

John Pye & Sons - Terms of participation and purchase of vehicles by auction

1. Interpretation

1.1. The definitions in this clause apply to these Terms:

“Bid Slip” means the slip to be completed by a potential buyer prior to participating in an auction in conjunction with Registration.

“Buyer” shall mean the maker of the highest bid accepted by JOHN PYE & SONS whether on the fall of the hammer (when the Hammer Price is achieved) or by private treaty sale.

“Buyer Premium” refers to the premium of between 15% to 20% (as specified in the Important Notes) which is incurred on the Hammer Price of all lots unless stated otherwise.

“Contract” means the contract for purchase formed between the Buyer and the Seller once the Hammer Price has been achieved.

“Defaulter’s Entry Fee” means the fee of £130 to be charged to the relevant party in the case of any Vehicle having to be re-auctioned otherwise than due to a fault of JOHN PYE & SONS.

“Deposit” means the deposit paid by the potential buyer upon Registration of either £200 or £500 as notified by JOHN PYE & SONS in the Important Notes.

“Important Notes” means the notes associated with each auction including but not limited to the Health & Safety notes, viewing times, payment details, collection times, the amount of the Buyer Premium, VAT chargeable, and any other relevant terms relating to that particular auction and/or sale, and which in all cases are governed by these Terms.

“JOHN PYE & SONS” means John Pye and Sons Limited including but not limited to JOHN PYE & SONS who have the conduct of auctions from the rostrum and/or any other authorised representative thereof.

“Hammer Price” shall mean the highest bid accepted by JOHN PYE & SONS including any VAT that may be included therein.

“Premises” means the premises in which the auction is taking place, and, where relevant, the location where the individual Vehicles and/or lots under the control of JOHN PYE & SONS are stored.

“Registration” means all or any one of the following as appropriate:

(i) the payment of the Deposit electronically, or as otherwise notified by JOHN PYE & SONS in the relevant Important Notes; and

(ii) the presentation of 2 forms of identification acceptable to JOHN PYE & SONS; and

(iii) the completion and submission of the Bid Slip.

“Seller” includes any prospective seller save where the context otherwise requires.

“VAT” means Value Added Tax.

“Vehicle” includes every kind of motor car, motor cycle, trailer and/or motorised caravan and every kind of commercial, agricultural and other self-propelled vehicle and mechanical and electrical plant and equipment, and any current vehicle excise license attached to it.

“Working Day” means any day that JOHN PYE & SONS is open to the public for business.

- 1.2. Headings do not affect the interpretation of these Terms.
- 1.3. The headings of the Terms do not form part of the Terms.
- 1.4. Save in the context of any online auctions held by JOHN PYE & SONS where reference to writing will include reference to email, writing or written does not include faxes and e-mail unless otherwise notified by JOHN PYE & SONS.
- 1.5. If any of these Terms are inconsistent with any term of the Important Notes, the Important Notes shall prevail.
- 1.6. Reference to a ‘lot’ or ‘lots’ under these Terms is a general reference in respect of the auction of Vehicles only.
- 1.7. All Vehicle entries, sale and purchases of Vehicles at our public auctions (which include our online auctions) are subject to these Terms.
- 1.8. All Buyers and Sellers acknowledge and agree that these Terms are binding upon them, and by the Buyers completing Registration, and JOHN PYE & SONS accepting the Sellers’ Vehicle(s) for auction, these Terms are deemed accepted and incorporated into all dealings as between the relevant parties.

