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 6.4) 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.

To the extent permitted by Law, 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. We will provide you with copies of the text of these documents before you enter into your agreement with us and you should familiarise 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 Guarantee contained in the Buyer’s Agreement, which we give personally to the Buyer. Subject to the terms of the Guarantee, we undertake to buy back at the Purchase Price any Forgery (and, in the case of Stamps, Lots which do not comply with their Contractual Description and in the case of Books, Lots which do not contain text or illustrations) and, in this agreement with you, you agree to reimburse us for our costs and expenses in performing this Guarantee (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 or requested by post from The Managing Director, Bonhams 1793 Limited, 97-99 Queen Street, Woolloomooloo NSW 2025, Australia or by e-mail at 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;

1.2 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;

1.3 agree a Reserve, or that the Sale will be Without Reserve, in accordance with paragraph 7;

1.4 take delivery of and store the Lot in accordance with paragraph 8;

1.5 expose the Lot in pre-sale viewings or any other viewings as Bonhams may think fit and enter the Lot in;

1.5.1 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;

1.6 conduct the Sale in accordance with paragraph 11;

1.7 accept payment from the Buyer of the Purchase Price and hold the Sale Proceeds on trust for you in accordance with paragraph 12;

1.8 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);

1.9 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, 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. We will exercise due care and skill in carrying out a Standard Examination (that is, with the level of skill and care that would reasonably be expected in a limited examination of this nature) if requested, and subject to paying an additional fee, 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, we will exercise due care and skill in carrying out that Specialist Examination (that is, with 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 prior to carrying out such investigation, research or tests.

1.2.3 We may also carry out for our own benefit (possibly without reference to you) our own investigations, research, tests, or specialist(s) 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 Buyer’s Premium payable. A Lot 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, provenances, 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 reasonable opinion.

1.3.3 Any Descriptions, Estimates or opinions given by us or on our behalf will be given on a reasonable basis and honestly using such due care and skill 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 given on a reasonable basis and honestly with the due care and skill 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 reasonably 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 a reasonable and honest 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 give any opinion on a reasonable basis and honestly and to exercise due
3.1 Unless otherwise agreed in writing between us, you will pay to us the Offer Fee and either:

3.1.1 unless the Lot is sold to 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:

<table>
<thead>
<tr>
<th>Until we have undertaken a Standard Examination (or, if requested, a Specialist Examination):</th>
<th>25% of the Notional Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>After we have undertaken a Standard Examination (or, if requested, a Specialist Examination) and before we have published an Entry about the Lot in the Catalogue or on our Website:</td>
<td>50% of the Notional Fee</td>
</tr>
<tr>
<td>After we have published an Entry about the Lot and before we have put the Lot on view:</td>
<td>75% of the Notional Fee</td>
</tr>
<tr>
<td>Thereafter:</td>
<td>100% of the Notional Fee</td>
</tr>
</tbody>
</table>

The Notional Fee will be the sum of such Commission and the Buyer’s Premium which would be payable to us if we were to have sold the Lot at the Sale for the Notional Price.

If paragraph 7.6 applies (excessive Reserve placed on the Lot by you), the Consignment Fee will be calculated by reference to the Reserve placed by you rather than the Notional Price.

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 on demand any Expenses reasonably incurred by us on your behalf.

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 Where applicable you will pay us Expenses relating to the payment of royalties under the Resale Royalty Right for Visual Artists Act 2009, currently 5% of the Hammer Price (Artists Resale Right).

3.6 If GST is or will be payable on a supply of services made by us to you under or in connection with this agreement where the sums payable are not expressly stated to include GST the sums otherwise payable are increased by the amount of GST and you must make payment of the increase at the same time as you must pay the other sums due.

3.7 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 HSBC Bank Australia Limited from time to time to be calculated on a daily basis from the date the sum became due until payment.

3.8 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 you save as disclosed to us in writing, you sell the Lot with full title Guarantee and free from all liens, charges, encumbrances and third party claims;

4.1.3 you are legally entitled to sell the Lot and 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 Part V, Division II of the Trade Practices Act 1974.

