

# TERMS AND CONDITIONS

These conditions of business consist of:

1. Information for Buyers;
2. Terms of Consignment (for Sellers);
3. Terms of Sale (for Bidders and Buyers).

## 1. INFORMATION FOR BUYERS

### Introduction

The following notes are intended to assist Bidders and Buyers, particularly those that are inexperienced or new to our salerooms. All of our auctions are governed by our Terms and Conditions and any notices that are displayed in our salerooms or announced by the Auctioneer at the auction. Our Terms and Conditions are available for inspection at our salerooms and the Terms of Sale are printed in the back of our auction catalogues. Our staff will be happy to help you if there is anything in our Terms and Conditions that you do not fully understand.

**Please make sure that you read our Terms of Sale carefully before bidding in the auction. If your bid is successful, you will be obliged to comply with our Terms of Sale.**

### Methods of payment

Lots must be paid for before they are collected. For those attending the auction we ask that Lots are paid for on the day of the sale. Methods by which we accept payment are detailed on our web site, including online payment upon receipt of your invoice, and these should be paid by 5pm on the Friday following the sale. We accept cash to an upper limit of 10,000 euros equivalent. We accept credit card payments to an upper limit of £5,000. Usually any cheques will need to be cleared before you can take the Goods away.

### Collection and storage

All Lots should be paid for and collected by 5pm on the Friday following the sale. Commission Bidders should check the success of their bids and arrange payment and collection within this time. For our specialist auctions please refer to the collection and storage requirements detailed in the catalogue and on our Website, which specifies the applicable fees. For our Homes and Interiors auctions, items not removed by 5pm on Friday may be removed at the purchaser's expense and storage charges of £10 as an administration fee and £2 per Lot per day may be charged (plus VAT).

### Dispatch

We are rarely able to pack and dispatch purchases. A choice of shippers is detailed on our web site.

### Agency

As Auctioneers we usually act on behalf of the Seller whose identity, for reasons of confidentiality, is not normally disclosed. If you buy at auction your contract for the Goods is with the Seller, not with us as Auctioneer.

### Estimates

Estimates are designed to help you gauge what sort of sum might be involved for the purchase of a particular Lot. Estimates may change and should not be thought of as the sale Price. The lower estimate may represent the Reserve Price (the minimum Price for which a Lot may be sold) and will not be below the Reserve Price. Estimates do not include the Buyer's Premium or VAT (where chargeable). Estimates are prepared some time before the auction and may be altered by a saleroom notice or announcement by the Auctioneer before the auction of the Lot. They are not definitive.

### Buyer's Premium

The Terms of Sale oblige you to pay a Buyer's Premium at 25% on the Hammer Price of each Lot purchased, except for our Fine Wine and Port auctions when it is 15%. In addition, VAT is charged on these Premiums (see below).

### VAT

Items in our catalogue may be marked with a dagger † or double dagger ‡, which indicates that VAT is payable by the Buyer on the Hammer Price and the Buyer's Premium at either the standard rate (currently 20%) or a reduced rate (currently 5%), depending upon the legal requirements relating to that Lot.

Lots which do not have either of the above symbols have no VAT payable on the Hammer Price. This is because such Lots are sold using the Auctioneers' Margin Scheme. The VAT included within the Premium is not recoverable as input tax.

### Inspection of Goods by the Buyer

As we act on behalf of the Seller, we are dependent on information provided by the Seller about their Goods. We may inspect Lots and will act reasonably in taking a general view about them. However, we are normally unable to carry out detailed examinations of Lots to check their condition in the way a Buyer would do. You will have ample opportunity to inspect the Goods. You must inspect and investigate Lots that you might wish to bid for. **Please note carefully the exclusion of liability for the condition of Lots set out in the Terms of Sale at clause 12.4.**

### Condition reports

We may be able to assist Buyers unable to view by emailing a condition report, but these are based solely on our own opinion and are for guidance only and no responsibility is accepted for their accuracy. Intending Buyers are strongly encouraged to view. Condition reports cannot be prepared on the day of the sale.

### Electrical goods

These are sold as 'antiques' only. If you buy electrical Goods for use you must ask a qualified electrician to check them for compliance with safety regulations before you use them.

### Export of Goods

If you intend to export Goods you must find out:

- a. whether an export licence is needed; and
- b. if there is a prohibition on importing Goods of that character e.g. because the Goods contain prohibited materials such as ivory.

### Bidding

Bidders will be required to register with us before the auction starts. We Reserve the right to impose a deadline prior to the auction by which you must register or by which we must receive a Commission bid. If you wish to bid on high value Lots this deadline may be several days before the auction in order to allow us sufficient time to carry out the necessary checks. Lots will be invoiced to the name and address on the registration form. You will need to provide us with proof of your identity in a form acceptable to us and such other information as we may require. Please enquire in advance about our arrangements for telephone or online bidding. Please note that we may refuse to register you if you do not provide us with all the information and documentation that we ask for or at our discretion.

### Commission bidding

You may leave Commission bids with us indicating the maximum amount to be bid against a Lot (excluding the Buyers' Premium and/or any applicable VAT). We will execute Commission bids as cheaply as possible having regard to the Reserve (if any) and competing bids. If two Buyers submit identical Commission bids we may prefer the first bid received (where this can be reasonably ascertained). We recommend leaving Commission bids online via our Website, though please contact us about leaving bids by telephone or fax/email. All absentee bids should be received at least 30 minutes before the auction commences; we cannot guarantee to execute Commission bids received after this time.

