



# Terms and Conditions

Modern Method  
of Auction

(Scotland)



# Terms and Conditions Modern Method of Auction

These Terms and Conditions - Modern Method of Auction ("the Terms and Conditions") apply to the sale of each lot in the auction described in that auction as using the "conditional" or "modern method", subject to any variation or addition referred to in the Special Conditions relating to the lot in question.

## 1. Reserve Price

1.1 Each lot is offered for sale at an undisclosed reserve price unless otherwise stated.

## 2. Bidding & Reservation Agreement

- 2.1 The Auctioneer shall have the power to determine whatever questions and differences as may occur at the auction between the Seller and any bidder or among the bidders themselves in relation to the said auction or to prefer the highest bidder and also adjourn the auction from time to time.
- 2.2 The Auctioneer shall have the right to regulate the bidding and refuse any bid or bids at its sole discretion and without any need to give reasons therefor. All bids made online via the Auctioneer's website or via one of the Auctioneer's accredited partners' websites shall be in accordance with such additional terms and conditions as may be set out in such websites as applying to the auction.
- 2.3 The bidder offering the reserve price or, if there are more than one offer over the reserve price, the highest bidder at the close of the auction shall be the preferred bidder or purchaser. On the close of the auction, the preferred bidder must fully identify themselves to the Auctioneer and/ or give details of the purchaser on whose behalf they were acting as agent failing which the Auctioneer will be entitled to re-submit the lot for sale.
- 2.4 Immediately after the close of the auction on their successful bid, the preferred bidder or purchaser shall pay the Reservation Deposit or Reservation Fee (as applicable) as detailed below and complete and sign the Reservation Agreement with the Seller. The Auctioneer is authorised to sign the Reservation Agreement on behalf of the Seller. If the preferred bidder or purchaser fails to sign the Reservation Agreement, the Seller may treat this as a repudiation of the Reservation Agreement and shall be entitled to re-submit the lot for sale, without prejudice to any claim in respect of such breach. Alternatively, the Auctioneer is hereby authorised to sign the Reservation Agreement on behalf of the preferred bidder or purchaser.
- 2.5 If the purchaser is a limited company, the bidder on their behalf is warranting that the purchaser is a properly constituted company with full power to purchase property in the United Kingdom and that the bidder has been properly authorised by the purchaser to bid and bind the purchaser to the Reservation Agreement.
- 2.6 A bid which does not reach the reserve price during the auction may at the auctioneers discretion be held provisionally by the Auctioneer and submitted to the Seller to be accepted or rejected at their discretion. The bidder will be held liable for their provisional bid price for a period of 5 working days after the auction date. If the Auctioneer does not accept or reject the bid within the said period, then the bidder is not bound by it. If the bid is accepted within the said period, then the bidder will be required to complete the purchase of the lot on the terms set out in the Reservation Agreement and any Special Conditions.
- 2.7 The Reservation Agreement shall constitute the entire agreement between the parties thereto and shall supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## 3. Seller's Rights

3.1 Subject to the sales agreement between the auctioneer and the Seller, The Seller reserves to itself and the Auctioneer the right to (i) withdraw any lot from the auction whether or not the bidding has commenced (ii) sell by private bargain all or any part of any lot before the auction (iii) to bid by itself or by the Auctioneer up to the reserve price (iv) to combine or divide lots or (v) to change the method of auction.

## 4. Reservation Deposit and Reservation Fee

- 4.1 If the Special Conditions provide for payment of a Reservation Deposit or Reservation Fee as set out therein, the Reservation Deposit or Reservation Fee (as applicable) shall be paid by the preferred bidder or purchaser forthwith after completion of the auction of the lot to **iamsold Ltd** as agents for the Seller and on the completion and subscription of the Reservation Agreement.
- 4.2 Payment of the Reservation Deposit or Reservation Fee (as applicable) must be made in pounds sterling in such manner as the Auctioneer may in their absolute discretion direct. The Auctioneer reserves the right to hold the Reservation Agreement until cleared funds for the Reservation Deposit or Reservation Fee (as applicable) have been secured.
- 4.3 If the preferred bidder or purchaser fails to pay the Reservation Deposit or Reservation Fee (as applicable) immediately after execution of the Reservation Agreement the Seller will be entitled to treat this as being a repudiation of the contract and will be entitled to rescind the contract and re-sell the lot but always without prejudice to any claim the Seller may have for damages for repudiation aforesaid.
- 4.4 A Reservation Deposit will be treated as a payment on account of the Price if the purchase of the lot proceeds and accordingly released to the Seller on the Date of Entry under a binding Missive of sale. The Reservation Deposit is non refundable in all other cases save where the Seller is in breach of the terms of the Reservation Agreement and the purchaser has complied with all of its obligations thereunder and this is accepted by the preferred bidder or

purchaser. Any interest accrued on the Reservation Deposit will be paid to the party entitled thereto and will not be treated as a payment on account of the Price.

