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C. J. Fisher & Co Ltd trading as Smart Property Sales

Online Auction Conditional Terms and Conditions

Description

These Terms set out the basis on which the online auction Platform and Services are provided to Members, Bidders and Purchasers.

It is important that You read and understand these Terms as You will be legally bound by them. You will be asked to confirm Your agreement to these Terms when You register and create an Auction Account to use the Platform. Please be aware however, that by using the Platform You confirm Your acceptance to these Terms. If You do not agree to these Terms then You must not use the Platform.

Please note that each Property may be subject to variations to these Terms and it is Your responsibility to make sure that You are aware of all matters that apply to each individual Property. You will be required to agree to any variations to these Terms before You will be able to use the Platform again.

We reserve the right to change these Terms at any time, so please check these Terms from time to time on our website at www.smartproperty.sale Amendments will take effect when posted on our website.

We recommend that You get your own professional advice before You bid at any Auction.

1. Definitions and Interpretation

1.1 The following terms have the following meanings:

Auction means an online auction sale on the Platform during which a Property is offered for sale and is intended to be sold to one of the competing Bidders.

Auction Passport Account means the Member's profile and registration on the Platform.

Auctioneer, We, Us or Our means C. J. Fisher & Co Ltd trading as Smart Property Sales, 10/12 Upper Dicconson Street Greater Manchester WN12AD (company registration number 11749223) and the individual Auctioneer or Auctioneers conducting the Auction.

Auction Close means the closing of an Auction after the end of the Initial Window and any Extension(s) when the electronic gavel falls to accept the highest Bid, at or in excess of the Reserve Price.

Auction Start means the start time of the Auction as set out in the Listing.

Bid means a bid lodged by a Bidder in respect of a Property via the Platform and **Bidding** shall be construed accordingly.

Bidder means a Member making a Bid or Bids for Property via the Platform.

Bidder Security means the pre-authorized security payment specified in the Listing that is required to be secured in advance of the Bidder placing a Bid;

Business Days means a day other than a Saturday, Sunday or public holiday in England when banks are open for business.

Completion Date means the date specified by the Seller when the balance of the Purchase Price will be paid to the Seller and ownership of the Property will transfer to the Purchaser.

Contract of Sale means the contract for the sale and purchase of the applicable Property the form of which is set out in the Seller's Legal Pack or otherwise provided by the Seller.

Exchange of Contracts means the Contract of Sale becomes legally binding.

Exclusivity Period means the amount of time that a Purchaser is given exclusive rights to sign the Contract of sale and complete the Exchange of Contracts provided that they have paid the Reservation Fee.

Extension(s) shall have the meaning give to it in clause 6.8. **Extend** and **Extended** shall be construed accordingly.

Guide Price is an indication as to where the Reserve Price is set.

Initial Window means the initial duration of an Auction excluding any Extension(s).

Listing means a listing for a Property on the Platform indicating that the Property is for sale by Auction via the Platform and setting out or referencing the relevant Particulars and the Seller's Legal Pack.

Member means a user of the Platform who creates an Auction Passport Account.

Particulars means the sales particulars of a Property.

Payment Processor means Stripe Payments Europe Limited or such other third party online payment processor as may be appointed from time to time. A reference to payment in these Terms shall include a payment to the Payment Processor.

Platform means the online Auction platform through which We may provide the opportunity to participate in an Auction from time to time.

Property or **Lot** means a property referenced in a Listing for sale at an Auction and **Properties** and **Lots** shall be construed accordingly.

Purchaser means the successful Bidder for a Property at Auction, or as the case may be, the person or non-natural body represented by such Bidder.

Purchase Price means the price of the winning bid being the price the Purchaser agrees to pay and the Seller agrees to accept as consideration for the sale and purchase of the Property.

Reservation Contract means the contract entered into between the Purchaser and Us (on behalf of the Seller) at Auction Close giving the Purchaser exclusive rights to purchase the Property and enter into the Contract of Sale to complete the Exchange of Contracts within the Exclusivity Period.

Reservation Fee means the amount specified in the Listing that is required to be paid by the Purchaser at Auction Close in order to enter into a Reservation Contract.

Reserve Price means the minimum price at which the Auctioneer is authorised by the Seller to sell the Property.

Seller means the person disposing of the Property at the Auction.

Seller's Legal Pack means the legal documents prepared by or on behalf of the Seller in respect of a Property including the Contract of Sale.

Services means the online auction facility provided via the Platform through which Sellers can sell and Bidders can bid for and purchase real estate property.

