



Terms and Conditions

Traditional
Auction

(Scotland)



Terms and Conditions Traditional Auction

These Terms and Conditions – Traditional Auction (“the Terms and Conditions”) apply to the sale of each lot in the auction, subject to any variation or addition referred to in the Articles of Roup/Offer to Sell or 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

- 2.1 The Judge of the Roup/Auctioneer (hereinafter the “Auctioneer”) shall have the power to determine whatever questions and differences as may occur at the roup/auction between the Seller and any bidder or among the bidders themselves in relation to the said roup/auction or to prefer the highest bidder and also adjourn the roup/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 therefore.
- 2.3 The bidder offering the reserve price or, if there are more than one offer over the reserve price, the highest bidder shall be the successful bidder or purchaser. On the fall of the hammer, the successful 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 fall of the hammer on their successful bid, the successful bidder or purchaser shall pay the deposit as detailed in section 9 below and complete and sign the Minute of Preference and Enactment or Acceptance of Offer to Sell, binding them to the amount offered by them.
- 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 contract of sale.
- 2.6 A bid which does not reach the reserve price during the roup/auction may 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 roup/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 Articles of Roup/Offer to Sell and any Special Conditions.

3. Seller's Rights

- 3.1 The Seller reserves to itself the right to (i) withdraw any lot from the roup/auction whether or not the bidding has commenced (ii) sell by private bargain all or any part of any lot before the roup/auction (iii) to bid by itself or by the Auctioneer up to the reserve price.

4. Deposit & Other Fees

- 4.1 A deposit of 10% of the Price (subject to a minimum as set out in the Articles of Roup/ Offer to Sell and Special Conditions) (“the Deposit”) shall be paid by the successful bidder or purchaser forthwith after the sale of each lot to Iamsold Ltd as agents for the Seller or as stakeholder (as set out in the Articles of Roup/ Offer to Sell and Special Conditions) and after the acceptance of the Offer to Sell or completion and subscription of the Minute of Preference and Enactment as appropriate.
- 4.2 If the successful bidder or purchaser fails to pay the Deposit, the Auctioneer shall be entitled to re-sell the lot or require the next highest offer or to complete the purchase at their last offer, without prejudice to the Seller's right to claim damages against the successful bidder or purchaser for their failure.
- 4.3 Payment of the Deposit must be made in pounds sterling by cheque or banker's draft drawn on an approved financial institution or in such manner as the Auctioneer may in their absolute discretion direct. The Auctioneer reserves the right to hold the Minute of Preference and Enactment until cleared funds have been secured.
- 4.4 If the successful bidder or purchaser fails to pay the Deposit immediately after execution of the Minute of Preference and Enactment or the acceptance of the Offer to Sell (as appropriate) or if a cheque given for payment of the Deposit is dishonoured on presentation, 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.
- 4.5 In addition to the Deposit, upon acceptance of the Offer to Sell or completion and subscription of the Minute of Preference and Enactment (as appropriate), the successful bidder or purchaser will be required to pay to the Auctioneer a reservation fee of 3.5% of the Price plus VAT subject a minimum of £3,750 plus VAT (“the Fees”). The Fees are not part of the Price and shall be retained by the Auctioneer whether the sale of the lot completes or not save in the case where the Seller withdraws from the sale, in which case the reservation fee element of the Fees shall be returned to the successful bidder or purchaser.
- 4.6 The 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. If the purchaser is in material breach of its obligations and the Seller properly rescinds the contract as a result, the Deposit shall be forfeited to the Seller. The Deposit shall be returned to the purchaser if the Seller is in material breach of its obligations and the purchaser properly

rescinds the contract as a result. The Deposit shall also be returned to the purchaser if for any reason the Seller is unable to complete the sale of the lot and in such cases, the purchaser agrees that neither the Auctioneer nor Seller shall have any liability for any expenses or loss of potential income suffered by the purchaser as a result.

- 4.7 Any interest accrued on the Deposit will be paid to the party to whom the Deposit is payable aforesaid. Such interest will not be treated as a payment on account of the Price.