### Telephone bidding

If you are unable to come to the auction it may be possible to bid on the telephone for higher value Lots. Please note that this service is for Lots with an estimate of £500 or more. The number of lines is limited so we would urge serious telephone bidding only and ask that you be prepared to bid over the top estimate. It is advisable to leave a maximum covering bid in case we are not able to contact you by telephone. All lines must be booked and confirmed in writing before the day of the auction and preferably some time in advance. Telephone bidding involves many variables and whilst we take every care to ensure the smooth operation of this service, we cannot be held liable if your bids are missed for any reason.

### Online bidding

Any Lots purchased via a live online bidding service will be subject to an additional Commission charge on the Hammer Price payable by the Bidder, in accordance with rates specified by the online service. From 1 January 2020, these charges will be charged at 0% while bidding via Sworders Website. If bidding through the-saleroom.com this will be charged at 4.95% plus VAT. These charges will be payable to us on top of the Hammer Price and our Buyer's Commission.

## IMPORTANT NOTICES

### Removal of Lots

All Lots are to be removed from the premises by 5.00pm at the latest on the Friday following each sale. Sworders retain the right to remove Lots remaining after this time into safe storage, for which a charge will be made.

### Electrical Goods

All electrical Goods offered in this sale have either been tested and certified safe or unsafe by an appropriately qualified electrician. All electrical Goods certified safe must be re-Commissioned by an appropriately qualified electrician and we recommend those certified safe are similarly re-Commissioned.

### Post 1950 Upholstered Furniture

All items of furniture included in this sale are offered for sale as works of art. The items may not comply with the Furniture and Furnishings (Fire) Safety Regulations 1988 and for this reason, they should not be used in a private dwelling.

### Furniture made of Brazilian Rosewood (Dalbergia Negra)

To comply with CITES Regulations on Post-1947 furniture made of Brazilian Rosewood, all post-war rosewood furniture items have Article 10 certificates.

If you are purchasing rosewood furniture for commercial purposes and not solely for your own use, CITES regulations require you to obtain your own certificate. You would need to contact the Animal Health and Veterinary Laboratories Agency (AHVLA) and, as part of the process of obtaining your document, it is a requirement that you have seen sight of the Sworders' certificate or are aware of its reference number.

It is therefore the responsibility of commercial Buyers to ensure that they obtain a copy of the appropriate certificate, or the certificate reference number, after purchase from Sworders Fine Art Auctioneers. Items are marked with this sign \$.

## TERMS OF CONSIGNMENT

Please note that if you (or another person acting on your behalf) provide Goods to us to sell on your behalf at our auction, this signifies that you agree to and will comply with these Terms of Consignment.

Please note that these Terms of Consignment relate to auctions conducted by an Auctioneer only. We have separate terms for online only auctions.

### 1. Definitions and interpretation

1.1 To make these Terms of Consignment easier to read, we have given the following words a specific meaning:

‘Auctioneer’	means GES & Sons Ltd trading as Sworders Fine Art Auctioneers, a company registered in England and Wales with registration number 6858916 and whose registered office is located at Cambridge Road, Stansted Mountfitchet, Essex, CM24 8GE or its authorised Auctioneer, as appropriate;
‘Bidder’	means a person who places a bid for Goods at our auction;
‘Buyer’	means the person who makes the highest bid for the Goods accepted by the Auctioneer;
‘Commission’	means the commission that we charge you on the sale of the Goods as set out in Clause 5 below;
‘Consumer’	means an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession;
‘Consumer Contracts Regulations’	means the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;
‘Deliberate Forgery’	means: (a) an imitation made with the intention of deceiving as to authorship, origin, date, age, period, culture or source; (b) which is described in the catalogue as being the work of a particular creator without qualification; and (c) which at the date of the auction had a value materially less than it would have had if it had been as described;
‘FCA’	means the Financial Conduct Authority;
‘Goods’	means the Goods that you consign to us for sale at our auction;
‘Hammer Price’	means the level of the highest bid for the Goods accepted by the Auctioneer;
‘Premium’	means the premium charged to the Buyer on the sale of the Goods in accordance with the Terms of Sale;
‘Price’	means the total of the Hammer Price, Premium and any applicable VAT;
‘Proceeds’	means the Price less the Commission, the Premium, any expenses incurred to your account and any applicable VAT;
‘Reserve’	means the minimum price at which the Goods may be sold;
‘Seller’	means the owner of the Goods and any agent who consigns the Goods for sale on the owner’s behalf (if applicable);
‘Terms of Consignment’	means these Terms of Consignment;
‘Terms of Sale’	means the Terms of Sale for Bidders or Buyers at our auctions;
‘Trader’	means a Seller who is acting for purposes relating to that Seller’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf (such as an agent and/or the Auctioneer);
‘VAT’	means any value added tax or equivalent sales tax; and
‘Website’	means our website available at <a href="http://www.sworder.co.uk">www.sworder.co.uk</a>

In these Terms of Consignment the words ‘you’, ‘yours’, etc. refer to the Seller. The words ‘we’, ‘us’, etc. refer to the Auctioneer. If the consigning of Goods to us is made by an agent we assume that you (as owner of the Goods) have authorised the consignment and authorised the agent to contract on your behalf. All obligations that apply to the Seller under these Terms of Consignment shall apply to the owner of the Goods and their agent, jointly and separately. Any reference to a ‘Clause’ is to a clause of these Terms of Consignment unless stated otherwise.

