

Conditions of Business

As at 31 October 2020

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

The following Conditions apply to all auction and services provided Sunny Auctions Pty Ltd (the Company) and any goods which are held by the Company for valuation, storage or any other purposes.

1. Definitions

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

'Auctioneer' means the representative of the Company conducting the Auction.

'Auction' means a public or private auction at which a Lot is offered for sale.

Artist Resale Royalty Fee has the meaning set out in clause 33.2.

'Bidder Registration Form' means a form prepared by the Company from time to time setting out details of a proposed bidder.

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

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

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

'Claims' means all sums of money, debts, dues, suits, actions, causes of action, proceedings, arbitrations, claims, accounts, liabilities, losses, demands, costs,

expenses, notices or any other type of claim howsoever arising out of these Conditions or anything relating to the subject matter of these Conditions.

'Company' means Sunny Auctions Pty Ltd (ABN 53 128 909 964) trading as Sunny Auctions.

'Conditions' means these general conditions of business.

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

'Consumer Legislation' means Goods Act, Competition and Consumer Act, Australian Consumer Law and Fair Trading Act and any other Queensland and / or federal law that may be applicable.

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

'Estimated Selling Range' means the estimated Sale Price range of a Lot set by the Company in consultation with the Seller.

'Expenses' includes all fees, charges and expenses (including the Online Photography Fee) as set out on the Company website or advised by the Company to the Seller from time to time.

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

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

'GST Act' means the New Tax System (Goods and Services Tax) Act 1999 as amended.

'Hammer Price' means the price in Dollars (including GST, if any) at which a Lot is knocked down by the Auctioneer to the Buyer (unless it is auctioned again) as a

result of a dispute in which event it means the price at which the Lot is knocked down by the Auctioneer to the Buyer at a subsequent Auction.

'Interest Rate' means rate at 4% above the interest rate fixed by the Attorney General under section 2 of the Penalty Interest Rate Act 1983.

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

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

'Low Estimated Selling Range' means the lower end of the Estimated Selling Range.

'Online Photography Fee' means the fee paid by the Seller regardless of whether a Lot sells for an amount set out on the Company website or advised by the Company to the Seller from time to time.

'PPSA' means the Personal Property Securities Act 2009.

'Premium' (unless otherwise stated in a relevant auction Catalogue) means the amount set out on the Company website or advised by the Company to the Seller from time to time.

'Premises' means as the case may be the Company premises or any premises from which a Sale is conducted or where a Lot or a part of a Lot may be viewed from time to time.

'Purchase Price' means the aggregate of the Sale Price and the Premium plus GST, if any.

'Reserve' means the confidential minimum Sale Price at which a Lot may be sold which will be 30% less than the Low Estimated Selling Range or as agreed to by the Company from time to time.

'Sale' means a sale of a Lot by either an Auction or private sale.

'Sale Price' means the Hammer Price if sold at Auction or the price agreed by the Buyer in a private sale (plus GST, if any).

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

otherwise).

'Second Auction' means a subsequent Auction to an initial Auction.

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

'Seller's Commission' means the amount payable by the Seller to the Company on the sale of a Lot that is calculated on the Sale Price at the rate set out on the Company website or advised by the Company to the Seller from time to time.

'Taxable Supply' means as defined in the GST Act.

'Tax Invoice' means as defined in the GST Act.

'Third Auction' means a subsequent Auction to a Second Auction.

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

'1WTS Lot' means a Lot which has a Low Estimated Selling Range between \$200 and \$300.

'2ATS Lot' means a Lot which has a Low Estimated Selling Range of over \$300.

2. The Company as Agent

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

2.2 The Seller instructs and authorises the Company to:

(a) sell the Lot as the Seller's agent in accordance with these Conditions;

(b) receive and hold all Sale Proceeds on the Seller's behalf;

(c) sign on the Seller's behalf any documentation necessary to transfer ownership of the Lot to the Buyer;

(d) allow the Lot to be inspected by prospective Buyers prior to the Sale, at any time and in any manner or place agreeable to the Company; and

(e) remove any Lot from the frame, holder, case or covering to examine it.

3. The Company's and Auctioneer's Discretion

3.1 The Auctioneer and/or the Company has the right at their sole discretion to:

- (a) refuse any bid;
- (b) to divide any Lot, to combine two or more Lots;
- (c) to withdraw any Lot from Sale;

3.2 In the event of a dispute, or the Auctioneer or the Company is of the opinion that there has been a misunderstanding or mistake regarding a Sale or a Lot the subject of a Sale, the Auctioneer may rescind the Sale and put any Lot up for a Second Auction.

