



## IWCO Direct

### Auction Terms & Conditions

#### TERMS & CONDITIONS - HIGHLIGHTS:

**Registration Deposit / Bidder Approval.** All bidders that aren't pre-approved by Thomas Industries will be required to provide a refundable deposit, prior to being approved for bidding. The deposit must be 25% of the amount the bidder is looking to be approved for bidding up to. Thomas Industries, at their sole discretion, reserves the right to deny bidding privileges to any customer. For information on bidder Approval or to provide a registration deposit contact Irina Lekhmus (email: [irina@thomasauktion.com](mailto:irina@thomasauktion.com) or Phone: 203-458-0709).

**Currency: (USD).** This auction will be conducted in United States currency (USD)

**Buyer's Premium: 18%**

**Staggered Closing Times: Lots Have 1-Minute Staggered Closing Times.**

**Auto Extend Bidding:** If a bid is submitted with less than 3-minutes remaining, the closing time for that lot will be extended by 3-minutes.

**Payment Due In Full: Wednesday, January 26, 2022**

**Payment Types: Certified Check, Wire Transfer or E-Check (ACH)**

**As-Is Where-Is: All Items Are Sold "As-Is Where-Is" With No Warranty or Guarantee of Operating Condition. Auctioneer Strongly Recommends That Buyers Inspect Equipment Prior to Bidding.**

**Removal: Removal begins Wednesday, January 26, 2022. Removal Hours: 8 AM to 4 PM (M-F). All items must be removed by Friday, February 11, 2022. Any items not removed by this date will be considered abandoned and bidder will forfeit all right to any items not removed, including all deposit or payment monies.**

**Removal Costs: Buyers are fully responsible for all cost to remove their purchases. Please get removal quotes prior to bidding and bid accordingly.**

**Legally Binding Contract: All bids constitute a legally binding contract and bidders will be legally obligated to make payment and remove items in accordance with the terms and conditions of the sale.**

### **Complete Terms & Conditions:**

- 1. These Terms and Conditions apply to any sale of equipment made using live auctions, web-cast auctions or online auction events (each an Auction), including privately negotiated sales, before or after the auction, as related to the equipment offered at Auction, all quotations, offers and acceptances for the sale of certain items of equipment (the Equipment) by buyers or potential buyers (the Buyer ), Thomas Industries (the Auctioneer), and the seller of such Equipment (the Seller) are hereby expressly conditioned upon and governed by these Auction Terms and Conditions. By participating in any Auction or purchase of Equipment hereunder, Buyer further consents to be bound any additional terms that may be imposed by the Seller or announced by Auctioneer. The Buyer agrees and acknowledges that its on-line electronic acceptance of these Auction Terms and Conditions is valid and enforceable and the equivalent to a signed written acceptance. Buyer further represents and warrants that such electronic acceptance was performed by a person with all necessary authority to fully bind the Buyer to these Auction Terms and Conditions.**
- 2. Equipment offered may be subject to prior sale. Auctioneer is not responsible for errors, omissions, additions or deletions. Equipment offered may not necessarily be sold as described and/or photographed. Buyers should verify all aspects of their potential purchases during inspection as all items offered will be sold “as-is, where-is” with all faults.**
- 3. Each potential Buyer must register at the auction site or online in the case of web-cast or online events before the Auction. Proof of identification may be required. In addition, each potential Buyer must submit in writing or electronically to Auctioneer a copy of these Auction Terms and Conditions signed or electronically agreed to by an authorized representative of Buyer prior to participating in any Auction, as well as copies of any tax exemption certificates that Buyer will rely upon to establish a tax exemption for any Equipment purchased hereunder. Buyer’s failure to provide copies of such certificates at registration may lead to the charging of otherwise applicable taxes on all purchases of Equipment hereunder. Seller or Auctioneer may, in their sole discretion, deny registration or the final purchase of any Equipment to any person or entity, which has not followed these procedures. No waiver of these requirements is effective unless agreed to in writing and signed by authorized representatives of each Buyer, Auctioneer and Seller.**
- 4. Buyers will be responsible to pay a Buyer’s Premium on all purchases of Equipment. Each Auction has a project specific Buyer’s Premium percentage which is posted on the main auction page and within the project specific terms and conditions. The Buyer’s Premium will be retained by Auctioneer.**
- 5. A contract will be formed upon an offer having been expressly accepted by Seller through Auctioneer. Buyer will receive notice of Sellers acceptance of an offer, verbally during a live Auction, in writing or by an electronic transmission, including e-mail or fax, given to the Buyer by Auctioneer or Seller or at the address or other contact information provided by Buyer at the Auction (Buyers Contact Information ). Such acceptance will be complete and effective if transmitted electronically, upon completion of the last act necessary for the computer user creating the notice of acceptance to transmit the e-mail message to the Internet for delivery to the Buyer. Any means of written or electronic communication by Seller, the choice of which shall be solely at Sellers option, shall be sufficient for purposes of Sellers acceptance being effective in accordance with the foregoing. The Buyer assumes all responsibility for the accuracy and effectiveness of the address and any other of the Buyers Contact Information provided by Buyer and for the receipt of Sellers or Auctioneer**

