



**TROOSTWIJK**  
INDUSTRIAL AUCTIONEERS & VALUERS SINCE 1930

## Condizioni Generali Asta on-line TroostwijkAuctions.com

General Terms and Conditions of the Online Auction TroostwijkAuctions.com

The following general terms and conditions ("Terms") are the terms on which Troostwijk (defined below) sells Lots (defined below) at Auctions (defined below).

THE PURCHASER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF ARTICLES 3.3, 6, 8.1 AND 11.

### Article 1 Definitions

The following words and phrases used in these Terms shall have the following meanings, except where the context clearly requires otherwise:

Website:	the website <a href="http://www.TroostwijkAuctions.com">www.TroostwijkAuctions.com</a> , which is maintained by Troostwijk Veilingen B.V., with its registered seat in Amsterdam;
User:	a person who has registered on the Website;
Troostwijk:	Troostwijk Veilingen B.V. and/or its subsidiary/ies or sister company/ies as reported on the Website;
Personal Data:	any data by which an individual can be identified (name, address, telephone number, bank details etc) provided to Troostwijk;
Privacy Policy:	Troostwijk's privacy policy accessed via the Website;
Purchase Sum:	the amount of the highest – Allocated – bid increased by: - Mark-up above the highest bid and - the V.A.T. owed
Registration:	registration of User on the Website by means of filling in completely the registration form found on the Website;
Bid:	each amount bid by User in the Auction for a Lot;
Lot:	an article, or a number of articles that are auctioned together (under one number);
Auction:	the public sale of moveable goods facilitated by Troostwijk via the Website;
Seller:	a person who has commissioned a Lot to be auctioned;
Purchaser:	the User to whom the Lot is Allocated;
User's Agreement:	the agreement between Troostwijk and the User;
Purchase Agreement:	the purchase agreement between the Purchaser and the Seller;
Delivery:	the actual delivery of the Lot to the Purchaser or to his authorized representative pursuant to article 9.1;
General Terms and Conditions for the User:	the General Terms and Conditions for access to and use of the Website;
Specific Online Auction Terms and Conditions:	the additional, supplementary to or in departure from the General Terms and Conditions for the User and the General Terms and Conditions of the Online Auction, valid terms and conditions, as reported on the Website for the Auction in question;
Allocation:	the declaration by Troostwijk that a Lot or combination of Lots has been allocated to the successful bidder and "Allocate" and "Allocated" shall have a corresponding meaning;
Mark-up:	a percentage of the Hammer Price (specified in the Specific Online Auction Terms and Conditions) which is added to the Hammer Price to make up the Purchase Sum; and
Hammer Price:	the amount offered by the Purchaser and accepted by Troostwijk in respect of the relevant Lot.

### Article 2. Applicability

These Terms and the documents referred to in them apply to all Auctions facilitated by Troostwijk Auctions Limited on the Website and supersede all other terms and conditions relating to the subject matter of these Terms.

### Article 3. The Auction and Use of the Website

- 3.1 Troostwijk acts as auctioneer at all Auctions and sells the Lots as agent on behalf of the Seller. The Purchase Agreement is entered into between the Purchaser and the Seller.
- 3.2 Troostwijk reserves the right to cancel an Auction, to terminate an Auction earlier than reported on the Website or to extend an Auction. In case of a technical malfunction of the Website, causing it to be not completely accessible and/or inaccessible to Users, Troostwijk has the right to extend the Auction by 24 hours.
- 3.3 The User states by his Registration that he is familiar with and agrees with the special circumstances of an internet auction and with the technical imperfections that can arise. Troostwijk denies any liability for whatever damage that may arise in any way, directly or indirectly, including but not limited to the damage arising from the User's use of the Website, unless there has been deliberate or conscious negligence by Troostwijk. More particularly, Troostwijk accepts no liability for any damage whatsoever that arises in any way by or from:

**[www.TroostwijkAuctions.com](http://www.TroostwijkAuctions.com)**



- (i) actions performed by the User that may have been inspired by the information placed on the Website;
- (ii) the impossibility of using the Website (completely) and/or another malfunction in the Website or the supporting system;
- (iii) the Lots not meeting the specifications as reported on the Website;
- (iv) the fact that the information on the Website is incorrect, incomplete or out of date;
- (v) errors in the software of the Website and/or the supporting system;
- (vi) the unlawful use of systems, including the Website, by a third party;
- (vii) actions by the Seller after the User has concluded a Purchase Agreement with the Seller.