5. Insurance

- 5.1 The Seller shall be obliged to insure the lot until the Date of Entry and shall:-
- (a) produce to the successful bidder or purchaser on reasonable request all relevant insurance details;
 - (b) pay the premiums when due;
 - (c) if requested by the successful bidder or purchaser, use reasonable endeavours to have the purchaser's interest noted on the policy (to the extent it is not already generically covered);
 - (d) at the request and cost of the successful bidder or purchaser, to use reasonable endeavours to increase the amount of cover or amend any other term of the policy;
 - (e) unless otherwise agreed, cancel their insurance as soon as reasonably practicable after the Date of Entry; and
 - (f) subject to the rights of any tenants or other third parties, hold on trust for the purchaser any insurance proceeds received in respect of loss or damage to the lot arising after the date of signing of the Minute of Preference and Enactment or Acceptance of the Offer to Sell (as appropriate) ("the contract Completion Date") or assign to the purchaser the benefit of any claim.
 - (g) The successful bidder or purchaser shall be obliged to reimburse the Seller the cost of effecting such insurance for the period between the Completion Date and the Date of Entry.
- 5.2 The Seller will be under no liability in respect of any damage or destruction of the lot from any cause from that date and the successful bidder or purchaser will be required to complete the purchase of the lot regardless of any damage or destruction thereto.

6. Entry & Completion

- 6.1 The date of entry shall be as set out in the Articles of Roup or Offer to Sell ("Date of Entry"), or such other date as may be agreed between the Seller and the purchaser, and shall be the date on which the balance of the Price shall become due and payable.
- 6.2 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 balance of the Price, and any VAT thereon, shall be payable by 2pm on the Date of Entry by instantaneous bank transfer of cleared funds into such account as may be nominated by the Seller. Payment of the Price aforesaid is a material condition of the contract.
- 6.4 In the event that the balance of the Price and any VAT thereon shall not have been paid in full by 2pm on the Date of Entry, then notwithstanding consignment or that the purchaser has not taken entry, the Seller will be entitled to charge interest on such sums as are outstanding at a rate of 4% above the Base Lending Rate of Royal Bank of Scotland plc from time to time until paid. For the purpose of calculating interest and any apportionments, where the balance of the Price and any VAT thereon is received after 2pm on the Date of Entry, it shall be deemed to have been received on the following working day.
- 6.5 In the event that the balance of the Price, VAT thereon or interest aforesaid shall not have been paid in full by the date falling 10 working days after the Date of Entry, the Seller shall be entitled to rescind the contract, to re-sell the lot to any third party and to claim damages from the purchaser to the extent that their losses exceed the deposit forfeited by the purchaser under clause 4.6 above, which may include (i) all costs and expenses incurred in relation to the remarketing and re-sale of the lot (ii) any shortfall between the sale price achieved by the Seller on any such re-sale and the Price and (iii) financial losses including increased funding costs which the Seller would not have incurred had the Price been paid in full on the Date of Entry and interest which the Seller could have earned on the Price had it been paid on the Date of Entry.
- 6.6 If the Seller rescinds the contract in terms of clause 6.5 above, no interest will be due by the purchaser in terms of clause 6.4.
- 6.7 Clauses 6.4 and 6.5 shall not have effect for any period during which the delay in payment by the purchaser is due to any failure or breach by or on behalf of the Seller.
- 6.8 On the Date of Entry and in exchange for payment of the Price and any VAT or interest thereon, the Seller shall deliver to the purchaser a duly executed disposition of the lot in favour of the purchaser and under the reservations, burdens, conditions and others referred to in the title deeds of the lot or otherwise affecting same and any occupancy, tenancy or lease documentation relating to the lot. The disposition to be granted to the purchaser shall have an exclusion of warrandice covering any current lets, servitudes, rights of possession and other rights however constituted. Any warrandice to be granted by a Seller who is a heritable creditor in possession or an insolvency practitioner shall be fact and deed only.
- 6.9 The Seller shall be under no obligation to grant a disposition of the lot to any person or body other than the purchaser or otherwise than as a whole or at a price different from that stated in the contract.
- 6.10 The successful 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 contract of sale to follow on the Articles or Roup/Offer to Sell.

