

Online Auction Buyer Terms for Conditional Auction Sale

ONLINE AUCTION BUYER TERMS AND CONDITIONS FOR CONDITIONAL AUCTION SALE

These conditions govern the conduct of Town & Country Online auctions run by Town & Country Online in conjunction with Essential Information Group. By proceeding to bid you agree to the Online Auction Terms and Conditions. If you are successful in winning the Auction you agree to pay your non-refundable Reservation Fee as stipulated in the Exclusivity Agreement within 24 hours of winning the Auction. All properties sold by Town & Country Online using Online Auctions are governed by these conditions. By agreeing to these Terms and Conditions, you agree to be bound by them for subsequent property lots that you bid on in the future. In the event that we change the Terms and Conditions, you will be required to accept the new Terms before you can continue to bid.

The bidder 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. All properties sold by auction using Online Conditional Auction are governed by these conditions.

Introduction

These conditions have three main sections: –

1 Glossary

This gives special meanings to some words used in the rest of the conditions.

2 The Conduct of the Auction (Auction Conduct Conditions)

This section regulates the conduct of the auction. If you bid for a property which is offered for sale in an Online Conditional Auction, you do so on the basis that you accept the Auction Conduct Conditions.

3 Conditions of Exclusivity (Exclusivity Agreement Conditions)

If you are the highest bidder at the end of an Online Auction, and your bid is at or higher than the Reserve Price, then your submission of your winning bid will be deemed to have secured your exclusive 'Option to Purchase' the property at the winning Bid Price within the prescribed time period as set out in the Memorandum of Sale. In the event of a sale being agreed Pre-Auction or Post Auction to you, the Conditions of the Exclusivity Agreement shall apply. The conditions are legally binding.

Important Notice

A prudent buyer will, before bidding for a property: –

- Take professional advice from a conveyancer and, in appropriate cases, a chartered surveyor and an accountant.
- Read the conditions.
- Have a suitable source of finance available for the Purchase Price, Non-Refundable Reservation Fee and all other charges described in the property details and/or in the Special Conditions of Sale.
- If available, review the Property Auction Pack and, if necessary, provide this for review to a conveyancer.
- Check whether VAT registration and election is advisable.

The conditions assume that the buyer has acted like a prudent buyer. If you choose to buy a property without taking these normal precautions you do so at your own risk.

1 GLOSSARY

This glossary applies to the auction conduct conditions and the Exclusivity Agreement conditions.

Wherever it makes sense: –

- singular words can be read as plurals, and plurals as singular words;

- a 'person' includes a corporate body;
- words of one gender include the other genders;
- 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); and
- where the following words printed in bold type appear they have the specified meanings.

Additional Fee

A payment made by a buyer to extend the **Exclusivity Period** beyond its original term

Approved Financial Institution

Any bank or building society that has signed up to the Banking Code or Business Banking Code or is otherwise acceptable to Us.

Auction

The Online Auction

Auctioneer

Us as the auctioneer providing the **Online Auctions** and moderating.

Auction Pack (if applicable)

The pack of documents relating to the property which is being offered at an **Online Auction**.

Bidder

The person who registers to bid and partake in an Online 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 identity, credit or debit card details, contact information.

Business Day

Any day except: (a) a Saturday or a Sunday; (b) a bank holiday in England and Wales or in Scotland; or (c) Good Friday or Christmas Day.

Buyer

The person who bids and wins the **Exclusivity Agreement** for the **property** or, if applicable, that person's personal representative or **agent**. If two or more are jointly the **buyer**, their obligations can be enforced against them jointly or against each of them separately. The **buyer** warrants that they are 18 years of age or older and entitled to enter into binding contracts.

Non-Refundable Reservation Fee

Represents the purchase fee paid by the **Buyer**.

Completion

Contract completion will be set for 20 working business days following **contract** exchange unless agreed otherwise by the **seller**. The completion date represents the end date of the **period of Exclusivity**.

Condition

One of the **auction conduct conditions** or **sales conditions**.

Contract

The contract by which the **seller** agrees to sell, and the **buyer** agrees to buy the property.

Exclusivity Agreement

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 **Contracts** to purchase the **Property** within the **Exclusivity Period** set out in the **Memorandum of Sale**.

Exclusivity End Date

The last day of the agreed **Exclusivity Period**.

Memorandum of Sale

Document that confirms the particulars of the transaction.

Online

On **our** website or, where applicable, one of **our** accredited partner's websites.

Option to Buy

Provides the winning auction **buyer** an exclusive period of 20 working business days to proceed to exchange of **contracts** for the **property**.

Previously Marketed Price

The price at which the **property** has been previously offered by us or by any accredited partner agent.

Price

The price that the **buyer** agrees to pay for the **property**.

Property

The **property** that is the subject of the Online Auction.

