

**These are the Conditions of Business referred to in the Receipt and Contract.  
Please read the enclosed carefully before signing your Receipt and Contract.**

## **INTRODUCTION**

**These conditions are the basis of Bonhams' agreement with the Seller. Please read them carefully and ask for an explanation of anything that you do not understand.**

Under the terms of this agreement we act as **your agent**. This means you will be responsible for all statements and representations made by us on your behalf and you will be the principal to the *Contract for Sale* with the *Buyer* of the *Lot* and responsible for breaches of that contract. For that reason you are required to give us certain undertakings about the *Lot* in paragraph 4 and you must ensure that what you tell us about the *Lot* is correct and complete (see paragraphs 4.1.5 and 4.1.6). You must check the *Entry* (see paragraph 6.3) if the *Catalogue* is made available to you prior to the *Sale*. As your agent, we are not under any obligation, either to you or to any *Buyer*, under the *Contract for Sale* which you make through us. Our liability to you is governed by this agreement.

We will offer the *Lot* for sale on the terms of the *Contract for Sale*, set out in **Appendix 1** of the *Catalogue*. The *Contract for Sale* will govern your relationship with any *Buyer*. The way in which we conduct auctions is explained in our *Notice to Bidders*, set out at the beginning of the *Catalogue*. We also have our own agreement with any *Buyer*, our *Buyer's Agreement*, which is set out in **Appendix 2** of the *Catalogue*. **Definitions** and a **Glossary** of words and phrases used by us in this agreement and in these associated documents are set out in **Appendix 3** of the *Catalogue*, and are incorporated into this agreement. Words and phrases that appear in the List of Definitions are printed in italics. As our *Catalogue* terms are undergoing revision, and different terms may apply to you than those in our current *Catalogues*, we will provide you with copies of the text of these documents before you enter into your agreement with us and you should familiarize yourself with them because, by entering into this agreement, you consent to our selling the *Lot* on your behalf in accordance with our *Notice to Bidders* and on the terms of the *Contract for Sale* and consent to our entering into our *Buyer's Agreement* with any *Buyer*.

You should in particular be aware of the undertaking contained in paragraph 9 of the *Buyer's Agreement*, which we give personally to the *Buyer*. Subject to the terms thereof, we undertake to buy back at the *Purchase Price* any *Forgery* and, in this agreement with you, you agree to reimburse us for our costs and expenses in performing this undertaking (see paragraph 14). All of the documents referred to above **are subject to alteration** by us before the sale of your *Lot*, but we will only alter them in a way which is reasonable as between you and us.

## **DATA PROTECTION - USE OF YOUR INFORMATION**

Where we obtain any personal information about you, we shall only use it in accordance with the terms of our Privacy Policy (subject to any additional specific consent(s) you may have given at the time your information was disclosed). A copy of our Privacy Policy can be found on our Website [www.bonhams.com](http://www.bonhams.com) or requested by post from Customer Services Department, 101 New Bond Street, London, W1S 1SR or by email from [info@bonhams.com](mailto:info@bonhams.com)

### **1. OUR OBLIGATIONS**

- 1.1. Subject to any express written agreement we may make to provide additional (or fewer) services, we will:
  - 1.1.1. if you bring the *Lot* in to us for examination or if we agree to examine it elsewhere, carry out the limited examination of the *Lot* which we describe in paragraph 1.2.1;
  - 1.1.2. based on any information you give to us about the *Lot* or we may have obtained about it, (including as a result of any *Standard Examination* or *Specialist Examination* we have carried out) publish a brief *Entry* about the *Lot* in the *Catalogue* on the basis explained in paragraph 1.3 and paragraph 6;
  - 1.1.3. agree a Reserve, or that the sale will be *Without Reserve*, in accordance with paragraph 7;
  - 1.1.4. take delivery of and store the *Lot* in accordance with paragraph 8;
  - 1.1.5. expose the *Lot* in pre-sale viewings or any other viewings as *Bonhams* may think fit and enter the *Lot* in the *Sale*;
  - 1.1.6. produce a *Condition Report* in respect of the *Lot* where requested to do so by a potential *Buyer* if we think it appropriate to do so;
  - 1.1.7. conduct the *Sale* in accordance with paragraph 11;
  - 1.1.8. accept payment from the *Buyer* of the *Purchase Price* and hold the *Sale Proceeds* on trust for you in accordance with paragraph 12;
  - 1.1.9. deal with a *Lot* sold at the *Sale* in accordance with paragraph 12 (including exercising on your behalf and for both your and our benefit all and any of your rights and powers to collect payment of the *Purchase Price*);
  - 1.1.10. deal with and sell any *Lot* unsold at the *Sale* in accordance with paragraph 13.
- 1.2. Examinations
  - 1.2.1. When you consign a *Lot* for sale by us at any saleroom, except New Bond Street, we will carry out a *Standard Examination* of the *Lot*. The *Standard Examination* that we agree to carry out under this agreement is a visual examination of the *Lot* by a non-specialist member of our staff. The degree of skill and care exercised by us in such a *Standard Examination* will be proportionate to an examination of this limited nature. At New Bond Street, a specialist on the *Lot* will carry out a visual examination (a *Specialist Examination*). Such examinations will not involve investigation or research into the *Lot*, nor tests on it. If we perform a *Specialist Examination*, the degree of skill and care involved will increase proportionately to the level of skill and care that would reasonably be expected from a specialist on the *Lot*.
  - 1.2.2. If you would like your *Lot* to be examined by a specialist on the *Lot* or for us to carry out investigation, research or tests on the *Lot*, we will endeavour to arrange this. We may require you to pay additional *Expenses* or a separate fee for arranging this, which we will agree with you.
  - 1.2.3. We may also carry out for our own benefit (possibly without reference to you) our own investigations, research, tests, or specialist or other examinations of the *Lot*, but we are under no obligation whatsoever to do so. If we choose to do so, you do not have to pay for it and it will not form part of any *Standard Examination* or *Specialist Examination*.
- 1.3. Descriptions and Estimates

- 1.3.1. When providing a *Standard Examination* or *Specialist Examination*, we will normally provide an *Estimate*. An *Estimate* is only an expression of our opinion of the range within which we think the *Hammer Price* for the *Lot* at the *Sale* is likely to be. It is not an estimate of value. It does not take account of any *Tax* or *Buyer's Premium* payable. *Lots* can in fact sell for *Hammer Prices* below and above the *Estimate*. Any *Estimate* should not be relied on as an indication of the actual selling price or value of a *Lot*.
- 1.3.2. Anything stated or represented by us or on our behalf in any *Description* in relation to the authorship, attribution, condition, provenance, history, background, authenticity, style, period, age, suitability, quality, roadworthiness, origin, value, or future selling price (including the *Hammer Price*) of any *Lot* or by any *Estimate* given in relation to it, whether in the *Catalogue* or on our *Website* or otherwise, and whether made orally or in writing, is only an expression of our opinion.
- 1.3.3. Any *Descriptions*, *Estimates* or opinions given by us or on our behalf will be honestly given, using such skill and care as is reasonable having regard to the extent of that visual examination in the *Standard Examination* (or, if relevant, *Specialist Examination*) of the *Lot* and any information about the *Lot* you have given us or we may have obtained about it. If you are selling the *Lot* in the course of a *Business*, we will be entitled to rely entirely upon the *Description* of the *Lot* given by you or on your behalf in any opinion or *Description* or any *Estimate* we give.
- 1.3.4. Save that any *Description*, *Estimate* or opinion is honestly given with the degree of skill and care referred to in paragraph 1.3.3, we neither make nor agree to make any contractual promise, undertaking, obligation, guarantee, warranty or representation of fact in relation to any such *Description*, *Estimate* or opinion or in relation to the accuracy of anything stated in or represented by any expression of that *Description*, *Estimate* or opinion.
- 1.3.5. Any statements or representations contained in any *Description* or any *Estimate* may be changed by us at any time until the *Lot* is sold (and will be, if we alter our opinion after it has been given).
- 1.3.6. If you wish us to provide a formal valuation of any *Lot*, you will need to request this, and enter into a separate agreement with us specifying, in detail, the purposes for which the valuation is required and providing us with greater information in relation to the *Lot* than is contained in the *Contract Form*. As this is an additional service (in addition to our acting as your agent to sell your *Lot*), we will make a further charge for undertaking any valuation.

## 2. PRE-CONTRACT STATEMENTS AND REPRESENTATIONS AND THE CONTRACT FORM

- 2.1. We provide a free service to members of the public who bring in items for examination by us. Because the service is free and you are under no obligation to us in relation to it, and because on such examinations we merely express an opinion in relation to such items (which opinion we may change subsequently) and because we undertake specific obligations to you under this agreement, we owe you no duty (other than to be honest) either in contract or tort in relation to anything stated or represented (expressly or by implication) to you about the *Lot* and no such statement or representation will be incorporated into this agreement and any liability under the Misrepresentation Ordinance (Chapter 284 of the Laws of Hong Kong) will be limited to the amount of any *Consignment Fee* payable.
- 2.2. Any *Description* of the *Lot* on the *Contract Form* is for the purposes of identification only and (subject to paragraph 1.3.3 above) is not to be relied on.