2. Entry into Auction

- 2.1. JOHN PYE & SONS sell as agents for the Seller and as such are not responsible for any default by Seller.
- 2.2. Unless otherwise agreed by JOHN PYE & SONS in writing, a Vehicle shall not be deemed accepted into any auction unless and until the Seller has produced:-
 - 2.2.1. The vehicle;
 - 2.2.2. The Form V5;
 - 2.2.3. any required entry fee as specified by JOHN PYE & SONS (for the avoidance of doubt, JOHN PYE & SONS reserve the right to charge an entry fee when a Vehicle is entered for auction, such entry fee as will be agreed between the potential seller and JOHN PYE & SONS at the relevant time, and for the avoidance of doubt, if for any reason the Vehicle is entered for re-sale subsequent to the initial auction (otherwise than due to a fault of JOHN PYE & SONS), then JOHN PYE & SONS will be entitled to charge the Defaulters Entry Fee each time the same Vehicle is re-entered for auction);
 - 2.2.4. the keys of the Vehicle;
 - 2.2.5. all other certificates pertaining to the Vehicle which the Seller is reasonably able to produce upon request; and
 - 2.2.6. the service history if available.
- 2.3. Unless otherwise agreed, notwithstanding the production of the items listed in clause 2.2 above, JOHN PYE & SONS has the right to refuse entry of any Vehicle into auction, and to set the entry fee at a reasonable amount deemed appropriate by JOHN PYE & SONS.
- 2.4. The Seller warrants to JOHN PYE & SONS and to the Buyer that:
 - 2.4.1. the Seller is the true owner of the Vehicle and is properly authorised to sell the Vehicle by the true owner;

- 2.4.2. the Seller is able to transfer a good and marketable title to the Vehicle free from any third party claims;
- 2.4.3. the Vehicle bears the proper chassis number and registration marks; and
- 2.4.4. every representation made by the Seller (in any form) about the Vehicle is wholly accurate and informed, and the Seller acknowledges that such representations will be relied upon by JOHN PYE & SONS and the Buyer.

2.5. The Seller will indemnify JOHN PYE & SONS, their servants and agents and the Buyer against any loss or damage suffered by them in consequence of any breach of the warranties set out in clause 2.4 above on the part of the Seller.

2.6. Save where otherwise agreed, JOHN PYE & SONS shall remit the proceeds of the sale to the Seller not later than one month after the auction, and following the relevant deductions.

2.7. Where a Seller cancels instructions for sale of a Vehicle, JOHN PYE & SONS reserves the right to charge the Defaulter's Entry Fee plus 5% of JOHN PYE & SONS then latest estimate of the auction price of the Vehicle withdrawn (plus VAT where applicable).

2.8. Where any Vehicle fails to sell, JOHN PYE & SONS will notify the Seller accordingly. The Seller will make arrangements either to re-offer the Vehicle lot for auction or to collect the Vehicle, and if such arrangements are not made:

2.8.1. Within 2 Working Days of notification, the Seller will be responsible for any removal, storage and insurance expenses of the Vehicle as notified by JOHN PYE & SONS; and

2.8.2. Within 4 days Working Days of notification, JOHN PYE & SONS will have the right to sell the Vehicle at public auction without reserve and to deduct from the Hammer Price any sum owing to JOHN PYE & SONS including removal, storage and insurance expenses, the entry fee in respect of the first auction (together with any VAT chargeable thereon), a Defaulter's Entry Fee, commission on the second auction and all other reasonable expenses before remitting the balance to the Seller.

3. Basis of Sale

3.1. All Vehicles are sold 'as they lie' with all faults and imperfections and errors of description. The absence to any reference to the condition of a Vehicle does not imply that the Vehicle is free from faults, imperfections and restorations. Illustrations in catalogues or brochures are for identification only. JOHN PYE & SONS will not be held responsible for any damage or defect that has not been notified to the Buyer.

3.2. Buyers must satisfy themselves prior to sale as to the condition of each Vehicle and should exercise and rely on their own judgment as to whether the Vehicle accords with its description. Prospective Buyers bid on the understanding that, inevitably, representations or statements by JOHN PYE & SONS as to genuineness, origin, date, age, Vehicle starting capability or condition involve matters of opinion. Neither JOHN PYE & SONS nor our employees or agents nor the Seller accept liability for the correctness of such opinions.

