

## TERMS AND CONDITIONS OF THE CONTRACT TO AUCTION

### 1. Introduction

The contractual relationship between Yoder & Frey Auctioneers, LLC (registered in Ohio) and Vendors is governed by:

- 1.1. The information as detailed on page 1 of this Agreement;
- 1.2. The terms and conditions detailed herein;
- 1.3. Any additional notices and terms printed in the sale catalogue, in each case as amended by any saleroom notice or Auctioneer's announcement.

### 2. Definitions

- 2.1. "Additional Items" means any Lots delivered to the Auction Site after the Entry Deadline as specified in page 1 of this Agreement
- 2.2. "Agreement" means this agreement
- 2.3. "Auction" means an auction undertaken by Yoder & Frey Auctioneers, LLC
- 2.4. "Auction Site" means the premises from where the Auctions is conducted
- 2.5. "Auctioneer" means Yoder & Frey Auctioneers, LLC, its staff, representatives and person and persons for the time being authorized by the Auctioneer to have the conduct of the Auction
- 2.6. "Commission" means the percentage payments (subject to the minimum payment) as detailed on page 1 of this Agreement (as may be amended in accordance with clause 18) due to the Auctioneer upon the sale of any Lots
- 2.7. "Consignment" means the equipment detailed as such on page 1 of this Agreement
- 2.8. "Entry Deadline" is the date specified as such on page 1 of this Agreement as applicable to either Rolling Stock or Stationary Stock. Any items accepted after the entry deadlines will be subjected to an increase in commission rate. As a matter of policy the Auctioneer may not accept any Lots for sale after this date, subject to the provisions of clauses 15 and 16 below.
- 2.9. "Hammer Price" is the highest bid for any Lot accepted by the Auctioneer at an Auction
- 2.10. "Lot" means any individual single part of a Consignment put up for Auction by the Auctioneer
- 2.11. "Purchaser" means the highest bidder for any Lot
- 2.12. "Rolling Stock" means any Lots that are driven by their own power (e.g. Excavators, Tractors, Forklift trucks, etc.)
- 2.13. "Stationary Stock" means any Lots that are not capable of being driven by their own power (e.g. generators, compressors, wacker plates, hammers, buckets, pumps, washers, mixers, trailers, garage equipment, etc.)
- 2.14. "Vendor" means any person offering a Consignment for sale, including their agents or executors

