

# TERMS AND CONDITIONS FOR SALE OF LOTS BY THE AGENT (MARRIOTT VALUERS LIMITED T/A MARRIOTT & CO.) BY TENDER, AUCTION AND PRIVATE TREATY

## 1 THE PARTIES

- (1) The Agent is the person organising the auction, tender or sale by private treaty on behalf of the Seller. The Agent is Marriott Valuers Limited t/a Marriott & Co. and is a company incorporated in England under number 11235026 whose registered office is at 19 East Street, Farnham, Surrey GU9 7SD. The Agent can be contacted by telephone at 01252 712 083 and by email at [sales@marriottco.co.uk](mailto:sales@marriottco.co.uk). The Agent is a member of the Royal Institution of Chartered Surveyors which is based at 12 Great George Street, London, SW1P 3AD. The rules governing the profession can be found at <http://www.rics.org/uk/regulation/>. The Agent's VAT registration number is GB 291447094. For the purpose of these Conditions, the Agent includes any director, employee or appointed person of the Agent.
- (2) The Seller is the person selling the Lots and will be named on the Sale Details. The Seller may be the owner, an agent for the owner, or an insolvency practitioner acting on an insolvency proceeding relating to the owner of the Lots. The Sale Details will specify if the Seller is an insolvency practitioner. Unless expressly stated in the Sale Details the Agent is selling as agent and not on his own behalf.
- (3) The Buyer is any person (i) requesting, receiving or viewing the Sale Details, (ii) visiting any Sale Site, (iii) bidding in the auction, submitting a tender, or making a private treaty offer, and, also, (iv) the person whose offer is accepted by the Seller. A Buyer will be assumed to be acting for himself unless his capacity as an agent for another person has been notified to the Agent in writing with confirmation of the name, address and contact details of the person for whom he is acting. The Buyer may be required to supply identification including name, address, date of birth and details of all company shareholders with more than a 25% shareholding.

## 2 INTERPRETATION

- 2.1 Definitions. In these Conditions, the following definitions apply:
  - Auctioneer:** the Agent or a person appointed by the Agent to run an auction.
  - Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
  - Collection Deadline:** the date and time specified in the Sale Details by which the Buyer must have collected the Lots.
  - Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 20.5.
  - Contract:** the contract between the Seller and the Buyer for the sale and purchase of the Lots in accordance with these Conditions.
  - Force Majeure Event:** has the meaning given in clause 17.
  - Lots:** the goods, vehicles, plant, machinery, computers or intangible items set out in the Sale Details and **Lot** means any individual item or list of items set out in the Sale Details.
  - Sale Details:** means the list of Lots for sale in a specific sale by private treaty or auction or tender process prepared by the Agent and available by hard copy or online.
  - Sale Site:** means any site where the Lots are located and available for viewing and the premises or site where any auction sale is held.
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to one gender shall include a reference to the other genders.
- 2.4 A reference to a party includes its personal representatives, successors or permitted assigns.
- 2.5 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 2.6 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.7 A reference to writing or written includes faxes and e-mails.

## 3 BASIS OF CONTRACT

- 3.1 These Conditions apply to govern the process leading to and the process of the auction, tender or private treaty sale and the sale of the Lots themselves, including the viewing of the Lots. These Conditions apply to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which would otherwise be implied by trade, custom, practice or course of dealing.
- 3.2 Where the Sale Details are made available online, or where the auction or tender is carried out online, the Terms of Website Use, Website Acceptable Use Policy and Privacy Policy which are set out on the Website apply in addition to these Conditions.
- 3.3 The Sale Details and these Conditions constitute the entire agreement between the parties except where the sale is conducted or bids are taken online in which case the Terms of Website Use, Website Acceptable Use Policy and Privacy Policy shown on the Website on the day of the sale apply in addition. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Agent which is not set out in the Sale Details or set out in writing and signed by the Agent.