Terms means these online Auction terms and conditions, as may be modified from time to time.

You or **Your** refers to any Bidder, Purchaser or their employee, representative or agent.

2. Registration and Auction Passport Accounts

- 2.1 In order to access the Platform and Services and to participate in an Auction you must register as a Member and create an Auction Passport Account. You must be over 18 years of age to register as a Member.
- 2.2 You agree to be legally bound by these Terms. By using the Platform and/or Services you agree that you will be deemed to have agreed to be legally bound by these Terms.
- 2.3 In order to bid in an Auction we will ask you to provide to Us and/or our Payment Processor certain information and documentation which may include, without limitation: proof of your identity, proof of your address, your solicitor's details and your bank or credit card details;
- 2.4 Where you are acting as agent for a proposed nominee Purchaser, we may also require you to provide relevant identification and verification information and supporting documents in respect of that person.
- 2.5 You promise that all information that you provide shall be accurate and complete.
- 2.6 You must treat any Auction Passport Account log in details as confidential and not disclose them to anyone else. You must tell us immediately if you know or suspect that anyone other than you know your username or password.
- 2.7 You promise that you have authority to use the Platform and the Services, to participate in an Auction, bid on a Property and enter into a legally binding contract to purchase Property, whether as Purchaser or on behalf of a Purchaser.

2.8 We reserve the right to refuse any Member registrations and suspend or withdraw access to any Auction Passport Account at our sole discretion.

2.9 We will process any personal data as collect or receive from you in accordance with our privacy policy. By using the Platform, you consent to such processing of your personal data.

3. Guide Price and Reserve Price

3.1 A Reserve Price may or may not be placed on a Property.

3.2 A Guide Price may be provided on a Listing. We accept no responsibility for any loss, cost or damage that a Bidder or Purchaser may incur as a result of relying on a Guide Price. It is the Bidder's responsibility to decide how much to bid for any Property. A Guide Price may change at any time prior to the Auction and is in no way indicative of how much the Property will sell for.

3.3 Any Guide Price or Reserve Price stated will be exclusive of any additional fees and costs that a Purchaser may have to pay. It is Your responsibility to check all the available information regarding additional costs and fees.

3.4 All prices stated are inclusive of VAT, unless otherwise stated.

4. Listings

4.1 We will use our reasonable endeavours to make Listings available for forthcoming Auctions for viewing on the Platform. All information provided and statements given in Listings, Particulars and the Seller's Legal Pack are provided for guidance and assistance only and should not be relied upon. We cannot promise You that it is accurate or complete. Bidders are responsible for checking the accuracy and completeness of any information provided in Listings, Particulars and the Seller's Legal Pack.

4.2 We cannot make any promise to You in respect of the condition, quality, state of readiness or fitness for purpose of any Property or working condition and suitability of any fixtures and fittings, heating appliances, appliances or other items included in the sale. You should satisfy yourself as to the condition, quality, state of readiness or fitness for purpose of any Property by physically viewing and inspecting the Property and where possible engaging a professional surveyor. We are not responsible for any loss or damage to the Property directly or indirectly due to a Bidder or other authorised person being given access to a Property.

4.3 We may elect to divide Listings into multiple Properties or combine more than one Property into a single Listing.

5. Bidder Security

5.1 Bidders agree to pre-authorise the Bidder Security amount on their payment card (or other payment method) in advance of placing a Bid for a Property at the Auction. These pre-authorised Bidder Securities will be held in security by the Payment Processor and You grant Us and the Payment Processor authority to exercise that hold and take the funds as part payment of the Reservation Fee should You be the successful Bidder at Auction Close.

