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 **BARRY L HAWKINS**  
Independent Auctioneer and Land Agent

## Terms & Conditions of Engagement

### COMMISSIONS AND CHARGES: (all subject to VAT):

17.5% up to £1,000 (subject to a minimum of £2 per lot)

8% on the next £5,000

4% thereafter (subject to a maximum of £1000)

**Wheels & Tyres:** All wheels and tyres abandoned on the sale ground 8 days after the sale will be subject to a disposal charge of £50 per tyre (refundable on collection).

**Electrical Safety Testing:** Any lots requiring electrical safety testing will be charged at £3 per item.

**STATUS OF THIS CONTRACT AND THE CONDITIONS OF SALE** The Vendor has agreed to adhere to these conditions by signing the entry form.

Any person attending the sale is deemed to attend on the understanding that they have read and understood these conditions and shall make any bid on the basis of these conditions.

The Auctioneers may supplement or supersede these conditions in whole or part with special conditions applicable to a specific sale or a specific Lot which will be displayed and/or announced at the start of the sale.

No employee or agent of the Auctioneers has any authority to vary these conditions. Any dispute arising under this contract, or the conditions of sale shall be determined in the first instance by the Auctioneers whose ruling shall be binding on the conduct of the auction. If such an issue (including any dispute under Clause 17) remains in dispute after the auction it may be referred by the Purchaser, the seller or the Auctioneers to arbitration or if the parties agree independent expert determination within the period of ten working days starting on the date of the sale by a person agreed between the parties in dispute or failing such agreement by a person appointed by the President of the Central Association of Agricultural Valuers on the application of any of the parties within that time paying such fee as may be charged for that service. The parties agree to meet the professional fees and costs of that person as he shall direct and to be bound by his award both as the matter of the dispute and as to the parties' costs.

Any indemnity under these conditions shall be an indemnity in respect of all actions proceedings and costs including legal costs expenses claims and demands whatever incurred or suffered.

**AUCTIONEERS' STATUS** The parties to the contract of sale are the Vendor and Purchaser. The Auctioneers sell as agents for the Vendor and as such are not responsible for any default of the Vendor or Purchaser.

The Auctioneers shall have discretion as to the description of any items and may take expert advice on any item, whether from a qualified electrician, agricultural engineer or other person at the Vendor's expense to ensure that the item is sold in a professional and legal manner.

The Auctioneers may make such announcements or publish such information supplied by a Vendor about any Lot as they in their discretion think fit.

The Auctioneers shall have absolute discretion without giving any reason to refuse any bid, divide any Lot, combine any two or more Lots, withdraw any Lot from the auction, and, in case of dispute, offer any Lot for sale again.

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

**VENDOR'S WARRANTIES** to the Auctioneers and to the Purchaser:

His identity. That he is the true owner of the Lot or is authorised by the true owner to act as Agent in offering the Lot for sale. That he is able to transfer a good and marketable title to the Lot free from any third party claims, liens and encumbrances. That no Lot is subject to a hire purchase, lease, contract hire or any other similar agreement or has been recorded by an insurance company as a write off or as subject to a major insurance claim. That all statements on the entry form are correct so that the Lot is not misdescribed being aware that providing a false description can be an offence under the Trade Descriptions Act 1968 and the Fraud Act 2006 punishable by a fine or imprisonment. That as far as reasonably practicable he has taken sufficient steps to ensure the Lot is safe and without risk to health and safety and that suitable testing and examination has been arranged and that he indemnifies the Auctioneer against all claims under the Consumer Safety Act 1978 and Part 1 of the Consumer Protection Act 1987. That he has declared in writing on the entry form any risk posed by the Lot to health and safety so that it is clear to the Auctioneer and prospective Purchasers. That unless previously disclosed to the Auctioneers any vehicle entered is in a roadworthy condition and complies with regulations made under Section 41 of the Road Traffic Act 1988 and has the benefit of any unexpired vehicle excise licence and any current MOT certificate relating to it which will be transferred to the Purchaser. That he will provide all operators' handbooks and instruction manuals in his possession for the Lot. That where information required by this Clause has not been provided or the Auctioneers have reason to doubt it the Auctioneer may using his powers under Clause 3.2 above instruct a suitably qualified person to inspect the items and report on any such matter the cost of which shall be borne by the Vendor. That he will indemnify the Auctioneers, their servants and agents and the Purchaser against any loss or damage suffered by them in consequence of any breach of the above warranties.

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

identification only.

The Auctioneers will not be responsible for any costs incurred by any person in reliance on the description of a Lot in the catalogue as those attending the auction will have no claim against the Auctioneers for their costs should any advertised Lot not be offered at that sale.

**ENTRY OF A LOT** The Auctioneers shall specify the terms on which any Lot may be entered for the sale and be delivered to the sale ground. The Auctioneers' entry form must be fully completed by the vendor prior to the sale of each Lot entered for the sale.