- 3.4 Where Lots are sold on the instruction of an insolvency practitioner advising, or appointed to, a Seller, the insolvency practitioner acts solely as agent for the Seller and shall be under no personal liability whatsoever in respect of the sale.
- 3.5 All Buyers must be over the age of 18 to bid for any Lot.
- 3.6 Where the Buyer is represented by an agent, the agent undertakes that if the Buyer does not complete on the purchase of any Lot, the agent will be personally liable to purchase the Lot and to indemnify the Agent and the Seller against any costs, losses or expenses incurred by the Buyer's default.

## 4 ELIGIBILITY OF BUYERS

- 4.1 The Agent does not intend to offer any Lots for sale to consumers.
- 4.2 By registering with the Agent to bid at the Agent's sales, the Buyer acknowledges that the Buyer is buying in the course of the Buyer's business or trade for business use.

## 5 LOTS

- 5.1 Unless otherwise specified in the Sale Details the Seller is the owner of the Lots sold by him and has full legal and beneficial ownership.
- 5.2 No warranty as to title is given in respect of any Lots where the Seller is subject to any insolvency procedure and the Lots are sold on the instruction of an insolvency practitioner. In such case the Seller sells such right, title and interest as it has. Any claim made in relation to such Lots after the sale by any person claiming title to that Lot will be the responsibility of the Buyer. The Buyer acknowledges that the price that it pays for the Lot will reflect the lack of certainty of title, and that no adjustment to the price paid for that Lot, nor any right to make any other claim will arise against the Seller (including any insolvency practitioner acting for the Seller) or the Agent.
- 5.3 Unless otherwise specified in the Sale Details the Lots are not new and will have been previously owned and used. They are likely to show signs of age, wear and tear and may have faults and imperfections. Unless otherwise specified in the Sale Details Lots have not been tested for operation, condition or safety.
- 5.4 IMPORTANT NOTICE IN THE CASE OF PLANT AND MACHINERY – Lots may not comply with relevant health and safety legislation or rules relating to that type of plant, machinery or equipment. The Buyer undertakes that he will ensure that all Lots purchased by the Buyer will be:
  - 5.4.1 transported, stored, commissioned, tested, maintained and used in accordance with instructions for safe use and all relevant statutes, rules and regulations governing the use of those Lots, including the safe handling and disposal of any oils, lubricants, fluids or other chemicals; or
  - 5.4.2 be used in accordance with all relevant statutes, rules and regulations solely for dismantling for scrap or spare parts;No warranty is given that any Lot will be able to pass any tests or be capable of meeting any relevant statutes, rules and regulations.
- 5.5 IMPORTANT NOTICE IN THE CASE OF MOTOR VEHICLES – Motor vehicles are not warranted as being roadworthy. Where available, motor vehicles will be sold with a current MOT test certificate but the MOT certificate is only a statement that the motor vehicle complied with legal requirements on the date of the test. A current MOT test certificate does not confirm that a motor vehicle is roadworthy at the date of sale. Odometer readings are not verified and are not warranted. The Buyer undertakes that he will ensure that:
  - 5.5.1 all Lots purchased by the Buyer will be transported, stored, commissioned, tested, maintained and used in accordance with instructions for safe use and all relevant statutes, rules and regulations governing the use of those Lots;
  - 5.5.2 before use on any public road any Lots purchased will comply with all legal requirements as to roadworthiness, construction and use;
  - 5.5.3 he obtains all certificates, permits, licences or authorisation necessary before any Lots can be used on any road;
  - 5.5.4 he will ensure the safe handling and disposal of any oils, lubricants, fluids, chemicals or waste in accordance with all current legislation, rules and regulations.
  - 5.5.5 all Lots not meeting the terms set out in 5.5.1 and 5.5.2 will be used in accordance with all relevant statutes, rules and regulations solely for dismantling for scrap or spare parts.
- 5.6 IMPORTANT NOTICE IN THE CASE OF COMPUTER EQUIPMENT – Unless otherwise specified in the Sale Details, computers are sold without operating systems or software of any description. The Buyer undertakes to ensure that any computer systems are used only with properly licensed software. The Buyer undertakes that it will not use, copy or release to any person, and will ensure secure deletion of, any data found on any computer or computer media purchased, and immediately advise the Seller or Agent that data was found. The Buyer agrees to indemnify the Agent and the Seller against any claims made relating to misuse of data caused by the act of the Buyer.
- 5.7 The description given for each Lot is intended to give a general description of the Lot to enable a Buyer to decide if it wishes to view the Lot. Sale by the Agent or the Seller to the Buyer is not a sale by description. The Buyer must inspect all Lots to satisfy itself that the Lots match the description in the Sale Details and are suitable for the purpose for which the Buyer wishes to purchase the Lots. The Buyer should not assume that any Lots are fit for a purpose merely because Lots of that type are normally used for that purpose. Lots may have been used or adapted by the Seller for other purposes which may affect future use of those Lots.
- 5.8 Whilst every care has been taken in the preparation of any advertisement brochure and other publication, they are necessarily statements of opinion and must not be relied upon as statements of fact. The images of the Lots in the Sale Details are for illustrative purposes