5.2 After Auction Close the Bidder Securities pre-authorised by unsuccessful Bidders will be released.

6. The Auction

- 6.1 The Auction will be conducted in accordance with these Terms.
- 6.2 The Auctioneer may cancel, suspend or rearrange an Auction at Our sole discretion and shall not be liable to You or any other person for any loss or damage suffered by reason of the fact that the Auction is not held at the date or time on the Listing.
- 6.3 Every Bidder shall be deemed to be acting as principal unless the Auctioneer has prior to the Auction acknowledged in writing that a Bidder is acting as agent on behalf of a named principal. We draw Your attention to clauses 10.2 & 10.3.
- 6.4 A Property may be sold or withdrawn from sale at any time prior to Exchange of Contracts.
- 6.5 The Auction will commence at the Auction Start and a countdown clock will display the time until the Auction Close.
- 6.6 If You are registered to Bid for a particular Property you will be able to place Bids on the relevant Listing for the Property on the Platform in accordance with our current guide to bidding.
- 6.7 Bids once made cannot be withdrawn.
- 6.8 Any extension to the time until Auction Close (**Extension**) will be applied in accordance with the Guide to Bidding.
- 6.9 The Auctioneer reserves the right to regulate the Bidding (including to adjust the Reserve Price to match the amount of an existing Bid) (at Our sole discretion) without requiring to provide a reason.
- 6.10 If two (2) or more Bidders attempt to lodge identical Bids, the first Bid received and acknowledged by the Platform will take precedence.
- 6.11 At the Auction Close, the Purchaser will be the Bidder who has made the highest Bid, at or in excess of the Reserve Price.
- 6.12 Each Bidder will be notified of the outcome of any Auction after the Auction Close.
- 6.13 The Auctioneer reserves the right (at Our sole discretion) to declare all results of the Auction as being null and void without requiring to provide a reason.
- 6.14 In the event that the Vendor accepts a pre-Auction offer the Auctioneer may withdraw the Property from the Auction and the parties shall proceed to deemed Exchange of Contracts and the remainder of these terms shall apply.
- 6.15 In the event of any dispute the Auctioneer's decision shall be final.

7. Fees

1. 7.1 At Auction Close You will pay an administration fee as follows:-
 - a. Where the Property is freehold - £500.
 - b. Where the Property is leasehold - £600.
2. 7.2 At the Auction close You will pay to the Auctioneer a Buyers premium of 2% of the agreed, subject to a minimum of £2,500 (including VAT)

8. The Contract for Sale

- 8.1 At Auction Close, a Reservation Contract will be entered into and the Purchaser agrees to enter into the Contract of Sale to complete the Exchange of Contracts within the Exclusivity Period.
- 8.2 The Purchaser grants authority to the Auctioneer or any person authorised by the Auctioneer, to sign the Reservation Contract relating to the Property on the Purchaser's behalf.

9. Payment of Reservation Fee and Purchase Price

- 9.1 We reserve the right in order to comply with our internal due diligence processes and obligations under applicable anti-money laundering or counter-financing of terrorism legislation, to make further enquiries and to seek further verification and/or implement further controls and monitoring with respect to any Purchaser or any other third party involved in providing funds.
- 9.2 The Purchase Price will be exclusive of any additional fees and costs that a Purchaser may have to pay. It is Your responsibility to check all the available information regarding additional costs and fees.
- 9.3 All prices stated are inclusive of VAT. Unless to be expressly stated as exclusive of VAT in the special conditions of Sale or other relevant documentation.
- 9.4 The Purchaser agrees to pay the Reservation Fee (less any Bidder Security retained in part payment of the Reservation Fee in accordance with clause 5.1) to the Auctioneer within two (2) Business Days of the Auction Close.
- 9.5 Where the Bidder Security is a higher amount than the Reservation Fee and there is therefore an excess, We will agree with the Purchaser whether they wish to receive a refund of the excess or they wish the excess to be held in part payment of the Purchase Price and paid over to the Seller's solicitor on the Completion Date, in which case the Excess will be held in security by Us and You grant Us authority to exercise that hold and pay the funds to the Seller's solicitor as part payment of the Purchase Price.
- 9.6 The Purchaser agrees to pay the Purchase Price (less any Reservation Fee and Excess already paid) to the Seller's solicitor together with any additional fees and costs on the Completion Date or when otherwise due to be paid.
- 9.7 Any refund due to be paid by the Seller to the Purchaser will be handled by Us.

10. Post completion arrangements

- 10.1 The Purchaser will not be entitled to the keys or access to the vacant Property until the Completion Date and receipt of the Purchase Price.
- 10.2 Where keys are to be collected from our office on the Completion Date, any keys we handover will have been provided by the Seller and we cannot promise that they will provide access to the whole or any part of the Property.
- 10.3 Where arrangements are made to post the keys, we take no responsibility for their delivery.

11. Liability of Purchaser and Agent/Representative

- 11.1 As the Purchaser, You are entering into obligations to the Seller and the Auctioneer. Bidding at Auction is only permitted on the basis You agree You will be personally liable in respect of any accepted Bid.
- 11.2 If the Purchaser fails to comply with their obligations to complete the Contract for Sale and pay the Purchase Price, then the Auctioneer and the Seller may have a claim for breach of contract. An agent or representative who Bids on behalf of the Purchaser may be liable to purchase the Property notwithstanding that they are acting as agent for the Purchaser.
- 11.3 The Purchaser agrees to indemnify the Auctioneer against any loss or damage suffered by them as a direct or indirect consequence of any breach of the Contract of Sale. If You bid as agent or other representative for a Purchaser, You agree You will be jointly and severally liable with the Purchaser on whose behalf You have bid as an agent or other representative.