- 6.11 If the Special Conditions specify that there are Capital Allowances available in respect of a lot, the purchaser will make an election with the Seller under s198 of the Capital Allowances Act 2001 at the Date of Entry. The Seller will use reasonable endeavours to provide copies of all relevant information in its possession as the purchaser may reasonably require in order to enable the purchaser to make a claim for Capital Allowances. The value of the applicable plant and machinery to be used in said election shall be as set out in the Special Conditions or as specified by the Seller.

7. Title

- 7.1 Each lot is as described in the Articles of Roup/ Offer to Sell and Special Conditions applicable to it (therein "the Property").
- 7.2 The title to each lot will be taken as it stands and the purchaser will be deemed to have satisfied itself on the validity and sufficiency of the title and the Seller's right and ability to sell the lot.
- 7.3 Without prejudice to the foregoing or any other condition of the contract, the purchaser will be bound to take the title subject to such real burdens, reservations, restrictions, servitudes, rights of way or similar rights, overriding interests, and other conditions affecting the lot whether formally constituted or not and will be obliged to relieve the Seller of all liability under same and comply with or obtain waiver of same at his own expense.
- 7.4 The minerals will be conveyed only insofar as the Seller has right thereto.
- 7.5 Any plan which the purchaser may wish to incorporate in the title to the lot or annex to the disposition in his favour or which may be required by the Keeper of the Land Register of Scotland shall be prepared by the purchaser at his own expense and shall not be warranted by the Seller.
- 7.6 The Seller's solicitors will be under no obligation to exhibit or deliver any evidence including consents, affidavits or renunciations required under or by virtue of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended and the Civil Partnership Act 2004.

8. Searches and Charges

- 8.1 No searches in the Property Register, nor in the Personal or Charges Registers and Company Files of the Seller or any predecessors in title will be exhibited at or prior to the Date of Entry.
- 8.2 The Seller will not be obliged to deliver or exhibit any Letters of Non Crystallisation in respect of any floating charge granted by the Seller or any predecessor in title.
- 8.3 The Seller's solicitors will not be obliged to deliver any Land Register Reports or a Letter of Obligation at the Date of Entry.
- 8.4 The Seller will be responsible for the discharge of any standard security affecting the lot, save as provided for in clause 8.5 below.
- 8.5 Where any lot is being sold by a heritable creditor in possession, no discharge of the standard security in favour of the Seller or of any pari passu or postponed standard securities will be exhibited or delivered. No discharges of any inhibitions registered against the granted of a standard security in favour of the Seller as a heritable creditor in possession and dated after the date of recording of the said standard security shall be exhibited or delivered.

9. Property Enquiries

- 9.1 The purchaser will be deemed to have made all necessary enquiries and satisfied itself in all respects in connection with the planning position, status of roads, footpaths, main drains and water supply and generally all other matters which are normally covered by Local Authority searches and Property Enquiry Certificates in respect of the lot and the Seller is under no obligation to deliver or exhibit such searches or Certificates.
- 9.2 No warranty is given by or on behalf of the Seller that the present use of the lot is the authorised use in terms of the Planning Acts or as to the state or condition of the lot or as to whether it is subject to any scheme, resolution, orders, notices or proposals under any legislation or regulations and the purchaser is deemed to have made all necessary enquiries to satisfy itself on same.
- 9.3 The purchaser is deemed to be purchasing the lot in all respects subject to the matters referred to in clauses 9.1 and 9.2 above and accepts full liability and responsibility for the cost of implementing any outstanding statutory notice issued in respect of the lot.
- 9.4 The Seller will notify the purchaser of any notices, orders, demands or proposals of any Local or other Authority it receives between the Completion Date and the Date of Entry, but the purchaser shall be responsible for complying with same and shall indemnify the Seller in all respects in connection thereto.

