

Conditional Auction Terms and Conditions (England)

Part A Interpretation

1. Introduction to these Terms
   1. These Conditional Auction Terms and Conditions for a Property situated in England are created by Yopa Online Auctions provided by GOTO Auctions (Genle Ltd) (registered number 9790404) whose registered office is at The Hall Barn, Church Lane, Lewknor, Watlington, United Kingdom, OX49 5TP.
   2. By creating an Account or placing a bid or Successful Bid, the Purchaser shall be bound by these Terms.
   3. By creating an Account or instructing the Auctioneers to market the Property for sale through an Authority to Auction or otherwise, the Seller shall be bound by these Terms.
   4. The Auctioneer shall be bound these Terms.
   5. These Terms must be read in conjunction with the Property description and all other documents applicable to a particular Property as shall be available from the Website.
2. Definitions
   1. The following words and expressions shall, unless the context otherwise requires, have the meanings respectively set opposite them below:

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| **Account** | an account created by a user for use of the Auctioneer’s digital platform for the sale of Properties by Auction; |
| **Auction** | any conditional auction advertised Online or in the Catalogue; |
| **Auctioneers** | the auctioneers of the Auction who in this case are Yopa Online Auctions powered by GOTO Auctions (Genle Ltd); |
| **Bidder** | anyone who bids at an Auction; |
| **Business Day** | any day except (a) a Saturday or a Sunday, (b) a bank holiday in England and Wales; |
| **Buyer or Purchaser** | the person who makes a Successful Bid to buy the Property or, if applicable, that person’s agents or personal representatives, or nominee; |
| **Buyer’s Premium** | a fee paid by the Buyer to us in the event of a Successful Bid for the Property; |
| **Bidding Requirements** | those steps and actions required by the Website (or any equivalent prescribed by us in writing) to enable a Buyer to register, be identified and submit a bid for a Property; |
| **Catalogue** | a physical or virtual publication of a collection of lots, or a single lot; |
| **Contract** | the contract by which the Seller agrees to sell, and the Buyer agrees to buy the Property; |
| **Information Pack** | the documents of title (including, if the title is registered, the entries on the register and the title plan) and other Legal Pack documents available to the Buyer in relation to the Property which is advertised for the Auction; |
| **Intellectual Property Rights** | patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| **Online** | on the Website; |
| **Price** | the price that the Buyer agrees to pay for the Property (normally equal to the Successful Bid); |
| **Property** | each separate Property described in the Catalogue or Online or (as the case may be) the Property that the Seller has agreed to sell and the Buyer to buy; |
| **Report** | a report, document, or other material or information concerning the Property, produced by a third party; |
| **Report Provider** | a third party providing Reports; |
| **Reservation** | Our acceptance of a Successful Bid by the Buyer enabling the Reservation Period to commence but always subject to the performance of the obligations upon the Buyer detailed in these Terms. |
| **Reservation Form** | a form normally to be completed by us on behalf of the Seller and a Buyer following a Successful Bid being the document forming Appendix 1 to these Terms; |
| **Reservation Period** | the period in which the Buyer is to exchange and complete Contracts to purchase the Property, commencing on the issue date of draft Contracts and ending fifty-six (56) Business Days thereafter; |
| **Reserve Price** | the price stipulated as the lowest acceptable by the Seller for a Property sold at Auction; |
| **Authority to Auction** | that authority to auction document signed or agreed to by the Seller authorising us to market and sell the Property in accordance with these Terms. |
| **Seller** | the person selling the Property; |
| **Services** | Us:   * acting as an agent for the Seller in the sale of the Property * providing Accounts * providing a digital platform for the sale and purchase of Properties by Auction, its maintenance and user support * procuring copies of Reports and relevant documents |
| **Starting Bid/Opening Bid** | the minimum price at which the Buyer can bid on a lot in auction, at the date of that being set; |
| **Successful Bid** | the winning bid which We accept for a Property (on the fall of the virtual hammer, close of an Auction or if an offer for the Property is accepted by us prior to the Auction); |
| **Terms** | these Conditional Auction Terms and Conditions; |
| **We (and us and our)** | the Auctioneers; |
| **Website** | the website available on yopa.gotoproperties.co.uk or in our publication on the internet, or on the website of one of our accredited partners, if applicable or on any other online exposure authorised by us; |
| **You (and your)** | anyone using the Services, including a Bidder, Buyer, or Seller, as appropriate where the context so admits; |
| **VAT** | Value Added Tax or other tax of a similar nature. |

* 1. Words and phrases in the singular shall include the plural and vice versa.
  2. A reference to a ‘person’ includes a corporate body.
  3. Paragraph headings are for assistance only and do not form part of the Terms
  4. Words of one gender include the other genders.
  5. 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).

