

## **TERMS and CONDITIONS of Auction:**

### **Registration & Bidding:**

Only one (1) Bidder per paddle number is allowed. The party whose information is provided at the time of registration is responsible for all purchases made under that Bidder paddle number. Machinery Network Auctions, Inc. (MNA) reserves the right to refuse issuing a paddle number for any reason it believes necessary to protect the integrity of the bid.

- **Credit Card Authorization:** All Bidders are required to provide a valid MasterCard, Visa or American Express and the appropriate Credit Card Authorization form (as instructed by MNA Staff) in order to bid. A \$200 deposit authorization will be processed on the card provided (there will be no charge at this time, this is a “no transaction” authorization only). By registering, the Bidder hereby expressly authorizes MNA to charge this Card if the Bidder fails to pay their invoice in accordance with these Terms and Conditions of Auction (the Terms) within forty-eight (48) hours of the issuance of that invoice. MNA expressly reserves the right to waive the deposit authorization requirement any time it deems fit and at their sole discretion.

- **Deposit(s):** Any prospective Bidder residing outside the continental United States shall be required to submit a refundable (subject to these terms) deposit of \$2,000 or 10% of a bidder’s projected spend for that auction, whichever is higher (and determined solely at MNA staff’s discretion). The deposit shall be paid by credit card and the requisite “Credit Card Authorization – Foreign Bid Deposit” form filled out and turned in to MNA staff prior to any such Bidder being approved to bid. If the Bidder does not win the bid on any lot, the deposit shall be credited back to the same credit card, and that credit card only, within 72 hours of the close of bidding. If the bidder wins the bid but fails to pay their invoice within 48 hours of its being issued, the bidder hereby expressly authorizes MNA, at their sole discretion, to either, 1) charge the credit card the full invoice amount, or 2) retain all or part of the deposit as liquidated damages without notice.

- **Bidder Information:** By placing any bid, each Bidder expressly represents that they have provided MNA staff with accurate and complete contact, financial, Credit Card, and any other requested information during the registration process. Each Bidder hereby further expressly warrants and acknowledges that, whether the Bidder is acting as a principal, an agent, or an officer, director, or other representative of an entity, or in any other capacity whatsoever, by placing a bid, they have entered into a legally binding contract with MNA whereby they will be held personally liable for, and shall be bound to remit payment of, the purchase price, buyer’s premium, taxes, and any other amounts payable on the invoice issued to their paddle number to MNA upon demand and/or per these Terms.

- **Back-up Bidder Invoicing/Sale:** Due to the continued prevalence and commercial disruption caused by COVID-19, which has led to an uptick in the amount of unclaimed won lots at auctions throughout the country, MNA hereby expressly reserves the right to invoice back-up bidders for any or all of the lots bid on, in their sole discretion, and by placing their bids, Bidders assent to being bound by all the other Terms found herein with regards payment and collection of their won lots without any further notice or warning whatsoever.

- **Reserves:** All or any one or group of lots may be offered with minimum reserve pricing and/or subject to Seller’s right of confirmation. MNA expressly reserves the right to publish or not to publish the existence

of any reserve or Seller's right to confirmation. Further, MNA expressly reserves the right to reject any bid that is not commensurate with the value of the item being offered or that MNA, in their sole discretion, believes was made illegally or in bad faith. MNA and/or any of its agents or assigns may bid on any lot either for its own account or on behalf of a third party.

- **ALL SALES ARE FINAL.** No Bidder may retract their bid. No returns or refunds will be permitted. All sales are final. No invoice shall be cancelled unless authorized by MNA and at their sole discretion. Should MNA agree to cancel an otherwise valid invoice or any individual lot(s) on same, Bidder expressly herein agrees to be held responsible for, and shall be required to immediately pay, a 10% restocking fee on the total of the bid or hammer price of the lot(s) inclusive of the buyer's premium.

**Disclaimer & Acknowledgement:**

MNA and seller expressly disclaim, without limitation, any warranty of merchantability or fitness for a particular purpose. These terms are merely meant to be representative; by registering for and/or bidding in this auction, you are expressly acknowledging and agreeing to these Terms as well as all of the Terms and Conditions in both the Bid Card and Auction Catalogue.

- **AS IS, WHERE IS:** The Bidder acknowledges and warrants that they, or an authorized agent, have inspected all of the assets to their satisfaction and had ample opportunity to inspect prior to placing a bid, which shall be, further, governed by these Terms. MNA and Seller make no warranty or guarantee, expressed or implied, as to the accuracy of the information (including pictures, descriptions or specifications) provided in any published or otherwise publicly circulated account of the auction or the assets for sale therein. If there is any question, whatsoever, as to whether the picture(s) of any particular lot is accurate or inclusive (or exclusive) of everything being sold as a part of that lot, it is the sole responsibility of the Bidder, prior to placing any bid on the lot, to verify to their complete satisfaction, what they are bidding on. Everything is being sold on an "AS IS," "WHERE IS," and "AS AVAILABLE" basis and ALL SALES ARE FINAL.