## 3. PAYMENTS BY YOU

- 3.1. Unless otherwise agreed in writing between us, you will pay to us either:
- 3.1.1. unless the *Lot* is sold by us (in which case paragraph 3.1.2 applies), the *Consignment Fee* (which will be payable on demand). The *Consignment Fee* will be calculated according to the following scale of charges:

Until we have undertaken a <i>Standard Examination</i> (or, at <i>New Bond Street</i> only, a <i>Specialist Examination</i> ):	25% of the <i>Notional Fee</i>
After we have undertaken a <i>Standard Examination</i> (or, at <i>New Bond Street</i> only, a <i>Specialist Examination</i> ) and before we have published an <i>Entry</i> about the <i>Lot</i> in the <i>Catalogue</i> or on our <i>Website</i> :	50% of the <i>Notional Fee</i>
After we have published an <i>Entry</i> about the <i>Lot</i> and before we have put the <i>Lot</i> on view:	75% of the <i>Notional Fee</i>
Thereafter:	100% of the <i>Notional Fee</i>
The <i>Notional Fee</i> will be the sum of such <i>Commission</i> and the <i>Buyer's Premium</i> which would be payable to us if we were to have sold the <i>Lot</i> at the <i>Sale</i> for the <i>Notional Price</i> .	
If paragraph 7.6 applies (excessive <i>Reserve</i> placed on the <i>Lot</i> by you), the <i>Consignment Fee</i> will be calculated by reference to the <i>Reserve</i> placed by you rather than the <i>Notional Price</i>	

- 3.1.2. if the *Lot* is sold by us, on such *Sale*, *Commission* calculated in accordance with the table on the *Contract Form*.
- 3.2. Unless paragraphs 7.6 (excessive *Reserve* placed on the *Lot* by you) or 10.1 (refusal to sell for cause) apply, we will waive the *Consignment Fee*

if the *Lot* is offered for sale during the *Sale* but is not sold by us on your behalf either during the *Sale* or under paragraph 13. We will also waive it if we refuse to sell the *Lot* pursuant to paragraph 10.3.

- 3.3 In addition, you will pay us any *Expenses* on demand.
- 3.4 In relation to the sale of any motor car, you will additionally pay us the *Motoring Catalogue Fee*. We will inform you of the amount of this fee before it is incurred.
- 3.5 Unless otherwise stated in this agreement, all sums payable to us will be subject to *Tax* at the appropriate rate and *Tax* will be payable by you on all such sums.
  
- 3.6 Any sum due from you but unpaid on the due date will bear interest (after as well as before judgement or order) at the annual rate of 5% per annum above the base lending rate of Hong Kong and Shanghai Banking Corporation Limited from time to time to be calculated on a daily basis from the date the sum became due until payment.
- 3.7 Time will be of the essence in relation to the payment of any sums payable by you to *Bonhams*.

#### **4. YOUR UNDERTAKINGS TO US**

- 4.1 We are selling the *Lot* on your behalf as your agent and you therefore undertake to us that:
  - 4.1.1 you are the owner of the *Lot* or, if you are not the owner of the *Lot* (whether or not you have notified us that you are acting as an agent for a principal), you are duly authorised by the owner of the *Lot* to sell it;
  - 4.1.2 save as disclosed to us in writing, you sell the *Lot* with full title guarantee free from all liens, charges, encumbrances and third party claims;
  - 4.1.3 you are legally entitled to sell the *Lot* and you are legally capable of conferring on the *Buyer* quiet possession of the *Lot* and that in the event of our selling the *Lot*, the sale will conform in every respect with the terms implied by the Sale of Goods Ordinance (Chapter 26 of the Laws of *Hong Kong*), Sections 14(1)(a) and 14(1)(b) (see the Definitions and Glossary);
  - 4.1.4 you have complied with all requirements, legal or otherwise, relating to any export or import of the *Lot*, all duties and *Taxes* in respect of the export or import of the *Lot* have (unless otherwise agreed in writing with us) been paid and, so far as you and any principal for whom you act in relation to the *Lot* are aware, all third parties have complied with such requirements in the past;
  - 4.1.5 you have notified us in writing of any material alterations to the *Lot* and provided us accurately with all information (including any concerns expressed by third parties relating to the authorship, attribution, age, suitability, quality and origin of the *Lot*) in relation to the *Lot*, or any *Description* of it, of which you are aware or which is in your possession or of which any principal for whom you act in relation to the *Lot* is aware or possesses;
  - 4.1.6 you have notified us of all information of which you are aware or reasonably ought to be aware relating to the present or past ownerships or use of the *Lot* (including any association of the *Lot* with persons or events of note).
  - 4.1.7 in so far as you or any principal may become aware of any information (including any concerns expressed by third parties) in relation to the *Lot*, or any *Description* of it, after this agreement has been made, you will promptly inform us of it;
  - 4.1.8 unless you notify us in writing to the contrary at the time the *Lot* is delivered to us, there are no restrictions, (whether copyright or otherwise), affecting the *Lot* or our rights to photograph or illustrate the *Lot*, or reproduce (in any manner and in any media) photographs or illustrations or any text of any information or *Description* of, about or relating to the *Lot* provided by you or on your behalf.
- 4.2 You authorise us to give to the *Buyer* on your behalf the undertakings or information referred to at paragraphs 4.1.1 to 4.1.8.

#### **5. INDEMNITIES FROM YOU**

- 5.1 You agree to indemnify us against all claims, proceedings, liabilities, costs, expenses and losses arising from:
  - 5.1.1 any actual or alleged breach of any undertaking or obligation by you to us, whether by act or omission or otherwise;
  - 5.1.2 any injury, loss or damage caused to any person by you;
  - 5.1.3 our exercising any of our rights, powers and/or duties under paragraphs 10.1, 10.4 or 12.13;
  - 5.1.4 our receiving or recovering (or seeking to recover where you have authorised us to do so) the Purchase Price, in particular our exercising any of our rights, powers and/or duties under paragraph 12.13, where our costs and expenses are not otherwise recouped by us;
  - 5.1.5 your fraud and our exercising any of our rights or powers under paragraph 15 in the event of fraud;
  - 5.1.6 without prejudice to paragraph 5.1.1, any error, misdescription or omission in any *Description* of the *Lot* or any *Estimate* in relation to it, so long as it was not caused by a breach of our duty to you under this agreement to exercise reasonable skill and care.

#### **6. CATALOGUE & MARKETING**

- 6.1 We will publish an *Entry* about the *Lot* in the *Catalogue* for the *Sale*. This may be by insert after publication of the *Catalogue*. The *Entry* may also at our discretion be published on our *Website* but we are under no obligation to do so.
- 6.2 The *Entry* will contain an *Estimate* and an expression of our opinion in relation to the *Lot* in addition to the *Contractual Description* of the *Lot*. We may at our discretion include photograph(s) and/or illustration(s) of the *Lot* in the *Entry*, but we are not under any obligation to do so, unless otherwise expressly agreed with you. The *Entry* is published by us as your agent on your behalf.
- 6.3 A copy of the *Entry* or of the *Catalogue* itself will normally be made available to you prior to the *Sale* and, if it is, you must notify us immediately (and in any event before the *Sale*) in writing to the Company Secretary at 101 New Bond Street, London W1S 1SR or by email to qc.uk@bonhams.com if there is anything in either the *Entry* and/or the *Catalogue* in relation to the *Lot* which you (or any principal on whose behalf you act) are aware is, or may be, inaccurate or incorrect or, in the case of any *Description* of the *Lot*, incomplete in any material respect.
- 6.4 We may at our discretion produce on your behalf other marketing or promotional material in relation to the *Lot* but are not under any obligation to do so unless we agree with you to do so, in which case we may charge you for it.
- 6.5 Any *Entry* or any marketing or promotional material may be revised either orally or in writing from time to time (including during the *Sale*) at our discretion.
- 6.6 The copyright in the text and the photographs and illustrations of the *Lot* contained in the *Entry* or the *Catalogue* or on our *Website* or in any marketing or promotional material belongs to us. You will not reproduce or permit anyone else to reproduce such text, photographs or illustrations without our prior written consent.

6.7. You will not produce or issue or cause to be produced or issued any marketing or promotional material nor make nor cause to be made any public announcements relating to the *Lot* prior to the *Sale*.

## 7. RESERVES

7.1. The *Lot* will be sold *Without Reserve* unless a Reserve has been agreed with us or we have accepted a Reserve under paragraph 7.5 or if paragraph 7.6.1 or 7.6.3 applies.

7.2. An agreed Reserve or the agreement that the *Lot* is to be sold *Without Reserve* cannot be altered without our written consent.

7.3. If the *Contract Form* states a figure for the Reserve, that is the agreed Reserve with which the *Lot* will be sold.

7.4. If the *Contract Form* states that the Reserve is “zero”, “sell” or “0” or that the *Lot* is to be sold *Without Reserve* or that there is no Reserve, it is agreed that the *Lot* will be sold *Without Reserve*.

7.5. If the *Contract Form* does not contain any of the statements referred to in paragraphs 7.3 or 7.4, the *Lot* will be sold *Without Reserve* unless by written notice received by us at least 24 hours prior to the start of the *Sale*, you ask us to place a Reserve on the *Lot* at a particular figure and we accept that figure as the Reserve.

