

MALCOLM HARRISON AUCTIONS LIMITED
CONDITIONS OF BUSINESS FOR THE PURCHASE OF GOODS AT AUCTION

1. DEFINITIONS

In these conditions the following words have the following meanings unless the context requires otherwise.

"Auction" means a sale at which MHA acting as agent for the Vendor offers for sale and/or sells the Goods submitted by the Vendor as Lots free from all encumbrances to the Bidders; means the catalogue/brochure/online list of Goods available for purchase at the Auction;

"Auction Listing" means the individual conducting the Auction for and on behalf of MHA;

"Auctioneer" means the person bidding on a Lot offered by the auctioneer at Auction either in their own capacity or on behalf of another individual, company, partnership or other body corporate or unincorporated;

"Bidder" means the person, partnership, company or other organisation that is the Bidder or represented by the Bidder with the highest bid if such bid is accepted by the Auctioneer at the fall of the hammer at Auction or acceptance by the Vendor of a Provisional Bid;

"Contract" means any contract between the MHA and the Buyer incorporating these conditions for the sale of Lots;

"Entry Form" means the documentation completed by the Vendor for the submission of Goods as Lots for sale in a forthcoming Auction;

"Goods" means the items that form Lots in whole or in part described in the Auction Listing as submitted by the Vendor for entry as a Lot at Auction;

"Intellectual Property" means any patent, copyright, registered design, unregistered design right, trade mark or other intellectual property in relation to the Goods;

"Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

"Lot" means any Goods either separately or collectively that are offered as a Lot for sale at Auction;

"Hammer Price" means in relation to any Lots, the bid accepted by the Auctioneer and paid by the Buyer to MHA as the selling agent for the Vendor;

"MHA" means Malcolm Harrison Auctions Limited, a company incorporated and registered in England and Wales with company number 05032824 whose registered office is Tadgedale Quarry, Mucklestone Road, Loggerheads, Market Drayton, Shropshire TF9 4DU;

"Provisional Bid" means the highest bid made by a Bidder which has not met the Reserve Price stipulated by the Vendor on the entry form;

"Reserve Price" means the lowest price that a Vendor is prepared to sell a Lot for;

"Service Charge" means the sum payable to MHA per Lot in relation to the Auction pursuant to clause 7.9;

"Vendor" means the individual, company or organisation corporate or unincorporated that has engaged MHA to act as selling agent to facilitate the sale of Goods on behalf of the Vendor.

"Working Days" means any day that MHA is open for business excluding Sundays and bank holidays.

2. BASIS OF CONTRACT

2.1 These conditions shall govern the agreement between MHA and the Buyer and/or Bidder to the exclusion of any other terms and conditions. By participating in the Auction the Buyer accepts these conditions shall govern the agreement between MHA and the Buyer.

2.2 Purchases made by the Buyer leading to a contract which is not expressed to be subject to these conditions shall still be subject to them.

2.3 These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Buyer and/or Bidder.

2.4 No variation to these conditions shall be binding on MHA unless agreed in writing between the Buyer and/or Bidder and an authorised representative of MHA.

2.5 MHA, its employees, sub-contractors and/or agents make no representations or warranties concerning the Lots and any Lots sold at Auction are sold as seen.

2.6 The Buyer acknowledges that MHA does make any representation and/or warranty in relation to the Lots.

2.7 By making a bid for any Lot, the Buyer and/or Bidder confirms that it has read and fully understands and agrees to be fully bound by those terms and conditions.

3. BIDDING

3.1 MHA has the right to take or refuse any bid. The sale of the Lot shall be concluded at the fall of the hammer and the Buyer shall be the Bidder with the highest bid.

3.2 If any dispute should arise between two or more Bidders regarding a Lot, the Auctioneer may:

3.2.1 immediately put the Lot for sale again at the last undisputed bid;

3.2.2 declare which Bidder it thinks should properly be the Buyer;

3.2.3 and any decision made by the Auctioneer shall be final and binding on the Bidders.

3.3 The Auctioneer reserves the right to determine the amount of advance on each Bid.

3.4 Any Bid made for any Lots shall be deemed to be an offer by the Bidder to purchase the Lot rendered upon in accordance with these conditions.

