

# Edward Mellor Online Auctions - Terms and Conditions for Buyers in a Conditional Auction

These conditions govern the conduct of Edward Mellor Online Auctions (a trading name of Edward Mellor Limited). All properties offered by auction using Edward Mellor Online Auctions are governed by these Terms and Conditions. By registering for an account and bidding at an Edward Mellor Online Auction, you agree to these Terms and Conditions now or in the future. If we change the Terms and Conditions, we will ask you to accept these before you continue to bid.

Bidders accept that the Auctioneer cannot offer guarantees against internet connectivity and server or software malfunction. If an internet, server or software problem occurs the Auctioneer reserves the right to stop the auction and to restart it when the service is restored.

## 1. Introduction & Definitions

### **The Conduct of the Auction (Auction Conduct Conditions).**

Regulates the conduct of the auction. By bidding on any property offered for sale in Edward Mellor Online Auction, you do so on the basis that you accept them.

### **Exclusivity Agreement Conditions**

If yours is the highest bid at the end of an Edward Mellor Online Auction and your bid is at or above the reserve price, then your submission of that bid will be deemed to have secured your exclusive "Option to Purchase" the property at the bid price within the time period stated in the Exclusivity Agreement.

The Conditions are legally binding.

### **Important Notice**

A prudent buyer should, before bidding for a property –

- Take professional advice from a legal adviser and, in appropriate cases, a chartered surveyor and an accountant.
- Read the conditions.
- Have finance available for the deposit and purchase price.

In addition, before buying a property a prudent buyer should –

- Carry out the relevant searches and make enquiries.
- Check whether VAT registration and election is advisable.
- Inspect the lot.
- Check that what is said about the lot in the Auctioneers description is accurate.
- Check the content of all available leases and other documents relating to the lot.
- Review the legal pack and forward it to their legal adviser.

**These conditions assume that the buyer has acted as a prudent buyer. If you choose to bid on a property without taking these normal precautions you do so at your own risk.**

**Definitions** - the meaning of words used in the terms and conditions.

These Definitions apply to the Auction Conduct Conditions and the Sale Conditions and the Exclusivity Agreement.

Wherever it makes sense –

- Singular words can be read as plurals and plurals as singular words.
- A “person” includes a corporate body.
- Words of one gender include the other genders.
- References to legislation are to that legislation as it may have been modified or re-enacted by the date of the auction or the contract date.

Where the following words printed in bold appear they have the specified meanings.

**Acceptance or Accepted**

Occurs when the **Bidder** is notified that theirs is the winning bid.

**Actual Completion Date**

The date when **Completion** takes place or is treated as taking place for the purposes of apportionment and calculating interest.

**Approved Financial Institution**

A bank or building society that has signed up to the banking code or business banking code or is otherwise acceptable to the **Auctioneers**.

**Arrears**

Arrears of rent and other sums due under the tenancies and still outstanding on the actual completion date.

**Arrears Schedule**

The arrears schedule (if any) forming part of the **Special Conditions**.

**Auction**

The Online Auction.

**Auctioneers**

The auctioneer providing the **Auction**.

**Bidder**

A person who registers to bid and partake in an **Auction**.

**Bidder Registration Process**

The process by which information and data is taken in relation to a **Bidder**. This may include, but is not limited to their identity, debit or credit card details and contact information.

**Business Day**

Any day except Saturday or Sunday, a bank holiday in England and Wales and Good Friday or Christmas Day.

**Buyer**

The person who bids and secures the **Exclusivity Agreement** for the **Property** or that persons representative or agent. If two or more are jointly the **Buyer** their obligations can be enforced against them

jointly or individually. The buyer confirms they are 18 years of age or older and entitled to enter into a binding contract.

### **Completion**

Completion will be set 20 business days after **Contract Exchange**, unless otherwise stated by the seller.

### **Condition**

One of the **Auction Conduct** conditions or **Sales Conditions**.

### **Contract**

The contract by which the **Seller** agrees to sell and the **Buyer** agrees to buy the property.

### **Contract Exchange**

The point at which the **Contract** is exchanged and the commitment to buy and sell is effective.