7.6. If the figure you give for the Reserve in the *Contract Form* or in a notice under paragraph 7.5 exceeds the lower figure of any *Estimate* for the *Lot* which we have notified to you, we can refuse to accept it as the Reserve. If we do so, we will give you notice of this and the *Lot* will be offered for sale *Without Reserve* unless:

7.6.1. you agree that the *Lot* is offered for *Sale* at a Reserve set by us; or

7.6.2. you withdraw the *Lot*, giving us a *Withdrawal Notice*, in which case you will remain liable to pay us the *Consignment Fee* and any other *Expenses* owing; or

7.6.3. you agree that the *Lot* is offered for *Sale* at the Reserve placed by you on the basis that, if the *Lot* does not sell at the *Sale* for an amount equal to or greater than that Reserve, you will pay us the *Consignment Fee* and any other *Expenses* owing if it is not sold. In that case the *Consignment Fee* will be calculated by reference to the Reserve placed by you on the *Lot* and not by reference to the Notional Price.

7.7. All Reserves will be in the currency of the country in which the *Lot* is to be sold. Any Reserve placed in any other currency will be converted into that currency using the mid market exchange rate at the close of business on the day before the *Sale* as quoted to us by Hong Kong and Shanghai Banking Corporation Limited.

7.8. Where a Reserve has been placed on the *Lot*, the *Auctioneer* may, at his sole discretion, place bids (up to an amount not equalling or exceeding the Reserve) on your behalf.

7.9. Where the *Contract Form* states that we are given “discretion” in relation to the Reserve, you authorise us (and the *Auctioneer*) to accept bids for the *Lot* at up to 10% less than the Reserve.

7.10. In addition to the authority under paragraph 7.9, you authorise us (and the *Auctioneer*) to accept bids (and sell at a *Hammer Price*) at less than the Reserve (or, if we are given “discretion” under paragraph 7.9, at less than 50% of the Reserve) provided that where we rely on that authority the *Sale Proceeds* paid to you are calculated on the basis that the *Hammer Price* was an amount equal to the Reserve (or, if we are given “discretion” under paragraph 7.9, an amount equal to 50% of the Reserve).

7.11. You authorise us (and the *Auctioneer*) to refuse a bid(s) from any *Bidder*, including from the highest *Bidder*, and whether or not there is a Reserve if such refusal is reasonable for the protection of your and/or our interests in the circumstances.

## 8. DELIVERY, RESPONSIBILITY FOR THE LOT, STORAGE & RE-COLLECTION

### 8.1. Delivery

8.1.1. Unless otherwise agreed with you, you will deliver the *Lot* at your expense into our custody at the place and time we will require of you.

8.1.2. You must notify us in writing at the time of delivery of the *Lot* of any special requirements and precautions reasonably required by you for its storage. You will be required to pay any additional costs which may be incurred as a consequence of your requirements. If your requirements are unreasonable we may refuse to accept the *Lot* and may terminate this agreement forthwith, and you will remain liable to pay us the *Consignment Fee*.

### 8.2. Responsibility for the Lot

8.2.1. Unless otherwise agreed in writing between you and us, we accept responsibility to you, on the basis set out in paragraph 8.2.2, for any damage to or loss or destruction of the *Lot* (other than a *Lot* which is a motor vehicle) whilst the *Lot* is in our custody (whether or not caused by our negligence but excluding damage, loss or destruction that is caused directly or indirectly by *Terrorism*) (the “*Loss and Damage Warranty*”) and you agree to pay us the *Loss and Damage Warranty Fee* described in paragraph 8.2.3 in consideration for us accepting such responsibility.

8.2.2. Without prejudice to your statutory rights:-

8.2.2.1. Our sole obligation to you under the *Loss and Damage Warranty* will be to pay you for any such damage, loss or destruction as referred to in paragraph 8.2.1 up to an aggregate amount, in the case of total loss, equal to:-

(a) until the *Lot* is sold, a sum equal to the Notional Price less any *Commission* or *Tax* which would have been payable if the *Lot* had been sold at the Notional Price; or

(b) after the *Lot* has been sold but before title in the *Lot* has passed to the *Buyer*, the amount of the *Hammer Price* less *Commission* and *Tax*.

8.2.2.2. our responsibility to you under the *Loss and Damage Warranty* will only continue until:-

(a) if the *Lot* is sold, the earlier of the collection of the *Lot* by or on behalf of the *Buyer* and the date that the *Lot* is taken into custody by the *Storage Contractor*; or

(b) if the *Lot* is unsold, the earlier of the expiry of any notice given under paragraphs 13.4 or 13.5 and the date that the *Lot* is taken into custody by the *Storage Contractor*.

8.2.3. The *Loss and Damage Warranty Fee* payable shall be:-

8.2.3.1. if the *Lot* is unsold, a sum equal to 1.5% of the amount specified in paragraph 8.2.2.1(a) plus *Tax*; or

8.2.3.2. if the *Lot* is sold at the *Sale* or subsequently by us on your behalf under paragraph 13, a sum equal to 1.5% of the amount specified in paragraph

8.2.2.1(b) plus *Tax* ; subject in each case to a minimum charge of HK\$100 (exclusive of *Tax*, if applicable). This fee is included in our *Expenses*, which are payable on demand.

### 8.3. Storage

- 8.3.1. From the time when the *Lot* is delivered into our custody under paragraph 8.1.1 and while we continue to have custody, we will have possession of it as bailee for reward and we will owe you a duty of care as such until title to the *Lot* passes to the *Buyer* or to us under paragraphs 12.1 or 12.3.
- 8.3.2. If the *Lot* is or becomes dangerous, whether before or after the *Sale*, we may dispose of it without advance notice to you in any manner as we think fit and we will be under no liability to you for doing so.
- 8.3.3. You authorise us, acting as your agent and on your behalf, to enter into a contract (the "*Storage Contract*") with the *Storage Contractor* for the storage of the *Lot* from either (1) if the *Lot* is unsold, the expiration of the period referred to in paragraph 13.4 or 13.5 or (2) if the *Lot* has been sold, the date specified in the *Notice to Bidders*, on the then current standard terms and conditions agreed between *Bonhams* and the *Storage Contractor* copies of which are available on request.
- 8.3.4. You undertake to comply with the terms of the *Storage Contract* and in particular to pay the charges due under the *Storage Contract* whilst the *Lot* is being stored by the *Storage Contractor* on your behalf.
- 8.4. Re-collection by you
- 8.4.1. If a *Lot* is withdrawn by you, or if we give you notice of our refusal to sell in accordance with paragraphs 10.1 or 10.3, you must remove the *Lot* at your own expense within seven days after the date of the *Withdrawal Notice* or of our notice of refusal to sell the *Lot*.
- 8.4.2. If the *Lot* is unsold at the *Sale*, we may give you not less than seven days' notice to remove the *Lot* and you must then remove the *Lot* at your own expense within that period. Until removal, such a notice will not terminate our authority to sell the *Lot* under paragraph 13.
- 8.4.3. If you give us notice terminating our authority to sell under paragraph 13, you must remove the *Lot* at your own expense within seven days of such notice.
- 8.4.4. Before removing the *Lot* you must pay us all sums due to us from you.
- 8.4.5. If you fail to remove the *Lot* by the latest time provided for above, you will pay us on demand storage charges at our current daily rate (currently a minimum charge of HK\$50 plus *Tax* per *Lot* per day) in respect of any period whilst the *Lot* is stored at our premises after latest time provided for above and any *Expenses* we incur and/or any charges incurred under any *Storage Contract*. This is without prejudice to our power under paragraph 13 to sell or dispose of the *Lot*.

## 9. WITHDRAWAL BY YOU

You may by written notice to us at any time revoke your instructions to sell the *Lot* by giving us a *Withdrawal Notice*. If you give us a *Withdrawal Notice*, you will remain liable to pay us the *Consignment Fee* (see paragraph 3.1.1) on demand.

