

## **Modern Method Terms and Conditions (“from hereinafter referred to as “Terms and Conditions”) –**

### **Buyer**

These Terms and Conditions govern the conduct of Modern Method Auctions operated by Your Bid (from hereinafter referred to as “Company” or “Auctioneer” or “us/we/our”).

All properties sold by auction using the Company’s website or by a physical in-room auction which are expressed to be either a “conditional” or “modern method” auction are governed by these Terms and Conditions.

These Conditions apply to the purchase of a Property following the acceptance of a bid at Auction or any bid accepted before or after the date of the Auction.

By proceeding to bid You agree to these Terms and Conditions.

### **IMPORTANT NOTICE**

We strongly recommend and advise that You should, before bidding for a Property:

1. View and inspect the Property
2. Take professional legal advice from a conveyancer/solicitor on the content of the Auction Pack
3. Take professional advice from a chartered surveyor, accountant, insurance advisor and mortgage advisor (as may be necessary)
4. Ensure that You have sufficient and suitable finance available for the Reservation Fee, the Deposit and the balance of Purchase Price together with any additional fees, disbursements and taxes (including but not limited to VAT, Land Transaction Tax or Stamp Duty Land Tax) that may be payable on completion of Your purchase of the Property.
5. Carry out all necessary searches in relation to the Property and make any necessary enquiries with us or the solicitor acting on behalf of the Seller.

These Terms and Conditions assume that You have acted like a prudent buyer. If You choose to bid on a Property and purchase a Property without taking these recommended precautions You do so at Your own risk.

### **Part 1**

#### **1. GLOSSARY**

This glossary applies to these Terms and Conditions and the definitions in this clause apply

- a ‘person’ includes a corporate or unincorporated body;
- Words importing one gender shall be construed as importing any other gender.
- Words importing the singular shall be construed as importing the plural and vice versa.
- Where any party comprises more than one person the obligations and liabilities of that party under these Terms and Conditions shall be the joint and several obligations and liabilities of those persons
- references to legislation are to that legislation as it may have been modified or re-enacted by the date of the auction or the contract date (as applicable).

**‘Auction’** means the auction advertised as Online or in the Catalogue (as applicable).

**'Auctioneers'** means us as the auctioneer providing the Modern Method of Auction.

**'Auction Pack'** means the pack of documents relating to a Property.

**'Bidder'** The person who registers to bid and partake in Modern Method of Auction.

**'Bidder Registration Process'** The process by which data and information is collected in relation to a Bidder. This will include but is not limited to the identity of the Bidder, credit or debit card details, evidence of the source of the Bidder's funds to purchase the Property, and the Bidder's contact information.

**'Business Day'** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday, a statutory Bank Holiday in England and Wales.

**'Buyer'** means the person who agrees to buy the Property and who is the highest Bidder (or, if applicable, that person's agent or representative), and secures an Exclusivity Agreement for the Property.

**'Catalogue'** means any catalogue prepared by or for the Auctioneer advertising the Properties for sale by the Modern Method of Auction.

**'Condition'** means any one of these Terms and Conditions.

**'Contract'** the contract by which the Seller agrees to sell, and the Buyer agrees to buy the Property.

**'Deposit'** means an amount equal to 10% of the Purchase Price

**'Exclusivity Agreement'** means the form of contract which the Buyer agrees to be bound by, and by Us (on behalf of the seller) giving the Buyer the exclusive right to exchange the Contract within the Exclusivity Period.

**'Exclusivity End Date'** the last day of the Exclusivity Period

**'Exclusivity Period'** means the exclusive period of 40 Business Days allowing the Buyer to proceed to exchange the Contract.

**'Memorandum of Sale'** means the document that confirms the particulars of the sale of the Property to the Buyer.

**'Modern Method of Auction'** means the timed and conditional method of auction

**'Online'** means on our website or, where applicable, one of our accredited partner's websites.

**'Property'** the property that is the subject of the Modern Method of Auction as described in the catalogue or as the case may be online.

**'Purchase Price'** the price that the Buyer agrees to pay for the Property.

**'Reservation Fee'** a non-refundable fee amounting to 4.8% of the Purchase Price inclusive of VAT (subject to a minimum amount of £6,600.00 inclusive of VAT) paid by the Buyer to us to reserve the Property to the Buyer for the Exclusivity Period in accordance with the terms of the Exclusivity Agreement. This fee is used by the Seller to pay our fees and commissions for conducting the Modern Method of Auction.