### **Exclusivity Agreement**

The **Agreement** (set out below) by which the **Buyer** and the **Auctioneer** (on behalf of the **Seller**) agrees to be bound giving the **Buyer** the exclusive right to purchase the **Property** within the **Exclusivity Period** established in the **Agreement** at the **Price** of the **Acceptance**.

### **Exclusivity Agreement Fee**

The fee paid by the **Buyer** to the **Auctioneer** to purchase the **Exclusivity Agreement**, being the amount of £1,995 including VAT. This fee will be held in a client account of the Auctioneer during the **Exclusivity Period**.

### **Exclusivity Arrangement Fee**

A fee of £1,995 including VAT, which is a non-refundable administration charge paid by the **Buyer** to the **Auctioneer** within 24 hours of **Acceptance**.

### **Exclusivity Period**

The period of 20 **Business Days** from the date of the **Exclusivity Agreement** (unless varied within the **Exclusivity Agreement**).

### **Fees**

The **Exclusivity Arrangement Fee** and the **Exclusivity Agreement Fee**.

### **Legal Pack**

Documents that may include title if registered, the entries on the register and other documents listed or referred to in any **Special Conditions** or the **Particulars of Sale** relating to the **Lot**.

### **Lot**

The **Property** described in the **Particulars of Sale** that the **Seller** has agreed to sell.

**Online**

On Edward Mellor's website or on one of our approved partner's websites.

**Option to Buy**

Gives the winning **Bidder** an **Exclusive Period** to proceed to **Contract Exchange** for the **Property**.

**Particulars of Sale**

The description of the **Property** used by the **Auctioneers** in the **Auction** including and **Special Conditions**.

**Previously Marketed Price**

A price at which the property has been previously listed, either by us or by our approved partner agents.

**Price**

The price that the **Buyer** agrees to bid for the **Property** in order to obtain the benefit of the **Exclusivity Agreement**.

**Property**

The property that is the subject of the **Auction**.

**Seller**

The person **Selling** the property. If two or more are jointly the **Seller** their obligations can be enforced against them jointly or individually.

**Special Conditions**

Those of the **Sale Conditions** so headed that relate to the **Lot**

**We (and us, our)**

The **Auctioneers**.

**You (and your)**

Someone who participates in an auction by bidding, not necessarily the **Buyer**.

## 2. Auction Conduct Conditions

When a property is advertised for auction **Online**, you will be granted access to the auction solely on the basis that **you** accept these Online Auction terms and conditions which regulate **our** relationship with **you** and cannot be treated as not applicable or varied by any **sale conditions** (even by a condition purporting to replace the whole of the terms). They are only varied if Edward Mellor Online Auctions agree in writing.

## 3. Our role

### 3.1

As agents for the **Seller** we are authorised to: -

- Offer the **Property** for sale by **Auction**.
- Receive the **Fees** (where applicable).
- Sign the **Exclusivity Agreement** on behalf of the **Seller** and the **Buyer**.
- Cancel the **Exclusivity Agreement** should the **Buyer** fail to pay the **Fees**.

### 3.2

**Our** decision on the conduct of the **Auction** is final.

### 3.3

**We** are authorised to cancel the **Auction** or amend the way in which a property is offered for sale. We may also combine or separate properties. We retain the right to sell or withdraw a property prior to the **Auction**.

### 3.4

**You** agree that to the extent permitted by law **we** owe **you** no duty of care and **you** have no claim against **us** for any loss.

## 4. Bidding and Reserve Prices

### 4.1

Bids will be made in pounds sterling exclusive of any Value Added Tax (**VAT**) that may apply.

### 4.2

No bids will be accepted without you having provided us prior to the Auction the security of a pre authorised credit or debit card for the Fees of £3,990 including VAT.

Payments are processed by Stripe and funds will be taken on a “pre-authorised” basis, no money will be taken from your card but it will show as a “Pending Transaction”. Pre-authorisation is technically a hold on your funds and at the close of the auction the pre-authorisation amount will be replaced by an actual charge debited from your card, but only if you are the winning **Bidder**. If you are not the winning **Bidder** or if the **Property** is not sold we will immediately release the hold on your funds, however, it can take up to 5 days for the release to be confirmed by your bank or card provider.

