

## **TERMS AND CONDITIONS OF SALE**

HARRY DAVIS LLC t/a HARRY DAVIS & COMPANY AUCTIONEERS

**NOTICE: All bidders and prospective bidders acknowledge that they have read, understand and accept all of these Terms and Conditions and agree to be bound thereby.**

These Terms and Conditions together with any amendments or modifications announced by the Auctioneer at the time of the sale, any terms and conditions posted on the Auctioneer's website [www.harrydavis.com](http://www.harrydavis.com) and on the Internet Provider's website identified on Auctioneer's website for this sale and any additional terms presented to bidders or prospective bidders shall constitute the terms and conditions of this sale. Any amendments or modifications announced by the Auctioneer at the time of the sale that differ from any written or posted terms and conditions shall supersede any written or posted terms and conditions.

1.     **REGISTRATION.** All prospective bidders are required to register prior to bidding and provide their full name, mailing address, email address and telephone number, and any person registering for an entity, is required to provide his or her full name, title and contact information. All persons registering on their own behalf or on behalf of an entity warrant that all information furnished to Auctioneer and the Internet Provider is complete, truthful and accurate and authorize the Auctioneer to contact them and the entity by email regarding this and other sales and equipment offerings. Persons registering on behalf of an entity warrant that they are duly authorized to bind the entity to these Terms and Conditions and on all matters with respect to the sale. Auctioneer reserves the right in its sole discretion to deny registration to any person or entity.

2.     **DEPOSIT.** Auctioneer reserves the right to require all bidders to provide a deposit equal to 25% of the maximum amount they anticipate spending at the sale in order to participate. The deposit shall be in cash, cashier's check or personal or company check with a bank guarantee of payment. All checks for the deposit shall be payable to HARRY DAVIS LLC. Wire transfers will be accepted by prior arrangement with Auctioneer. Auctioneer reserves the right to deny further bidding once bidding exceeds the deposit requirement. The deposit will be applied to the purchase price of all items purchased. Any unused deposit will be refunded to bidders following completion of the sale if nothing is purchased or to purchasers at the expiration of the removal deadline providing the purchaser has complied with all of the terms and conditions for the sale.

3.     **BUYER'S PREMIUM.** A buyer's premium will be charged by the Auctioneer on all sales to be added to the successful bid the amount of which will be posted on the Auctioneer's website for this sale. Online bidders will be charged an additional buyer's premium for the Internet Provider the amount of which will also be posted on the Auctioneer's website for this sale. For auctions in Wisconsin no buyer's premium will be charged. On Wisconsin auctions Auctioneer will charge a "buyer's fee" which will be added to the successful bid the amount of which will be posted on the Auctioneer's website for the sale and an additional "buyer's fee" for online bidders for the Internet Provider which will also be posted on the website for the sale.

4. SALES TAX. Bidders shall be responsible for payment to Auctioneer of all applicable sales taxes. Where Auctioneer is required to collect sales tax, a bidder that is exempt must provide an exemption certificate satisfactory to Auctioneer to be entitled to claim the exemption.

5. PAYMENT. Unless otherwise specifically agreed by the Auctioneer, payment in full for all purchases plus the buyer's premiums or buyer's fees, whichever is applicable, and any applicable sales tax shall be made at the conclusion of the sale by all on-site purchasers. Online purchasers will be invoiced following the sale payment of which shall be due and payable on receipt. Payment shall be by cashier's check or with prior arrangement with the Auctioneer by wire transfer. Personal and company checks accompanied by a bank guarantee of payment may be accepted by Auctioneer in its sole discretion. A fee will be charged for wire transfers. All checks shall be payable to HARRY DAVIS LLC.

6. REMOVAL. Terms and conditions for removal of purchases, including deadlines, will be posted on the Auctioneer's website for this sale and must be strictly adhered to by the purchasers. Removal shall be at the expense, risk and liability of the purchasers including, without limitation, any damage caused by purchasers' employees, representatives, agents or subcontractors in removal of their purchases. All purchases are required to indemnify and hold harmless the seller and HD from and against any and all liability arising out of removal of their purchases. No purchase may be removed from the sale site until payment is made in full for all purchases by purchaser and proof of payment presented by the purchaser. No purchase may be removed during the sale. Neither Auctioneer nor seller shall be responsible for purchases not removed within the time allowed. Auctioneer and/or seller shall have the option but not the obligation, to remove and store at the expense and risk of the purchaser items not paid for and removed within such time for resale as provided in Section 7. All riggers designated for removal are independent contractors and are to be engaged by the purchaser. Auctioneer shall not be liable for any damages caused to persons or property in connection with removal of equipment from the sale site by the purchaser or their rigger. Any rigging prices posted on Auctioneer's website or in any catalogue for this sale have been provided by the riggers and do not include the charges for any special handling for loading and transport of the purchased equipment. It shall be the responsibility of the purchaser to provide all equipment for transport of the purchased equipment from the sale site.