3.3 If a Sale is rescinded, the Company may:

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

3.4 The Company may refuse entry to the Premises or by any person or persons at its absolute discretion.

4. Risk of Personal Loss or Injury

The Company shall be under no liability for any injury, damage or loss sustained by any person while on the Premises, except where the Company (or its employees or agents) has acted with gross negligence.

5. The Company's Estimated Selling Range and Descriptions

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

5.2 The Company reserves the right to revise the Estimated Selling Range at any time upon notice to the Seller.

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

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

6. Warranties of Seller

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

(a) the Seller owns the Lot or the Seller is authorised to sell the Lot by the owner of the Lot (in which case, an original signed authorisation by the owner of the Lot must be provided to the Company to the satisfaction of the Company);

(b) the Lot is free from all liens, charges, encumbrances, registered security interests and third(3rd) party claims including a claim by a spouse or partner;

(c) the Seller has complied with all requirements, legal or otherwise, in relation to any export or import of the Lot and has notified the Company in writing of any failure by third parties to comply with such requirements in the past;

(d) the Lot and any written provenance given by the Seller to the Company are authentic;

(e) the Seller has notified the Company in writing of:

(i) any material alterations to the Lot of which the Seller is aware;

(ii) any concerns expressed by third parties in relation to the authenticity, provenance, origin, age, condition or quality of the Lot;

(iii) all information in the Seller's possession as to the provenance and identification of the Lot including, in respect of a V Lot (whether that V Lot complies with the provisions of any road traffic or maritime acts and regulations) is true and correct;

(f) the Lot is fit for its purpose and safe if used for the purpose for which it was designed and free from any defect not obvious on external inspection; and

(h) the Lot and description is in compliance with all warranties implied by Consumer Legislation.

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

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

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

6.5 The Company may, at any time, register a financing statement in accordance with the PPSA with respect to any security interest arising out of these Conditions on its own behalf or on behalf of the Seller if a sold Lot is delivered to the Buyer prior to payment of the Sale Price over the Lot.

6.6 The Buyer waives the right to receive notice under section 157(1) of the PPSA

6.7 The Buyer and /or Seller must sign any documents and do anything necessary to enable the Company to register the statements referred to in clause 6.5 and to enforce its rights and perform its obligations under these Conditions and the PPSA.

7. Commission and Expenses

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

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

7.3 The Seller shall pay to the Company the relevant Expenses on a Lot being offered for sale which has not sold, within five (5) days of the Auction.

8. Reserves

8.1 All Lots will be sold without reserve unless there is a Reserve. If a Lot has a Reserve then it will be offered subject to the Reserve.

8.2 Lots with a Low Estimated Selling Range below \$200 will not be given a Reserve unless agreed to by the Company.

8.3 If there is a Reserve:

(a) it may only be changed with the written consent of the Company although the Company may at its own discretion consent to an oral request for a reduction (but not an increase);

(b) only the Auctioneer may place a bid on behalf of the Seller;

(c) neither the Seller nor any person on the Seller's behalf may bid on the Lot;

(d) if the Auctioneer is of the opinion that the Seller or a person on the Seller's behalf may have bid on the Lot, the Auctioneer may knock down the Lot to the Seller without observing the Reserve and the Seller shall pay to the Company the Premium in addition to the Seller's Commission and Expenses.

8.4 If a Seller purports to place a reserve on a Lot but that reserve is not a Reserve, the Company will sell the Lot without a Reserve unless the Seller withdraws the Lot from Sale in accordance with clause 13.

8.5 If there is no Reserve, the Company shall not be liable if the Sale Price of the Lot is less than the minimum amount stated in the Estimated Selling Range.

8.7 If an UNRES Lot remains unsold after the initial Auction, the Company reserves the right to dispose of the UNRES Lot by donating it to charity or by disposing of it by other appropriate means. If the Seller does not want an UNRES Lot disposed of in this manner, the Lot must be collected within one (1) day after the initial Auction.

9. 1WTS Lot

9.1 Where a 1WTS Lot is offered for sale and is unsold the Seller may advise the Company that the Seller wishes to collect the 1WTS Lot and shall arrange for its collection from the Premises within five (5) days of the initial Auction.

