

J. P. KING AUCTION COMPANY, INC.

TERMS OF EQUIPMENT AUCTION

**Halo Notch Vineyard
Madisonville (Monroe County), TN
Saturday, May 16, 2009 at 1:00 P.M. (ET)**

J. P. King Auction Company, Inc. ("King"), an Alabama corporation headquartered at 108 Fountain Avenue in Gadsden, Alabama 35901 (telephone 800-662-5464 or 256-546-5217 and facsimile 256-543-8036) has contracted with Michael D. and Tina Lea S. Frizzell, husband and wife ("Seller") to offer to sell at public auction ("Auction") certain agricultural and related equipment ("Equipment"). These terms, plus any additions, deletions, and/or revisions announced by Auctioneer before the commencement of the Auction for the Equipment represent the exclusive terms for this offering ("Terms of Equipment Auction").

1. *EQUIPMENT AUCTION ONLY*: These Terms of Equipment Auction apply solely to the offering of the Equipment referenced herein and specifically do not apply in any way to any offering or auction of real property (i.e., real estate).
2. *AGENCY*: Auctioneer is acting exclusively as an agent for Seller and not as an agent for any bidder or buyer.
3. *COLLUSION*: Bid-rigging is a federal felony punishable by imprisonment and fine. Auctioneer will report all illegal conduct to the F.B.I. and cooperate with any prosecution.
4. *COPYRIGHT*: The Auction is the exclusive intellectual property of Auctioneer, covered by copyright protection, and may not be recorded, reproduced, or used in any form by anyone other than Auctioneer.
5. *PROPERTY*: The Equipment will be offered in two, separate lots and not on a piece-by-piece or other partial basis. The Equipment comprising "Lot A" is listed on an attachment to these Terms of Equipment Auction. The Equipment comprising "Lot B" is listed on a separate attachment to these Terms of Equipment Auction.
6. *DUE DILIGENCE*: Seller and Auctioneer do not attempt to provide bidder with all of the information that may be needed to make an informed decision about the Auction and Equipment. Bidder should obtain professional advice and conduct due diligence on the Equipment, all information provided by Seller or Auctioneer, public records, this Terms of Equipment Auction, the Auction, the transaction contemplated herein, and all circumstances, defects, facts, issues, problems, and other relevant matters (collectively "Equipment Issues"). All information provided by Auctioneer came from Seller and is believed to be accurate, but neither Seller nor Auctioneer guarantees, represents, or warrants its accuracy or completeness and bidder should not rely upon it without independent inspection and verification from sources bidder knows to be reliable. Seller and Auctioneer are not required to update any information provided or published and will have no liability on any basis for failing to do so.
7. *DISCLAIMER*: Participation in the Auction is at bidder's sole risk and Seller and Auctioneer, plus their agents, contractors, and employees, will have no liability on any basis. The Equipment will be offered in "**AS IS, WHERE IS**" condition "**WITH ALL FAULTS.**" Bidder acknowledges that all lots were available for inspection prior to the auction and, by this Terms of Equipment Auction, auctioneer strongly encourages bidder to carefully inspect each lot in which bidder has any interest to determine the lot's nature, quality, condition, quantity, and size. Bidder relies solely on personal inspection of the Equipment and not on information listed provided by Auctioneer, its staff, or Seller. If bidder fails to inspect any lot, this failure to inspect, or otherwise be fully informed as to the lot's nature, quality, condition, quantity, and size will not constitute ground for any adjustment, claim, refund, termination of the contract of sale, or refusal to close the sale. To the fullest extent allowed by law, Seller and Auctioneer unconditionally disclaim any guarantee, representation, or warranty of every kind, whether expressed, implied, or statutory, whether oral or written, and whether past, present, or future, with respect to the Equipment and all Equipment Issues, except as expressly provided in the Terms of Equipment Auction. **The IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE SPECIFICALLY AND FULLY DISCLAIMED AND EXCLUDED AND DO NOT APPLY TO ANY SALE OF THE EQUIPMENT.**

8. *DISCLOSURES*: The Equipment will be offered for sale and conveyed subject to all conditions and matters of record.

