

## General Conditions of Business (1 August 2014)

These Conditions apply to all sales conducted and services provided by the Company and any goods which are held by the Company for valuation, storage or any other purposes.

### 1. Definitions

In these Conditions the following words and expressions shall (unless the context otherwise requires) have the following meanings:

'**Agreed Reserve**' means the confidential minimum Sale Price at which a Lot may be sold as agreed in writing by Seller and the Company on the Consignment Agreement Form or otherwise.

'**Auctioneer**' means the representative of the Company conducting the auction.

'**Buyer**' means the person to whom a Lot is knocked down by the Auctioneer or a person who purchases a Lot sold by the Company on behalf of a Seller by private treaty or tender or any other sales process.

'**Catalogue**' includes any advertisement, brochure, price list and other publication produced by the Company.

'**Charges**' means charges and expenses paid or payable by the Company in respect of a Lot as set out in these Conditions, including legal expenses, packing or shipping costs, taxes, levies, removal and storage charges and interest, plus any GST payable. The relevant charges and expenses will be passed on to the Seller and/or Buyer at the price paid or payable by the Company plus 10%, or otherwise as is set out in writing or agreed by the Company and Seller and/or Buyer.

'**Claims**' means all sums of money, debts, dues, suits, actions, causes of action, proceedings, arbitrations, claims, accounts, liabilities, losses, demands, costs, expenses, notices or any other type of claim howsoever arising out of these Conditions or anything relating to the subject matter of these Conditions.

'**the Company**' means TBA (NSW) Pty Ltd ABN 38 145 506 176 trading as Theodore Bruce Auctioneers & Valuers unless written notification to the contrary is provided.

'**Consignment Agreement Form**' means the form signed, and a copy of which is received, by the Seller containing the terms on which the Seller submits a Lot or Lots for sale by the Company or the form used to provide a record of an item or items taken into custody for evaluation, research or advice.

'**Dollars**' or '**\$**' means Australian currency.

'**Estimated Selling Range**' means the estimated Sale Price range of a Lot.

'**Expenses**' includes all fees, charges and expenses listed on the front page of the Consignment Agreement Form and/or correspondence annexed to it and/or as agreed in writing between the Company and the Seller.

'**Forgery**' means an imitation intended by the maker or any other person to deceive as to authorship, origin, date, age, period, provenance, culture, source or composition, which at the date of the Sale had a value materially less than it would have had if the Lot had not been such an imitation, and which is not stated to be such an imitation in the description of the Lot given in the Catalogue. A Lot will not be a Forgery by reason of any damage to and/or restoration and/or modification work (including repairing or over painting) having been carried out on the Lot, where that damage, restoration or modification work (as the case may be) does not substantially affect the identity of the Lot as one conforming to the description of the Lot given.

'**GST**' means a tax payable under the *New Tax System (Goods and Services Tax) Act 1999* as amended.

'**Hammer Price**' means the price in Dollars (including GST, if any) at which a Lot is knocked down by the Auctioneer to the Buyer unless it is auctioned again ('**Second Auction**') as a result of a dispute in which event it means the price at which the Lot is knocked down by the Auctioneer to the Buyer at the Second Auction.

'**Insurance Fee**' means the mandatory fee paid by the Seller on all sold Lots with the exception of V Lots and referred to in the Consignment Agreement Form, being 1.5% of the Hammer Price, plus GST.

'**Lot**' means any item or items consigned by or on behalf of the Seller to the Company with a view to its sale at auction or by private treaty and includes a V Lot.

'**Lot Number**' means the number allocated by the Company to a Lot prior to auction.

'**Offer Fee**' means the flat fee paid by the Seller regardless of whether a Lot sells and referred to in the Consignment Agreement Form.

'**Premium**' (unless otherwise stated in a relevant auction Catalogue) means 25% of the Hammer Price paid by the Buyer, including GST.

'**Purchase Price**' means the aggregate of the Sale Price, the Premium, any GST payable on the Sale Price and/or the Premium and the Charges.

'**Sale**' means any private treaty or auction sale at which a Lot is offered for sale.

'**Sale Price**' means the Hammer Price if sold at auction or the price agreed by the Buyer at private treaty (including GST, if any).

'**Sale Proceeds**' means the net amount payable to the Seller, being the Sale Price less the Seller's Commission, Expenses and any other amount payable to the Company by the Seller as agreed between the Company and the Seller (in whatever capacity and howsoever arising, whether in relation to these Conditions or otherwise).

'**Second Auction**' has the meaning set out in the definition of Hammer Price.

'**Seller**' means in relation to any Lot the person or other entity named as the Seller on the front page of the Consignment Agreement Form who offers the Lot for sale.

'**Seller's Commission**' means the amount paid by the Seller to the Company on the sale of a Lot that is calculated on the Sale Price at the rate agreed in writing by the Seller and the Company on the Consignment Agreement Form or otherwise, plus GST.

'**V Lot**' means any motor vehicle or marine vessel consigned by or on behalf of the Seller to the Company with a view to its sale at auction or by private treaty.