- only. The Agent cannot guarantee that the colours shown on the Buyer's computer screen or appearing in the printed Sale Details accurately reflect the colour of the Lots. Neither the Seller nor the Agent is responsible for the correctness of any description of any Lots.
- 5.9 No employee of the Seller or director, employee or appointed person of the Agent has authority to make any statements, warranties or representations about any Lot unless the same is confirmed in writing signed by the Agent or a director of, or insolvency practitioner appointed to, the Seller.
- 5.10 Unless stated in the Sale Details to be new, all Lots sold are used, pre-owned or second-hand and are sold as seen. There are no manufacturer's warranties or guarantees with any Lot unless expressly stated in the Sale Details.
- 5.11 **IMPORTANT NOTICE – EXCLUDED ASSETS** – Unless expressly stated otherwise in the Sale Details, the Seller is selling only the listed Lots and is not selling any right, title or interest in, or to, its books of account, purchase and sale records, orders or any other books or records of any type, whether digital or hard copy, kept or used by the Seller in relation to its business or any part of it.

## 6 SALE SITES

- 6.1 Lots may be offered for sale at the Seller's premises, the site where the Lots are being used, or at premises hired or made available for the purposes of the sale. Whilst all sites may have dangers, construction sites and industrial premises have particular hazards and Buyers must take care.
- 6.2 The Buyer is responsible for his own safety and for ensuring the safety of all persons accompanying or acting on behalf of the Buyer. The Buyer and those accompanying the Buyer must observe all safety notices, rules and regulations relating to the Sale Site. The Buyer is responsible for ensuring that all persons accompanying the Buyer comply with all safety notices, rules and regulations. In particular, children under the age of 16 are not allowed on any Sale Site, unless the Buyer completes and signs a disclaimer, which will be available at the entrance to the Sale Site. The Buyer must ensure that any children remain with the Buyer at all times. The Agent reserves the right to refuse entry to any children, or to require a Buyer with accompanying children to leave a Sale Site immediately.
- 6.3 The Buyer shall refrain from, and shall ensure those accompanying him or acting on his behalf refrain from, conduct that may cause a nuisance to the Seller, the Agent, the occupiers and neighbours of any Sale Site and other buyers visiting the Sale Site. The Agent reserves the right to refuse entry to a Buyer, or to require a Buyer to leave a Sale Site immediately if his conduct or that of those accompanying him is not satisfactory to the Agent.
- 6.4 The Buyer shall be responsible for any damage caused to the Sale Site or the Lots by the Buyer or any person accompanying or acting on behalf of the Buyer.

