

## **Terms and Conditions:**

### **Ellemford Farm Sale**

**Friday 20<sup>th</sup> May 2022**

Auctioneers Terms and Conditions

#### 1. DEFINITIONS

1.1 In these conditions the following terms have the following meanings, unless inconsistent with the context.

‘Auctioneers’ means Border Livestock Exchange Ltd, 5 Kings Mount, Ramparts Business Park, Berwick upon Tweed. TD15 1TQ

‘Commission’ means the commission charged on the sale of Lots in accordance with Clause 2 below.

‘Conditions’ means the standard terms and conditions of business set out in this document.

‘Lots’ means all machinery and all other items sold or intended to be sold in accordance with these Conditions.

‘Purchaser’ means a person, firm or company who purchases lots.

‘Vendor’ means any person, firm or company who puts forward lots intended to be sold at the Sale.

‘Sale Day’ means the day fixed by the Auctioneers for an auction and where the context so requires means the day fixed for the auction in which a particular lot is entered.

‘Reserve Price’ means the minimum price fixed by either the Auctioneers or the Vendor at which Lots are to be sold at the Sale.

1.2 Except where the context otherwise requires words denoting the singular include the plural and vice versa; words denoting one gender include all genders; words denoting persons include corporations and vice versa.

## 2. COMMISSION RATES

2.1 The Vendor – shall pay commission to the Auctioneers as follows:

10% to £1000 + VAT

5% £1001 and above + VAT

## 3. ENTRY OF LOTS FOR SALE

3.1 No entries can be accepted on the day of the sale unless agreed by the Auctioneers.

3.2 All reserve prices must be set out in writing and be in the hands of the Auctioneer 48 hours previous to the sale otherwise no responsibility can be accepted by the Auctioneers for errors in respect of Reserve Prices.

3.3 All Lots for the Sale must be offered for sale by auction and must not be sold privately before the Sale. In the event that any private transactions take place following a sale, they must be notified to the Auctioneers. Such transactions will be treated as a sale of the Lots by the Auctioneers and these conditions will apply.

## 4. WITHDRAWN LOTS

The Vendor may not withdraw the Lot from the sale without the Auctioneers' consent.

5. VAT will be charged unless stated at the current rate of 20%.

## 6. RESERVE PRICE & BIDDING

6.1 The auctioneers and/or the vendor reserve the right to fix a Reserve Price for any lot and withdraw that lot in the event that the highest bid price does not meet the reserve price.

6.2 The vendor may not bid for any of their Lots either personally or through any other person and may not withdraw any lot before the sale without the full consent of the Auctioneers.

6.3 The Auctioneers may without giving any reason refuse to accept the bidding of any person. In the case of a dispute as to any bid, the Auctioneers may forthwith determine the dispute or put up the Lot again at the last undisputed bid or withdraw the Lot.

6.4 No person may advance less at a bid than a sum to be named from time to time by The Auctioneers nor be allowed to retract a bid.

6.5 The highest bidder for each Lot shall be the Purchaser of that Lot.

6.6 Once a bid has been made you are responsible for the payment of this lot.

## 7. AUCTIONEERS AS AGENT FOR VENDOR

7.1 The Auctioneers sell as Agent for the Vendor and as such are not responsible for any default by the Vendor or Purchaser.

7.2 In the event that a Purchaser fails to pay the purchase price for the Lot in accordance with these Conditions and the Auctioneers have previously advanced to the Vendor of such Lot an amount representing such purchase price the Vendor shall forthwith at the request of the Auctioneers assign all and any of his rights against the Purchaser in respect of the unpaid purchase price to the Auctioneers and shall execute such documents as may be required by the Auctioneers to give effect to such an assignment and further, shall give reasonable co-operation to the Auctioneers in any action, claim or proceeding brought or threatened by the Auctioneers against the Purchaser.

## 8. RISK

8.1 All Lots remain at the Vendor's risk until sold and following such sale shall be at the Purchaser's risk.

8.2 The Purchaser is on risk once the items sells and is strongly advised to effect insurance at once. Upon the fall of the hammer, the Purchaser shall assume all risks in and relating to such lots. The Purchaser is advised to effect in respect of all such risks arising thereafter any insurance it may consider necessary.

## 9. CONFIRMATION OF OWNERSHIP

The vendor warrants to the Auctioneers and to the Purchaser:-

9.1 That they are the true owner of the Lot or is properly authorised to sell the Lot by the true owner.

9.2 Is able to transfer a good and marketable title to the lot free from any third party claims liens and encumbrances and that all entries on the entry form are correct.

9.3 That no Lot is subject to any hire purchase, lease, contract hire agreement or any other finance agreement or contract.

9.4 That the auctioneers have been notified in writing if any of the items on this form, or any continuation form, have been recorded by any insurance company as a write off or having been subject to a major insurance claim.

## 10. REMOVAL OF LOTS FROM THE SALE

10.1 All lots purchased must be cleared from the Sales area within 7 days of sale unless otherwise agreed with the Auctioneer or as stated in the catalogue or sales conditions.