### Terms and Conditions

3. The Vendor hereby instructs the Auctioneer to sell the Consignments at public auction, as agent for the Vendor.
4. Unless otherwise specified in this Agreement, Vendor hereby agrees to sell the Consignment(s) to the highest bidder with no minimum prices. Vendor shall be responsible for and Auctioneer will deduct from the sale proceeds, a processing fee of \$75.00 per Contract to Auction.
5. The Vendor at his own cost shall deliver the Rolling Stock and the Stationary Stock to the Auction Site in a safe condition, in good running order and free of any hazardous materials on or before the Entry Deadline.
6. The Vendor shall deliver to the Auctioneer on or before the Entry Deadline all documents required by any purchaser for the transfer of ownership of all Lots contained in the Consignment.
7. The Vendor acknowledges that the Auctioneer shall have no obligation to inspect any Lot to ensure compliance with any law or regulation or for any other purpose and the Vendor warrants that all Lots shall comply in all respects with all applicable laws, regulations and standards relating thereto.
8. The Vendor shall provide to the Auctioneer a description of the Consignments and warrants that this description shall be fully true and accurate and not misleading in all respects. All Consignments will be sold by the Auctioneer as agent for the Vendor with all faults and imperfections and errors of description. Illustrations and descriptions in catalogues and brochures are for identification purposes only.
9. The Vendor warrants to the Auctioneer that he is the absolute owner of each Lot and is able to transfer a good and marketable title to each Lot free from third party claims or encumbrances of any nature. The Vendor will indemnify the Auctioneer, its servants and agents and the Purchaser against any loss or damage suffered by them in consequence of any breach of the above warranty on the part of the Vendor. Without prejudice to the foregoing, the Vendor accepts that he is solely responsible for discharging all hire purchase and other liabilities on each Lot whether or not the Hammer Price is sufficient to discharge any such liabilities and for the avoidance of doubt no Lots are accepted subject to any reserve price.
10. The Vendor will indemnify the Auctioneer against any and all loss, costs, expenses and liabilities caused to the Auctioneer whether directly, or as a result of the action, claim or demand of any third party, or by reason of any breach by the Vendor of this Agreement or of any terms or obligations on the Vendor's part implied by any statute or statutory provision relevant to the Lots or the operation of this Agreement.
11. The Vendor hereby authorizes the Auctioneer at its absolute discretion to carry out title searches in respect of any Lot at the expense of the Vendor. In no circumstances shall the Auctioneer be deemed to have a duty to conduct or be responsible for the results of such title searches. The Vendor also authorizes the Auctioneer to contact Creditors to determine amounts claimed against the Equipment. The Vendor authorizes the Auctioneer to carry out whatever necessary searches or any other such service to ensure consignment is free of liens or any other encumbrances. Charges for these services will be applied at varying amounts. Vendor hereby agrees that Auctioneer shall be permitted and authorized to deduct from any and all sale proceeds in its possession, amounts necessary to obtain releases of any liens, claims, or other encumbrances on or against the Equipment. In the event that such proceeds are insufficient to obtain the necessary releases or termination, Vendor shall immediately pay the additional amount necessary to obtain such release, or immediately reimburse the Auctioneer if such additional amount is paid by the Auctioneer.
12. The Auctioneer shall have the absolute discretion without giving any reason to refuse any bid, to divide any Lot or Consignment, to combine any two or more Lots or Consignments, to refuse to auction any Lot, to withdraw any Lot from the Auction, regulate bidding and in case of dispute put any Lot up for auction again. The Auctioneer shall not be liable for any loss or damage claimed or suffered in respect of any of the above actions.
13. In all cases all Lots shall remain at all times at the risk of the Vendor until the receipt by the Auctioneer of cleared funds from the sale of the Lot and neither the Auctioneer nor its servants or agents will be responsible for any loss or damage whether caused by negligence or otherwise. The Vendor authorizes the Auctioneer to utilize any part of the Consignments in the marketing and conduct of the Auction.
14. The Vendor must provide the Auctioneer with valid and transferable titles and make the Auctioneer aware in writing of titles stating "rebuild, salvage" etc., or where F.E.T. is applicable.
15. Vendor hereby agrees to indemnify, defend, and save harmless Auctioneer against all suits, actions, costs, or charges whatsoever; including but not limited to attorney fees, arising from or relating to (a) any false or incorrect representations or warranties contained herein or for any breach of the Vendor's obligations hereunder, including, but not limited to any inaccuracies in the description of Equipment or items or (b) the condition of Equipment.