3.3. No warranty (written or oral) or other term (whether express or implied and whether implied by statute, common law, custom or otherwise) as to the age, description, suitability, fitness for purpose, satisfactory quality or roadworthiness of the Vehicle is given by JOHN PYE & SONS, their servants or agents or by any Seller to any Buyer in respect of any lot, and any express or implied conditions or warranties are excluded to the fullest extent permitted by law. For the avoidance of doubt, the Vehicles are not sold by sample.

3.4. Any reference to the age of a Vehicle in the particulars relating to it is intended to be a reference to the year of first registration of the Vehicle in the United Kingdom.

3.5. No oral or written representation made prior to or at the time of sale of any Vehicle shall be deemed to be a representation of fact and JOHN PYE & SONS undertakes no obligation or duty (whether in contract or tort or otherwise) in respect of the accuracy or completeness of any statement or representation made by JOHN PYE & SONS or on JOHN PYE & SONS' behalf which is in any way descriptive of any Vehicle. No such oral or written representations shall be deemed to be incorporated into such sale nor to have induced any potential buyer to bid.

3.6. Buyers buy Vehicles where they lie and are wholly responsible to bring any necessary labour and equipment in order to remove their Vehicle(s) and shall comply with any directions which may be given by JOHN PYE & SONS as to the safe removal of the Vehicle(s) and in giving due care to other lots on the Premises and the Premises itself.

3.7. The Buyer is hereby made aware that in adjudging the accuracy of the description "no major mechanical defects" the age and, if warranted by the Seller, the mileage of the Vehicle shall be taken into account; and, when a Vehicle is described by JOHN PYE & SONS as having no major mechanical defects that description shall be construed as meaning that there is no major mechanical defect in (but only in) the engine, gearbox, clutch, brakes, steering and transmission of the Vehicle.

3.8. These Terms shall become binding on the Seller and Buyer respectively when:

3.8.1. The Seller's Vehicle is accepted by JOHN PYE & SONS to be considered for auction; and

3.8.2. The Buyer completes Registration.

3.9. JOHN PYE & SONS has the right to revise and amend these Terms from time to time to reflect changes in market conditions affecting its business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in various systems' capabilities. Buyers and Sellers will be subject to the policies and terms in force at the time these Terms become binding in accordance with clause 3.6 above.

3.10. The Buyer acknowledges that a sale by auction is Not a consumer sale for the purposes of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994 and as replaced by the Consumer Rights Act 2015) and the Unfair Contract Terms Act 1977 / 1999 Regulations and the Buyer shall not seek to rely upon any conditions or warranties implied thereby or by any other legislation. All Vehicles are strictly Sold as Seen with no grading or guarantees and can include second-hand items, salvage, raw returns, ex-display, repossessed and seized goods.

3.11. Any estimates provided in respect of a Vehicle are only an expression of JOHN PYE & SONS' opinion made on behalf of the Seller of the range where JOHN PYE & SONS thinks the Hammer Price for the Vehicle is likely to fall; it is not an estimate of value. It does not take into account any VAT or Buyer Premium payable. Vehicles can in fact sell for Hammer Prices below and above the estimate. Any estimate should not be relied on as an indication of the actual selling price or value of a Vehicle.

3.12. Private treaty sales made under these Terms are deemed to be sales by auction for purposes of consumer legislation.

4. Risk and Title

4.1. The title in the Vehicle shall not pass to the Buyer until the Hammer Price and the Buyer Premium have been paid to JOHN PYE & SONS (and have been received in full and cleared funds) and any other instrument tendered in payment has been cleared. Until title passes, and subject to clause 7.1 below, JOHN PYE & SONS reserves the right to dispose of the Vehicle in accordance with clause 2.8 above.

4.2. From the delivery of a Vehicle to the Premises until the Hammer Price in respect of a Vehicle is reached or the Vehicle is removed by the Seller (including any time during which the Vehicle is being tested or demonstrated on the auction premises, or elsewhere) the Vehicle is at the risk of the Seller, and neither JOHN PYE & SONS nor its servants or agents will be responsible for any loss or damage whether caused by negligence or otherwise.