#### **Article 4. Organization of the Auction**

- 4.1 The organization, preparation and carrying out of the Auction is to be done by Troostwijk.
- 4.2 Without having to give any reason, Troostwijk has the authority before or during the Auction:
- (i) not to recognize a Bid as such;
  - (ii) to exclude one or several Users from the Auction;
  - (iii) to collect objects into Lots, to split Lots or to remove Lots from the auction;
  - (iv) to repair mistakes made by Troostwijk in offers and/or allocations, without the User being able to make use of these errors and/or derive any rights from them;
  - (v) to take other measures that are, in its judgment, necessary.
- 4.3 Troostwijk has the authority to set as a condition for participation in certain Auctions and/or bids on certain Lots that a User provides a bank guarantee or other form of security (such as a performance bond) beforehand to the satisfaction of Troostwijk.
- 4.4 The judgment of Troostwijk concerning that which has occurred during the Auction is binding.

#### **Article 5. Bids; Purchase Agreement**

- 5.1 The User can place a Bid on the Website on one or several Lots. Every bid is unconditional, irrevocable and without reservation. Troostwijk and/or the Seller are entitled to reject bids without giving any reason. Bids are placed exclusive of Mark-Up and V.A.T, which shall be added to the Hammer Price and payable by the Purchaser as part of the Purchase Sum. Troostwijk is authorized to place bids on behalf of third parties.
- 5.2 If a Lot is also brought to auction together with one or several other Lots as a combination, this will be reported on the individual page of the Lot. In that case, bids can be placed first on the individual Lots of the combination and after the closing of all individual Lots, bids can be placed on the combined Lot. Individual Lots can be Allocated only if the total amount of the highest sustainable bids on the individual lots is higher than the highest sustainable bid on the combination. The combination will be Allocated solely if the highest sustainable bid on the combination is higher than the total amount of the highest sustainable bids on the individual Lots.
- 5.3 Bids can be placed in the form of a 'static bid' or 'proxy bid.' In a static bid, the User places a bid in the form of a fixed amount per Lot. In a proxy bid the User indicates the maximum price he is prepared to pay for the Lot. The auction system sees to it that, after outbidding by a third party, the minimally possible higher bid is introduced in the name of the User, as long as the maximum indicated by the User has not been reached. A proxy bid can be eliminated by the User solely by placing a static bid that at that moment is the highest bid.
- 5.4 The Purchase Agreement arises through Allocation. Allocation is generally given to the User who has made the highest Bid. By applying article 5.1, through conditions for Allocation as included in the Specific Terms and Conditions of the Online Auction or for other reasons at the discretion of Troostwijk, a Lot can be Allocated to a different User who has placed the highest sustainable Bid.
- 5.5 The User receives confirmation within 6 days after the Auction has closed (not including Saturdays, Sundays and holidays) by e-mail on behalf of the Seller(s) that the Purchase Agreement has been made. If the User does not receive any e-mail within the period mentioned above, this means that his Bid has not been accepted. Troostwijk has the right to provisionally allocate a lot to the Users, subject to the Seller(s) approval, and in this event the Purchase Agreement will only come into existence once Troostwijk has confirmed Allocation.
- 5.6 The risk of the Lot(s) is transferred to the Purchaser at the moment of Allocation. The legal and beneficial title in and to such Lot(s) shall remain with Troostwijk until the Purchaser has paid for the Lot(s) (together with any Mark-up and V.A.T) in full and in cleared funds.
- 5.7 Without prejudice to article 3.1 and for the avoidance of doubt Troostwijk is not a party to the Purchase Agreement but merely mediates in the creation of Purchase Agreements.

#### **Article 6. Guarantees, Claims and Indemnity**

- 6.1 LOTS ARE SOLD ENTIRELY "AS IS" WITH ALL BENEFITS AND BURDENS ATTACHED THERETO. TROOSTWIJK DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR PURPOSE OR CONDITION OF THE LOTS, OR AS TO THE CORRECTNESS OF DESCRIPTION OF SUCH LOTS. THE PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT SUBJECT TO ARTICLE 11.1 IN NO EVENT SHALL TROOSTWIJK BE LIABLE FOR ANY DAMAGES INCLUDING, WITHOUT LIMITATION, ANY DIRECT, SPECIAL, COMPENSATORY, PUNITIVE. INCIDENTAL OR



CONSEQUENTIAL DAMAGES SUFFERED BY THE PURCHASER AS A RESULT OF PARTICIPATING IN AN AUCTION AND/OR PURCHASING ANY LOTS AT AN AUCTION. TROOSTWIJK ACTS AS AUCTIONEER AND SELLS THE LOTS AS AGENT ON BEHALF OF THE SELLER. THE CONTRACT OF SALE IN RESPECT OF LOTS IS BETWEEN THE PURCHASER AND THE SELLER.