- 4.5 A Reservation Fee is not a part payment on account of the Price and the successful bidder or purchaser accepts that it is a fee payable to the Auctioneer in addition to the Price and non-refundable whether a binding Missive of sale is concluded or not save where the Seller withdraws from the Sale during the reservation period contained in the Reservation Agreement, in which case it will be returned to the successful bidder or purchaser.

## **5. Reservation Period**

- 5.1 Provided the preferred bidder or purchaser shall have made payment of the Reservation Deposit or Reservation Fee (as applicable) and completed and signed the Reservation Agreement with the Seller, the preferred bidder or purchaser shall be given an exclusive period as set out in the Reservation Agreement in which to enter into a binding Missive of sale for the lot with the Seller ("the Reservation Period").
- 5.2 During the Reservation Period, subject to compliance by the preferred bidder or purchaser of their obligations hereunder, the Seller undertakes to:-
- (a) instruct the Auctioneer not to agree another reservation of the lot;
  - (b) not encumber or deal with the title to the lot;
  - (c) not send, instruct nor allow anyone else to send any contract of sale of the lot to anyone other than the preferred bidder or purchaser's solicitors;
  - (d) give such access as may reasonably be required by any surveyor or valuer appointed by the preferred bidder or purchaser;
  - (e) not give access to any other person to view the lot nor negotiate with anyone other than the preferred bidder or purchaser any terms for the sale of the lot;
  - (f) use all reasonable endeavours to conclude a binding Missive of sale with the purchaser within the Reservation Period;
  - (g) supply all documentation, information and authority to enable the Seller's solicitors to draft and negotiate the Missive of sale of the lot and do all work necessary to enable a binding Missive of sale to be concluded within the Reservation Period;
  - (h) to the extent not already included in the auction pack for the lot, where applicable to provide the successful bidder or purchaser with a Home Report and Energy Performance Certificate for the lot; and
  - (i) immediately instruct the Seller's solicitors to issue a draft Offer to Sell the lot to the purchaser's solicitors and to answer promptly all enquiries raised by the purchaser's solicitors relating to the lot and to respond promptly to any amendments to the draft Offer to Sell proposed by the purchaser's solicitors.
- 5.3 During the Reservation Period, the preferred bidder or purchaser undertakes to:-
- (a) use all reasonable endeavours to conclude a binding Missive of sale with the Seller within the Reservation Period;
  - (b) immediately instruct the purchaser's solicitors to investigate the title to the lot, negotiate the Missive of sale for the lot, raise enquiries of the Seller and any third parties about the lot and to do any other work as required to enable a binding Missive of sale with the Seller to be concluded within the Reservation Period;
  - (c) (if intending to use a loan in connection with the purchase of the lot) within 5 working days of the auction or their bid being accepted, to apply to the relevant lender and complete all necessary documentation and to do such things as such lender may require to process their application as soon as possible, including payment of all application and other fees, and to keep the Seller's solicitors and the Auctioneer advised of progress with the loan application.
  - (d) carry out any surveys and/ or valuations of the lot required by them or their lender as soon as reasonably practicable;
  - (e) within 5 working days of receiving the draft Offer to Sell from the Seller's solicitors, to ensure that their solicitors have raised initial queries in relation to the draft in writing with the Seller's solicitors failing which the Seller may terminate the Reservation Agreement, re-offer the lot for sale without limitation and any Reservation Deposit or Reservation Fee (as applicable) would be non-refundable;
- 5.4 The Seller shall be entitled (but not bound) to extend the Reservation Period by giving written notice to the preferred bidder or purchaser to that effect.
- 5.5 Neither the Seller nor the Purchaser shall be entitled to terminate the Reservation Agreement during the Reservation Period save that the Seller shall be entitled to terminate the Reservation Agreement by written notice to that effect should the preferred bidder or purchaser be in breach of any of its obligations thereunder.
- 5.6 The preferred bidder or purchaser agrees that if a binding Missive of sale has not been concluded with the Seller by the expiry of the Reservation Period, the Seller has the absolute right to re-offer the lot for sale free of any obligation to them and the Reservation Deposit or Reservation Fee (as applicable) shall be deemed non-refundable.