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 with all information (including any concerns expressed by third parties relating to the authenticity, attribution, condition, provenance, authenticity, age, suitability, quality and origin of the Lot) in relation to the Lot, or any Description of it, of which you are aware or reasonably ought to be aware or which is in your possession or reasonably ought to be 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.

4.3 You must notify us if you are registered or required to be registered for GST and if so provide your ABN at the same time.

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 12.11;

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 12.11, 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 provide any opinion on a reasonable and honest basis and to exercise due care and skill.

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 reasonable 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 photographs or illustrations 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 If you have informed us that you are registered or required to be registered for GST, the Entry will show that GST will be included within the Hammer Price and that you authorise us as your agent, to issue a tax invoice to the Buyer in respect of the Sale of the Lot.

6.4 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, by recorded delivery, to the Managing Director, Bonhams 1793 Ltd, 97-99 Queen Street, Woolloolua NSW, 2025 or by email to info@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 of, or may be, inaccurate or incorrect or, in the case of any Description of the Lot, incomplete in any material respect.
6.5 We may at our reasonable 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.

6.6 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 reasonable discretion.

6.7 The copyright in the text and the photographs and illustrations of the Lot contained in the Entry or the Catalogue or on any Website or in any marketing or promotional material belongs to us. You will not reproduce or re-post anywhere else to Reserve, is such text, photographs or illustrations without our prior written consent.

6.8 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 "O" or that the Lot is to be sold Without Reserve but there is no Reserve, it is such 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, in writing, 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.

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 equaling or exceeding the Reserve) on your behalf.

7.9 Where the Contract Form states that we are given “discretion” or “wide discretion” in relation to the Reserve, you authorise us (and the Auctioneer) if the Auctioneer deems it necessary in order to sell the Lot (regardless of Estimate) to accept bids for the Lot at up to 10% or 50% respectively 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 including GST if applicable) less than the Reserve (or, we are given “discretion” or “wide discretion” under paragraph 7.9, at 10% or 50% as appropriate 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” or “wide discretion” under paragraph 7.9, an amount equal to 90% or 50% as appropriate of the Reserve).

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 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 us, and you, 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.

8.2.2.2 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 13.3 or 13.4 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 GST (if applicable); 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 GST (if applicable); subject in each case to a minimum charge of AU$10 plus GST (if applicable). This fee is included in our Expenses, which are payable on demand.

8.3 Storage

8.3.1 From the time 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 or is becomes dangerous, whether before or after the Sale, we may dispose of it without advance notice to you in any manner as we reasonably 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 (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 relevant Storage Contractor copies of which are available on request. We may instead reasonably choose to store the Lot at our own premises and, if this is the case, storage fees at our current daily rates (currently a minimum of AU$5.50 plus GST (if applicable) per Lot per day) will be payable.

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.
9 WITHDRAWAL BY YOU

You may by written notice to us at any time revoke your instructions to sell the Lot giving us a Withdrawal Notice. If we give you 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 reasonable 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 or as a 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 but after negotiating 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 the Buyer 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 at HSBC Bank Australia Limited A/C 078193002 and will be held by us upon trust for you (subject to the provisions of clauses 12.5 to 12.13 inclusive). From and following the payment by us of such sums into our Trust Account our sole obligation to you in respect of the Purchase Price and the Sale Proceeds will be to hold the same on trust for you (in accordance with and subject to the provisions of clauses 12.5 to 12.13 inclusive below), and you will have no further right or recourse against us in respect of the Purchase Price or the Sale Proceeds other than your rights as beneficiary in connection with the Trust Account. In particular, the funds in the Trust Account are held at your risk so that in the event of the insolvency of the bank at which the Trust Account is held or in the event of such bank’s delay in or failure to pay amounts standing to the credit of the Trust Account we will have no liability to you for payment of the Sale Proceeds, unless any loss suffered by you is attributable to our negligence or willful default as trustee of the Trust Account.