- **No Reliance on Information:** All PICTURES descriptions, advertising, lot catalogs, or any other source of information (oral or written) concerning the Assets provided by MNA or their agents, affiliates or assigns, or otherwise obtained by a Bidder from a source other than MNA are subject to additions deletions, changes, and modifications at any time prior to purchase and sale. Each Bidder expressly acknowledges and agrees that no sale of any Asset may be invalidated by a Bidder because of an error, inaccuracy, or other fault in the Information. Each Bidder hereby expressly acknowledges and agrees that the Information has been prepared for and to be used for informational purposes only and shall not and may not be relied upon by any Bidder for any purpose, including (without limitation) accuracy or completeness. By bidding on an Assets, a Bidder represents, warrants, covenants and agrees that each such Bidder is relying upon each such Bidder's own investigation, inspection, research, and analysis of the Asset(s) for which a bid has been submitted and is not in any way relying upon the Information provided by MNA or any other third party.

- **Lot Order & Withdrawal:** MNA reserves the right to withdraw items, alter the order of the sale, accept bids from the Seller or their agents or assigns and group lots as it may deem appropriate in their sole discretion or at the direction of Seller or Seller's agent(s).

- Security Interest: Each Bidder expressly grants to MNA a security interest in, and lien upon, the purchased assets and proceeds thereof to secure payment of the purchase price for the purchased assets. Each Bidder expressly acknowledges and agrees that, in the event of non-payment by a Bidder, MNA may proceed to file the Bidder Registration Agreement, UCC-1 financing statements, and any other documents to perfect the security interest and lien granted hereby and that MNA will pursue their interests in such assets to the fullest extent of the law and equity.

- Disputes: In the event of any dispute over Bidding, MNA may, in its sole discretion, either accept what it deems to be the final bid, solicit further bids on the item in dispute or withdraw (or retroactively withdraw) the lot(s) or item(s) without penalty or recourse, except as allowed for herein. By placing a Bid, Bidders expressly acknowledge and accept these terms, whereby the remedy for MNA having withdrawn any Lot(s) falling under the purview of this Section, shall be expressly limited to a refund of any monies already paid to MNA. MNA retains the rights and privileges of this Section so long as the Lot(s) remain on the premises. Any controversy or claim relating to these Terms shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award (which shall include attorneys' fees to the prevailing party), rendered by the arbitrators may be entered in any court having jurisdiction thereof. This Section notwithstanding, in the event either party hereto institutes any suit or action to enforce its rights hereunder, the prevailing party shall be entitled to reimbursement of its costs and expenses, including without limitation reasonable attorneys' fees.

**Payment:**

**All bidders are required to pay in full within 48 hours of invoice date – NO EXCEPTIONS**

- Payment Terms: Unless specifically stated otherwise in the Sale Specific Terms, PAYMENT IS DUE AND PAYABLE, IN FULL, UPON RECEIPT OF INVOICE. Invoices will be e-mailed, typically within 24 hours after the Sale closes. All payments must be made by Bank Wire Transfer, Cashier's Check, or Company Check with Bank Letter of Guarantee. Checks must be made payable to Machinery Network Auctions, Inc. In some limited instances and at MNA's sole and complete discretion, cash (onsite only) and credit cards up to a certain limit, but in no case exceeding \$2,000, U.S., will also be accepted. All payments by credit card are subject to a service fee equal to an additional 3% of the amount charged to the card. It is highly recommended that if you wish to utilize any method of payment other than bank Wire Transfer, you call our office to explain your particular circumstance and obtain prior approval from appropriate MNA staff. A list of acceptable forms of payment can always be found in the auction catalog, on the MNA website and on your invoice. In any case, MNA expressly retains the right in their sole and complete discretion, to change or limit the acceptable forms of payment based upon an individual bidder's particular circumstances.

- Buyer's Premium: A "Buyer's Premium" of 18% of the final hammer price shall be added to each invoice. Occasionally, the exceptionally prompt payment of invoices by either, and sometimes both, onsite and online Bidders will net a generous discount in the Buyer's Premium charged. Please check Sale-Specific Terms and Conditions posted on our Website and/or on the catalog the day of the sale for more information and to see if any such discount applies to the auction you wish to participate in.

- Sales Tax: Applicable sales tax will likewise be added to the purchase price of all taxable items. All resellers need to contact Abraham Torres at (818) 788-2260 to make arrangements to either fax or email a copy of their Resale Certificate or other state issued certification of exempt status to our office at least

24 hours prior to the day of auction. Any reseller not doing so risks their exempt status for that auction and, if sales tax is charged, will be required to seek a refund of those monies directly from the state taxing authority in the state in which the auction is held. ONCE COLLECTED, MNA WILL NOT REFUND STATE SALES TAX – NO EXCEPTIONS. Lots not paid for (and removed by published deadline and per the terms of removal, below) may be resold at public or private sale without further notice and any deficiency, together with all expenses of that resale and/or removal, will be charged to the defaulting purchaser.

