

## TERMS AND CONDITIONS

The following terms and conditions ("**Terms**") are the terms on which **Hilco Appraisal Limited**, in relation to intellectual property t/a Hilco Streambank (a limited liability company incorporated under the laws of England and Wales with company number: 04703331 and whose registered office is at 3 St. Helen's Place, Bishopsgate, London EC3A 6AB ("**Hilco**"), as the case may be, the relevant party to be identified on the relevant invoice sells Intellectual Property (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 Intellectual Property to a Buyer (defined below) by way of Auction or Private Treaty Sale.

### THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 8 AND THE BUYER SHOULD NOTE THAT:

- **ALL INTELLECTUAL PROPERTY IS SOLD 'AS IS, WHERE IS'**
- **NO GUARANTEES AND/OR WARRANTIES ARE PROVIDED BY HILCO IN RESPECT OF ANY INTELLECTUAL PROPERTY**
- **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**

### 1. DEFINITIONS AND INTERPRETATION

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

1.1.1. "**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;

1.1.2. "**Auction**" means a public sale or online sale at which Intellectual Property is being sold by HILCO, with the Intellectual Property going to one of the competing bidders;

1.1.3. "**Buyer**" means any person, firm or auctioneer who agrees to purchase the Intellectual Property 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;

1.1.4. "**Buyer's Premium**" means a percentage of the Sale Price (specified in the Sale Specific Terms) which is added to the Sale Price to make up the Purchase Price;

1.1.5. "**Catalogue**" means an online or printed document containing a description of the Intellectual Property to be sold at an Auction or by way of a Private Treaty Sale;

1.1.6. "**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);

1.1.7. "**Intellectual Property**" means the assets in respect of which potential Buyers are invited to submit offers by means of placing bids in respect of an Auction or Private Treaty Sale;

1.1.8. "**EU**" means the European Union;

1.1.9. "**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, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors;

1.1.10. "**Sale Price**" means the amount offered by the Buyer and accepted by HILCO in respect of the relevant Intellectual Property;

1.1.11. "**Parties**" means HILCO and the Buyer collectively and "Party" shall mean any one of them as determined by the context;

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

1.1.13. "**Privacy Policy**" means HILCO's privacy policy accessible via the link on HILCO's Website(s) and which forms part of these Terms;

1.1.14. "**Private Treaty Sale**" means a sale (not by way of an Auction) of Intellectual Property by HILCO where HILCO prepares descriptive details of the Intellectual Property for sale and invites offers which HILCO may accept or reject;

1.1.15. "**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;



1.1.16. **"Purchase Price"** means the amount payable by the Buyer to HILCO in respect of the sale and purchase of the Intellectual Property and shall consist of, in respect of a sale, the Sale Price plus the Buyer's Premium and, in respect of a Private Treaty Sale, the price agreed between HILCO and the relevant Buyer;

1.1.17. **"Registration Form"** means the printed or online form the Buyer completes when registering for an Auction;

1.1.18. **"Sale Specific Terms"** means any terms published by HILCO on any of the Websites in respect of the sale of Intellectual Property 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;

1.1.19. **"Third Party"** means any person or entity other than the Parties;

1.1.20. **"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;

1.1.21. **"Vendor"** means, the vendor of the Intellectual Property, where HILCO sells the Intellectual Property as an agent on the vendor's behalf or HILCO if it sells for its own account;

1.1.22. **"Website(s)"** means HILCO's website located at [www.hilcostreambank.com](http://www.hilcostreambank.com) and any other websites used by HILCO for purposes of Auctions or in respect of a Private Treaty Sale.

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

1.3. Words importing the singular include the plural and vice versa.

1.4. Words importing a gender shall include all genders.

1.5. 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.

1.6. 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 INTELLECTUAL PROPERTY

3.1. All statements relating to the Intellectual Property 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 carry out their due diligence in relation to all aspects of the Intellectual Property and to satisfy itself on all matters affecting the Intellectual Property including the description of the Intellectual Property and its suitability for any particular purpose prior to bidding on such Intellectual Property 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 Intellectual Property bought by the Buyer at an Auction shall pass to the Buyer on offer acceptance, but the legal and beneficial title in and to such Intellectual Property 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 Intellectual Property 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 Intellectual Property 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.

