

Auktion & Markt General Terms and Conditions of Business for online auctions of commercial property and land.

I. General and applicable law

1. User of these General Terms and Conditions

The user of these General Terms and Conditions is Auktion & Markt Aktiengesellschaft, Klarenthaler Strasse 83, 65197 Wiesbaden, founded in accordance with the law of the Federal Republic of Germany with its head office in Wiesbaden, entered in Wiesbaden District Court's commercial register under the registration number HRB 20968.

2. Purpose of these General Terms and Conditions

The purpose of these General Terms and Conditions is the regulation of the auction of property and land (hereinafter known as property) by the user as a business operation (hereinafter known as the auctioneer) on behalf of and in the name of third parties (hereinafter known as vendors) to persons who are also business operations and not consumers (hereinafter known as bidders) via the user's Internet platform with the designation www.propertybid.de.

3. Other General Terms and Conditions

The following General Terms and Conditions also apply to future business with the bidder insofar as they are not replaced with others by the auctioneer before future business and the bidder informed. Contradictory General Terms and Conditions on the part of the bidder do not apply, even if the auctioneer does not expressly reject them.

4. Applicable law

The law of the Federal Republic of Germany shall apply exclusively.

II. Registration and approval as a bidder

1. Registration as a bidder

Every bidder must register before initial participation in an auction at www.propertybid.de.

The bidder must expressly declare and verify their capacity as a business operation in terms of Section 14 of the German Civil Code and their identity in terms of the Prevention of Money Laundering Act (see also VIII). For bidders with their head office within the territory of the Federal Republic of Germany, this verification is normally provided by submission of a commercial register entry (no older than 14 days when submitted), verification of the beneficial owner and a copy of the identity cards of the persons authorised to represent.

For bidders with their head office outside the territory of the Federal Republic of Germany, certified translations of the appropriate documents into German are required in addition. Bidders with their head office in a Member State of the European Union and bidders with their head office within the Federal Republic of Germany must also specify the valid VAT identification number they have been issued with.

Otherwise, the auctioneer specifies the type of verification and reserves the right to change this.

Apart from the aforementioned documents, all bidders must return the signed confirmation of registration, the agreement on the place of jurisdiction and recognition of the General Terms and Conditions as well as the declaration of confidentiality and agreement to the provision of a bank reference, or alternatively an accompanying letter from the bank, to the auctioneer.

2. Approval as a bidder

The bidder receives confirmation of registration from the auctioneer following successful registration and submission of the necessary documentation. This is sent by email and contains the bidder's personal password as determined by the auctioneer.

Every bidder must report changes in their data (e.g. name, head office, address) to the auctioneer immediately in writing.

The bidder can log into an auction with the allocated password and the freely selected user name (nickname) as soon as the auctioneer has received all the bidder's documentation as specified in Fig. 1.

III. Auction

1. Approval for submission of bids

Before bids can be placed, the bidder shall prove their creditworthiness and provide a bidding security of 5% of the bid price. The bidding security must be provided separately for each property. Proof can be provided by the regular submission of a bank guarantee. Payment into a trust account at the bidder's expense is also possible.

Otherwise, the auctioneer reserves the right to determine the type of verification of creditworthiness and bidding security.

Following positive checking of creditworthiness and confirmation of payment of security the bidder receives approval to place bids.

Otherwise, the auctioneer reserves the right to permit the bidder to place bids.

The nickname is visible for all participants in the screen display of the auction. The bidder's name remains unknown, as does the password.

2. Deadline for submitting bids, bids, commitment to bids

The auctioneer puts properties out to tender in electronic auction catalogues. The properties are described by means of comprehensive property documentation. An initial bid price (hereinafter known as the bid price) is quoted for every property.

The bidder is invited by the vendor to make a bid for the property within the deadline for offers. The deadline for offers is terminated by the hot bid phase. The hot bid phase restarts with every fresh bid made. If no further bid is made during the hot bid phase it ends when the time set by the system expires and the entire bid phase ends.

The auctioneer reserves the right to end the hot bid phase prematurely in case of extraordinary circumstances.

The bidder makes an offer by entering a figure within the deadline for placing bids. The offer can be below the bid price. The bidder is bound by their offer for five working days after the hot bid phase expires.

The bidder is bound to offers below the bid price, which are shown on-screen as “Conditional”, for five working days after the hot bid phase expires.

3. Initial bid price

The initial bid price for a property results from the auction catalogue.

4. Bidding agent

Bids can also be placed in advance by means of a maximum price offer in the electronic bidding agent. The bidding agent is an instrument which automatically outbids offers made by other bidders by a minimum increase step, which is specified in the auction catalogue, up to the highest price offered.

5. Bid steps

The bidder can increase their offer in systematically specified steps. The bidding steps for a property are taken from the electronic auction catalogue. The auctioneer reserves the right to change the bidding steps for a property – even during a running auction.