10. Apportionments & Rents

- 10.1 All payments and receipt due to or by the Seller in respect of the lot shall be apportioned on a day/ year basis from the Date of Entry.
- 10.2 Where the lot is tenanted:-
- (a) where there are arrears of rent or service charge relating to the period prior to the Date of Entry, such arrears shall be paid by the purchaser to the Seller on the Date of Entry in addition to the Price and the Seller shall assign to the purchaser all rights the Seller has to recover such arrears from the tenant(s).
 - (b) any rent or service charge paid to the Seller in advance and relating to the period from the Date of Entry shall be deducted from the Price.
 - (c) the Seller shall not terminate, vary or surrender any lease without the prior consent of the successful

bidder or purchaser;

- (d) the Seller shall assign its interest in any rent deposit agreement with any tenant relating to the lot to the purchaser and transfer the balance of any rent deposit fund thereunder at the Date of Entry. In exchange, the purchaser will give notice of such assignation to the tenant(s), comply with all obligations under the said rent deposit agreement and indemnify the Seller in all respects relating thereto.

11. Sold as Seen

- 11.1 Each lot is sold as it exists, tantum et tale. No warranty is given on any matter relating to the condition and state of repair of the lot, the title, the application of statute, planning and building control matters, leases or otherwise in any way.
- 11.2 The successful bidder or purchaser accepts that he has enquired and satisfied himself on all matters relating to the lot or otherwise accepts all risks and where anything subject to which a lot is sold would expose the Seller to liability, the successful bidder or purchaser shall indemnify the Seller against that liability.
- 11.3 Where a sale induces first registration in the Land Register of Scotland, the successful bidder or purchaser shall be bound to accept any exclusion of indemnity by the Keeper, so long as it is not material. An exclusion of indemnity shall not be considered material where it arises out of any matter disclosed to the successful bidder or purchaser or which could reasonably have been deduced from any deed or document or public register or other source of information or enquiry available to any party using reasonable endeavours prior to the Date of Entry or which arises out of any failure by the successful bidder or purchaser or its solicitors to carry out any necessary conveyancing procedures.
- 11.4 Where a lot is sold with vacant possession, the successful bidder or purchaser accepts that vacant possession is given notwithstanding that there may be furniture, fittings or effects remaining therein and shall not require the Seller to remove the same nor object to the taking of same since no warranty is given by the Seller to the ownership or condition of any moveable items within the lot.
- 11.5 The successful bidder or purchaser is deemed to have satisfied itself on the terms of any lease agreement affecting the lot, including the rent payable (which may be more or less than as stated in the auction catalogue), and shall accept all tenancies on their current terms. A lot will be deemed to be sold with vacant possession unless otherwise specified in the Articles of Roup/Offer to Sell and Special Conditions
- 11.6 An auction pack containing, inter alia, the titles to the lot shall be available for inspection prior to the date of the auction as specified in the auction catalogue and the successful bidder or purchaser, whether inspecting the same or not, shall be deemed to purchase the lot with full knowledge of the contents thereof and the successful bidder or purchaser shall raise no objection thereto or requisition thereon whatsoever.

12. TUPE

- 12.1 The Special Conditions will set out whether there are any persons to whom the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply in relation to the sale of the lot. If the Special Conditions provide that TUPE will apply or are silent on the point, then the Seller will notify the successful bidder or purchaser in writing no later than 14 days prior to the Date of Entry of the employees whose contracts will transfer to the purchaser on the Date of Entry ("the Transferring Employees"). The purchaser will comply in all respects with its obligations under TUPE in respect of the Transferring Employees and will indemnify the Seller against all liability for the Transferring Employees after the Date of Entry.

13. Misrepresentation

- 13.1 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.
- 13.2 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.
- 13.3 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.

14. Continuing Contract

- 14.1 Notwithstanding delivery of the Disposition in favour of the purchaser, the provisions of the contract of sale arising out of the Articles of Roup or Offer to Sell shall remain in full force and effect until the earlier of the date each provision has been implemented and the date Two years after the Date of Entry except in so far as they are founded on in any court proceedings which have commenced within such two year period.

15. Applicable Law

- 15.1 The contract of sale arising out of the Articles of Roup or Offer to Sell shall be governed by and construed in accordance with the law of Scotland and the Seller and the purchaser will be deemed to have agreed to submit to the non-exclusive jurisdiction of the Scottish courts.

Newcastle Office Floor 6, Arden House, Gosforth, NE3 3LU

Call: 0345 646 0302 **Email:** enquiries@iam-sold.co.uk

www.iamsold.co.uk

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