## 7 SALE PROCESS – PRIVATE TREATY OR TENDER

- 7.1 Where the sale is by private treaty or tender, the Buyer shall:
- 7.1.1 provide any documentary evidence of identity as is required by the Agent;
  - 7.1.2 view the Lots;
  - 7.1.3 submit his offer or place bids to the Agent in writing, or by such other manner as is specified by the Agent.
- 7.2 The Agent will review all offers with the Seller and will accept the offer specified by the Seller. The Agent will notify the successful Buyer in writing. The Seller is not obliged to accept any offer and may withdraw any Lot from sale before or during the sale process. The Seller is not obliged to accept the highest offer or the latest and may choose a lower offer or one made earlier in the sale process. The Agent has no authority to accept any offer without the approval of the Seller.
- 7.3 Each offer submitted by a Buyer is an offer available for acceptance by the Seller or the Agent on the Seller's behalf. Acceptance will take place when the Agent sends a notice to the successful Buyer that his offer has been accepted. At that point the Buyer is legally bound to purchase the Lot.

## 8 SALE PROCESS – PUBLIC OR ONLINE AUCTION

- 8.1 The Auctioneer may divide, combine or withdraw any Lot during the sale process.
- 8.2 To take part in a public auction a Buyer shall register with the Agent providing such information as is requested. A Buyer shall submit bids by raising his hand or other identification in such manner as is specified by the Agent, or indicated by the Auctioneer at the sale.
- 8.3 To take part in an online auction, a Buyer shall register at [www.auction.marriottco.co.uk](http://www.auction.marriottco.co.uk) and provide such information as is requested by the Agent at any time. Once the Buyer has viewed the Lots or taken such other steps as the Buyer wishes to inspect the Lots the Buyer shall place bids online through the Agent's website. The Buyer is reminded that the sale takes place by use of computer software operated by the Agent and supplied by a third party, and through use of the Buyer's computer and the internet. The Agent cannot guarantee that the software will work without error or interruption, and has no control over the internet or the Buyer's method of access. The Buyer should not assume that an offer has been received unless it has been acknowledged.
- 8.4 The Auctioneer is entitled to refuse to accept a bid made at the auction or to refuse all bids from a specified Buyer.
- 8.5 The Auctioneer is entitled to set the increments by which bids must increase and to refuse to accept bids falling below those increments.
- 8.6 Lots may be subject to a reserve the level of which will be available upon request. Where a reserve has been fixed the Auctioneer shall be entitled to bid on behalf of the Seller up to that reserve.

- 8.7 The Auctioneer has no liability for any bids which are not seen or received by the Auctioneer for any reason prior to the fall of the hammer. It is the responsibility of the Buyer to ensure that his bid is brought to the attention of the Auctioneer.
- 8.8 The Seller is entitled to bid at the auction either himself or through an agent but cannot bid himself or by an agent if a reserve has been fixed.
- 8.9 The fall of the hammer will constitute acceptance of the offer made by the Buyer and will create a binding contract for the purchase of that Lot by the Buyer at the hammer price. At an online auction, the fall of the hammer will be signified by reaching the end of the period during which bids for the Lots may be made (provided the reserve has been met).
- 8.10 In the event of any dispute about the bidding process a Buyer shall notify the Auctioneer immediately after the fall of the hammer, before bidding commences on the next Lot. The Auctioneer may confirm the sale or offer the Lot for sale again immediately. The Auctioneer's decision will be final.

## 9 SALE PROCESS – ONLINE TENDER

- 9.1 To take part in an online tender the Buyer shall register at [www.marriottco-auctions.co.uk](http://www.marriottco-auctions.co.uk) and provide any documentary evidence of identity as required by the Agent online or subsequently. Once the Buyer has viewed the Lots or taken such other steps as the Buyer wishes to inspect the Lots the Buyer shall place bids online through the Agent's website. The Buyer is reminded that the sale takes place by use of computer software operated by the Agent and supplied by a third party, and through use of the Buyer's computer and the internet. The Agent cannot guarantee that the software will work without error or interruption, and has no control over the internet or the Buyer's method of access. The Buyer should not assume that an offer has been received unless it has been acknowledged.
- 9.2 The Agent may review offers with the Seller and in those circumstances will accept the offer specified by the Seller. The Agent will notify the successful Buyer in writing. The Seller is not obliged to accept any offer and may withdraw any Lot from sale before or during the sale process. The Seller is not obliged to accept the highest offer or the latest and may choose a lower offer or one made earlier in the sale process.
- 9.3 Each offer submitted by a Buyer is an offer available for acceptance by the Seller or the Agent on the Seller's behalf. Acceptance will take place when the Agent sends a notice to the successful Buyer that his offer has been accepted. At that point the Buyer is legally bound to purchase the Lot.