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

7.1. The Purchase Price shall consist of the Sale 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.



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7.2. 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.

7.3. The Purchase Price does not include VAT and other taxes (if any). Any VAT (or other taxes if any) relating to a 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 exports purchasers where the Intellectual Property in question is removed from the EU)

7.3.1. Buyers located in the country of supply and where the Intellectual Property 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 Sale Price and Buyers Premium.

7.3.2. 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 removes the Intellectual Property 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 the supply.

7.3.3. 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 Intellectual Property from the EU as an export (and this will include shipping documents) to HILCO within three (3) months from the date of the supply.

7.4. The intra EU forms and proof of export documents (including full shipping documents) required under clause 7.3.3 should be sent to HILCO via email to Justine Hall (juhalla@hilcoglobal.eu) or by fax +44 (0) 8453 150 or to such other person as HILCO may notify the Buyer from time to time.

7.5. 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.

7.6. 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.

7.7. Time for payment shall be of the essence and any items of Intellectual Property in respect of which full payment (in cleared funds) has not been received by HILCO within five (5) 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 of such Intellectual Property and any resulting loss of fees or commission or premium incurred or suffered by HILCO.

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

7.9. 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.

7.10. If the Buyer fails to pay HILCO any sum due pursuant to the Buyer purchasing any Intellectual Property 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. Transfer of Risk

Upon the acceptance of offer 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.



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## 8.2. As Is / Where Is

All representations, warranties, conditions, guarantees and stipulations, expressed or implied and whether statutory, customary or otherwise, are expressly excluded in relation to this Agreement (including warranties as to rights to dispose, freedom from encumbrances and other third party rights and interests, quiet possession, merchantable or satisfactory quality, fitness for purpose and description). The Buyer accepts the Intellectual Property subject to all faults, liens, executions, distraints, encumbrances and claims of third parties, the expense of discharging which shall be met by the Buyer. Unless otherwise required by law (and then only to that extent) the Sellers and the Liquidators or Administrators and each of them shall not be liable for any loss or damage of any kind whatsoever (including any punitive, special, indirect or consequential loss or loss of profit or for any loss of goodwill or possible business after the time of execution of this Agreement, whether actual or prospective) arising out of or in any way caused by any defect or deficiencies in the Intellectual Property. The Buyer accepts and agrees that it shall be its responsibility and at its expense to apply for and obtain all necessary or appropriate licences, consents, permits and rights to use or have the benefit of the Intellectual Property. The Buyer agrees that the terms and conditions of this Agreement and the exclusions and limitations contained in it are fair and reasonable in the circumstances taking into account the liquidation or administration of the Sellers. The Buyer has relied solely upon either or both of the Buyer's own opinion and/or professional advice concerning the Intellectual Property (including any or all of their quality, state, condition, description, fitness and suitability for any purpose, the possibility that some or all of them may have defects not apparent on inspection and examination and the use to which the Buyer intends or proposes to put them).

## 9. HILCO'S 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.

## 10. DATA PROTECTION

10.1. 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.

10.2. 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.

10.3. 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.

## 11. REGISTRATION AND ACCESS TO THE WEBSITES

11.1. While HILCO Endeavour's 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.

11.2. 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.

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

11.4. 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.

## 12. 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.

## 13. 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.

## 14. 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.

## 15. 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.



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#### 16. RULES AT AUCTION

The Auctioneer can at its own discretion:

- 16.1. Change or withdraw any or all lots.
- 16.2. Bid for any lot(s) offered for the sale on its own account and or on behalf of third parties, including on behalf of the seller.
- 16.3. Sell lots in combination, subdivide a lot(s) or change lot(s).
- 16.4. Withdraw any lot(s) if the reserve price, placed on that lot, has not been reached.
- 16.5. HILCO and or any HILCO related company may act as the seller in any Online Auction.
- 16.6. Temporarily or permanently stop the sale process.
- 16.7. Refuse to accept any Bid, including Autobids, for any reason and without any explanation to the bidder.

#### 17. 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.

#### 18. PREVAILING TEXT

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



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