6. Offer acceptance

The vendor is not obliged to accept offers by the bidder below the bidding price (which are displayed as conditional on-screen). The same applies to offers equal to or higher than the bid price.

Insofar as they do not make use of their entitlement not to accept offers, the vendor will accept the highest bid if this is equal to or above the bid price. Notification of acceptance of the bid by the vendor is sent by email by the auctioneer.

7. Auction period

The auctioneer reserves the right to determine the auction period for every single auction.

8. The auctioneer as vendor

If the auctioneer is involved in a property, or is a shareholder of the vendor, or is the sole owner of a property they shall make this known at the beginning of the auction in the auction catalogue.

IV. Making contact

The bidder expressly declares their consent to being contacted by the auctioneer via phone or email for the purposes of negotiation and to answer queries.

Any attempt to contact the vendor or their representative or tenants of the property offered, whether successful or not, is expressly prohibited without the express permission of the auctioneer.

V. Data room

Each property is described in a data room by means of comprehensive property documents.

The bidder should examine the property documentation completely, conscientiously and with the appropriate care of a prudent businessman before making an offer.

VI. Sale contract

1. Conclusion

Notification of acceptance of the bid by email does not constitute a sale contract between the vendor and the bidder.

The conclusion of a sale contract must be registered by a notary.

A sale contract is concluded exclusively by a previously appointed notary to the conditions set out in the draft contract contained in the property documentation.

Notarial registration should normally take place within five working days of acceptance.

2. Sale price and other costs

The sale price must be paid into a trust account of the recording notary within one month of acceptance.

Apart from the sale price and the commission, the bidder bears all other costs such as fees for notarisation of the sale contract, priority notice of conveyance and execution of the notarial sale contract as well as approvals and confirmations of authorisations and also the costs of depositing the sale price.

In addition, the bidder is liable for the costs of entry in the land register and deletion of priority notices, authority fees, real estate transfer tax and the costs of any necessary approvals and official permits.

The notary shall pay out the commission in accordance with Fig. VII. 2 directly to the auctioneer. Should the payment of the sale price not take place via a notary's trust account, the commission is payable and due five working days after conclusion of the notarial sale contract and receipt of an orderly invoice.

3. Liability

The notarial sale contract for the property is concluded in the condition appropriate to its age and as the property stands and lies, unless deviating agreements are made in individual cases. The purchase is made with the exclusion of all claims and rights due to the material and legal defects of the property.

The vendor's liability for the following is excluded from this exclusion of warranty:

- Premeditation or fraudulent intent or an expressly declared guarantee,
- Losses caused by premeditated or gross negligence,

- Losses due to culpable infringement of major contractual obligations
- Losses arising from injury to life, body and health which are based on premeditated or negligent breach of duty on the part of the auctioneer, their legal representative or vicarious agents.

If goods and chattels are sold with the property, the above exclusion of liability applies including the above exceptions.

4. Limitation period

The limitation period is one year with the exception of the elements of liability excluded from the exclusion of guarantee. The appropriate legal limitation periods apply to the elements of liability excluded from the exclusion of guarantee.

5. Miscellaneous

Otherwise, the conclusion of a sale contract is the responsibility of the vendor and the bidder.

VII. Costs

1. Sale contract

In addition to the sale price and the commission, the total sale price contains further items which may accrue within the context of the acquisition of a property such as notary's fees, real estate transfer tax, land registry costs, etc.

2. Auction costs

a) Commission

The bidder declares that the opportunity to conclude a notarial sale contract was arranged and verified by the auctioneer.

The bidder therefore undertakes to pay the auctioneer the commission of 4% of the sale price plus VAT by way of a genuine contract to the benefit of third parties in agreement with the vendor.

The auctioneer thus acquires their own claim against the bidder in accordance with Section 328 of the German Civil Code.

The claim to the commission does not cease to apply because either the vendor or the bidder withdraws from the notarial sale contract or if the notarial sale contract is suspended, rescinded, contested or cannot be executed for any other legal reason.

b) Submission to foreclosure

The bidder submits to immediate foreclosure due to the aforementioned claim of the auctioneer against their entire assets without restriction.

The bidder undertakes to add a corresponding clause to the notarial sale contract.

The notary is commissioned to provide the auctioneer with an enforceable copy of this document at any time.

c) Bid guarantee

Insofar as the bidder does not pay the entire value of the sale price into the documenting notary's trust account or, if the payment is not made via the documenting notary's trust account, does not otherwise provide the full sale price, the bid guarantee initially serves to satisfy the auctioneer's claim to the commission and then to satisfy compensation claims of the vendor as set out in Fig. III. 1.

VIII. Obligations regarding the combatting of money laundering

In order to combat money laundering at a national and international level, auctioneers and bidders are obliged to comply with the provisions of the Money Laundering Act. These include in particular due diligence (section 3 – 6 of the Act) when business relationships are initiated and as part of ongoing business relations, including the associated documentation and storage obligations (Sections 11 and 12 of the Act) and preventive organisational obligations for preventing money laundering and the financing of terrorism designated by the Act as internal security measures (Section 9 of the Act).