## 2. The Company as agent

2.1 The Company is the agent of the Seller in relation to the sale of a Lot (except where it is expressly stated in writing to be selling as principal) and is not responsible for any default by the Seller or the Buyer.

2.2 The Seller instructs and authorises the Company to:

- (a) sell the Lot as the Seller's agent in accordance with these Conditions;
- (b) receive and hold all Sale Proceeds on the Seller's behalf;
- (c) sign on the Seller's behalf any documentation necessary to transfer ownership of the Lot to the Buyer;
- (d) allow the Lot to be inspected by prospective Buyers prior to the Sale, at any time and in any manner or place agreeable to the Company; and
- (e) remove any Lot from the frame, holder, case or covering to examine it.

## 3. The Company's discretion

3.1 The Auctioneer has the right at his or her sole discretion to refuse any bid, to divide any Lot, to combine two or more Lots, to withdraw any Lot from Sale and, if there is a dispute or the Auctioneer or the Company is of the opinion that there has been a misunderstanding or mistake regarding a Sale or a Lot the subject of a Sale, to rescind the Sale and put any Lot up for a Second Auction.

3.2 If a Sale is rescinded, the Company may:

- (a) put the Lot up for a Second Auction at a subsequent Sale; or
- (b) offer the Lot for sale by private treaty; or
- (c) withdraw the Lot from sale.

3.3 The Company may refuse entry to its premises or to any private premises at which it is conducting an auction by any person or persons at its absolute discretion.

## 4. Risk of personal loss or injury

The Company shall be under no liability for any injury, damage or loss sustained by any person while on the Company's premises or any Sale premises or where a Lot, or a part of a Lot, may be on view from time to time, except where the Company (and its employees or agents) has not acted with due care and skill.

## 5. The Company's Estimated Selling Range and descriptions

5.1 (a) Any Estimated Selling Range given by the Company is a statement of opinion and should not be relied upon as a representation as to the Sale Price a Lot may achieve at a Sale.

(b) The Company reserves the right to revise the Estimated Selling Range at any time with the agreement of the Seller.

5.2 The Seller acknowledges that the Company is entitled to rely on the accuracy of a description of a Lot provided by or on behalf of the Seller.

5.3 The Company shall not be liable for any error, misstatement or omission in the description of a Lot in any Catalogue, unless the Company (and its employees or agents) has engaged in misleading or deceptive conduct.

## 6. Warranties of Seller

6.1 The Seller warrants to the Company and the Buyer that:

- (a) the Seller owns the Lot or the Seller is authorised to sell the Lot by the owner (in which case, an original signed authorisation by the owner must be provided to the Company);
- (b) the Lot is free from all liens, charges encumbrances and third party claims including a claim by a spouse;
- (c) the Seller has complied with all requirements, legal or otherwise, in relation to any export or import of the Lot and has notified the Company in writing of any failure by third parties to comply with such requirements in the past;
- (d) the Lot and any written provenance given by the Seller to the Company are authentic;
- (e) the Seller has notified the Company in writing of:
  - (i) any material alterations to the Lot of which the Seller is aware;
  - (ii) any concerns expressed by third parties in relation to the authenticity, provenance, origin, age, condition or quality of the Lot;
  - (iii) all information in the Seller's possession as to the provenance and identification of the Lot including, in respect of a V Lot, whether that V Lot complies with the provisions of any road traffic or maritime Acts and Regulations,
 and that information is correct; and
- (f) the Lot is fit for its purpose and safe if used for the purpose for which it was designed and free from any defect not obvious on external inspection.

6.2 For motor vehicles and number plates the Seller will provide to the Company prior to the Sale all legal and requisite title and registration certificates, permits and other documents to transfer title of the Lot to the Buyer.

6.3 The Seller acknowledges that the Company relies on any information provided by the Seller and the Seller agrees to indemnify and keep indemnified the Company against all Claims arising out of or in connection with this information.

6.4 The Seller agrees to indemnify and keep indemnified the Company and or the Buyer against all Claims arising from the Seller's actual or alleged breach of any warranty in these Conditions.

## 7. Commission and Expenses

7.1 The Seller shall pay to the Company the Seller's Commission and any other Expenses set out in the Consignment Agreement Form.

7.2 The Company may deduct and retain the Seller's Commission from the amount paid by the Buyer for the Lot as soon as the Purchase Price, or part of it, is received and before the Sale Proceeds are paid to the Seller.

7.3 The Seller shall pay to the Company the relevant Offer Fee on a Lot being offered for sale whether or not the Lot is sold.

## 8. Reserves

8.1 All Lots will be sold without reserve unless there is an Agreed Reserve. If a Lot has an Agreed Reserve then it will be offered subject to the Agreed Reserve. There shall be no Agreed Reserve for Lots with an Estimated Selling Range of less than \$1,000.