### 2. Information that we are required to give to Consumers

2.1 A description of the main characteristics of the auction-related services that we are providing to you as set out in these Terms of Consignment or otherwise agreed with you in writing.

2.2 Our name, address and contact details as set out in these Terms of Consignment and/or on our Website.

2.3 The rate at which we will charge you the Commission plus any applicable VAT on the sale of the Goods as set out in Clause 5.

2.4 The fee that we will charge you plus any applicable VAT as set out in Clause 19 if either the Goods are unsold at auction or the Goods are withdrawn by you from the auction after the Goods have been catalogued and/or marketed by us prior to the auction in any way.

2.5 The arrangements for collection of any unsold Goods as set out in Clauses 19 and 21 and terms regarding payment of any Proceeds due to you set out in Clause 18.

2.6 If you have any complaints, please get in contact with us using the contact details set out on our Website.

### 3. Procedure for consigning Goods for sale at auction

3.1 If you consign Goods to us for sale at auction, you will need to provide us with the following information about you, in a form acceptable to us:

3.1.1 Your legal name and proof of identity;

3.1.2 Information about the Goods (as set out in Clause 13);

3.1.3 Your bank account details;

3.1.4 Your address and contact details; and

3.1.5 Your VAT registration number (if applicable);

3.2 If you do not provide us with, or we are not satisfied with any of the above information, we may refuse to accept consignment of your Goods for sale in our auction.

3.3 You must provide the Goods to us by any stated deadline (at your expense). We may be able to assist you with this process but any liability incurred to a carrier for haulage charges is solely your responsibility.

### 4. The contract between you and the Buyer

4.1 The contract for the purchase of the Lot between you and the Buyer will be formed when the

Auctioneer records the winning Lot in the sale book accepting the highest bid for the Lot at auction, unless due diligence information required by the Auctioneer under the Money Laundering Regulations 2019 in accordance with their internal procedure remains outstanding, in which case the contract will be formed when that information is accepted by the Auctioneer as complete.

4.2 You may directly enforce any terms in the Terms of Sale against a Buyer and/or a Bidder to the extent that you have suffered damages and/or loss as a result of the Buyer and/or the Bidder’s breach of the Terms of Sale.

4.3 If you breach these Terms of Consignment, you may be responsible for damages and/or losses suffered by a Buyer, Bidder and/ or by us. If we are contacted by a Buyer and/or a Bidder who wishes to bring a claim against you, we may in our discretion provide the Buyer and/or Bidder with information or assistance in relation to that claim.

4.4 We normally act as an agent only and will not have any responsibility for default by you or the Buyer.

### 5. Commission

We will charge you a Commission on the sale of the Goods calculated as a percentage of the Hammer Price at 17.5% plus VAT, except for Fine Wines and Spirits which will be 12% plus VAT on the first £250 and 8% plus VAT thereafter, unless we agree with you otherwise. There is a minimum Commission charge of £7.50 plus VAT per Lot.

### 6. Loss and damage to Goods

6.1 We are not authorised by the FCA to provide insurance to you. However, subject only to Clauses 6.3 and 6.4, we accept liability for Goods from the time we take possession of the Goods until title passes to the Buyer.

6.2 Our liability for Goods is limited to our mid pre-sale estimate for the Lot before the sale, or our valuation if no estimate has been agreed, or the Hammer less our Commission if the Lot has sold.

6.3 The liability accepted by us in Clause 6.1 does not include any liability for loss or damage to the Goods that is caused by or results from: (i) any inherent vice or defect affecting the Goods; (ii) acts of God, flood, drought, earthquake or other natural disaster; (iii) acts of terrorism, civil commotion, riots or war; or (iv) nuclear, chemical or biological contamination.

6.4 If you (or your agent) instruct us in writing not to assume liability for Goods, the Goods remain entirely at your risk unless and until the Goods pass to the Buyer or are collected by you or on your behalf. In this case Clauses 6.1 - 6.3 will not apply.

### 7. Photographs

You will pay for the cost of any photographs of your Goods produced for the auction catalogue, our Website or online bidding platform. We Reserve the right to photograph all Goods unless you specifically request us not to. We Reserve the right to make a charge for this service. The charge will vary in specialist auctions, depending upon the size of the catalogue illustration. A charge of £5 plus VAT per Lot will be made on Lots entered into the Homes and Interiors auctions. The copyright in such photographs will be owned by us, along with the text of the auction catalogue.

### 8. Minimum bids and our discretion

Goods may be offered subject to a Reserve agreed between you and us before the auction in accordance with Clause 9. We may sell Goods below the Reserve provided that we account to you for the same sale Proceeds as you would have received had the Reserve been the Hammer Price. If you specifically give us ‘discretion’ we may accept a bid of up to 10% below the formal Reserve.

### 9. Reserves

9.1 Reserves must be reasonable and may not exceed our lower pre-sale estimate for that Lot. We may decline to offer Goods which, in our opinion, would be subject to an unreasonably high Reserve (in which case the Goods carry the storage charge set out in these Terms of Consignment).

9.2 Once we have agreed a Reserve, this cannot be changed except with your and our consent.

9.3 Where a Reserve has been agreed only we may bid on your behalf and only up to one bid below the Reserve (if any) and you may in no circumstances bid personally or ask anyone else to bid on your behalf.