9.2 If a 1WTS Lot remains unsold after the initial Auction, and the Lot has not been collected pursuant to clause 9.1 the Seller authorises the Company as the Seller's sole agent to sell 1WTS Lot by private sale following the initial Auction or by Second Auction without a Reserve will not be less than five (5) days after the initial Auction.

9.3 If a 1WTS Lot remains unsold after the Second Auction, the Company reserves the right to dispose of the 1WTS Lot by donating it to charity if possible or by disposing of it by other appropriate means. If the Seller does not want a 1WTS Lot

disposed of in this manner, the 1WTS Lot must be collected within three (3) day after the Second Auction.

9.4 The Seller may only withdraw a 1WTS Lot after the Auction but prior to the Second Auction, without being liable for the damages set out in Clause 13 by physically collecting the 1WTS Lot from the Premises within five (5) days of the initial Auction.

9.5 The Company will not be liable to the Seller in anyway in the event that the 1WTS Lot is sold at less than the Reserve as set out in clause 9.2 or if disposed of pursuant to clause 9.3.

10. 2ATS Lot

10.1 Where a 2ATS Lot is offered for sale and is unsold the Seller may advise the Company that the Seller wishes to collect the 2ATS Lot and shall arrange for its collection from the Premises within five (5) days of the initial Auction.

10.2 If a 2ATS Lot is unsold at the initial Auction, and the Lot has not been collected pursuant to clause 10.1 the Seller authorises the Company as the Seller's sole agent to sell the 2ATS Lot:

(a) by private sale following the initial Auction or by Second Auction for a price that is not less than 70% of the Reserve;

(b) by private sale following the Second Auction or by Third Auction with no Reserve.

10.4 If a 2ATS Lot remains unsold after the Third Auction, the Company reserves the right to dispose of the 2ATS Lot by donating it to charity if possible or by disposing of it by other appropriate means. If the Seller does not want a 2ATS Lot disposed of in this manner, the 2ATS Lot must be collected within one (1) day after the Third Auction.

10.5 The Seller may only withdraw a 2ATS Lot after the Auction by physically collecting the 2ATS Lot from the Premises. The Seller will not be liable for the fees associated with the withdrawal of a Lot set out in Clause 13 but will be required to pay to the Company all Expenses prior to collection.

10.7 The Company will not be liable to the Seller in any way in the event that the 2ATS Lot is sold at less than the Reserve as set out in clause 10.2 or if disposed of pursuant to clause 10.4.

11. Risk

11.1 Any V Lot in the possession or custody of the Company (including during transportation by employees or agents of the Company) shall at all times remain at the sole risk of the Seller until the legal risk passes to the Buyer (see clause 11.8 below).

11.2 The Seller shall not make any Claim against the Company in respect of loss of or damage to any V Lot, except where the loss or damage is as a result of the Company's (or its employees or agents) gross negligence and the Seller indemnifies the Company against all Claims relating to or caused by any V Lot.

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

11.4 In respect of Lots that are not V Lots, the Company indemnifies the Seller against any damage to the Lot which the Seller suffers whilst the Lot is in the custody of the Company to the extent of the Company's insurer's liability provided the Company's liability to the Seller at all times, subject to consumer legislation, is limited to:

(a) in the case of unsold Lots:

(i) the Reserve; or

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

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

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

11.5 The Company will charge the Seller the Indemnity Fee for providing the indemnity referred to in clause 11.4 if the Lot is sold.

11.6 The Company's own insurance will subsist until payment is made by the Buyer or, in the case of unsold Lots, until the expiry of seven (7) days after the Auction.

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

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

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

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

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

12. Payment to Seller

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

12.2 Company will pay to the Seller the Sale Proceeds within twenty-eight (28) days (excluding public holidays) of the receipt of the Purchase Price.

12.3 The Company will pay the Sale Proceeds by electronic funds transfer direct to the Seller's nominated account. Should the Seller require the Sale Proceeds to be paid by Cheque, a fee will be payable and Sale Proceeds will be sent on the last Friday of the month via Express Post unless the last Friday of a month is a public holiday and it will be sent on the next business day.