## 10 PRICE AND PAYMENT

- 10.1 The price of each Lot shall be:
- 10.1.1 the price offered by the Buyer and accepted by the Seller in a sale by tender or private treaty including online tender; or
  - 10.1.2 the price offered by the Buyer at the fall of the hammer in a sale by public or online auction; and
  - 10.1.3 in all cases, unless otherwise specified in relation to that Lot on the Sale Details, subject to a buyer's premium of 15%.
- 10.2 The price of the Lots is exclusive of the costs and charges of packaging, insurance and transport of the Lots, which shall be the responsibility of the Buyer.
- 10.3 The price of the Lots is exclusive of any value added tax (VAT) payable. The Buyer shall pay to the Agent such additional amounts in respect of VAT as are chargeable on the sale price of the Lots and the buyer's premium.
- 10.4 The Agent shall be entitled to require the Buyer to pay a deposit with or immediately after acceptance of any offer made by the Buyer. If the Buyer fails to pay the deposit the Agent shall be entitled, but not required, to rescind the contract and offer the Lot for resale. A deposit will be received by the Agent as agent for the Seller and not as stakeholder. Interest will not be paid on any deposit, unless the money is held for more than one month and the Buyer is unable to complete due to default on the part of the Seller or the Agent. Where payable, interest will be paid at the rate obtained by the Agent on those funds, less all costs incurred in calculating and paying the interest.
- 10.5 Unless otherwise agreed by the Agent in writing, the Buyer shall pay the invoice in full and in cleared funds by 4pm on the Business Day following the date of notification from the Agent that its offer has been accepted. Payment shall be made to the bank account nominated in writing by the Agent. Time of payment is of the essence.
- 10.6 If the Buyer fails to make any payment due to the Agent by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 6% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 10.7 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Agent may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Agent to the Buyer.
- 10.8 If the Buyer fails to make payment of all amounts due by the due time and date, the Buyer shall be deemed to have instructed the Agent, at the absolute discretion of the Agent to:
- 10.8.1 resell all Lots for which the Buyer has failed to pay in full; or
  - 10.8.2 leave the Lot at the Sale Site and notify any person of the details of the Buyer. Any resale shall be by whatever means the Agent deems suitable for the sale of that Lot. If the resale price, after deducting all storage costs, transportation and moving costs, and all expenses of the sale including the Agent's time costs at its current charge-out rates:
  - 10.8.3 is greater than the sums due from the Buyer, the Agent will account to the Buyer for the excess;