- 6.2 THE PROVISIONS OF THE SALE OF GOODS ACT 1979 (AS AMENDED) ARE HEREBY EXPRESSLY EXCLUDED INSOFAR AS PERMITTED BY LAW.
- 6.3 Any defects of whatever kind or disappointed expectations of the Purchaser and/or the receiving third parties do not bestow any rights at all to a claim for damages against and/or a discount from Troostwijk or the Seller. The Purchaser is assumed to have carefully investigated the Lot (s) bought by him beforehand.
- 6.4 WHERE ANY REGULATIONS TO THE CONSUMER PROTECTION ACT 1987 APPLIES TO ANY LOTS, SUCH LOTS IS SOLD ON THE UNDERSTANDING THAT TROOSTWIJK DOES NOT WARRANT OR REPRESENT THAT SUCH LOTS IS IN A CONDITION THAT MAKES IT SUITABLE FOR DOMESTIC USE. IN THE EVENT OF THE PURCHASER INTENDING TO USE SUCH LOTS IN A DOMESTIC ENVIRONMENT, THE PURCHASER SHOULD ENSURE THAT SUCH LOTS COMPLY WITH THE REQUIREMENTS OF THE RELEVANT REGULATIONS, AS AMENDED FROM TIME TO TIME.
- 6.5 IT IS THE PURCHASER'S RESPONSIBILITY TO ENSURE THAT ANY LOTS CLASSIFIED AS A 'MOTOR VEHICLE' IN TERMS OF SECTION 185 OF THE ROAD TRAFFIC ACT 1988 COMPLIES WITH THE PROVISIONS OF SUCH ACT.
- 6.6 If, in respect of the Lots, claims by third parties are made on the basis of the retention of ownership, the Purchaser is obligated to hold the Lot (s) in question for those third parties, under the obligation to transfer it to the third parties at the first request or to come to a suitable arrangement with the third parties.
- 6.7 The Purchaser indemnifies Troostwijk and/or the Seller against every claim by a third party in connection with the Purchase Agreement.

#### **Article 7. The Purchaser's Payment Obligations**

- 7.1 The Purchaser has the obligation to transfer the Purchase Sum to an account number to be indicated by Troostwijk within three days (not including Saturdays, Sundays and holidays) after confirmation of the Purchase Agreement. Payment should be made in euros or in another currency to be indicated by Troostwijk.
- 7.2 Time for payment of the Purchase Sum shall be of the essence and any Lot(s) in respect of which full payment (in cleared funds) has not been received by Troostwijk within the timeframe set out in article 7.1 the relevant Auction shall be forfeited and the Purchaser shall be liable for the administrative costs and the shortfall in the resale price and/or disposal costs of Troostwijk for arranging for the resale and/or scrapping of such Lot(s).
- 7.3 The Purchaser shall make all payments due under these Terms in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 7.4 If the Purchaser fails to pay Troostwijk any sum due pursuant to the Purchaser purchasing any Lot(s) at an Auction, including without limitation the Purchase Sum, by the due date the Purchaser shall be liable to pay interest to Troostwijk on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Natwest Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 7.5 Payments are intended first to decrease the costs, then the interest charges, then finally the Purchase Sum.