#### 10. Electrical items

We will test and certify safe or unsafe any electrical items that you wish to consign to us for sale using external contractors, and make a charge to you of £10 plus VAT per Lot.

#### 11. Unsafe Goods

If in our opinion any of your Goods, in particular those which are soft furnishings, infringe safety regulations we will not offer these Goods for sale. You must remove such Goods at your expense. If you do not collect such Goods within seven days of our notice to do so, we may dispose of the Goods at your expense.

#### 12. Picture Frames

Due to the fragile nature of picture frames, the Auctioneer accepts no responsibility for any damage, however caused, to picture frames whilst in our possession, either in the auction room, in store or in transit.

#### 13. Warranties and information about the Goods

13.1 You must provide us with all information that you have relating to the provenance, export/import history, condition, attribution and authenticity of the Goods (and any additional information that may be relevant).

13.2 In addition to any warranties implied by law, you warrant to us and the Buyer that:

13.2.1 any information that you provide in relation to the Goods is complete, correct and up-to-date;

13.2.2 the Goods will match any description of the Goods that you provide to us;

13.2.3 as far as you are aware, the main characteristics of the Goods set out in the auction catalogue (as amended by any notice displayed in the saleroom or announced by us at the auction) are correct;

13.2.4 to the best of your knowledge, the Goods have been lawfully imported and lawfully and permanently exported as required by the laws of any country in which the Goods were located; required declarations upon the export and import of the Goods have been properly made; and any duties and taxes on the export and import of the Goods have been paid; and

13.2.5 you will pay all taxes and duties potentially due on the sale of the Goods.

13.3 You must let us know promptly, and in any event before the auction, if you find out that any of the information you have provided to us relating to the Goods is incorrect or incomplete and/or if the Goods do not match the description that you provided to us or the main characteristics of the Goods set out in the auction catalogue.

13.4 Any information that you provide in relation to the Goods may form part of the contract between both of us and the Buyer and you acknowledge that the Buyer may have a statutory right to reject the Goods if the information provided is incorrect.

13.5 If we have to refund the Price of any Goods to the Buyer due to the Goods being a Deliberate Forgery, you must promptly, and in any event within seven days, reimburse to us any Proceeds that we have transferred to you for those Goods following receipt of our written notice requesting you to do so.

#### 14. Transfer of ownership of the Goods

You warrant and undertake to us and the Buyer that you are the true owner of the Goods (or are properly authorised by the true owner to sell the Goods on the owner's behalf) and you currently have and will have the right to sell the Goods to the Buyer with good and marketable title free of any third party rights or claims at the time when ownership of the Goods is to be transferred.

#### 15. Indemnity

You will indemnify and keep us fully indemnified against any and all liability, loss, damage, costs (including reasonable legal fees and any VAT in

relation to such fees) and expenses which we may incur or suffer as a result of any breach of Clauses 13 or 14 by you or anyone acting on your behalf, including without limitation, if we are required to refund the Price of any Goods to the Buyer as a result of your breach of these clauses.

#### 16. Terms of Sale

You agree that the Goods will be sold to the Buyer in accordance with our Terms of Sale, a copy of which will be displayed in the saleroom and printed in our auction catalogue.

#### 17. Authority to deduct Commission and expenses and retain Premium and interest

You authorise us to deduct our Commission at the stated rate and all expenses incurred on your account from the Hammer Price, plus any applicable VAT. You consent to our right to charge the Buyer and retain beneficially the Premium plus any applicable VAT paid by the Buyer in accordance with our Terms of Sale and any interest earned on the sale Proceeds until the date of settlement.

#### 18. Settlement

18.1 Provided that the Buyer has paid for the Goods, we will usually pay the net sum due to you within twenty one days of the day of the auction for specialist auctions and eight days for Homes & Interiors auctions, by BACS transfer direct into the bank account you notified to us in writing or by crossed cheque to the Seller.

18.2 If the Buyer has not paid for the Goods, we will not submit payment to you. In this case no settlement will be made. We will however discuss with you the rights that we may exercise under Clause 9 of our Terms of Sale in relation to a Buyer's failure to pay. We will not release the Goods to the Buyer until we have received payment in full of the Price for the Goods.

18.3 You must notify us in writing if your bank account details change. We will not be responsible for any payments made to the incorrect bank account if this is because you have not provided us with the correct bank account details.

18.4 If we make payments to your bank account in error, we may request reimbursement by sending you an invoice.

18.5 We may deduct any sums that you owe to us from the Proceeds.

#### 19. Unsold and withdrawn items

19.1 If the Goods are unsold at auction, you authorise us to negotiate a sale by private treaty not later than the close of business three working days following the last day of the auction. In this case you will pay to us the same charges as if such Goods had been sold at auction and, so far as appropriate, these Terms of Consignment will apply to any such sale.

19.2 In addition to Clause 19.1, we may, with your consent, re-offer unsold Goods at a future auction (or by private treaty thereafter as set out in Clause 19.1 above) but we may recommend a variation in Estimates or Reserve. Where, in our opinion, Goods are unsaleable, we will notify you and you must collect such Goods from the saleroom within three business days of the date of our notice to do so. If you fail to collect such Goods promptly, we may charge you reasonable storage charges at a daily rate.

19.3 You will pay us a charge of 30% of the lower estimate plus VAT on any Goods that are withdrawn from the auction after being catalogued and/or marketed by us prior to the auction in any way.

