

TERMS AND CONDITIONS FOR PARTICIPATION IN ONLINE AUCTIONS

1 The auction service and applicable terms and conditions

- 1.1 These terms and conditions for participation in online auctions (**Terms**) set out the terms on which Machinecompare.Com Ltd, a company incorporated and registered in England and Wales with company number 09169101 (the **Online Auctioneer**) permits participation in online auctions for the sale and purchase of plant, machinery and equipment (the **Products**) via the website at www.machinecompare.com operated by the Online Auctioneer (**Website**).
- 1.2 The Online Auctioneer provides an online auction platform via the Website through which businesses can offer for sale and sell (in which capacity they are **Sellers**) and businesses can bid on (in which capacity they are **Bidders**) and buy (in which capacity they are **Buyers**) Products. The provision and operation by the Online Auctioneer of the online auction platform via the Website is referred to as the **Services**.
- 1.3 The Online Auctioneer is incorporated and trades in the United Kingdom. All online auctions which take place via the Website shall, and shall be deemed to, take place in the United Kingdom. All Services shall be performed in and from the United Kingdom.
- 1.4 In these Terms, a reference to a **Participant** means a reference to a Seller or a Bidder/Buyer (as appropriate) who receives the Services and utilises the Website for the purpose of listing or bidding on and/or buying or selling Products. An individual who uses the Website or Services is referred to in these Terms as the **User**. The Participant shall, in addition to the User, be responsible for all acts or omissions of each User connected with it and shall ensure that all such Users comply with these Terms.
- 1.5 The User and the Participant represent and warrant to the Online Auctioneer that the User and the Participant are lawfully able to enter into these Terms, that the User has legal authority to bind that Participant and that the Participant and User will be bound by these Terms.
- 1.6 It is important that the User reads and understands these Terms before using the Services. By accessing or using the Services, the User agrees on behalf of the Participant to be legally bound by these Terms, as they may be modified by the Online Auctioneer from time to time.
- 1.7 The Online Auctioneer reserves the right to change these Terms at any time. Amendments will take effect when posted on the Website. However, the Terms current as at the time at which a particular transaction becomes binding on a party will apply in relation to that transaction.
- 1.8 The Website is aimed solely at facilitating the sale of Products by business Sellers to business Buyers. **The Website and Services are not aimed at consumers and, by using the Services or the Website, each User and Participant confirms that he, she or it is acting for purposes relating to his, her or its trade, business, craft or profession.**
- 1.9 When using the Website and the Services, Users and Participants agree to comply with the terms of use applicable to the Website, which can be found at www.machinecompare.com/terms-and-conditions/.
- 1.10 The Online Auctioneer's current privacy policy covers its use of any personal data provided by any User or Participant. In using the Services and the Website, Users and Participants acknowledge and agree to be bound by the terms of such privacy policy, which can be found at www.machinecompare.com/policy-page/.

2 The role of the Online Auctioneer

- 2.1 The Website is a platform for Sellers to auction and sell Products and for Bidders and Buyers to bid for and buy Products.
- 2.2 The Online Auctioneer is not and will not become party to the contract for the transaction concerning the sale or purchase of any Products and at no stage does the Online Auctioneer bid for, buy or sell or purport to bid for, buy or sell any of the Products displayed on the Website.
- 2.3 The contract for the sale and purchase of any Products made via the Website will be entered into directly between the Buyer and the Seller of such Products on the basis set out in these Terms.
- 2.4 The Online Auctioneer operates the Website as a platform, but the Online Auctioneer is not a traditional auctioneer and the Website does not follow the conventions of a traditional auction. The Online Auctioneer shall determine in its discretion any dispute in relation to the conduct of auctions via the Website.
- 2.5 Any dispute in relation to the sale of Products will be between the relevant Buyer and Seller. The Online Auctioneer may, at its discretion, offer support in dispute resolution, but it is not obliged to do so.
- 2.6 The Online Auctioneer does not screen and accepts no liability in relation to the Products or the identity of the Users and the Participants.

