

By Order of the Liquidator of Thrivehurst Limited t/a Dolmetsch Musical Instruments ("the company" and "the seller")

# SALE BY TENDER

**Such Right, Title and Interest (if any) as the Company may have in  
British Trade Mark 747076 (Class 15) and  
French Trade Mark 1231882 (Class 15 & 16),  
both providing protection to the name DOLMETSCH within their  
respective Classes ("the Lot")**

Offers to be received by 4pm Monday 19 April 2010

*The sale is subject to the Conditions of Sale overleaf and the following terms which are accepted by the Buyer as being fair and reasonable in the context of a sale by a company in a distressed situation bearing in mind that in settling the consideration payable, one of the factors taken into account was the commercial risk to the Buyer represented by the fact that the parties believe that the terms and conditions, exclusions and limitations would be recognised as fully effective by the Courts and the parties making it clear that they would not have purchased the above Asset except for a much higher consideration. In the event of any inconsistency between any of the terms of the Conditions of Sale and the following terms, the following terms shall prevail:*

- A. The sale is completed on the basis that the Seller can only transfer such right, title and, interest (if any) that it has in the above Asset at the date of sale, subject to all liens, obligations, licences, encumbrances and any third party rights relating thereto. Such right, title, and interest will pass immediately on receipt of all payments (in cleared funds) in full.
- B. The Asset is sold on an "as is/as seen" basis. No representation, warranty or guarantee is given or implied by either the Seller or Marriott & Co. (the "Agent").
- C. Other than signing the transfer document, neither the Seller nor his Agent has any obligation to identify or deliver the Asset or any documentation relating to the Asset to the Buyer, or to take any positive steps whatsoever (including but not limited to seeking or obtaining any requisite consent of any person not party hereto) to enable the Buyer to obtain title to the same.
- D. The Agent contracts as agent of the Seller only and without any personal liability.

**With reference to Condition 9 overleaf - Buyer's Duties:**

- (i) **The Buyer shall pay the full Purchase price by 5pm on the working day following acceptance of offer.**
- (ii) **The Buyer shall cover any legal costs involved in facilitating the transfer of any right and title.**
- (iii) **The Buyer accepts that neither the Company nor Marriott & Co. provide any warranty as to the ownership of the lot, nor will they be responsible for delivering it, nor will they accept any liability to pay any claims in respect of further costs incurred by the purchaser in obtaining the right to use it.**

Notwithstanding these Conditions, please note:

- **BUYER'S PREMIUM:** The Buyer shall pay a 10% premium on the purchase price of the lot.
- **VALUE ADDED TAX:** All lots are subject to VAT at the current rate, unless stated otherwise. VAT will therefore be added to the total, including the Buyer's Premium of each buyer's account.
- **PAYMENTS:** To be made by inter-bank transfer, by way of CHAPS.
- **BANKING DETAILS:** Marriott & Co - Client Account - No. 90349687,  
National Westminster Bank plc, 39 The Borough, Farnham, GU9 7NP  
(Tel. 01252 710 708) - Sort Code 60 08 15.

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## Marriott & Co.

Machinery and Business Assets Valuers

19 East Street Farnham Surrey GU9 7SD England  
Telephone: 01 252 712 083 Facsimile: 01 252 737 613

www.marriottco.co.uk mail@marriottco.co.uk

# CONDITIONS OF SALE BY TENDER

**'Online' sales use the internet, licenced software and a remote server over which Marriott & Co. has no control. Marriott & Co. accept no responsibility whatsoever for any bids placed**

## 1. Definitions

In these conditions references to:

- (a) "The Agent" means the firm of Marriott & Co. or any Partner or employee thereof at the time of Sale;
- (b) The "Buyer" shall have the meaning ascribed to it in Condition 6 and the "Buyers" shall be deemed to be principals (for the purpose of these conditions), unless to the knowledge of the Agent they are acting as agents on behalf of a named principal;
- (c) The "Seller" means the person owning or having the right to sell the lot;
- (d) "Lot(s)" means such goods, vehicles, computers and/or other items which are the subject of the Sale by Tender;
- (e) The Interpretation Act 1978 applies to the terms and expressions used in these conditions as if contained in the statute, and these conditions shall be governed by English Law.

## 2. The Condition of Goods

Whilst every care has been taken in the preparation of any advertisement brochure and other publication, they are necessarily statements of opinion and must not be relied upon as statements of fact. Neither the Seller nor the Agent is responsible for the correctness of any description of any lot. The Agent sells as agent for the Seller (unless otherwise specifically declared). The Agent is not in a position to know the history or assess the quality of the lots. Lots sold are likely to have been subject to wear and tear caused by use or the effects of age and may have faults and imperfections. Buyers are given opportunities at the viewing times to examine lots and will be assumed to have done so. They must rely solely on their own skill or judgement as to whether lots are fit for any particular purpose and whether they comply with the catalogue description.