3.5 If a Reserve Price has been stipulated against a Lot by the Vendor and the Auctioneer receives a bid that has failed to reach the Reserve Price, the highest Bidder shall be granted a Provisional Bid. MHA shall notify the Vendor as soon as is reasonably practicable following the Auction and confirm with the Buyer whether or not the Vendor wishes to conclude the sale to the Buyer for the Provisional Bid.

3.6 If a Vendor declines a Provisional Bid made in accordance with clause 3.5 above, MHA shall notify the Bidder as soon as reasonably practicable.

3.7 The highest Bidder shall be the Buyer and the sale of any Lot shall be concluded and binding:

3.7.1 at the moment of the fall of the hammer of the Auctioneer; or,

3.7.2 upon confirmation of acceptance of a Provisional Bid by MHA to the Buyer upon instructions from the Vendor pursuant to clause 3.5 above.

3.8 The Auctioneer reserves the right to refuse or take any bid.

4. BEFORE THE AUCTION

4.1 If a Bidder is physically attending the Auction it must provide:

4.1.1 its full name and address and contact details;

4.1.2 details of any principal or employer;

4.1.3 identification as required by MHA;

4.1.4 a minimum deposit of £1,000 or up to 10% of the Bidder's anticipated spend (whichever is the higher) by credit or debit card at the sole discretion of MHA;

4.1.5 payment in the sum of 10% of the Hammer Price in cleared funds (excluding credit card) on the Auction day in the event that the Bidder is successful in purchasing a Lot whilst in attendance at the Auction.

4.2 If a Bidder is participating in an Auction online, it must provide:

4.2.1 its full name and address and contact details;

4.2.2 details of any principal or employer;

4.2.3 identification as required by MHA;

4.2.4 a deposit of up to £5,000 or up to 10% of the Bidder's anticipated spend (whichever is the higher) by credit or debit card at the sole discretion of MHA; and

4.2.5 payment in the sum of 10% of the Hammer Price in cleared funds (excluding credit card) on the Auction day in the event that the Bidder is successful in purchasing a Lot online at the Auction.

4.3 Any deposit received by MHA in accordance with clause 4.1.4 or clause 4.2.4 shall be:

4.3.1 refunded in full to any unsuccessful Bidder; or

4.3.2 retained by MHA in the event that the Buyer is successful and subsequently deducted from the Hammer Price, pursuant to clause 7.1 below.

5. COLLECTION OF GOODS

5.1 The Buyer shall not be entitled to remove any Lot at the time of sale until payment has been received in full in accordance with clause 7 for all Lots bought at Auction.

5.2 The Buyer shall be responsible at its own cost for all arrangements to collect and load any Lots purchased at Auction. Collection from MHA will be available between 8.00am and 5.00pm on Working Days.

5.3 The Buyer shall collect the Goods within 5 Working Days of the date of the Auction. If Goods are not collected by the Buyer within the specified period MHA may store the Lots at the Buyer's expense and risk until despatch and/or collection by the Buyer.

5.4 If the Buyer fails to collect any Goods then unless otherwise agreed pursuant to clause 5.3 above, MHA shall be entitled to treat this Contract as repudiated by the Buyer and shall have the right to rescind this Contract.

5.5 MHA may comply with reasonable requests by the Buyer for postponement of collection of the Goods but shall be under no obligation to do so.

5.6 Where collection of the Goods is postponed at the Buyer's request then the Buyer shall pay all costs and expenses of MHA and the Buyer shall be obliged to pay for the Goods in accordance with clause 7 as if collection had not been postponed.

6. CANCELLATION

6.1 MHA reserves the right to cancel the Contract without Liability where:

6.1.1 there has been a genuine mistake in the interpretation of a Reserve Price set by a Vendor at Auction;

6.1.2 MHA acting as agent for the Vendor is unable to fulfill its obligations under this contract due to the acts or omissions (including misrepresentation) of the Vendor.

