

**COTTRILL & ASSOCIATES LIMITED**

**TERMS AND CONDITIONS**

**INTERPRETATION**

“the Auction Premises”	the location at which lots/goods are either stored at or sold from, or, if applicable, where the auction is conducted.
“Buyers Premium”	the amount specified as a percentage of the lot price payable by a buyer as set out in the Special Conditions.
“the Seller”	the legal owner of the lots/good being sold or auctioned.
“Special Conditions”	means the specific conditions and notices provided by Us as applicable to individual lots as set out on the Website or in any written information provided by Us including but not limited to any bespoke relevant information, bidding period, special payment terms, applicable time limits.
“Total Sale Price”	means the agreed price in respect of the lots/goods sold plus any Value Added Tax, customs duties, the Buyer’s Premium and any additional charges, fees and expenses due
“We/Us/Our”	Cottrill & Associates Limited trading as Cottrill & Co of 401-407 Tyburn Road, Erdington, Birmingham West Midlands B24 8HJ, England.
“Website/Site”	<a href="http://www.cottandco.com">www.cottandco.com</a>
“You/Your”	The Purchaser/Bidder

**GENERAL CONDITIONS**

1. The Terms and Conditions set out herein constitute an agreement between You, and Cottrill & Associates Ltd and set out the conditions upon which

- (a) You may access through our Website, the services, information, products and materials available through the Website;
  - (b) We conduct sales of goods by auction;
  - (c) We conduct sales by Tender;
  - (d) We conduct sales by private Treaty
2. By accessing, viewing or using the services, information, products and materials available on or through the Website, You acknowledge that You understand and intend these Terms and Conditions to be the legal equivalent of a signed, written document and that You accept such Terms and Conditions and accept to be legally bound by them.
  3. We reserve the right to amend these Terms and Condition, as a whole or in any part at any time, and We reserve the right to correct any clerical administrative or typographical errors made by Our employees at any time. Any such changes will appear on the Website. You are therefore required to review the Terms and Conditions posted on the Website periodically.
  4. We may change, adapt, add or remove features, auctions or services at Our sole discretion and without any liability whatsoever to You.
  5. These Terms and Conditions together with those set out in any Special Conditions are the only Terms and Conditions subject to which We as agent/seller will sell goods to a purchaser and all other conditions whether expressed or implied at common law or by statute as are capable of lawful exclusion are hereby excluded.
  6. You are hereby permitted to make personal use of the Website and may view and print hard copies of the Website for your own use only. You are expressly prohibited from using the Website for any commercial use and You may not print, reproduce, download, copy, republish, transmit, broadcast, display, modify or re-use any content of the Website otherwise than for your personal use.
  7. We reserve the right at our absolute discretion, to suspend or terminate Your right to access the Website in the event that You have; provided false or misleading information, interfered with other users or the administration of the Website, failed to provide deposits when required, failed to pay monies owed on or before their due date, or in any way breached or attempted to breach these Terms and Conditions.
  8. We give no warranties in respect of the Website. Without limiting the generality of the foregoing We do not warrant the Website or any software available on or downloaded from it will be free from viruses or defects, nor do We warrant that any material or information contained on the Website will be true, accurate or complete. Except to the extent otherwise

provided in these Terms and Conditions any warranties which would otherwise be implied by law as to quality, fitness for purpose or as to skill and care are hereby excluded.

9. Neither Us nor Our employees will be liable to You, whether for negligence, breach of contract, misrepresentation or otherwise, for any direct, indirect or consequential damage (including, without limitation, loss of profit, goodwill, business opportunity or anticipated savings), suffered by You as a result of any information, materials, software or services provided on or through the Website or downloaded from it, or Your inability to use the Website, or any error in the provision of the Website. Nothing in these Terms and Conditions or in any other terms and conditions governing the use of the Website shall operate to exclude or restrict Our liability for death or personal injury resulting from Our or Our employees' negligence, or breach of their obligations arising from Section 12 of the Sale of Goods Act 1979 or from fraud.
10. Any information that is supplied by You to the Website whether of a personal or business nature will be treated as being supplied in confidence. We will collect and store information supplied for our own use and for purposes connected with the Website. We reserve the right to use such information to contact You from time to time in connection with Our business. We confirm that we will not disclose information to third parties without Your permission.
11. Where there are other terms and conditions applying to particular areas of the Site and which relate to use of such areas, those terms and conditions, together with these Terms and Conditions, govern the use of the Site and of its associated information, products, materials and services.
12. Where We sell as agents for the Seller we are not responsible for any default by the Seller.
13. Should any third party claim possession of or title to all or any part of the lot(s)/goods prior to its removal from the Auction Premises We reserve the right to rescind the sale thereof or to permit the removal thereof from the Auction Premises subject to such conditions as We may see fit to impose.
14. We reserve the right not to accept any bid, or any tender and shall not be obliged to accept any or the highest offer tendered.
15. In the event that the Total Sales Price is not received by Us in cleared funds by the date set out in the Special Conditions, We reserve the right to rescind the sale contract without any liability to You, and any deposit paid by You to Us is thereupon forfeited by You to Us and We will be entitled to resell the lot(s)/goods but shall not be liable to account to you in the event of a resale at a higher price than the price contracted to be paid by You.