#### 4.3

**We** may refuse to accept a bid for any other reason. **We** do not have to explain why.

#### 4.4

Every bid made **Online** must comply with the terms and conditions which apply to use of our website or our partner's websites (as applicable).

#### 4.5

If there is a dispute over bidding **we** are entitled to resolve it, and **our** decision is final.

#### 4.6

Unless stated otherwise, each property is subject to a **Reserve Price**, being the price at which the Seller has authorized the Auctioneer to accept a winning bid. If no bid equals or exceeds that **Reserve Price** at the end of the **Auction**, the property will be withdrawn from the **Auction**.

#### 4.7

The **Seller** may bid (or instruct **us** or another party to bid on their behalf) up to the **Reserve Price** but may not make a bid at or exceeding the **Reserve Price**. You accept that all bids up to the **Reserve Price** may be made by or on behalf of the seller.

#### 4.8

Where a guide price or range of prices is used, that guide in the Particulars of Sale is just a guide and does not guarantee that bidding that sum will result in a bid being accepted. Guide prices may be subject to change and the last published guide price may be at or above any reserve price, but not always – as the **Seller** may fix the final **Reserve Price** just before bidding commences.

#### 4.9

Should you wish to place a bid in person then such a bid can be placed by attending at our offices by prior arrangement.

### 5. Particulars of Sale and Other Information

#### 5.1

**We** have taken reasonable care to prepare **Particulars of Sale** and **Legal Pack** that correctly describe the **Property**. The particulars are based on information supplied by or on behalf of the **Seller**. **You** need to check that the information is correct.

#### 5.2

The **Particulars of Sale** and **Legal Pack** may change prior to the **Auction** and it is **your** responsibility to check that **you** have the correct version.

#### 5.3

If **we** provide reports, information or copies of documents supplied to **us** by others **we** are not responsible for the accuracy of that report, information or document.

## 6. Exclusivity Agreements

### 6.1

A winning bid is the:-

6.1.1 highest bid at the end of the **Online Auction** and is at or above the **Reserve Price**; and/or

6.1.2 is the bid that is **Accepted** by the **Seller**

### 6.2

If yours is the winning bid **you** must pay the **Fees** to **us** within 24 hours of the end of the auction.

### 6.3

By accepting these terms and conditions **you** authorise the **Exclusivity Agreement** to be signed by **us** on **your** behalf at the end of the auction if **you** are the winning bidder being notified that your bid is **Accepted**.

### 6.4

**You** must supply the information **we** reasonably need from **you** to enable **us** to complete the **Exclusivity Agreement**.

### 6.5

If you fail to pay the **Fees** within 24 hours of the close of the Auction we may treat that failure as your voiding of the **Agreement** and offer the **Property** for sale again or offer the right to **Exclusivity** to another Bidder but in such circumstances you remain liable for the **Fees** and we reserve the right to take action against you to receive the **Fees** and the costs of doing so, including fees of £350 per day for attendance at Court.

### 6.6

The **Fees** must be paid by debit card, bankers draft, transfer or personal cheque. Directions for payment will be provided by **us**.

### 6.7

**We** shall retain electronic data of an **Accepted Bid** and may retain any other bid activity on the property.

### 6.8

If **you** fail to comply with your obligations under the **Exclusivity Agreement** then **you** are personally liable to comply even if **you** are acting as an agent for the **Buyer** or buying on behalf of a company.

### 6.9

If the **Buyer** is a company, you certify the Buyer is properly constituted and able to buy the property.

## 7. **Binding Obligations**

### 7.1

These conditions should be read together with the **Exclusivity Agreement** applicable to a particular **Property**. If there is inconsistency between these conditions and the provisions of an individual **Exclusivity Agreement** the relevant provisions of the **Exclusivity Agreement** shall apply.

### 7.2

As these conditions and the **Exclusivity Agreement** contain legally binding obligations on you it is recommended you seek independent legal advice on these conditions and the **Exclusivity Agreement** before making any bid on a property.