12.5 We may deduct from the Purchase Price and pay out of the Trust Account to our own account any Consignment Fee, Commission any amounts payable for the Artists Resale Right and Expenses (plus GST if applicable) and any other amounts payable in respect of the Trust Account. Where Bonhams is liable for GST in respect of the importation of a Lot, Bonhams can deduct an amount equal to that GST from the Purchase Price.

12.6 If the Buyer’s Premium (and any GST) 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 any related GST.

12.7 We will distribute the Sale Proceeds held on trust for you under clause 12.4 (which, for the avoidance of doubt, shall be the portion of the Purchase Price remaining after any deductions we are entitled to make pursuant to any of clauses 12.5 to 12.6 inclusive or clauses 12.8 to 12.13 inclusive) 35 days after the Sale (or any Sale under paragraph 1.3) 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 our charging you a fee not to exceed the bank for such transfer (plus GST if applicable) 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. In this case we agree thereafter to pay to you on demand the amount so withdrawn from the Trust Account.

12.8 We may retain the Sale Proceeds in the Trust Account until you have delivered to us any relevant documentation reasonably required by us to evidence your right to transfer title of the Lot to the Buyer and all documentation referred to in the Entry regarding the Lot.

12.9 We may deduct from the Purchase Price and pay out of the Trust Account 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.

12.10 If before the Sale Proceeds have been distributed to you from the Trust Account the Buyer or any other person makes a claim against either you or us in relation to the Lot, we may withhold distribution of the Sale Proceeds to you from the Trust Account until such time as the claim has been resolved. In that event we will transfer the Sale Proceeds into a separate interest bearing Trust Account with our bank. Any interest earned on these monies will be subject to tax at whatever rate may be payable to you unless otherwise agreed by you or determined by a court of competent jurisdiction.
12.11 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.

12.12 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. It is taken 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.

12.13 Any monies recovered or paid to us in consequence of our taking any steps pursuant to paragraph 12 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 HSBC Bank Australia 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:

12.13.1 all legal or other costs incurred by us in connection with such steps (plus GST if applicable);

12.13.2 all other relevant Expenses (plus GST if applicable);

12.13.3 Buyer’s Premium (plus GST if applicable); and

12.13.4 Commission (plus GST if applicable)

Any balance remaining will be paid into the Trust Account (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” or “wide discretion” in relation to the Reserve then we may agree to sell the Lot at up to 10% (where we are given “discretion” only) or 50% (where we are given “wide discretion”), 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 90% or 50% of the Reserve as applicable.

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” or “wide discretion” in relation to the Reserve then we may agree to sell the Lot at up to 10% (where we are given “discretion” only) or 50% (where we are given “wide discretion”), 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 90% or 50% of the Reserve as applicable.

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 GST if applicable) 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 with proof of delivery 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 13.4, 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 (by auction or by private treaty) Within Reserve if you still have not removed it. We will be entitled to deduct from the Purchase Price and pay out of the Trust Account: (a) the costs of Sale; (b) Commission on the Sale of the Lot by us under this paragraph; and (c) any other sums due to us from you. In addition we will be entitled to charge a Buyer’s Premium plus GST on the Sale Proceeds of any Lot on such Sale, and we will be entitled to retain the Buyer’s Premium from the proceeds of such a Sale.

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.

14 FORGERIES, STAMPS NOT MATCHING THEIR 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 conform to the 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, GST and Expenses, together with interest (after as well as before judgement or order) at an annual rate equal to 5% above HSBC Bank Australia Limited’s 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 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.

14.3 You authorise us to carry out such tests and processes of a Lot as we consider necessary at your cost 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 authorise 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 We acknowledge that certain laws imply terms, conditions or warranties into contracts for the supply of goods or services (including this agreement) that cannot be excluded. For example, services to Consumers (including those under this agreement) come with non-excludable warranties under Consumer protection legislation that they will be provided with due care and skill and be reasonably fit for their purpose (where the purpose is made known). We also acknowledge that certain other laws cannot be excluded. Nothing in paragraphs 16.2 to 16.5 is intended to exclude or restrict:

16.1.1 the application of any Consumer protection legislation; or

16.1.2 our liability for fraud or death or personal injury caused to our negligence (or any person under our control or for whom we are legally responsible); or

16.1.3 any other liability to the extent that such liability may not be excluded or restricted as a matter of law.