7. PRICE AND PAYMENT

7.1 The Buyer shall be liable to pay for the Hammer Price plus the applicable Service Charge in accordance with clause 7.9 less any deposit received by MHA in cleared funds in accordance with clause 4.3.2.

7.2 The Buyer shall be liable to pay all costs incurred by MHA for transport and or storage of the Goods purchased.

7.3 The Hammer Price and the Service Charge is exclusive of any applicable VAT or any other tax for which the Buyer shall additionally be liable.

7.4 MHA's terms of payment are cleared funds within 5 Working Days of the date of sale of a Lot. Time for payment shall be of the essence.

7.5 Any monies received by MHA from the Buyer may be applied by MHA at its option against any additional administrative costs and/or interest charged prior to application against any principal sums due from the Buyer against which it may be applied in any order.

7.6 Subject to clause 4.3 and 7.2 the Buyer shall pay all sums due to MHA as agent for the Vendor under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

7.7 Payment shall not be deemed to be made until MHA has received either cash or cleared funds in respect of the full amount outstanding.

7.8 MHA shall be entitled to render an invoice to the Buyer any time after the Auction.

7.9 The Buyer shall be liable to pay for the Service Charge when physically attending an Auction, participating in an Auction over the telephone and/or participating in an Auction on line, as notified for the Auction.

7.10 If payment in full is not made to MHA when due then MHA may:

7.10.1 rescind the contract; or

7.10.2 withhold the Lot for collection pursuant to clause 5.1 and/or the deposit paid pursuant to clause 4 in whole or in part until payment of the full amount outstanding is received, at its absolute discretion.

8. INDEMNITY

8.1 The Buyer will indemnify and keep indemnified MHA against any and all lost profits, costs (including increased administration costs and legal costs on a full indemnity basis), expenses, damages and any other loss and/or Liability suffered by MHA as a result of:

8.1.1 any breach of contract;

8.1.2 any tortious act or omission;

8.1.3 any breach of statutory duty;

8.1.4 the Buyer purporting to cancel this Contract and/or failing to collect any Lots for which it has been the successful Bidder;

8.1.5 any other liability which MHA may incur as a result of acting with reasonable care and skill within the scope of its authority under this contract acting as selling agent for the Vendor to facilitate the purchase of the Lots by the Buyer.

9. CATALOGUE

9.1 MHA uses all reasonable endeavours to ensure that the description of the Goods and Lots for sale at Auction in the Auction Listing is clear, however, the Bidder relies on any such description at its own risk.

9.2 The Bidder is responsible for inspecting the Auction Listing and the Goods and satisfying itself that they are adequate for the Bidder's needs.

9.3 MHA shall have no Liability for any documentation or details supplied by the Vendor with the Goods.

9.4 Details of Goods and guide price lists produced by MHA are intended as a guide only and only give a general approximation of the Goods.

9.5 The Buyer confirms and agrees that it has not relied upon the details and information contained in MHA's Auction Listing.

10. CONFIDENTIALITY

10.1 The Buyer agrees that it will keep confidential and not use except for purposes contemplated by this Contract all information relating to the Lots and/or the identity of the Vendor which may be disclosed to it or which it may learn in relation to this contract except where such information is public knowledge or it is required to be disclosed by law.

11. PROPERTY AND RISK

11.1 Risk in the Goods shall pass to the Buyer at the fall of the hammer at the Auction.

11.2 The Vendor shall retain title and ownership of the Goods until MHA has received payment in full in cash or cleared funds of all sums due and/or owing for all Goods under this Contract.

11.3 Until title in the Goods has passed to the Buyer the Buyer shall keep the Goods insured for the price at which the Goods were sold as a Lot to the Buyer against all normal risks.

12. DEFAULT

12.1 If the Buyer:

12.1.1 fails to make any payment to the MHA when due;

12.1.2 breaches the terms of this Contract and, if the breach is capable of remedy, has not remedied the breach within 7 days of receiving notice requiring the breach to be remedied;

12.1.3 pledges or charges any Goods which remain the property of the Vendor, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim order under Section 252 Insolvency Act 1986 or has a Bankruptcy Petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or takes or suffers any similar action in any jurisdiction;

12.1.4 appears reasonably to MHA to be about to suffer any of the above events;

then MHA shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 12.2 below.

