

# HILCO APPRAISAL LIMITED

## TERMS AND CONDITIONS

The following terms and conditions (“Terms”) are the terms on which Hilco Appraisal Limited (a limited liability company incorporated under the laws of England and Wales with company number 04703331 and whose registered office is at 11 Ironmonger Lane, London EC2V 8EY (“Hilco”), as the case may be, the relevant part to be identified on the relevant invoice sells Equipment (defined below) at Auctions (defined below) or by means of Private Treaty Sales (defined below) and supersedes all other terms and conditions relating to the subject matter of these Terms. These Terms are the terms subject to which Hilco shall, either on its own behalf or as agent for the Vendor (defined below), sell Equipment to a Buyer (defined below) by way of Auction or Private Treaty Sale.

**THE BUYERS ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 8 AND THE BUYER SHOULD NOTE THAT:**

- **THE EQUIPMENT IS SOLD ‘AS IS, WHERE IS’ (WITH ALL FAULTS, IMPERFECTIONS AND DEFECTS)**
- **NO GUARANTEES AND/OR WARRANTIES ARE PROVIDED BY HILCO IN RESPECT OF ANY EQUIPMENT**
- **IT IS THE BUYER’S RESPONSIBILITY TO INSPECT EQUIPMENT PRIOR TO BIDDING ON SUCH EQUIPMENT OR MAKING AN OFFER IN RESPECT OF SUCH EQUIPMENT**
- **ALL SALES ARE FINAL – NO EXCEPTIONS**
- **SALES MAY BE SUBJECT TO A BUYER’S PREMIUM (DEFINED IN THE SPECIFIC SALE TERMS, IF APPLICABLE), THE RATE OF WHICH WILL VARY FROM SALE TO SALE**
- **ALL AUCTIONS (DEFINED BELOW) ARE SUBJECT TO THE CONDITIONS, VALID IN THE COUNTRY WHERE THE AUCTION TAKES PLACE**
- **EXTENDED BIDDING (ANTI SNIPING): - IF ANY LOTS ARE BID ON IN THE LAST 5 MINUTES, 5 EXTRA MINUTES WILL BE ADDED. THIS IS EXTENDED BIDDING**

### 1. DEFINITIONS AND INTERPRETATION

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

**“Advertising Material”** means brochures, pamphlets, advertisements and any other marketing material (in both electronic and printed format) used by Hilco to market and promote the Auctions and/or any Private Treaty Sale;

**“Auction”** means a public sale or online sale at which items of Equipment are being sold by Hilco, each such item of Equipment going to one of the competing bidders;

**“Buyer”** means any person, firm or auctioneer who agrees to purchase the Equipment by participating in an Auction and placing a winning bid or who makes an offer which is accepted by Hilco in respect of a Private Treaty Sale;

**“Buyer’s Premium”** means a percentage of the Hammer Price (specified in the Sale Specific Terms) which is added to the Hammer Price to make up the Purchase Price;

**“Catalogue”** means an online or printed document containing a description of the Equipment to be sold at an Auction or by way of a Private Treaty Sale;

**“Data Protection”** means the Data Protection as applicable in the Country where the Auction takes place or such other legislation which enacts or consolidates it (with or without modification);

**“Equipment”** means the assets in respect of which potential buyers are invited to submit offers by means of placing bids at an Auction or in respect of a Private Treaty Sale;

**“EU”** means the European Union;

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**“Force Majeure Event”** means any event beyond a Party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable and which affects the performance by a Party of its obligations under these Terms, including without limitation, strikes, lock-outs or other industrial disputes (excluding such party’s own workforce), failure of energy sources or transport network, acts of God, international disputes, war, export or import limitations or embargos, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemic or similar events, natural disasters or extreme adverse weather conditions, or default of supplies or subcontractors;

**“Hammer Price”** means the amount offers by the Buyer and accepted by Hilco at Auction in respect of the relevant Equipment;