3 Registration and qualification to use the Services

- 3.1 Each User is required to register with the Online Auctioneer by completing and submitting the registration form on the Website. Users shall ensure that all such information is, when provided, and remains accurate.
- 3.2 Only persons who are acting in the course of a trade, business, craft or profession (and not as a consumer) are entitled to register on the Website as Users or Participants and use the Services.
- 3.3 Any individuals who are unable to form legally binding contracts are prohibited from using the Services. **By registering, each User is making a statement, upon which the Online Auctioneer is entitled to rely, that he or she is aged 18 years or older and capable of forming a legally binding contract.**
- 3.4 On occasions certain Users may be refused access to the Services and/or the Website or may have their account suspended or terminated. Any such refusal, suspension or termination shall be at the Online Auctioneer's sole discretion and the Online Auctioneer is not obliged to give a reason for the same. The Online Auctioneer may at its discretion revoke any bids and remove any Products listed by the relevant User prior to such suspension or termination.

4 Information

- 4.1 The Participant grants to the Online Auctioneer a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence to use all and any information, photographs and other materials (the **Materials**) which the User or Participant provides to the Online Auctioneer or other users of the Services, includ-

ing any Materials provided during the registration, listing or bidding process.

4.2 The Participant warrants and undertakes that the Materials:

- 4.2.1 are legal, valid, true and accurate in all material respects (and any expression of opinion will be genuinely held);
- 4.2.2 do not infringe any third party's intellectual property rights or other rights;
- 4.2.3 will not contain any viruses or other malicious computer programming routines;
- 4.2.4 do not contain any links to any other websites;
- 4.2.5 are not defamatory, offensive, inflammatory or likely to harass, upset, alarm or annoy any person; and
- 4.2.6 do not contain any personal data (as defined in applicable data protection and privacy legislation in force from time to time in the United Kingdom) of any person other than a User or Participant.

5 Security and availability of the Website and Services

- 5.1 The Participant is solely responsible in all respects for all use of and for protecting the confidentiality of any user authentication details which may be given to or selected by the User for use on the Website. The User shall not share these with or transfer them to any third party. The Participant must immediately notify the Online Auctioneer of any unauthorised use of them or any other breach of security regarding the Services.
- 5.2 The Participant shall be responsible for all activity and use undertaken in connection with the Website or the Services using a User's user authentication details, irrespective of whether the activity or use is undertaken by the User or any third party. The Online Auctioneer shall not be responsible for any unauthorised access to the Website or the Services where such use is made using a User's user authentication details.
- 5.3 The Participant acknowledges and agrees that transmissions are never completely private or secure. The Participant understands that any instructions, message or information sent when using the Website or the Services may be read or intercepted by others. Any losses suffered, incurred or sustained by the Participant or any User in transmitting information shall be borne solely and exclusively by the Participant and in no event shall any such losses in whole or in part be borne by the Online Auctioneer (save to the extent that such losses are caused by the Online Auctioneer's breach of duties owed to the Participant or any User in respect of data protection).
- 5.4 The Online Auctioneer cannot guarantee that the Website or the Services will operate continuously or without interruptions. Interruptions or unavailability could affect bidding or other aspects of an auction or sale and the Online Auctioneer accepts no responsibility for any detrimental effect caused by:
 - 5.4.1 any failure of the Website or Services to operate continuously or without interruptions; or
 - 5.4.2 the Website or Services being unavailable at any time.

6 Listings and auction event

- 6.1 The Online Auctioneer reserves the right to withhold approval of any listing of Products on the Website (**Listing**) and/or to remove any Listing from the Website at its absolute discretion. One or more Products which form the subject of an individual Listing are referred to as a **Lot**.
- 6.2 Subject to the foregoing, any Listing will be available on the Website for viewing for the period starting on the date on which the Online Auctioneer accepts it for listing and publishes it on the Website and ending on or following the end of the Bidding Period (as defined in clause 6.3 below) in respect of the next auction (an **Auction Event**) which the Online Auctioneer hosts on the Website.
- 6.3 The Auction Event will be carried out by way of electronic bids submitted on the Website. Lots which are listed on the Website will be open for bids for such period that the Online Auctioneer shall publish via the Website (the **Bidding Period**). On commencement of the Bidding Period all Lots which are listed on the Website shall automatically be made available for bidding under auction on the Website.
- 6.4 Upon expiry of the Bidding Period, any Lot which has successfully been bid for (as set out in clause 7) will result in a contract between the relevant Buyer and Seller coming into force automatically for the sale and purchase of the Lot.
- 6.5 If a Lot is not successfully sold at the end of the Bidding Period, then the relevant Listing will be automatically removed from the Website, however the relevant Seller may (subject to clause 6.1) re-list the relevant Products for bidding in the next Bidding Period, should it wish to do so.