8.2 If there is an Agreed Reserve:

- (a) it may only be changed with the written consent of the Company although the Company may at its own discretion consent to an oral request for a reduction (but not an increase);
- (b) only the Auctioneer may place a bid on behalf of the Seller;
- (c) neither the Seller nor any person on the Seller's behalf may bid on the Lot;
- (d) if the Auctioneer is of the opinion that the Seller or a person on the Seller's behalf may have bid on the Lot, the Auctioneer may knock down the Lot to the Seller without observing the Agreed Reserve and the Seller shall pay to the Company the Premium in addition to the Seller's Commission and Expenses.

8.3 If a Seller purports to place a reserve on a Lot but that reserve is not an Agreed Reserve, the Company will sell the Lot without reserve unless the Seller withdraws the Lot from Sale in accordance with clause 11.

8.4 If there is no Agreed Reserve, the Company shall not be liable if the Sale Price of the Lot is less than the Estimated Selling Range.

8.5 Where the Agreed Reserve for a Lot is \$5,000 or less and the Lot is offered for sale and is unsold, the Company reserves the right to lower the Agreed Reserve for the Lot for a subsequent Sale by up to 20%.

## 9. Risk

9.1 Any V Lot in the power, possession or custody of the Company (including during transportation by employees or agents of the Company) shall at all times remain at the risk of the Seller until the legal risk passes to the Buyer (see clause 9.8 below) and, except where the Company (and its employees or agents) has not acted with due care and skill, the Company shall not be liable for any Claims relating to any V Lot.

9.2 The Seller shall not make any Claim against the Company in respect of loss of or damage to any V Lot, except where the loss or damage is as a result of the Company (and its employees or agents) not acting with due care and skill, and, other than in circumstances where the Company (and its employees or agents) has not acted with due care and skill, the Seller indemnifies the Company against all Claims relating to or caused by any V Lot.

9.3 The Seller shall insure any V Lot in the power, possession or custody of the Company for no less than the maximum value of the V Lot as estimated by the Company for loss of or any damage to the V Lot and shall maintain that insurance until the Lot has been sold and the Seller has been notified by the Company that the Purchase Price has been received.

9.4 In respect of Lots that are not V Lots, the Company indemnifies the Seller against some risks arising from fire and other insurable perils, theft following forcible entry, hold up and water damage to the extent of the Company's insurer's liability to it in that regard. In the event of a loss, except where the loss is as a result of the Company (and its employees or agents) not acting with due care and skill, the Seller may only claim an amount up to:

(a) in the case of unsold Lots:

(i) the Agreed Reserve; or

(ii) in the absence of an Agreed Reserve, the low end of the Estimated Selling Range; or

(iii) in the absence of (a) or (b) above, an amount included in a loss assessment provided by the Company or, if disputed by the Seller, by an independent loss assessor appointed by the Company; or

(b) in the event that the loss occurs after the fall of the Auctioneer's hammer and the Lot is sold but the Company has not yet received payment from the Buyer as cleared funds, an amount equal to the net proceeds which would have been due to the Seller.

9.5 The Company will charge the Seller the Insurance Fee for providing the insurance referred to in clause 9.4 if the Lot is sold.

9.6 The Company's own insurance will subsist until payment is made by the Buyer or, in the case of unsold Lots, until the expiry of 7 days after notice from the Company requiring the Seller to collect the unsold Lot.

9.7 Subject to clause 9.4, the Company will not be liable for any Claims relating to or caused by any Lot or by the Seller, except where the Company (and its employees or agents) has not acted with due care and skill, and the Seller indemnifies the Company against all Claims relating to or caused by any Lot, except where the Company (and its employees or agents) has not acted with due care and skill.

9.8 A purchased Lot shall be at the Buyer's risk in all respects from the fall of the Auctioneer's hammer whether or not payment has been made and neither the Company nor the Seller shall thereafter be liable for, and the Buyer indemnifies the Company against, any loss or damage of any kind, except where the Company (and its employees or agents) has not acted with due care and skill.

9.9 The Company advises all Buyers to arrange for their own insurance cover for purchased Lots effective from the fall of the Auctioneer's hammer to protect their interests as the Company cannot warrant that the Seller has insured its interests in the Lots or that the Company's insurance cover will extend to all risks.

9.10 Where the Company has exercised due care and skill, the Company:

(a) does not accept responsibility for Lots damaged by insect infestation or by changes in atmospheric conditions; and

(b) shall not be liable for such damage nor for any other damage to glass or to picture frames.

## 10. Payment to Seller

10.1 The Company is only liable to the Seller for payment of the Sale Proceeds if the Purchase Price has been received in cleared funds by the Company.

10.2 If the full Purchase Price has been received in cleared funds by the Company within 21 days of the date of the Sale, the Company shall pay the Sale Proceeds to the Seller not later than 28 days after the date of the Sale. Unless an alternative method of payment shall have been agreed in writing with the Seller, payment shall be made by sending to the Seller a cheque by post at the Seller's risk.

10.3 If the Purchase Price has not been received in full by the Company within 21 days of the date of the Sale, the Company shall pay the Sale Proceeds within 6 business days after the date on which the full Purchase Price is received in cleared funds from the Buyer.