communication of acceptance at any such address. All risk of loss during the transmission of Sellers or Auctioneer' notice of acceptance or any other notice required or permitted under the Auction Terms and Conditions shall be borne by Buyer. Upon the acceptance of Buyers offer, the terms of the contract between Seller and Buyer will include the price to be paid, these Auction Terms and Conditions and the identifying information for the specific Equipment purchased by such Buyer. The Auction Terms and Conditions may only be modified in writing signed by authorized representatives of each the Buyer, Auctioneer and Seller.

6. Unless: (a) otherwise agreed in writing by the Seller and the Buyer; or (b) otherwise posted or announced by Auctioneer, all payments are due for Equipment purchased hereunder to Auctioneer, as directed, within 48 hours of the Auction ("Payment Date"). All payments must be made by wire transfer to the bank account identified in the cover letter attached to the invoice sent to Buyer by Auctioneer. All payments are to be in US Dollars only and each Buyer will be responsible for any fees charged by its bank for payment made hereunder. In the event a Buyer's payment is not received by the Payment Date, Seller and Auctioneer may exercise any options under these Terms and Conditions, including, but not limited to, resale or other disposal of such Equipment pursuant to Section 11.

7. For any purchase in cash with a value of \$10,000 or greater, the Buyer will be required to complete United States Treasury Department form number 8300. These forms are available from the Auctioneer or Auctioneer and must be completed and returned to the Seller as directed at the time of payment.

8. Each Buyer will be charged for all applicable taxes in accordance with the laws of the state and/or country where the purchased Equipment is located or as otherwise directed by Seller or Auctioneer. Buyer will be charged applicable taxes if Buyer did not provide at registration the tax exemption certificates that Buyer will rely upon to establish a tax exemption for any Equipment purchased hereunder. Similarly, if in Auctioneer's reasonable business judgment, any such certificates provided by Buyer are not valid or applicable, Buyer shall be charged applicable taxes and the Equipment will not be released to Buyer until the Buyer has paid the final purchase price and all taxes as shown on the invoice from Buyer. Buyer agrees to defend, indemnify and hold Seller and Auctioneer harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys fees and costs), which they may incur due to Buyer failing to pay all applicable taxes.

9. Each lot of Equipment sold via Auction may be offered subject to a reserve price with or without notice to each Buyer. The Seller or Auctioneer may, without giving any reason, refuse to accept the bidding of any Buyer. The Seller or Auctioneer may, at their discretion and without any liability, cancel without notice the Auction either totally or in respect to any particular lot or lots of Equipment or to alter, vary, or withdraw any lot or lots either before or at any time after commencement of the Auction and prior to acceptance of a bid. The Seller or Auctioneer shall have the right to offer a complete facility as a single lot. The advances in the bidding shall be regulated by Auctioneer. Auctioneer reserves the right not to acknowledge or accept any bid which is deemed a junk bid, in Auctioneer' sole discretion. Auctioneer reserves the right not to acknowledge or accept any bid which is merely a fractional advance over the preceding bid, in their sole discretion. If, for any reason whatsoever, the Seller fails to deliver an awarded lot or any portion thereof, the Seller's and Auctioneer' sole liability shall be the return of any deposit or monies paid on such non-delivered lot or portion thereof, and Buyer shall have no further claim with respect thereto.