7 **Bidding and buying**

- 7.1 Sellers are entitled to set minimum bid or reserve requirements in relation to Lots and are entitled to change these during the Bidding Period.
- 7.2 A Bidder may not retract a bid unless:
- 7.2.1 the Seller has during the Bidding Period materially changed the description of the Lot on the Listing; or
 - 7.2.2 the Online Auctioneer has in its discretion provided its express written consent to the withdrawal of such bid.
- 7.3 A Bidder's placing of a bid entitles the Online Auctioneer and any Seller to rely on the Bidder's bid. Each Bidder warrants and undertakes that it has the legal right to make a bid and to enter into any transaction on which it bids.
- 7.4 Subject to clauses 8.9 to 8.11, if a Bidder bids for a Lot, it acknowledges and agrees that if it has placed the Highest Valid Bid (as defined in clause 7.5) at or above any minimum or reserve price, it has entered into a contract with the Seller to buy the Lot in accordance with these Terms and any terms set out in the Listing (provided that in the event of any conflict these Terms shall prevail). In such circumstances the Bidder shall be the **Buyer** in relation to such Lot and must complete the transaction. The Buyer acknowledges and agrees that such transaction may be voided by the Seller in the circumstances set out in clause 8.5.
- 7.5 The **Highest Valid Bid** shall mean the highest bid on a Lot at the end of the Bidding Period which:
- 7.5.1 complies with these Terms and any terms in the Listing; and
 - 7.5.2 exceeds any minimum or reserve price in relation to the Lot.

- 7.6 Please note that copies of the Auctions (Bidding Agreements) Acts 1927 and 1969 are held at the Online Auctioneer's place of business, as listed on the Website.
- 7.7 Bidders (and Participants who are potential Bidders) will be entitled to request a physical inspection of any Lot at the location in which the Lot is situated (or as the Seller may otherwise reasonably determine) by giving reasonable notice to the Seller. Upon receiving such notice, the Seller shall use reasonable endeavours to facilitate an inspection at a suitable time.
- 7.8 A Bidder or potential Bidder must not directly or indirectly contact any Seller prior to the end of the Bidding Period regarding the supply of a Lot, save for the sole and express purpose of arranging a physical inspection of the Lot.

8 Listing and selling

- 8.1 Sellers must list all Lots in the correct category with accurate and appropriate descriptions and provide such information as the Online Auctioneer may request for the purpose of the Listing (together, the **Listing Information**). Upon a Seller posting the Listing Information and the Online Auctioneer accepting the Lot, the Seller makes an irrevocable offer to auction and sell that Lot.
- 8.2 In relation to each Lot which a Seller sells or offers for sale through the Website, the Seller warrants that:
- 8.2.1 it is the absolute unencumbered legal owner with the full and exclusive right to sell the Lot;
 - 8.2.2 the Lot shall conform in all material respects with its description in the Listing Information;
 - 8.2.3 the Lot does not contain asbestos or hazardous substances (or to the extent that they do contain any asbestos or hazardous substances, this is disclosed in full in the Listing Information);
 - 8.2.4 no part of the Lot is a fixture or fitting which form part of a property over which any third party has any rights;
 - 8.2.5 the Lot may be lawfully sold via the Website and such sale shall not infringe any third party intellectual property or other rights; and
 - 8.2.6 the Products contained within the Lot are not on any current prohibited items list which the Online Auctioneer maintains.
- 8.3 Each Seller shall indemnify the Online Auctioneer and any Buyer of the Lot from and against all liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred by the Online Auctioneer or the Buyer in connection with the Seller's breach of clause 8.2.
- 8.4 Subject to clause 8.2, any Lots are sold on an "as is, where is and with all faults" basis. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Terms are excluded to the fullest extent permitted by law.
- 8.5 Subject to clauses 8.9 to 8.11, any Seller receiving at least one bid at or above any stated applicable minimum or reserve requirement is obliged to complete the transaction with the Bidder who made the Highest Valid Bid by the end of the Bidding Period in accordance with these Terms and any terms set out in the Listing (provided that in the event of any conflict these Terms shall prevail), unless:

8.5.1 the Bidder fails to make payment for the Lot in accordance with these Terms; or

8.5.2 the Bidder fails to collect the Lot in accordance with these Terms,

and, in each case, the Seller has served notice on the Online Auctioneer stating that the contract between the Bidder and Seller is void and the reasons for the same. Following service of such notice there will be no obligation on either the Buyer or the Seller to complete the sale and purchase of the Lot, without prejudice to any other accrued rights and remedies of the Bidder or the Seller.

