

TERM AND CONDITIONS OF THE CONTRACT TO AUCTION

1. Introduction

The contractual relationship between Dunn Bros SW Ltd (registered in United Kingdom with number **13885838**) and Vendors is governed by:

- 1.1. The information as detailed on page 1 of this Agreement;
- 1.2. The terms and conditions detailed herein;
- 1.3. Any additional notices and terms, as amended by any saleroom notice or Auctioneer's announcement.

2. Definitions

- 2.1. "Additional Items" means any Lots delivered to the Auction Site after the Entry Deadline as specified in page 1 of this Agreement
- 2.2. "Agreement" means this agreement
- 2.3. "After-Auction Sale" means the selling/sale of any Lot which did not meet its Reserve Price or where the Highest Bid offered was not accepted by the Vendor at Auction
- 2.4. "Auction" means an auction undertaken by Dunn Bros SW Ltd
- 2.5. "Auction Site" means the premises from where the Auctions is conducted
- 2.6. "Auctioneer" means Dunn Bros SW LTD, its staff, representatives and person and persons for the time being authorised by the Auctioneer to have the conduct of the Auction
- 2.7. "Commission" means the percentage payments (subject to the minimum payment) as detailed on page 1 of this Agreement (as may be amended in accordance with Clause 21) due to the Auctioneer upon the sale of any Lots
- 2.8. "Consignment" means the equipment detailed as such on page 1 of this Agreement
- 2.9. "Entry Deadline" is the date specified as such on page 1 of this Agreement as applicable to either Rolling Stock or Stationary Stock. Any items accepted after the entry deadlines will be subjected to an increase in commission rate. As a matter of policy the Auctioneer may not accept any Lots for sale after this date, subject to the provisions of Clauses 17 and 18 below.
- 2.10. "Hammer Price" is the highest bid for any Lot accepted by the Auctioneer at an Auction
- 2.11. "Listing Fee" an amount of £5.00+VAT applied by the Auctioneer for any items entered for auction, which is incumbent in covering the processing and advertising costs of that item for sale
- 2.12. "Lot" means any individual single part of a Consignment put up for Auction by the Auctioneer
- 2.13. "Offer to Sell" means a conditional proposal to the Vendor to sell a Lot to the Highest Bidder, for an amount less than the Reserve Price, where the Reserve Price of a consignment has not been met
- 2.14. "Purchaser" means the highest bidder for any Lot
- 2.15. "Reserve Price" means the minimum price that the Vendor would be willing to accept from a buyer
- 2.16. "Rolling Stock" means any Lots that are driven by their own power (e.g. excavators, tractors, forklift trucks, etc.)
- 2.17. "Stationary Stock" means any Lots that are not capable of being driven by their own power (including but not limited to generators, compressors, wacker plates, hammers, buckets, pumps, washers, mixers, trailers, garage equipment, etc).
- 2.18. "Safety Defect" refers to any fault on the item which would render the item unfit or unsafe to use according to the requirements of the applicable European Directives. Egs of Safety Defects: Missing ROPS, Damaged Safety Rails, Missing Seatbelt etc.
- 2.19. "Unsold Lot" means any individual part of a consignment not sold through the Auction or as an After-

Auction Sale

- 2.20. "Unreserved Lot" means a Lot that is to be sold without a Reserve Price as defined in 2.13
- 2.21. "Vendor" means any person offering a Consignment for sale, including their agents or executors