**“Parties”** means Hilco and the Buyer collectively and “Party” shall mean any one of them as determined by the context;

**“Personal Data”** means any personal information (such as name, address, telephone number, credit card details and copies of documents such as driving licence used for identification purposes) which the Buyer provides to Hilco when submitting a Registration Form to Hilco;

**“Privacy Policy”** means Hilco’s privacy policy accessible via the link on Hilco’s Website(s) and which forms part of these Terms;

**“Private Treaty Sale”** means a sale (not by way of an Auction) of Equipment by Hilco where Hilco prepares descriptive details of the Equipment for sale and invites offers which Hilco may accept or reject;

**“Proxy Bid”** means a bid submitted by an employee of Hilco on a Buyer’s behalf and with the Buyer’s authority in circumstances where a Buyer is unable to participate in an Auction;

**“Purchase Price”** means the amount payable by the Buyer to Hilco in respect of the sale and purchase of the Equipment and shall consist of, in respect of sale at Auction, the Hammer Price plus the Buyer’s Premium and, in respect of a Private Treaty Sale, the price agreed between Hilco and the relevant Buyer;

**“Registration Form”** means the printed or online form the Buyer completes when registering for an Auction;

**“Sale Specific Terms”** means any terms published by Hilco on any of the Websites in respect of the sale of Equipment and, in respect of a sale by Auction, any terms made available at any Auction and which relate to the specific Auction mentioned in such terms and/or any other terms communicated to the Buyer or potential Buyer by Hilco from time to time which shall be incorporated into these Terms by reference;

**“Third Party”** means any person or entity other than the Parties;

**“VAT”** means value added tax or the equivalent or similar sales taxes applicable in the Country where the Auction and/or Private Treaty takes place;

**“Vendor”** means the vendor of the Equipment, where Hilco sells the Equipment as agent on the vendor’s behalf or Hilco if it sells for its own account;

**“Website(s)”** means Hilco’s website located at [www.hilcoind.com](http://www.hilcoind.com) and any other websites used by Hilco for purposes of Auctions or in respect of a Private Treaty Sale.

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The headings used in these Terms have been inserted for convenience only and shall not affect its construction or interpretation.

**1.1** Words importing the singular include the plural and vice versa.

**1.2** Words importing a gender shall include all genders.

**1.3** Reference to any statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under them as from time to time amended, consolidated or re-enacted.

**1.4** In the event of a conflict between the provisions of these Terms and the Sale Specific Terms, the Sale Specific Terms shall take precedence.

### **2. APPLICABILITY OF THESE TERMS**

These Terms as well as the "Sale Specific Terms" apply to all Auctions and Private Treaty Sales facilitated and/or conducted by Hilco.

### **3. STATEMENTS RELATING TO THE EQUIPMENT**

**3.1** All statements relating to the Equipment put up for auction at an Auction or offered for sale by means of a Private Treaty Sale contained on the Websites, in any Catalogue or in any Advertising Material (such as statements relating to description, quality and condition) are qualified statements of opinions and should not be relied upon or construed as being representations or warranties.

**3.2** It is the Buyer's responsibility to inspect the Equipment and to satisfy itself on all matters affecting the Equipment, including the condition and description of the Equipment, its fitness and suitability for any particular purpose prior to bidding on such Equipment at an Auction or making an offer in respect of a Private Treaty Sale.

### **4. OFFERS**

**4.1** All offers of Hilco are subject to prior sale of the goods by Hilco to a third party.

**4.2** No offer, whether oral or in writing, is binding upon Hilco. Hilco has the right to withdraw any offer within five days after such offer has been accepted by the purchaser.

### **5. RISK AND TITLE**

**5.1** The risk in and to Equipment bought by the Buyer at an Auction shall pass to the Buyer on the 'fall of the hammer', but the legal and beneficial title in and to such Equipment shall remain with Hilco until the Buyer's payment of the Purchase Price (together with any VAT and any other applicable tax) in accordance with Clause 7 and has been received by Hilco in cleared funds.