7. FAILURE TO PAY FOR PURCHASES. If a purchaser fails for any reason to pay for all purchased items when due, all purchased items shall be deemed abandoned by the purchaser at the option of the Auctioneer, and, Auctioneer and/or seller, in addition to all other remedies allowed by law, may resell the items at private or public sale without further notice. The purchaser shall be liable for any deficiency following resale and all removal, storage (at a minimum of \$2.00 per sq. ft.), interest (at a minimum except where prohibited by law of 1.5% per month or 18% per annum) and all other costs, charges and expenses relating to such resale or disposition including, without limitation, legal fees, costs and expenses. Auctioneer and/or seller shall be entitled to retain all sums received from any resale and apply them against the deficiency without further notice and shall not be required to account for sums received on resale in excess of the purchase prices. Alternatively, Auctioneer and/or seller may in their sole discretion retain all monies received as a deposit or payment on account as liquidated damages. Auctioneer and/or seller may dispose of any of said items that are not resold in any manner it deems appropriate in its sole discretion without liability to the purchaser.

8        **CONDITION OF ARTICLES SOLD.** Auctioneer and the seller shall not be responsible for the accuracy of the description in any advertising or catalogue of any item or lot or for any description of an item or lot stated during the course of the auction. All photographs and other images in any advertising or catalogues are for identification purposes only and are not indicative of the accuracy of the description or the merchantability, quality, condition or fitness of any item for any purpose. ALL ITEMS AND LOTS ARE SOLD ON AN “AS IS, WHERE IS AND ALL FAULTS” BASIS. NEITHER AUCTIONEER NOR SELLER MAKE ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR GUARANTEES, EXPRESS OR IMPLIED, OF ANY KIND AS TO THE NATURE, QUALITY, DURABILITY, CAPABILITY, FUNCTION, PERFORMANCE, VALUE, CONDITION OR SUITABILITY FOR ANY USE AND SPECIFICALLY DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TITLE TO ANY INTELLECTUAL PROPERTY RIGHTS IN THE PURCHASED ITEMS SHALL NOT TRANSFER TO THE PURCHASER, INCLUDING, WITHOUT LIMITATION, COMPUTER SOFTWARE RIGHTS, AND ALL ITEMS SHALL BE SUBJECT TO THE TERMS OF ANY EXISTING LICENSE OR OTHER INTELLECTUAL PROPERTY RIGHTS IN AND TO SUCH ITEMS. NO SALE WILL BE SET ASIDE OR ALLOWANCE MADE ON ACCOUNT OF ANY INACURACY IN THE DESCRIPTION OR THE CONDITION OF AN ITEM OR LOT AND ALL SALES WILL BE WITHOUT RECOURSE TO THE AUCTIONEER OR SELLER. PURCHASERS ACKNOWLEDGE THAT THEY HAVE INSPECTED OR HAVE BEEN GIVEN THE OPPORTUNITY TO INSPECT ALL ITMES UPON WHICH THEY ARE SUBMITTING BIDS PRIOR TO BIDDING AND CHOSE NOT MAKE AN INSPECTION AND ARE RELYING SOLELY ON THEIR OWN INVESTIGATION AND NOT UPON ANY INFORMATION PROVIDED BY AUCTIONEER OR SELLER OR OTHER PERSONS REPRESENTING OR PURPORTING TO REPRESENT AUCTIONEER OR SELLER. ALL PROSPECTIVE PURCHASERS ACKNOWLEDGE THAT UNLESS SPECIFICALLY STATED OTHERWISE THAT THE ITEMS BEING SOLD ARE USED ITEMS AND THAT THE SELLER IS NOT A DEALER OR MERCHANT OF ITEMS OF THIS TYPE. Auctioneer and seller encourage prospective purchasers to avail themselves of the opportunity to make inspections prior to bidding or purchasing.

9        **CONDUCT OF THE AUCTION.** Auctioneer shall control all matters in the conduct of the auction and its decisions shall be binding upon all bidders. Auctioneer reserves the right to group, regroup, reduce, add to, subdivide or withdraw any item or lot, to accept or reject any or all bids in its sole discretion and resolve all disputes between two or more bidders. Auctioneer also reserves the right in its sole discretion to sell all of the lots in bulk at any time during the auction, to augment the auction with additional items from additional sellers and/or items not listed in the catalogue and determine bidding increments. The Auctioneer and/or the seller may bid on any item or lot to protect their respective financial interests. Items or lots may be offered subject to reserve or subject to confirmation by the seller or by a court in a court authorized sale.