## 3. Personal Risk and Damage to Property

Every person on the premises where the lots are being exhibited or sold before, during or after the sale are:

- (a) Deemed to be there at their own risk and neither the Seller nor the Agent shall be liable for any loss, accident or injury sustained howsoever caused; and
- (b) Responsible for any damage they, their carriers or other agents may cause to any lot, to the premises or any other property.

## 4. Duties of Persons Present

All persons present at the sale agree to refrain from conduct which may cause a nuisance to others present and to indemnify the Agent against the consequences of any proceedings brought against them in respect of such conduct.

## 5. Offers

All offers shall be submitted in the manner prescribed by the Agent, and shall be treated as being made upon these Conditions of Sale and on the basis that the party making the offer has notice of these conditions. All offers shall be binding upon the party making the offer unless otherwise notified by the Agent.

## 6. Ascertainment of the Buyer

The Buyer shall be the person making the offer which is acceptable to the Agent; the Buyer will be informed in writing accordingly.

## 7. Agent's Discretion

The Agent has sole discretion to refuse any offer, to withdraw any lot, and exclude any person from the sale site.

## 8. Buyer's Premium and Value Added Tax

The Buyer shall pay a 10 per cent premium on the purchase price of each lot whether sold by tender or private treaty (such premium to belong to the Agent), together with Value Added Tax at the current rate on the purchase price of each lot (unless the lot is notified as not attracting Value Added Tax) and on the premium.

## 9. Duties of Buyers

The Buyer shall:

- (a) Pay the full purchase price together with any chargeable Value Added Tax by the time/date stated overleaf;
- (b) In accordance with the Health & Safety at Work Regulations and Construction Design & Management Regulations, the Buyer may be required to provide a "Method Statement" and/or "Risk Assessment" for approval by the Seller and/or the Agent prior to the removal of any lots. The Buyer is responsible for electrical disconnections which must be carried out by a suitably qualified electrician, and the Buyer is responsible for the removal of any fluids and/or waste in and around the lot(s) strictly in accordance with the Control of Substances Hazardous to Health Regulations;
- (c) On proof of payment and by appointment, remove the goods expeditiously and by the time/date stated overleaf;
- (d) Where lots are fixed to land and/or buildings, detach such lot safely and lawfully without the use of flame cutters, explosives or any other dangerous equipment or processes (unless with previous written permission of the Agent) and forthwith make good any damage to the land and/or buildings and the Buyer undertakes to indemnify the Agent and (where appropriate) the Seller against any costs, damage, claims and demands arising upon such

removal. The Agent may require prior to removal a sum from the Buyer to cover the likely damage caused by such removal. The Agent shall be entitled to exercise a lien on any lot purchased by the Buyer until all or any damage or loss has been paid in full.

## 10. Liability of the Agent and Sellers

- (a) Lots are sold with all faults and defects and with all errors of description and neither the Seller nor the Agent is responsible for any defects whatsoever. All implied conditions relating to description, fitness and quality are accordingly excluded;
- (b) The Seller and the Agent do not make or give, nor has any person in the employment of the Agent any authority to make or give, any express representation or warranty with regard to any lot - except as provided by Condition 11 below.

## 11. Risk and Passing of Property

Subject to Condition 15 below, the Seller warrants to the Agent and to the Buyer that the Seller is the true owner of the lot or is properly authorised to sell it. Each lot is at the sole risk of the Buyer upon acceptance of the Buyer's offer. Title shall not pass to the Buyer until payment has been made in full and until such time the Agent shall have a lien on the lot.

## 12. Default by the Purchaser

If the Buyer fails to comply with his duties, the Agent shall have the right to:

- (a) Resell the lots by Public Auction or otherwise without notice to the Buyer, and if any loss arises from such a resale after deducting the Agent's full costs and expenses, the Buyer shall be responsible to the Agent for that loss (any net surplus to be the Seller's); and
- (b) Where a deposit is paid, to forfeit that deposit; and
- (c) Charge interest on any unpaid balance at the rate of 2 per cent above base rate from time to time; and
- (d) Charge for storage arising after the time for removal at the rate of 25 per cent per annum of the sale price and to release the lots in question to the Buyer only after payment in full of all storage and removal expenses incurred (as well as the full purchase price).

## 13. Computer Software and Data

The sale of any computers specifically excludes any software and/or data that may be held on computer carrying media, and the Buyer undertakes to not use and to remove and/or re-licence any software and to not use and to remove all data within the meaning of the Data Protection Act 1998 from the computer carrying media.