**5.2** The risk in and to Equipment bought by the Buyer by means of a Private Treaty Sale shall pass to the Buyer on the date on which the Private Treaty Sale is agreed between Hilco and the Buyer, but the legal and beneficial title in and to such Equipment shall remain with Hilco (or as the case may be, the Vendor) until the Buyer's payment of the Purchase Price (together with any VAT and any other applicable tax) in accordance with Clause 7 and has been received by Hilco in cleared funds.

### **6. PROXY BIDS**

Hilco may place Proxy Bids on behalf of a Buyer or potential Buyer at any Auction at the Buyer's election.

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### 7. PURCHASE PRICE, PAYMENT TERMS AND VAT (AND OTHER TAXES)

#### Purchase Price

The Purchase Price shall consist of the Hammer Price plus the Buyer's Premium (if applicable), or, in the event of Private Treaty Sales, the Purchase Price shall be the price agreed between Hilco and the relevant Buyer in respect of such Private Treaty Sale.

#### Buyers Premium

Hilco may levy a Buyer's Premium on all sales at Auctions and the rate of such Buyer's Premium will vary from sale to sale.

#### 7.1 VAT

The Purchase Price does not include VAT and other taxes (if any). Any VAT (or other taxes if any) relating to the sale shall be payable at the current rate(s) applicable in the country of supply and at the rate in force at the time of supply where the sale takes place. In respect of VAT and any other taxes (if any) the following shall apply (please see important information below for Intra EU dispatches and export purchasers where the Equipment in question is removed from the EU).

**7.1.1** Buyers located in the country of supply and where the Equipment remains in that country will be charged VAT and other taxes (if any) on the Purchase Price, and for sales at auctions local VAT (and other taxes if any) will be levied on the Hammer Price and Buyers Premium.

**7.1.2** Buyers located in another country other than the country of sale but located within the EU must complete documentation or be able to support that there is an Intra EU dispatch and if necessary complete an Intra EU form. A deposit equal to the amount of the VAT payable in the country of supply will be taken from the Buyer and held by Hilco until satisfactory proof of Intra EU dispatch is received by Hilco. Where a Buyer removed the Equipment from the country of supply to another EU state then proof of removal will include full shipping documents, proof of

transport certification, or any other shipping documentation required by the EU Member State of dispatch to satisfy the Intra EU supply rules for goods including the evidence of a VAT ID number in another EU state to that of the country of supply. This documentation must be received by Hilco within three (3) months from the date of supply. *Purchasers from overseas should note that the VAT on the Buyer's Premium is not recoverable.*

**7.1.3** Buyers who are established outside the EU will be charged VAT (and other taxes if any) on the Purchase Price. A refund of the VAT applied in the country of supply can be processed by sending proof of removal of the Equipment from the EU as an export (and this will include shipping documents) to Hilco within three (3) months from the date of the supply. *Purchasers from overseas should note that the VAT on the Buyer's Premium is not recoverable.*

#### Intra EU Forms and Proof of Export

The Intra EU forms and Proof of Export documents (including full shipping documents) required should be sent to Hilco via regular mail to Accounts Department (accounts@hilcoglobal.eu) or to such other person as Hilco may notify the Buyer from time to time.

#### VAT Exemption

Buyers wishing to claim an exemption from VAT (or that VAT is to be charged at zero rate or is otherwise not payable (either at all or at the full rate or amount prevailing at the time of the sale)) should provide satisfactory proof to Hilco of the Buyer's entitlement to claim such exemption or release. *Purchasers from overseas should note that the VAT on the Buyer's Premium is not recoverable.*

#### Payment Terms

The Purchase Price should be paid by means of electronic funds transfer (EFT). The bank details and the currency in which payment should be made shall be specified in the Sale Specific Terms.