Part B Our Actions and Conduct of the Auction

1. Our Services
   1. We agree to provide the Services to the Seller in accordance with the Authority to Auctions and these Terms.
   2. As agents for the Seller We shall:
      1. prepare the Catalogue from information supplied by or on behalf of the Seller;
      2. market the Property for sale;
      3. receive and hold any deposits or advance payments where appropriate in connection with a Reservation;
      4. seek and obtain Buyer’s Premium;
      5. advise the Seller that we have received any Buyer’s Premium;
      6. sign the Reservation Form on behalf of the Seller;
      7. sign the Reservation Form on behalf of the Buyer if the Auctioneer holds appropriate authorisation.
2. Conduct of the Auction
   1. Both the Starting Bid/Opening Bid and Reserve Price are subject to change any time before or during the Auction.
   2. 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. Bidders accept that it is possible that all bids up to the Reserve Price are bids made by or on behalf of the Seller.
   3. The Reserve Price is the minimum price that the Auctioneer is currently authorised by the Seller to sell the Property for. The Reserve Price may change throughout the course of marketing. We may with the agreement of the Seller lower the Reserve Price during the Auction to a level that matches the existing highest bid.
   4. The Bidder who places the Successful Bid will be declared the Buyer at the end of the Auction process.
   5. Where the Buyer has set out caveats in accordance with clause 6.1, which the Seller fails to satisfy, the Buyer may withdraw from the Auction and will not be liable for paying the Buyers’ Premium.
   6. We may refuse to accept a bid.
   7. If there is a dispute over bidding, We are entitled to resolve it and our decision is final.
   8. Our decision on the conduct of the Auction is final.
   9. We may cancel the Auction or change the way in which a Property is offered for sale. We may also combine or divide Properties. A Property may be sold or withdrawn from sale prior to the Auction.
   10. Irrespective of any other bids, We may select a Successful Bid before the end of an Auction and have no obligation to inform any Bidder about our intention to do so.
   11. On the submission of a Successful Bid and payment of the Buyer’s Premium
       1. We shall, by the execution of the Reservation Form in terms of the authorities which we hold, reserve the Property for the Buyer, subject to the performance by the Buyer of their obligations under these Terms.
       2. The Seller shall make the undertakings and be obliged to take the actions detailed in Clause 5
       3. The Buyer shall make the undertakings shall be obliged to take the actions detailed in Clauses 6, 7 and 8

Part C Obligations upon the Seller

1. The Seller’s obligations
   1. Before an Auction, a Seller must complete the Authority to Auction and comply with its terms.
   2. Once the Buyer’s Premium has been paid, the Seller agrees during the Reservation Period, without prejudice to the right of the Seller to enforce performance of the Buyer’s obligations deriving from these Terms:
      1. not to instruct us to agree another Reservation of the Property;
      2. not to provide access to the Property or negotiate any terms for the sale of the Property with anyone other than the Buyer or persons confirmed to be acting on their behalf;
      3. not to send, instruct, or allow anyone else, to send any document inferring a potential sale of the Property to another party to any person;
      4. not to encumber or deal with the title to the Property;
      5. to give such access to the Property as may be reasonably required by a surveyor or valuer if required by the Buyer for the purpose of obtaining a mortgage over the Property;
      6. To immediately instruct the Seller’s solicitors 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 Reservation Period
   3. To enable the Seller's solicitors to carry out all work necessary to enable the completion of the Contract for sale of the Property and the transaction to be completed within the Reservation Period, the Seller shall:
      1. supply all documentation, information and authority; and
      2. take all relevant actions reasonably necessary.