## 14. Safety of Machinery, Vehicles and Portable Appliances

- (a) Lots may not comply with the Health and Safety at Work Act 1974 or other relevant safety legislation. Accordingly the Buyer undertakes not to use any lot purchased until satisfied that it complies with the relevant Acts and Regulations relating to such machines and equipment, to handle correctly any toxic chemicals and dangerous substances, and to indemnify the Agent against any failure to observe this undertaking;
- (b) In the case of the sale of vehicles, no vehicle is warranted or held out to be roadworthy; the Buyer undertakes to ensure that no vehicle is used unless it complies with the Road Traffic Acts and other relevant legislation; the odometer reading of vehicles is not warranted;
- (c) All goods sold are sold as used and are not supplied as new;
- (d) This sale is subject to Marriott & Co. being satisfied that all electrical and/or gas portable appliances are safe, and the Buyer must allow access for a competent person nominated by Marriott & Co. to inspect and carry out any necessary portable appliance tests (at the Seller's expense); any item failing a safety test will be excluded from the sale and scrapped.

## 15. Insolvency and Death

Where the Agent conducts a sale on behalf of a Seller who is the Administrative Receiver, Administrator, Liquidator or Supervisor of a limited company or Trustee in Bankruptcy or Supervisor of an individual:

- (a) The Seller shall only act as an agent on behalf of the company or bankrupt or individual (as the case may be) and shall be under no personal liability whatsoever in respect of the contract for sale of any lot;
- (b) The Seller and the Agent on his behalf sell whatever right, title or interest the company, bankrupt or individual may have in the lot; no warranty is given or authorised to be given by the Seller nor the Agent with regard to the Seller's title to any lot(s) sold; any claims with regard to retention of title or other claims to the lot(s) will be the responsibility of the Buyer without any recourse to the Seller or the Agent; no adjustment will be made if it subsequently transpires that the lot(s) are subject to third party ownership;
- (c) If before title to any lot has passed to the Buyer, being an individual, he dies or enters into a composition or arrangement for the benefit of his creditors or has a Receiving Order in Bankruptcy made against him, or being a body corporate, has a Receiver or a Receiver and Manager or an Administrator appointed or goes into Liquidation or enters into an arrangement for the benefit of its creditors, then in all such cases the contract for sale for such lot may be, at the Agent's discretion, rescinded without notice to the Buyer. Upon rescission, any deposit paid by the Buyer shall be forfeited and the Agent shall be entitled to exercise the rights set out in these Conditions of Sale on the basis of a deemed default by the Buyer.

**Tender Form (Ref. THR2)**

**To: Marriott & Co., 19 East Street, Farnham, Surrey, GU9 7SD Fax: 01252 737 613**

I/we hereby tender for the purchase of the lot as described below, and in the event of the offer being accepted agree to complete the purchase in accordance with the Conditions of Sale as printed in this document.



Lot	Description	Offer
1	Such Right, Title and Interest (if any) that the Company may have in British Trade Mark 747076 (Class 15) and French Trade Mark 1231882 (Class 15 & 16)	£.....+BP+VAT

UK Intellectual Property Office defines the Classes as:  
 Class 15: Musical instruments and parts thereof included in Class 15.  
 Class 16: Sheet music and printed publications relating to music.

**Dolmetsch Recorders**

Arnold Dolmetsch was a famous French musician, who settled in Haslemere, Surrey in 1917 and established an instrument-making workshop in the town. He proceeded to build copies of every musical instrument dating from the 15th to the 18th centuries, including the viol, lute, recorder and early keyboard instruments. In 1918 he built his first modern recorder and this was followed by descant, tenor and bass recorders. He also began the Haslemere Festival of Music in 1925 which was devoted exclusively to early instrumental chamber music. In 1925 Arnold passed over the management of recorder production to his son Carl. During World War Two Carl used the family's workshop for making parts of aircraft. This introduced the family to lots of 'new' materials including plastics and after the war he developed the inexpensive plastic recorder which did much to promote the use of the instrument in schools.

Contributed by Haslemere Museum. BBC [Online]. Available at:  
<http://www.bbc.co.uk/ahistoryoftheworld/objects/7ePDs-x5Rpgj6f-WoPc21g>

Please note that the company's wood working equipment and stock, previously used in the production of recorders, is also for sale by tender and the catalogue can be viewed on our website at [www.marriottco-auctions.co.uk](http://www.marriottco-auctions.co.uk)

Signed.....Name.....Date.....

Company.....

Address.....

Email.\* ..... Mobile .....

Telephone..... Facsimile.....

*Upon submission of your above bid(s) we will add your contact details to our mailing list, to allow us to notify you of similar future sales, unless you inform us other wise. \* Please note if we are not supplied with a valid email address we cannot ensure you receive sale notifications.*

**Please tick here if you do not wish your details to be added to our mailing list**