4.3. From the time when a Hammer Price is reached in respect of a Vehicle, a Vehicle is deemed sold, and notwithstanding clause 4.1 above, it is at the risk of the Buyer from that point onwards.

5. Conduct of the Auction

5.1. Without prejudice to any other of their rights set out in these Terms, JOHN PYE & SONS has absolute discretion without giving any reason to refuse any bid, to withdraw any Vehicle before the hammer falls, to divide any lot, to combine any two or more lots, or to withdraw any lot and/or Vehicle from the auction.

JOHN PYE & SONS is not bound to accept any offer.

5.2. Potential buyers wishing to participate in an auction must first:

5.2.1. view all lots; and

5.2.2. Complete Registration (including the payment of the Deposit),
before they will be admitted to participate in any auction.

5.3. The contract of sale between the Seller and a Buyer will be formed once the Hammer Price has been achieved, at which point the Vehicle shall be deemed sold subject to the provisions of clause 4.1 above.

5.4. For the avoidance of doubt, the parties to the contract of sale of the Vehicle are the Buyer and the Seller. JOHN PYE & SONS is not a party to the contract of sale but acts as the Seller's agent only and is not liable for any breach thereof by either the Buyer or the Seller.

5.5. It shall be a term of the contract of sale that the Buyer accepts the bodywork, the tyres, the exhaust, the battery and the upholstery of the Vehicle with all damage and defects (if any) which an inspection of the interior and the exterior ought reasonably to reveal.

5.6. Immediately after the achievement of the Hammer Price the terms of clause 6 below shall apply.

5.7. If a potential buyer is unsuccessful in achieving the Hammer Price, they may recover their Deposit from JOHN PYE & SONS or, they may request in writing that JOHN PYE & SONS keep the Deposit against future auctions which the potential buyer may participate in, and make them a registered 'regular customer' of JOHN PYE & SONS provided they adhere to bi-annual requests for identification.

5.8. Any disputes in relation to the bidding, or following the attainment of the Hammer Price in relation to what bids were made by who shall be referred to JOHN PYE & SONS for decision. For the avoidance of doubt, JOHN PYE & SONS shall have absolute discretion to cancel the contract of sale and to re-auction the Vehicle (which is the subject of any dispute) either during the same or a subsequent auction, and, in all cases, JOHN PYE & SONS' decision in respect of any such dispute (for which no justification or reasons shall be required) will be final.

5.9. In the event that JOHN PYE & SONS exercises the discretion to cancel the contract referred to at clause 5.8 above, neither the original Buyer nor the Seller shall be entitled to rely on the original contract of sale for any purpose whatsoever save that the Buyer shall be entitled to the return of any deposit or other money which he may have paid under the original contract.

5.10. Every bidder shall be deemed to act as principal unless there is in force a written acknowledgment by JOHN PYE & SONS that he acts as agent on behalf of a named principal.

5.11. JOHN PYE & SONS shall not in any circumstances be obliged to announce any reserve price.

5.12. JOHN PYE & SONS reserves the right to turn away any potential sellers and/or buyers who do not present appropriate identification upon reasonable request.

5.13. Persons attend auctions at their own risk.

5.14. Where JOHN PYE & SONS conducts a sale on behalf of a Seller who is either a receiver or liquidator of a limited company or trustee in bankruptcy:-

5.14.1. The Seller and JOHN PYE & SONS on their behalf only sell whatsoever right, title or interest the company or bankrupt may have in any lot;

5.14.2. In the event of a third party proving to have a superior title or right to custody or possession of any Vehicle JOHN PYE & SONS may rescind the contract of sale and upon return of any Deposit and/or Hammer Price to the Buyer, neither the Seller nor JOHN PYE & SONS shall be under any further liability to the Buyer.

5.15. JOHN PYE & SONS shall have the right, at its discretion, to refuse admission to the Premises or attendance at the auctions by any person.