10.4 If the Buyer fails to pay the Purchase Price within 21 days after the date of the Sale then the Company will give notice of this to the Seller. If the Seller does not give written instructions to the Company in response to this notice within 7 days then the Company may do any of the following for and on behalf of the Seller (who will give the Company any assistance it may require):

- (a) agree terms for the payment of the Purchase Price with the Buyer;
- (b) remove, store and further insure the Lot sold;
- (c) settle any Claim by or against the Buyer;
- (d) take such steps as the Company shall at its absolute discretion consider necessary to collect the monies due from the Buyer;
- (e) rescind the Sale and refund any monies to the Buyer;
- (f) offer the Lot for resale by private treaty or auction on the same terms as appear in the Consignment Agreement Form;
- (g) appoint a solicitor or other agent to do any of the above.
- (h)

10.5 Any monies recovered by and paid to the Company by the Buyer shall be applied in the following order (in each case together with interest) to the payment of:

- (a) any legal or other costs incurred by the Company;
- (b) the Expenses;
- (c) the Premium;
- (d) the Seller's Commission; and

any balance remaining shall be paid by the Company to the Seller (or, if appropriate, the Buyer). Any cost incurred by The Company in the collection of monies owed from services rendered, will be at the expense of the debtor

10.6 In the event that there is a shortfall, any such shortfall shall be made good by the Seller to the Company on demand.

10.7 If, within 7 days of receipt of the notice referred to in clause 10.4, the Seller informs the Company that the Seller wishes to take delivery of the Lot, the Seller shall be entitled to do so but only upon prior payment of the Offer Fee and any legal and other costs incurred by the Company so as to provide the Company with a full indemnity in respect of those costs.

10.8 If the Company rescinds a Sale because the Lot is proved to its reasonable satisfaction to be a Forgery (see clause 15.5) and the Company has accounted to the Seller for the Sale Proceeds, the Seller must immediately refund the Sale Proceeds to the Company, which will then refund the Purchase Price to the Buyer and make the Lot available to the Seller for collection.

## **11. Withdrawal fees**

11.1 A Seller may only withdraw a Lot from sale by written notice signed by the Seller.

11.2 If a Seller withdraws a Lot from sale either at any time after 30 days have elapsed after signing the Consignment Agreement Form or after the Company has photographed the Lot and/or allocated a Lot Number to the Lot (whichever is the earlier) but before the Lot has been advertised and/or catalogued for auction, the Seller shall pay to the Company the Expenses plus a withdrawal fee equal to 15% plus GST of the higher of:

- (a) the average of the Estimated Selling Range high and low estimates; and
- (b) the Agreed Reserve.

11.3 If a Seller withdraws a Lot from sale after the Company has advertised and/or catalogued the Lot for auction but before the Lot has been put on view, the Seller shall pay to the Company the Expenses plus a withdrawal fee equal to 25% plus GST of the higher of:

- (a) the average of the Estimated Selling Range high and low estimates; and
- (b) the Agreed Reserve.

11.4 If a Seller withdraws a Lot from sale after the Lot has been put on view at the sale venue or in the Company's premises up to and including 28 days after the Sale, the Seller shall pay to the Company the Expenses plus a withdrawal fee equal to 30% plus GST of the higher of:

- (a) the average of the Estimated Selling Range high and low estimates; and
- (b) the Agreed Reserve.

11.5 If a Seller purports to change the Agreed Reserve at any time without the consent of the Company, the Seller shall be deemed to have withdrawn the Lot from sale.

11.6 If the Company or the Seller is restrained by order of any Court or other competent authority from selling a Lot or if the Company has reasonable cause for believing that either:

- (a) the Company or the Seller is so restrained or otherwise not legally entitled to sell the Lot;
- (b) the Seller is in breach of any one or more of the warranties of the Seller, or
- (c) the description of the Lot given to the Company by the Seller is inaccurate or misleading in any material respect,

then the Company may by notice in writing to the Seller decline to sell the Lot in question and the Seller shall be deemed to have withdrawn the Lot from sale.

11.7 If a Lot is withdrawn from sale or deemed to have been withdrawn then the Seller shall arrange for collection and removal of the Lot at Seller's expense within 2 business days after the date of withdrawal provided that the Seller has paid the Expenses and the applicable withdrawal fee.

11.8 If the Company incurs any legal and other costs investigating or defending any Claims concerning the ownership of a Lot, the accuracy of the description of the Lot contained in the Catalogue or the warranties of the Seller, the Seller shall indemnify the Company for all such costs.

11.9 The Company is authorised by the Seller to apply any money held by the Company on behalf of the Seller to the payment or reimbursement of any amount payable by the Seller to the Company including the Expenses and the withdrawal fees.

11.10 The Company may claim a lien on any goods held by the Company for the Seller until all money payable to the Company by the Seller has been paid and, if it is not paid within 28 days, may exercise a power of sale over those goods.

## 12. Photography and illustration

12.1 The Company shall have the right to photograph and make illustrations of any Lot and to use at its discretion in the normal course of business such photographs and illustrations, and any photograph or illustration of a Lot owned and supplied by the Seller, whether or not in conjunction with the Sale.

