

# TERMS & CONDITIONS

The Terms & Conditions set out herein in addition to Terms & Conditions which may be expressly agreed between REA (Real Estate Alliance) T/A BidNow and the auctioneer, REA McGreal Burke, or which have been set out on the website are the only ones on which the sale will occur and will prevail over any Terms & Conditions put forward by the user of BidNow. By bidding at the auction, bidders and buyers agree to be bound by these Conditions of Sale, as so changed or supplemented.

## 1. CONTACT US

To contact us, please telephone +353 (91) 395300 or email [robert@reamcgrealburke.ie](mailto:robert@reamcgrealburke.ie)

## 2. DEFINITIONS AND INTERPRETATION

- a) For the purposes of the interpretation of this contract and any dispute arising therefrom the headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of, or to effect, the meaning or interpretation thereof.
- b) For the purposes of the interpretation of this contract and any dispute arising therefrom the following words and expressions shall have the following meanings;

*"Auctioneer"* means any registered firm which is listing property for sale on BidNow.

*"Buyer"* means the highest bidder acceptable to the auctioneer who buys at the hammer price.

*"Catalogue"* means any advertisement, brochure, estimate, price or other publication displayed on BidNow or otherwise.

*"Lot"* means any item which is placed with the auctioneer with a view to its being sold at auction.

*"Bid"* constitutes the purchaser's offer to purchase the lot on the basis of these Terms & Conditions

*"Hammer price"* means the price at which bidding on a lot finishes at the time of close of auction after meeting the reserve set by the auctioneer, it is confirmed by email to agent and buyer.

*"Sniping"* means a practice of placing a bid which is likely to exceed the current highest bid, including hidden bids, as late as possible removing the possibility of being outbid.

*"V.A.T."* means Value Added Tax.

*"Close of Auction"* means the closing of an auction which is confirmed by the issuing of emails in respect of this closure to buyer and agent.

*"Registration form"* means the completed page which is provided at registration stage detailing, amongst other matters, name and contact information of the user of BidNow.

"Proof of funds" means documentary evidence of proof of availability of funds to purchase, this may include:

- (i) Copy of bank statement in the name of the bidder.
- (ii) Letter of offer from mortgage lender to the bidder.

"Lien" means a right to keep possession of property which is legally owned by another person until a debt owed by that person is discharged.

### 3. CONDUCT OF THE AUCTION

Where the sale is by auction through BidNow the following provisions shall apply:

- a) In the case of REA McGreal Burke acting as agent, the auctioneer is selling as agent for the seller unless specifically stated to the contrary. In acting as agent for the seller the auctioneer is not responsible for any default by the seller or buyer. The auctioneer does not have the right to bid on behalf of the seller.
- b) The interests of prospective buyers are best protected and served by the buyers bidding at auction. The auctioneer will not execute bids on behalf of a prospective buyer.
- c) It shall be unlawful for the bidder to make a bid for the property on behalf of the vendor, subject to certain exemptions. See Exemptions Section of the Property Services (Regulations) Act, 2011, Part 6, Section 58, Pages 60 and 61 [www.psr.ie](http://www.psr.ie).
- d) Bidders and buyers on BidNow confirm that they are in possession of sufficient funds at the time of bidding.
- e) BidNow shall have the right, at its discretion, to refuse admission to any individual or entity to the website.
- f) The Auctioneer shall have the right, at its discretion to:
  - (i) refuse any bids.
  - (ii) advance the bidding in any manner it may decide.
  - (iii) withdraw or divide any lot.
  - (iv) combine any two or more lots.
  - (v) put any lot up for auction again in the case of a dispute.
- g) Any dispute which may arise with regard to bidding or the acceptance of bids shall be settled by the auctioneer.
- h) Every bidder shall be deemed to act 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.
- i) With regard to the sale of any Lot the auctioneer shall have the following powers exercisable at its sole discretion:
  - (i) To decide whether to offer any lot for sale or not;
  - (ii) To decide whether a particular lot is suitable for sale by the auctioneer and, if so, to determine the conditions of sale, duration and the manner in which such a sale should be conducted;
  - (iii) To determine the description of any lot on [bidnow.ie](http://bidnow.ie)
  - (iv) To determine what illustration of a lot, if any, is to be included on [bidnow.ie](http://bidnow.ie)

BidNow shall have no liability whatsoever for any such action taken by the auctioneer.