12.2 If any of the events set out in clause 12.1 above occurs in relation to the Buyer then:

12.2.1 MHA may enter, without prior notice, any premises of the Buyer (or premises of third parties with their consent) where Goods that constitute Lots for which payment is outstanding and repossess or sell any Goods found which constitute such Lots so as to discharge any sums due to MHA under this Contract or any other agreement with the Buyer;

12.2.2 MHA may require the Buyer not to re-sell or part with the possession of any Goods for which payment remains outstanding until the Buyer has paid in full all sums due to MHA under this Contract or any other agreement with the Buyer;

12.2.3 MHA may refuse collection of any uncollected Goods and stop any Goods in transit;

12.2.4 MHA may cancel, terminate, rescind and/or suspend without Liability to the Buyer any contract with the Buyer; and/or

12.2.5 all monies owed by the Buyer to MHA shall forthwith become due and payable.

12.3 MHA shall have a lien over all property or goods belonging to the Buyer which may be in MHA's possession in respect of all sums due from the Buyer to MHA.

13. NO WARRANTY OR GUARANTEE

13.1 MHA provides no guarantee or warranty regarding the Goods.

13.2 All Goods in Lots are sold as seen and unfit for purpose without supporting documentation unless expressly agreed by the Auctioneer in writing or another authorised representative of MHA.

13.3 The Bidder shall carry out its own inspection of the Goods to satisfy itself of the suitability of any Goods available for sale as Lots at Auction and its ability to use the Goods once purchased.

14. LIMITATIONS ON LIABILITY

14.1 MHA shall have no Liability for any defect in the Goods.

14.2 MHA shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Buyer's use of the Goods.

14.3 The Buyer shall produce to MHA written evidence of any claims for which it is alleged that MHA is liable together with written details of how the loss was caused by MHA and the steps the Buyer has taken to mitigate the loss before MHA shall have any Liability for any claim made by the Buyer.

14.4 MHA shall have no Liability to the Buyer to the extent that the Buyer is covered by any policy of insurance and the Buyer shall ensure that the Buyer's insurers waive any and all rights of subrogation they may have against MHA.

14.5 MHA shall have no Liability to the Buyer for any defect in title of the Goods or any warranty, misrepresentation or otherwise given by the Vendor.

14.6 MHA shall have no Liability for any matters which are outside its reasonable control.

14.7 MHA shall have no Liability to the Buyer for any:-

14.7.1 consequential losses;

14.7.2 loss of profits and/or damage to goodwill;

14.7.3 economic and/or other similar losses;

14.7.4 special damages and indirect losses; and/or

14.7.5 business interruption, loss of business, contracts, opportunity and/or production.

14.8 The Buyer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.

14.9 MHA's total Liability to the Buyer shall not exceed the Hammer Price. To the extent that any Liability of MHA to the Buyer would be met by any insurance of MHA then the Liability of MHA shall be extended to the extent that such Liability is met by such insurance.

14.10 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

14.10.1 Liability for breach of contract;

14.10.2 Liability in tort (including negligence);

14.10.3 Liability for breach of statutory duty; and

14.10.4 Liability for breach of Common Law.

except clause 14.9 above which shall apply only in respect of all the said types of Liability.

14.11 Nothing in this Contract shall exclude or limit the Liability of MHA for death or personal injury due to its negligence or any Liability which is due to MHA's fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

14.12 Nothing in this Contract shall exclude or limit any statutory rights of the Buyer which may not be excluded or limited due to the Buyer acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent, have no force or effect.

15. GENERAL

15.1 No waiver by the Company of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

15.2 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

15.3 MHA shall have no Liability to the Buyer for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to any events outside MHA's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If MHA is affected by any such event then time for performance shall be extended for the period that the period that such event or events delayed such performance.

15.4 The Buyer shall not assign its interest in the Contract (or any part) without the written consent of MHA.

15.5 All third party rights are excluded and no third party shall have any right to enforce this Contract.

15.6 This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.