12. Liability of the Auctioneer

- 12.1 We are under no liability to any Member, Bidder or Purchaser or their employees, representatives or agents in respect of any loss or damage as a consequence of exercising our rights or obligations under these Terms.

13. The Platform

- 13.1 The Platform is provided free of charge and is accessible at www.smartproperty.sale or such other website and/or application through which We and third party providers may provide the opportunity to participate in an online Auction from time to time.
- 13.2 We will use reasonable endeavours to make the Platform and our Services available, but We cannot guarantee to operate continuously or without interruptions. We will not be responsible to You if for any reason the Platform is unavailable at any time for any period. We accept no liability for any failures, delays or errors caused by interruptions in the availability of the Platform or Services or any errors or defects in their content or functionality, any software and/or hardware defects and/or any internet connectivity problems. We cannot promise that the Platform will be error free, virus free or that any defects will be corrected.
- 13.3 Although We make reasonable efforts to update information and content on the Platform, we cannot promise that it is accurate or up to date. We are not responsible for any loss or damage you suffer as a result of relying on such information.
- 13.4 Where the Platform contains links to other sites and resources provided by third party providers, You agree that we have no control over the contents of these sites or resources and that We are not responsible for such sites and resources.
- 13.5 The Platform content is not legal, financial or other professional advice and should not be relied upon as such.
- 13.6 We may suspend, withdraw, discontinue or change all or any part of the Platform without notice at any time.
- 13.7 We may use a third party provider of services such as web-hosting, transaction facilitation and support and maintenance to host and support the operation of the Platform.

14. Communications

- 14.1 You are responsible for making Your own arrangements to access, send and receive communications and/or notifications to and from the Platform.
- 14.2 We cannot promise that Bids, notifications or e-mails sent to or by Us will not be viewed or intercepted. The use of Internet e-mail carries certain risks. Confidentiality may be breached, messages lost or delayed, or may not be read and viruses may be transferred through the use of e-mail. We cannot accept responsibility for loss or damage suffered as a result of the use of Internet e-mail for communication between Us, or between Us and third parties.
- 14.3 We suggest that You telephone the intended recipient to check that time critical e-mails have been received.
- 14.4 You are solely responsible for securing and backing up any of Your content, or records of any communication or notification from or to Us.
- 14.5 Except as otherwise stated, any notices You wish to send Us should be emailed to hello@smartproperty.sale Such notice shall be deemed to have been received on the day and time of delivery.
- 14.6 Any notices that We wish to draw to Your attention will be displayed on our website www.smartproperty.sale and/or the Platform as appropriate.
- 14.7 E-mail exchange shall be sufficient for anything in these Terms that requires to be "agreed in writing".

15. General

- 15.1 All contents of the Platform are owned by Us or a third party licensor and may not be copied, downloaded, distributed or published in any way without our prior written consent, except that you may print, copy, download or temporarily store extracts for your personal information when you make use of the Services.
- 15.2 We reserve the right to amend these Terms at any time. Amendments will take effect when updated Terms are posted on our website www.smartproperty.sale Each Property may be subject to variations to these Terms.
- 15.3 You agree to comply with all applicable laws, statutes and regulations concerning Your use of the Services and Platform.
- 15.4 We exclude all warranties, conditions, terms, undertakings and representations of any kind, express, implied, statutory or otherwise in connection with the Services or Platform to the fullest extent permitted by law.
- 15.5 No provision in these Terms shall exclude or limit a party's liability in respect of fraud or fraudulent misrepresentation made by a party or their employee, representative or agent or in respect of death or personal injury.
- 15.6 If any part of these Terms is unenforceable the enforceability of any other part of the Terms will not be affected.
- 15.7 The Seller and any Bidder may not directly or indirectly initiate, solicit, negotiate or contract for the sale of the Property in an attempt to circumvent these Terms. In the event of a sale due to such circumvention the Seller and the Bidder shall be liable for the fees that would have been payable had the sale proceeded in accordance with these Terms.

- 15.8 These Terms together with any document or communication expressly referred to in these Terms is the entire agreement between us and supersedes any previous agreements or arrangements
- 15.9 These Terms and any dispute or claim arising out of or in connection with these Terms or their subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 15.10 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or their subject matter (including non-contractual disputes or claims).