8.6 If a Seller lists a Lot for sale at a minimum or reserve price, the Seller may consider bids received below that price but is not obliged to sell a Lot for less than the reserve price.

8.7 A Seller must not directly or indirectly place bids on its own Lots or manipulate bidding in any other way.

8.8 Participants must not directly or indirectly contact any other Participant prior to the end of the Bidding Period regarding the supply of a Lot with the intention of selling or purchasing a Lot other than via the Auction Event.

8.9 At the end of the Bidding Period the Seller will be informed of the identity of the Bidder who has made the Highest Valid Bid in relation to a Lot, following which the Seller may in its discretion determine not to sell the Lot to such Bidder by giving notice (**Bidder Refusal Notice**) to the Online Auctioneer within 2 days of having been so notified, following which clause 8.11 shall apply. If a Bidder Refusal Notice is not so served the Seller shall be deemed to have accepted the Bidder as the Buyer. The Online Auctioneer shall inform the relevant Bidder of any refusal under a Bidder Refusal Notice.

8.10 In the event that a Buyer fails to make payment in respect of a Lot in accordance with these Terms a Seller may elect by written notice (**Late Payment Notice**), given to the Online Auctioneer within the period of 45 days following the time for payment by the Buyer having elapsed, determine not to sell the Lot to such Buyer, following which clause 8.11 shall apply. If a Late Payment Notice is not so served the Seller shall be deemed to have accepted the Buyer. The Online Auctioneer shall inform the relevant Buyer of any refusal under a Late Payment Notice.

8.11 Following receipt of a Bidder Refusal Notice or Late Payment Notice by the Online Auctioneer, the Online Auctioneer shall inform the Seller of the two Bidders who have made the next highest bids (disregarding the original Bidder/Buyer) in relation to the Lot and:

8.11.1 the Seller shall elect by giving notice (**Bidder Election Notice**), within 2 days of having been informed of the identities of such Bidders, to the Online Auctioneer to which of such Bidders it will sell the Lot and the amounts that they have bid. The Seller must choose one of such Bidders and may not refuse to sell the Lot to both of such Bidders;

8.11.2 upon receipt by the Online Auctioneer of a Bidder Election Notice the Bidder named in the Bidder Election Notice shall be deemed to be the Buyer and the highest bid they made shall, for the purposes of these Terms, be deemed to be the Highest Valid Bid. The Online Auctioneer shall inform the relevant Bidder that it has become the Buyer in relation to such Lot and the Bidder shall accordingly be obliged to purchase the Lot as the Buyer; and

8.11.3 in the event that the Seller fails to comply with any provision of this clause 8.9 any Bidder Refusal Notice or Late Payment Notice given by such Seller shall be invalidated and the Seller shall be obliged to sell the Lot to the original Bidder who made the Highest Valid Bid.

9 Terms implied into contract between Buyer and Seller

- 9.1 Subject to clauses 8.5 and 8.9 to 8.11 at the end of a Bidding Period, provided a Highest Valid Bid has been made in relation to a Lot, a contract for the supply of the relevant Lot shall come into effect immediately between the Buyer and Seller and such contract will be deemed to include the following terms:
- 9.1.1 the Sale Terms shall incorporate these Terms;
 - 9.1.2 title in the Lot will pass once full payment has been received by the Seller from the Online Auctioneer in accordance with clause 10.1;
 - 9.1.3 risk in the Lot will pass to the Buyer at the end of the Bidding Period;
 - 9.1.4 the Buyer may not collect the Lot until it has paid in full the purchase price and Buyer Transaction Fee (as defined in clause 10.5 payable by it in respect of such Lot);
 - 9.1.5 subject to clause 9.1.4 and unless agreed otherwise, the Buyer shall arrange for collection of the Lot within the timeframe specified in the Listing (or, if no timeframe is specified, as soon as practicable following the auction and in any event no later than 30 days from the date of the auction). If the Buyer fails to arrange for collection during such 30 day period, then the Seller shall be entitled to charge the Buyer its reasonable costs and expenses in storing the Lot after the expiry of such 30 day period;
 - 9.1.6 the Buyer will comply with the Seller's health and safety procedures and directions on site when collecting the Lot and shall follow the Seller's reasonable directions with regards to any requirements for specialist removal contractors (provided always that the Seller must make such requirements clear in the Listing as a condition of these Terms); and
 - 9.1.7 the Buyer will be responsible for and shall indemnify the Seller from and against all liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any damage caused by the Buyer (or its employees, agents or contractors) to the Seller's premises in collecting the Lot.