No portable electrical item will be offered for sale without a current electrician's safety certificate, the cost of which shall be borne by the vendor. By completing the entry form for a Lot, the vendor accepts that the Lot is subject to commission and other charges set out in these conditions and/or the entry form.

**REGISTRATION DOCUMENTS, ETC** The Vendor must submit all vehicle registration documents and any relevant MOT and/or test certificates to the Auctioneers no later than 5pm on the day before the sale.

Following the sale of any vehicle, the Auctioneers shall not pay over the sale proceeds to the Vendor until the Vendor has given to the Auctioneers the V5c/registration document for that vehicle, a signed declaration that the V5c/registration document is lost or a declaration of non-registration. If the Vendor fails to notify the Auctioneers prior to the sale that the V5c/registration document has been lost, then the Auctioneers reserve the right to apply for a duplicate V5c on behalf of the Purchaser and charge the Vendor the DVLA fee together with an administration fee of £16 plus VAT.

**INSURANCE:** An optional insurance cover against theft is available to Vendors for lots whilst on the sale ground as below. The premium shall be charged at the rate of 2% of value and cover is subject to a £20 excess. To implement the cover the declaration on the entry form must be completed prior to delivery of lots to the sale ground.

**WITHDRAWAL OF A LOT** In all cases where a Lot once entered is not offered for sale on the Vendors instructions the Auctioneers shall be indemnified by the Vendor for all expenses incurred in relation thereto and against all claims from third parties that may arise.

**PRIVATE SALES** Any Lot included by the Vendor on an entry form and accepted by the Auctioneers onto the sale ground to be offered for sale must be offered for sale by auction and must not be sold privately before the sale for which it was entered. The Auctioneers shall not be liable for any breach by the Vendor of this condition. The Auctioneers' consent is required for the private sale of any Lot after the sale while it is on the sale ground. That consent may be given on condition that the sale is booked through the Auctioneers' office subject to these conditions and that any fee commission buyer's premium charge or expense due under these conditions apply as though that Lot had been sold by auction at a hammer price equal to the price agreed for the private sale. Where a Lot is not sold at the sale and remains on the sale ground the Auctioneers reserve the right to sell it privately at no less than any reserve price set for it without further consultation with the Vendor.

**WARRANTY AND INSPECTION OF LOTS** The Auctioneers' knowledge of the Lots is dependent on information provided by the Vendor who has warranted as to its accuracy. The Auctioneer does not carry out exhaustive due diligence on each Lot. The information supplied is not a representation of fact but a statement of opinion on the basis of the evidence available to them. Bidders acknowledge these points and accept responsibility for carrying out inspections and investigations to satisfy themselves as to the Lots in which they may be interested. Where the Vendor has declared any health and safety issues regarding a Lot or the Auctioneers have become aware of any such issues details of the matter will be available to bidders at the Auctioneers office on the sale ground.

It will be for the bidders to satisfy themselves as to health and safety matters. Bidders, including the Purchaser, acknowledge that Lots have generally been used and are of an age and type which means they are not in perfect condition. As such they may not comply with current health and safety legislation and may have faults not expressly referred to in the catalogue or the other information that may be available on individual Lots from the Auctioneers.

The Purchaser must satisfy himself prior to bidding for a Lot as to its condition and should exercise and rely on his own judgement as to whether the Lot accords with its description. The Auctioneers shall have no liability for the accuracy of the description of any Lot. Unless otherwise stated, no warranty is given by the Auctioneers to the Purchaser in respect of any Lot and any express or implied conditions or warranties are excluded to the fullest extent permitted by law. It is the Purchaser's responsibility to check the Lot and ensure that its subsequent use is compliant and that identified health and safety concerns are rectified.

If a Lot is described at the time of the sale as in "working or running order" that Lot is understood to have no defect which renders it incapable of the reasonable work for which it is intended. Any Lot so described must have a key, control box, PTO shaft, starting handle, etc, as appropriate. Where electrical equipment is sold without specific instructions for its use it is the responsibility of the Purchaser to seek independent advice as to its safe operation. The Auctioneers shall have no liability for the safe operation of the item by the Purchaser.

**RESERVE PRICE** The Vendor shall be entitled to place a reserve price on any Lot prior to the sale being the minimum amount for which the Lot may be sold. Such reserves shall be advised to the Auctioneers in writing no later than 9am on the day of sale or start of online sale. Unless given in person to the Auctioneer or stated on the entry form, any such instruction shall not be binding unless the Auctioneer has confirmed his receipt of it

in writing.

**BIDDING** No Vendor shall bid for any Lot that he has entered into the sale. Where the Lot is offered for sale on the dissolution of a partnership Clause 14.1 does not apply. The person who makes the highest bid acceptable to the Auctioneers shall be the Purchaser on the fall of the hammer.

