

Historics Classic and Sportscar Auctions - Vendors Terms and Conditions

1. Definitions

In these Terms and Conditions the following definitions shall apply:

"Bid" an offer to purchase the Lot at a price given by Historics;
"Buyer" the maker of the highest Bid accepted by Historics When the Hammer Falls;
"Entry Form" the form to be signed by You and attached to these Terms and Conditions;
"Hammer Price" the amount of the highest Bid on the Lot at the moment When the Hammer Falls;
"Historics" Historics Classic and Sportscar Auctions Limited (Company No. 06997410) with a registered address at Main Building, Thorney Business Park, Thorney Lane North, Iver, Bucks SL0 9HF and where appropriate its officers, employees and agents;
"Lot" an item or items consigned to Historics by You and identified within the Entry Form;
"Resale Rights" the statutory right of any third party to receive a payment on a disposal of the Lot (or any part of it) including, but not limited to, those set out in the Artists Resale Right Regulations 2006;
"Reserve" the minimum price at which the Lot may be sold as stipulated on the Entry Form before the Sale;
"Sale" the auction sale at which the Lot is to be made available for sale through Historics;
"Seller's Commission" a commission plus VAT payable by You and calculated in the manner described in Clause 11;
"Statement of Sale" a written statement provided to You by Historics containing details of (a) the Hammer Price; (b) the Seller's Commission; and (c) the balance of sale proceeds owed to You;
"When the Hammer Falls" the moment that the Lot is knocked down to the Buyer which occurs upon the fall of Historics' hammer following the Buyer's highest Bid when no higher Bid has been made for the Lot; and
"You" the person signing these Terms and Conditions.

2. These Terms and Conditions

In consideration of Historics agreeing to facilitate the sale of the Lot You agree to accept these Terms and Conditions.

3. Contract of Sale

You invite the Buyer to offer to purchase the Lot by making Bids for the Lot. You hereby authorise Historics to accept offers to purchase the Lot in the manner described below, such contract, if concluded, being made between You and the Buyer. Historics acts in the capacity as a facilitator and not as Your agent or as an additional principal and Historics shall have no liability to You or the Buyer in respect of the Lot, its sale or the contract for the sale of the Lot. A binding contract between You and the Buyer under which the Buyer's offer to purchase the Lot for a consideration equal to the Buyer's highest Bid is made When the Hammer Falls at which point, subject to Clause 6 (Reserves) below, You accept the Buyer's offer to purchase the Lot.

4. Conduct of the Sale

Historics reserves the right, without giving any reasons, to withdraw any Lot from the Sale or to cancel any auction in respect of the Lot at any time prior to the moment When the Hammer Falls. Historics' decision as to whether or not a Bid has been validly made shall be determinative.

5. Acceptance of the Lot into the Sale

Historics shall not be deemed to have accepted the Lot into the Sale unless and until You have delivered to Historics and Historics has accepted:

- the Lot;
- the registration document of the Lot or any official substitute for that document;
- any subsisting test or plating or other certificate relating to the Lot;
- all keys of the Lot; and
- an Entry Form fully completed and signed by You.

You agree to deliver the Lot and all items referred to in (b) - (e) above at least 48 hours prior to the Sale at a time and place agreed in advance with Historics. You will be wholly responsible for charges or expenses incurred by Historics before the Sale. At its absolute discretion, Historics shall be entitled to accept the Lot into the Sale notwithstanding Your failure to deliver any one or more of the foregoing or to complete the Entry Form. Historics shall be entitled absolutely to refuse to accept delivery of anything referred to in (a) - (e) above.

6. Reserves

If the Entry Form does not contain a Reserve Historics is authorised to auction the Lot without a Reserve. Where the Lot is subject to a Reserve, Historics shall not be obliged to announce that fact save if the Lot does not sell because it has not reached its Reserve. Historics shall not in any circumstances be obliged to announce the Reserve. Notwithstanding that the Lot may have been knocked down to the Buyer upon the fall of Historics' hammer following the Buyer's highest Bid, Your acceptance of the Buyer's offer to purchase the Lot at the Buyer's highest Bid is conditional on the Buyer's highest Bid being equal to or higher than the Reserve. You agree that Historics may at its sole discretion sell the Lot for less than the Reserve but will account to You as if the Lot had been sold at the Reserve. If a Lot has not been assigned a Reserve then in the event that the Lot sells for less than the estimated selling price of the Lot contained in the catalogue, Historics shall not be liable for any losses or damages arising as a result, unless the same arises out of the negligence of Historics or its employees.