## 8. **Auctioneer**

### 8.1

You agree that we act as the agent of the **Seller** and not in our own capacity.

### 8.2

Save in the event of fraudulent activity, death or personal injury resulting from our negligence, neither **us** nor any of our partners, group companies, affiliates, third party service providers, licensors, officers, directors or employees shall have a liability of any nature howsoever arising in relation to these conditions or to any **property**.

### 8.3

You accept and agree that the **Auction** as provided by the Auctioneer, their agents or servants, could be subject to interruption, full or partial failure from time to time due to, but not limited to, internet connectivity, server or software. The **Auctioneer** will not be liable in any way for any loss or damage to **you** in this event.



# Exclusivity Agreement

**The Property**

.....  
.....  
.....

**Between**

**Seller**

.....  
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.....

**Buyer**

.....  
.....  
.....

**Price**

.....

This agreement is binding from the date and time that the online auction ends. It describes the terms and conditions under which the **Seller** and **Buyer** will enter into a period of exclusivity for the purpose of completing the **Transaction**.

**Parties Involved in the Transaction**

(1) (Sellers name and address) (**Seller**).

.....  
.....  
.....

(2) (Buyers name and address) (**Buyer**).

.....  
.....  
.....

**BACKGROUND**

- (A) The **Seller** and **Buyer** intend to enter into the **Transaction** subject to contract.
- (B) The **Seller** will not enter into the **Transaction** with any person other than the **Buyer** during the **Exclusivity Period**.
- (C) The **Seller** and **Buyer** are entering into this agreement in good faith and will rely on its terms.

**AGREED TERMS**

**1.**

1.1 The definitions in this clause apply throughout this agreement.

**Buyer's Obligations:** the obligations of the **Buyer** set out in clause 3 below.

**Buyer's Solicitors:** The buyers nominated solicitor or legal representative.

**Exclusivity Period:** is 20 **Business Days** beginning on the date of this Agreement.

**Exclusivity Agreement Fee** means the fee paid by the **Buyer** to the **Auctioneer** to purchase the **Exclusivity Agreement**, being the amount of £1,995 including VAT. This fee will be held in a client account of the Auctioneer during the **Exclusivity Period**.

**Exclusivity Arrangement Fee** means the non-refundable fee payable to the **Auctioneer** of £1,995 including VAT.

**Property:** [ADDRESS OF THE PROPERTY].

.....

.....

.....

**Seller's Obligations:** the obligations of the **Seller** set out in clause 2 below.

**Seller's Solicitors:** **Seller's** nominated Solicitor or legal representative.

**Transaction:** the sale of the **Property**.

**Transaction Documents:** the draft sale and purchase agreement including but not limited to replies to Standard Enquiries and the Legal Pack.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax.

## 2. Seller's Obligations

2.1 In consideration of the **Buyer** undertaking and incurring costs in connection with the **Buyer's Obligations**, the **Seller** undertakes: -

2.1.1 to instruct their solicitors as soon as possible to send the **Transaction Documents** to the **Buyer's** Solicitors by first class post or by recognised document exchange or by hand to their address or document exchange number (as appropriate);

2.1.2 during the **Exclusivity Period** not to send, instruct or permit anyone else to send any **Transaction Documents** to anyone other than the **Buyer's Solicitors**;

2.1.3 during the **Exclusivity Period**, not to (nor instruct or allow anyone else to):-

(i) transact or attempt to transact with the title to the **Property** except with the **Buyer**; or

(ii) solicit or respond to any offer to transact or attempt to transact with the title to the **Property** with anyone other than the **Buyer**.

2.2 During the **Exclusivity Period** the **Seller** agrees:-

2.2.1 they have not instructed anyone to grant another **Exclusivity Agreement** of the **Property**;

2.2.1 not to transact with the title to the **Property**;

2.2.3 not to send, instruct, or permit anyone else to send any contract for sale of the **Property** to anyone other than the **Buyer's Solicitors**;

2.2.4 to provide access to the property that may be reasonably required by any surveyor or valuer appointed by the **Buyer**;

2.2.5 not to negotiate terms with anyone other than the **Buyer** for the sale of the **Property**;

2.2.6 to use all reasonable efforts to proceed to a formal **Contract Exchange** within the **Exclusivity Period**;

2.2.7 to immediately instruct the seller's solicitors to issue a contract for the sale of the property to the buyer's solicitors.