**‘Reserve Price’** means the minimum amount that the Seller will accept in order to sell the Property

**‘Seller’** the person selling the Property.

**‘Sterling and £’** means the lawful currency of the United Kingdom.

**‘VAT’** means value added tax and includes any future tax of a like nature

**‘Winning Bid’** means the highest bid at or above the Reserve Price

**‘You (and your)’** means the Buyer (and someone who bids on a Property at the Auction for and on behalf of the Buyer, if applicable).

## **2. Introduction**

2.1 Where a Property is advertised for a Modern Method of Auction, You have been given access to that Auction only on the basis that You accept these Terms and Conditions which govern our relationship with You and these Terms and Conditions can only be varied if we agree in writing.

## **3. Our Role**

3.1 As agents for the Seller we have authority to;

- i. prepare the Catalogue (as applicable) from information supplied by or on behalf of the Seller;
- ii. offer each Property for sale by the Modern Method of Auction;
- iii. receive and hold the Reservation Fee;
- v. sign the Exclusivity Agreement on behalf of the Seller; and
- vi. rescind or terminate the Exclusivity Agreement if the Buyer fails to pay the Reservation Fee or acts in breach of any of the terms of the Exclusivity Agreement

3.2 Our decisions on the conduct of the Modern Method of Auction will be full and final.

3.3 We reserve the right to cancel the Modern Method of Auction, or change the way in which a Property is offered for sale and we may also combine or divide Properties.

3.4 A Property may be sold or withdrawn from sale prior to the date of the Modern Method of Auction.

3.5 You acknowledge that to the extent permitted by law we do not owe You a duty of care and You have no claim against us for any loss.

## **4. Bidding and reserve prices**

4.1 All bids are to be made in Sterling and exclusive of any applicable VAT.

- 4.2 We reserve the right to refuse to accept a bid without providing any explanation.
- 4.3 All bids made Online must comply with terms and conditions which apply to use of our website or to the use of our partner's websites (as applicable).
- 4.4 If there is a dispute over bidding we are entitled to resolve it, and our decision will be final.
- 4.5 Unless stated otherwise each Property is subject to a Reserve Price. If no bid equals or exceeds the Reserve Price, the Property will be withdrawn from the Modern Method of Auction.
- 4.6 Where there is a Reserve Price, we, another agent, may bid on the Seller's behalf up to the Reserve Price but may not make a bid equal to or exceeding the Reserve Price. You accept that it is possible that all bids up to the Reserve Price are bids made on behalf of the Seller.
- 4.7 Prior to entering any bids for the Property, You will comply with our Bidding Registration Process and provide us with all information we may reasonably require.

## **5. Description of the Property and the Auction Pack**

- 5.1 We have taken reasonable care to describe the Property (either Online or in a Catalogue). The description of the Property is based on information supplied by or on behalf of the Seller and You are required to check that the information is correct and take professional advice on the Auction Pack.
- 5.2 The description of the Property and the documentation contained in the Auction Pack may change prior to the Modern Method of Auction and it is Your responsibility to check that You have the latest and correct versions.
- 5.3 If we provide information, or a copy of a document, that has been provided to us by another party, we do so only on the basis that we are not responsible for the accuracy of that information or document.

## **Part 3**

### **6. The Exclusivity Agreement**

- 6.1 This Condition 6 applies to You if You and the highest Bidder and place the Winning Bid for a Property.
- 6.2 Upon our acceptance of the Winning Bid, You must:
- i. provide all information we reasonably require from You to enable us to prepare the Exclusivity Agreement and Memorandum of Sale (including but not limited to Your name, address and contact details) and provide us with proof of Your identity and address;
  - ii. pay the Reservation Fee; and
  - iii. enter into the Exclusivity Agreement.

6.3 By accepting these Terms and Conditions, if You enter the Winning Bid, You authorise the Exclusivity Agreement and/or the Memorandum of Sale to be signed by us on your behalf at the close of the Auction.

6.4 If You fail to comply with 6.2 of these Conditions we may as agent for the Seller declare your Winning Bid to be null and void and rescind the Exclusivity Agreement (if the same has been formally entered in to) and we may offer the Property for sale again or offer the property to any under-bidder at our discretion.

6.5 If You fail to comply with 6.2 of these Conditions, the Seller reserves the right to pursue a claim against You for breach of these Terms and Conditions.