7. Variations

In all cases any additional or alternative terms and conditions set out in any written contracts for sale provided to You by Historics shall take precedence over the terms and conditions shown below and acceptance by You of the Buyer's Bid shall be deemed to be acceptance by You upon these Terms and Conditions as varied by any of the additions/variations referred to above.

8. Seller's Undertakings

You undertake to Historics and the Buyer that:

- You are the legal and beneficial owner of the Lot or are duly authorised as an agent (whether such agency is disclosed or not) for a principal who is the owner to sell the Lot (and where You act as an agent for the owner of the Lot both You as agent and the principal shall be jointly and severally liable as such to sell the Lot);
- save as may be disclosed in the Entry Form, You have the absolute right to sell the Lot with full title guarantee free from all liens, charges, encumbrances and third party claims or, where you are the executor, trustee, liquidator, receiver or administrator, with whatever right, title or interest you may have in the Lot;
- the Lot bears its proper registration mark and chassis number;
- each and every entry made by You in the Entry Form is entirely accurate and the Lot is sold as corresponding with any description in the Entry Form or any statement or representation made in writing by You. You accept that Historics shall incur no liability to any person or persons in respect of any mis-description;
- Historics is entitled to publish before the Sale (by fixing the Entry Form or any part thereof or any other document to the Lot or otherwise) and to announce at the Sale any information contained in the Entry Form or supplied by You, any fair summary of any such information and any fair description of the appearance of the Lot but Historics shall not be obliged to make any such publication or announcement;
- the Lot has not been treated by an insurance company as a total loss save when Historics makes an announcement to the effect that it was or was treated as a total loss; and
- You are offering to sell the Lot for Yourself and not as an agent for a principal. You accept that When the Hammer Falls You cannot avoid being personally liable to complete the sale of the Lot by claiming that You are acting as the agent of a third party principal.

9. Exclusions and Limitations of Liability

Historics does not make or give any contractual promise, undertaking, obligation, guarantee, warranty, or representation of fact, and shall not be deemed to have any duty of care, in relation to any description of the Lot or any fact or statistic applied or made in relation to it. In particular, Historics shall not have any liability (whether implied by the Sale of Goods Act 1979 or otherwise) in respect of the Lot's quality, manufacturer, value, model description, date of creation, provenance, prior owners, component parts, manufacture, service history, road/air/seaworthiness, safety, heritage, any remedial work carried out on it, its compliance with any relevant laws or regulations, its fitness for any purpose or its conformity with any description. Without limiting the provisions of this Clause 9, to the fullest extent permitted by law Historics nor any associated company shall be liable to You or the Buyer for any indirect special or consequential loss or damage (including but not limited to loss of profit or loss of saving), costs, expenses or other claims for compensation whatsoever which arise out of or in connection with these Terms and Conditions, the sale or supply of any Lots or their use or resale by You or the Buyer. Without limiting the provisions of this Clause 9 Your liability to the Buyer for any claim arising in relation to the Sale will be limited to the payment of a sum which will not exceed by way of maximum the amount of the Hammer Price of the Lot. Notwithstanding the above, nothing in these Terms and Conditions excludes or limits either Your or Historics' liability in respect of your fraudulent misrepresentation or any death or personal injury arising out of your negligence or any other liability to the extent the same may not be excluded or restricted as a matter of law.

10. Risk, Property And Title

The Lot is at Your risk at all times before the Sale, from the delivery of the Lot to Historics whether at the auction premises or elsewhere until the Lot is sold to the Buyer subject to Clause 6 (Reserves) above at which point risk in the Lot passes to the Buyer When the Hammer Falls. For the avoidance of doubt, risk in the Lot will remain with You at all times if the Lot is not sold at the Sale for any reason including failure to reach the Reserve. If at any point after When the Hammer Falls a contract of sale is terminated or cancelled (whether by default on the part of the Buyer or otherwise) You accept that risk in the Lot shall revert from the Buyer to You. You accept that the Lot shall never be at Historics' risk at any time before, during or after the Sale. You hereby agree to indemnify Historics and keep Historics fully indemnified from and against all claims, proceedings, costs, expenses and losses arising in respect of any injury, loss and damaged caused to or by the Lot before the moment "When the Hammer Falls" at which point risk passes to the Buyer, or in the event that the Lot is not sold until the Lot is removed from the auction premises or elsewhere after the Sale by You. Title to the Lot remains in and is retained by You until all of the following have occurred:

- the Hammer Price and all other sums payable by the Buyer to Historics and You in relation to the Lot have been paid in full, and received in cleared funds by Historics; and
- the Buyer has collected the Lot in accordance with Clause 15 below.

