

Conditions of Sale for Farm Machinery Auction in England and Wales

1. Definitions

In these conditions the following terms have the following meanings:

- i. "Auctioneers" means **Barry L Hawkins**.
- ii. "Commission" means the commission charged on the sale of Lots in accordance with Clause 18 below.
- iii. "Conditions" means the standard terms and conditions of business set out in this document. Any further specific conditions will be contained in a separate statement of special conditions.
- iv. "Entry Form" means the form to be completed and signed by the Vendor describing the Lot in such form as may be required by the Auctioneers before the Lot will be accepted for sale.
- v. "Hammer Price" means the price at which a Lot is knocked down by the Auctioneers to the Purchaser exclusive of any Value Added Tax and Buyer's Premium.
- vi. "Lot" means any item offered for sale or sold as a single transaction in accordance with these Conditions.
- vii. "Purchaser" means a person firm or company who purchases any Lot including any person firm or company acting as an agent for such a party in the purchase of that Lot in accordance with the Conditions.
- viii. "Reserve Price" means the minimum price fixed by the Vendor in writing at which any Lot is to be sold at the Sale.
- ix. "Sale" means a sale of the Lots by auction organised by the Auctioneers.
- x. "Sale ground" means the venue at which the Sale takes place.
- xi. "Sale Proceeds" means the net amount due the Vendor being the Hammer Price of the Lot sold less Commission and expenses and any other amounts due the Auctioneers by the Vendor in whatever capacity and howsoever arising.
- xii. "Vehicle" means any tractor self-propelled machine or other vehicles.
- xiii. "VAT Auctioneers' Scheme" means the scheme for the treatment of Value Added Tax by the Auctioneers made under The Value Added Tax (Special Provisions) Order 1995 S.I. 1268 (as amended).
- xiv. "Vendor" means a person firm or company including any person firm or company acting as an agent for such a party who offers for sale a Lot in accordance with these Conditions.
- xv. "Working Day" means each day from Monday to Friday inclusive in any week except that a Bank Holiday or other public holiday shall not be a Working Day.
- xvi. Except where the context otherwise requires:
 - words denoting the singular include the plural and vice versa.
 - words denoting one gender include the other gender.
 - words denoting persons include both natural and legal persons.

References to any regulation directive statute statutory instrument or other legislation include any amendment re-enactment and other subsequent alteration of that legislation.

2. Status of Conditions of Sale

- i. The Vendor agrees to adhere to these Conditions by signing the Entry Form.
- ii. 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 based on these Conditions.
- iii. 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.
- iv. No employee or agent of the Auctioneers has any authority to vary these Conditions.
- v. Any dispute arising under these conditions 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 (save for disputes under 14 (xiii)) by including any dispute under Clause 20) remains in dispute after the auction it may be referred by the Purchaser the Vendor or the Auctioneers to arbitration within a period of one month from 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 paying such fee as may be charged for that service. The parties agree to meet the professional fees and costs of that arbitrator as he shall direct.
- vi. 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.

3. Entry to the Sale ground

- i. Any person entering the Sale ground does so at their own risk.
- ii. Any person entering the Sale ground must comply with the requirements of all health and safety notices.
- iii. The Auctioneers reserve the right to refuse admission to any person or entry of any Lot onto the Sale ground without giving any reason.

4. Auctioneers' Status

- i. The parties to the contract of sale are the Vendor and Purchaser.
- ii. The Auctioneers sell as agents for the Vendor and as such are not responsible for any default of the Vendor or Purchaser.
- iii. The Auctioneers shall have discretion as to the description of any item 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.
- iv. The Auctioneers may make such announcements or publish such information supplied by a Vendor about any Lot as they in their discretion think fit.
- v. The Auctioneers shall have absolute discretion without giving any reason:
 - a) to refuse any bid
 - b) to divide any Lot
 - c) to combine any two or more Lots
 - d) to withdraw any Lot from the auction; and
 - e) in case of dispute, to offer any Lot for sale again.
 - f) Exclusion of Liability

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

5. Vendor's Warranties

The Vendor warrants to the Auctioneers and to the Purchaser: -

- i. His identity.
- ii. 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.
- iii. That he is able to transfer a good and marketable title to the Lot free from any third-party claim's liens and encumbrances.
- iv. That no Lot is subject to a Hire Purchase lease contract hire or any other similar agreement unless otherwise stated on the entry form.
- v. 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.
- vi. 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 Part 1 of the Consumer Safety Act 1987.
- vii. 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.
- viii. 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.
- ix. That he will provide all operators' handbooks and instruction manuals held in his possession for the Lot.
- x. 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 4(iii) 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.
- xi. 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.