## 10. OUR RIGHT TO REFUSE TO SELL AND OTHER RESPONSES FOR CAUSE

- 10.1. If we have reasonable cause for believing that:
- 10.1.1. we and/or you may be or are restrained by order of the court or other competent authority in respect of the *Lot*, or may be or are otherwise not legally entitled to sell the *Lot*; or
- 10.1.2. you are in breach of any of the undertakings set out in paragraph 4; or
- 10.1.3. the information about the *Lot* given to us by you or on your behalf is inaccurate or misleading in any material respect; or
- 10.1.4. the *Lot* is a *Forgery* we may refuse to sell the *Lot* in question. In this event, you will remain liable to pay us the *Consignment Fee* and *Expenses* on demand.
- 10.2. We will give you written notice of any decision under paragraph 10.1 and of the reason for it as soon as practicable after making our decision to refuse to sell the *Lot* in question.
- 10.3. In addition to our right to refuse to sell the *Lot* under paragraph 10.1, we may, by notice to you, refuse to sell any *Lot* for any reason. If we exercise this right after delivery of the *Lot* under paragraph 8.1.1, we will reimburse to you your reasonable expenses directly incurred by you in connection with that delivery and the collection and removal of the *Lot* from our custody and/or control.
- 10.4. Whenever it becomes apparent to us that the *Lot* is the subject of a claim by someone other than you (or that such a claim can reasonably be expected to be made), we may, at our absolute discretion, deal with the *Lot* in any manner which appears to us to recognise the legitimate interests of ourselves and the other parties involved and lawfully protect our position and our legitimate interests. Without prejudice to the generality of this discretion and by way of example, we may:
- 10.4.1. refuse to sell the *Lot*; and/or
- 10.4.2. retain the *Lot* to investigate any question raised or reasonably expected by us to be raised in relation to it; and/or
- 10.4.3. deliver the *Lot* to a person other than you; and/or
- 10.4.4. bring interpleader proceedings or seek any other order of any court, mediator, arbitrator or government body at your cost; and/or
- 10.4.5. require a further indemnity (beyond those set out in paragraph 5) and/or security from you in return for pursuing a course of action agreed to by you.
- 10.5. We will not exercise the rights under paragraph 10.4:
- 10.5.1. unless we believe that there exists a serious prospect of a good arguable case in favour of the claim; or
- 10.5.2. where the claim is a legitimate claim to the possession of the *Lot* by a *Buyer* of the *Lot*.
- 10.6. The rights under paragraph 10.4 are without prejudice to our rights to refuse to sell the *Lot* set out in paragraphs 10.1 and 10.3 and we may exercise them in addition to or in substitution for those rights and notwithstanding the exercise of our rights any *Consignment Fee* and *Expenses* shall remain due and payable to us on demand.
- 10.7. The rights under paragraph 10.4 may be exercised at any time during which we have actual or constructive possession of the *Lot*, or at any time after such possession, where the cessation of such possession has occurred by reason of any decision, order or ruling of any court, mediator, arbitrator or government body.

## 11. THE SALE

- 11.1. We will conduct the *Sale* in accordance with our *Notice to Bidders* and will sell the *Lot* on your behalf on the terms of the *Contract for Sale* subject to any alteration by us made at our discretion by notices, inserts and announcements. We will exercise such discretion reasonably as between you and us.
- 11.2. Neither you nor any person on your behalf (other than the *Auctioneer*) may bid for the *Lot*, whether a Reserve has been placed or not. If any such bid is nonetheless made, the *Auctioneer* may knock the *Lot* down to you without observing any Reserve and you will pay to us the *Buyer's Premium* in addition to the *Commission* and *Expenses*.

## 12. SALE PROCEEDS

- 12.1. Subject to paragraph 12.3, title to the *Lot* will only pass to the *Buyer* on receipt by us in cleared funds of the full Purchase Price. Once he has paid the Purchase Price and all other sums due to us, we will release the *Lot* to the *Buyer*.
- 12.2. You agree that we or any associated company of ours may at our or its discretion offer credit facilities to the *Buyer* to finance the sums payable to us and that the *Buyer* may use any existing credit facility with us (or any associated company of ours) if permitted by the terms of that facility to pay the sums to be paid.
- 12.3. Unless otherwise agreed in writing between you and us, we may at our discretion pay the *Sale Proceeds* to you before receipt of the Purchase Price, and, on our doing so, title in the *Lot* will pass to *Bonhams* and your right to payment of the Purchase Price will pass to us together with any right of action which you may have against the *Buyer* for non-payment.
- 12.4. All sums received by us on account of the Purchase Price for the *Lot* will be paid by us into our *Trust Account* and will be held by us upon trust for you.
- 12.5. We may deduct from the Purchase Price and pay out of the *Trust Account* to our own account any *Consignment Fee*, *Commission*, *Expenses*, *Tax* and interest earned on the *Trust Account*.
- 12.6. It is our policy to charge the *Buyer* an *Additional Premium* (as set out in the *Notice to Bidders*) to cover our expenses relating to the payment of royalties under the Artists Resale Right Regulations 2006. If any such payment of an *Additional Premium* does not cover, in full, the amount of any payment due under the Artists Resale Right Regulations 2006 in relation to the sale of the *Lot* by us or the *Buyer* fails to pay the *Additional Premium*, you agree to pay us, on demand, any shortfall and agree that we may deduct such amount from the Purchase Price and pay such amount out of the *Trust Account*.
- 12.7. If the *Buyer's Premium* (and *Tax*) payable on the sale of the *Lot* is paid into the *Trust Account* we may pay out of the *Trust Account* to our own account the amount of the *Buyer's Premium* and *Tax*.
- 12.8. We will issue payment to you of the *Sale Proceeds* 21 days after the *Sale* (or any sale under paragraph 13) or, if we receive the Purchase Price later than that date, within seven working days after the date of receipt of the Purchase Price in cleared funds by us. Payment will be made by cheque drawn in your favour, in the currency in which the *Sale* is conducted, and sent, at your risk, by post to you at the address shown on the *Contract Form* or such other address as you may specify in writing. If you wish for us to send the money to your account by telegraphic transfer you agree to us deducting any fees charged by our bank for such transfer (plus *Tax*) from the amount transferred. Any telegraphic transfer must be made to an account held in the same name as the name on the *Contract Form*. If you have not banked any cheque we send to you within seven years, we may transfer from the *Trust Account* to our own account a sum equal to the amount of the uncashed cheque and use the amount in question for our own benefit. We will nonetheless remain liable to pay the relevant amount to you on demand.
- 12.9. We may retain the *Sale Proceeds* until you have delivered to us any relevant documentation reasonably required by us to evidence your right to transfer title to the *Lot* to the *Buyer* and all documentation referred to in the *Entry* regarding the *Lot*.
- 12.10. We may deduct from any *Sale Proceeds* due to you any monies due to us from you, including any sums due to us in respect of any other goods bought or sold through us by you and pay such sums to ourselves in satisfaction or part satisfaction of the sums due to us.
- 12.11. If before we pay the *Sale Proceeds* to you the *Buyer* or any other person makes a claim against either you or us in relation to the *Lot*, we may withhold payment of the *Sale Proceeds* until such time as the claim has been resolved. In that event we will pay the *Sale Proceeds* into an interest bearing trust account with our bank. Any interest earned on these monies will (subject to any applicable statutory withholding *Tax*) be payable to you unless otherwise agreed by you or determined by a court of competent jurisdiction.
- 12.12. If the *Buyer* fails or refuses to pay the Purchase Price for the *Lot* to us in accordance with his obligations to do so, we will notify you of this as soon as practicable.
- 12.13. Following a notice of non-payment of the Purchase Price, we will, at your expense, take such steps to obtain payment of the Purchase Price as you may reasonably instruct us to take by notice in writing within seven days of our notice to you. In the absence of such instructions, you authorise us to take (at your cost) such steps as we may (at our absolute discretion) consider necessary or appropriate to collect the monies due from the *Buyer* (including commencing proceedings in your name) and/or appoint a solicitor and/or other agent to take any such steps and you hereby appoint us as your agent and undertake to give all such assistance to us as we may require in connection with the steps being taken pursuant to this paragraph.
- 12.14. Any monies recovered or paid to us in consequence of our taking any steps pursuant to paragraph 12.13 will be applied (in each case with the addition of interest at the annual rate of 5% per annum above the base lending rate of Standard Chartered Bank (Hong Kong) Limited from time to time to be calculated on a daily basis from the date the relevant sum was paid by us until the date of receipt by us of the monies) to the payment in the following order of:
- 12.14.1. all legal or other costs incurred by us in connection with such steps;
- 12.14.2. all other relevant *Expenses*;
- 12.14.3. *Buyer's Premium* plus any *Tax*;
- 12.14.4. *Commission* plus any *Tax*.

Any balance remaining will be paid to you. In the event that the monies recovered from the *Buyer* are insufficient to pay these amounts, such shortfall will be made good by you to us on demand.

## 13. AUTHORITY TO SELL OR DISPOSE OF AN UNSOLD LOT

- 13.1. If the *Lot* is unsold at the *Sale*, we (as your sole and exclusive agent) may for a period of at least 21 days following the *Sale* enter into an agreement to sell the *Lot* (at auction or by private treaty) upon such terms and conditions as we may reasonably consider appropriate. Subject to paragraph 13.2 below, the minimum *Sale Proceeds* from such a sale will (if a Reserve has been agreed with or accepted by us) be not less than the *Sale Proceeds* would have been if the *Lot* had been sold at the Reserve. Subject to paragraph 13.2 below, in the case where the *Contract Form* states that we are given “discretion” in relation to the Reserve then we may agree to sell the *Lot* at up to 50% less than the Reserve, and the *Sale Proceeds* from such a sale will be not less than the *Sale Proceeds* would have been if the *Lot* had been sold for an amount equal to 50% of the Reserve.
- 13.2. Where a *Lot* has not sold at the *Sale* and we believe that it could be sold if the Reserve were reduced we will write to you setting out our suggestion as to a new Reserve. If you do not object to the new Reserve suggested by us within ten days of the date of our letter then the Reserve will be reduced accordingly. If you object to the new Reserve within the above time period then the Reserve will remain unchanged and our authority to sell the *Lot* in accordance with these conditions shall continue.
- 13.3. We will, unless agreed otherwise, be entitled to *Commission* on the *Sale* of the *Lot* under paragraph 13.1 and we are entitled to charge a *Buyer’s Premium* plus *Tax* to any *Buyer* of any *Lot* on any such *Sale*.
- 13.4. You may terminate our authority to sell a *Lot* under paragraph 13.1 by giving us written notice expiring at any time after the period of 21 days following the *Sale*, whereupon you must remove the *Lot* at your expense within seven days of such notice.
- 13.5. In addition to the above authority to sell the *Lot*, you agree that, if you fail to remove the *Lot* by the expiry of the time set for removal in paragraph 8.4, we may, after the expiration of 3 months written notice from us to you specifying that we wish to sell pursuant to this paragraph 13.5, sell the *Lot* on your behalf (at auction or by private treaty) *Without Reserve* if you still have not removed it. We will be entitled to deduct from the *Sale Proceeds* any sums due to us and also the costs of such sale. The costs of sale will include *Commission* on the sale of the *Lot* by us under this paragraph, and we will be entitled to charge a *Buyer’s Premium* plus *Tax* to any *Buyer* of any *Lot* on any such sale and we will therefore retain the *Commission*, the *Buyer’s Premium*, *Tax* and any other sums due to us from the proceeds of such a sale and pay you the balance only.
- 13.6. If an unsold *Lot* has no monetary value, you authorise us to dispose of it in such manner as we think fit. We will give you seven days notice of such disposal to allow you to collect it if you wish to.