Seller

The person selling the **property**. If two or more are jointly the **seller** their obligations can be enforced against them jointly or against each of them separately.

Winning Bid

Highest bid at or above the reserve.

We (and us and our)

The **auctioneers**.

You (and your)

Someone who bids on an **auction**, whether or not a **buyer**.

2. Conditional Online Auction Conduct Conditions

2.1 Introduction

2.1.1 Words in **bold** type have specified meanings, which are defined in the **Glossary**.

2.1.2 Where a **property** is advertised for **Online Auction** you have been given access to that auction only on the basis that you accept these **auction conduct conditions** which govern **our** relationship with you and cannot be treated as not applicable or varied by the **sale conditions** (even by a condition purporting to replace the whole of the **Conditional Online Auction Conditions**). They can be varied only if **we** agree in writing. These conditions shall also apply in the case of Pre-Auction and Post Auction sales.

2.2 Our role

2.2.1 As agents for each **seller** **we** have authority to: –

- (a) offer each **property** for sale by **Online Auction**;
- (b) receive **non-refundable Reservation Fees**;
- (c) sign each **Exclusivity Agreement** on behalf of each **seller**; and
- (d) treat an **Exclusivity Agreement** as void if the **buyer** fails to pay the **Administration Fee** if applicable.

2.2.2 **Our** decision on the conduct of the **Online Auction** is final.

2.2.3 **We** may cancel the **Online Auction** or change the way in which a **property** is offered for sale or vary the amount of **Reservation Fee**. **We** may also combine or divide properties. A **property** may be sold or withdrawn from sale prior to the **Online Auction** or Post Auction.

2.2.4 You acknowledge that to the extent permitted by law **we** owe you no duty of care and you have no claim against us for any loss.

2.3 Bidding and reserve prices

2.3.1 All bids are to be made in British pounds sterling exclusive of any applicable VAT.

2.3.2 **We** may refuse to accept a bid. **We** do not have to explain why.

2.3.3 All bids made **online** must comply with the terms and conditions which apply to use of **our** website or to the use of

our partner's websites (as applicable).

2.3.4 If there is a dispute over bidding **we** are entitled to resolve it, and **our** decision is final.

2.3.5 Unless stated otherwise, each **property** is subject to a Reserve Price. If no bid equals or exceeds that Reserve Price at the end of the **Online Auction**, the **property** shall be withdrawn from the **Online Auction**.

2.3.6 Where there is a Reserve Price, the **seller** may bid (or ask us or another agent to 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 by or on behalf of the **seller**.

2.3.7 Where a guide price (or range of prices) is given, that guide or up to 10% above that single figure guide, is the minimum price at which, or range of prices within which, the **seller** might be prepared to sell at. But guide prices may change, and the last published guide price will normally be at or above any reserve price, but not always – as the **seller** may fix the final reserve price just before bidding commences.

2.4 Property Description

2.4.1 **We** have taken reasonable care to describe each **property**.

The description of a **property** is based on information supplied by or on behalf of the **seller**. **You** need to check that the information is correct.

2.4.2 The description of a **property** may change prior to the **Online Auction** and it is **your** responsibility to check that you have the correct version.

2.4.3 If **we** provide information, or a copy of a document, provided by others **we** are not responsible for the accuracy of that information or document.

2.5 The Exclusivity Agreement

2.5.1 A successful bid is one which is the highest bid at the end of the **Online Auction** and is at or higher than the reserve unless otherwise Pre-Auction or Post Auction offers that are agreed by negotiation.

2.5.2 **You** are to ensure that the payment of the **Reservation Fee** will be made to Us in accordance with the **Online Auction** process, and that payment will take place within 24 hours after the end of the auction or in the case of Pre-Auction or Post Auction Sales within 24 hours of agreement.

2.5.3 By accepting these terms and conditions you authorise the **Memorandum of Sale** to be signed by us on your behalf at the close of the auction if you are the successful bidder.

2.5.4 You must provide all information **we** reasonably need from you to enable us to complete the **Memorandum of Sale** (including proof of your identity and address).

2.5.5 If you do not **we** may as agent for the **seller** treat that failure as your voiding of the **Exclusivity Agreement** and offer the **property** for sale again or offer the **property** to any under-bidder. The **seller** may then have a claim against you for breach of contract.

2.5.6 **We** will retain electronic data of your **Winning Bid** and all other bid activity on the **property**.

2.5.7 If you do not comply with your obligations under the **Exclusivity Agreement** then you are personally liable to comply even if you are acting as an agent for the **buyer** or buying on behalf of a company.

2.5.8 Where the **buyer** is a company, you warrant that the **buyer** is properly constituted and able to buy the **property**.