12.2 Where the Seller agrees to the cost of such photographs and illustrations being incurred (and the amount to be incurred), the Seller is liable for the payment of that cost.

12.3 The copyright of all photographs taken and illustrations made of any Lot by and on behalf of the Company shall be the absolute property of the Company.

## 13. Unsold Lots

13.1 The Seller must request from the Company confirmation as to whether or not a Lot has been sold at the Sale. If a Lot is unsold the Seller shall advise the Company that the Seller wishes to collect the Lot and shall arrange for its removal from the premises of the Company or the Sale premises. The Seller must pay to the Company the Offer Fee and all Expenses, and the estimated cost of delivery of the Lot if the Company agrees to arrange redelivery to the Seller before removal of an unsold Lot.

13.2 If a Lot is unsold at the Sale, the Company is authorised by the Seller as the Seller's sole agent to sell the Lot by private treaty or by auction for a price that is not less than the Agreed Reserve at any time within 28 days after the Sale, provided that:

- (a) if the highest offer for an unsold Lot is referred to the Seller then the Seller may accept that offer; and
- (b) if the maker of the offer wishes to withdraw the offer then they must do so in writing prior to the communication to them by the Company of the Seller's acceptance of the offer.

13.3 If the Seller sells a Lot that was unsold at the Sale:

- (a) within 90 days after the Sale to a person who was registered to bid at the Sale; or
- (b) within 28 days after the Sale to any person,

the Seller must notify the Company in writing of the terms of the Seller's Sale within 7 days and pay the Seller's Commission, the Offer Fee and the Premium to the Company within 7 days after the Seller's Sale as though the Company had sold the Lot on behalf of the Seller.

- 13.4 If an unsold Lot is not collected by the Seller or sold by the Company within 28 days after the Sale and after the Company has given to the Seller 7 days' notice to arrange for its collection, then the Seller authorises the Company to dispose of the unsold Lot by public auction without reserve and to deduct from the Sale receipts all monies owing by the Seller to the Company.

**14. The Buyer**

- 14.1 The Auctioneer may knock down a Lot to the person who, at his or her absolute discretion, he or she believes is the highest bidder acceptable to the Company, subject to any Agreed Reserve. Any dispute may be determined by the Auctioneer at his or her absolute discretion and the decision of the Auctioneer shall be final.
- 14.2 Every bidder shall be deemed to act as principal unless prior to the commencement of the Sale there is a written acceptance by the Company that the bidder is acting on behalf of a third party and that the bidder is not personally liable.
- 14.3 No person shall be entitled to bid at a Sale without first having completed and delivered to the Company a bidder registration form acceptable to the Company and the registration form will include an acknowledgement by a bidder that they are bound by these Conditions.

The Company is the agent of the Seller, not the Buyer, and it is not intended that there be any legal relationship between the Company and the Buyer.

**15. Buyers to satisfy themselves**

- 15.1 Lots are sold on an 'as is' basis and it is the responsibility of prospective Buyers to examine a Lot prior to the Sale and to satisfy themselves as to the condition of the Lot and that the Lot matches any written or oral description provided by the Seller or the Company.
- 15.2 All descriptions provided by the Seller or the Company are subject to any statements made by the Auctioneer from the rostrum prior to any bid being accepted for the Lot and any illustrations in the Catalogue are solely for the guidance of prospective Buyers and should not be relied upon in terms of tone or colour or necessarily to reveal imperfections in any Lot.
- 15.3 In bidding for any Lot, prospective Buyers agree that they have not been induced to make any bid by any representation, to the extent the representation is not misleading or deceptive, in respect of the Lot by the Company, including any representation arising from a document that has been provided by the Seller to the Company in association with the Sale of a Lot and made available by the Company for inspection by prospective Buyers. If prospective Buyers wish to rely on any representation made by or on behalf of the Company, they must advise the Company in writing of this prior to the Sale.
- 15.4 If the Company is found to be liable for any loss or damage suffered, other than in circumstances where the loss or damage suffered is as a result of the Company (and its employees or agents) not acting with due care and skill or the Company (and its employees or agents) engaging in misleading or deceptive conduct,
- (a) the maximum liability of the Company to a Buyer shall be the Sale Price of the relevant Lot and the Premium (if paid by the Buyer); or
  - (b) the maximum liability of the Company to a Seller shall be the Sale Proceeds of the relevant Lot,
- and the Company shall not be liable for any consequential or indirect loss whatsoever.
- 15.5 If a Lot is proved to the reasonable satisfaction of the Company to be a Forgery then the Company may rescind the Sale as agent of the Seller in which case the Seller shall refund the Sale Proceeds to the Company, which will refund the Purchase Price to the Buyer and make the Lot available to the Seller for collection provided that:
- (a) the Buyer provides written notice to the Company within 14 days of the auction date of the Forgery allegations;
  - (b) the Buyer produces evidence from two independent experts who both agree that the Lot is a Forgery, however, the Company reserves the right to request further expert evidence if, in its sole discretion, it is not satisfied with the findings by the experts;
  - (c) the Buyer returns the Lot to the Company in the same condition as it was at the date of the Sale;
  - (d) the Buyer warrants that it has not sold or transferred the Lot nor created any rights in respect thereof in favour of any third party;
  - (e) the Seller has refunded the Sale Proceeds to the Company.
- 15.6 The benefits of this clause are for the Buyer only and cannot be assigned.
- 15.7 Despite clause 15.5 the Company has no obligation to rescind the Sale and the Buyer shall not be entitled to rescind the Sale if in the opinion of the Company:
- (a) the description of the Lot in the Catalogue was accurate at the time of its publication based on the opinion of an expert in the relevant area of expertise at that time; or
  - (b) the only method of establishing at the time of publication of the Catalogue that the Lot was a Forgery would have been a scientific process not then in general usage, or which would have been too costly or impractical or would have been likely to cause damage to the Lot.