9. *BUYER'S PREMIUM*: A ten-percent (10.00%) buyer's premium will be in effect for the Auction and added to the amount of the highest bid for a lot to arrive at that lot's selling price.

10. *AUCTION*: Auctioneer's discretion in conducting the auction includes, but is not limited to, the auction method, bid-calling, bid increments, and determining the buyer. The decision of Auctioneer is final regarding all matters that arise before, during, or after the Auction. Should a dispute arise between two or more bidders, the decision of Auctioneer will be final. Bidders are encouraged to make their bids clearly visible to Auctioneer to avoid being missed. Seller agrees not to bid in the Auction and bidder agrees not to retract any bid made. The Equipment will be offered in the Auction subject to Seller's confirmation of the highest bid price for each of the two lots. Auctioneer will conduct the bidding to determine the highest bid for each lot. Auctioneer will present the highest bid for a lot to Seller and Seller will decide whether to accept the bid. A lot will be sold to a bidder if Seller decides to accept the bid and Auctioneer advises the bidder of Seller's acceptance. An enforceable contract for sale will then be immediately formed between Seller and that bidder, now the buyer. No writing of any kind will be required from buyer to satisfy any decision, principle, rule, statute, or other requirement in law or equity, including any statute or rule based upon, or of like effect, as section 2-201 (1) of the Uniform Commercial Code ("formal requirements; statute of frauds") which buyer specifically waives and disclaims as applying to any sale of the Equipment.

11. *CONTRACT FOR SALE*. Auctioneer may have made oral statements about the merchandise in a lot purchased by buyer. Such statements do **NOT** constitute warranties of any kind by Seller or Auctioneer, are **NOT** to be relied upon by bidder or buyer, and are **NOT** part of any contract for sale for the Equipment. The entire contract for sale for the Equipment is embodied in these written Terms of Equipment Auction which constitutes the final expression of Seller's and buyer's agreement and is a complete and exclusive statement of the terms of their contract for sale. Ownership and the risk of loss from any cause pass immediately to buyer when Auctioneer announces the sale of a lot. Buyer is solely responsible for any purchase and Seller and Auctioneer will have no responsibility for lost, stolen, or damaged lots or goods within them.

12. *CASH SALE*: This is a cash sale and not contingent upon any matter, including buyer obtaining financing. Immediately upon buyer's payment to Seller of the full purchase price for a lot, Seller will provide buyer with a written Bill of Sale evidencing the sale of the lot to buyer. If for any reason buyer fails to timely pay the purchase price for a lot, Seller has sole discretion, to: (a) pursue all legal and equitable remedies available against buyer, or (b) declare buyer's bid to be immediately forfeited, null, and void, without any requirement of notice, and immediately re-offer the Equipment to other prospective buyers. All purchases must be paid for in full by buyer not later than the end of the auction. Acceptable forms of payment include cash and approved check. If payment is dishonored on a check for any reason, in addition to the face amount of the check, the drawer must immediately pay Seller the bad check return fee charged by its bank, plus a processing charge of thirty-five dollars (\$35.00). Should Seller have to institute collection action, buyer agrees to also pay Seller all costs of collection, including reasonable attorneys' fees. **ALL SALES ARE FINAL WITH NO REFUNDS FOR ANY REASON.** Nothing in a lot may be moved from its location prior to the lot being paid for by the buyer. Everything within a lot must be removed from the auction site immediately following the auction. Buyer assumes all responsibility of risk for the equipment at the moment of sale.

13. *RELEASE*: Bidders, buyers, and other persons present at the Auction (collectively "attendees") are advised that Auctioneer and its agents, contractors, employees, and/or representatives may record the Auction, related matters, and attendees through audiotape, photography, motion pictures, and/or videotape for advertising, marketing, promotion, publicity, record, and/or trade purposes, and in consideration of being allowed to attend the Auction, attendees unconditionally and irrevocably agree that their images and voices may be so recorded and used by Auctioneer in all types of media without territorial, time, or use limitation, and without compensation being owed or paid to attendees by Auctioneer or Seller.