3. Exclusivity Agreement Conditions

3.1 Introduction

3.1.1 Words in **bold** type have specified meanings, which are defined in the **Glossary**.

3.1.2 Where you win an **Online Auction** with an **Exclusivity Agreement**, you agree that your **Winning Bid** is legally binding to proceed on these Terms and Conditions.

3.1.3 These conditions summarise the terms of the **Exclusivity**

Agreement.

3.2 Seller's obligations

- 3.2.1 Upon the **Exclusivity Agreement** being signed and **Reservation Fee** being paid, the **seller** will grant to the **buyer** a period of exclusivity to proceed to legally contract.
- 3.2.2 During the **Exclusivity Period** the **seller** agrees: –

- (a) he or she has instructed us not to agree another **Exclusivity Agreement** of the **property**;
- (b) not to transact or attempt to transact with the title to the **property**;
- (c) not to send, instruct, or allow anyone else to send any contract for sale of the **property** to anyone other than the **buyer's** solicitors;
- (d) to give such access to the **property** as may be reasonably required by any surveyor or valuer appointed by the **buyer**;
- (e) not to 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**;
- (f) to use all reasonable endeavours to proceed to a formal exchange of contracts within the **Exclusivity Period**;
- (g) to immediately instruct the **seller's** solicitors via the **Memorandum of Sale** to issue a contract for the sale of the **property** to the **buyer's** solicitors and to do all other work required to enable contracts for the sale of the **property** to be exchanged within the **Exclusivity Period**.

- 3.2.3 The **seller** may (but shall not be obliged to) grant an extension of the **Exclusivity Period** stated in the **Exclusivity Agreement**. Any such extension shall be confirmed in writing by us to the **seller's** solicitor and to the **buyer's** solicitor. An extension will usually require the payment of an Additional Fee.

3.3 Buyer's obligations

- 3.3.1 The **buyer** agrees: –

- (a) to use all reasonable endeavours to proceed to a formal exchange of contracts on or before the target contract exchange deadline date as referenced within the **Memorandum of Sale** with contract completion on or before the **Exclusivity end date**.
- (b) to immediately instruct the **buyer's** solicitors to review title to the **property**, negotiate the draft contract for the purchase of the **property**, raise enquiries of the **seller** and any third parties about the **property** and do any other work required to enable contracts for the purchase of the **property** to be exchanged within the **exclusivity period**;
- (c) to promptly: –
 - (i) if the **buyer** intends to use a loan in connection with the purchase of the **property**, apply to the relevant lender and complete all necessary documentation and do all such things as such lender may require processing the **buyer's** application as soon as possible including the payment of any application fees;
 - (ii) if the **buyer** or the **buyer's** mortgagee or lender requires that the **property** is surveyed and/or valued, 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; and
 - (iii) keep the auctioneer and **our** accredited partner agent (if applicable) and the **seller's** solicitors advised of progress with the application for the loan.

- (d) the date of **completion** shall be specified in the **contract** exchanged for the purchase of the **property** and the **buyer** shall use all reasonable endeavours to complete the purchase of the **property** by such date;
- (e) the **buyer** agrees that if contracts for the purchase of the **property** have not been legally and unconditionally exchanged within the **exclusivity period** the **seller** has the absolute right to re-offer the **property** for sale free of any

obligation to the **buyer**. In such a case the **buyer** accepts that the **Reservation Fee** is non-refundable.

3.4 Binding obligations

- 3.4.1 These conditions of exclusivity must be read in conjunction with the **Exclusivity Agreement** applicable to a particular **property reservation fee**. Where there is any conflict or inconsistency between these conditions and the provisions of an individual **Exclusivity Agreement**, the relevant provisions of the **Exclusivity Agreement** shall apply.

- 3.4.2 As these conditions and the **Exclusivity Agreement** comprise legally binding obligations on **you**, it is recommended **you** seek independent legal advice on these conditions and the **Exclusivity Agreement** before making any bid on a **property**.

3.5 Auctioneer

- 3.5.1 **You** acknowledge and agree that **we** act as an agent of the **seller** and not in **our** own capacity.

- 3.5.2 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 conditions or to any **property**.

- 3.5.3 The **Bidder** accepts and agrees that the **Auction** as provided by the **Auctioneer**, their agents or servants, can be subject to full or partial failure from time to time due to, but not limited to, internet connectivity, server or software, and the **Auctioneer** will not be liable in any way for any loss or damage to the **buyer** in this event.

Complaints Procedure

Should you have any problems with Town & Country Online services which you are unable to resolve with the Auctioneer involved you should write to: Managing Director, Town & Country Online, 33 Lower Bridge St, Chester CH1 1RS. The complaint will be acknowledged within five working days of receipt and an investigation undertaken. A formal written outcome of the investigation will be sent to you within 15 working 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. For the avoidance of doubt, TPO will only review complaints made by consumers. By signing this Agreement, you give us consent to provide any information regarding the sale of your 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.