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Time for payment shall be of the essence and any items of Equipment in respect of which full payment (in cleared funds) has not been received by Hilco within ten (10) days of the closing of the relevant Auction or the date of the Private Treaty Sale shall be forfeited and the Buyer shall be liable for the administrative and other costs of Hilco for arranging for the resale and/or scrapping of such Equipment and any resulting loss of fees or commission or premium incurred or suffered by Hilco.

No payment shall be deemed to have been received until Hilco has received the relevant payment in cleared funds.

The Buyer shall make all payments due under these Terms in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

If the Buyer fails to pay Hilco any sum due pursuant to the Buyer purchasing any Equipment at an Auction or by way of Private Treaty Sale, the Buyer shall be liable to pay interest to Hilco on such sum from the due date for payment at the maximum allowable annual rate accruing on a daily basis until payment is made, whether before or after any judgment.

### **8. WARRANTIES AND LIMITATION OF LIABILITY**

#### **8.1 International Statutory Compliance Exclusion**

**8.1.1** It is expressly brought to the Buyer's attention that, at the time of sale, any item of plant, machinery or equipment contained in the lot(s); May not necessarily comply with the Health and Safety Laws, in the relevant jurisdiction and any other EC Acts, Regulations, Directives or their applicable laws or equivalent or equivalent or similar laws in any relevant jurisdiction or; And could contain blue or white asbestos, hazardous substances, dangerous chemicals etc. which if not handled correctly during their removal from a site could be in breach of the relevant Health and Safety Laws, use of such substances in a working

environment in the EC or any other relevant jurisdiction.

**8.1.2** The Buyer undertakes to: Remove, ship and use any purchased plant and equipment within the European Community or any other relevant jurisdiction in a way that does not contravene any relevant legislation and in full compliance with all applicable Health and Safety Standards and regulations; comply with all current applicable legislations in any relevant jurisdiction and reasonable instructions by the Auctioneer in relation to the removal/disposal of waste including hazardous waste. Participants agree to comply with all applicable export or import control or related laws or regulations and not to violate any applicable local, state, national or international law, statute, ordinance, rule or regulation. Participants acknowledge that the Auctioneer is not the exporter of any asset unless expressly stated. The Auctioneer gives no representation or warranty concerning and has not conducted any investigation to ascertain which items, if any, constitute, for example, 'Restricted Technology' for US law purposes or whose export is otherwise restricted under applicable law. The Auctioneer and the seller reserve the right to cancel or rescind any sale in an Online Transaction at any time if either of them determines. In its absolute discretion, that the sale does or may violate applicable export or import control or related laws and regulations.

#### **8.2 Buyers Responsibilities and Conduct**

**8.2.1** The Buyer will be responsible for all damage that it, its carriers or its agents may do to the property for any third party (and, in particular, to the seller's premises) in removing the lot(s) it has purchased. Should the Auctioneer consider such damage likely to occur, it may require the Buyer to deposit such sum of money with the Auctioneer, by way of security for the costs of reinstating that part of the premises likely to be damaged by the removal of a lot, as the Auctioneer may refuse the Buyer access to the seller's premises for the purpose of collecting all or any of the lots

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it has purchased, or rescind the sale of such lot. By placing a Bid on a lot, the Buyer represents, warrants and undertakes that it has the authority and capacity to enter such Bid and close the transaction and that any Bid that it makes constitutes an irrevocable offer to buy the lot in question for the full amount of the Bid.

#### **8.3 Transfer of Risk**

Upon the Announcement of Sale the Buyer shall assume all risks in and relating to such lots. The Buyer is advised to effect in respect of all such risks arising thereafter any insurance it may consider necessary. The duty of the Auctioneer and/or the seller to make lots available shall be deemed performed upon Announcement of Sale even if a lot is subsequently damaged and/or part thereof has been lost. Property and title in each lot shall not pass to the Buyer until: (a) full payment therefore has been received or (b) each such lot has been removed from the seller's premises in its entirety.