#### **14. FORGERIES, STAMPS NOT MATCHING THEIR CONTRACTUAL DESCRIPTION AND BOOKS WITHOUT ILLUSTRATIONS OR TEXT**

- 14.1. If, having been reasonably satisfied that a *Lot* is a *Forgery* or, in the case of a *Lot* consisting of *Stamps*, does not comply with the *Contractual Description* of the relevant *Stamps*, or, in the case of a *Lot* consisting of *Books*, does not contain any illustrations or text, we have (within six years after the *Lot* was sold to the *Buyer*) purchased the *Lot* from the *Buyer*, you undertake to repurchase the *Lot* from us on demand for an amount equal to the sum of the *Purchase Price*, *Buyer’s Premium*, *VAT* and *Expenses*, together with interest (after as well as before judgement or order) at an annual rate equal to 5% above Hong Kong and Shanghai Banking Corporation Limited base lending rate from time to time to be calculated on a daily basis from the date upon which we demanded payment from you until the date of the actual payment.
- 14.2. On payment to us of the amount referred to in paragraph 14.1, you will be entitled to collect the *Lot* and we will transfer to you the full sum of the rights and interests in the *Lot* (if any) which we have obtained from the *Buyer*. The said transfer will count as a sale of the *Lot* within the provisions of the Sale of Goods Ordinance (Chapter 26 of the Laws of *Hong Kong*), Sections 14(2)(a) and 14(2)(b) and will not attract the provisions of Sections 14(1)(a) and 14(1)(b) of that Ordinance in your favour (see the Definitions and Glossary).
- 14.3. You authorise us to carry out such tests and processes on a *Lot* as we consider necessary to satisfy ourselves that the *Guarantee* applies in any particular case.

#### **15. FRAUD**

In the event of any fraud by you or on your behalf which has induced the *Buyer* to purchase the *Lot*, we will be entitled at our discretion and irrespective of whether we are personally liable to the *Buyer* to act in any reasonable manner which appears to us to be best calculated to compensate the *Buyer* (which may include but is not limited to repurchasing the *Lot* from the *Buyer*) and, so long as we ourselves were not also fraudulent with you, you will indemnify us under the provisions in paragraph 5.1.5. You authorize us to carry out such tests and processes on a *Lot* as we consider necessary to establish whether this paragraph applies.

#### **16. LIMITS ON OUR LIABILITY**

- 16.1. If you are selling the *Lot* in the course of a *Business*, we will be entitled to rely entirely upon the *Description* of the *Lot* given by you or on your behalf in any opinion or *Description* or *Estimate* we give. Our liability in respect of any *Description* given by us is excluded except to the extent that we fail accurately to reflect any *Description* of the *Lot* given to us by you.
- 16.2. Without prejudice to the exclusion of liability provided for in paragraph 16.1, we will not be liable (whether in negligence, other tort, breach of contract or statutory duty or in restitution or in any other way) whether as a result of an act or an omission, whether before or after this agreement, for any lack of conformity with or inaccuracy, error or misdescription or omission in any *Description* of a *Lot* or any opinion, *Entry* or *Estimate* in respect of it (whether made in writing, including in the *Catalogue*, or on our *Website*, or orally or by conduct or otherwise) or in the setting of any *Reserve* or for any failure to achieve a sale or a sale at a higher price than was achieved, except in so far as it is caused by a breach of our duty to exercise reasonable skill and care in the performance of the obligations we have agreed to under this agreement or in the case of fraud by us or on our behalf (and we will not be liable to the extent that any breach of obligation by you has caused or contributed to it).
- 16.3. Our duty to you while the *Lot* is your property and in our custody and/or control is that of bailee for reward, but we will not be responsible for damage to the *Lot* or to other persons or things caused by:
- 16.3.1. handling the *Lot* if it is affected by woodworm and if any damage is caused as a result of it being so affected; or
- 16.3.2. changes in atmospheric pressure; nor will we be liable for:
- 16.3.3. damage to tension stringed musical instruments; or
- 16.3.4. damage to gilded picture frames, plaster picture frames or to picture frame glass.

- 16.4. We will not be liable to you for any loss of *Business*, *Business* profits or revenue or income or for loss of *Business* reputation or for disruption to *Business* or wasted time on the part of management or staff or, if you are selling the *Lot* in the course of a *Business*, for any indirect losses or consequential damages of any kind, irrespective in any case of the nature, volume or source of the loss or damage alleged to be suffered, and irrespective of whether the said loss or damage is caused by or claimed in respect of any negligence, other tort, breach of contract, statutory duty, bailee's duty, restitutionary claim or otherwise.
- 16.5. If you are selling the *Lot* in the course of a *Business*, in any circumstances where we are liable to you in respect of a *Lot*, or any act, omission, statement or representation in respect of it or this agreement or its performance, and whether in damages, for an indemnity or contribution, for a restitutionary remedy or in any way whatsoever, our liability will be limited to payment of a sum which will not exceed by way of maximum the amount of the *Purchase Price* (if any) or, if the *Lot* is not sold, the *Notional Price*, irrespective in any case of the nature, volume or source of any loss or damage alleged to be suffered or sum claimed as due, and irrespective of whether the liability arises from negligence, other tort, breach of contract, statutory duty, bailee's duty, restitutionary claim or otherwise. You may wish to protect yourself against loss by obtaining your own insurance.
- 16.6. Nothing set out above will be construed as excluding or restricting (whether directly or indirectly) any person's liability or excluding or restricting any person's rights or remedies in respect of (i) fraud, or (ii) death or personal injury caused by our negligence (or any person under our control or for whom we are legally responsible), or (iii) acts or omissions for which we are liable under the Occupiers Liability Ordinance (Chapter 314 of the Laws of Hong Kong), or (iv) any other liability to the extent the same may not be excluded or restricted as a matter of law.

## 17. MISCELLANEOUS

- 17.1. You may not assign either the benefit or burden of this agreement.
- 17.2. Our failure or delay in enforcing or exercising any power or right under this agreement will not operate or be deemed to operate as a waiver of our rights under it except to the extent of any express waiver given to you in writing. Any such waiver will not affect our ability subsequently to enforce any right arising under this agreement.
- 17.3. If either party to this agreement is prevented from performing that party's respective obligations under this agreement by circumstances beyond its reasonable control or if performance of its obligations would by reason of such circumstances give rise to a significantly increased financial cost to it, that party will not, for so long as such circumstances prevail, be required to perform such obligations. This paragraph does not apply to the obligations imposed on you by paragraphs 3, 4, 5, 6.3, 8 or 14.
- 17.4. Any notice or other communication to be given under this agreement must be in writing and may be delivered by hand or sent by registered post or air mail or fax transmission (if to *Bonhams* marked for the attention of the Company Secretary), to the address or fax number of the relevant party given in the *Contract Form* (unless notice of any change of address is given in writing). It is the responsibility of the sender of the notice or communication to ensure that it is received in a legible form within any applicable time period.
- 17.5. If any term or any part of any term of this agreement is held to be unenforceable or invalid, such unenforceability or invalidity will not affect the enforceability and validity of the remaining terms or the remainder of the relevant term.
- 17.6. References in this agreement to *Bonhams* will, where appropriate, include reference to *Bonhams*' officers, employees and agents.
- 17.7. The headings used in this agreement are for convenience only and will not affect their interpretation.
- 17.8. In this agreement "including" means "including, without limitation".
- 17.9. References to the singular will include reference to the plural (and vice versa) and reference to any one gender will include reference to the other genders.
- 17.10. Reference to a numbered paragraph is to a paragraph of this agreement.
- 17.11. Save as expressly provided in paragraph 17.12 nothing in this agreement confers (or purports to confer) on any person who is not a party to this agreement any benefit conferred by, or the right to enforce any term of, this agreement.
- 17.12. Where this agreement confers an immunity from, and/or an exclusion or restriction of, the responsibility and/or liability of *Bonhams*, this agreement will also operate in favour and for the benefit of *Bonhams*' holding company and the subsidiaries of such holding company and the successors and assignees of *Bonhams* and of such companies and of any officer, employee and agent of *Bonhams* and such companies, each of whom will be entitled to avail itself of the same relevant right at law.