- j) Bidders are required to provide a standard deposit "Bidder Security" of €4,350.00 (Inclusive of €350.00 Administration Fee) which is payable by credit card or debit card by way of a hold on the card, cheque/bank draft or bank transfer prior to the commencement of the online auction. This amount may vary from time to time at the discretion of the auctioneer and will be dependent on the reserve that has been placed on the property concerned (Inclusive of €350.00 Administration Fee). Cheques drawn by third parties whether in the auctioneer's favour or requiring endorsement may not be accepted. The administration fee does not form part of the deposit.
- k) Bidders must pay the deposit "Bidder Security" requested on the property in question to the auctioneer prior to gaining access to the bidding platform. These funds will then be held in trust by the auctioneer if paid by cheque/bank draft or bank transfer in their client account. The administration fee will not form part of the "hammer price" in the contract. Unsuccessful bidders will have the "Bidder Security" (inclusive of €350.00 Administration fee) hold released on their credit card or debit card, or if paid by cheque/bank draft or bank transfer this amount will be refunded to them by the auctioneer.
- l) Subject to the auctioneer's discretion, the seller shall be entitled, prior to the auction, to place a reserve on any lot. Unless a reserve has been placed on a lot, such a lot shall be put up for sale without reserve. The reserve shall be the minimum Hammer Price at which the lot may be sold by the auctioneer. Once in place a reserve may only be changed with the consent of the auctioneer.
- m) Sniping is not permitted on BidNow. The auction shall end when there are no bids placed within the last 60 seconds of the auction cycle. If a bid is placed within the last 60 seconds of the auction cycle, an additional 60 seconds will be added to allow for any further bids and this will continue until the bidding ceases.
- n) No person shall advance a bid at a sum less than that fixed by the auctioneer, and no accepted bid shall be retracted.
- o) In the event the reserve price has not been reached and provided the Lot remains with the auctioneer and has not been re-entered into another auction, the seller authorises the auctioneer to sell the lot by private treaty at a price which does not fall below the reserve price. In the event of a sale by private treaty the auctioneer shall ensure that those conditions provided for herein apply to such a sale and may be modified as necessary.
- p) Where any lot fails to sell at auction the auctioneer shall notify the seller accordingly and, in the absence of agreement between the seller and the auctioneer to the contrary, the lot may be re-entered on bidnow.ie at the auctioneer's discretion and subject to any instructions from the seller to the contrary.

#### **4. CONTRACT FOR SALE**

- a) Unless alternate terms have been agreed with the auctioneer before the auction, the buyer grants authority to the auctioneer or any person authorised by the auctioneer, to sign the contract for sale relating to the lot on the buyer's behalf.
- b) Bidders are required to provide a standard deposit "Bidder Security" of €4,350.00 or that amount as set by the auctioneer which is payable by credit card, debit card, cheque/bank draft or bank transfer prior to the commencement of the auction.
- c) At the auctioneers discretion, the buyer of the lot shall pay to the auctioneer within two (2) working days from the date of the auction, the balance of 10% of the total amount due. The auctioneer may apply any payments received by a buyer towards any sums owing by that buyer to the auctioneer on any account whatsoever irrespective of any directions of the buyer or his agent in that regard whether they be express or implied.

- d) Notwithstanding delivery or passing of risk to the buyer, the ownership of a lot shall not pass to the buyer until the contract for sale has been exchanged by both parties and the buyer has paid to the auctioneer, or the seller's solicitors if specified in the contract of sale, the total amount due.

#### **5. BREACH OF CONTRACT FOR SALE OR FAILURE TO SIGN OR RETURN CONTRACT**

- a) If a buyer fails to make payments for any purchased lot by the dates specified for payment or fails to sign or return contracts, the auctioneer shall have absolute discretion, without prejudice to any other rights or remedies it may have, to exercise one or more of the following rights or remedies without further notice to the buyer:
  - (i) To issue court proceedings for damages for breach of contract;
  - (ii) To rescind the sale of that lot or any other lots sold to the buyer whether at that or any other auction;
  - (iii) To resell the lot or cause it to be resold whether by public auction or private treaty sale. In the event there is a deficiency between the total amount due by the buyer and the amount received by the auctioneer on resale after deduction of any necessary expenses, the difference shall be paid to the auctioneer by the buyer while any surplus arising shall belong to the seller;
  - (iv) Levy a fixed penalty in the amount of €5,000.00
  - (v) To charge interest on the total amount due at the rate of 2% over and above the base rate issued by Bank of Ireland or if there be no such base rate, the nearest equivalent thereto to be determined by the auctioneer at its absolute discretion from the date on which the payment fell due hereunder to the date of actual payment;
  - (vi) To retain that lot or any other lot purchased by the buyer whether at the same or any other auction and release same to the buyer only after payment is made to the auctioneer of the total amount due;
  - (vii) To apply any sums which the auctioneer received in respect of lots being sold by the buyer towards settlement of the total amount due;
  - (viii) To exercise a lien on any property of the buyer in the possession of the Auctioneer for whatever reason.