10.2 If an item is not collected within 4 weeks of purchase, ownership will revert back to Border Livestock Exchange Ltd without any refund being made. This is unless a reasonable effort has been made by the purchaser to collect the item.

## 11. DETAILS OF PURCHASERS AND PAYMENT

11.1 All purchasers are required to Register on our website.

11.2 All lots must be paid for on the day of the sale by the Purchaser: An Invoice will be emailed to successful bidders on completion of the sale. The Invoice should be paid by BACS preferably to the bank details shown on the Invoice within 24 hours or you can pay by Card by Tel: 01289 306067.

## 12. INSPECTION OF GOODS

12.1 Viewing – By appointment only through our office.

12.2 All lots are sold with all faults and errors of description. Purchasers should satisfy themselves prior to sale of the Lot as to the condition of each Lot and should exercise and rely on their own judgement as to whether the Lot accords with its description. Neither the Auctioneers, their servants or agents are responsible for errors of description or for the genuineness or authenticity of any Lot; unless otherwise stated no warranty is given by the Auctioneers, their servants or agents or by any Vendor to any Purchaser in respect of any Lot and any express or implied conditions or warranties are excluded to the fullest extent permitted by law.

12.3 The Auctioneers may at their discretion or upon the instruction of the Vendor alter or withdraw all or any lots referred to in the auction catalogue up to the moment at which the hammer falls in relation to such lot(s)

## 13. AUCTIONEERS' RIGHT TO ANNUL SALES

In the event of any dispute or refusal to pay or of non-payment on the part of the Purchaser, the Auctioneers may, entirely at their discretion, annul and cancel the sale of such lot or lots.

#### 14. RESERVATION OF TITLE

14.1 If the Auctioneers allow the Purchaser to remove the Lot from the Sales area before the Purchaser has made full payment for the Lot then title to the Lot shall remain vested in the Vendor.

14.2 If the Auctioneers pay the Vendor the price of the Lot before the Purchaser has paid the price to the Auctioneers, title to the Lot shall pass from Vendor to the Auctioneers and shall remain with the Auctioneers until full payment has been made by the Purchaser to the Auctioneers, when title shall pass to the Purchaser.

14.3 Notwithstanding that the title has not passed to the Purchaser all risk of damage to the Lot shall pass to the Purchaser immediately upon sale (the fall of the hammer).

14.4 The Purchaser shall until payment has been made in full keep the Lot in good marketable condition and readily identified and shall indemnify the Vendor or the Auctioneers as the case may be for any damage.

14.5 In the event of any sale by the Purchaser of a Lot before full payment has been made the Purchaser shall hold the proceeds of such sale on trust for the Vendor or the Auctioneer (as the case may be) and shall pay such proceeds into a separate identifiable bank account.

14.6 At any time before the title to the Lot has passed to the Purchaser, the Vendors or the Auctioneers (as the case may be) including the Auctioneers acting as agents for the Vendor shall have the right to enter upon the Purchasers property for the purpose of recovering the Lot.

#### 15. COMPLIANCE WITH ROAD TRAFFIC ACTS

The Purchaser of any vehicle or trailer is responsible for complying with all legal requirements as to the construction and the use of such vehicle or trailer and for obtaining all certificates, permits or other authorisations necessary before such vehicle or trailer can be used on the road.

#### 16. HEALTH AND SAFETY AT WORK ACT 1974 AND ALL OTHER ACTS AND REGULATIONS APPLICABLE TO FARM SAFETY

The Purchaser of any lot is responsible for complying with all legal requirements as to the safe use of lots purchased at the Sale and shall ensure compliance with all relevant legislation relating to the safe use of such lots.

#### 17. TRADES DESCRIPTIONS ACT 1968

The vendor is reminded that under the terms of the Trades Descriptions Act 1968 the Vendor of any Lot to which a false description is applied may be guilty of a criminal offence punishable by fine or imprisonment.

#### 18. GOVERNING LAW AND JURISDICTION

For the avoidance of doubt all contracts entered into between the Purchaser and Vendor and between either of them and the Auctioneers on the basis of these standard terms and conditions of business are governed by the laws of Scotland & England and the parties hereby submit to the non-exclusive jurisdiction of the Scottish & English Courts.

#### 19. EXPORT

The Purchaser or their agent will be responsible for removing the Lots from Great Britain and will act as the importer of record and will be responsible for payment of any VAT, duties, goods and services tax, or other sales or import taxes or duties arising on the exportation of the goods from Great Britain and the importation of the goods into any country.

19.1 Neither Border Livestock Exchange Ltd or the Seller are responsible for any VAT, duties, goods and services tax, or other sales or import taxes or duties arising on the exportation of the lots from Great Britain and the importation of the lots into any country by the Purchaser or their agents. Border Livestock Exchange recommend exporters visit <https://www.gov.uk/check-customs-declaration>