- 10.8.4 is less than the sums due from the Buyer, the Buyer shall pay to the Agent a sum equal to the shortfall.
- 10.9 For the purpose of clause 10.8 in the event that the Buyer is already in possession of the Lots, then the Buyer agrees that the Agent, without limiting any other right or remedy the Agent may have, may at any time require the Buyer to deliver up the Lots and if the Buyer fails to deliver up the Lots promptly, then the Buyer authorises the Agent to enter any premises of the Buyer or of any third party where the Lots are stored in order to recover the Lots. The costs incurred in recovering the Lots from the Buyer shall be paid by the Buyer as set out in clause 10.8.
- 11 LIEN**
- 11.1 The Agent shall have a lien over each Lot which is in the possession or control of the Agent until all sums due to the Agent or Seller in relation to that Lot have been paid in full by the Buyer.
- 11.2 The Agent's lien shall be exercisable against any deposit received by the Agent from a Buyer.
- 12 COLLECTION OF LOTS**
- 12.1 The Agent will not release any Lots until payment in full has been received by the Agent.
- 12.2 The Buyer shall collect the Lots promptly by appointment and by the Collection Deadline specified in the Sale Details from the Sale Site or from such other location as may be advised by the Agent to the Buyer.
- 12.3 In accordance with the Health & Safety at Work Regulations and Construction Design & Management Regulations, the Buyer may be required to provide a removal "Method Statement" and/or "Risk Assessment" for approval by the Seller and/or the Agent prior to the removal of any Lots. The Buyer undertakes to comply with any agreed Method Statement during the removal process, and the Agent reserves the right to stop the removal process if the Agent deems the removal process is being carried out in an unsatisfactory manner. The Buyer is responsible for all work required to disconnect any Lot which is connected to any supply services, another Lot, or the land and/or buildings in any way, and all such work must be carried out by suitably qualified persons. The Buyer is responsible for the removal from the Sale Site of any fluids and/or waste in and around the Lot(s) and shall carry out the removal strictly in accordance with all current legislation, rules and regulations governing those fluids or waste. The Buyer hereby indemnifies the Agent and (where appropriate) the Seller against any costs, damage, claims and other liabilities arising from any breach by the Buyer of such legislation, rules or regulations.
- 12.4 The Buyer shall take all due care during collection of any Lots, and will be responsible for any damage caused to the Sale Site or other location from which the Lot is collected. Where Lots are fixed to land and/or buildings, the Buyer shall detach such Lot safely and lawfully without the use of flame cutters, explosives or any other dangerous equipment or processes (unless with the express written permission of the Agent given expressly in relation to that removal). Save to the extent that the Buyer shall make good, with the consent and approval of the Agent or the Seller, any damage to the land and/or buildings the Buyer hereby indemnifies the Agent and (where appropriate) the Seller against any costs, damage, claims and other liabilities arising from such damage.
- 12.5 The Agent may require the Buyer to pay a deposit prior to collection of any Lot to cover any possible damage to the Sale Site or other location, and the deposit shall be returned to the Buyer within 3 working days of the Buyer collecting the Lots without damage to the Sale Site or other location.
- 12.6 If the Buyer has paid for but fails to collect the Lots by the Collection Deadline specified in the Sale Details then, except where such failure or delay is caused by a Force Majeure Event or the Agent's failure to comply with its obligations under the Contract:
- 12.6.1 collection of the Lots shall be deemed to have been completed by close of business (5pm UK time) on the day of the Collection Deadline; and
- 12.6.2 the Agent may store the Lots until collection takes place, or a sale occurs pursuant to clause 12.7 below, or scrap the lots, and charge the Buyer for all related costs and expenses (including rent and insurance from the Collection Deadline); or
- 12.6.3 the Agent may leave the Lot at the Sale Site and notify any person of the details of the Buyer.
- 12.7 If the Buyer has not collected the Lots by the Collection Deadline, the Agent may resell or otherwise dispose of part or all of the Lots or leave them on the Sale Site at the risk of the Buyer. All Lots resold or disposed of will be subject to the Agent's normal charges for disposal of goods similar to that Lot, including any commission-based fees. Where the Buyer had paid for the Lots but had not taken delivery the Agent will deduct the storage and selling costs and account to the Buyer for the balance of the price achieved on resale or disposal (excluding VAT which will have been accounted for on the sale of the Lots and will not be recoverable) of the Lots. Where the Buyer had not paid for the Lots the Buyer shall be liable to pay the original sale price, buyer's premium and VAT together with the additional costs of the resale or disposal, but shall receive credit for the sale price achieved on the resale or disposal (excluding any buyer's premium and VAT chargeable on the resale or disposal).