6. Catalogues and Advertisements

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

7. Entry of a Lot

- i. The Auctioneers shall specify the terms on which any Lot may be entered for the Sale and delivered to the Sale ground.
- ii. The Auctioneers' Entry form must be fully completed by the Vendor prior to the Sale for each Lot entered for the Sale. Where the Auctioneers have completed the Entry Form on behalf of the Vendor the Vendor shall be deemed to have read and checked the Entry Form on the information given therein before signing it.
- iii. The Vendor must submit all vehicle registration documents any relevant MOT test certificates as agreed with the Auctioneers.
- iv. Unless otherwise agreed by the Auctioneers no entries can be accepted on the day of the Sale.
- v. By completing the Entry Form for a Lot, the Vendor accepts that the Lot is subject to any entry fee Commission and other expenses and charges set out in these Conditions and/or on the Entry Form.

8. Withdrawal of a Lot

In all cases where a Lot once entered is not offered for sale on the Vendor's 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.

9. Private Sales

- i. Any Lot included by the Vendor on an Entry Form and accepted by the Auctioneers to be offered for sale must be offered for sale by auction and must not be sold privately before the Sale. The Auctioneers shall not be liable for any breach by the Vendor of this condition.
- ii. No Lot may be sold privately after the Sale while on the Sale ground without the Auctioneers' prior consent which may be given on condition that the sale is booked through the Auctioneers' office subject to these Conditions and in particular any entry fee Commission charges and expenses set out on the Entry Form and in 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. The proceeds of such a private sale after such Auctioneers' charges shall be deemed to be Sale Proceeds for the purpose of these Conditions.
- iii. 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.

10. Warranty and Inspection of Lots

- i. The Auctioneers' knowledge of the Lots is initially dependent on the 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 about Lots is not a representation of fact, but a statement of opinion genuinely held by the Auctioneers on the basis of the evidence available to them having taken reasonable care. 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.
- ii. Bidders acknowledge that Lots have generally been used and many are of an age and type which means they are not in perfect condition and so may have faults not expressly referred to in the catalogue or the other information that may be available on other Lots from the Auctioneers. As such machinery may not comply with current safety legislation it is sold on the basis that it is the buyer's responsibility to check the Lot and ensure that its subsequent use is compliant.
- iii. 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.
- iv. If a Lot is described at the time of the Sale as in "working order" that Lot is understood to have no defect which renders it incapable of the reasonable work for which it is intended.
- v. 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 also be for Bidders to satisfy themselves as to health and safety matters and the Purchaser to take them into account in his use of the Lot after purchase.
- vi. 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.

11. Vehicles and Trailers

- i. All expressed and implied conditions and warranties relating to any vehicle are excluded so far as the law allows.

- ii. Bidders are advised that if a vehicle is described as unroadworthy it is illegal for it to be used on the road in Great Britain unless it is put into roadworthy condition.
- iii. Any reference to the year of a motor vehicle refers to the year in which it was first registered in the United Kingdom.
- iv. Vehicles are sold with the benefit of any unexpired vehicle excise licences attached to them on the day of the Sale and any current MOT certificate relating to them.
- v. A person on becoming the Purchaser of any vehicle or trailer is forthwith responsible for complying with all legal requirements as to the roadworthiness construction and use of such vehicle or trailer and for obtaining all certificates permits or other authorisations necessary before such vehicle or trailer can be used on the road. If the vehicle or trailer is not roadworthy it is the Purchaser's responsibility to ensure its removal from the Sale ground in a safe manner and it is thereafter to be used on the road to put it into roadworthy condition.
- vi. The Purchaser warrants that he has third party liability insurance for his use of the vehicle or trailer.
- vii. 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 or the Purchaser confirms that he has now obtained a V5C document.

12. Reserve Price

- i. 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.
- ii. Such a Reserve Price shall be advised to the Auctioneers in writing no later than 9.00 am before (or as advised in the special conditions) the start of the Sale and without such a Reserve Price the Lot will be offered for sale without a Reserve Price. 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.