#### **6. LIABILITY**

- a) Prior to auction ample opportunity is given for the inspection of lots on sale and associated legal documentation. In making a bid each buyer acknowledges that he has had ample opportunity to take independent legal advice and has satisfied himself as to the physical condition, title, legal status, age and description of each lot.
- b) Representations or statements made by the auctioneer or BidNow are a statement of opinion only.
- c) Neither the auctioneer or BidNow nor their employees, servants or agents shall be responsible for the accuracy of any such opinions. Every person interested in the lot must exercise and rely on their own judgement and opinion as to such matters.
- d) Neither the seller the auctioneer, BidNow nor any of their employees, servants or agents shall be responsible for the condition or authenticity of any lot or any error in its description.
- e) No warranty whatsoever is given by the seller, BidNow or auctioneer or by any of their employees, servants or agents in respect of any lot, excluding any condition or warranty express or implied by statute or otherwise.

- f) No provision in these conditions of sale shall be deemed to exclude or limit the liability of BidNow or any of our affiliated companies to the buyer in respect of any fraud or fraudulent misrepresentation made by any of us or in respect of death or personal injury caused by our negligent acts or omissions.

#### **7. INDEMNITY**

- a) Any indemnity given under these conditions shall extend to all actions, proceedings, claims, demands, costs and expenses whatsoever and howsoever incurred or suffered by the person entitled to the benefit of the indemnity.
- b) The auctioneer and BidNow declare themselves to be a trustee of the benefit of every such indemnity for their employees, servants or agents to the extent that such indemnity is expressed to be for their benefit.

#### **8. SELLER'S WARRANTY AND INDEMNITY**

- a) The seller warrants to the auctioneer, to BidNow and to the buyer that he is the true owner of the lot or is legally authorised to sell the lot on behalf of the true owner and can transfer good and marketable title to the lot free from any third party claims.
- b) BidNow shall have the right, but not the obligation, to rescind a sale without notice to the buyer if it reasonably believes that there is a material breach of the seller's representations and warranties or the authorship warranty or an adverse claim is made by a third party. The purchase price will be returned to the buyer.
- c) The seller shall indemnify the auctioneer, BidNow and the buyer or any of their respective employees, servants or agents against any loss or damage suffered by any of them in consequence of any breach of the above warranties or undertakings by the seller.

#### **9. INFORMATION REQUIRED FROM BUYERS**

- a) The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 requires that buyers provide the following:
  - (i) Copy of photo ID
  - (ii) Utility bill showing current addressto the auctioneer and/or all other parties connected with the sellers of the properties they are interested in before their BidNow account will be activated.
- b) Bidders and buyers confirm they are in a position to provide the auctioneer and/or all other parties connected with the sellers with proof of funds if so requested.
- c) This information will be used for the purposes as set out in our privacy policy. By agreeing to these conditions of sale, you consent to our use of your personal data, including sensitive personal data, in accordance with this privacy policy.

## **10. SOLICITORS**

- a) Solicitors on BidNow confirm that any and all information furnished to them is done so on a “subject to contract/contract denied” basis.
- b) Each solicitor acknowledges that they are providing independent legal advice to their respective client and are satisfied as to the physical condition, title, legal status, age and description of each Lot by exercising and relying on their own judgement.
- c) Solicitors acknowledge that any queries raised and/or replied to via BidNow may be shared with other parties at the discretion of BidNow.

## **11. NOTICES**

- a) Any notice or other communication required to be given by the auctioneer and or bidnow.ie hereunder to a buyer or a seller shall, where required be in writing and shall be sufficiently given if delivered by hand, sent by post or electronically, in the case of the buyer, to the address of the buyer specified on the registration form or register, in the case of the seller, to the address of the seller specified in the service agreement or to such other address as the buyer or seller may notify the auctioneer or BidNow in writing.
- b) Every notice or communication given in accordance with this condition shall be deemed to have been received if delivered by hand or email on the day and time of delivery and if delivered by post three (3) business days after posting.

## **12. GOVERNING LAW AND JURISDICTION**

- a) These conditions shall be governed by and construed in accordance with Irish Law with any disputes being subject to the exclusive jurisdiction of the Irish courts.