#### **Article 8. Viewing days, Auction days, Delivery days**

- 8.1 Whoever enters the buildings and grounds on viewing days or on the day of delivery does so entirely at his own risk. The instructions of Troostwijk and/or persons called in by Troostwijk are to be followed. Subject to article 11.1, Troostwijk and the Seller do not accept any liability for damages arising from the Purchaser or its authorized representative entering their buildings or grounds.
- 8.2 Whoever enters the building and grounds for the Purchaser will be required to comply at all times with the relevant health and safety legislation and regulations the health and safety rules of the Seller(s) and/or Troostwijk as the case may be.
- 8.3 During the Delivery period the Purchaser and/or his authorized representative must at all times act in accordance with all relevant national health and safety and environmental protection legislation. Without limiting the generality of the foregoing, certain types of Lots may contain hazardous materials (such as chemicals) and the Purchaser must ensure that the removal of such hazardous materials is carried out in accordance with the applicable health and safety legislation and/or regulations dealing with the removal and handling of such hazardous materials and that a proper record is kept of such disposal. The Purchaser will be required to comply at all times with the health and safety rules of the Seller(s) and/or Troostwijk as the case may be.
- 8.4 Where mechanical handling is required to remove the lots then the Purchaser and/or his contractor must provide proof of adequate liability insurance and (if required) method statements and risk assessments to the satisfaction of the seller(s) and/or their appointed representatives.
- 8.5 Where the Seller(s) or its appointed representative feel that the removal of a lot poses a risk of damage to the building or neighboring assets then the Seller(s) reserves the right to impose a performance bond on the Purchaser or his contractor returnable following safe removal without damage to the property of others.
- 8.6 The Seller(s) or its appointed representative may stop all work on site without any liability for delays so occasioned if the Purchaser or their authorized representative fails to comply with the above conditions.

#### **Article 9. Delivery**



- 9.1 It is the Purchaser's responsibility to collect or arrange for the collection of the Lot(s), at the Purchaser's own cost. If and as soon as the Purchaser has met all his payment obligations in full and in cleared funds, the Purchaser can pick up the Lot(s) in question during the hours and at the place specified by Troostwijk, after having showing a proper identification. This is the Delivery. The Purchaser is obligated to pick up the Lot(s) no later than the date specified in the Specific Terms and Conditions of the Online Auction. Troostwijk can stipulate that (a) certain Lot(s) can be picked up only after Lots have been delivered.
- 9.2 If it appears that a Lot cannot be delivered because of claims by third parties or because of the fact that the delivery would cause unacceptable damage to the buildings or premises where the Lot is situated or for other reasons appears to be strongly objectionable, Troostwijk is authorized to terminate the Purchase Agreement. This termination occurs by e-mail and/or registered letter to the Purchaser at the address supplied by the Purchaser, after which Troostwijk and/or the Purchaser is/are no longer held to restitution of the amounts already paid by the Purchaser to Troostwijk for the purchase of the Lot(s).
- 9.3 The Purchaser whose Lot(s) hinder the picking up of other lots is obligated to see to it immediately after reception of an e-mail or other written documents from Troostwijk that the Lot(s) are picked up. The arranging of possible storage by third parties is at the Purchaser's own charge and risk.
- 9.4 The Purchaser is obligated to dismantle or demolish his Lot(s) and to pick them up. He is completely liable for damage done to the property of others in connection therewith. He is further obligated to indemnify, defend and hold harmless Troostwijk and the Seller against all liabilities, damages, costs, expenses and claims by third parties arising from the dismantling, demolishing and/or the picking up of the Lot(s).
- 9.5 During the dismantling, demolishing and picking of the Lot(s), the Purchaser is obligated to follow the instructions of Troostwijk and/or persons called in by Troostwijk.
- 9.6 The Purchaser is obligated to see to it that he or whoever takes care on his behalf of the dismantling, demolishing or transport has the proper required permits. Troostwijk and/or the Seller cannot be held accountable for the lack of the necessary documents and/or the infringement of governmental regulations in the dismantling, demolishing and/or transport by or on behalf of the Purchaser.
- 9.7 In situations in which it is/appears necessary to dismantle buildings for (an) allocated Lot(s), this can occur only through prior consultation with and written authorization from Troostwijk and under these terms and conditions set in the granting of permission.
- 9.8 If Troostwijk stipulates such, a deposit or performance bond will be made in connection with possible damage to the buildings. If such damage occurs, the deposit will be applied to the payment for repair of the damage, subject to the obligation of the Purchaser to pay compensation for more damage. If no damage results, the deposit will be restored to the Purchaser and/or the performance bond will be released.