13. Bidding

- i. No person may bid without warranting their identity to the Auctioneers.
- ii. Any person intending to bid as an agent for a potential Purchaser must notify the Auctioneers in advance of the Sale and confirm the arrangements for payment of the goods to the satisfaction of the Auctioneers.
- iii. The Auctioneers may accept written instructions to bid on behalf of any prospective Purchaser, but any instructions accepted shall be at the risk of the prospective Purchasers who will be deemed to have viewed the Lot. The Auctioneers accept no responsibility in connection with the commissioning of their staff to bid for a Lot.
- iv. The Auctioneers may at their discretion make arrangements to receive bids over the telephone or otherwise from prospective Purchasers not physically present at the Sale. Where such a facility is offered prospective Purchasers wishing to use it must register with the Auctioneers in advance of the Sale. The Auctioneers accept no liability in relation to telecommunications facilities and connections nor to the means by which such prospective Purchasers may seek to communicate with the Auctioneers.
- v. Bids shall be made exclusive of any VAT which may apply.
- vi. The Auctioneers may refuse to accept the bidding of any person without giving any reason.
- vii. No Vendor shall bid for any Lot that he has entered into the Sale save that where the Vendor has set a Reserve Price for a Lot in accordance with clause 13 in which case bids may only be made on behalf of the Vendor for that Lot by the Auctioneers and then only provided that the Auctioneers had announced at the start of the Sale that they may be bidding on behalf of the Vendor.
- viii. Where the Lot is offered for sale on the dissolution of a partnership clause 14(vii) does not apply.
- ix. The person who makes the highest bid acceptable to the Auctioneers shall be the Purchaser on the fall of the hammer.
- x. The Purchaser is deemed to have inspected any Lot for which he is bidding and if successful in that bidding agrees to take it with all faults and imperfections.
- xi. The Purchaser shall supply his full name and address to the Auctioneers.
- xii. The Purchaser warrants that he is able to pay in accordance with these Conditions.
- xiii. In the event of a dispute between two or more bidders as to which is the Purchaser the dispute shall be settled at the absolute discretion of the Auctioneers.
- xiv. Transfers of purchases will only be recognised at the sole discretion of the Auctioneers.

14. Payment by Purchasers

- i. Unless otherwise agreed with the Auctioneers the Purchaser shall pay the Auctioneers in full on the day of the Sale for the Lot purchased together with any charges Buyer's Premium or other payment due under these Conditions before removing that Lot from the Playground.