#### **8.4 As is / Where Is**

All goods are sold "AS IS, WHERE IS, WITH ALL FAULTS, IMPERFECTIONS, DEFECTS AND WITHOUT RECOURSE". Illustrations, pictures or videos posted on the Site are for the convenience of the Buyers only. Each of the seller, the Auctioneer and, where applicable, Hilco has used its reasonable endeavours' to ensure that the description of each lot(s) appearing on the Site are accurate, but the Buyer relies upon such description at its own risk. Buyers should satisfy themselves prior to the sale as to the condition of the lot and should exercise and rely on their judgment as to whether the lot accords with its description at their own risk. Subject to the obligations accepted by Hilco and where applicable, the Auctioneer under these Terms and Conditions neither the seller nor Hilco nor, where applicable, the Auctioneer nor any of their respective employees or agents are responsible for errors of description or for the genuineness or authenticity of any lot and no warranty whatever is given by Hilco or, where applicable, the Auctioneer, or the seller or

their respective employees or agents to the Buyer in respect of any lot and any express or implied conditions or warranties are hereby excluded to the greatest extent permitted by law.

#### **9. REMOVAL OF EQUIPMENT**

**9.1** It is the Buyer's responsibility to collect or to arrange for the collection of Equipment bought (at the Buyer's cost).

**9.2** The Buyer should contact the individual whose name and contact details are provided in the Sale Specific Terms to arrange for the collection of Equipment.

**9.3** Hilco shall only release Equipment for collection by a Buyer or its duly authorised representative once such Equipment has been paid for in full and Hilco has received such payment in cleared funds.

**9.4** The Buyer must make payment of the Purchase Price on receipt of Hilco's invoice. Invoices related to purchases made via the Websites will be emailed to the Buyer within forty eight (48) hours of the closing of the relevant Auction or conclusion of the relevant Private Treaty Sale.

**9.5** Unless stated otherwise in the Sale Specific Terms, the Buyer shall collect or arrange for the collection of the Equipment purchases within ten (10) days of the closing of the relevant Auction or conclusion of the relevant Private Treaty Sale, after which Hilco shall be entitled to charge to the Buyer the cost of storing and securing such Equipment. The Buyer agrees to advise Hilco of the intended date for collection and method of collection and transport prior to collecting the Equipment.

**9.6** The dismantling and removal of Equipment by the Buyer shall comply with the Health and Safety Laws, applicable in the Country where the Equipment is located, if applicable, together with Hilco's site safety policies and

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procedures. After the dismantling and removal, the Buyer shall ensure that the site where the Equipment is located is left clean and in the state it was in prior to the dismantling and removal of the Equipment by the Buyer.

**9.7** Certain types of Equipment may contain hazardous materials (such as chemicals) and, on his own account, the Buyer must ensure that the removal of such hazardous materials is carried out in accordance with the Health and Safety Laws, applicable in the Country where the Equipment is located and any other relevant legislation and/or regulations dealing with the removal and handling of such hazardous materials.

**9.8** The Buyer shall indemnify and shall keep Hilco indemnified against all liabilities, damages, costs, expenses, death and personal injury arising from or in the course of the removal of the Equipment.

### **10. INTELLECTUAL PROPERTY**

The copyright in the text appearing on the Websites, in any of our Catalogues, Advertising Material and the photographs, digital images and illustrations of Equipment on the Websites, in any of our Catalogues and in any Advertising Material vest in and shall remain vested in Hilco or its licensors. The Buyer will not reproduce or permit anyone else to reproduce such text, photographs, digital images or illustrations without Hilco's prior written consent.

### **11. DATA PROTECTION**

**11.1** Hilco collects Personal Data from the Buyer when the Buyer submits a Registration Form to Hilco, or, if a Buyer generally provides Personal Data to Hilco in the course of doing business with Hilco.

**11.2** The collection, processing and storage of Personal Data will be dealt with by Hilco in accordance with the Privacy Policy and Hilco's obligations under the Data Protection Act.