16. The Vendor shall insure the equipment to its full insurable value against all perils so that in the event of damage to or destruction of the equipment or any part thereof, all insurance proceeds shall be paid to the Auctioneer as if such were the Auction sale proceeds whereupon the Auctioneer shall be paid Commission in accordance with the terms of this Agreement and in addition paid any expenses and surcharges in accordance with any other terms or conditions herein.
17. Auctioneer may offer Lots to Internet Bidders using its online service; however Auctioneer shall not be liable for any claims or costs arising from its failure to do so.
18. Without prejudice to clause 5, the Vendor hereby authorizes the Auctioneer
  - (i) To supply glass and parts; and
  - (ii) To carry out work such as the following: welding, steam cleaning, sandblasting, painting, repairing and other refurbishing; and
  - (iii) To pay any expenses in the moving, haulage, storage and service calls; and
  - (iv) To supply fuel, batteries and tire repair;
 In each case which the Auctioneer determines necessary at its sole discretion for the demonstration and sale of the Lots and all costs incurred shall be at the expense of and paid by the Vendor and such payment shall be in addition to the Commission.
19. Should the Vendor submit any Consignments for Auction after the Entry Deadline the Auctioneer may in its sole and absolute discretion accept these items for entry to the Auction. In the event that the items are accepted into the Auction, they will be deemed to be Additional Items and will incur an increase in Commission rate as stipulated on Page 1 of the Contract to Auction. If the Vendor submits a Consignment for Auction as Additional Items, the Vendor agrees and accepts that the said Additional Items will be subject to these terms and conditions as contained herein.
20. Additional Items shall only be deemed to have been accepted by the Auctioneer upon issue by the Auctioneer of an amended or supplementary Page 1 to this Agreement containing details of the Additional Items.
21. Neither the Vendor nor any person affiliated with, or, as agent of the Vendor shall make, or collude in the making of, bids for Lots at the Auction. In the event that the Vendor breaches this provision the sale of such Lots shall be deemed void and in addition to any other remedies of the Auctioneer or the Purchaser, the Vendor shall pay to the Auctioneer a commission of 25% of the Hammer Price upon resale.
22. The Vendor hereby agrees to pay the Auctioneer Commission based on the Hammer Price realized at the Auction. The Auctioneer shall be entitled to vary the rate of Commission by notice to the Vendor at any time prior to the commencement of the Auction. Without prejudice to the Vendor's obligation to pay the Commission and other sums due under this Agreement, the Vendor authorizes the Auctioneer to deduct Commission and any other sums due by the Vendor to the Auctioneer on any account from any sums received by the Auctioneer in respect of the sale of any Lot.
23. Payment of all sums due to the Auctioneer under this Agreement is due on the day of the Auction or (if any Lots are withdrawn prior to the Auction) on the day of withdrawal. Time for payment shall be of the essence. No payment shall be deemed to have been received by the Auctioneer until the Auctioneer has received cleared funds.
24. If the Vendor fails to pay the Auctioneer any sum due pursuant to this Agreement the Vendor will be liable to pay interest to the Auctioneer 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 the Bank of America, accruing on a daily basis until payment is made, whether before or after any judgment.
25. Any Consignment that has been advertised in the Auction catalogue/brochure which is not delivered to the Auction Site on or before the Entry Deadline will be subject to a surcharge of either \$1000 per Lot or 10% of the book value of the Lot whichever sum is greater. Any valuation of any Lot to be undertaken under this clause will be carried out by the Auctioneer in its sole and absolute discretion.
26. All Lots will be sold by Unreserved/Absolute Public Auction. The Vendor accepts that it is fully aware of the policy of the Auctioneer to impose no reserve price on any Lot at any time and any requests by the Vendor to do so will be refused. In no circumstances whatsoever can a Vendor decline to accept a winning bid should it not reach a level and value acceptable to the Vendor.
27. The Vendor authorizes and provides a license to the Auctioneer to use the Vendor's name, trademark or logo for the purpose of advertising and marketing the Auction.
28. The Vendor authorizes the Auctioneer to utilize any part of the Consignments in the marketing and conduct of the Auction.
29. This Agreement can only be amended or varied by written agreement between the parties and constitutes the entire agreement between the parties and overrides prior contracts or agreements or understandings between the parties in relation to the sale by Auction and ensures for the benefit of and is binding upon the heirs, executors, administrators, successors in title and assigns of the parties herein.
30. The Auctioneer shall not be obliged to release any funds to the Vendor for Lots sold until such time as the Auctioneer has received cleared funds from the Purchaser of such Lots or 18 banking days from the Auction Date whichever is the later subject to the provisions of clause 28. The Auctioneer reserves the right to withhold funds from this auction to clear any outstanding Purchase Balance the Vendor may have from any other Yoder & Frey auction and/or any other associated company. Auctioneer will pay Vendor the sale proceeds collected from the Auction less the sales commission and any other charges referred to herein upon the later of (i) approval and release of any and all creditors or lienholders or (ii) eighteen banking days from the last day of the sale for auctions conducted in Florida, fourteen banking days for auctions conducted in Ohio. Interest earned on sale proceeds, if any, accrue to the benefit of the Auctioneer
31. Where Lots have been consigned and sold subject to finance or other financial liability the Auctioneer shall be entitled to settle all outstanding balances with the respective finance companies prior to the release of any funds to the Vendor.
32. Where the Auctioneer has made payment of the proceeds of the auction of Lots to the Vendor in accordance with the terms of this Agreement, the Vendor agrees to assign, or procure to be assigned to the Auctioneer, for no consideration any and all rights and claims of the Vendor against the Purchaser in respect of the payment of the purchase price or any part thereof and the Vendor agrees to provide all reasonable assistance to the Auctioneer in respect of pursuit by the Auctioneer of any such claim against the Purchaser.
33. The Vendor agrees to stipulate on Page 1 of the Contract to Auction whether any item has a Safety Defect and forward in writing full details of any and all defects. Where the Vendor fails to provide the information regarding the Safety Defects the Auctioneer will assume the item is not safe and may announce it as unsafe or may sell it as a Deadrow item. Liability for all Lot Descriptions including the Safety Defects lies with the Vendor. The Vendor agrees to indemnify the Auctioneer against any resulting shortfall or legal issue which may arise as a result of the Lot Description including the Safety Defect.
34. The Vendor agrees to provide bank details to the Auctioneer for payment of sale proceeds. The Auctioneer will use the bank details on file, unless advised by Vendor.
35. The foregoing Agreement represents the entire agreement between Auctioneer and Vendor and is intended to replace and supersede all prior negotiations, representations or agreements, written or oral, entered into or made by or between Auctioneer and Vendor. No modification of this Agreement shall be effective unless made in writing and signed by the parties herein. The parties hereto agree and acknowledge that all disputes arising under this Agreement shall be resolved (i) if the amount in dispute is \$100,000 or more, by court of general jurisdiction in Lucas County, Ohio; or (ii) if the amount in dispute is less than \$100,000, by binding arbitration, conducted in Lucas County, Ohio, in accordance with the American Arbitration Association under its Commercial Arbitration Rules.