Terms and Conditions

3. The Vendor hereby instructs the Auctioneer to sell the Consignments through Online Timed Auction, as agent for the Vendor.
4. The Auctioneer will sell, without prejudice, any lot where the Hammer Price has achieved the Vendors Reserve Price, in accordance with Clause 27
5. The Vendor at his own cost shall deliver the Rolling Stock and the Stationary Stock to the Auction Site in a safe condition, in good running order and free of any hazardous materials on or before the Entry Deadline.
6. The Vendor shall deliver to the Auctioneer on or before the Entry Deadline all documents required by any purchaser for the transfer of ownership of all Lots contained in the Consignment.
7. The Vendor shall deliver to the Auctioneer on or before the Entry Deadline all documents required by any Purchaser to allow the Lots to be freely used within the European Union (including but not limited to valid CE certification and other certificates where applicable). The Vendor acknowledges that the Auctioneer shall have no obligation to inspect any Lot to ensure compliance with any law or regulation or for any other purpose and the Vendor warrants that all Lots shall comply in all respects with all applicable laws, regulations and standards relating thereto.
8. The Vendor shall provide to the Auctioneer a description of the Consignments and warrants that this description shall be fully true and accurate and not misleading in all respects. All Consignments will be sold by the Auctioneer as agent for the Vendor with all faults and imperfections and errors of description. Illustrations and descriptions in catalogues and brochures are for identification purposes only.
9. The Vendor warrants to the Auctioneer that he is the absolute owner of each Lot and is able to transfer a good and marketable title to each Lot free from third party claims or encumbrances of any nature. The Vendor will indemnify the Auctioneer, its servants and agents and the Purchaser against any loss or damage suffered by them in consequence of any breach of the above warranty on the part of the Vendor. Without prejudice to the foregoing the Vendor accepts that he is solely responsible for discharging all hire purchase and other liabilities on each Lot whether or not the Hammer Price is sufficient to discharge any such liabilities.
10. The Vendor will indemnify the Auctioneer against any and all loss, costs, expenses and liabilities caused to the Auctioneer whether directly, or as a result of the action, claim or demand of any third party, or by reason of any breach by the Vendor of this Agreement or of any terms or obligations on the Vendor's part implied by any statute or statutory provision relevant to the Lots or the operation of this Agreement.
11. The Vendor hereby authorizes the Auctioneer at its absolute discretion to carry out title searches in respect of any Lot at the expense of the Vendor. In no circumstances shall the Auctioneer be deemed to have a duty to conduct or be responsible for the results of such title searches. The Vendor also authorizes the Auctioneer to contact Creditors to determine amounts claimed against the Equipment. The Vendor authorizes the Auctioneer to carry out whatever necessary searches via HPI/ICB/Cartell/TER or any other such service to ensure consignment is free of finance or any other encumbrances. Charges for these services will be applied at varying amounts.
12. The Auctioneer shall have the absolute discretion without giving any reason to refuse any bid, to divide

any Lot or Consignment, to combine any two or more Lots or Consignments, to refuse to auction any Lot, to withdraw any Lot from the Auction, regulate bidding and in case of dispute put any Lot up for auction again. The Auctioneer shall not be liable for any loss or damage claimed or suffered in respect of any of the above actions.

13. In all cases all Lots shall remain at all times at the risk of the Vendor until the receipt by the Auctioneer of cleared funds from the sale of the Lot and neither the Auctioneer nor its servants or agents will be responsible for any loss or damage whether caused by negligence or otherwise. The Vendor authorizes the Auctioneer to utilize any part of the Consignments in the marketing and conduct of the Auction.

14. The Vendor shall insure the equipment to its full insurable value against all perils so that in the event of damage to or destruction of the equipment or any part thereof, all insurance proceeds shall be paid to the Auctioneer as if such were the Auction sale proceeds whereupon the Auctioneer shall be paid Commission in accordance with the terms of this Agreement and in addition paid any expenses and surcharges in accordance with any other terms or conditions herein.

15. In addition to Clause 5, the Vendor accepts that all lots will be sold in the condition it is received by the Auction Site and the Auctioneer will not be responsible for offering services or improvements to the condition of any Lot which may affect the Hammer Price; including, but not limited to (i) supplying glass and parts; (ii) Carrying out work such as the following: welding, steam cleaning, sandblasting, painting, repairing and other refurbishing; and (iii) Supplying fuel, batteries and tyre repair; and the Auctioneer shall not be liable for any perceived losses, claims or costs arising from its omissions

15.1 Should any of the above services be requested by the Vendor, these will be carried out at the Auctioneers absolute discretion and all costs incurred shall be at the expense of and paid for by the Vendor and such payment shall be in addition to the Commission

16. Where the Vendor uses the Auctioneers haulage services, the Vendor accepts to pay any expenses in the moving, haulage, storage and service calls and all costs incurred shall be at the expense of and paid by the Vendor and such payment shall be in addition to the Commission

17. Should the Vendor submit any Consignments for Auction after the Entry Deadline the Auctioneer may in its sole and absolute discretion accept these items for entry to the Auction. In the event that the items are accepted into the Auction, they will be deemed to be Additional Items and will incur an increase in Commission rate at the Auctioneers discretion. If the Vendor submits a Consignment for Auction as Additional Items, the Vendor agrees and accepts that the said Additional Items will be subject to these terms and conditions as contained herein.