**10. In the event of a tie or other dispute between Buyers, Auctioneer at its sole discretion may reopen the bidding to determine the highest bidder. Auctioneer's decision shall be final and absolute. The record of sale kept by Auctioneer will be taken as final in the event of any dispute.**

**11. In the event the Buyer fails to make payment in full by the Payment Date, fails to remove Equipment by the Removal Date or otherwise defaults in its obligations regarding the Equipment purchased, Seller or Auctioneer may resell or otherwise dispose of such Equipment without notice to and at the Buyers sole risk and expense and recover from Buyer any loss and costs of resale, including reasonable attorneys fees and cost of suit. Seller or Auctioneer, at their sole option, may elect to retain for Seller all monies deposited in part payment by Buyer as liquidated damages and cancel Buyer's agreement of purchase. Auctioneer is acting as an independent contractor retained by Seller and is not responsible for the acts of Seller or any other principals. Seller is not responsible for acts of Auctioneer or any of their service providers or agents.**

**12. Buyer shall examine or inspect equipment prior to the day of the auction. All equipment is used and is sold as-is, where-is and with all faults. Seller and auctioneer make no warranty, express or implied, as to the nature, quality, value or condition of any equipment. Auctioneer and seller expressly disclaim all warranties express or implied, including, but not limited to, any implied warranty of merchantability, non-infringement of third party rights or fitness for particular purpose. Buyer acknowledges and agrees that any sale is a sale of hardware items only and does not include any program code, software, firmware or data ("software") whatsoever, in any form or medium, regardless of whether such software has been packaged with, installed on, integrated or imbedded into or otherwise included with the equipment. Any such software, and any copyrights, patents, trade secrets, trademarks or other intellectual property rights in such software and the equipment may be the property of the manufacturer of the equipment or one or more other third parties. No sale shall grant or convey to buyer any license or rights whatsoever in or to any such third-party software or intellectual property, and as a condition to any use thereof buyer agrees to obtain the appropriate licenses and authorizations from such third parties. No oral or written information or advice given by seller or auctioneer, or any representative thereof shall create a warranty or in any way increase the scope of this warranty. Buyer accepts the risks of use and except as otherwise stated herein such risks fall solely on buyer. In no event shall seller, auctioneer or auctioneer be liable for any indirect, special, incidental or consequential damages resulting from their performance or failure to perform under this auction or the furnishing, performance or use of any equipment sold pursuant hereto, whether due to a breach of contract, breach of warranty, strict liability, negligence or otherwise.**

**13. Seller and Auctioneer make no representation or warranty concerning the truth or completeness of information provided to Buyer regarding the Equipment subject to Auction. Photographs are provided solely for the Buyers convenience and shall not be construed to create representation or warranties of any kind pertaining to the Equipment. Buyer acknowledges that it has had the full opportunity to physically inspect all Equipment prior to tendering its bid and agrees that, to the extent that Buyer elects not to physically inspect the Equipment, that Buyer hereby expressly waives any right it may have, if any, to seek any recourse for any claim that such inspection would have revealed. Buyer waives any and all claims against Auctioneer and/or Seller relating to photographs or descriptions of such Equipment. And, while quantities and descriptions are believed to be correct, there are no guarantees and neither Auctioneer, Seller, nor their representatives will be held responsible for advertising discrepancies, inaccuracies or failure of the Equipment to correspond**

with any standard expected. No Equipment shall be sold or deemed to be sold by description. A Buyer shall not be entitled to rely on any representations made either in writing or orally by or on behalf of the Seller or Auctioneer. The description, measurements, dimensions, serial and Equipment numbers, year, model, quantities and weights set out in the auction brochures, catalogues and/or invoices are believed to be accurate, but such information is given by way of identification only and no warranty, condition or guarantee is given or is to be implied as to the accuracy of such descriptions, measurements, serial and Equipment numbers, year, models, quantities or weights or other particulars or the genuineness or authenticity of any lot of Equipment and neither the Seller or Auctioneer will be responsible for any damage or loss (consequential or otherwise) arising as a result of any inaccuracy in respect thereof.