6.6 Where a Reservation Fee is paid, that Reservation Fee:-

- i. is a non-refundable payment made by You to us;
- ii. must be paid in Sterling by a debit card, or direct bank transfer. Directions for payment will be provided to You by us;
- iii. will be held by us as agent for the Seller.

6.7 We will retain electronic data of your Winning Bid and all other bid activity on the Property.

6.8 We may retain the Reservation Form signed by or on behalf of the Seller until the Reservation Fee (as applicable) has been received in cleared funds.

6.9 If the Buyer does not comply with the obligations under the Exclusivity Agreement then You (if different from the Buyer) are personally liable to comply with the obligations under the Exclusivity Agreement even if You are acting as an agent or representative for the Buyer.

6.10 Where the Buyer is a company, You warrant that the Buyer is properly constituted and able to buy the Property.

6.11 In the event that the Seller withdraws from the sale of the Property during the Exclusivity Period or in the event of the Seller refusing to exchange the Contract with You during the Exclusivity Period, the Reservation Fee will not be refunded to You by us and the Seller will be required to reimburse the Reservation Fee to You.

## **7. Exclusivity Agreement conditions**

7.1 Where Your bid is the Winning Bid, You must immediately sign the Exclusivity Agreement which is a legally binding contract between the Buyer and Seller reserving the Property for purchase by the Buyer.

## **8. Payment of Reservation Fee**

8.1 The Reservation Fee must be paid by You on securing the Winning Bid and must be paid within 2 hours of the Winning Bid being accepted in accordance with clause 6.6 ii of these Terms and Conditions.

8.2 Conditional upon payment of the Reservation Fee and You signing the Exclusivity Agreement, the Property shall be reserved to the Buyer for the Exclusivity Period.

8.3 The Reservation Fee is paid to us and will be retained by us. The Reservation Fee is an additional cost of purchase of the Property and is paid in addition to the Purchase Price and all other payments due under the terms of the Contract

## **9. Seller's obligations**

9.1 Upon the Exclusivity Agreement being signed and entered into and payment of the Reservation Fee, the Seller will grant to the Buyer the exclusive right to purchase the Property in accordance with the terms of the Exclusivity Agreement.

9.2 During the Exclusivity Period the Seller;

- i. shall not sell or agree to sell the Property other than in accordance with the terms of the Exclusivity Agreement
- ii. shall not send, instruct or allow anyone else to send any contract for sale and purchase of the Property to anyone other than the Buyer's solicitors;
- iii. shall, upon receiving reasonable written notice allow access to the Property as may be reasonably required by any surveyor or valuer appointed by the Buyer;
- iv. shall not give access to any other person to view the Property nor negotiate with anyone other than the Buyer any terms for the sale of the Property;
- v. shall use all reasonable endeavours to proceed to a formal exchange of Contracts within the Exclusivity Period;
- vi. to supply all documentation, information and authority to enable the Seller's solicitors to prepare the Auction Pack and do all work necessary to enable the Contract to be exchanged within the Exclusivity Period;

9.3 The Seller may (but shall not be obliged to) grant an extension of the Exclusivity Period. Any such extension shall be confirmed in writing by us to the Seller's solicitor and to the Buyer's solicitor and such extension will be subject to any reasonable terms and conditions imposed by the Seller.

9.4 The Seller must insure the Property until the Contract has been exchanged, unless stated to the contrary in the Contract. Once the Contract has been exchanged, the Buyer will be responsible for insuring the Property unless the Contract requires the Seller to continue to insure the Property an

## **10. Buyer's obligations**

10.1 The Buyer hereby agrees:

- i. to proceed to a formal exchange of Contracts within the Exclusivity Period;

ii. (in accordance with Condition 10.1 iv) to promptly instruct the Buyer's solicitors to investigate title to the Property, raise enquiries of the Seller and any third parties about the Property and do any other work required to enable the Contract to be exchanged within the Exclusivity Period;

iii. to promptly;

- if the Buyer intends to use a loan in connection with the purchase of the Property, the Buyer shall apply to the relevant lender and complete all necessary documentation and do all such things as such lender may require to process the Buyer's application as soon as possible including the payment of any application fees;
- if the Buyer or the Buyer's mortgagee or lender requires that the Property is surveyed and/or valued, the Buyer will use all reasonable endeavours to arrange for the survey and/or valuation to take place at the Property as soon as reasonably practicable including the payment of any valuation fee;
- keep the auctioneer advised of progress with the application for the loan;

iv. within 20 Business Days of entering into the Exclusivity Agreement, the Buyer must ensure that their nominated solicitor raises initial enquiries in relation to the Auction Pack in writing with the Seller's solicitor.