10 Payment and transaction fees

- 10.1 All Sellers shall pay to the Online Auctioneer a transaction fee (**Seller Transaction Fee**) in respect of each Lot of an amount equal to the greater of:
- 10.1.1 5% of the purchase price of the Lot;
 - 10.1.2 £1,000; and
 - 10.1.3 5% of the reserve or minimum price for the Lot.
- 10.2 The Seller Transaction Fee shall be payable if:
- 10.2.1 the Lot is sold via the Website;
 - 10.2.2 the Lot is withdrawn by the Seller prior to the end of the Bidding Period; or
 - 10.2.3 the listing of the Lot is revoked on suspension or termination,

but shall not apply if the Lot is not sold because at the end of the Bidding Period the Lot remains listed and no bid has been received or no bid has been received which exceeds an applicable minimum or reserve price.

- 10.3 Seller Transaction Fees are non-refundable. The Online Auctioneer will invoice Sellers upon conclusion of the Bidding Period or at such other time as the Seller Transaction Fee becomes payable under clause 10.2.
- 10.4 The Online Auctioneer shall, if it has received payment from the Buyer in respect of the Lot, deduct the Seller Transaction Fee before distributing the balance of the purchase price to the Seller. Otherwise the Seller Transaction Fee shall be payable in accordance with clause 10.7.
- 10.5 The Online Auctioneer will request payment from Buyers for the purchase price for the Lot upon conclusion of the Bidding Period or at such other time as it may deem appropriate.
- 10.6 The Buyer Seller Transaction Fees shall be payable in relation to all sales and purchases by Participants of Products which have been the subject of a Listing if the buyer and seller were introduced to each other or have otherwise contacted each other through the Website or the Services, whether or not the relevant Products were sold through an Auction Event, and in such circumstances this clause 10 shall apply with the necessary changes having been made to effect such obligations.
- 10.7 All amounts payable to the Online Auctioneer under these Terms shall be paid in cleared funds by bank transfer to such bank account that the Online Auctioneer shall nominate within 14 days from the date of invoice.
- 10.8 The Online Auctioneer shall be entitled to charge interest on any late payment at a rate of 4% above the Bank of England base rate from the date on which the payment becomes overdue until such time as payment is received.
- 10.9 Payments shall be made in euros or such other currency that we may from time to time expressly permit.
- 10.10 The Online Auctioneer may at any time, without notice, set off any liability of a Participant to the Online Auctioneer against any liability of the Online Auctioneer to the Participant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, the Online Auctioneer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Online Auctioneer of its rights under this clause shall not limit or affect any other rights or remedies available to it under these terms or otherwise.
- 10.11 All amounts due under this agreement from a Participant shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.12 All bids or other amounts of money referred to in these Terms shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts by Buyer.
- 10.13 If the Buyer is required under any applicable law to withhold or deduct any amount from the payments due to the Online Auctioneer or the Seller, the Buyer shall increase the sum it pays to the Online Auctioneer or the Seller (as applicable) by the amount necessary to leave the Online Auctioneer or the Seller with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

- 10.14 Buyers are responsible for any costs of delivery or collection, including any import taxes, duties or permit fees, and any insurance costs in respect of any Lots purchased by them, unless otherwise stated on the Listing. Sellers are responsible for any export taxes.
- 10.15 Some transactions may involve Lots being transported by Buyers to locations outside the territory or jurisdiction in which the Lot is located. Buyers and Sellers alike must observe and comply with all applicable regulations and legislation, including obtaining all necessary cultural or customs permits and shall co-operate with each other for such purposes.
- 10.16 Buyers and Sellers shall co-operate with each other and provide such assistance and documentation that the other shall reasonably require for the purpose of importing or exporting the Lots
- 10.17 The Online Auctioneer makes no representation and accepts no liability whatsoever to any Buyer or Seller in respect of the issuance or validity of any exportation or importation permits or the existence and exercise of exportation or importation regulations or any compulsory purchasing regimes.