12.4 If the Buyer fails to pay the Purchase Price within fourteen (14) days after the date of the Sale then the Company will give notice of this to the Seller. If the Seller does not give written instructions to the Company in response to this notice within seven (7) days, then the Seller appoints the Company as its agent and authorizes the Company to take any of the following action for and on behalf of the Seller (who will give the Company any assistance it may require):

(a) agree to payment terms for the payment of the Purchase Price with the Buyer;

(c) settle any Claim by or against the Buyer;

(d) take such steps as the Company shall at its absolute discretion consider necessary to collect the monies due from the Buyer;

(e) rescind the Sale and refund any monies to the Buyer;

(f) offer the Lot for resale by private sale or Auction on the same terms as appear in the Consignment Agreement Form; and/or

(g) appoint a solicitor or other agent to do any of the above.

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

(a) any legal or other costs incurred by the Company;

(b) any transport or storage costs;

(C) the Expenses, Online Photography Fee and Indemnity Fee;

(d) the Premium;

(e) the Seller's Commission; and

(f) any balance remaining shall be paid by the Company to the Seller.

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

12.7 If within seven (7) days of receipt of the notice referred to in clause 12.4 by the Seller, the Seller informs the Company that the Seller wishes to take delivery of the Lot, the Seller shall be entitled to do so but only upon prior payment of the Online Photography Fee and any legal and other costs incurred by the Company so as to provide the Company with a full indemnity in respect of those costs.

12.8 If the Company rescinds a Sale because the Lot is proved to its reasonable satisfaction to be a Forgery (see clause 17) and the Company has accounted to the Seller for the Sale Proceeds, the Seller must immediately refund the Sale Proceeds to the Company, which will then refund the Purchase Price to the Buyer and make the Lot available to the Seller for collection.

13. Withdrawal of a Lot

13.1 A Seller may only withdraw a Lot from Sale by written notice signed by the Seller.

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

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

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

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

13.4 If a Seller withdraws a Lot from sale after the Lot has been put on view at the Premises the Seller shall pay to the Company the Expenses plus a withdrawal fee equal to 30% plus GST of the higher of:

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

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

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

- (a) the Company or the Seller is so restrained or otherwise not legally entitled to sell the Lot;

(b) the Seller is in breach of any one or more of the warranties of the Seller, or

(c) the description of the Lot given to the Company by the Seller is inaccurate or misleading in any material respect,
then the Company may by notice in writing to the Seller decline to sell the Lot in question and the Seller shall be deemed to have withdrawn the Lot from sale.

13.7 If a Lot is withdrawn from sale or deemed to have been withdrawn then the Seller shall arrange for collection and removal of the Lot at Seller's expense within two (2) business days after the date of withdrawal provided that the Seller has paid the Expenses and the applicable withdrawal fee as set out in this clause 13.

14. Seller's indemnity for costs

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

15. Application of Sale Proceeds

15.1 The Company is authorised by the Seller to apply any money held by the Company on behalf of the Seller to the payment or reimbursement of any amount payable by the Seller to the Company including the Expenses and the withdrawal fees as set out in this clause 13.

15.2 The Company may claim a lien on any goods held by the Company for the Seller until all money payable to the Company by the Seller has been paid and, if it is not paid within twenty one (21) days, may exercise a power of sale over those goods.

16. Photography and illustration

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

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

16.3 The copyright of all photographs taken and illustrations made of any Lot by and on behalf of the Company shall be the absolute property of the Company, subject to any underlying copyright owned by other parties.

17. The Buyer

17.1 A prospective Buyer must:

- (a) be over eighteen (18) years of age at the date of the Auction;
- (b) provide to the Company their full name, home address, email and mobile number;
- (c) register in advance of the Auction by completing the Bidder Registration Form;
- (d) provide an acknowledgement that they have read and agreed to be bound by these Conditions; and
- (e) provide any other information requested by the Company including but not limited to banking details, credit card details, suitable references or identification.

17.2 No person shall be entitled to bid at an Auction without first having completed and delivered to the Company a bidder registration form acceptable to the Company.

17.3 Every bidder shall be deemed to act as principal unless prior to the commencement of the Auction there is a written acceptance by the Company that the bidder is acting on behalf of a third party and that the bidder is not personally liable.

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

18. Buyers to Satisfy Themselves

18.1 Lots are sold on an 'as is' basis and it is the responsibility of prospective Buyers to examine a Lot prior to the Sale and to satisfy themselves as to the condition of the Lot and that the Lot matches any written or oral description provided by the Seller or the Company. Sale with **all faults (AF)** means sale as is and "AF" is used on occasion in the lot description to remind clients that the lot is sold on an 'as is' basis.