### 3. Buyer's Obligations

3.1 In consideration of the **Seller** undertaking the **Seller's Obligations**, the **Buyer** undertakes to pay the **Fees** to the Auctioneer. The payment must be made immediately upon the **Seller's Acceptance** of the **Buyers** bid.

3.2 Upon **Acceptance** the **Buyer** will immediately instruct their solicitors to take such steps as are necessary to enable contracts for the **Transaction** to be exchanged within the **Exclusivity Period**.

3.3 The **Buyer** agrees that the Fees are due and payable to the **Auctioneer** if the **Buyer** gets the benefit of the **Exclusivity Agreement** and its **Exclusivity Period**.

3.4 The **Buyer** agrees to promptly:-

3.4.1 if the **Buyer** intends to use a loan or mortgage in connection with the purchase of the **Property**, the **Buyer** shall apply to the relevant lender and complete all necessary documentation and do all such things as the lender may require to process the **Buyer's** application as soon as possible including the payment of any application fees;

3.4.2 if the **Buyers** mortgagee or lender requires that the property is surveyed and/or valued, the buyer will use all reasonable endeavours to arrange for the survey or valuation to take place at the property as soon as reasonably possible including the payment of any valuation fee; and

3.4.3 keep the **Auctioneer** or our partner agent and the **Seller's Solicitors** informed of progress with the application for the loan.

### 4. TERMINATION and the **Exclusivity Arrangement Fee** and **Exclusivity Agreement Fee**

#### 4.1 Forfeiture of the **Fees**

4.1.1 The **Buyer** may terminate this agreement with immediate effect by written notice to the **Seller** in which case the **Buyer** will forfeit the non-refundable **Exclusivity Arrangement Fee**. The **Exclusivity Agreement Fee** will be refunded in full.

4.1.2 This agreement shall terminate on expiry of the **Exclusivity Period** and if **Contract Exchange** is not achieved, through no fault of the **Seller**, the **Buyer** will forfeit the **Exclusivity Arrangement Fee**. The **Exclusivity Agreement Fee** will be refunded in full.

4.1.3 The **Seller** may terminate this agreement with immediate effect by written notice to the **Buyer** if the **Buyer** is in breach of any of the **Buyer's Obligations**, in which case the **Buyer** will forfeit the **Exclusivity Arrangement Fee**. The **Exclusivity Agreement Fee** will be refunded in full.

#### 4.2 Recovery of the **Fees**

4.2.1 The **Buyer** may terminate this agreement with immediate effect by written notice to the **Seller** if the **Seller** is in material breach of the **Seller's** obligations, in which case the **Exclusivity Arrangement Fee** and **Exclusivity Agreement Fee** will be returned to the **Buyer**.

4.2.2 The **Buyer** can terminate this agreement if the property is damaged or destroyed during the **Exclusivity Period** so as to make it uninhabitable, in which case the **Exclusivity Arrangement Fee** and **Exclusivity Agreement Fee** will be returned to the **Buyer**.

4.2.3 The **Buyer** can terminate this agreement in the event that; i) a survey reveals a serious structural defect that renders the property unmortgageable; ii) the **Seller** is

unable to deduce good and valued legal title to the **Property** prior to **Contract Exchange**, in which case the **Exclusivity Arrangement Fee** and **Exclusivity Agreement Fee** will be returned to the **Buyer**.

**5. Time of the Essence**

Time is of the essence for the purposes of this agreement.

**6. Exclusion of Third Party Rights**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

This agreement has been entered into on .....following the end of the online auction on ..... 2018.

Signed by

.....

Signed for and on behalf of Edward Mellor Auctions as instructed by the Seller.

Date.....

Signed by

.....

Signed for and on behalf of Edward Mellor Auctions as instructed by the Seller