5.16. The Important Notes will be made available to potential buyers on JOHN PYE & SONS website, in the relevant catalogue, on request, and will be on display at the Premises.

6. Price and Payment

6.1. Immediately following the achievement of the Hammer Price, the Buyer shall attend the relevant clerk and/or follow the appropriate process as notified to the Buyer by JOHN PYE & SONS and pay the Hammer Price (plus VAT where relevant), and the Buyer Premium (plus VAT where applicable). If the Buyer fails to do so by 5 pm on the next Working Day, or such other time as is specified in the Important Notes, JOHN PYE & SONS shall have an absolute discretion to cancel the contract of sale, to retain the Deposit, and the terms of clause 8.1 below will apply.

6.2. All required payments will be settled in full and before removal of the Vehicle is permitted and will be in sterling (GBP) by way of CHAPS, Bankers Draft, Debit Cards, or as otherwise specified in the Important Notes or directly by JOHN PYE & SONS. All queries in relation to methods of payment must be made to JOHN PYE & SONS accounts department and unless otherwise agreed by JOHN PYE & SONS, the timing required under these Terms for payment is of the essence, and will under no circumstances be adjusted further to a failure on the part of the Buyer to make the necessary enquiries and preparations in order to pay the Hammer Price.

6.3. In respect of telegraphic transfers, the remitting bank must include the bidding number (listed on the Bid Slip), the invoice number, and any other reference as shown in the Important Notes, or as otherwise directed by JOHN PYE & SONS.

6.4. All bankers' drafts will be confirmed with the drawn bank prior to acceptance.

Buyers must provide full details of the drawn bank including branch, contact name and telephone number.

6.5. Bankers Drafts can only be accepted for payment up to 4.00pm, Monday to Thursday – after this time collection will be deferred to the next Working Day.

6.6. All lots are sold exclusive of VAT which will be added to the Hammer Price at the prevailing rate (if applicable).

6.7. All lots must be paid for in accordance with clause 6.1 above, and must be removed no later than the time specified in the Important Notes.

6.8. The Important Notes will set out:

6.8.1. the Health & Safety policies;

6.8.2. viewing times;

6.8.3. payment details;

6.8.4. collection times;

6.8.5. the amount of commission (if any) which will be payable by the Seller as a percentage of the Hammer Price;

6.8.6. the amount of the Buyer Premium (as defined below in clause 6.9);

6.8.7. any service charges;

6.8.8. VAT payable (if any);

6.8.9. Registration details;

6.8.10. location details; and

6.8.11. specific detail relating to the particular auction.

6.9. JOHN PYE & SONS will charge a "Buyer Premium" on all lots on the purchase price of the Vehicle plus VAT. The Buyer Premium will be set out in the Important Notes, and will be a percentage of the Hammer Price which will be charged to the Buyer.

6.10. JOHN PYE & SONS is entitled to deduct the relevant fees from the Hammer Price (plus any VAT chargeable thereon) in respect of each Vehicle (which may, for the avoidance of doubt, include any commission due, the entry fee due (if not already paid) and any other previously notified fees chargeable), before remitting the proceeds to the Seller.

6.11. Without prejudice to any other rights of JOHN PYE & SONS under these Terms in respect of the charging of commission, entry fees, Buyer Premium, and any other relevant fees, JOHN PYE & SONS will be entitled to charge the commission and Buyer Premium in all cases including but not limited to:

- 6.11.1. when the Vehicle is sold in an auction irrespective of whether the contract of sale is later rescinded (save further to an act or omission of JOHN PYE & SONS);
- 6.11.2. if the Vehicle is sold (or re-sold) by way of private sale on the Premises;
- 6.11.3. if the Vehicle is re-sold further to the default of the Buyer, or the Seller;
- 6.11.4. if the Seller becomes the Buyer.