- 13 WARRANTIES, TITLE AND RISK**
- 13.1 The Buyer is reminded that it is the obligation of the Buyer to inspect all Lots for which it wishes to bid to make sure that they are suitable for the purposes for which the Buyer wishes to use them. Accordingly, all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.2 The risk in the Lots shall pass to the Buyer upon acceptance of the offer or the fall of the hammer in accordance with clause 7.3 or 8.7 as appropriate.
- 13.3 Title to the Lots purchased shall not pass to the Buyer until the Agent has received payment in full (in cleared funds) for:
- 13.3.1 the Lots; and
- 13.3.2 any other services that the Agent or Seller has supplied to the Buyer;
- 13.3.3 any other monies due to the Agent or the Seller from the Buyer.
- 13.4 Until title to the Lots has passed to the Buyer, the Buyer shall:
- 13.4.1 hold the Lots on a fiduciary basis as the Seller's bailee;
- 13.4.2 store the Lots separately from all other similar items held by the Buyer so that they remain readily identifiable as the Seller's property;
- 13.4.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Lots;
- 13.4.4 maintain the Lots in satisfactory condition and keep them insured against all risks for their full price from the date of Sale;
- 13.4.5 notify the Agent immediately if the Buyer becomes subject to any of the events listed in clauses 15.1.1 to 15.1.12 inclusive; and
- 13.4.6 give the Agent such information relating to the Lots as the Agent may require from time to time,
- but, subject to complying with clause 5.4, 5.5 or 5.6 as appropriate the Buyer may use the Lots in the ordinary course of its business.
- 13.5 If before title to the Lots passes to the Buyer the Buyer becomes subject to any of the events listed in clauses 15.1.1 to 15.1.12 inclusive, or the Agent reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then without limiting any other right or remedy the Agent may have, the Agent may at any time require the Buyer to deliver up the Lots and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Lots are stored in order to recover them.
- 14 BOOKS AND RECORDS, DATABASES AND INTANGIBLE ASSETS**
- 14.1 IMPORTANT NOTICE – SELLER'S BOOKS AND RECORDS – If the Buyer is given access to or possession of any of the books or records referred to in clause 5.11 above, the Buyer shall hold them to the order of the Seller or its Agent and shall, on demand in writing by the Seller or its Agent, return them to the Seller or its Agent promptly or, at the choice of the Seller or its Agent, provide them with all access that they require, including facilities to copy the same. Whilst it holds such books and records, the Buyer shall keep them safe and secure and ensure that they remain confidential.
- 14.2 IMPORTANT NOTICE IN THE CASE OF TRANSFER OF ANY DATABASE – If the Buyer receives from the Seller by any means any database containing personal information the following provisions will apply:
- 14.2.1 the Seller gives no warranty as to ownership of the database or the information contained in it;
- 14.2.2 the Seller gives no warranty that it has complied with the requirements of any relevant data protection legislation;
- 14.2.3 the Buyer, by making an offer for the database or any equipment on which the database is contained, warrants that it requires the information for the purpose of using the Lots which it purchases and that it is registered under all relevant data protection legislation;
- 14.2.4 the Buyer warrants that it will comply with all relevant data protection legislation applying to the transfer of the database and that it will seek the consent of every person on the database to the transfer;
- 14.2.5 the Buyer warrants that it will delete all personal information contained on any database for those people who do not consent, or if so requested any person on the database;
- 14.2.6 the Buyer hereby indemnifies the Seller and the Agent against any claims, losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Seller or the Agent arising out of or in connection with the processing of the any data on the database except to the extent that the claims against the Seller have arisen out of or in connection with any negligence or wilful default of the Seller.
- 14.3 IMPORTANT NOTICE – INTANGIBLE ASSETS – Where any Lot comprises, or includes, any intangible asset, such as, but not limited to, goodwill, a database, website, domain name, telephone or facsimile number, the Buyer will be responsible for taking all steps necessary at the Buyer's cost to complete the transfer of the relevant Lot. The Buyer shall be responsible for all costs related to the transfer, including any fees or professional or other costs. The Buyer shall deliver or procure the delivery to, and collection from, the Seller of all documentation that requires signature by the Seller.
- 14.4 If the Seller requires legal advice on any documents produced by the Buyer the Buyer shall be responsible for meeting all legal costs incurred by the Seller.
- 15 INSOLVENCY OF THE BUYER**
- 15.1 For the purposes of clauses 13.4.5 and 13.5, the relevant events are:
- 15.1.1 the Buyer 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) 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;
- 15.1.2 the Buyer 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 (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

