the Seller acknowledge that Moody is not responsible or liable for any default by Seller to the Buyer or the Buyer to the Seller

4. OFFERS, RESERVES AND KNOCK DOWN

4.1 Moody may withdraw any Item from sale prior to the Item being Knocked Down.

4.2 Moody reserves the right to place a Minimum Reserve Price on any Item at any time.

4.3 A potential Buyer can attend, and offer to purchase an Item at, an auction or private treaty in person or by using an Internet Auction Service (where available).

4.4 Any and all bids made by a potential Buyer are irrevocable and unconditional.

4.5 The Auctioneer and/or Moody shall have the right to refuse, without giving any reason, any offer from a potential Buyer.

4.6 Any dispute as to any offer shall be settled at Moody's absolute discretion. If requested by Moody, the Auctioneer has the right to determine any dispute with immediate effect and where appropriate, put up the Item again at the last undisputed bid or withdraw the Item.

4.7 Unless otherwise stated in the Catalogue, offers for any Item will only be accepted by Moody and the Auctioneer in pounds sterling.

4.8 At the time the Item is Knocked Down the Buyer enters into a contract with the Seller to purchase that Item (on the relevant terms set out in these conditions).

4.9 Save as otherwise set out in the Catalogue, the Seller undertakes to the Buyer that the owner of the Item, is authorised to sell the Item and the Seller shall sell the Item to the Buyer with full title guarantee.

4.10 In the event that after the sale:

(a) the Seller is not able to give a good and sufficient title to an Item purchased by the Buyer; or

(b) if in the Seller's opinion the removal of an Item will endanger or permanently damage any building, other property or person; or

(c) if the Seller is unable or unwilling to sell the Item for any reason whatsoever (such reason being at the Seller's absolute discretion, the Seller may by written notice to the Buyer rescind the sale of the Item and Moody or the Seller shall repay to the Buyer any and all monies paid by the Buyer to Moody in respect thereof and following payment of such monies Moody and the Seller shall have no further liability to the Buyer in respect of such Item.

5. CONDITION OF EQUIPMENT

5.1 All Equipment is sold as used equipment and is not supplied as new unless otherwise stated in the Catalogue. All Equipment is sold to the Buyer on an 'as is' basis and is sold with all faults, imperfections and errors of description (such faults, imperfections and errors of description are not purported to be exhaustive). No warranty is made as to the condition, quality, suitability, fitness for purpose and capability of an Item.

5.2 Illustrations, descriptions and comments in the Catalogue are for identification purposes only and no warranty is made as to the accuracy or completeness of such illustrations, descriptions and comments. Any comments in the Catalogue in relation to the authorship, attribution, genuineness, origin, date, age, provenance, condition, quality, suitability, fitness for purpose and capability of an Item are statements of opinion only and the Buyer should rely on its own judgement prior to sale in connection with such matters.

5.3 Moody and their agents are not responsible for errors of descriptions (including but not limited to any inaccuracy or any incompleteness) or for the genuineness or authenticity of any Item.

5.4 The Buyer acknowledges that it has not relied on any statement, warranty or representation made by or on behalf of the Seller other than those which are expressly stated in the Catalogue to be a statement, warranty or representation that can be relied on.

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

6. LEGISLATION AND SAFETY

6.1 It is expressly brought to the Buyer's attention that:

(a) the Equipment may not necessarily comply with the Legislation affecting the use, operation, removal, transportation and disposal of any Equipment;

(b) the Seller does not warrant, represent or guarantee that the Equipment complies with the Legislation;

(c) in the case of Equipment which are vehicles, no vehicle is warranted or held out to be road worthy and no Item is warranted or held out to be merchantable or safe for use or complying with any Legislation for use, display or movement and all vehicles are sold as scrap;

(d) certain types of Equipment (or associated main service installation) could contain dangerous and hazardous substances (including but not limited to blue & white asbestos and dangerous chemicals), which if not handled correctly during their removal, use, operation, transportation and disposal could be in breach of the Legislation and (where appropriate) the Buyer undertakes to use an approved and licensed contractor during such removal, transportation and disposal;

(e) the Buyer undertakes not to use, operate, remove, transport and dispose any Item purchased until the Buyer is satisfied that the Item complies with the relevant Legislation;

(f) the Buyer undertakes to comply with all Legislation in connection with the use, operation, removal, transportation and disposal of any Item purchased; and

(g) the Buyer shall fully indemnify Moody and the Seller for any losses, damages, costs and expenses incurred by them due to any failure by the Buyer to observe its obligations and undertakings in this condition.