## 18. GOVERNING LAW

- 18.1. Law

All transactions to which this agreement applies and all connected matters will be governed by and construed in accordance with the laws where the *Sale* takes place.

## 19. LANGUAGE

The *Conditions of Business* are published in both Chinese and English. If there is any dispute in its interpretation, the English version will prevail.

## APPENDIX 1

### CONTRACT FOR SALE

**IMPORTANT:** These terms may be changed in advance of the Sale of the *Lot* to you, by the setting out of different terms in the Catalogue for the Sale and/or by placing an insert in the Catalogue and/or by notices at the Sale venue and/or by oral announcements before and during the Sale at the Sale venue. You should be alert to this possibility of changes and ask in advance of bidding if there have been any.

Under this contract the *Seller's* liability in respect of the quality of the *Lot*, its fitness for any purpose and its conformity with any *Description* is limited. You are strongly advised to examine the *Lot* for yourself and/or obtain an independent examination of it before you buy it.

## 1 THE CONTRACT

- 1.1 These terms govern the *Contract for Sale* of the *Lot* by the *Seller* to the *Buyer*.
- 1.2 The Definitions and Glossary contained in Appendix 3 in the Catalogue are incorporated into this Contract for Sale and a separate copy can also be provided by Bonhams on request. Where words and phrases are used which are in the List of Definitions in it, they are printed in italics.
- 1.3 *Seller* sells the *Lot* as the principal to the *Contract for Sale*, such contract being made between the *Seller* and you through *Bonhams* which acts in the sole capacity as the *Seller's* agent and not as an additional principal. However, if the *Catalogue* states that *Bonhams* sells the *Lot* as principal, or such a statement is made by an announcement by the *Auctioneer*, or by a notice at the *Sale*, or an insert in the *Catalogue*, then *Bonhams* is the *Seller* for the purposes of this agreement.
- 1.4 The contract is made on the striking of the *Auctioneer's* hammer in respect of the *Lot* when it is knocked down to you.

## 2 SELLER'S UNDERTAKINGS

- 2.1 The *Seller* undertakes to you that:2.1.1 the *Seller* is the owner of the *Lot* or is duly authorised to sell the *Lot* by the owner;
- 2.1.2 save as may be disclosed in the *Entry* for the *Lot* in the *Catalogue*, the *Seller* sells the *Lot* with full title guarantee or, where the *Seller* is executor, trustee, liquidator, or receiver or administrator, with whatever right, title or interest he may have in the *Lot*;
- 2.1.3 except where the *Sale* is by an executor, trustee, liquidator, or receiver or administrator the *Seller* is both legally entitled to sell the *Lot*, and legally capable of conferring on you quiet possession of the *Lot* and that the sale conforms in every respect with the terms implied by the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong), Sections 14(1)(a) and 14(1)(b) (see the Definitions and Glossary);
- 2.1.4 the *Seller* has complied with all requirements, legal or otherwise, relating to any export or import of the *Lot*, and all duties and Taxes in respect of the export or import of the *Lot* have (unless stated to the contrary in the *Catalogue* or announced by the *Auctioneer*) been paid and, so far as the *Seller* is aware, all third parties have complied with such requirements in the past;
- 2.1.5 subject to any alterations expressly identified as such made by announcement or notice at the *Sale* venue or by the *Notice to Bidders* or by an insert in the *Catalogue*, the *Lot* corresponds with the *Contractual Description* of the *Lot*, being that part of the *Entry* about the *Lot* in the *Catalogue* which is in bold letters and (except for colour) with any photograph of the *Lot* in the *Catalogue* and the contents of any *Condition Report* which has been provided to the *Buyer*.

## 3 DESCRIPTIONS OF THE LOT

- 3.1 Paragraph 2.1.5 sets out what is the *Contractual Description* of the *Lot*. In particular, the *Lot* is not sold as corresponding with that part of the *Entry* in the *Catalogue* which is not printed in bold letters, which merely sets out (on the *Seller's* behalf) *Bonhams's* opinion about the *Lot* and which is not part of the *Contractual Description* upon which the *Lot* is sold. Any statement or representation other than that part of the *Entry* referred to in paragraph 2.1.5 (together with any express alteration to it as referred to in paragraph 2.1.5), including any *Description* or *Estimate*, whether made orally or in writing, including in the *Catalogue* or on *Bonhams's Website*, or by conduct, or otherwise, and whether by or on behalf of the *Seller* or *Bonhams* and whether made prior to or during the *Sale*, is not part of the *Contractual Description* upon which the *Lot* is sold.
- 3.2 Except as provided in paragraph 2.1.5, the *Seller* does not make or give and does not agree to make or give any contractual promise, undertaking, obligation, guarantee, warranty, or representation of fact, or undertake any duty of care, in relation to any *Description* of the *Lot* or any *Estimate* in relation to it, nor of the accuracy or completeness of any *Description* or *Estimate* which may have been made by or on behalf of the *Seller* including by *Bonhams*. No such *Description* or *Estimate* is incorporated into this *Contract for Sale*.

## 4 FITNESS FOR PURPOSE AND SATISFACTORY QUALITY

- 4.1 The *Seller* does not make and does not agree to make any contractual promise, undertaking, obligation, guarantee, warranty, or representation of fact in relation to the satisfactory quality of the *Lot* or its fitness for any purpose.
- 4.2 The *Seller* will not be liable for any breach of any undertaking, whether implied by the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong) or otherwise, as to the satisfactory quality of the *Lot* or its fitness for any purpose.

## 5 RISK, PROPERTY AND TITLE

- 5.1 *Risk* in the *Lot* passes to you when it is knocked down to you on the fall of the *Auctioneer's* hammer in respect of the *Lot*. The *Seller* will not be responsible thereafter for the *Lot* prior to you collecting it from *Bonhams* or the *Storage Contractor*, with whom you have separate contract(s) as *Buyer*. You will indemnify the *Seller* and keep the *Seller* fully indemnified from and against all claims, proceedings, costs, expenses and losses arising in respect of any injury, loss and damage caused to the *Lot* after the fall of the *Auctioneer's* hammer until you obtain full title to it.
- 5.2 Title to the *Lot* remains in and is retained by the *Seller* until the *Purchase Price* and all other sums payable by you to *Bonhams* in relation to the *Lot* have been paid in full to, and received in cleared funds by, *Bonhams*.

## 6 PAYMENT

- 6.1 Your obligation to pay the *Purchase Price* arises when the *Lot* is knocked down to you on the fall of the *Auctioneer's* hammer in respect of the *Lot*.
- 6.2 Time will be of the essence in relation to payment of the *Purchase Price* and all other sums payable by you to *Bonhams*. Unless agreed in writing with you by *Bonhams* on the *Seller's* behalf (in which case you must comply with the terms of that agreement), all such sums must be paid to *Bonhams* by you in the currency in which the *Sale* was conducted by not later than 4.30pm on the second working day following the *Sale* and you must ensure that the funds are cleared by the seventh working day after the *Sale*. Payment must be made to *Bonhams* by one of the methods stated in the *Notice to Bidders* unless otherwise agreed with you in writing by *Bonhams*. If you do not pay any sums due in accordance with this paragraph, the *Seller* will have the rights set out in paragraph 8 below.

## 7 COLLECTION OF THE LOT

- 7.1 Unless otherwise agreed in writing with you by *Bonhams*, the *Lot* will be released to you or to your order only when *Bonhams* has received cleared funds to the amount of the full *Purchase Price* and all other sums owed by you to the *Seller* and to *Bonhams*.
- 7.2 The *Seller* is entitled to withhold possession from you of any other *Lot* he has sold to you at the same or at any other *Sale* and whether currently in *Bonhams*' possession or not until payment in full and in cleared funds of the *Purchase Price* and all other sums due to the *Seller* and/or *Bonhams* in respect of the *Lot*.
- 7.3 You will collect and remove the *Lot* at your own expense from *Bonhams*' custody and/or control or from the *Storage Contractor's* custody in accordance with *Bonhams*' instructions or requirements.
- 7.4 You will be wholly responsible for packing, handling and transport of the *Lot* on collection and for complying with all import or export regulations in connection with the *Lot*.
- 7.5 You will be wholly responsible for any removal, storage or other charges or expenses incurred by the *Seller* if you do not remove the *Lot* in accordance with this paragraph 7 and will indemnify the *Seller* against all charges, costs, including any legal costs and fees, expenses and losses suffered by the *Seller* by reason of your failure to remove the *Lot* including any charges due under any *Storage Contract*. All such sums due to the *Seller* will be payable on demand.