#### 20. Withdrawal of the Goods by us

20.1 We may (acting reasonably) at our discretion at any time withdraw your Goods from our auction:

20.1.1 for legal, reputational or operational reasons (including if you fail to provide evidence to verify your identity or your title to the Goods to our satisfaction);

20.1.2 if we reasonably believe that you may be, or are about to be, in breach of these Terms of Consignment; or

20.1.3 if we reasonably believe the Goods to be a Deliberate Forgery.

#### 21. Warehousing

21.1 We have no liability for Goods that you deliver to our saleroom without sufficient sale instructions. We Reserve the right to charge you a minimum warehousing charge of £2 per Lot per day plus any applicable VAT, and an administration charge of up to £20 plus VAT.

21.2 We will notify you to ask you to remove any of your unsold or withdrawn Goods. Unsold and withdrawn Goods will be subject to the charges set out in Clause 21.1 above if you do not remove them within three days of the sale in which last offered unless alternative arrangements have been made with the Auctioneer.

21.3 If you do not remove your unsold or withdrawn Goods within thirty days of being offered for sale we may either: (a) sell such Goods and off set charges from any net Proceeds of sale; or (b) at your expense dispose of such Goods.

21.4 In respect of Goods delivered to our saleroom for the agreed specific purpose of their valuation we will notify you when they are ready to be collected. In these circumstances, you will have three months to collect the Goods before the charges or remedies above in this section will apply.

#### 22. Our liability to you

22.1 We will not be liable to you for any loss of opportunity or disappointment suffered as a result of participating in our auction.

22.2 In addition, neither we nor the Buyer shall be responsible to you and you shall not be responsible to the Buyer or us for any other loss or damage that any of us suffer that is not a foreseeable result of any of us not complying with the Conditions of Business. Loss or damage is foreseeable if it is obvious that it will happen or if at the time of the sale of the Lot, we, you and the Seller knew it might happen.

22.3 Subject to Clause 22.4, if we are found to be liable to you for any reason (including, amongst others, if we are found to be negligent, in breach of contract or to have made a misrepresentation), our liability will be limited to the Proceeds due for the Goods if sold or the Reserve if unsold.

22.4 Notwithstanding the above, nothing in these Terms of Consignment limits the liability of us or our employees or agents for:

22.4.1 death or personal injury resulting from negligence (as defined in the Unfair Contract Terms Act 1977);

22.4.2 fraudulent misrepresentation; or

22.4.3 any liability which cannot be excluded by law.

#### 23. Notices

23.1 All notices between you and us regarding these Terms of Consignment must be in writing and signed by or on behalf of the party giving it.

23.2 Any notice referred in Clause 23.1 may be given:

23.2.1 by delivering it by hand;

23.2.2 by first class pre-paid post or recorded delivery; or

23.2.3 by email, provided that receipt of the email is acknowledged by the recipient.

23.3 Notices must be sent:

23.3.1 by hand or registered post:

a. to us, at our address set out in these Terms of Consignment or at our registered office address appearing on our Website; and

b. to you, at the last postal address that you have given to us as your contact address in writing.

23.3.2 by email:

a. to us, by sending the notice to the following email address:

auctions@sworder.co.uk

b. to you, by sending the notice to any email address that you have given to us as your contact email address in writing.

23.4 Notices will be deemed to have been received:

23.4.1 if delivered by hand, on the day of delivery; or

23.4.2 if sent by first class pre-paid post or recorded delivery, two business days after posting, exclusive of the day of posting; or

23.4.3 if sent by email, at the time of transmission unless sent after 17.00 in the place of receipt in which case they will be deemed to have been received on the next business day in the place of receipt (provided that the receipt is acknowledged by the recipient).

23.5 Any notice or communication given under these Terms of Consignment will not be validly given if sent by fax, any form of messaging via social media or text message.

#### **24. Data Protection**

We will hold and process any personal data in relation to you in accordance with our current privacy policy, a copy of which is available on [www.sworder.co.uk](http://www.sworder.co.uk).

#### **25. General**

25.1 Each of the clauses of these Terms of Consignment operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

25.2 We may change these Terms of Consignment from time to time, without notice to you. Please read these Terms of Consignment carefully, as they may be different from the last time you read them.

25.3 Except as otherwise stated in these Terms of Consignment, each of our rights and remedies:

(a) are in addition to and not exclusive of any other rights or remedies under these Terms of Consignment or general law; and (b) may be waived only in writing and specifically. Delay in exercising or non-exercise of any right under these Terms of Consignment is not a waiver of that or any other right. Partial exercise of any right under these Terms of Consignment will not preclude any further or other exercise of that right or any other right under these Terms of Consignment. Waiver of a breach of any term of these Terms of Consignment will not operate as a waiver of breach of any other term or any subsequent breach of that term.

25.4 These Terms of Consignment are between you and us. No person other than you, the Buyer or us will have any rights to enforce any of these Terms of Consignment.

25.5 These Terms of Consignment and any dispute or claim arising out of or in connection with them (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.