IX. The law relating to material or legal defects and liability

1. Material and legal defects

The auctioneer does not enter into the rights and obligations arising from the (contractual) relationship between the vendor and the bidder.

The auctioneer assumes no warranty or guarantee for the correctness of the information given by the vendor about their property.

The auctioneer specifically assumes no warranty or guarantee for the correctness of the property documentation as all information is based on information from the vendor.

2. Liability arising from culpability in contractual negotiations and tortious liability

Any liability on the part of the auctioneer arising from culpability in contractual negotiations and impermissible acts is excluded.

3. Liability for compensation

Any liability on the part of the auctioneer is excluded without regard to the legal nature of the claim asserted and also following expiry of a deadline for performance set for the auctioneer.

The auctioneer is specifically not liable for the information which can be accessed and entered via the access systems – neither for its correctness, completeness or topicality nor for its legality or unencumbrance by the rights of third parties, nor for losses to objects of legal protection of the bidder's or lost earnings, unrealised savings, losses arising from claims by third parties and other directly consequential losses.

4. Limitation of all exclusions of liability in these General Terms and Conditions

The liability of the auctioneer towards the bidder is excluded from the legal limitations in these General Terms and Conditions in case of

- Premeditation or fraudulent intent or an expressly declared guarantee,
- Losses caused by premeditated or gross negligence,
- Losses due to culpable infringement of major contractual obligations
- Losses arising from injury to life, body and health which are based on premeditated or negligent breach of duty on the part of the auctioneer, their legal representative or vicarious agents.

X. Limitation of liability due to delays in performance by online services

1. Liability in case of delays in performance

The auctioneer is not liable in case of delays in performance.

2. Limitation of the exclusion of liability

The auctioneer's liability in terms of liability towards the bidder is excluded from the legal limitations on liability in case of delay in performance in case of

- Premeditation or fraudulent intent or an expressly declared guarantee,
- Losses caused by premeditated or gross negligence,
- Losses due to culpable infringement of major contractual obligations
- Losses arising from injury to life, body and health which are based on premeditated or negligent breach of duty on the part of the auctioneer, their legal representative or vicarious agents.

XI. Limited liability in case of the impossibility of online services

1. Liability in case of impossibility of performance

The auctioneer is not liable in case of impossibility of performance.

2. Limitation of exclusion of liability

The auctioneer's liability in terms of liability towards the bidder is excluded from the legal limitations on liability in case of impossibility of performance in case of

- Premeditation or fraudulent intent or an expressly declared guarantee,
- Losses caused by premeditated or gross negligence,

- Losses due to culpable infringement of major contractual obligations
- Losses arising from injury to life, body and health which are based on premeditated or negligent breach of duty on the part of the auctioneer, their legal representative or vicarious agents.

XII. Auctioneer's liability arising from the bidder/ vendor relationship

The right of the auctioneer to claim compensation is based on statutory provisions insofar as nothing contrary is provided for in these General Terms and Conditions.

XIII. Limitation period

The limitation period for claims against the auctioneer is one year as from the statutory commencement of limitation with the exception of the claims specified in Fig. IX No. 4, Fig. X No. 2 and Fig. XI. No. 2; the statutory limitation periods apply for these claims.

The limitation period also applies to the replacement of futile expenses.

The limitation period for all compensation claims begins with the conclusion of the ongoing auction.

Insofar as nothing contrary has been provided for, the legal provisions regarding the start of the limitation period, the suspension of expiration of prescription and the recommencement of limitation periods remain unaffected.

Any change in the burden of proof to the bidder's detriment is not connected with these provisions.

XIV. Place of fulfilment and place of jurisdiction, severability clause, prohibition of assignment

1. Place of fulfilment and exclusive place of jurisdiction

The place of fulfilment is the auctioneer's domicile.

The exclusive place of jurisdiction for all disputes arising from the contractual relationship is the auctioneer's domicile including for actions for assertion of a claim concerning payment of cheques or bills of exchange.

The foregoing also applies if the bidder has no customary place of residence in the Federal Republic of Germany at the time of conclusion of the contract, or relocates their customary place of residence abroad after conclusion of the contract, or if their customary place of residence is unknown at the time an action is brought.

2. Severability clause

Should individual parts of these General Terms and Conditions infringe legal provisions or be ineffective for other reasons this does not release the bidder from complying with the remaining agreements. Should one of the provisions be or become ineffective this does not affect the effectiveness of the remaining provisions. In such a case, the legal provision which comes closest to the ineffective provision in economic terms applies in place of the ineffective provision.

3. Prohibition of assignment

Bidder's rights and claims against the auctioneer may only be assigned with the written consent of the auctioneer.