7. COLLECTION AND LIFT-OUT SERVICES

7.1 On the date that the Item is Knocked Down or the date Moody provides a Lift-Out Service, unless otherwise agreed by Moody in writing, the Buyer shall at its own expense collect (including transportation) the Item from the Seller's premises. In the event that the Item is not collected on the due date, the Buyer shall pay reasonable storage costs in connection with the storage of the Item to Moody.

7.2 A Lift-Out Service may be required to remove an Item. Any Lift-Out Services Charges will be set out in the Catalogue or agreed between Moody and the Buyer.

7.3 The timings and date of any Lift-Out Service provided by Moody are at the absolute discretion of Moody. In the event that the Buyer has a request as to the timing and date of any Lift-Out Services, it shall notify Moody of such request at least 5 Business Days before the auction provided always that the finalisation of the timings and date of any Lift-Out Services provided by Moody are at the absolute discretion of Moody.

7.4 Where Moody provides Lift-Out Services, (where applicable) Moody shall notify the Buyer at least 2 Business Days before the Lift-Out Services are provided of the date and timing of such Lift-Out Services in order that the Buyer can arrange for the collection and transportation of the Item from the Seller's premises.

7.5 In circumstances where Moody provides a Lift-Out Service, subject to conditions 10.4 and 10.5 Moody shall be liable for damage caused to the Item during the Lift-Out Service.

8. RISK AND OWNERSHIP

8.1 Ownership of the Item purchased shall not pass to the Buyer until the Buyer has made payment in full to Moody of the Total Amount Due together with any storage costs, interest, charges and expenses due under these conditions.

8.2 Any Item purchased shall be at the Buyer's risk when the Item is Knocked Down. The Buyer is responsible for insuring any Item purchased from the time that the Item is Knocked Down.

8.3 Subject to conditions 7.3 and 10.5 after the Item has been Knocked Down Moody, the Seller and their agents shall not be responsible for any loss or damage incurred of any kind, whether caused by negligence or otherwise, while the Item is under the custody or control of Moody or the Seller.

9. TOTAL AMOUNT DUE, BUYER'S PREMIUM AND PAYMENT

9.1 The amount payable by the Buyer for the Item shall be the aggregate of the Hammer Price in respect of the Item sold, the Buyer's Premium and any Lift-Out Service Charges (if applicable) plus (in each case) any applicable VAT (being the Total Amount Due).

9.2 The Total Amount Due is payable to Moody immediately after the Item is Knocked Down (unless otherwise agreed in writing by Moody).

9.3 All payment shall be made in pounds sterling and 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).

9.4 Time for payment shall be of the essence and no payment shall be deemed to have been received until Moody has received cleared funds.

9.5 If the Buyer fails to pay the Total Amount Due on the due date for payment, without prejudice to any other right or remedy that the Seller or Moody may have pursuant to condition 9.6 the Buyer shall be liable to pay interest to Moody on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment provided always that Moody reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9.6 If the Buyer is in breach of its obligations under these conditions (including but not limited to condition 9, without prejudice to any other right or remedy that the Seller or Moody shall be entitled to exercise one or more of the following rights:

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

(b) to rescind the sale of that Item and/or any other Item sold to the defaulting Buyer;

(c) to remove, store, and insure the Item at the expense of the defaulting Buyer;

(d) to re-sell the Item or cause it to be re-sold and the defaulting Buyer shall pay to Moody any resulting deficiency between the Total Amount Due and the amount of the sale price relating to the re-sale of the Item together with all properly incurred expenses relating to the re-sale of the Item;

(e) to use any money deposited as part payment for the Item (such monies being forfeited to Moody) to pay out all properly incurred expenses to resell the Item with any excess being

used 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;

(f) to retain that Item and any other Items purchased by the same Buyer and release any such Items only after receipt by Moody of all amounts owing by that Buyer to Moody;

(g) 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;

(h) 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;

(i) to recover and repossess the Item and to that extent the Buyer grants Moody and the Seller (and their agents and employees) an irrevocable licence at any time to enter any premises where the Item is or may be stored in order to recover it.

9.7 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.

9.8 The Buyer shall make all payments due under these conditions in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

10. LIMITATION OF LIABILITY – THE BUYER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

10.1 The following provisions set out the entire liability of Moody and the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions;

(b) any use made by the Buyer of the Item; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with these conditions.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these conditions.

10.3 Nothing in these conditions excludes or limits the liability of Moody and the Seller:

(a) for death or personal injury caused by (as the case may be) Moody’s or the Seller’s negligence;

(b) for any matter which it would be illegal for Moody or the Seller to exclude or attempt to exclude its liability; or

(c) for fraud or fraudulent misrepresentation by (as the case may be) Moody or the Seller.