**Removal:**

**Purchased lots will not be released until payment has been received in full. Wire transfers must clear in order for payment to be considered “received in full”**

- **Standard Removal Hours:** Removal of purchased assets shall begin per the Sale-Specific Terms & Conditions, which may be found in the auction catalog, on the MNA website at: [www.machinerynetworkauctions.com](http://www.machinerynetworkauctions.com) and on the invoice emailed winning bidders at the conclusion of the auction event. Unless specifically stated otherwise in the Sale Specific Terms, absolutely no purchased assets may be removed before (i) the conclusion of the Sale and (ii) payment is made in full. A marked “Paid in Full” invoice and properly executed “Third Party Release” (whenever applicable) must be presented to MNA or other designated facility personnel and any item(s) removed from the premises must be verified against that invoice and signed out as received by both the buyer and operations staff. Standard hours of removal shall be Monday through Friday, 8:00 am to 4:00 pm, local facility time, unless otherwise posted at the facility, advertised on the MNA website or by special arrangement, in writing and agreed to by MNA operations and/or facility staff.

- **Rigging/Removal:** IS THE RESPONSIBILITY OF THE BIDDER/BUYER and all riggers are required to be licensed, insured and approved, in advance, by MNA. Every effort will be made to facilitate the timely and professional removal of the assets. All removal activity must be in accordance with OSHA guidelines and at the direction of on-site MNA and/or Seller staff. Removal may begin when the auction has been completed and Payment in full has been made (each Invoiced lot and any other invoiced line item – sales tax, Buyer’s Premium, etc. – must be paid). If two (2) people cannot safely lift, carry and load an item without any mechanical assistance whatsoever, then a rigger must be used on its removal. Any lot not removed from the premises by the published removal deadline shall be removed and may be resold at public or private sale and/or scrapped by MNA, in their sole discretion, without further notice and the costs of same shall be charged to the defaulting buyer.

- **Preferred Riggers/Disclaimer:** For most sales, MNA will provide a list of “preferred riggers” who have offered services for that sale, have proof of commercial liability insurance on file with MNA and are familiar with the particular offerings of the sale. Preferred rigger information is provided solely as a courtesy to our buyers. MNA is not affiliated with and does not endorse or guarantee the services of any machinery rigging, transport or export company, and cannot be held responsible for any damage or other problems incurred as a result of the actions of said companies.

- **Buyer Responsibility/REMOVAL DEADLINES:** Each buyer expressly acknowledges and agrees that they shall be responsible for all costs and expenses associated with removal of the purchased lots and shall be liable to MNA, Seller, owner and/or landlord of the premises at which the purchased lots are located, and all other third parties and are solely responsible for removing all purchased lots from site by removal deadline. Buyers with items left on site after deadline are subject to fines of \$500 per day or could be

subject to abandonment (and in accordance with other Terms found in this Section) with no further recourse.

- Trade Compliance: Machinery Network Auctions, Inc. and Machinery Network, Inc., are required, by law, to notify all bidders that we are in strict compliance with all U.S. Government export regulations with regards to the machines we sell. All out-of-the-Country bidders are hereby put on notice that, prior to the release of any machine won at auction, we are required to obtain a Commodity Classification from the Bureau of Industry and Security (BIS), which regulates the exportation of same. \*\*By registering to bid, you are expressly agreeing to be bound by, and comply with, the following **Destination Control Statement (15 CFR § 758.6)**: *Whereas the machines I have bid on and/or won may be controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.* Compliance with these regulations can take days or even weeks and is beyond the control of MNA staff. All bidders are urged to carefully consider this before placing their bid(s) as all such delays shall be considered FORESEEN DELAYS. As such, **ALL "PAYMENT DUE BY" AND "REMOVAL DATES" SHALL CONTINUE TO APPLY.**
- Governing Law and Venue: These Terms shall be governed by the laws of the State of California regardless of its place of execution or performance.
- Miscellaneous: By registering and participating in this auction, Buyer is expressly agreeing to receive emails regarding their participation in the auction and any and all future emails, including advertising and/or marketing, which may, at times, be received from Auctioneer. These Terms constitute the entire Agreement between Auctioneer and Buyer and supersedes any and all prior agreements, correspondence, quotations or understandings heretofore in force between the parties. There are no agreements between the parties with respect to the Equipment or sale of goods herein except those specifically set forth and made part of this Agreement. Waivers by Auctioneer of a breach of any of the Terms herein shall not be construed as a waiver of any other breach.