16. Payment of any deposit or the Total Sales Price will only be accepted by us if made by direct bank transfer, direct debit, credit card, debit card or switch.
17. Payment of any deposit by You, or any sums on account of the Total Sales Price shall be non refundable.
18. None of Our employees have any authority to make or give any representation or warranty in relation to the lot(s)/goods or to vary the Terms and Conditions of this Contract. Any variation to these Terms and Conditions will only be acceptable to us if agreed in writing signed by one of Our authorised officers
19. We and the Seller hereby severally exclude liability for any accident or injury howsoever arising sustained by any person or persons who may come to the Auction Premises for any purposes whatsoever save where such accident or injury is caused by our negligence or the negligence of the Seller. Neither We nor the Seller recommend any organisation or represent the competence of any other organisation representatives or advertising literature to be available or distributed at the Auction Premises.
20. Notwithstanding any of the foregoing provisions, where You are in relation to the Contract dealing as a consumer as defined in the Unfair Contract Terms Act 1977 (or any statutory modification or re-enactment thereof) any condition or stipulation which is void against You under any statute for the time being in force shall be deemed not to be included in this Contract and Your statutory rights against Us in relation to the lot(s)/goods shall remain unaffected.
21. Unless otherwise stated in these Terms and Conditions, time is of the essence.

#### **DESCRIPTION AND INSPECTION**

22. It is Your responsibility to verify any information that You may obtain on the Website with independent authorities before acting on it.
23. We have used Our best endeavours to ensure that the descriptions of each lot(s)/goods appearing in Our catalogue or on the Website are accurate but You should rely upon such descriptions at your own risk. You are advised to inspect any lot(s)/goods for which you intend to buy to verify the accuracy of the description contained in the catalogue or on Our Website.
24. In the event that we ascertain that the description of any lot(s)/goods appearing in Our catalogue or on the Website is incorrect, or that any third party (other than the Seller) has a right to or title of any such item, we reserve the right to withdraw the lot/goods from any auction, or in the event that a third party makes a claim after the auction to rescind the sales

contract and refund any monies received by Us from You. Our liability to You is limited to the repayment by Us of any monies You have paid to Us, and we will not be liable for any consequential or other losses or liabilities you may incur.

25. All statements by Us as to the lot(s)/goods are statements of opinion only and are not to be taken as, or as implying, statements or representations of fact. You should rely upon your own judgement as to all matters affecting the lot(s)/goods.
26. We on Our own behalf and on the behalf of the Seller hereby exclude all liabilities for any loss or damage or injury sustained by You as a result of or in connection with any fault, defect, deficiency, failure, malfunctioning or failure to function in any lot(s)/goods purchased or a mis-description thereof in Our catalogue or on the Website or any failure to fulfil the functions for which they were intended by You, Without prejudice to the generality of the foregoing no warranty is given that the lot(s)/goods are so designed and constructed as to be safe and without risk to health and safety when properly used and accordingly the lot(s)/goods may not comply with the Health and Safety at Work etc Act 1974 or with any statutory amendment or re-enactment thereof or with any regulations made.
27. The lot(s)/goods are sold as they lie with all or any faults. No goods sold “as new”. You shall be deemed to have inspected and approved the lot(s)/goods. If You buy without prior inspection You shall be deemed to have done so at your own risk. Any statutory or other warranty, condition, description or representation expressed or implied as to the state, quality or fitness of the lot(s)/goods subject to this contract, is to the extent permitted by applicable law hereby expressly excluded.