v. the date of completion of the Buyer's purchase of the Property shall be specified in the Contract upon exchange, but such date shall be no later than 20 Business Days from the date of exchange of Contracts or 20 Business Days from the Exclusivity End Date, which shall be earlier.

vi. on exchange of the Contract, the Buyer will pay to the Seller the Deposit.

vii. that if Contracts for the purchase of the Property have not been legally and unconditionally exchanged within the Exclusivity Period the Exclusivity Agreement shall be terminated and the Seller has the absolute right to re-offer the Property for sale free of any obligation to the Buyer.

viii. if the Exclusivity Agreement is terminated in accordance with Condition 10.1 vii the Reservation Fee will not be refundable to the Buyer

ix. to be responsible for the payment of the Seller's legal fees and disbursements on completion of the Buyer's purchase of the Property, details of which are set out in the Contract.

10.2 The Buyer accepts that the Auctioneer cannot guarantee that the internet connectivity, server or software will not fail from time to time. In the event of a total or partial failure the Auctioneer reserves the right to declare the result of the Auction null and void and to restart the Auction when the service is restored.

10.3 Once the Contract has been exchanged, the Buyer will be responsible for insuring the Property, unless the Contract requires the Seller to insure the Property until the Buyer has completed the purchase of the Property.

### **11. Termination of reservation**

11.1 The Exclusivity Agreement shall not be capable of termination by the Seller or Buyer during the Exclusivity Period except as specified below.

11.2 On the Exclusivity End Date (or the expiry of any extension granted by the Seller in writing) if the Buyer and the Seller have not exchanged Contracts for the sale and purchase of the Property within the Exclusivity Period, the Exclusivity Agreement will be terminated.

11.3 The Seller may terminate the Exclusivity Agreement with written notice to the Buyer if the Buyer is in breach of the Buyer's obligations set out above or is in breach of any of the terms of the Exclusivity Agreement.

### **12. Binding obligations**

12.1 These Terms and Conditions must be read in conjunction with the Exclusivity Agreement. Where there is any conflict or inconsistency between these Terms and Conditions and the provisions of the Exclusivity Agreement, the relevant provisions of the Exclusivity Agreement shall apply.

12.2 As these Terms and Conditions and Exclusivity Agreement comprise legally binding obligations on You, we strongly recommend that You seek independent legal advice on these Terms and Conditions and the Exclusivity Agreement before making any bid on a Property.

### **13. Auctioneer**

13.1 You acknowledge and agree that we act as an agent of the Seller and not in our own capacity.

13.2 Save in the event of fraud or death or personal injury resulting from our negligence, neither us nor any of our group companies, affiliates, third party service providers, licensors, officers, directors or employees shall have any liability of any nature howsoever arising in relation to these Terms and Conditions or to any Property

### **14. Complaints Procedure**

Should You have any problems with our services which You are unable to resolve with the us directly You should write to the following details providing details of Your complaint:

The complaint will be acknowledged within 5 Business Days of receipt and an investigation will be undertaken. A formal written outcome of the investigation will be sent to You within 20 Business Days of our acknowledgement letter to You. This letter will also confirm that You are entitled, if dissatisfied, to refer the matter to The Property Ombudsman (TPO) within six months for a review (for further details see below).

#### **The Property Ombudsman**

We are certain that You will be satisfied with our service but if You have any concerns we operate a formal Complaints Procedure as detailed above. We are a Member of The Property Ombudsman (TPO) scheme and abide by its Code of Practice. Our Registration number with the TPO is T12461.

For the avoidance of doubt, TPO will only review complaints made by consumers. By signing these Terms and Conditions You give us consent to provide any information regarding the purchase of the Property and how You can be contacted if the Ombudsman asks us to do so. Full details of the Ombudsman scheme are available on request to the Buyer. For more information, please visit the website [www.tpos.co.uk](http://www.tpos.co.uk).

Signed : \_\_\_\_\_  
Name : \_\_\_\_\_  
Date : \_\_\_\_\_

Signed : \_\_\_\_\_  
Name : \_\_\_\_\_  
Date : \_\_\_\_\_

By signing these Terms and Conditions, You agree to these Terms and Conditions.