11 Limitation of Liability

- 11.1 Nothing in these Terms limits or excludes liability for:
 - 11.1.1 death or personal injury caused by negligence;
 - 11.1.2 fraud or fraudulent misrepresentation;
 - 11.1.3 any other liability that cannot be limited or excluded by law.
- 11.2 Subject to clause 11.1, the Online Auctioneer will under no circumstances be liable to any person (including any User or Participant), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with these Terms for:
 - 11.2.1 any loss of profits, sales, business, or revenue; or
 - 11.2.2 loss or corruption of data, information or software; or
 - 11.2.3 loss of business opportunity; or
 - 11.2.4 loss of anticipated savings; or
 - 11.2.5 loss of goodwill; or
 - 11.2.6 any indirect or consequential loss.
- 11.3 The Online Auctioneer's total liability in contract, tort (including negligence), misrepresentation or otherwise:
 - 11.3.1 to a Participant or User in connection with these Terms shall be limited to a maximum amount of £100,000; and
 - 11.3.2 subject to clause 11.3.1, to any Participant or User in connection with any Lot and any transaction relating to it shall be limited to the total Buyer Transaction Fee and Seller Transaction Fee payable to the Online Auctioneer in connection with such Lot.
- 11.4 The Online Auctioneer does not give any representations, warranties or undertakings in relation to

the Lots. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, the Online Auctioneer will not be responsible for ensuring that the Lots are suitable for the Buyer's purposes.

- 11.5 The Online Auctioneer has no control whatsoever over, and accepts no responsibility for, the quality, legality or safety of any advertised Products or of any other characteristics upon which a Buyer may rely, the accuracy of any of the Listings or the capacity of any Seller or any Buyer to transact.
- 11.6 Each Participant shall indemnify the Online Auctioneer from and against all liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred by the Online Auctioneer in connection with any claim against the Online Auctioneer by another user of the Website or any other third party as a result of any breach of these Terms or any other contract or legal obligation by such Participant or any Users connected with it.
- 11.7 The Online Auctioneer makes no representations or warranties about the accuracy, completeness or suitability for any purpose of the information and related graphics published on the Website. From time to time the Website may contain technical inaccuracies or typographical errors. All liability of the Online Auctioneer howsoever arising for any such inaccuracies or errors is expressly excluded to the fullest extent permitted by law.

12 Termination

- 12.1 The Online Auctioneer may at its sole discretion issue a warning, temporary suspension, or an indefinite suspension and termination of a Participant's rights to use the Services if:
 - 12.1.1 the Participant acts inconsistently with and/or in breach of these Terms;
 - 12.1.2 the Participant violates or attempts to violate any rights of any other user of the Services or third party;
 - 12.1.3 the Participant engages in any fraudulent activity;
 - 12.1.4 the Participant fails to make any payments due in accordance with these Terms;
 - 12.1.5 a winding-up order or bankruptcy order is made against the Participant;
 - 12.1.6 the Participant passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party);
 - 12.1.7 the Participant has appointed to it an administrator or an administrative receiver;
 - 12.1.8 the Participant, being a partnership, suffers bankruptcy orders being made against any of its partners;
 - 12.1.9 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the Participant's assets;
 - 12.1.10 the Participant ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- 12.1.11 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into in relation to the Participant;
 - 12.1.12 the Participant ceases, or threatens to cease, to carry on business;
 - 12.1.13 any event analogous to those described in clause 12.1.5 to clause 12.1.12 occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business; or
 - 12.1.14 the Online Auctioneer has some other reason which it believes justifies issuing a warning or the temporary or indefinite suspension or termination of a Participant's rights to use the Services (and the Online Auctioneer shall not be obliged to provide such reason).
- 12.2 Upon suspension or termination of a Participant's right to use the Services, the right of all Users connected with such Participant to use the Services shall be suspended or terminated (as appropriate).
 - 12.3 Any bids made and any Lots listed by the relevant Participant prior to such suspension or termination shall automatically be revoked on suspension or termination, unless the Online Auctioneer in its discretion otherwise determines.
 - 12.4 Any of the provisions of these Terms that are expressed to take effect in whole or in part on or after termination, or are capable of having effect after termination, shall remain in full force and effect despite termination.
 - 12.5 Termination of these Terms shall be without prejudice to the accrued rights and remedies of the parties.