Part D Obligations upon the Buyer

1. Before the Auction
   1. Before bidding, a Bidder may call out in writing specific caveats relating to the Property and condition the Bidder’s purchase of the Property on the Seller meeting these caveats.
   2. To enable bidding, a Bidder must before the Auction fulfil the Bidding Requirements including:
      1. provide the Auctioneer with electronic payment details;
      2. ensure We have all information We reasonably need from the Buyer to enable us to complete the Reservation, including proof of the Buyer’s identity and address if required by us; and
      3. provide Us with details of the Buyer’s solicitors failing which the Auctioneer will instruct solicitors for the Buyer which instructions shall be deemed to have been made by the Buyer and the costs of such instruction shall be responsibility of the Buyer
   3. All bids by a Buyer must made:
      1. from an Account; and
      2. in Pounds Sterling (GBP) exclusive of any applicable VAT.
   4. Where the Buyer is a company, the Buyer warrants that the company is properly constituted and able to offer, sell, or buy the Property. In the event of the Company failing to adhere to its obligations under these Terms and the Contract, the person completing the Bidding Requirements will be personally liable to fulfil the obligations of the Buyer.
2. Undertakings by the Buyer before submitting a bid
   1. The Buyer by fulfilling the Bidding Requirements:
      1. agrees that the Buyer has received the Information Pack (if applicable) and is ready, willing, and able to proceed with the purchase of the Property;
      2. gives the Auctioneer explicit irrevocable consent to sign a completed Reservation Form on behalf of the Buyer following a Successful Bid by the Buyer and agrees that the Auctioneer may also sign the Reservation Form on behalf of the Seller if the Auctioneer holds appropriate authorisation;
      3. accepts that the Buyer’s Premium will form part of the chargeable consideration for the Property in calculating the LBTT (stamp duty) liability on the acquisition of the Property.
3. After the Auction
   1. Immediately after the Auction or they have made a Successful Bid the Buyer must:
      1. pay the costs incurred in preparing the Information Pack and Buyer’s Premium by electronic same day payment
      2. within 5 (five) Business Days of the Buyer’s solicitors receiving the draft Contracts from the Seller's solicitor, ensure that the Buyer’s solicitor has raised initial enquiries in writing in relation to the draft Contract with the Seller's solicitor.
      3. Ensure that the exchange and completion of Contracts takes place no later than 56 (fifty six) Business Days after draft contracts are issued by the Seller’s solicitor.
   2. To enable the completion of the transaction pertaining to the Property within the Reservation Period, the Buyer will provide irrevocable instructions (and payment if requested) to the Buyer’s solicitor to do all work required to enable completion of the transaction within the Reservation Period;
   3. If the Buyer intends to utilise a loan in connection with the purchase of the Property, the Buyer shall:
      1. promptly apply to the relevant lender and complete all necessary documentation, pay the relevant fees and do all such things as the lender may require to process the Buyer’s application;
      2. promptly arrange and pay for any survey and/or valuation of the Property if required by the Buyer or its lender; and
      3. keep the Auctioneer and the Seller’s solicitors advised of the progress with the loan application.
4. Buyer’s Premium
   1. Payment by the Buyer of the Buyer’s Premium is an essential condition of a Successful Bid for the Property.
   2. The Buyer shall be obliged to pay the Buyer’s Premium when they place the Successful Bid for the Property.
   3. If the Buyer fails to pay the Buyer’s Premium contemporaneously with the Successful Bid or financing details provided by the Buyer do not result in payment of the Buyer’s Premium, the Auctioneer will provide the Buyer with two business days’ notice requesting that the Buyer make the payment (“Overdue Buyer’s Premium Demand”).
   4. If the Buyer’s Premium is not paid within two business days of the Overdue Buyer’s Premium Demand:
      1. we may as agent for the Seller treat that failure to pay as the Buyer’s repudiation of the Reservation and offer the Property for sale again in which case the Seller shall have a claim against the Buyer for breach of contract or
      2. we may as agent for the Seller provide notice to the Buyer that the Seller wishes to complete the transaction by virtue of these Terms save that the Successful Bid shall be increased by the Amount of the Buyer’s Premium and the price in the Relevant Offer increased accordingly. When the Price is paid by the Buyer which Price will be augmented by the Buyer’s Premium, the Seller shall pay the Buyer’s Premium to the Auctioneer.
   5. A Buyer who first becomes aware of the availability of a Property by its presentation in a Catalogue or Online shall be obliged to pay the Buyer’s Premium in event the Buyer subsequently purchases the Property through any other means or route to market. This clause does not affect the Buyer’s obligation to pay the Buyer’s Premium immediately after the Auction.
   6. The Buyer’s Premium is non-refundable unless the Seller is unable to fulfil its obligations under the Contract.
5. General Issues arising from the Auction
   1. If following payment of the Buyer’s Premium, the Buyer reneges on the obligations contained in these Terms (having been given at least 14 days’ notice to comply with the Buyer’s relevant obligations) then the Seller has the right (without prejudice to the Seller’s right to pursue the Buyer for breach of contract)
      1. request the Auctioneer to terminate the Reservation.
      2. re-offer the Property for sale free of any obligation to the Buyer and in such event the Buyer’s Premium shall be non-refundable.
   2. The Seller may grant an extension of the Reservation Period. Any such extension shall be confirmed in writing.