18.2 All descriptions provided by the Seller or the Company are subject to any statements made by the Auctioneer from the rostrum prior to any bid being accepted for the Lot and any illustrations in the Catalogue are solely for the guidance of prospective Buyers and should not be relied upon in terms of tone or colour or necessarily to reveal imperfections in any Lot.

18.3 In bidding for any Lot, prospective Buyers agree that they have not been induced to make any bid by any representation, in respect of the Lot by the Company, including any representation arising from a document that has been

provided by the Seller to the Company in association with the Sale of a Lot and made available by the Company for inspection by prospective Buyers. If prospective Buyers wish to rely on any representation made by or on behalf of the Company, they must advise the Company in writing of this prior to the Sale.

18.4 The maximum liability of the Company to a Buyer shall at all times be limited to the Sale Price of the relevant Lot and the Premium (if paid by the Buyer) but shall not include a refund of storage charges, insurance, interest and the like, or any consequential or indirect loss or damage suffered or expense incurred by the Buyer.

19. Forgery

19.1 If a Lot is proved to the reasonable satisfaction of the Company to be a Forgery then the Company may rescind the Sale as agent of the Seller in which case the Seller shall refund the Sale Proceeds to the Company, which will refund the Purchase Price to the Buyer and make the Lot available to the Seller for collection provided that:

(a) the Buyer provides written notice to the Company within fourteen (14) days of the Auction of the Forgery allegations;

(b) the Buyer produces evidence from two (2) independent acknowledged experts who both agree that the Lot is a Forgery, provided that, the Company reserves the right to request further expert evidence if, in its sole discretion, it is not satisfied with the findings by the experts;

(c) the Buyer returns the Lot to the Company in the same condition as it was at the date of the Sale;

(d) the Buyer warrants that it has not sold or transferred the Lot nor created any rights in respect thereof in favour of any third party;

(e) the Seller has refunded the Sale Proceeds to the Company.

19.2 The benefits of this clause are for the Buyer only and cannot be assigned.

19.3 Despite clause 19.1 the Company has no obligation to rescind the Sale and the Buyer shall not be entitled to rescind the Sale if in the opinion of the Company:

(a) the description of the Lot in the Catalogue was accurate at the time of its publication based on the opinion of an expert in the relevant area of expertise at that time; or

(b) the only method of establishing at the time of publication of the Catalogue that the Lot was a Forgery would have been a scientific process not then in general

usage, or which would have been too costly or impractical or would have been likely to cause damage to the Lot.

20. Premium

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

21. Contract of sale

21.1 The Auctioneer may knock down a Lot to the person who, the Auctioneer, in their absolute discretion believes, is the highest bidder acceptable to the Company, subject to any Reserve. Any dispute may be determined by the Auctioneer in their absolute discretion and the decision of the Auctioneer shall be final.

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

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

21.4 Title to the Lot will pass to the Buyer when the full Purchase Price which includes all the buyer's premium and all other incurred expenses, has been received by the Company by way of cleared funds.

22. Payment by Buyer

22.1 The Purchase Price must be paid by the Buyer to the Company no later than 4.00pm on the second day after the Sale unless otherwise stated in the Catalogue.

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

22.3 Absentee or telephone bidders who are unable to attend an Auction and who wish to bid on any V Lot and other Lots as determined by the Company at its absolute discretion may be required to provide a deposit equal to 50% of the low end of the Estimated Selling Range (but no less than \$1,000), either in cash, approved credit card or approved bank cheque prior to the Sale. In the event that such absentee or telephone bidders are unsuccessful then the Company will refund any deposits received within five (5) working days from day of the Auction.

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

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

23. Pickup purchase

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

24. Responsibility for Lots Purchased

24.1 The Buyer shall be responsible for any loss or damage to, or caused by, a Lot purchased by the Buyer from the fall of the Auctioneer's hammer and neither the Company nor its employees or agents shall be responsible for any Claim while the Lot is in its power, possession or custody, except where the Company has been grossly negligent.