## TERMS OF SALE

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<b>'Bidder'</b>	means a person who places a bid for Goods at our auction;
<b>'Buyer'</b>	means the person who makes the highest bid for the Goods accepted by the Auctioneer;
<b>'Commission'</b>	means the Commission that we charge you on the sale of the Goods as set out in Clause 5 below;
<b>'Consumer'</b>	means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;
<b>'Consumer Contracts Regulations'</b>	means the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013;
<b>'Deliberate Forgery'</b>	means: (a) an imitation made with the intention of deceiving as to authorship, origin, date, age, period, culture or source; (b) which is described in the catalogue as being the work of a particular creator without qualification; and (c) which at the date of the auction had a value materially less than it would have had if it had been as described;
<b>'FCA'</b>	means the Financial Conduct Authority;
<b>'Goods'</b>	means the Goods that have been consigned to us for sale at our auction;
<b>'Hammer Price'</b>	means the level of the highest bid for a Lot accepted by the Auctioneer;
<b>'Premium'</b>	means the Premium charged to the Buyer on the sale of the Goods in accordance with the Terms of Sale;
<b>'Price'</b>	means the total of the Hammer Price, Premium and any applicable VAT;
<b>'Proceeds'</b>	means the Price less the Commission, the Premium, any expenses incurred to your account and any applicable VAT;
<b>'Reserve'</b>	means the minimum Price at which the Goods may be sold;
<b>'Seller'</b>	means the owner of the Goods and any agent who consigns the Goods for sale on the owner's behalf (if applicable);
<b>'Terms of Consignment'</b>	means these Terms of Consignment;
<b>'Terms of Sale'</b>	means the Terms of Sale for Bidders or Buyers at our auctions;
<b>'Trader'</b>	means a Seller who is acting for purposes relating to that Seller's trade, business, craft or profession, whether acting personally or through another person acting in the Trader's name or on the Trader's behalf (such as an agent and/or the Auctioneer);
<b>'VAT'</b>	means any value added tax or equivalent sales tax; and
<b>'Website'</b>	means our Website available at <a href="http://www.sworder.co.uk">www.sworder.co.uk</a> .

In these Terms of Sale the words 'you', 'yours', etc. refer to you as the Buyer. The words 'we', 'us', etc. refer to the Auctioneer. Any reference to a 'Clause' is to a clause of these Terms of Sale unless stated otherwise.

### 2. Information that we are required to give to Consumers

2.1 A description of the main characteristics of each Lot as contained in the auction catalogue.

2.2 Our name, address and contact details as set out herein, in our auction catalogues and/or on our Website.

2.3 The Price of the Goods and arrangements for payment as described in Clauses 4, 5, 7 and 8.

2.4 The arrangements for collection of the Goods as set out in Clauses 8 and 9.

2.5 Your right to return a Lot and receive a refund if the Lot is a Deliberate Forgery as set out in Clause 13.

2.6 We and Trader Sellers have a legal duty to supply any Lots to you in accordance with these Terms of Sale.

2.7 If you have any complaints, please send them to us directly at the address set out on our Website.

### 3. Bidding procedures and the Buyer

3.1 You must register your details with us before bidding and provide us with any requested proof of identity and billing information, in a form acceptable to us. You must also satisfy any security arrangements we have in place before entering the auction room to view or bid.

3.2 We strongly recommend that you attend the auction in person. You are responsible for your decision to

bid for a particular Lot. If you bid on a Lot, including by telephone and online bidding, or by placing a Commission bid, we assume that you have carefully inspected the Lot and satisfied yourself regarding its condition.

3.3 If you instruct us in writing, we may execute Commission bids on your behalf. Neither we nor our employees or agents will be responsible for any failure to execute your Commission bid, unless our failure to do so is unreasonable. Where two or more Commission bids at the same level are recorded we have the right to prefer the first bid made (where this can be reasonably ascertained).

3.4 The Bidder placing the highest bid for a Lot accepted by the Auctioneer will be the Buyer at the Hammer Price. Any dispute about a bid will be settled at our discretion. We may re-offer the Lot during the auction or may settle the dispute in another way. We will act reasonably when deciding how to settle the dispute.

3.5 Bidders will be deemed to act as principals, even if the Bidder is acting as an agent for a third party.

3.6 We may bid on Lots on behalf of the Seller up to one bid below the Reserve.

3.7 We may refuse to accept any bid if it is reasonable for us to do so.

3.8 Bidding increments will be at our sole discretion (but will be in line with standard auction practice).

### 4. The purchase price

As Buyer, you will pay:

- the Hammer Price;
- a premium of 25% plus VAT of the Hammer Price or 15% plus VAT for our Fine Wine and Port Auction;
- any artist's resale right royalty payable on the sale of the Lot; and
- any VAT due.

### 5. VAT

5.1 You shall be liable for the payment of any VAT applicable on the Hammer Price and Premium due for a Lot. Please see the symbols used in the auction catalogue for that Lot and the 'Information for Buyers' in our auction catalogue for further information.

5.2 We will charge VAT at the current rate at the date of the auction.

### 6. The contract between you and the Seller

6.1 The contract for the purchase of the Lot between you and the Seller will be formed when the Auctioneer records the winning Lot in the sale book accepting the highest bid for the Lot at auction, unless due diligence information required by the Auctioneer under the Money Laundering Regulations 2019 in accordance with their internal procedure remains outstanding, in which case the contract will be formed when that information is accepted by the Auctioneer as complete.

6.2 You may directly enforce any terms in the Terms of Consignment against a Seller to the extent that you suffer damages and/or loss as a result of the Seller's breach of the Terms of Consignment.

6.3 If you breach these Terms of Sale, you may be responsible for damages and/or losses suffered by a Seller or us. If we are contacted by a Seller who wishes to bring a claim against you, we may at our discretion provide the Seller with information or assistance in relation to that claim.