18. Additional Items shall only be deemed to have been accepted by the Auctioneer upon issue by the Auctioneer of an amended or supplementary Page 1 to this Agreement containing details of the Additional Items.

19. Neither the Vendor nor any person affiliated with, or, as agent of the Vendor shall make, or collude in the making of, bids for Lots at the Auction. In the event that the Vendor breaches this provision the sale of such Lots shall be deemed void and in addition to any other remedies of the Auctioneer or the Purchaser, the Vendor shall pay to the Auctioneer a commission of 25% of the Hammer Price upon resale.

Listing Fee

20. The Vendor agrees to pay the Auctioneer a compulsory Listing Fee of £5.00+VAT for each individual Item consigned to Auction

20.1 The Listing Fee will be applied automatically and without negotiation to the Vendor Statement and

will be in addition to any commissions and/or any other sums due by the Vendor to the Auctioneer.

20.2 In the event that Lots do not sell at Auction or in an After-Auction Sale the Listing Fee will remain payable to the Auctioneer by the Vendor.

20.3 Listing Fees may be removed only at the Auctioneers absolute discretion.

Commissions

21. The Vendor hereby agrees to pay the Auctioneer Commission (plus any VAT chargeable thereon) based on the Hammer Price realised at the Auction. The Auctioneer shall be entitled to vary the rate of Commission by notice to the Vendor at any time prior to the commencement of the Auction. Without prejudice to the Vendor's obligation to pay the Commission (together with any VAT thereon) and other sums due under this Agreement, the Vendor authorizes the Auctioneer to deduct Commissions and any other sums due by the Vendor to the Auctioneer on any account (plus any VAT chargeable thereon) from any sums received by the Auctioneer in respect of the sale of any Lot.

21.1 Where Lots are sold subject to an After sale the Vendor agrees to pay the Auctioneer commissions and any other sums due as reflected on Page 1, automatically deductible from the sums received for the sale of any Lot.

22. Payment of all sums due to the Auctioneer under this Agreement is due on the day of the Auction or (if any Lots are withdrawn prior to the Auction) on the day of withdrawal. Time for payment shall be of the essence. No payment shall be deemed to have been received by the Auctioneer until the Auctioneer has received cleared funds.

23. If the Vendor fails to pay the Auctioneer any sum due pursuant to this Agreement the Vendor will be liable to pay interest to the Auctioneer on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.

Withdrawal

24. Any Consignment that has been advertised in the Auction catalogue/brochure which is not delivered to the Auction Site on or before the Entry Deadline will be subject to a surcharge of £1000 per Lot plus VAT.

25. Any Consignment that has been delivered to the auction site and is withdrawn prior to or on the date of the Auction will be subject to a surcharge of £1000 per lot or 8% of the Reserve Price (whichever is highest) plus VAT.

Reserve Prices

26. Lots will be sold by Reserved Timed-Online Auction.

27. A Reserve Price for each individual Lot of a consignment shall be provided by the Vendor, no later than the Entry Deadline Date, as stipulated on Page 1 Contract to Auction

27.1 Any Categories of Lot and those of a similar nature, which are to be sold unreserved are stipulated on Page 1 Contract to Auction and are non-negotiable

27.2 It is the sole responsibility of the Vendor to provide a Reserve Price for any Lot consigned. If no Reserve Price is provided to the Auctioneer by the Vendor before the Entry Deadline Date by written communication, the Auctioneer will sell the Lot Unreserved. For the avoidance of all doubt the Auctioneer shall not be liable for any perceived losses, claims or costs arising from its omission to obtain a Reserve Price from the Vendor

27.3 Reserve Prices cannot be given and will not be accepted in retrospect.

27.4 Where a Lot has been sold Unreserved due to the Vendors omission to provide a Reserve Price in conjunction with Clause 27, in no circumstances whatsoever can a Vendor refuse to accept a winning bid should it not reach a level and value acceptable to the Vendor.