Part E General

1. Termination
   1. These Terms can only be terminated in cases defined in this clause 11.
   2. You may terminate your Account at any time, however, if there are any outstanding or pending transactions then termination will occur upon completion of those transactions.
   3. We may terminate or suspend your Account at any time in the event that you breach any of these Terms.
   4. We may also terminate or suspend your Account at any time on giving you notice to the email address that you provided when registering with us. We reserve the right to withdraw or amend the Services on a reasonable notice.
2. Our Rights
   1. We shall not have any liability to any third party except in accordance with any applicable laws, or these Terms, or as otherwise expressly agreed in writing by us.
   2. If two or more persons jointly form a party (i.e. the Bidder, Buyer, or the Seller) their obligations can be enforced against them jointly or against either of them separately.
   3. We may transfer our rights and obligations under these Terms to another organisation. You may only transfer your rights or your obligations under these Terms to another person if we agree to this in writing.
   4. We shall not be in breach of these Terms or the Contract nor liable for delay in performing, or failure to perform, any of our obligations under these Terms or the Contract if such delay or failure result from events, circumstances or causes beyond our reasonable control. In such circumstances we shall be entitled to a reasonable extension of the time for performing such obligations.
   5. You acknowledge that all Intellectual Property Rights in the Services are and shall remain owned by either us or our third-party suppliers and nothing in these Terms purports to transfer, assign or grant any rights to You in respect of the Intellectual Property Rights.
   6. You agree that you will not, except as permitted herein or by separate agreement with us, change, amend, remove, alter or modify any trademark or proprietary marking on any documents and/or other material you receive or gain access to as part of our provision of the Services. You agree to indemnify us and keep us indemnified from and hold us on demand, harmless from and against all costs, claims, demands, actions, proceedings, liabilities, expenses, damages or losses (including without limitation, consequential losses and loss of profit, and all interest and penalties and legal and other professional costs and expenses) arising out of or in connection with a breach of this clause 12.
3. General, Governing law and jurisdiction
   1. These Terms are governed by and construed in accordance with English law and non-exclusive jurisdiction is conferred on the English Courts
   2. **Dispute Resolution**: Where a Buyer or Seller is a consumer within the meaning of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and as a consumer makes a complaint about the Services provided pursuant to the Terms (“Complaint”) and We are unable to resolve the Complaint to the satisfaction of the person making the Complaint they may refer the matter to The Property Ombudsman scheme (website https://www.tpos.co.uk). We will co-operate fully with the Ombudsman during an investigation and comply with their final decision.
   3. **Notices:** Unless otherwise stated in these Terms, all notices from You to us or vice versa must be in writing and sent to our registered office address or your address as stated in the Reservation Form.
   4. **Rights of third parties:** These Terms are between You and us. No other person shall have any rights to enforce any of its terms.
   5. **Severance:** Each of the elements of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
   6. **Waiver:** If any party to the Terms does not insist immediately that another relevant party or parties to these Terms does anything that the relevant party or parties are required to do under these Terms, or if any party to the Terms delays taking steps against the relevant party or parties in respect of their breaking of these Terms, that will not mean that the relevant party or parties do not have to do those things and it will not prevent us taking steps against you at a later date.
   7. We may amend these Terms from time to time by posting the amended version of the Terms and conditions Online. The amended version shall have effect 30 days from the time of posting, or from such other time stipulated Online.



Appendix 1: Online Auction Reservation

The following terms shall be read in conjunction with the Terms mentioned below and shall have the meanings set respectively opposite them

|  |  |
| --- | --- |
| **Property** |  |
| **Date Online Auction Completed** |  |
| **Price** |  |
| **Tenure** |  |
| **Additional Items** |  |
| **Buyer’s Premium (please state whether paid)** |  |
| **Seller [name and address]** |  |
| **Buyer [name and address]** |  |
| **Seller’s Authorisation** |  |
| **Buyer’s Authorisation** |  |
| **Date of Entry** | 56 working days from the date the draft contract is issued (or such other date as mutually agreed between the Seller and the Purchaser) |
| **Terms** | Those terms set out by Yopa Online Auctions (provided by GOTO Auctions (Genle Ltd, registered number 9790404) whose registered office is at The Hall Barn, Church Lane, Lewknor, Watlington, United Kingdom, OX49 5TP) which are available at the following yopa.gotoproperties.co.uk |

The Seller and Buyer agree that

ONE this Reservation is binding upon the Seller and Purchaser respectively from the date and time that the Auction, conducted within the Terms for the Property, concluded.

TWO as separate obligation from ONE above these details document the arrangements between the Seller and Purchaser relevant to the Sale and Purchase of the Property at the Price and represent their directions to their respective conveyancing solicitors to act in accordance with the irrevocable instructions contained in the Terms

IN WITNESS WHEREOF this agreement has been entered into on the Date Online Auction Completed

|  |  |  |
| --- | --- | --- |
| Signed by or on behalf of the Seller in terms of the Seller’s Authorisation |  | Authorised Signature per Resolution of GOTO Auctions (Genle Ltd) |
| Signed by or on behalf of Buyer in terms of the Buyer’s Authorisation |  | Authorised Signature per Resolution of GOTO Auctions (Genle Ltd) |