6.4 We normally act as an agent only and will not have any responsibility for default by you or the Seller (unless we are the Seller of the Lot).

### 7. Payment

7.1 Immediately following your successful bid on a Lot you will:

7.1.1 give to us, if not already provided to our satisfaction, proof of identity in a form acceptable to us (and any other information that we require in order to comply with our anti-money laundering obligations); and

7.1.2 pay to us the total amount due in any way that we agree to accept payment.

7.2 If you owe us any money, we may use any payment made by you to repay these debts.

### 8. Title and collection of purchases

8.1 Once you have paid us in full the total amount due for any Lot, ownership of that Lot will transfer to you. You may not claim or collect a Lot until you have paid for it.

8.2 You will (at your own expense) collect any Lots that you have purchased and paid for not later than 5pm on the Friday following the auction, or such later date as is specified in the printed catalogue or on our Website.

8.3 If you do not collect the Lot within this time period, you will be responsible for any reasonable removal and storage charges in relation to that Lot.

8.4 Risk of loss or damage to the Lot will pass to you when you (or your agents) take physical possession of the Lot.

8.5 If you do not collect the Lot that you have paid for within thirty days after the auction, we may sell the Lot. We will pay the Proceeds of any such sale to you, but will deduct any storage charges or other sums that we have incurred in the storage and sale of the Lot. We Reserve the right to charge you a selling Commission at our standard rates on any such resale of the Lot.

### 9. Remedies for non-payment or failure to collect purchases

9.1 Please do not bid on a Lot if you do not intend to buy it. If your bid is successful, these Terms of Sale will apply to you. This means that you will have to carry out your obligations set out in these Terms of Sale. If you do not comply with these Terms of Sale we may (acting on behalf of the Seller and ourselves) pursue one or more of the following measures:

9.1.1 take action against you for damages for breach of contract;

9.1.2 reverse the sale of the Lot to you and/or any other Lots sold by us to you;

9.1.3 resell the Lot by auction or private treaty (in which case you will have to pay any difference between the Price you should have paid for the Lot and the Price we sell it for as well as the charges outlined in Clause 8.5). Please note that if we sell the Lot for a higher amount than your winning bid, the extra money will belong to the Seller;

9.1.4 remove, store and insure the Lot at your expense;

9.1.5 if you do not pay us within five business days of your successful bid, we may charge interest at a rate not exceeding 1.5% per month on the total amount due;

9.1.6 keep that Lot or any other Lot sold to you until you pay the total amount due;

9.1.7 reject or ignore bids from you or your agent at future auctions or impose conditions before we accept bids from you; and/or

9.1.8 if we sell any Lots for you, use the money made on these Lots to repay any amount you owe us.

9.2 We will act reasonably when exercising our rights under Clause 9.1. We will contact you before exercising these rights and try to work with you to correct any non-compliance by you with these Terms of Sale.

#### 10. Health and safety

Although we take reasonable precautions regarding health and safety, you are on our premises at your own risk. Please note the lay-out of the premises and security arrangements. Neither we nor our employees or agents are responsible for the safety of you or your property when you visit our premises, unless you suffer any injury to your person or damage to your property as a result of our employees' or our agents' negligence.

#### 11. Warranties

11.1 The Seller warrants to us and to you that:

11.1.1 the Seller is the true owner of the Lot for sale or is authorised by the true owner to offer and sell the Lot at auction;

11.1.2 the Seller is able to transfer good and marketable title to the Lot to you free from any third party rights or claims; and

11.1.3 as far as the Seller is aware, the main characteristics of the Lot set out in the auction catalogue (as amended by any notice displayed in the saleroom or announced by the Auctioneer at the auction) are correct.

11.2 If, after you have placed a successful bid and paid for a Lot, any of the warranties above are found not to be true, please notify us in writing. Neither we nor the Seller will be liable to pay you any sums over and above the total amount due and we will not be responsible for any inaccuracies in the information provided by the Seller except as set out below.

11.3 Please note that many of the Lots that you may bid on at our auction are second-hand.

11.4 If a Lot is not second-hand and you purchase the Lot as a Consumer from a Seller that is a Trader, a number of additional terms may be implied by law in addition to the Seller's warranties set out at Clause 11.1 (in particular under the Consumer Rights Act 2015). These Terms of Sale do not seek to exclude your rights under law as they relate to the sale of these Lots.

11.5 Save as expressly set out above, all other warranties, conditions or other terms which might have effect between the Seller and you, or us and you, or be implied or incorporated by statute, common law or otherwise are excluded.

#### 12. Descriptions and condition

12.1 Our descriptions of the Lot will be based on: (a) information provided to us by the Seller of the Lot (for which we are not liable); and (b) our opinion (although it is likely that we will not be able to carry out a detailed inspection of each Lot).

12.2 We will give you a number of opportunities to view and inspect the Lots before the auction. You (and any independent consultants acting on your behalf) must satisfy yourself about the accuracy of any description of a Lot. We shall not be responsible for any failure by you or your consultants to properly inspect a Lot.

12.3 Representations or statements by us as to authorship, genuineness, origin, date, age, provenance, condition or estimated selling Price involve matters of opinion. We undertake that any such opinion will be honestly and reasonably held and accept liability for opinions given negligently or fraudulently.