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

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

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

25. Non-Payment or Failure to Collect

25.1 If the Purchase Price in respect of a Lot is not paid for in full in accordance with clause 22.4, the Company may, after a period of five (5) days (during which time the Company may attempt to contact the Buyer), and in its absolute discretion and without prejudice to any other rights or remedies it may have, exercise at its discretion one or more of the following remedies:

(a) re-sell the Lot without reserve by Auction, private sale or any other means;

- (b) remove, store and further insure the Lot at the expense of the Buyer;

- (c) charge interest on the Purchase Price at the Interest Rate per month or part thereof from the date upon which the Purchase Price becomes payable until the full Purchase Price has been received by the Company from the Buyer or as the result of a resale;

- (d) retain any Lot sold to the Buyer at the same or any other Auction until payment of the Purchase Price by the Buyer;

- (e) apply the proceeds of the Sale of any Lot then due or at any time thereafter becoming due to the Buyer in payment or part payment of the Purchase Price;

- (f) exercise a lien on or exercise a power of sale over any other property of the Buyer in the power, possession or control of the Company;

- (g) rescind the Sale of that Lot or any other Lot sold by the Seller to the Buyer at the same or any other Sale;

- (h) repossess any goods comprising any Lot in respect of which payment is overdue and thereafter resell the same, and for this purpose the Buyer hereby grants an irrevocable licence to the Company to enter upon all or any of the Buyer's premises (with or without vehicles) during normal business hours, without prejudice to any other rights of the Company to repossess any goods comprising any Lot;

- (i) issue legal proceedings against the Buyer;

- (ii) reject a bid from the Buyer at any future auction sale or require the Buyer to pay a deposit before any bid is accepted by the Company at any future Sale.

25.2 If the Lot is not collected in accordance with clause 23, the Company may, after a period of fourteen (14) days (during which time the Company may attempt to contact the Buyer), and in its absolute discretion and without prejudice to any other rights or remedies it may have, exercise one or more of the following remedies:

- (a) remove, store and further insure the Lot at the expense of the Buyer;

- (b) rescind the sale of that Lot or any other Lot sold by the Seller to the Buyer at the same or any other Auction and resell the Lot or any other Lot by Auction or private sale; or

- (c) dispose of the Lot by donating it to charity if possible and if not disposing of it by other appropriate means.

In the event of a resale as set out in clause 25.2 (b) the Buyer will be entitled to the Sale Proceeds paid for the resale but not a refund of the original Purchase Price paid.

25.3 The Company will not be liable to the to make a refund of the Purchase Price paid in the event that it takes any of the actions set out in clause 25.2.

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

26. Absentee

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

26.2 The Company will execute telephone bids on behalf of prospective Buyers who are not at the Auction on the condition that the prospective Buyer acknowledges that taking instructions by telephone in the course of an auction has inherent risks (such as miscommunication, misunderstanding or other problems caused by a telecommunications fault or failure including a mobile telephone connection falling out).

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

26.4 The Company reserves the right to charging bidders for the telephone bidding service, on a per Lot basis, specifically but not limited situation when a Lot sells below an advertised reserve and the telephone bidder has failed to make a reasonable bid.

27. GST

27.1 Interpretation

Words or expressions used in this clause 27 that are defined in A New Tax System (Goods and Services Tax) Act 1999 have the same meaning.

27.2 GST and amounts payable to the Company:

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

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

27.3 GST and amounts payable to the Seller:

(a) The Seller must, on or before the date of the Sale, notify the Company whether it is registered for GST, and if so, must provide its ABN to the Seller at the same time.

(b) If the Seller notifies the Company that it is registered for GST in accordance with clause 27.3(a):

(i) the Seller authorises the Company as its agent, to issue a tax invoice to the Buyer in respect of the Sale of any Lot which is a taxable supply; and

(ii) on payment of the Sale Proceeds to the Seller in accordance with clause 10, the Company will:

(A) notify the Seller of the amount of GST included in the Sale Price for the Lot to enable the Seller to determine its GST liability on the Sale; and

(B) give the Seller a tax invoice for any taxable supply made by the Company to the Seller under this agreement (including, without limitation, any supply for which the Seller's Commission, the Online Photography Fee, the Insurance Fee, and Expenses are consideration) including any amounts payable on account of GSWTST in accordance with clause 27.2(a).

27.4 GST on sale of Lot to Buyer

(a) The Sale Price is inclusive of GST (if any) and shall not be increased any further for any GST payable by the Seller in respect of the Sale.

(b) If the Seller has informed the Company that it is registered for GST in accordance with clause 27.3(a), the Company will, upon request by the Buyer or otherwise at its discretion, issue a tax invoice to the Buyer showing:

(i) the amount of GST included in the Sale Price; and

(ii) any amounts payable by the Buyer to the Company in consideration for any taxable supply made by the Company to the Buyer under this agreement and any GST payable on the supply in accordance with clause 27.2(b).