- ii. That payment is to be by a means approved by the Auctioneers and in particular:
 - a. where payment is to be by cheque a Purchaser who is unknown to the Auctioneers must make one of the following arrangements before the day of the Sale:
 - b. obtain a letter from his Bank addressed to the Auctioneer and to be provided to the Auctioneers' office at the time of payment confirming the amount up to which cheques can be accepted and stating the name number and authorised signatory for the account on which the cheque is to be drawn.
 - c. instruct his Bank to advise the Auctioneers' bankers of the maximum amount for which a cheque should be accepted.
 - d. arrange for the issue of a guaranteed cheque or bankers' draft to be brought to the auction.
 - iii. debit card payments may be made.
 - iv. where cash is offered in settlement the Auctioneers will not accept more than £8,000 for transactions at any one Sale to comply with the Money Laundering Regulations.
 - v. Where a Purchaser defaults on a payment the Auctioneers reserve the right to re-sell the Lot and to charge the Purchaser for any expenses and loss incurred by reason of the failure of the Purchaser to complete his purchase.
 - vi. The Auctioneers reserve the right to charge the Purchaser interest on any payment outstanding from five Working Days after the day of the Sale at the rate of 15 per cent per annum or such other rate as fixed by the Auctioneers.
 - vii. If the Auctioneers have agreed to allow the Purchaser to remove the Lot from the Playground before the Purchaser has made full payment for the Lot, then the Vendor shall retain a lien on the Lot for the outstanding amount.
 - viii. If the Auctioneers have paid the Vendor the Sale Proceeds due for a Lot before the Purchaser has paid the Auctioneers in full for the Lot then the Auctioneers shall have a lien on the Lot until the outstanding amount is paid by the Purchaser to the Auctioneers.
 - ix. In the event of any sale by the Purchaser of a Lot before full payment has been made the Purchaser shall hold the proceeds of such sale on trust for the Vendor or the Auctioneers (as the case may be) and shall pay such proceeds into a separate identifiable bank account from which the liens referred to at 15(v) and 15(vi) shall be discharged.
- 15. Responsibility for Lots**
- i. Until sold each Lot shall remain on the Playground entirely at the risk of the Vendor. The Auctioneers accept no liability for any Lot and will not provide insurance cover for any Lot.
 - ii. From the fall of the hammer for a Lot that Lot is the liability of the Purchaser.
 - iii. It is the responsibility of the Vendor to ascertain whether his Lots have sold at the Sale and the Auctioneers shall be under no liability to notify the Vendor if Lots are not sold.
 - iv. The Vendor will remain liable for any Lot that was not sold at the Sale and must remove it from the Sale ground within three days of the Sale.
- 16. Buyer's Premium**
- Where the Auctioneers state before the Sale in the catalogue or special conditions a Buyer's Premium together with Value Added Tax may be charged to Purchasers calculated based on the Hammer Price at a rate to be stated in that announcement.
- 17. Auctioneers' Commission**
- i. The Auctioneer will be entitled to charge the Vendor commission at the rate of 10 per cent of the Hammer Price as commission for his services ("Commission") which together with such entry fees expenses and other charges as may also have been agreed with the Vendor shall be subject to VAT at the appropriate rate or rates. See Entry Form for Specific Commission Terms.
 - ii. Any Lot included on the Entry Form by the Vendor which is purchased by the Vendor or on his behalf will be subject to charges and commission in accordance with these Conditions.
- 18. Value Added Tax on the Purchase Price**
- i. The Vendor will be responsible for accounting for any Value Added Tax on the Sale of a Lot.
 - ii. The Vendor must state to the Auctioneers whether he is registered for Value Added Tax and if registered his Value Added Tax registration number and whether he operates under a flat rate scheme or any VAT Margin Scheme.
 - iii. The Auctioneers will not account to the Vendor for any Value Added Tax without the information required by 19(ii).
 - iv. The Auctioneers will add Value Added Tax at the appropriate rate to the Hammer Price of a Lot.
 - v. If a Lot is zero rated exempt or where the Vendor operates the flat rate scheme for Value Added Tax purposes the Auctioneers will state this at the time of Sale.
 - vi. Where a Lot is sold on behalf of a Vendor who is not registered for Value Added Tax the Lot will be sold under the VAT Auctioneers' Scheme unless written instructions are given to the Auctioneers to the contrary.
- 19. Notification of Defective Lots**
- i. Where a Purchaser disputes the accuracy of the description of a Lot or alleges a breach of any warranty of a Lot he shall notify the Auctioneers in writing clearly stating details of the alleged inaccuracy or breach as soon as practicable and no later than 1.00 pm on the third working day after the Lot was purchased and in any event before the Lot is removed from the United Kingdom.
 - ii. 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.
 - iii. 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.
 - iv. If the complaint is against the Vendor the Auctioneers will notify the Vendor of the alleged inaccuracy or breach as soon as reasonably practicable and in the event of continuing disagreement any dispute will be handled under clause 2(v).
- 20. Resale due to Failure to Comply with these Conditions.**
- i. 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 resell that Lot either by public auction or private contract. If the price achieved on resale is less than Hammer Price together with any expenses arising the deficit shall be due as a debt from the original Purchaser of the Lot.
 - ii. The defaulter shall not be entitled to any part of the proceeds which may arise by such re-sale which shall remain the property of the Auctioneers.
 - iii. 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.
- 21. 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 or of non-payment on the part of the Purchaser the Auctioneers may entirely at their discretion annul and cancel the sale of such a Lot or Lots.
- 22. Removal of Lots from the Sale ground**
- i. No Lot whether sold or unsold may be removed from the Sale ground without the written authority of the Auctioneers. Passes for such removal must be obtained from the Auctioneers' offices and each Lot will be checked out by the Auctioneers or their duly authorised representative.
 - ii. Any Lot which (without express written consent of the Auctioneers) has not been collected within three days from the day on which it was sold or last offered for sale or such period as shall have been announced in the special conditions will be deemed to be abandoned and the Auctioneers will be entitled to dispose of such an abandoned Lot at their unfettered discretion. For the avoidance of doubt any monies arising from such a disposal(s) will be paid to and retained by the Auctioneers.
- 23. Payment to Vendors**
- i. Subject to 24(iii) 24(iv) and 24(v), the Auctioneers shall pay the Sale Proceeds for a Lot to the Vendor within 10 Working Days of the Auctioneers receiving the payment for that Lot from the Purchaser.
 - 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 20 then the procedure set out in that clause shall be followed and the sale proceeds dealt with accordingly.
 - iv. Notwithstanding Clause 24(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 a vehicle the Auctioneers shall not pay over the sale proceeds to the Vendor until such time as the Vendor has given to the Auctioneers the vehicle's V5C registration document or the Purchaser has confirmed that he has obtained one.
- 24. Applicable Law**
- These Conditions shall be governed by and construed in accordance with the law of England and Wales. All transactions to which these Conditions apply, and all connected matters shall also be governed by the law of England and Wales.