### **PROPERTY AND RISK**

28. Upon confirmation being given by Us to You that your bid has been accepted, or on the acceptance of the Tender or on the entering by You into a contract of sale You shall assume all risk in and relating to such lot(s)/goods, whether or not the lot(s)/goods have been removed by You from the Auction Premises. We shall not be liable for any damage or loss you may suffer thereof prior to the lot(s)/goods being removed from the Auction Premises but after the passing of risk.
29. You are advised to effect in respect of all such risks arising thereafter any insurance You may consider necessary. Our duty and/or the duty of the Seller to deliver lot(s)/goods shall be deemed performed upon notification to You of the acceptance of Your bid or Tender or upon the entering into a contract of sale even if lot(s)/goods are subsequently damaged and/or parts thereof have been lost.

30. In the event of total loss and/or destruction of lot(s)/goods prior to delivery or collection, We may treat the contract (in relation only to such lot(s)/goods) as frustrated and return to You any money paid by You in relation thereto in full and final satisfaction of all claims by You in relation to the said lot(s)/goods.
31. Where the Purchaser is more than one person your duties and obligations will be joint and several.
32. Property and title to the lot(s)/goods shall NOT pass to You until:-
  - (a) We have received full payment of the Total Sale Price; and
  - (b) each lot/good has been removed from the Auction Premises in its entirety.

### **REMOVAL OF LOT(S)/GOODS**

33. You shall at your own expense disconnect, dismantle and remove the lot(s)/goods from the Auction Premises. Further you will be responsible for ensuring compliance with all regulations in force from time to time including the obtaining of any required Export Licence if it is Your intention to export the lot(s)/goods out of the UK. You hereby agree to indemnify Us for any costs we incur as a result of any breach by you of this clause 33.
34. Removal of the lot(s)/goods from the Auction Premises shall be at Your expense, and shall be on a date or dates agreed with us or before the date set out in the Special Conditions. Further such removal shall be by previous arrangement and subject to the supervision by Us or by Our appointed representatives.
35. Notwithstanding the provisions of clause 33, You will not be permitted to remove any lot(s)/goods from any premises until the Total Sale Price has been received by us in full in accordance with clause 16.
36. If in Our opinion removal of any lot(s)/goods or part thereof will be likely to cause serious damage to the Auction Premises or any other premises or any damage which You are either unable or unwilling to rectify We may by notice to You rescind the sale of such lot(s)/goods or part thereof (returning the purchase money to the bidder) or permit the removal thereof from the premises to proceed subject to such conditions as We may think fit You will be responsible for all damage that is caused by any carriers or agent to the premises or any third party in removing the lot(s)/goods You have purchased. Further should we consider such damage likely to occur We may require You to deposit a sum of money with Us by way of security for the cost of reinstating that part of the premises likely to be damaged by the removal of such lot(s)/goods as We shall from time to time determine. Should You refuse to deposit such monies We may refuse You access to the Auction Premises for the purpose of

collecting all or any of the lot(s)/goods You have purchased or rescind the sale of such lot(s)/goods.

37. We require that You are responsible at your own cost for any disconnection of any lot(s)/goods from the main electricity supply, and that such disconnection shall be undertaken by a fully qualified electrician, at a point below the junction box.
38. Access for the purposes of removing the lot(s)/goods by You may not be available outside normal business hours.
39. You will be responsible for obtaining at your own expense all necessary labour and plant for the removal of the lot(s)/goods from the Auction Premises and for complying with all relevant Health and Safety regulation. Where Our employees give assistance to You in connection with such removal such assistance is given entirely at Your risk and cost.
40. You will be responsible for undertaking a full risk assessment before removing any lots/goods, and will be required to comply with the relevant Construction Design and Management Regulations.
41. If You fail for whatever reason (other than Our default) to remove lot(s)/goods from the Auction Premises on or before the date given in Special Conditions or otherwise agreed between us, we will be entitled to rescind the contract forthwith without incurring any liability whatsoever and on such rescission the following conditions apply:-
  - (a) any sums paid by You on account of the Total Sales Price will be forfeited to Us.
  - (b) We will be entitled to resell the lot(s)/goods but shall not be liable to account to you in the event of a resale at a higher price than the price contracted to be paid by You.
  - (c) You will be liable for any loss damage or expense suffered by Us as a result of the failure to remove the lot(s)goods from the Auction Premises by the date specified by Us (including costs incurred in removal and/or storage of the lot(s)/goods) or arising from the resale of the lot(s)/goods provided that any sums forfeited to Us under the foregoing provisions will be credited against such loss damage or expenses but so that if such loss damage or expense is less than the sums forfeited We shall be under no obligation to make any refund to the Purchaser of any such sums.