28. The Auctioneer agrees to communicate the Highest Bid to the Vendor where the Reserve Price is not reached. The Vendor will have a 48hour window starting from the point where the last Lot of the Auction is sold to accept the Highest Bid amount, before it is respectfully withdrawn. The Auctioneer shall not be liable for any perceived losses, claims or costs arising from any omission to do so.

28.1 Where the Vendor accepts the Highest Bid, an additional notice shall be provided to both the Vendor and Purchaser confirming the Sale.

After-Auction Sales

29. The Auctioneer has the right to retain possession of, with the intention to sell on behalf of the Vendor, any Consignment which did not meet its Reserve Price and/or where the Highest Bid was not accepted, for a period of 14 days following the Auction Date.

29.1 Collection of any Unsold Lots within this two week After-Auction Sale period, will result in a fee not less than 8% of the Reserve Price given by the Vendor.

29.2 If the Vendor rejects After-Auction Sale Price offered on an Unsold Lot, that matches the Reserve Price or is greater than, there will be a surcharge of £1000 per Lot or 8% of the Reserve Price per Lot (whichever is higher) plus VAT

29.3 If the Vendor rejects an After-Auction Sale price offered on an Unsold Lot which is less than the Reserve Price, the Vendor agrees to pay the Auctioneers Listing Fee in accordance with Clause 20

30. Any Unsold Lot, where an After-Auction Sale has not been concluded, must be removed from the Auction site within 21 days of the Auction date, otherwise Storage Charges will be applicable at a daily rate to be determined by the Auctioneer at his sole discretion.

31. The Vendor authorizes and provides a license to the Auctioneer to use the Vendor's name, trademark or logo for the purpose of advertising and marketing the Auction.

32. The Vendor authorizes the Auctioneer to utilize any part of the Consignments in the marketing and conduct of the Auction.

33. This Agreement can only be amended or varied by written agreement between the parties and constitutes the entire agreement between the parties and overrides prior contracts or agreements or understandings between the parties in relation to the sale by Auction and ensures for the benefit of and is binding upon the heirs, executors, administrators, successors in title and assigns of the parties herein.

34. The Auctioneer shall not be obliged to release any funds to the Vendor for Lots sold until such time as the Auctioneer has received cleared funds from the Purchaser of such Lots or 28 days from the Auction Date whichever is the later subject to the provisions of Clause 29. The Auctioneer reserves the right to withhold funds from this Sale to clear any outstanding Purchase Balance the Vendor may have from any other Dunn Bros SW Ltd Sale.

35. Where Lots have been consigned and sold subject to finance or other financial liability the Auctioneer shall be entitled to settle all outstanding balances with the respective finance companies prior to the release of any funds to the Vendor.

36. Where the Auctioneer has made payment of the proceeds of the auction of Lots to the Vendor in accordance with the terms of this Agreement, the Vendor agrees to assign, or procure to be assigned to the Auctioneer, for no consideration any and all rights and claims of the Vendor against the Purchaser in

respect of the payment of the purchase price or any part thereof and the Vendor agrees to provide all reasonable assistance to the Auctioneer in respect of pursuit by the Auctioneer of any such claim against the Purchaser.

37. The Vendor agrees to stipulate on Page 1 of the Contract to Auction whether any item has a Safety Defect and forward in writing full details of any and all defects. Where the Vendor fails to provide the information regarding the Safety Defects the Auctioneer will assume the item is not safe and may announce it as unsafe or may sell it as a Deadrow item. Liability for all Lot Descriptions including the Safety Defects lies with the Vendor. The Vendor agrees to indemnify the Auctioneer against any resulting shortfall or legal issue which may arise as a result of the Lot Description including the Safety Defect.

38. The formation, existence, construction, performance, validity and all aspects of this Agreement shall be governed by the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England.

39. The Vendor is responsible to ensure that all consignments (where applicable) are registered with DVLA under the HMRC Notification of Vehicle Arrivals (NOVA) VAT Information Sheet 06/13. In the event that consignments are not registered, the Vendor authorizes the Auctioneer to process any NOVA application on their behalf and if applicable any outstanding VAT or any other charges are to be deducted from sale proceeds. In no circumstances shall the Auctioneer be deemed liable for any monies due to HMRC.

40. The Vendor agrees to provide bank details to the Auctioneer for payment of sale proceeds. The Auctioneer will use the bank details on file, unless advised by Vendor.