- 15.1.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- 15.1.4 (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- 15.1.5 a creditor or encumbrancer of the Buyer 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 its assets and such attachment or process is not discharged within 14 days;
- 15.1.6 (being a company) 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 Buyer;
- 15.1.7 (being a company) the holder of a qualifying charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- 15.1.8 a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- 15.1.9 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
- 15.1.10 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 15.1.11 the Buyer's financial position deteriorates to such an extent that in the Agent's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 15.1.12 (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## 16 STATUTORY PROVISIONS AND LIMITATION OF LIABILITY

- 16.1 For the purposes of section 12 of the Sale of Goods Act 1979 (SGA) or section 2 of the Supply of Goods and Services Act 1982 (SGSA):
  - 16.1.1 where the Seller is in some form of insolvency procedure and the sale is arranged by an insolvency practitioner appointed to, or assisting, a Seller, section 12(3) of the SGA or section 2(3) of the SGSA shall apply as appropriate and title is limited to such right, title and interest as is held by the Seller;
  - 16.1.2 where specified in the Sale Details, section 12(3) of the SGA or section 2(3) of the SGSA as appropriate shall apply and title is limited to such right, title and interest as is held by the Seller;
  - 16.1.3 the Agent acts only as agent of the Seller and gives no condition or warranty.
- 16.2 Nothing in these Conditions shall limit or exclude the Agent's liability for:
  - 16.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 16.2.2 fraud or fraudulent misrepresentation;
  - 16.2.3 any matter in respect of which it would be unlawful for the Agent to exclude or restrict liability.
- 16.3 Nothing in these Conditions shall limit or exclude the Seller's liability for:
  - 16.3.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 16.3.2 fraud or fraudulent misrepresentation;
  - 16.3.3 defective products under the Consumer Protection Act 1987; or
  - 16.3.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 16.4 Any offer made by a Buyer is made on the basis that the Buyer has been able to inspect the Lot for which it makes an offer, and makes its own decision whether that Lot is suitable for the Buyer or for its intended purpose. Accordingly, but subject to clause 16.2 and 16.3, neither the Agent nor the Seller shall be liable for:
  - 16.4.1 loss of profits; or
  - 16.4.2 loss of business; or
  - 16.4.3 depletion of goodwill and/or similar losses; or
  - 16.4.4 loss of anticipated savings; or
  - 16.4.5 loss of goods; or
  - 16.4.6 loss of contract; or
  - 16.4.7 loss of use; or
  - 16.4.8 damages, fines, penalties or charges of any type levied on the Buyer by any regulatory body; or
  - 16.4.9 any special, indirect, consequential or pure economic loss, costs, damages, goodwill payments, charges or expenses.
- 16.5 The Agent'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 this agreement shall be limited to the amount of the buyer's premium paid by the Buyer under clause 10.1.3 in relation to the Lot in respect of which the claim arises and any other sums paid to the Agent for services supplied by the Agent.
- 16.6 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 this agreement shall be limited to the purchase price paid by the Buyer for the Lot in relation to which the claim arises.

## 17 FORCE MAJEURE

- 17.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination (but not including any such contamination for which the Buyer is responsible under clause 5.4.1 or 5.5.1), sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Agents or subcontractors.

## 18 ASSIGNMENT AND OTHER DEALINGS

- 18.1 The Agent may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 18.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement without the prior written consent of the Agent.

## 19 NOTICES

- 19.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 19.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.1; if sent by pre-paid first class post or other next working day delivery service, at 12 noon on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 19.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 20 GENERAL

- 20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement.
- 20.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.3 A waiver of any right or remedy under this agreement or under the law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.4 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 20.5 Except as set out in these Conditions, no variation of this agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Agent. The Agent shall be entitled to vary these Conditions at any time. The version of the Conditions current at the time that a Buyer requests Sale Details, registers or submits a bid, tender or offer will apply to all dealings on those Sale Details.
- 20.6 These Conditions and any dispute or claim arising out of or in connection with them or their subject matter or the formation of any agreement under these Conditions (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).