## Domestic Vendor Payment Form

Please complete the following to help expedite your payment. Yoder & Frey will retain this information on file for all future transactions. If this information is to change at any time, you will be responsible for formally notifying us of the change. Thank you.

ACH / Direct Deposit (no charge)  Wire Transfer (\$25.00)  Check

|   |   |
|---|---|
| <b>Vendor Name (as it appears on your contract with us)</b> | <b>Y &amp; F Vendor Code (leave blank if unknown)</b>   |
|   |   |
| <b>Name of your Bank</b>                                    | <b>Vendor Name (as it appears on your bank account)</b> |
|   |   |
| <b>Street Address</b>                                       | <b>City, State, Zip Code</b>                            |
|   |   |
| <b>Bank Account Number</b>                                  | <b>Account Type (Checking, Saving)</b>                  |
|   |   |
| <b>ABA Number (Bank Transit Number)</b>                     | <b>Contact Phone Number</b>                             |
|   |   |
| <b>Email Address</b>  |   |
|   |   |
| <b>Vendor Signature</b>                                     | <b>Print Name</b>                                       |
|   |   |

**NOTES:**

- Incorrect or incomplete data may delay payment
- Information provided on this form needs to be for the entity actually providing the goods / services to Yoder & Frey
- Once your account has been set up to pay electronically, a test payment in the amount of \$0.01 (1¢) may be sent to the account
- When payments are processed, a Remittance Advice detailing items paid will be sent to the email address shown above