- 15.8 If the conditions of clause 15.5 are satisfied and clause 15.7 does not apply, the maximum liability of the Company to a Buyer shall be the Sale Price of the relevant Lot and the Premium (if paid by the Buyer) but shall not include a refund of storage charges, insurance, interest and the like, or any consequential or indirect loss or damage suffered or expense incurred by the Buyer.

**16. Premium**

Unless otherwise stated in the Catalogue, the Buyer shall pay the Company the Premium. The Buyer acknowledges that the Company may also receive a Seller's Commission.

**17. Contract of sale**

- 17.1 Subject to the Company's discretion, on the acceptance of a bid by the fall of the Auctioneer's hammer a contract of sale is made between the Seller and the Buyer. The Company is not a party to the contract of sale and shall not be liable for any breach of that contract by either the Seller or the Buyer.

17.2 Risk of the Lot will pass to the Buyer on the fall of the Auctioneer's hammer.

17.3 Title to the Lot will pass to the Buyer when the full Purchase Price has been received by the Company by way of cleared funds.

**18. Payment by Buyer**

- 18.1 At that same time that a prospective Buyer registers to bid he or she must give the Company his or her name and address and, if requested by the Company, banking or other suitable references or identification and an acknowledgement that they have read and agreed to be bound by these Conditions.

18.2 The Purchase Price must be paid to the Company not later than 4.00 pm on the second day after the Sale unless otherwise stated in the Catalogue.

18.3 On the fall of the Auctioneer's hammer, the successful bidder on any V Lot, and other Lots as determined by the Company at its absolute discretion, may be required to provide a deposit equal to 15% of the Hammer Price, either in cash, approved credit card or approved bank cheque. If the successful bidder does not do so then the Company may rescind the Sale and resubmit the Lot for a Second Auction.

18.4 Absentee or telephone bidders who are unable to attend a Sale and who wish to bid on any V Lot and other Lots as determined by the Company at its absolute discretion may be required to provide a deposit equal to 15% of the low end of the Estimated Selling Range, either in cash, approved credit card or approved bank cheque prior to the Sale. In the event that such absentee or telephone bidders are unsuccessful then the Company will refund any deposits received within 5 working days from day of the Sale.

18.5 Full payment for all Lots must be made to the Company by cash, electronic funds transfer or approved credit card. Where the Buyer wishes to pay by bank cheque, personal or company cheque, and the Company has agreed that the Buyer may do so, a V Lot will not be released until the cheque has cleared and other Lots may not be released until the cheque has been cleared.

18.6 No Lot may be collected until the full Purchase Price has been received by the Company unless prior arrangements in writing have been made with the Company before the date of the Sale, provided always that ownership of the Lot will not pass to the Buyer until cleared funds in payment of the full Purchase Price have been received by the Company.

**19. Collection of Purchases**

All Lots must be paid for and collected by the second day after the Sale unless otherwise stated in the Catalogue. The Buyer shall be responsible for any removal, storage, or other charges for any Lot after this day.

**20. Responsibility for Lots purchased**

20.1 The Buyer shall be responsible for any loss or damage to, or caused by, a Lot purchased by the Buyer from the fall of the Auctioneer's hammer and neither the Company nor its employees or agents shall be responsible for any Claim while the Lot is in its power, possession or custody, except where the Company (and its employees or agents) has not acted with due care and skill.

20.2 Unless expressly stated in a Catalogue, the Company has no knowledge of whether a V Lot complies with the provisions of any road traffic or maritime Acts and Regulations. The Buyer of a V Lot who intends to use it on a public road or waterway shall be responsible for ensuring that it complies with the provisions of any road traffic or maritime Acts and Regulations.

20.3 The Buyer shall be solely responsible for obtaining any export licence that may be required in connection with a purchased Lot.

20.4 The Buyer of a firearm must obtain any certificates and licences required by law. the Company may refuse delivery of a Lot to a Buyer without evidence of compliance by the Buyer.