(c) If the Seller does not inform the Company that it is registered for GST in accordance with clause 27.3(a), the Sale will be presumed not to be a taxable supply, and the Company will only issue a tax invoice for any taxable supply made by the Company to the Buyer under this agreement (including, without limitation, any taxable supply for which the Premium is consideration and any amounts payable on account of GST payable on that supply in accordance with clause 27.2(b)).

(d) A Buyer of a Lot sold by a GST registered Seller that is subsequently exported from Australia may be able to claim a refund from the Company for any GST included in the Sale Price of a Lot if, within 60 days of the Sale, the Buyer provides the Company with:

(i) all relevant shipping documents confirming that the goods have been exported from Australia; and

(ii) evidence to the reasonable satisfaction of the Company that the Buyer is not registered or required to be registered for GST in Australia.
However, the Company need not refund any GST amount to the Buyer under this clause, unless and until it receives a refund of this amount from the Seller.

27.5 Obligations of non-resident Sellers

(a) This clause 27.5 only applies to Sellers that are non-residents of Australia.

(b) The Seller must, on or before any Lot is imported into Australia for Sale, notify the Company as to:

(i) whether the Seller will be selling the Lot in the course of carrying on an enterprise; and

(ii) whether the Seller is registered for GST in Australia.

(c) The Seller acknowledges and agrees that the Company has the right to deduct and retain from the Sale Proceeds, an amount equal to any GST for which the Company is or becomes liable to pay in respect of the importation or Sale of a Lot, including, without limitation, any GST payable pursuant to the GST Act.

27.6 Reimbursements (net down)

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

28. Appointment of Sunny Auctions Pty Ltd as Agent

This clause 28 applies in respect of any Seller, who wishes to appoint Sunny Auctions as their agent for the purpose of undertaking certain transactions on their behalf and **Sunny Auctions** accepts this appointment. The Seller is a non-resident of Australia for the purposes of the GST Act and on the basis that the Seller is either registered for GST purposes or required to be registered for GST as at the date a Lot is imported into Australia for Sale.

(a) The Seller hereby appoints **Sunny Auctions** to act as agent for the Seller from time to time for the purpose of importing goods into Australia, exporting goods from Australia and making acquisitions from and supplies to third parties within Australia.

(b) The Seller acknowledges that, with the prior written consent of the Seller, **Sunny Auctions** may engage third party suppliers for the purpose of performing the services referred to in clause 28(a).

(c) The Seller agrees:

(i) to make payment to suppliers for goods and services supplied in accordance with supply agreements that are negotiated by **Sunny Auctions** as agent for the Seller;

(ii) to reimburse **Sunny Auctions** for payments that are made by **Sunny Auctions** to suppliers of goods and services supplied in accordance with supply agreements that are negotiated by **Sunny Auctions** as agent for the Seller;

(iii) to accept invoices including Tax Invoices that are issued by suppliers addressed to **Sunny Auctions** for supplies of goods and services supplied in accordance with supply agreements that are negotiated by **Sunny Auctions** as agent for the Seller; and

(iv) that **Sunny Auctions** will issue a Tax Invoice to the recipient of any Taxable Supply made by **Sunny Auctions** on behalf of the Seller and the Seller will not issue a Tax Invoice for any such supply.

(d) **Sunny Auctions** agrees to account for the Australian GST obligations of the Seller in accordance with Division 57 of the GST Act.

(e) The Seller acknowledges that **Sunny Auctions** will claim any input tax credit available in respect of the importation of goods into Australia on behalf of the Seller. The Seller agrees not to claim an input tax credit in respect of the importation of any goods into Australia that are subject to this agreement.

(f) The Seller agrees to advise **Sunny Auctions** should the Seller cease to be required to be registered for GST (i.e. if the value of the supplies that the Seller will make in Australia in any period of twelve (12) months is expected to be less than AUD\$75,000).

29. Currency Converter

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

30. Governing Law and Jurisdiction

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

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

31. Notices

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

(a) in writing, in English, and signed by a person duly authorised by the sender; and

(b) delivered by hand or sent by prepaid post, and by airmail when sent to a destination outside Australia, or facsimile or email to the recipient's address as varied by any Notice given by the recipient to the sender.

31.2 A Notice given in accordance with clause 31.1 takes effect when it is taken to have been received (or at a later time specified in it), and is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by facsimile, on receipt by the sender of the transmission report at the conclusion of the transmission;

(c) if sent by mail, three (3) days after the date of posting if posted to an address within the country of posting and seven (7) days after the date of posting if posted to a country outside Australia; and

(d) if sent by email, at the time of transmission unless the sender is notified that the email was undeliverable.