## **HEALTH & SAFETY AT WORK ACT**

42. It is expressly brought to Your attention that at the time any item of plant machinery or equipment is referred to on the Website, it may not necessarily comply with the Health and Safety at Work Act 1974 or any other Act or Acts or Regulations thereunder governing the use of that plant machinery or equipment in a work environment. Purchasers of any such plant machinery or equipment are hereby required to ensure that the use of any such plant machinery and equipment at a work place within the United Kingdom does not contravene such relevant Act or Regulation thereunder applicable thereto.

## **ASBESTOS**

43. It is expressly brought to Your attention that certain types of plant or main service installations could contain blue and white asbestos, dangerous chemicals etc. which if not handled correctly during their removal from the site could be in breach of the Health and Safety at Work Act 1974 section 29 or any other current legislation covering the use of such substances in a working environment.

## **CONDITIONS RELATING TO ONLINE AUCTIONS**

44. We may at our absolute discretion or upon the instructions of a Seller do the following:
- (a) Alter or withdraw all or any lots referred to in the auction catalogue or on the Website up to the moment at which the hammer falls in relation to such lot(s)
  - (b) Where a reserve has been placed on a lot, withdraw that lot in the event that the highest bid price does not meet the reserve.
  - (c) Fix or change any reserve price for any lot(s).
  - (d) Refuse, without giving any reason, to accept bidding from any person
45. Each lot shall be sold to the highest bidder, or to such other bidder at our entire discretion and in the event of any dispute arising between bidders such a dispute shall be dealt with in such a manner as We in our absolute discretion determine or put up the lot again at the last undisputed bid or withdraw the lot
46. Bidding shall be regulated by Us in such a manner as We may think fit and without prejudice to the generality of the foregoing the Seller may bid for any lot either personally or through Us or through any other person as many times as they respectively may think fit.



47. Upon confirmation being given by Us to You that your bid has been accepted You will, if required to do so by Us, pay to Us in cleared funds 25% of the price of each lot which it has purchased. Deposits paid shall be held by Us as a general deposit for all lots purchased by You at the relevant sale. The balance of Total Sales Price shall be paid to within 48 hours of Us giving to You confirmation that your bid has been accepted.
48. After you have been notified that you bid has been accepted, should You fail to comply with paragraphs 47 We reserve the right to offer for re-sale destroy or otherwise dispose of the lots/goods allocated to you at Our absolute discretion and in any manner We deem fit and any monies paid hereunder by the bidder shall be forfeited to the Seller.
49. Without prejudice to any claim that We and /or a Seller may have against a buyer for breach of contract or otherwise the buyer will become liable from the time referred to in the Special Conditions for all the storage security and administration expenses and the cost of and incidental to re-selling and/or otherwise disposing of uncleared items.
50. We or any agent we have appointed can request the bidder or the bidder's representative to produce a copy of insurance certificates and documents, to include that they are fully qualified and insured for all third party claims, personal injury and property damage. In this circumstance the bidder will not be permitted to remove or start any preparation for removal of any lot(s) it has purchased from the Sellers premises until all documents have been provided and approved.
51. The price at which the bidder purchases each lot will be EXCLUSIVE of VAT which will be payable in addition at the applicable rate. Where the You intend to export any Goods any refund of VAT will (subject to whatever regulations made from time to time may be in force) be available upon the production of You of such proof of the impending export as We may require.

#### **SALE/PURCHASE BY TENDER**

52. Tenders must be submitted in the form provided and be delivered to arrive at the offices specified in the Tender Form not later than the times and date specified in the Tender Form.
53. Tenders may be made for all the goods or for each separate lot(s) as shown in the catalogue or on the Website.
54. No Tender will be accepted by Us where it attempts to impose further conditions or make any qualifications whatsoever.

55. Tenders will be opened at the time and date specified in the Tender Form. The sender of the Tender accepted will be notified of such acceptance within 7-10 working days.
56. No tender may be withdrawn once submitted.
57. We may refuse to accept any tender and shall not be obliged to accept any or the highest offer tendered. We reserve the right to accept the whole or such part of any tender or tenders as we may think fit.
58. The Total Sale Price of the lot(s) must be paid to Us at our office or elsewhere as we may direct.

### **JURISDICTION**

59. These Terms and Conditions and any matter relating to them and any sale made by Us shall be governed by and construed in accordance with the laws of England and Wales and any disputes arising shall be subject to the exclusive jurisdiction of the English Courts.

### **THIRD PARTY RIGHTS**

60. A person who is not party to these Terms and Conditions shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

### **BUY IT NOW**

61. If the 'Buy It Now' option is applied to an auction then it will only be available up to 24 hours before the end date and time of the auction. At this point the option will be removed or otherwise at the discretion of the auctioneer.

Cottrill & Associates Ltd

March 2015