**21. Non-payment or failure to collect**

21.1 If the Purchase Price in respect of a Lot is not paid for in full in accordance with clause 18, the Company may, after a period of two weeks (during which time the Company will attempt to contact to the Buyer), and in its absolute discretion and without prejudice to any other rights or remedies it may have, exercise one or more of the following remedies:

- (a) re-sell the Lot without reserve by auction, private treaty or any other means provided that 2 days prior notice is given to the Buyer who agrees not to challenge the resale price achieved in respect of the Lot;
- (b) remove, store and further insure the Lot at the expense of the Buyer;
- (c) charge interest on the Purchase Price at the rate of 1.65% per month or part thereof from the date upon which the Purchase Price becomes payable until the full Purchase Price has been received by the Company from a resale;
- (d) retain any Lot sold to the Buyer at the same or any other auction until payment of the Purchase Price by the Buyer;
- (e) apply the proceeds of the Sale of any Lot then due or at any time thereafter becoming due to the Buyer in payment or part payment of the Purchase Price;
- (f) exercise a lien on or exercise a power of sale over any other property of the Buyer in the power, possession or control of the Company;
- (g) rescind the Sale of that Lot or any other Lot sold by the Seller to the Buyer at the same or any other auction sale;
- (h) repossess any goods comprising any Lot in respect of which payment is overdue and thereafter resell the same, and for this purpose the Buyer hereby grants an irrevocable licence to the Company to enter upon all or any of the Buyer's premises (with or without vehicles) during normal business hours, without prejudice to any other rights of the Company;
- (i) issue legal proceedings against the Buyer;
- (j) reject a bid from the Buyer at any future auction sale or require the Buyer to pay a deposit before any bid is accepted by the Company at any future Sale.

21.2 If the Lot is not collected in accordance with clause 19, the Company may, after a period of two weeks (during which time the Company will attempt to contact the Buyer), and in its absolute discretion and without prejudice to any other rights or remedies it may have, exercise one or more of the following remedies:

- (a) remove, store and further insure the Lot at the expense of the Buyer;
- (b) rescind the Sale of that Lot or any other Lot sold by the Seller to the Buyer at the same or any other auction sale.

21.3 The Buyer shall pay all reasonable legal and other costs reasonably incurred by the Company or the Seller (whether or not Court proceedings shall have been issued) as a result of the Buyer's non-payment for and/or failure to collect a Lot, on a full indemnity basis, together with interest thereon at the rate specified in clause 21.1(c) from the date upon which the Buyer shall have become liable to pay costs.

## **22. Absentee or commission bids**

22.1 An absentee bidder may make an absentee bid in the form of written instructions directing the Company to bid on one or more Lots up to a maximum amount specified for each Lot. The Company will execute the absentee bid at the lowest possible price taking into account the Agreed Reserve and other bids. There is no charge for this service. If identical bids are left by two or more parties, the first bid received by the Company will take preference. The Auctioneer may execute bids for absentee bidders directly from the rostrum, clearly identifying these as absentee or commission bids.

22.2 The Company is prepared to execute telephone bids on behalf of prospective Buyers who are not at the auction at no charge on the condition that the prospective Buyer acknowledges that taking instructions by telephone in the course of an auction has inherent risks (such as miscommunication, misunderstanding or other problems caused by a telecommunications fault or failure including a mobile telephone connection falling out).

22.3 The Company shall not be responsible for any errors or omissions in connection with the execution of absentee or telephone bids.

## **23. GST**

23.1 Interpretation

Words or expressions used in this clause 23 that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning.

23.2 GST and amounts payable to the Company:

- (a) All amounts owing by the Seller to the Company (including, without limitation, the Seller's Commission, the Offer Fee, the Insurance Fee, and Expenses) under this agreement do not include GST. If and to the extent that any amount owing by the Seller to the Company is consideration for a taxable supply by the Company, the amount shall be increased by an amount equal to the GST payable by the Company on that supply.

- (b) All amounts payable by the Buyer to the Company under this agreement (including, without limitation, the Premium) do not include GST. If and to the extent that any amount payable by the Buyer to the Company is consideration for a taxable supply by the Company, the Buyer must pay to the Company, an additional amount equal to the GST payable on the supply.

### 23.3 GST and amounts payable to the Seller

- (a) The Seller must, on or before the date of the Sale, notify the Company whether it is registered for GST, and if so, must provide its ABN to the Seller at the same time.
- (b) If the Seller notifies the Company that it is registered for GST in accordance with clause 23.3(a):
  - (i) the Seller authorises the Company as its agent, to issue a tax invoice to the Buyer in respect of the Sale of any Lot which is a taxable supply; and
  - (ii) on payment of the Sale Proceeds to the Seller in accordance with clause 10, the Company will:
    - (A) notify the Seller of the amount of GST included in the Sale Price for the Lot to enable the Seller to determine its GST liability on the Sale; and
    - (B) give the Seller a tax invoice for any taxable supply made by the Company to the Seller under this agreement (including, without limitation, any supply for which the Seller's Commission, the Offer Fee, the Insurance Fee, and Expenses are consideration) including any amounts payable on account of GST in accordance with clause 23.2(a).