31.3 In proving service by delivery:

(a) by hand, it shall be necessary only to produce a receipt for the communication signed by or on behalf of the recipient;

(b) by facsimile, it shall be necessary only to produce the confirmatory transmission report;

(c) by post, it shall be necessary only to prove that the communication was contained in a pre-paid envelope which was duly addressed, posted and, in the case of the Notice being sent to a destination outside Australia, was sent by airmail; and

(d) by email, it shall be necessary only to prove that the communication was sent to the correct email address.

32. General Provisions

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

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

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

32.4 No party shall be liable for any loss or damage or be deemed to be in breach of these Conditions if its failure to perform its respective obligations hereunder results

from any event or circumstance beyond its reasonable control. The party interfered with shall give the other party prompt written notice of any such force majeure condition. If notice is provided, the time for performance or cure shall be extended for a period equal to the duration of the force majeure event or circumstance described in such notice, except that any such cause shall not excuse the payment of any sums owed to the Company prior to, during, or after any such force majeure condition.

33. Privacy Statement

33.1 In our dealings with the Sellers, Buyers and bidders it is necessary to collect personal information such as:

(a) name;

(b) company name, ABN and/or ACN;

(c) residential address;

(d) business address;

(e) email address;

(f) facsimile number;

(g) telephone numbers;

(h) drivers licence details;

(i) credit card details; and

(j) bank account details.
("Information")

33.2 When a Seller, Buyer and / or bidder provides the Company with the Information, the Company relies on the accuracy of the Information. If the Information is in inaccurate or incorrectly recorded it is the obligation of the aSeller, Buyer and / or bidder to advise the Company to ensure it is updated.

33.3 The provider of the Information consents to the Company:

(a) retaining the Information for future use and reference;

(b) being used for marketing purposes by the Company; and

(c) being disclosed as required by law.

33.4 The Company will upon request provide access to the Information to the Seller, Buyer or bidder for the purpose of correcting or updating their Information and will delete the Information if requested in writing by the provider of it.

33.5 The Company will store the Information in a manner that ensures security against unauthorised access, alteration or deletion at a level commensurate with its sensitivity.

34. Resale Royalty

34.1 The Seller:

(a) acknowledges that they understand their legal obligations under the Resale Royalty for Visual Artists Act 2009 (the Act);

(b) undertakes to comply with all requirements of the Act, including by providing its agent, the Company, with accurate information sufficient for compliance with sections 28 and 29 of the Act;

(c) undertakes to indemnify the Company for any loss incurred by the Company as a result of the Seller's failure to comply with any of the Seller's legal obligations under the Act; and

(d) acknowledges that if they fail to comply with any of their legal obligations under the Act, the Company may provide the Seller's name and contact details to Copyright Agency Limited.

34.2 Lots which the Company identifies with the § sign or advises at the Auction will be subject to payment of the artist resale royalty in the event that the lot is sold for a hammer price of \$1,000 or more ("Artist Resale Royalty Fee").

34.3 The Buyer will be liable to pay the Artist Resale Royalty Fee which will be charged in addition to the Buyer's Premium plus any and all applicable taxes.

35. Sale of Jewellery and Authenticity Certificate

35.1 Sale of Jewellery

(a) Lots offered by **Sunny Auctions** containing jewellery and watches may be accompanied by an independent valuation as stated in the catalogue.

(i) These valuations are conducted by registered valuers and are offered only as independent opinions.

(ii) The Buyer acknowledges that variation may be found as to the colour, clarity and size of stones described in these reports and **Sunny Auctions** does not guarantee the accuracy and reliability of these independent valuations.

(b) Where stones that form part of a Lost can be weighed accurately, weights will be provided but weights of set stones are estimates only and are provided to the best of **Sunny Auctions**' technical ability.

(i) Gram weight on gold and other precious metals are also given as an approximation.

(c) Wristwatches and pocket watches are offered in their current condition and **Sunny Auctions** does not guarantee that they are in working order.

35.2 Authenticity Certificate

(a) As various manufacturers may not issue certificates of authenticity, **Sunny Auctions** has no obligation to furnish a buyer with a certificate of authenticity from the manufacturer, except where specifically noted in the catalogue.

(b) **Sunny Auctions** will not cancel a Sale due to the failure of a manufacturer to issue a certificate of authenticity.