**RESPONSIBILITY OF LOTS** From the fall of the hammer for a Lot that Lot is the liability of the Purchaser who is responsible for its safe use any damage to it and for complying with all legal requirements. The Auctioneers reserve the right to charge for handling and storage of any Lot remaining on the sale ground longer than 8 days after the date of sale notwithstanding Clause 15.1 above.

**VAT** Value Added Tax at the standard rate will be charged on all lots marked with a "V" in the catalogue or otherwise announced at the time of sale. All lots sold on behalf of non registered Vendors will be sold under the VAT Auctioneers Margin Scheme unless written instructions are given to the contrary. Any registered Vendor trading goods under the General Margin Scheme and requiring the goods to be sold under the Auctioneers Scheme must enter such goods on a separate form clearly stating that they are to be sold under the respective schemes. Where the Vendor does not advise the Auctioneers of the appropriate rate of or status for VAT of a Lot the Auctioneer will apply the rate or status that appears appropriate from the information available to them and will not accept liability for any errors. The Vendor agrees that the Auctioneers shall issue a self billed invoice in respect of all Lots sold and that the Vendor will not raise his own VAT invoice for the supply of such Lots. The Auctioneers will add VAT at the appropriate rate to the hammer price of a Lot. Where the Vendor does not advise the Auctioneers of the appropriate rate of or status for VAT of a Lot the Auctioneer will apply the rate or status that appears appropriate from the information available to them and will not accept liability for any errors.

**NOTIFICATION OF A DEFECTIVE LOT** Where a Purchaser alleges a breach of any warranty for a Lot, he shall notify the Auctioneers in writing clearly stating details of the alleged breach as soon as practicable and no later than 5pm on the Monday following the date of the sale and in any event before the Lot is removed from the United Kingdom.

No Lot shall be subject to the complaints procedure unless paid for and any such payment subsequently stopped or dishonoured shall not constitute payment. The Purchaser shall make the Lot available for inspection in the United Kingdom by the Vendor, the Auctioneers and the duly appointed agents of within five working days following the day on which the notification of the defective Lot is received. If there is a complaint against the Auctioneers, it will be handled under the complaints procedure established by the Auctioneers to handle formal complaints made against their business. If the complaint is against the Vendor, the Auctioneers will notify the Vendor of the alleged breach as soon as reasonably practicable and in the event of continuing disagreement any dispute will be handled under Clause 2.5. The Auctioneers' obligation to account to the Vendor for the sale shall be suspended until they are satisfied that the dispute has been settled.

**RESALE DUE TO FAILURE TO COMPLY WITH THESE CONDITIONS** Where a Lot has been sold to a Purchaser who then fails to comply with the conditions the Auctioneers may, without prejudice to any other rights they may have, resell that Lot either by public auction or private contract. If the price achieved on resale is less than hammer price together with expenses arising the deficit shall be due as a debt from the original Purchaser. The defaulter shall not be entitled to any part of the proceeds which may arise by such a resale which shall remain the property of the Auctioneers. Expenses due from the defaulter shall be deemed to include the Auctioneers' commission on the re-sale and all other expenses that would be due on a sale under these conditions.

**AUCTIONEERS' RIGHT TO ANNUL A SALE OF A LOT** Before making payment to the Vendor in the event of any dispute or refusal to pay on the part of the Purchaser the Auctioneers may entirely at their discretion annul and cancel the sale of such a Lot or Lots.

**LOADING/UNLOADING SERVICES** A forklift is available free of charge to assist with the loading/unloading of lots and a loading ramp is also available. These facilities are provided entirely at the risk of the Vendor or Purchaser who must be responsible for supervision and the Auctioneers accept no liability whatsoever. Loading will only be undertaken in daylight hours for safety reasons.

### PAYMENT TO VENDORS

(i) Subject to the above the Auctioneers shall issue payment of the sale proceeds for a Lot to the Vendor in 10 working days after the sale provided the Auctioneers shall have received the same.

(ii) Monies received from Purchasers will be held by the Auctioneers in a separate identifiable Clients' Account.

(iii) Should there be notification by the Purchaser of a defective Lot or Lots pursuant to Clause 17 then the procedure set out in that Clause shall be followed and the sale proceeds dealt with accordingly.

(iv) Notwithstanding Clause 21(i) in the event of any debt of the Vendor being owed to the Auctioneers the latter shall have the right to set off such debt against the sale proceeds.

(v) Following the sale of any vehicle the Auctioneers shall not pay over the sale proceeds to the Vendor until the Vendor has given to the Auctioneers the V5c registration book for that vehicle, a signed declaration that the registration book is lost or a declaration of non-registration or the purchaser confirms that he has now obtained a V5c document for the vehicle.