10.      **ONLINE BIDDERS.** All online bidders agree to be bound by the bidder terms and conditions of the Internet Provider identified on Auctioneer’s website for this sale. The Internet Provider is an independent contractor and not in any way affiliated with Auctioneer. Auctioneer does not warrant that the functions or content contained in the online bidding platform or software

of the Internet Provider, including any third-party software, will be timely, secure, uninterrupted or error free or that defects will be corrected, and Auctioneer hereby expressly disclaims any and all liability with respect thereto. All online bidders shall be bound by all bids regardless of the order and or time they are accepted or rejected.

11. **SALE BY ESTIMATED WEIGHT, COUNT OR MEASURE.** Where items are sold by estimated weight, count or measure, the purchaser will be billed for and required to pay for the estimated weight, count or measure. If upon delivery any shortage exists, the purchaser will receive a refund at the rate of purchase and if there is an excess the purchaser will be required to take and pay for such excess at the rate of purchase.

12. **PURCHASER'S RISK.** All purchases made at the sale as soon as they are announced as sold or posted sold on the Internet by the Auctioneer become the sole and absolute responsibility of the purchaser and the purchaser thereafter assumes all risk of loss and damage from any cause whatsoever (including, without limitation, loss by theft and damage caused by any riggers or others at the sale site) and all liability relating to or arising from the use of the purchased items. In no event shall Auctioneer or seller be liable to purchaser or any third person for injuries or damages to persons or property by reason of any defects or conditions, latent or otherwise, in or arising from the physical condition of any purchased item, the use of any purchased item or for any materials or substances contained in any purchased item, and purchasers shall indemnify and hold Auctioneer and seller, and their respective officers, members, employees, agents and representatives harmless from any and all such losses, claims and expenses, including, without limitation, attorneys' fees, costs and expenses.

13. **AUCTIONEER'S AND SELLER'S LIMITS OF LIABILITY.** Auctioneer and seller shall not in any event be liable for the non-delivery of any item or lot for any other reason except for the return to the purchaser of the deposit or other sums paid for such item or lot should the purchaser be entitled thereto. Under no circumstances shall the Auctioneer or seller be held liable for an amount greater than the amount actually paid by the purchaser. Purchasers acknowledge and agree that the Auctioneer and Seller shall have no liability for special, consequential, punitive or incidental damages. No claim under any circumstances shall be allowed after removal of an item or lot from the sale site.

14. **RISK TO PERSONS AND PROPERTY; RELEASE.** All purchasers and prospective purchasers, and all persons entering upon the premises of the sale site on their behalf, or at their invitation, for any reason whatsoever, do so at their own risk, expressly assume all risk of injury or damage while on said premises and agree that neither the Auctioneer nor the seller shall be held liable by reason of any injury or damage to them or their property while on said premises. All said persons to the fullest extent permitted by law, in consideration of their being permitted to enter upon the premises of the sale site, hereby release, indemnify and hold harmless Auctioneer and seller and their respective officers, members, employees, agents and representatives from any and all claims of any kind or nature to persons or property arising while on said premises.

15. **SEVERABILITY.** If any of the provisions of these Terms and Conditions or any terms and conditions of the Internet Provider shall be held to be void or unenforceable all of the remaining terms and conditions herein and those of the Internet Provider shall remain in full force

and effect and shall in no way be affected, impaired or invalidated thereby; provided, however, if any term or condition is deemed unenforceable because it is too broad or unreasonable, such term or condition may be judicially modified to the minimum extent required to enforce such term or condition.

16. SECTION TITLES. The section titles in these Terms and Conditions are inserted for convenience of reference only and shall in no way enlarge or limit the scope or meaning of any of these Terms and Conditions.

17. WAIVER: The failure of Auctioneer at any time to require performance of any provision hereunder by a bidder or purchaser shall not affect Auctioneer's rights thereafter to enforce the same against the bidder or purchaser or any other bidder or purchaser nor shall a waiver of any provision hereof be taken or held to be a waiver of any other term or provision of these Terms and Conditions.

18. GOVERNING LAW, JURISDICTION AND VENUE. These Terms and Conditions and all matters with respect to this sale shall be governed by the laws of the Commonwealth Pennsylvania without regard to the conflicts of laws principles thereof. Any litigation in connection with this sale, any matter related thereto or arising therefrom or under these Terms and Conditions or the Terms and Conditions of the Internet Provider shall be brought exclusively in the Court of Common Pleas of Allegheny County, Pennsylvania and all bidders and purchasers consent to the jurisdiction and venue of said court. The prevailing party in any such litigation shall be entitled to recover from the losing party all costs and expenses of such litigation including attorneys' fees, costs and expenses.