### 23.4 GST on sale of Lot to Buyer

- (a) The Sale Price is inclusive of GST (if any) and shall not be increased any further for any GST payable by the Seller in respect of the Sale.
- (b) If the Seller has informed the Company that it is registered for GST in accordance with clause 23.3(a), the Company will, upon request by the Buyer or otherwise at its discretion, issue a tax invoice to the Buyer showing:
  - (i) the amount of GST included in the Sale Price; and
  - (ii) any amounts payable by the Buyer to the Company in consideration for any taxable supply made by the Company to the Buyer under this agreement and any GST payable on the supply in accordance with clause 23.2(b).
- (c) If the Seller does not inform the Company that it is registered for GST in accordance with clause 23.3(a), the Sale will be presumed not to be a taxable supply, and the Company will only issue a tax invoice for any taxable supply made by the Company to the Buyer under this agreement (including, without limitation, any taxable supply for which the Premium is consideration and any amounts payable on account of GST payable on that supply in accordance with clause 23.2(b)).
- (d) A Buyer of a Lot sold by a GST registered Seller that is subsequently exported from Australia may be able to claim a refund from the Company for any GST included in the Sale Price of a Lot if, within 60 days of the Sale, the Buyer provides the Company with:
  - (i) all relevant shipping documents confirming that the goods have been exported from Australia; and
  - (ii) evidence to the reasonable satisfaction of the Company that the Buyer is not registered or required to be registered for GST in Australia.

However, the Company need not refund any GST amount to the Buyer under this clause, unless and until it receives a refund of this amount from the Seller.

### 23.5 Obligations of non-resident Sellers

- (a) This clause 23.5 only applies to Sellers that are non-residents of Australia.
- (b) The Seller must, on or before any Lot is imported into Australia for Sale, notify the Company as to:
  - (i) whether the Seller will be selling the Lot in the course of carrying on an enterprise; and
  - (ii) whether the Seller is registered for GST in Australia.
- (c) The Seller acknowledges and agrees that the Company has the right to deduct and retain from the Sale Proceeds, an amount equal to any GST for which the Company is or becomes liable to pay in respect of the importation or Sale of a Lot, including, without limitation, any GST payable pursuant to Division 57 of the GST Act.

23.6 Reimbursements (net down)

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the taxable supply to which that loss, cost or expense relates.

**24. Currency converter**

The Company may provide a currency converter for the convenience of bidders. The rates quoted for conversion of other currencies to Dollars (or the currency in which the relevant Sale is conducted) are indicative only and neither the Company nor its agents shall be responsible for any errors or omissions in the converter.

**25. Governing Law and Jurisdiction**

25.1 These Conditions are governed by and shall be construed in accordance with the law of the State in which the Sale is conducted ('Sale State').

25.2 The Company, the Seller, the Buyer and any bidders at the Sale irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Sale State.

**26. Notices**

26.1 A notice, demand, consent or approval or communication under these Conditions ('Notice') must be:

- (a) in writing, in English, and signed by a person duly authorised by the sender; and
- (b) delivered by hand or sent by prepaid post, and by airmail when sent to a destination outside Australia, or facsimile or email to the recipient's address as varied by any Notice given by the recipient to the sender.

26.2 A Notice given in accordance with clause 26.1 takes effect when it is taken to have been received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by facsimile, on receipt by the sender of the transmission report at the conclusion of the transmission;
- (c) if sent by mail, two days after the date of posting if posted to an address within the country of posting and seven days after the date of posting if posted to a country outside Australia; and
- (d) if sent by email, at the time of transmission unless the sender is notified that the email was undeliverable.

26.3 In proving service by delivery:

- (a) by hand, it shall be necessary only to produce a receipt for the communication signed by or on behalf of the recipient;
- (b) by facsimile, it shall be necessary only to produce the confirmatory transmission report;
- (c) by post, it shall be necessary only to prove that the communication was contained in a pre-paid envelope which was duly addressed, posted and, in the case of the Notice being sent to a destination outside Australia, was sent by airmail; and
- (d) by email, it shall be necessary only to prove that the communication was sent to the correct email address.

**27. General provisions**

27.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

27.2 These Conditions constitute the entire agreement of the parties on the subject matter. All representations, communications and prior agreements, to the extent they are not misleading or deceptive, in relation to the subject matter are merged in and superseded by these Conditions.

27.3 The parties agree that, if the whole or any part of any one or more provisions is judged invalid or unenforceable, that portion will be deemed to be deleted and will not affect the validity or enforceability of the remaining provisions.

27.4 Neither party shall be liable for any loss or damage or be deemed to be in breach of these Conditions if its failure to perform or failure to cure any of its respective obligations hereunder results from any event or circumstance beyond its reasonable control. The party interfered with shall give the other party prompt written notice of any such force majeure condition. If notice is provided, the time for performance or cure shall be extended for a period equal to the duration of the force majeure event or circumstance described in such notice, except that any such cause shall not excuse the payment of any sums owed to the Company prior to, during, or after any such force majeure condition.