## **8 FAILURE TO PAY FOR THE LOT**

- 8.1 If the *Purchase Price* for a *Lot* is not paid to *Bonhams* in full in accordance with the *Contract for Sale* the *Seller* will be entitled, with the prior written agreement of *Bonhams* but without further notice to you, to exercise one or more of the following rights (whether through *Bonhams* or otherwise):
- 8.1.1 to terminate immediately the *Contract for Sale* of the *Lot* for your breach of contract;
- 8.1.2 to re-sell the *Lot* by auction, private treaty or any other means on giving seven days' written notice to you of the intention to resell;
- 8.1.3 to retain possession of the *Lot*;
- 8.1.4 to remove and store the *Lot* at your expense;
- 8.1.5 to take legal proceedings against you for any sum due under the *Contract for Sale* and/or damages for breach of contract;
- 8.1.6 to be paid interest on any monies due (after as well as before judgement or order) at the annual rate of 5% per annum above the base rate of the Hong Kong and Shanghai Banking Corporation Limited from time to time to be calculated on a daily basis from the date upon which such monies become payable until the date of actual payment;
- 8.1.7 to repossess the *Lot* (or any part thereof) which has not become your property, and for this purpose you hereby grant an irrevocable licence to the *Seller* by himself and to his servants or agents to enter upon all or any of your premises (with or without vehicles) during normal *Business* hours to take possession of the *Lot* or part thereof;
- 8.1.8 to retain possession of any other property sold to you by the *Seller* at the *Sale* or any other auction or by private treaty until all sums due under the *Contract for Sale* shall have been paid in full in cleared funds;
- 8.1.9 to retain possession of, and on three months' written notice to sell, *Without Reserve*, any of your other property in the possession of the *Seller* and/or of *Bonhams* (as bailee for the *Seller*) for any purpose (including, without limitation, other goods sold to you) and to apply any monies due to you as a result of such sale in satisfaction or part satisfaction of any amounts owed to the *Seller* or to *Bonhams*; and
- 8.1.10 so long as such goods remain in the possession of the *Seller* or *Bonhams* as its bailee, to rescind the contract for the *Sale* of any other goods sold to you by the *Seller* at the *Sale* or at any other auction or by private treaty and apply any monies received from you in respect of such goods in part or full satisfaction of any amounts owed to the *Seller* or to *Bonhams* by you.
- 8.2 You agree to indemnify the *Seller* against all legal and other costs of enforcement, all losses and other expenses and costs (including any monies payable to *Bonhams* in order to obtain the release of the *Lot*) incurred by the *Seller* (whether or not court proceedings will have been issued) as a result of *Bonhams* taking steps under this paragraph 8 on a full indemnity basis together with interest thereon (after as well as before judgement or order) at the rate specified in paragraph 8.1.6 from the date upon which the *Seller* becomes liable to pay the same until payment by you.
- 8.3 On any re-sale of the *Lot* under paragraph 8.1.2, the *Seller* will account to you in respect of any balance remaining from any monies received by him or on his behalf in respect of the *Lot*, after the payment of all sums due to the *Seller* and to *Bonhams*, within 28 days of receipt of such monies by him or on his behalf.

## **9 THE SELLER'S LIABILITY**

- 9.1 The *Seller* will not be liable for any injury, loss or damage caused by the *Lot* after the fall of the *Auctioneer's* hammer in respect of the *Lot*.
- 9.2 Subject to paragraph 9.3 below, except for breach of the express undertaking provided in paragraph 2.1.5, the *Seller* will not be liable for any breach of any term that the *Lot* will correspond with any *Description* applied to it by or on behalf of the *Seller*, whether implied by the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong) or otherwise.
- 9.3 The *Seller* will not be liable (whether in negligence, other tort, breach of contract or statutory duty or in restitution or under the Misrepresentation Ordinance (Chapter 284 of the Laws of Hong Kong), or in any other way) for any lack of conformity with, or inaccuracy, error, misdescription or omission in any *Description* of the *Lot* or any *Entry* or *Estimate* in relation to the *Lot* made by or on behalf of the *Seller* (whether made in writing, including in the *Catalogue*, or on the *Website*, or orally, or by conduct or otherwise) and whether made before or after this agreement or prior to or during the *Sale*.
- 9.4 The *Seller* will not be liable for any loss of *Business*, *Business* profits or revenue or income or for loss of reputation or for disruption to *Business* or wasted time on the part of the *Buyer* or of the *Buyer's* management or staff or, for any indirect losses or consequential damages of any kind, irrespective in any case of the nature, volume or source of the loss or damage alleged to be suffered, and irrespective of whether the said loss or damage is caused by or claimed in respect of any negligence, other tort, breach of contract, statutory duty, restitutionary claim or otherwise;
- 9.5 In any circumstances where the *Seller* is liable to you in respect of the *Lot*, or any act, omission, statement, or representation in respect of it, or this agreement or its performance, and whether in damages, for an indemnity or contribution or for a restitutionary remedy or in any way whatsoever, the *Seller's* liability will be limited to payment of a sum which will not exceed by way of maximum the amount of the *Purchase Price* of the *Lot* irrespective in any case of the nature, volume or source of any loss or damage alleged to be suffered or sum claimed as due, and irrespective of whether the liability arises from any negligence, other tort, breach of contract, statutory duty, bailee's duty, restitutionary claim or otherwise.
- 9.6 Nothing set out in paragraphs 9.1 to 9.5 above will be construed as excluding or restricting (whether directly or indirectly) any person's liability or excluding or restricting any person's rights or remedies in respect of (i) fraud, or (ii) death or personal injury caused by the *Seller's* negligence (or any person under the *Seller's* control or for whom the *Seller* is legally responsible), or (iii) acts or omissions for which the *Seller* is liable under the Occupiers Liability Ordinance (Chapter 314 of the Laws of Hong Kong), or (iv) any other liability to the extent the same may not be excluded or restricted as a matter of law.

## 10 MISCELLANEOUS

- 10.1 You may not assign either the benefit or burden of the *Contract for Sale*.
- 10.2 The *Seller's* failure or delay in enforcing or exercising any power or right under the *Contract for Sale* will not operate or be deemed to operate as a waiver of his rights under it except to the extent of any express waiver given to you in writing. Any such waiver will not affect the *Seller's* ability subsequently to enforce any right arising under the *Contract for Sale*.
- 10.3 If either party to the *Contract for Sale* is prevented from performing that party's respective obligations under the *Contract for Sale* by circumstances beyond its reasonable control or if performance of its obligations would by reason of such circumstances give rise to a significantly increased financial cost to it, that party will not, for so long as such circumstances prevail, be required to perform such obligations. This paragraph does not apply to the obligations imposed on you by paragraph 6.
- 10.4 Any notice or other communication to be given under the *Contract for Sale* must be in writing and may be delivered by hand or sent by first class post or air mail or fax transmission, if to the *Seller*, addressed c/o *Bonhams* at its address or fax number in the *Catalogue* (marked for the attention of the Managing Director), and if to you to the address or fax number of the *Buyer* given in the *Bidding Form* (unless notice of any change of address is given in writing). It is the responsibility of the sender of the notice or communication to ensure that it is received in a legible form within any applicable time period.
- 10.5 If any term or any part of any term of the *Contract for Sale* is held to be unenforceable or invalid, such unenforceability or invalidity will not affect the enforceability and validity of the remaining terms or the remainder of the relevant term.
- 10.6 References in the *Contract for Sale* to *Bonhams* will, where appropriate, include reference to *Bonhams'* officers, employees and agents.
- 10.7 The headings used in the *Contract for Sale* are for convenience only and will not affect its interpretation.
- 10.8 In the *Contract for Sale* "including" means "including, without limitation".
- 10.9 References to the singular will include reference to the plural (and vice versa) and reference to any one gender will include reference to the other genders.
- 10.10 Reference to a numbered paragraph is to a paragraph of the *Contract for Sale*.
- 10.11 Save as expressly provided in paragraph 10.12 nothing in the *Contract for Sale* confers (or purports to confer) on any person who is not a party to the *Contract for Sale* any benefit conferred by, or the right to enforce any term of, the *Contract for Sale*.
- 10.12 Where the *Contract for Sale* confers an immunity from, and/or an exclusion or restriction of, the responsibility and/or liability of the *Seller*, it will also operate in favour and for the benefit of *Bonhams*, *Bonhams'* holding company and the subsidiaries of such holding company and the successors and assignees of *Bonhams* and of such companies and of any officer, employee and agent of *Bonhams* and such companies, each of whom will be entitled to avail itself of the same relevant right at law.

## 11 GOVERNING LAW

- 11.1 Law  
All transactions to which this agreement applies and all connected matters will be governed by and construed in accordance with the laws of Hong Kong.

## 12 LANGUAGE

The *Contract for Sale* is published in both Chinese and English. If there is any dispute in its interpretation, the English version will prevail.

## APPENDIX 3

### DEFINITIONS and GLOSSARY

Where these Definitions and Glossary are incorporated, the following words and phrases used have (unless the context otherwise requires) the meanings given to them below. The Glossary is to assist you to understand words and phrases which have a specific legal meaning with which you may not be familiar.