14. *ARBITRATION*: Any action, claim, controversy, counterclaim, dispute, or proceeding arising out of the Equipment Issues and involving Seller, bidder, buyer, or Auctioneer, in any combination, whether controlled by federal or state law, and whether an issue of law or equity, including the determination of the scope and applicability of this agreement to arbitrate, must be determined and resolved exclusively by final and binding arbitration, with no appeal permitted, except as provided by applicable law for the judicial review or enforcement of arbitration decisions. The arbitration will be administered by Judicial Arbitration and Mediation Services, Inc., or its successor, and decided by one (1) independent arbitrator. Judgment on the arbitration award may be entered in any court having jurisdiction. The parties waive the right to any legal action and trial by jury. The costs of

arbitration, including the fees and expenses of the arbitrators, but not including the parties' attorneys' fees, will initially be paid equally by them. The prevailing party will be entitled to collect from the other its full costs associated with the arbitration, including reasonable attorneys' fees. All aspects of any arbitration will be permanently kept confidential and not disclosed in any form or manner to any entity, media, or person, and the parties will jointly move the court entering judgment on the arbitration award to so order. Any arbitration must be commenced within two (2) years from the date when the cause of arbitration accrues or it will be forever barred. The right of arbitration will accrue, and the two (2) year limitation period will begin to run, on the date the breach, damage, or injury is sustained and not when the resulting damage or harm is discovered. To the fullest extent allowed by law, the parties agree that neither Seller nor Auctioneer will be liable for any consequential, incidental, indirect, or special loss or damage that might arise out of Equipment Issues.

15. CHOICE OF LAW, JURISDICTION, AND VENUE: Equipment Issues and all other matters related to Seller, Auctioneer, the Equipment, the Auction, and the sale of the Equipment will be exclusively construed and governed in accordance with the laws of the State of Tennessee, without regard to its conflict of laws principles. The exclusive jurisdiction and venue for any controversy or claim between the parties will be the County of Monroe in the State of Tennessee.

16. MISCELLANEOUS: The Terms of Equipment Auction will bind bidders and their agents, assigns, attorneys, beneficiaries, brokers, directors, distributees, employees, executors, heirs, legatees, officers, representatives, shareholders, and successors in interest. No deletion, modification, supplement, or waiver of any provision of the Terms of Equipment Auction will be made, except by Auctioneer's written revision or oral announcement at the Auction and from the block. If there is anything relevant to this Auction or the Terms of Equipment Auction that a bidder does not fully understand, bidder should immediately ask a member of Auctioneer's staff for assistance with the question.

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ATTACHMENT I

INVENTORY – LOT A

**Halo Notch Vineyard
Equipment List**

LOT “A”:

- Mechanical Grape Harvester, Braud Model 524
- Specialty Vineyard Tractor, Kubota 2005 M8200 Narrow 4WD

ATTACHMENT II

INVENTORY – LOT B

Halo Notch Vineyard Equipment List

LOT “B”:

- Forty (40) 1,200 LB capacity Harvest bins, MacroBin, model 24-A w/rotator bar attachments, includes 21 lids
- Utility Tractor, Zetor, model 6245, 4WD
- Front End Loader (on Zetor), Westendorf, model TA26, includes Westendorf bucket and forks attachments, model FL48
- Finisher Mower, Woods, 2005, model RM99OV
- Rotary Cutter, Kodiak, 7' Heavy Duty
- Rotary Tiller, 4'King Kutter 2
- Sprayer, Fimco, 60 Gallon, ATVTS60
- Fruit Scales, Mettler Toledo, model XRT-3710
- Digital Hand-Held Refractometer, Atago, model PAL-1
- Front Tine Tiller, Yard Machines, model 21A
- Hedge Trimmer, Troy Built, Gas Articulating
- Pressure Washer, Troy Built, 2450 PSI, model 01903
- Ten (10) Norseman Harvest Lugs and forty (40) Harvest Buckets
- Ten (10) Pruning Shears