13 Returns

- 13.1 The Online Auctioneer shall not be responsible in any way if any Lot sold via the Website proves unsatisfactory to the Buyer,. The Online Auctioneer is not party to the contract for the sale of the Lot. The Online Auctioneer provides a platform for the transaction and does not, and does not purport to, buy or sell any Lot.
- 13.2 Under no circumstances does the Online Auctioneer accept the return of any Products directly to the Online Auctioneer.
- 13.3 There is no right to return any Lot unless the Seller agrees otherwise.

14 Compliance with laws

Users and Participants shall comply with all applicable laws, statutes and regulations in connection with use of the Services and the Website.

15 General terms

- 15.1 Save as set out in clause 15.2, these Terms do not give rise to any rights for a third party to enforce any term of these Terms.

- 15.2 Buyers and Sellers in relation to a particular Lot may enforce these Terms as against each other.
- 15.3 Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between the Online Auctioneer and any other person, constitute any of such persons the agent of another, or authorise any person to make or enter into any commitments for or on behalf of any other of such persons.
- 15.4 The rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.5 Users and Participants shall not, without the prior written consent of the Online Auctioneer, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of their rights and obligations under these Terms.
- 15.6 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.
- 15.7 These Terms, together with any document expressly referred to within their provisions, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters or any statements made by any person, including any of employees or agents of the Online Auctioneer. Save for fraud or fraudulent misrepresentation, the Online Auctioneer shall have no liability for any such representation being untrue or misleading.
- 15.8 The Online Auctioneer will not be in breach of these Terms or otherwise liable for any delay in performance to the extent that any delay or failure is due to circumstances beyond its reasonable control, including strikes, lock-outs and other industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident.
- 15.9 In these Terms:
- 15.9.1 reference to a **clause** is to a clause of these Terms, unless the context requires otherwise;
 - 15.9.2 a reference to one gender includes a reference to the other gender;
 - 15.9.3 words in the singular include the plural and in the plural include the singular;
 - 15.9.4 a reference to a **person** includes an incorporated or unincorporated body;
 - 15.9.5 a reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
 - 15.9.6 unless the context otherwise requires, the words **including** and **include** and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
 - 15.9.7 the headings in these Terms are for ease of reference only and shall not affect their construction or interpretation; and
 - 15.9.8 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most

nearly approximates to the English legal term in that jurisdiction.

16 Trade marks

The Online Auctioneer is the proprietor of the Machinecompare.com trade mark and get-up. All other trade marks, product names and company names or logos cited herein are the property of their respective owners. No permission is given by the Online Auctioneer in respect of the use of any such brand names, product names or titles or copyrights and such use may constitute an infringement of the holder's rights.

17 Notices

17.1 Any notice or other communication given to a party under or in connection with these Terms shall be in writing and shall be sent by email as follows:

17.1.1 in the case of the Online Auctioneer, to *info@machinecompare.com*;

17.1.2 in the case of a User, to the email address provided by such User on registering on the Website (as updated via the Website from time to time); and

17.1.3 in the case of a Participant, to any User connected with such Participant in accordance with clause 17.1.2.

17.2 Any notice or communication shall be deemed to have been received one hour following the time at which the relevant email is sent.

17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18 Language

18.1 These Terms are drafted in the English language. If these Terms are translated into any other language, the English language version shall prevail.

18.2 Any notice given under or in connection with these Terms shall be in the English language. All other documents provided under or in connection with these Terms shall be in the English language, or accompanied by a certified English translation.

19 Governing law and jurisdiction

19.1 These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

19.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) to which the Online Auc-

tioneer is party arising out of or in connection with these Terms or their subject matter or formation.

- 19.3 Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) to which the Online Auctioneer is not party arising out of or in connection with these Terms or their subject matter or formation.
- 19.4 Nothing in this clause 19 shall limit the right of the Online Auctioneer to take proceedings against any User or Participant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Online Auctioneer from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.