**11.3** By submitting a Registration to Hilco the Buyer consents to Hilco collecting, processing and storing the Personal Data contained in such Registration Form for the purposes described in the Privacy Policy.

### **12. REGISTRATION AND ACCESS TO THE WEBSITES**

**12.1** While Hilco endeavours to ensure that the Websites are normally available 24 hours a day, Hilco shall not be liable if for any reason the Websites are unavailable at any time or for any period. Access to the Websites may be suspended temporarily and without notice in the case of system failure, maintenance, or repair, or for reasons beyond Hilco's control.

**12.2** Each registration by a Buyer as a registered user on the Websites is for a single user only. Hilco does not permit a Buyer to share a user name and password with any other person nor with multiple users on a network.

**12.3** Responsibility for the security of any passwords issued rests with the Buyer.

**12.4** In consideration of the Buyer's use of the Websites, the Buyer agrees to maintain the security of the password and identification used to access the user area of the Websites, and the Buyer shall be fully responsible for all use of the Buyer's account and for any actions that take place using the Buyer's membership account.

### **13. FORCE MAJEURE EVENT**

Save for the Buyer's obligation to make payment under these Terms (which shall not be excused), neither Party shall be liable for any failure or delay in performing its obligations under these Terms to the extent that such failure or delay is caused by a Force Majeure Event.

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### 14. WAIVER

A waiver (whether express or implied) by one of the Parties of any of the provisions of these Terms or of any breach of or default by any other Party in performing any of those provisions, will not constitute a continuing waiver and that waiver will not prevent the waiving Party from subsequently enforcing any of the provisions of these Terms not waived or from acting on any subsequent breach of or default by any other Party under any of the provisions of these Terms.

### 15. SEVERABILITY

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.

### 16. WHOLE AGREEMENT

These Terms (together with any other documents referred to herein and referenced as forming part hereof), contain the whole agreement between the Parties relating to the subject matter contemplated by these Terms.

### 17. RULES AT AUCTION

The Auctioneer can at its own discretion:

**17.1** Change or withdraw any or all lots.

**17.2** Bid for any lot(s) offered for sale at the Online Auction on its own account or on behalf of third parties, including on behalf of the seller.

**17.3** Sell lots in combination, subdivide a lot(s) or change lot(s).

**17.4** Withdraw any lot(s) if the reserve price, placed on that lot, has not been reached.

**17.5** Hilco and or any Hilco related company may act as the seller in any Online Auction.

**17.6** Temporarily or permanently stop the Online Auction.

**17.7** Refuse to accept any Bid, including Autobids, for any reason and without any explanation to the bidder.

### 18. IMPORTANT INFORMATION FOR EXPORT PURCHASERS

If you are intending purchasing items for export outside the Country where the Items (Equipment/Lots) are located, YOU MUST satisfy all of the following criteria in order for a VAT refund/zero rating to be considered:

**Export Forms:** The registered purchaser must complete the appropriate form showing the export destination and address, and the registered Buyer must be the party who is to receive the goods overseas and NOT their agent.

**VAT Deposit:** A deposit equal to the amount of VAT due will be taken and held by Hilco until satisfactory proof of export is received (NO EXCEPTIONS). *Purchasers from overseas should note that the VAT on the Buyer's Premium is not recoverable.*

**Time Limit:** Goods must be exported and documentary proof provided within three months from the date of purchase. **NO REFUNDS WILL BE GIVEN AFTER THIS PERIOD.**

**Proof of Export:** Bills of Lading / fully completed CMR documents together with a letter of declaration must be forwarded to Hilco within three months of the date of purchase. Bills of Lading / fully completed CMR documents must specify the goods with reference to lot numbers and description, and/or the purchase invoice reference number. Consignee details on the Bills of Lading must match those of the registered Buyer on our registration form.



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### **19. GOVERNING LAW AND JURISDICTION**

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.

### **20. PREVAILING TEXT**

The English text of these general terms and conditions prevails over any translations thereof.