12.4 Please note that Lots (in particular second-hand Lots) are unlikely to be in perfect condition. Lots are sold 'as is' (i.e. as you see them at the time of the auction). Neither we nor the Seller accept any liability for the condition of second-hand Lots or for

any condition issues affecting a Lot if such issues are included in the description of a Lot in the auction catalogue (or in any saleroom notice) and/ or which the inspection of a Lot by the Buyer ought to have revealed.

#### 13. Deliberate Forgeries

13.1 You may return any Lot which is found to be a Deliberate Forgery to us within thirty days of the auction provided that you return the Lot to us in the same condition as when it was released to you, accompanied by a written statement identifying the Lot from the relevant catalogue description and a written statement of defects.

13.2 If we are reasonably satisfied that the Lot is a Deliberate Forgery we will refund the money paid by you for the Lot (including any Premium and applicable VAT) provided that if:

13.2.1 the catalogue description reflected the accepted view of experts as at the date of the auction; or

13.2.2 you personally are not able to transfer good and marketable title in the Lot to us, you will have no right to a refund under this Clause 13.2.

13.3 If you have sold the Lot to another person, we will only be liable to refund the Price that you paid for the Lot. We will not be responsible for repaying any additional money you may have made from selling the Lot.

13.4 Your right to return a Lot that is a Deliberate Forgery does not affect your legal rights and is in addition to any other right or remedy provided by law or by these Terms of Sale.

#### 14. Our liability to you

14.1 We will not be liable for any loss of opportunity or disappointment suffered as a result of participating in our auction.

14.2 In addition to the above, neither we nor the Seller shall be responsible to you and you shall not be responsible to the Seller or us for any other loss or damage that any of us suffer that is not a foreseeable result of any of us not complying with the Terms and Conditions. Loss or damage is foreseeable if it is obvious that it will happen or if at the time of the sale of the Lot, we, you and the Seller knew it might happen.

14.3 Subject to Clause 14.4, if we are found to be liable to you for any reason (including, amongst others, if we are found to be negligent, in breach of contract or to have made a misrepresentation), our liability will be limited to the total purchase price paid by you to us for any Lot.

14.4 Notwithstanding the above, nothing in these Terms of Sale shall limit our liability (or that of our employees or agents) for:

14.4.1 death or personal injury resulting from negligence (as defined in the Unfair Contract Terms Act 1977);

14.4.2 fraudulent misrepresentation; or

14.4.3 any liability which cannot be excluded by law.

#### 15. Notices

15.1 All notices between you and us regarding these Terms of Sale must be in writing and signed by or on behalf of the party giving it.

15.2 Any notice referred in Clause 15.1 may be given:

15.2.1 by delivering it by hand;

15.2.2 by first class pre-paid post or recorded delivery; or

15.2.3 by email, provided that receipt of the email is acknowledged by the recipient.

15.3 Notices must be sent:

15.3.1 by hand or registered post;

a. to us, at our address set out in these Terms of Sale or at our registered office address appearing on our Website; and  
b. to you, at the last postal address that you have given to us as your contact address in writing; or

15.3.2 by email:

a. to us, by sending the notice to the following email address: [auctions@sworder.co.uk](mailto:auctions@sworder.co.uk)  
b. to you, by sending the notice to any email address that you have given to us as your contact email address in writing.

15.4 Notices will be deemed to have been received:

15.4.1 if delivered by hand, on the day of delivery;

15.4.2 if sent by first class pre-paid post or recorded delivery, two business days after posting, exclusive of the day of posting; or

15.4.3 if sent by email, at the time of transmission unless sent after 17.00 in the place of receipt in which case they will be deemed to have been received on the next business day in the place of receipt (provided that receipt is acknowledged by the recipient).

15.5 Any notice or communication given under these Terms of Sale will not be validly given if sent by fax, email, any form of messaging via social media or text message.

#### 16. Data Protection

We will hold and process any personal data in relation to you in accordance with our current privacy policy, a copy of which is available on our Website.

#### 17. General

17.1 We may, acting reasonably, refuse admission to our premises or attendance at our auctions by any person.

17.2 We act as an agent for our Sellers. The rights we have to claim against you for breach of these Terms of Sale may be used by either us, our employees or agents, or the Seller, its employees or agents, as appropriate. Other than as set out in this Clause, these Terms of Sale are between you and us and no other person will have any rights to enforce any of these Terms of Sale.

17.3 We may use special terms in the catalogue descriptions of particular Lots. You must read these terms carefully along with any glossary provided in our auction catalogues.

17.4 Each of the clauses of these Terms of Sale operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

17.5 We may change these Terms of Sale from time to time, without notice to you. Please read these Terms of Sale carefully, as they may be different from the last time you read them.

17.6 Except as otherwise stated in these Terms of Sale, each of our rights and remedies are: (a) are in addition to and not exclusive of any other rights or remedies under these Terms of Sale or general law; and (b) may be waived only in writing and specifically. Delay in exercising or non-exercise of any right under these Terms of Sale is not a waiver of that or any other right. Partial exercise of any right under these Terms of Sale will not preclude any further or other exercise of that right or any other right under these Terms of Sale. Waiver of a breach of any term of these Terms of Sale will not operate as a waiver of breach of any other term or any subsequent breach of that term.

17.7 These Terms of Sale and any dispute or claim arising out of or in connection with them (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**These terms are based upon the recommended terms of sale by the Society of Fine Art Auctioneers and Valuers**