14. All Equipment must be removed by the posted removal date. All removal is at the Buyer's cost, unless otherwise noted. There shall be no removal of Equipment until the Auction is completed and the Buyer has paid in full the final purchase price, including the Buyers Premium and all applicable taxes. Auctioneer may restrict removal of Equipment in whatever manner they deem necessary in order to maintain the operation and security of the premises and Equipment. Buyer shall be responsible to completely remove all Equipment purchased and shall proceed diligently in the removal of the Equipment. Any Equipment not removed by the posted removal date may be subject to daily storage charges. No forklifts, tools or material handling equipment located at the auction site may be used by Buyers during removal. Auctioneer takes no responsibility or any liability resulting from claims for loss or damage to equipment due to removal by Buyer. Auctioneer makes no warranty about damage free transport and takes no responsibility or any liability resulting from claims for loss or damage to equipment during transport to Buyer's location. During removal of Equipment, no liability can be accepted by the Seller or Auctioneer for any loss or damage arising from strikes, industrial disputes, war, acts of God, and other things beyond Seller's or Auctioneer' control.

15. Each Buyer or their agent should inspect the purchased Equipment at the Sellers applicable facility before the Equipment is removed from Sellers premises and determine the removal and shipping requirements of said Equipment. This may be done by the Buyer and/or their agent. Any claim by Buyer as to shortages or misrepresentations, of any kind, must be made by Buyer prior to Equipment leaving the Premises. Seller and Auctioneer take no responsibility and no adjustments will be made on purchases of Equipment for claims made after Equipment has left the Premises.

16. Buyer shall assume that hazardous materials may have been used in the Equipment and that it may not have been completely removed and ensure that people coming in contact with the Equipment use proper protective equipment and clothing until the actual condition of the Equipment is determined. Buyer acknowledges having been notified that proper protective gear and clothing, and proper safety methods should be used at all times when handling and/or using the Equipment. If applicable, Material Safety Data Sheets for the hazardous materials listed will be provided upon written request. Buyer, for itself and for any other recipient on Buyers behalf, agrees that in the event the Equipment is transferred to a third party prior to being used by the Buyer or other recipient, Buyer will attach disclosure information, if applicable, to the Equipment and to the documentation covering the transfer of the Equipment. Buyer agrees to require that the disclosure information be continuously passed on to subsequent recipients until the Equipment has reached the final recipient or end user.

**17. Buyer agrees that, upon taking possession of the Equipment, it will be Buyers responsibility and duty to inspect and monitor all Equipment on a continuing basis, to provide proper safety devices and Equipment and all means necessary to safeguard the operator from any harm for any particular use or operation or setup of the Equipment. Buyer accepts full responsibility for any further duty to adequately install, operate or safeguard all Equipment and meet all applicable government safety standards, which may be imposed from time-to-time.**

**18. Buyer shall bear all risk of loss, property damage, environmental damage and personal injury caused by removal and transportation of Equipment purchased hereunder. Seller warrants that upon Seller's receipt of the payment of agreed purchasing price from Auctioneer, title and risk of loss or damage will pass to Buyer. A certificate of insurance reflecting adequate insurance coverage, holding Auctioneer and Seller harmless against any damage must be furnished to the Seller prior to such removal. Buyers obligations with regard to removal of Equipment purchased further include the obligation to repair and restore any damage to the real property or permanent improvements where the Equipment is located caused by the removal of Equipment. This includes repairing any external openings created by such removal where the item removed constituted a portion of the external shell of the building, i.e., a tank that protrudes through the roof. In the event of any question, Seller shall make the final determination as to what repairs Buyer must make. In the event any of the repairs described herein are necessary they must be made, if possible, prior to the Equipment being removed. Buyer agrees to defend, indemnify and hold Seller and Auctioneer harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys fees and costs), which they may incur due to Buyers purchase or use of the Equipment.**

**19. Buyer must remove Equipment from Seller's location by the designated removal date. The removal date ("Removal Date") will be determined and agreed to by Seller and Buyer, subject to Seller's de-installation schedule, unless an exception is posted at the Auction sale, online in the case of web-cast Auction events or announced by Auctioneer, or an arrangement is made between Seller and Buyer and approved in writing by Seller and Buyer. Any Equipment not removed by Buyer from the Sellers storage location by the Removal Date will result in Buyer being in violation of these Auction Terms and Conditions, giving Seller and Auctioneer the right to exercise any options under these Terms and Conditions, including, but not limited to, resale or other disposal of such Equipment. Seller reserves the right to charge a late charge of \$500.00 per day, plus additional expenses incurred by Seller, or Auctioneer to remove, resell or dispose of such Equipment.**