6.12. Without prejudice to any of JOHN PYE & SONS' rights under these Terms, for the avoidance of doubt:

- 6.12.1. JOHN PYE & SONS will not be under any obligation to pay any monies to the Seller following the auction until such time as the Buyer remits all monies due in accordance with this clause 6; and
- 6.12.2. JOHN PYE & SONS will be entitled to deduct from any payment due to the Seller, any amounts owed by the Seller to JOHN PYE & SONS which JOHN PYE & SONS has obtained prior consent from the Seller to so deduct.

7. Buyers Duties

7.1. The Buyer shall at his own expense and risk take away the Vehicle(s) purchased not later than 5pm the following Working Day after the relevant auction in which the Vehicle was purchased has concluded, unless otherwise stated in the Important Notes (but in any event not before payment to JOHN PYE & SONS in accordance with clause 6 above). If the Buyer fails to do so, the provisions of clause 8.2 below will apply.

7.2. The Buyer shall fully indemnify and keep indemnified JOHN PYE & SONS in the event of any damage or loss caused and/or occasioned to any adjoining or other lots or to the Premises by their removal of the Vehicles.

7.3. The Buyer shall be responsible for any injury to and/or death of any person resulting from the removal of his Vehicle(s) and shall fully indemnify and keep indemnified, JOHN PYE & SONS against any such liability whether or not such injury and/or death was caused by the negligence of the Buyer, his employees or agents.

7.4. In accordance with clause 4.3 above, the Buyer will be responsible for loss or damage to the Vehicles purchased from notification of successful bid and neither JOHN PYE & SONS nor its servants or agents shall afterwards be responsible for any loss or damage of any kind, whether caused by negligence or otherwise, while any Vehicle is in their custody or under their control.

7.5. The Buyer of any Vehicle is responsible for complying with all legal requirements as to the construction and use of that Vehicle and for obtaining all insurances, certificates, permits or other authorisations necessary before that Vehicle can be used on any road, and the Buyer will not use the Vehicle on any road or remove it from the Premises under its own power until it is roadworthy, can be used lawfully on the road, and has all necessary certificates.

7.6. If required to do so by JOHN PYE & SONS the Buyer will provide a written undertaking (in a form acceptable to JOHN PYE & SONS) to comply with all duties and obligations in respect of the vehicle by the Road Traffic Act 1972, the Health and Safety at Work Act 1974, any subsequent modification or re-enactment of either Act or by any other legislation affecting the use of the Vehicle. JOHN PYE & SONS may cancel the contract the contract of sale if the Buyer fails to provide such an undertaking upon request. In this event, JOHN PYE & SONS will be entitled to re-auction the Vehicle at any time.

7.7. The Buyer shall be responsible for any damage occasioned to any adjoining or other lots or to the Premises by the removal of their Vehicle(s) and shall repair the same either before removal of the Vehicles from the Premises or after such removal as JOHN PYE & SONS may desire or shall pay the estimated cost of doing so to be fixed by JOHN PYE & SONS whose decision shall be binding on the Buyer.

7.8. Neither the Seller nor JOHN PYE & SONS shall be under any liability pursuant to section 6 of the Health and Safety Act 1974 and the Buyer's attention is drawn to the undertaking given on each Bid Slip at the sale by which the Buyer undertakes to take such reasonable and practical steps as are sufficient to ensure that his purchase will be safe and without risk to health and safety when properly used.

8. Buyers Default

8.1. If the Buyer does not honour its obligations for payment under clause 6 above in any way, JOHN PYE & SONS as agents of the Seller shall at its absolute discretion and without prejudice to any other rights it may have, be entitled to exercise one or more of the following rights or remedies:

- 8.1.1. to rescind the contract for sale of the Vehicle (or any other Vehicle) sold to the defaulting Buyer at the auction; and
- 8.1.2. to retain the Deposit and to pursue the Buyer directly for all monies owed including damages for breach of contract; or
- 8.1.3. to enter the Vehicle in question to be re-sold at public auction or private sale, the defaulting Buyer will then pay to JOHN PYE & SONS any resulting deficiency in the purchase price at the first auction after deduction of any part payment and addition of resale costs;
- 8.1.4. to remove, store (either at the Premises or elsewhere) and insure the Vehicle at the expense of the defaulting Buyer;
- 8.1.5. to charge interest at a rate not exceeding 2% per month on the Hammer Price to the extent that it remains unpaid for more than 2 Working Days after the day of the relevant auction;
- 8.1.6. to retain that or any other Vehicle sold to the same Buyer at the same or any other auction and release it only after payment of the Hammer Price;
- 8.1.7. to reject or ignore any bids made by or on behalf of the defaulting Buyer at any future auction;
- 8.1.8. to apply any proceeds of sale then due or at any time afterwards becoming due to the defaulting Buyer towards settlement of the Hammer Price and to exercise a lien on any property of the defaulting Buyer which is in JOHN PYE & SONS possession for any purpose.

8.2. If the Buyer fails to remove the Vehicle from the Premises as required under clause 7.1 above (and such failure to remove the Vehicle is not due to a fault of JOHN PYE & SONS) JOHN PYE & SONS will have the right to:

- 8.2.1. re-enter the Vehicle into auction and charge the Defaulter's Entry Fee to the Buyer;
- 8.2.2. charge a one-off administration fee of £50 (plus VAT if applicable);
- 8.2.3. move the Vehicle (at the risk of the Buyer provided that JOHN PYE & SONS will use reasonable care and skill in such a move) to another Premises from that where the Buyer purchased the Vehicle; and
- 8.2.4. for every calendar day following the day on which the Vehicle(s) should have been collected from the Premises by the Buyer, the Buyer will incur a daily storage charge of £21 plus VAT per Vehicle stored without exception, and such charge will continue to accrue notwithstanding the transfer of any Vehicle to an alternative premises by JOHN PYE & SONS (and for the avoidance of doubt, JOHN PYE & SONS will deduct such charge from the Deposit).

8.3. When a Vehicle is re-auctioned pursuant to clause 8.1 or 8.2 or otherwise in accordance with these Terms as deemed appropriate by JOHN PYE & SONS, the proceeds of such re-sale will be applied in the following manner (for the avoidance of doubt, JOHN PYE & SONS will only be able to apply the Deposit as against the costs listed below if the re-sale is occurring further to clause 8.1, and in the case of a re-sale occurring further to clause 8.2, the Deposit will first be applied as against the costs listed below, followed by the proceeds of the re-sale):

8.3.1. the Defaulters Entry Fee on the re-sale which will be charged to the Buyer;

8.3.2. any outstanding storage fees, removal fees, and insurance expenses due;

8.3.3. any sums due under the original contract following the first auctions (together with any VAT chargeable).

8.4. The balance of the re-sale price, if any, shall be paid to the original Buyer if title in the Vehicle has passed to him but shall otherwise be paid to the original Seller or, where the Seller's rights have been transferred to JOHN PYE & SONS, shall be retained by JOHN PYE & SONS. The original Buyer will remain liable to JOHN PYE & SONS and/or the Seller subsequent to the re-sale, save where the proceeds of the re-sale have discharged such liability.

8.5. For the avoidance of doubt, nothing in these Terms limits JOHN PYE & SONS' liability, nor, where applicable, the liability of the Buyer or Seller for:

(a) death or personal injury caused by negligence; or

(b) fraud or fraudulent misrepresentation; or

(c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or

(e) any other matter for which it would be illegal or unlawful to exclude or attempt to exclude liability.

9. Data Protection

Personal data will be processed as set out in the John Pye Privacy Policy which can be viewed at www.johnpye.co.uk/terms/privacy, as updated, amended or replaced by John Pye from time to time.

10. General

10.1. If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

10.2. If or to the extent that any of these Terms (as amended from time to time in writing by JOHN PYE & SONS) are Terms to which any of the provisions of the Unfair Contract Terms Act 1977 or the Supply of Goods and Services Act 1982 or any subsequent modification or re-enactment thereof apply then such Terms shall be enforceable only to the extent permitted by those Acts or their subsequent modification or re-enactment and these Terms shall be construed accordingly.