16.2 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. Subject to paragraph 16.1, 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.

16.3 Subject to paragraph 16.1 and without prejudice to the exclusion of liability provided for in paragraph 16.2, 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, Estimate or Description 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 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).

16.4 Subject to paragraph 16.1, 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:

16.4.1 handling the Lot if it is affected by woodworm and if any damage is caused as a result of it being so affected; or

16.4.2 changes in atmospheric pressure; or

nor will we be liable for:

16.4.3 damage to tension stringed musical instruments; or

16.4.4 damage to gilded picture frames, plaster picture frames or to picture frame glass.

16.5 Subject to paragraph 16.1, 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, 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.
16.6 Subject to paragraph 16.1, 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.

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 secure delivery (if to Bonhams marked for the attention of the Managing Director), 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 invalidity 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 assigns 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 rely on the relevant immunity and/or exclusion and/or restriction (and Bonhams enter into this agreement on trust for each such person).

18 GOVERNING LAW

All transactions to which the Contract for Sale applies and all connected matters will be governed by and construed in accordance with the laws of that state or territory of Australia where the Sale takes (or is to take) place and we and you each submit to the exclusive jurisdiction of the courts of that state or territory of Australia, save that we may bring proceedings against you in any other court of competent jurisdiction to the extent permitted by the laws of the relevant jurisdiction. Bonhams has a complaints procedure in place.
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, they are printed in italics.

1.3 The 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 fall 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 disclosed in the Entry for the Lot in the Catalogue, the Seller sells the Lot with full title Guarantee or, where the Seller is an executor, trustee, liquidator, 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;

2.1.3 except where the Sale is by an executor, trustee, liquidator, 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;

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' opinion (given on a reasonable basis and honestly) 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' 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 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.

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 alleged undertaking, 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 at the Storage Contractor, with whom you have separate contracts(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, 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. If you do not pay any sums due in accordance with this paragraph, the Seller will have the rights set out in paragraph 9 below.

7 GST

If the Seller is registered or required to be registered for GST, unless otherwise indicated, the Sale of the Lot will be a taxable supply by the Seller and subject to GST. GST will be due and is inclusive in the Hammer Price.

Where the Sale is a taxable supply, Bonhams (on behalf of the Seller) will issue a tax invoice to you for the Sale of the Lot.

8 COLLECTION OF THE LOT

8.1 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.

8.2 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 on or after you have received cleared funds of the Purchase Price and all other sums due to the Seller and/or Bonhams in respect of the Lot.

8.3 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.

8.4 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.

8.5 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 8 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.

9 FAILURE TO PAY FOR THE LOT

9.1 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):

9.1.1 to terminate immediately the Contract for Sale of the Lot for your breach of contract;

9.1.2 to resell the Lot by auction, private treaty or any other means on giving seven days' written notice to you of the intention to resell;

9.1.3 to retain possession of the Lot;

9.1.4 to remove and store the Lot at your expense;

9.1.5 to take legal proceedings against you for any sum due under the Contract for Sale and/or damages for breach of contract.
9.1.6 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 HSBC Bank Australia 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;

9.1.7 to repossess the Lot (or any part thereof) which has not become your property, and for this purpose (unless the Buyer buys the Lot as a Consumer from the Seller selling in the course of a Business) 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;

9.1.8 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;

9.1.9 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 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 Bonhams; and

9.1.10 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 Bonhams by you.

9.2 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 9 on a full indemnity basis together with interest thereon (after as well as before judgement or order) at the rate specified in paragraph 9.1.6 from the date upon which the Seller becomes liable to pay the same until payment by you.