**20. In the event of problems resulting from online or webcast auction software malfunctions, internet connection disruptions or other computer related malfunctions, Auctioneer reserves the right to cancel any sale. Auctioneer at its sole discretion may reopen the bidding to determine the highest bidder. Auctioneer's decision shall be final and absolute. The record of sale kept by Auctioneer will be taken as final in the event of any dispute.**

**21. Certain items of Equipment offered for sale at the Auction may constitute Restricted Technology. Under federal law, such items may not be shipped outside of the United States. Seller and Auctioneer make no representation or warranty concerning, and has conducted no investigation to ascertain the Equipment, if any, that constitutes Restricted Technology. Buyer acknowledges and agrees and further represents and warrants that: (i) it is solely responsible for determining all licensing/legal requirements and obtaining all licenses and legal authorizations required to purchase, import or**

export any Equipment; (ii) it will not request or make any regulatory certifications or applications in the name of or on behalf of Seller or Auctioneer; (iii) it will not, unless specifically authorized by appropriate government license or regulation, transfer, export or re-export, directly or indirectly, any Equipment, including without limitation any technology, software, or components purchased hereunder or its direct product to any countries or to their assimilated entities (i.e. Embassies, Consulates, Controlled In Fact Entities) or to the nationals of any country which are subject to the United States or other countries export control laws and regulations, as applicable, including the Export Administration Regulations. Such restricted countries include, but may not be limited to, Afghanistan, Cuba, Iran, Iraq, North Korea, Libya, Sudan or Syria, as well as any other country subject to restriction under applicable laws and regulations; (iv) it is not located in, under control of, or a national or resident of any such country; (v) it and any party it represents are not legally barred from buying, exporting or importing Equipment and that it and any party it represents are not identified on any end-user list maintained by the United States government, including but not limited to the following lists: Debarred Parties List (U.S. Dept. of Commerce); Denied Persons List (U.S. Dept. of Commerce); Entity List (U.S. Dept. of Commerce); Unverified Users List (U.S. Dept. of Commerce); Specially Designated Nations List (U.S. Dept. of Treasury, Office of Foreign Asset Control); and/or Parties of Non-Proliferation Concern List (U.S. Departments of State and Commerce); (vi) it will not use the Equipment in any activity related to the development, production, use or maintenance of "Weapons of Mass Destruction" including without limitation, uses related to nuclear, missile, and/or chemical/biological development; and (vii) it will not transfer, export or re-export, directly or indirectly, the Equipment to any third party engaged in any such activity. Buyer agrees to defend, indemnify and hold Seller, Auctioneer and Auctioneer harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys fees and costs), which they may incur due to Buyers failure to comply fully with all applicable federal, state, and local laws and regulations, and the laws and regulations of other countries to the extent that such may be applicable, including, but not limited to, the export control laws of the United States of America or other applicable countries.

22. This shall be a Connecticut contract and shall be deemed to have been made in Connecticut. Any claim relating to the contract or to the sale or use of the Equipment shall be governed by and construed in accordance with the laws of the State of Connecticut (regardless of the laws that might be applicable under principles of conflicts of law). The terms and provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly agreed to be not applicable to any contract between Buyer and Seller relating to the Equipment.

23. Any Dispute shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration shall be conducted in Connecticut. The arbitration shall be conducted by a single arbitrator, selected in accordance with the applicable rules of the association. Any award rendered by the arbitrator may be entered as a judgment or order and confirmed or enforced by either the Buyer or the Seller in any state or federal court having competent jurisdiction thereof. If these terms and conditions are found not to be subject to arbitration, the parties knowingly and willingly waive any right they have under applicable law to a trial by jury in any dispute arising out of or in any way related to this agreement or the issues raised by that dispute.

24. These Auction Terms and Conditions along with the price to be paid as accepted at the Auction, the identifying information for the specific Equipment purchased by such Buyer, and any other specific

**terms and conditions relating to the removal/crating/shipping of such Equipment as disclosed by Seller or Auctioneer represent the entire agreement between the parties as to the subject matter hereof.**

**25. In the event of a conflict between these Auction Terms and Conditions and any other agreement, understanding or other document relating to the sale of the Equipment, these Auction Terms and Conditions shall govern.**

**26. All sales transactions are to be conducted in US Dollars.**