## **6. Missive of Sale**

- 6.1 The Date of Entry to be inserted into the Offer to Sell to be prepared by the Seller's solicitors ("the Offer to Sell") and on de plano acceptance of which by the purchaser a binding Missive of sale between the Seller and the purchaser will be formed (the "Missive") shall be as set out in the Reservation Agreement, but shall be no later than 28 days after the date of conclusion of the Missive. The purchaser shall use all reasonable endeavours to complete the purchase of the lot on the Date of Entry.
- 6.2 The Price to be inserted into the Offer to Sell (and which Price shall be non-negotiable) shall be the accepted

bid made by the preferred bidder or purchaser and accepted by the Auctioneer. The Price shall be exclusive of VAT, which may be chargeable thereon as set out in the Special Conditions and which the purchaser undertakes to pay same in exchange for a valid VAT invoice.

- 6.3 The Offer to Sell shall be prepared on the basis that the purchaser has already satisfied itself on all matters covered by the auction pack prepared by the Auctioneers and available for inspection in advance of the auction of the lot and is ready, willing and able to proceed with the purchase of the lot as set out therein.
- 6.4 Each party shall be responsible for its own costs and expenses in relation to the Missive and the Reservation Agreement.
- 6.5 The preferred bidder or purchaser shall have no right (at common law or otherwise) to assign, transfer, grant any security over, hold on trust or deal in any other manner with the benefit of the whole or any part of its interest in the Reservation Agreement or Missive.

## **7. Auctioneer**

- 7.1 The preferred bidder or purchaser and the Seller agree that the Auctioneer's capacity in relation to these Terms and the Reservation Agreement and the sale of the lot are solely as agent for the Seller and no personal liability will attach to the Auctioneer in any way in relation thereto.
- 7.2 The preferred bidder or purchaser acknowledges and agrees that the Auctioneer shall be entitled to enforce against them any term of the Reservation Agreement which relates to payment to the Auctioneer of the Fees and a Reservation Deposit or Reservation Fee (as applicable) and the capacity in which the Auctioneer is acting.

## **8. Misrepresentation**

- 8.1 All statements made in the particulars of sale, auction catalogue or on the Auctioneer's website in connection with the lot are made without responsibility on the part of the Auctioneer or the Seller and are statements of opinion and are not to be taken as a statement of fact. The purchaser will be deemed to have satisfied itself by inspection or otherwise as to the correctness of each said statement.
- 8.2 No warranty is given by either the Seller or the Auctioneer in respect of the lot and neither the Auctioneer nor any employee of the Auctioneer has authority to make warranties or representations on behalf of the Seller.
- 8.3 The purchaser warrants that no reliance has been placed by the purchaser on any comments, statements or representations made verbally, in the auction catalogue or on websites with respect to the lot by or on behalf of the Seller.

## **9. Waiver**

- 9.1 No failure or delay by any party to exercise any right or remedy provided under these terms or the Reservation Agreement or by law shall constitute a waiver of that right 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.

## **10. Notices**

- 10.1 All notices or other communications required to be given under or in connection with the Reservation Agreement shall be in writing and shall be validly delivered if sent by first class post, next working day delivery service or hand delivered to the relevant party to their address set out in the Reservation Agreement (or such other address as may be notified in writing from time to time).
- 10.2 Any notice or communication will be deemed to have been received (i) if delivered by hand, on signing of a delivery receipt and (ii) otherwise on the second working day after posting.

## **11. Confidentiality**

- 11.1 No party shall make, or permit to be made, any public announcement concerning the Reservation Agreement without the prior written consent of the other, save as required by law, any governmental or regulatory authority, any court or other authority of appropriate jurisdiction.

## **12. Applicable Law**

- 12.1 The Reservation Agreement and Missive shall be governed by and construed in accordance with the law of Scotland and the Seller and the preferred bidder or purchaser will be deemed to have agreed to submit to the non-exclusive jurisdiction of the Scottish courts.

### **Newcastle Office**

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