10.3. If JOHN PYE & SONS fails, at any time while these Terms are in force, to insist that the Seller and/or Buyer perform their obligations under these Terms, or if JOHN PYE & SONS does not exercise any of its rights or remedies under these Terms, that will not mean that JOHN PYE & SONS has waived such rights or remedies and will not mean that the Seller and/or Buyer does not have to comply with those obligations. If JOHN PYE & SONS do waive a default by the Seller and/or Buyer that will not mean that JOHN PYE & SONS will automatically waive any subsequent default by the Seller and/or Buyer. No waiver by JOHN PYE & SONS of any of these Terms shall be effective unless JOHN PYE & SONS expressly says that it is a waiver and JOHN PYE & SONS tell the Buyer and Seller so in writing.

10.4. A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

10.5. Lots in our auctions that have been physically de-branded/de-badged are to remain de-branded. No original trademarks, web images, vendor/clients logos or other intellectual property may be copied or used by the winning bidder without prior written consent. Any customers in breach risk permanent exclusion from auctions and salerooms.

10.6. These Terms shall be governed by English law and JOHN PYE & SONS, the Seller and the Buyer all agree to the exclusive jurisdiction of the English courts.

11. Online Terms of Participation and Sale

11.1. Subject to the following clauses which have precedence over the Terms above, the provisions of all Terms above apply to the sale of Vehicles made through www.johnpye.co.uk (the "Website"), and to the extent that such adjustments in practical application of the Terms are warranted by virtue of the electronic medium of participation in any given auction, so such adjustments shall be deemed made so to give full application to all relevant and applicable Terms.

11.2. All participants in the Website auctions warrant that they are of legal age to operate any Vehicle which they purchase, and are otherwise legally capable of entering into binding contracts.

11.3. Provision 5.5 of the Terms shall apply to the extent that it is not in conflict with any online grading system or other description provided by JOHN PYE & SONS through the Website.

11.4. Any reference in the above Terms to the Buyer Premium will also, for the purposes of sale/purchases over the Website, include any online Buyer's fees of which the Buyer will be so notified at the time of Registration.

11.5. The Website operates a '3 minute rule' which means that any person who bids on-line within the last 3 minutes of a specific lot closing time will instigate the automatic extension of the lot closing time by an additional 3 minutes and so on for any such subsequent bids.

11.6. Use of the JOHN PYE & SONS online bidding platform is at all times subject to the JOHN PYE & SONS conditions of website use.

11.7. During an auction, potential Buyers can bid for a Vehicle by clicking the "Bid" button. Each bid shall be final and binding as soon as the Bid button is clicked.

11.8. In the event of a tie between a bid placed by a potential buyer online and any other identical bid(s) it will be at the auctioneer's discretion as to which bid shall be accepted.

11.9. Buyers acknowledge that the online auction is a live auction and agree that each bid submitted as provided in these Terms is irrevocable and cannot be amended or corrected, even if submitted in error and notified to JOHN PYE & SONS.

11.10. Buyers are fully liable for all bids submitted via their online bidding account (including the liability to pay in full and on time in accordance with these Terms for any Vehicle that is the subject of a successful bid submitted from the Buyer's account).

11.11. JOHN PYE & SONS provide the online bidding service "as is" and without any warranty or condition, express, implied or statutory. Without limiting the foregoing, we accept no liability for any failures, delays or errors caused by interruptions in the availability of the online bidding service or our website or any errors or defects in their content or functionality, any software and/or hardware defects (whether the potential Buyers or JOHN PYE & SONS') and or any internet connection problems (whether the potential Buyers or JOHN PYE & SONS') and JOHN PYE & SONS do not represent or warrant that the JOHN PYE & SONS website or online bidding platform will be error-free, virus free, or that any defects will be corrected.