10.4 Moody shall accept liability to the Buyer in respect of damage to the tangible property of the Buyer resulting from the negligence of Moody or its agents or sub-contractors up to a maximum amount of £10 million for each event or series of connected events.

The Buyer’s attention is in particular drawn to the provisions of conditions 10.5 to 10.7.

10.5 Subject to conditions 10.2 - 10.4 (inclusive):

(a) Moody’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these conditions shall be limited to the aggregate amount of the Buyer’s Premium and the Lift-Out Service Charges (if any); and

(b) Moody shall not be liable to the Buyer for any (i) pure economic loss, (ii) loss of profit, (iii) anticipated savings, (iv) loss of business (v) depletion of goodwill or (vi) similar loss in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these conditions.

10.6 Subject to conditions 10.2 - 10.4 (inclusive):

(a) the Seller’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these conditions shall be limited to the Total Amount Due less the aggregate amount of the Buyer’s Premium and the Lift-Out Service Charges (if any); and

(b) the Seller shall not be liable to the Buyer for any (i) pure economic loss, (ii) loss of profit, (iii) anticipated savings, (iv) loss of business (v) depletion of goodwill or (vi) similar loss in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these conditions.

10.7 A potential Buyer acknowledges and agrees that there may be Technical Problems that interrupt or prevent Moody (or its nominee contracted to provide the Internet Auction Service) from providing an Internet Auction Service (including but not limited to matters occurring during the bidding process for an Item) and a potential Buyer acknowledges and agrees that in the event that there is a Technical Problem Moody (or its nominee contracted to provide the Internet Auction Service) and the Seller shall not be liable to the potential Buyer for any (i) pure economic loss, (ii) loss of profit, (iii) anticipated savings, (iv) loss of business (v) depletion of goodwill or (vi) similar loss in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with a Technical Problem.

11. CONFIDENTIALITY

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

(a) trivial or obvious;

(b) already in its possession other than as a result of a breach of this condition;

(c) in the public domain other than as a result of a breach of this condition; and

(d) as may be required to be disclosed by any law, court order or any governmental or regulatory authority.

11.2 Each of the parties undertakes to the other parties to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this condition 11 by its employees, agents and subcontractors.

12. TERMINATION

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate these conditions immediately on giving notice to the other party if:

(a) the other party fails to pay any amount due under these conditions on the due date for payment;

(b) the other party commits a material breach of any of these conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;

(c) the other party has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party;

(d) the other party suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or 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 so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(e) the other party 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 that other party with one or more other companies or the solvent reconstruction of that other party;

(f) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this condition 12.1; or

(g) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

12.2 On termination of these conditions for any reason the accrued rights and liabilities of the parties as at termination shall not be affected the following conditions shall survive and continue in full force and effect:

(a) condition 10;

(b) condition 11;

(c) condition 12; and

(d) condition 14.

13. FORCE MAJEURE

13.1 No party shall be liable to another party if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes or accidental or malicious damage. A party claiming to be unable to perform its obligations under these conditions (either on time or at all) in any of the circumstances set out in this condition must immediately notify any other party of the nature and extent of the circumstances in question.

14. GENERAL

14.1 These conditions and the Catalogue constitute the whole agreement between the parties in relation to its subject matter and supersede all previous agreements between the parties relating to its subject matter.

14.2 No variation of these conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

14.3 If any provision of these conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the these conditions and the remainder of such provision shall continue in full force and effect.

14.4 Failure or delay by any party in enforcing or partially enforcing any provision of these conditions shall not be construed as a waiver of any of its rights under these conditions.

14.5 Any waiver by any party of any breach of, or any default under, any provision of these conditions by another party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these conditions.

14.6 The Buyer shall not be entitled to assign, transfer or charge these conditions (or part of them) or any right under them without the prior written consent of the Seller and Moody.

14.7 These conditions are made for the benefit of the Seller, the Buyer, the Auctioneer, Moody and any Affiliate of Moody and are not intended to benefit, or be enforceable by, anyone else. Save as otherwise provided in this condition, The Contracts (Rights of Third Parties) Act 1999 shall not apply to these conditions.

14.8 All communications between the parties under these conditions shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax to its registered office or last known fax number and communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

(b) if delivered by hand, on the day of delivery; or

(c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

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

14.10 The formation, existence, construction, performance, validity and all aspects of these conditions shall be governed by English law and the parties submit to the jurisdiction of the English courts.



West Carr Road Industrial Estate, Retford, Nottinghamshire, DN22 7SN, England

Tel: +44 (0)1777 701141 Fax: +44 (0)1777 709086

Email: info@moodyauctions.com Web: www.moodyauctions.com