9.3 On any resale of the Lot under paragraph 9.1.2, 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.

10 THE SELLER’S LIABILITY

10.1 The Seller acknowledges that certain laws imply terms, conditions or warranties into contracts for the supply of goods or services (including this agreement) that cannot be excluded. For example, for Consumers, purchasing goods at auction (including those under this agreement) come with non-excludable warranties under Consumer protection legislation as to title and quiet possession and that the goods are free from encumbrance. The Seller also acknowledges that certain other laws cannot be excluded. Nothing in paragraphs 10.2 to 10.5 is intended to exclude or restrict:

10.1.1 the application of any Consumer protection legislation; or

10.1.2 our liability for fraud or death or personal injury caused by the Seller’s negligence (or for anyone under the Seller’s control or for whom the Seller is legally responsible); or

10.1.3 any other liability to the extent that such liability may not be excluded or restricted as a matter of law.

10.2 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.

10.3 Subject to paragraph 10.4 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 Trade Practices Act 1974 or otherwise.

10.4 Unless the Seller sells the Lot in the course of a Business and the Buyer buys it as a Consumer,

10.4.1 the Seller will not be liable (whether in negligence, other tort, breach of contract or statutory duty or in restitution or under the Trade Practices Act 1974, 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;

10.4.2 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;

10.4.3 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 any of 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.

11 MISCELLANEOUS

11.1 You may not assign either the benefit or burden of the Contract for Sale.

11.2 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 be reason of such circumstances give rise to a significantly increased financial cost to it, such 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.

11.3 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.

11.4 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.

11.5 References in the Contract for Sale to Bonhams will, where appropriate, include reference to Bonhams’ officers, employees and agents.

11.6 The headings used in the Contract for Sale are for convenience only and will not affect its interpretation.

11.7 In the Contract for Sale “including” means “including, without limitation”.

11.8 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.

11.9 Reference to a numbered paragraph is a paragraph of the Contract for Sale.

11.10 Save as expressly provided in paragraph 11.12 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.

11.11 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 assigns 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 rely on the relevant immunity and/or exclusion and/or restriction (and Bonhams enters into this agreement on trust for each such person).

12 GOVERNING LAW

All transactions to which the Contract for Sale applies and all connected matters will be governed by and construed in accordance with the laws of that state or territory of Australia where the Sale takes (or is to take) place and we and you each submit to the exclusive jurisdiction of the courts of that state or territory of Australia, save that we may bring proceedings against you in any other court of competent jurisdiction to the extent permitted by the laws of the relevant jurisdiction. Bonhams has a complaints procedure in place.
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


“Auctioneer” the representative of Bonhams conducting the Sale.

“Bidder” a person who has completed a Bidding Form.

“Bidding Form” our Bidding Registration Form, our Absentee Bidding Form or our Telephone Bidding Form.

“Bonhams” Bonhams 1793 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 for 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.


“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 that 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 for 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, 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 illustrations 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 loss and damage cover, Catalogue and other reproductions and illustrations, any customs duties, advertising, packing or shipping costs, any obligation rights’ fees, taxes (including GST), 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 GST if applicable.

“Forgery” an invitation 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 the 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.

“GST” means any goods and services tax or similar or comparable tax imposed by and defined in the GST Law.

“GST Law” means the “A New Tax System (Goods and Services Tax Act 1999)” and any other Act or Regulation pursuant to, associated with, amending or replacing that Act. Any expression used in Contract for Sale that is also defined in the GST Law shall have the meaning used or attributed to that expression by the GST Law.

“Guarantee” the warranty 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 (including GST, if any) at which a Lot is knocked down by the Auctioneer.

“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 for Bonhams or its sale by private treaty.

“Lot Description” the warranty described in the Description of the Lot.

“Motorising 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.

“Notional Price” the amount of Commission and GST 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 back or front of our Catalogues.

“Offer Fee” the fee payable by the Seller on consigning a Lot, irrespective of the Lot being sold.

“Purchase Price” 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 GST chargeable thereon, any amounts payable for the Artists Resale Right, 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.

“Stamp Owner” means the person identified as such in the Catalogue.

“Stamp Owner’s Agreement” the contract described in paragraph 9.3.3 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.

“ Terrorism” means any act or threatened act of Terrorism, whether anyone is acting alone or on behalf of or in connection with any organisation(s) and/or government(s), committed for political, religious 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 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.


“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 Resale Royalty Right for Visual Artists Act 2009.

“bidder”: 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 “indemnity” 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.