## **Article 10. Termination**

- 10.1 If the Purchaser does not fulfill any obligation in the Purchase Agreement, including (but not limited to):
- (i) not paying the Purchase Sum or not paying it completely on time;
  - (ii) not picking up the Lot(s) on time; and/or
  - (iii) not providing the information required before Delivery,
- the Purchaser is deemed to be in breach of a material obligation of the Purchase Agreement, and Troostwijk can terminate the Purchase Agreement on behalf of the Seller. In that case Troostwijk is free to allocate the Lot(s) to another party without Troostwijk and/or the Seller being liable for any damages.
- 10.2 In case of termination as set out in article 10.1, Troostwijk may without prejudice to its other rights or remedies require the Purchaser to pay to it by way of liquidated damages a sum equivalent to 25 % of the Purchase Sum to cover administrative, storage, insurance and transport costs, etc. The parties agree that this is not a penalty but a genuine pre-estimate of the loss that would be suffered by Troostwijk in the event of termination pursuant to article 10.1 above.

## **Article 11. Liability**

- 11.1 Neither Troostwijk nor the Seller limits its liability for fraud or theft by it or its employees or for death or personal injury caused by its negligence or that of its employees, agents or subcontractors as applicable.
- 11.2 Subject to article 11.1, the aggregate liability of Troostwijk arising out of or in connection with (i) these Terms, (ii) the Terms and Conditions for the User and (iii) the Specific Terms and Conditions of the Online Auction, whether arising from negligence, tort, breach of contract or other obligation or duty or otherwise, will be limited to either the amount to which the liability insurance of Troostwijk accords Troostwijk in the instance in question, increased by the amount of excess according to the policy in question, or, if less, to the Purchase Sum actually paid by the Purchaser to Troostwijk.
- 11.3 Troostwijk shall not be liable for any claim to the extent that such claim is or can be characterised as a claim for (or arising from) loss of revenue or profits (whether direct or indirect), loss of business opportunity or loss of contracts, loss of goodwill or injury to reputation, indirect, consequential or special loss or damage, anticipated savings, loss of use or loss or corruption of data or information. Further, subject to article 11.1, all liability of Troostwijk in connection with any defect in the Lot(s) or in respect of (alleged) infringement of the rights of (the intellectual property of) third parties is excluded. The Purchaser declares that he is familiar with the fact that, in respect of Lot(s), possible rights (of intellectual property) rest with third parties.
- 11.4 In consulting with third parties, Troostwijk will take the necessary caution into consideration. Troostwijk is also not liable for possible shortcomings of these third parties.

## **Article 12. Intellectual Property**



The copyright in the text appearing on the Website and in any of the photographs, digital images and illustrations of Lots on the Website vests in and shall remain vested in Troostwijk or its licensors. The Purchaser will not reproduce or permit anyone else to reproduce such text, photographs, digital images or illustrations without Troostwijk's prior written consent.

#### **Article 13. Data Protection**

- 13.1 Troostwijk may collect Personal Data from the Purchaser during Registration in order to participate in Auctions.
- 13.2 The collection, processing and storage of Personal Data will be dealt with by Troostwijk in accordance with the Privacy Policy.
- 13.3 By registering on the Website the Purchaser consents to Troostwijk collecting, processing and storing the Personal Data submitted as part of Registration for the purposes described in the Privacy Policy.

#### **Article 14. Adjustments; Effect**

- 14.1 The provisions contained in each clause and sub-clause of these Terms is enforceable independently of each of the others and its validity will not be affected if any of the others is invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid.
- 14.2 Troostwijk can, in addition to these General Online Auction Terms and Conditions, declare the Specific Online Auction Conditions to be applicable. Notification of the Specific Online Auction Terms and Conditions will be made before the Auction. If and insofar as the Specific Online Auction Terms and Conditions are in contradiction with the General Terms and Conditions of the Online Auction, the Specific Online Auction Terms and Conditions will have preference. If the Specific Online Auction Terms and Conditions apply, they will form part of these Terms.
- 14.3 Departure from these General Terms and Conditions of the Online Auction is permitted only if is fixed in writing by an authorized representative of Troostwijk
- 14.4 Troostwijk reserves the right to amend these Terms and any such amendments will take effect 24 hours after these have been sent by e-mail to the User.

#### **Article 15. The Contracts (Rights of Third Parties) Act 1999**

Except for a Seller, no Third Party may enforce any of the terms contained in these Terms under the Contracts (Rights of Third Parties) Act 1999.

#### **Article 16. Applicable law**

These Terms are governed by and will be construed in accordance with English law. Each Party irrevocably submits to the exclusive jurisdiction of the English Courts for all purposes relating to these Terms.