11. Seller's Commission

Historics shall maintain a list of charges which it shall be at liberty to vary from time to time. It is a condition of these Terms and Conditions that You pay to Historics the Seller's Commission which is a sum equal to 10% of the Hammer Price shown (20% if

automobilia) (plus VAT) and which represents part of the consideration due to Historics for Historics' facilitation of the sale of the Lot. In the event that the sale of the Lot to the Buyer is not completed because of any breach by You of these Terms and Conditions You undertake to compensate Historics in full in respect of the Seller's Commission that would have been payable along with any other commission (plus VAT) that would have been due to Historics from You if the sale of the Lot had been completed at the Reserve and if none is stated then at such figure as Historics shall reasonably estimate as the value of the Lot. If Historics is in possession of the Lot (or any other Lot or property of yours) then it may retain that property until any sums due to it are paid with the costs of storage to be paid by You. In the event that the Lot is not sold (or does not meet its Reserve) but during or within one month after the Sale You enter into a commitment with the Buyer or any related company to acquire any interest in the Lot (or any part of it) You also undertake to simultaneously pay Historics 20% of the total price payable to You or any related company for the interest in the Lot (plus VAT).

12. Rights reserved to Historics

Historics reserves to itself the following rights which it may exercise without any reason being given, namely the right:

- to refuse to allow You or any person to enter the auction premises;
 - to refuse to allow You or any person to place Bids at a Sale;
 - to refuse to allow any Lot to be brought on to the auction premises;
 - to require You to remove the Lot from the auction premises and if You fail to do so to effect such removal and to recover the cost thereof as a debt due from You;
 - to provide either party to the contract of sale with the name and address of the other party in the case of any dispute; and/or
 - to allocate such lot numbers to Lots as Historics sees fit and notwithstanding the lot numbers which are allocated to auction Lots in such order and at such times as Historics sees fit.
- (g) to apply any sums received from You towards any sums due from You to Historics on any account whatsoever notwithstanding any directions to the contrary by You or any person acting on Your behalf, whether express or implied. If Historics has reasonable grounds to believe:

- You were not entitled to sell the Lot;
 - You should have notified Historics that you were not the owner of the Lot but failed to do so; or
 - any facts which You notified to Historics concerning ownership of the Lot were inaccurate;
- then Historics shall be entitled to withhold any sum which would otherwise be payable by Historics to You until You establish to the satisfaction of Historics that You were not in breach of any express or implied term of the contract of sale. If You fail to establish this within a reasonable time Historics shall be entitled but not obliged to:
- retain the Lot pending the resolution of such claim;
 - refund any money paid to Historics by the Buyer;
 - retain any such sums until all questions of title have been resolved;
 - pay any such sum to anyone who to the reasonable satisfaction of Historics establishes title to the Lot; or
 - interplead and to pay any such sums to a Court.

13. Resale Rights

(a) You agree that in the event that the sale of any Lot is subject to a Resale Right it will, as between You, the Buyer and Historics, be the Buyer's responsibility to make any such payment in full and You hereby indemnify Historics against any failure on the Buyer's part to do so.

(b) Unsold Lots: Where any Lot fails to sell at the Auction for whatever reason then Historics will have the sole and exclusive right to sell the Lot by private treaty within 21 days of the Auction date. You agree that any sale of the Lot during that 21-day period will be governed by these Terms and Conditions. For the avoidance of doubt, such a sale of the Lot by Historics will be the same as the moment When the Hammer Falls.

14. Payment

Historics shall not be obliged to pay You the proceeds from the sale of the Lot unless and until Historics has received cleared funds from the Buyer. The Hammer Price payable by the Buyer to You in relation to the Lot and the Buyers Commission shall be placed into a separate trust account to be held by Coutts & Co or such other bank as nominated by Historics. Historics shall be entitled to deduct the Buyer's Commission and the Seller's Commission and any other sums due from You against any payment made to You. The money due to You shall be sent to You within 14 days of the auction at which the Lot is sold (subject only to Historics receiving cleared funds from the bidder). If you do not pay any sums due strictly in accordance with this Clause 14 Historics shall have the right, without further notice to You, to exercise one or more of the following rights:

- to immediately re-advertise or sell the Lot by auction, private treaty or any other means;
- to retain possession of the Lot;
- to remove and store the Lot at alternative premises at Your expense;
- to take legal proceedings against You for any sum due and/or damages for breach of contract;
- to increase Your liability to include interest on any outstanding sums due from the date when such payment was due until the date of actual payment at a rate per annum determined under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (or any higher rate implemented under any legislation that replaces or repeats that section) and notwithstanding that You may not be acting in the course of a business, plus any reasonable and identifiable costs including legal fees incurred in recovering these sums;
- to retain possession of any other property sold to You at the Sale or by any third party at any other auction or by private treaty until all sums due under these Terms and Conditions have been paid in full in cleared funds;
- to retain possession of, and to sell any of Your other property in the possession of Historics for any purpose (including, without limitation, other goods sold to You) and to apply any monies due to You as a result of such sale in satisfaction or part satisfaction of any amounts owed to Historics; and/or
- so long as such goods remain in the possession of Historics as your bailee, to rescind the contract for the sale of any other goods sold to You at the Sale or by any third party at any other auction or by private treaty and apply any monies received from You in respect of such goods in part or full satisfaction of any amounts owed to Historics by You. You agree to indemnify the Buyer and Historics against all legal and other costs of enforcement, all losses and other expenses and costs (including any monies payable to Historics in order to obtain the release of the Lot) incurred by Historics (whether or not court proceedings will have been issued) as a result of Historics taking steps under this Clause 14 on a full indemnity basis together with interest thereon (after as well as before judgement or order) at the rate specified above from the date upon which Historics became liable to pay the same until payment by You.
- to hold payment of funds after sale should any dispute arise, until all parties are satisfied.

15. Insurance and Collection of the Lot

Notwithstanding that Historics may (at its discretion) take out insurance cover in relation to the Lot while it is at the auction premises, it is Your responsibility to ensure that the Lot is effectively and fully insured until title in the Lot passes to the Buyer in accordance with Clause 10. In the event that the Lot is not sold at the Sale, You will collect and remove the Lot at your own expense from Historics' custody and/or in accordance with Historics' instructions or requirements. You fail to remove the Lot from the auction premises by close of business on the day after the Sale You will be wholly responsible for the charges or expenses incurred by Historics, including a parking fee per day and transport to a storage facility. Historics shall have a lien on the Lot in respect of any unpaid parking or storage fees. You will indemnify Historics against all charges, costs, including any legal costs and fees, expenses and losses suffered by Historics by reason of your failure to remove the Lot including any charges due from any third party storage provider. All such sums due will be payable on demand.

16. Withdrawal

If you withdraw the Lot from the auction prior to the auction date then you are obliged to pay Historics:

- 10% (20% if automobilia) of the Reserve or if no Reserve the estimated value plus VAT if the withdrawal is before the catalogue for that Sale has been printed;
- 20% (40% if automobilia) of the Reserve or if no Reserve the estimated value plus VAT if the withdrawal is after the catalogue for that Sale has been printed.

17. Data Protection

All information provided by You to Historics will be treated confidentially and will not be passed on to third parties, except to the extent this is necessary in order to complete a sale transaction provided that Historics reserves the right to pass on information where this is required by legislation, government authorities or the courts. Historics shall also have the right to use any personal information obtained from you to notify you of auctions and other events and products of a related nature made available by Historics or by carefully chosen third parties and Historics also reserves the right to use the information in an anonymous form, for example in connection with marketing, user surveys and statistical analysis.

18. General

You may not assign either the benefit or burden of these Terms and Conditions or the contract for sale of the Lot. Historics' failure or delay in enforcing or exercising any power or right under these Terms and Conditions will not operate or be deemed to operate as a waiver of Historics' rights except to the extent of any express waiver given to You in writing. Any such waiver will not affect Historics' ability subsequently to enforce any right arising under these Terms and Conditions. Neither You nor Historics shall be liable for delay in performing or for failure to perform their obligations under these Terms and Conditions if they are prevented from, or delayed in, carrying on their business by acts, events, omissions or accidents beyond their reasonable control. If any term or any part of any term of these Terms and Conditions is held to be unenforceable or invalid, such unenforceability or invalidity will not affect the enforceability and validity of the remaining terms or the remainder of the relevant term. No person who is not a party to these Terms and Conditions shall have any right to enforce any term under the Contracts (Rights of Third Parties) Act 1999 but, for the avoidance of doubt, Historics shall be entitled to enforce any term of these Terms and Conditions that confer a benefit on it. These Terms and Conditions 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 law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). At the election of Historics You and the Buyer accept that any dispute arising out of or in connection with these Terms and Conditions (including any dispute arising out of the contract for sale of the Lot) may (if Historics so decides) be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more UK based arbitrators appointed to preside over an arbitration that takes place in London in accordance with the said Rules.