### LIST OF DEFINITIONS

- "**Additional Premium**" a premium, calculated in accordance with the Notice to Bidders, to cover *Bonhams'* expenses relating to the payment of royalties under the Artists Resale Right Regulations 2006 which is payable by the Buyer to *Bonhams* on any Lot marked [<sup>AR</sup>] which sells for a Hammer Price which together with the Buyer's Premium (but excluding any VAT) equals or exceeds 1000 euros (converted into the currency of the Sale using the European Central Bank Reference rate prevailing on the date of the Sale).
- "**Auctioneer**" the representative of *Bonhams* conducting the Sale.
- "**Bidder**" a person who has completed a Bidding Form.
- "**Bidding Form**" our Bidder Registration Form, our Absentee and Telephone Bidding Form.
- "**Bonhams**" *Bonhams* (Hong Kong) Limited or its successors or assigns. *Bonhams* is also referred to in the Buyer's Agreement, the Conditions of Business and the Notice to Bidders by the words "we", "us" and "our".
- "**Book**" a printed book offered for sale at a specialist book sale.
- "**Business**" includes any trade, business and profession.
- "**Buyer**" the person to whom a Lot is knocked down by the Auctioneer. The Buyer is also referred to in the Contract of Sale and the Buyer's Agreement by the words "you" and "your".
- "**Buyer's Agreement**" the contract entered into by *Bonhams* with the Buyer (see Appendix 2 in the Catalogue).
- "**Buyer's Premium**" the sum calculated on the Hammer Price at the rates stated in the Notice to Bidders.
- "**Catalogue**" the catalogue relating to the relevant Sale, including any representation of the catalogue published on our Website.
- "**Commission**" the commission payable by the Seller to *Bonhams* calculated at the rates stated in the Contract Form.
- "**Condition Report**" a report on the physical condition of a Lot provided to a Bidder or potential Bidder by *Bonhams* on behalf of the Seller.
- "**Conditions of Sale**" the Notice to Bidders, Contract for Sale, Buyer's Agreement and Definitions and Glossary.
- "**Consignment Fee**" a fee payable to *Bonhams* by the Seller calculated at rates set out in the Conditions of Business.
- "**Consumer**" a natural person who is acting for the relevant purpose outside his trade, business or profession.
- "**Contract Form**" the contract form, or vehicle entry form, as applicable, signed by or on behalf of the Seller listing the Lots to be offered for sale by *Bonhams*.

**“Contract for Sale”** the sale contract entered into by the Seller with the Buyer (see Appendix 1 in the Catalogue).

**“Contractual Description”** the only description of the Lot (being that part of the Entry about the Lot in the Catalogue which is in bold letters, any photograph (except for the colour) and the contents of any Condition Report) to which the Seller undertakes in the Contract of Sale the Lot corresponds.

**“Description”** any statement or representation in any way descriptive of the Lot, including any statement or representation relating to its authorship, attribution, condition, provenance, authenticity, style, period, age, suitability, quality, origin, value, estimated selling price (including the Hammer Price).

**“Entry”** a written statement in the Catalogue identifying the Lot and its lot number which may contain a description and illustration(s) relating to the Lot.

**“Estimate”** a statement of our opinion of the range within which the hammer is likely to fall.

**“Expenses”** charges and expenses paid or payable by Bonhams in respect of the Lot including legal expenses, banking charges and expenses incurred as a result of an electronic transfer of money, charges and expenses for insurance, catalogue and other reproductions and illustrations, any customs duties, advertising, packing or shipping costs, reproductions rights’ fees, Taxes, levies, costs of testing, searches or enquiries, preparation of the Lot for sale, storage charges, removal charges or costs of collection from the Seller as the Seller’s agents or from a defaulting Buyer, plus Tax if applicable.

**“Forgery”** an imitation intended by the maker or any other person to deceive as to authorship, attribution, origin, authenticity, style, 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 any description of the Lot. A Lot will not be a Forgery by reason of any damage to, and/or restoration and/or modification work (including repainting 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.

**“Guarantee”** the obligation undertaken personally by Bonhams to the Buyer in respect of any Forgery and, in the case of specialist Stamp sales and/or specialist Book sales, a Lot made up of a Stamp or Stamps or a Book or Books as set out in the Buyer’s Agreement.

**“Hammer Price”** the price in the currency in which the Sale is conducted at which a Lot is knocked down by the Auctioneer.

**“Hong Kong”** the Hong Kong Special Administrative Region of the People’s Republic of China.

**“Loss and Damage Warranty”** means the warranty described in paragraph 8.2 of the Conditions of Business.

**“Loss and Damage Warranty Fee”** means the fee described in paragraph 8.2.3 of the Conditions of Business.

**“Lot”** any item consigned to Bonhams with a view to its Sale at auction or by private treaty (and reference to any Lot will include, unless the context otherwise requires, reference to individual items comprised in a group of two or more items offered for sale as one Lot).

**“Motoring Catalogue Fee”** a fee payable by the Seller to Bonhams in consideration of the additional work undertaken by Bonhams in respect of the cataloguing of motor vehicles and in respect of the promotion of sales of motor vehicles.

**“New Bond Street”** means Bonhams’ saleroom at 101 New Bond Street, London W1S 1SR.

**“Notional Charges”** the amount of Commission and Tax which would have been payable if the Lot had been sold at the Notional Price.

**“Notional Fee”** the sum on which the Consignment Fee payable to Bonhams by the Seller is based and which is calculated according to the formula set out in the Conditions of Business.

**“Notional Price”** the latest in time of the average of the high and low estimates given by us to you or stated in the Catalogue or, if no such estimates have been given or stated, the Reserve applicable to the Lot.

**“Notice to Bidders”** the notice printed at the front of our Catalogues.

**“Purchase Price”** the aggregate of the Hammer Price and Tax on the Hammer Price.

**“Reserve”** the minimum price at which a Lot may be sold (whether at auction or by private treaty).

**“Sale”** the auction sale at which a Lot is to be offered for sale by Bonhams.

**“Sale Proceeds”** the net amount due to the Seller from the sale of a Lot, being the Hammer Price less the Commission, any Tax chargeable thereon, Expenses and any other amount due to us in whatever capacity and howsoever arising.

**“Seller”** the person who offers the Lot for sale named on the Contract Form. Where the person so named identifies on the form another person as acting as his agent, or where the person named on the Contract Form acts as an agent for a principal (whether such agency is disclosed to Bonhams or not), “Seller” includes both the agent and the principal who shall be jointly and severally liable as such. The Seller is also referred to in the Conditions of Business by the words “you” and “your”.

**“Specialist Examination”** a visual examination of a Lot by a specialist on the Lot.

**“Stamp”** means a postage stamp offered for sale at a Specialist Stamp sale.

**“Standard Examination”** a visual examination of a Lot by a non-specialist member of Bonhams’ staff.

**“Storage Contract”** means the contract described in paragraph 8.3.3 of the Conditions of Business or paragraph 4.4 of the Buyer’s Agreement (as appropriate).

**“Storage Contractor”** means the company identified as such in the Catalogue.

**“Tax”** means all taxes, charges, duties, imposts, fees, levies or other assessments, and all estimated payments thereof, including without limitation income, business profits, branch profits, excise, property, sales, use, value added (VAT), environmental, franchise, customs, import, payroll, transfer, gross receipts, withholding, social security, unemployment taxes, as well as stamp duties and other costs, imposed by the Hong Kong government applicable from time to time and any interest and penalty relating to such taxes, charges, fees, levies or other assessments.

**“Terrorism”** means any act or threatened act of terrorism, whether any person is acting alone or on behalf of or in connection with any organisation(s) and/or government(s), committed for political, religious or ideological or similar purposes including, but not limited to, the intention to influence any government and/or put the public or any section of the public into fear.

**“Trust Account”** the bank account of Bonhams into which all relevant sums received in respect of the Purchase Price of any Lot will be paid, such account to be a distinct and separate account to Bonhams’ normal business bank account.

**“Website”** Bonhams website at [www.bonhams.com](http://www.bonhams.com).

**“Withdrawal Notice”** the Seller’s written notice to Bonhams revoking Bonhams’ instructions to sell a Lot.

**“Without Reserve”** where there is no minimum price at which a Lot may be sold (whether at auction or by private treaty).

## GLOSSARY

The following expressions have specific legal meanings with which you may not be familiar. The following glossary is intended to give you an understanding of those expressions but is not intended to limit their legal meanings:-

- “artist’s resale right”**: the right of the creator of a work of art to receive a payment on sales of that work subsequent to the original sale of that work by the creator of it as set out in the Artists Resale Right Regulations 2006.
- “bailee”**: a person to whom goods are entrusted.
- “indemnity”**: an obligation to put the person who has the benefit of the indemnity in the same position in which he would have been, had the circumstances giving rise to the indemnity not arisen and the expression “indemnify” is construed accordingly.
- “interpleader proceedings”**: proceedings in the Courts to determine ownership or rights over a Lot.
- “knocked down”**: when a Lot is sold to a Bidder, indicated by the fall of the hammer at the Sale.
- “lien”**: a right for the person who has possession of the Lot to retain possession of it.

**“risk”**: the possibility that a Lot may be lost, damaged, destroyed, stolen, or deteriorate in condition or value.

**“title”**: the legal and equitable right to the ownership of a Lot.

**“tort”**: a legal wrong done to someone to whom the wrong doer has a duty of care.

**SALE OF GOODS ORDINANCE (Chapter 26 of the Laws of Hong Kong)**

The following is an extract from the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong):

“Section 14 **Implied undertaking as to title etc.**

(1) In every contract of sale, other than one to which subsection (2) applies, there is-

(a) an implied condition on the part of the seller that in the case of the sale, he has a right to sell the goods, and in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass; and

(b) an implied warranty that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made and that the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

(2) In a contract of sale, in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the seller should transfer only such title as he or a third person may have, there is-

(a) an implied warranty that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made; and

(b) an implied warranty that neither-

(i) the seller; nor

(ii) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person; nor

(iii) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made, will disturb the buyer’s quiet possession of the goods.