

# TERMS AND CONDITIONS FOR BUYERS (SPINK CHINA TIMED AUCTIONS)

These conditions set out the terms on which we (**Spink Fine Wines** of 4/F and 5/F, Hua Fu Commercial Building, 111 Queen's Road West, Sheung Wan, Hong Kong (company no. 1672599)) contract with you (**Buyer**) either as agent on behalf of the Seller or as principal if we are the Seller. You should read these conditions carefully.

## 1 DEFINITIONS

The following definitions apply in these conditions:

**Timed Auction** is an online only auction which opens and closes on separate specified dates. After the first lot closes the subsequent lots will close in 30 seconds intervals;

**Auctioneers' Margin Scheme** means a VAT margin scheme as defined by HM Revenue & Customs;

**Buyer's Premium** means the charge payable by you as a percentage of the Hammer Price, at the rates set out in clause 5.1 below;

**Forgery** means a Lot constituting an imitation originally conceived and executed as a whole with a fraudulent intention to deceive as to authorship, origin, age, period, culture or source where the correct description as to such matters is not reflected by the description and which at the date of the timed auction had a value materially less than it would have had if it had been in accordance with the description. Accordingly, no Lot shall be capable of being a Forgery by reason of any damage and/or restoration work of any kind (including re-enamelling);

**Hammer Price** means the highest bid at the closing time in relation to a Lot;

**Lot** means any item deposited with us for sale at auction and, in particular, the item or items described against any Lot number in timed auction;

**Reserve** the amount below which we agree with the Seller that the Lot cannot be sold;

**Seller** means the owner of the Lot being sold by us;

**Spink Group** Spink and Son Limited, our subsidiaries and associated companies.

**VAT** value added tax chargeable under VAT and any similar replacement or additional tax; and

**VAT Symbols** means the symbols detailing the VAT status of the Lot details of which are set out at the back of these terms.

## 2 SPINK'S ROLE AS AGENT

2.1 All sales undertaken by us either at auction or privately are undertaken either as agent on behalf of the Seller or from time to time, as principal if we are the owner of the Lot. Please note that even if we are acting as agent on behalf of the Seller rather than as principal, we may have a financial interest in the Lot.

2.2 The Spink Group reserves the right to bid on and purchase Lots as principal.

2.3 The contract for the sale of the Lot will be between you and the Seller.

## 3 BEFORE THE SALE

### 3.1 Examination of goods

You are strongly advised to examine the images provided online and if in any doubt ask for condition report that is available on request. We provide no guarantee to you other than in relation to Forgeries, as set out in clause 5.11 of these Terms and Conditions.

### 3.2 Descriptions

3.2.1 Statements by us online or in condition report, or made orally or in writing elsewhere, regarding the authorship, origin, date, age, size, medium, attribution, genuineness, provenance, condition or estimated selling price of any Lot are merely statements of opinion, and are not to be relied on as statements of definitive fact. Descriptions and web illustrations are for guidance only, and should not be relied on either to determine the tone or colour of any item. No lot shall be rejected on the grounds of inaccurate reproduction. No lot shall be rejected on the grounds of cancellation, centring, margins, perforation or other characteristics apparent from the illustration. Estimates of the selling price should not be relied on as a statement that this price is either the price at which the Lot will sell or its value for any other purpose.

3.2.2 Many items are of an age or nature which precludes their being in perfect condition and some descriptions or given by way of condition report make reference to damage and/or restoration. We provide this information for guidance only and the absence of such a reference does not imply that an item is free from defects or restoration nor does a reference to particular defects imply the absence of any others.

3.2.3 Other than as set out in clause 5.13, and in the absence of fraud, neither the Seller nor we, nor any of our employees or agents, are responsible for the correctness of any statement as to the authorship, origin, date, age, attribution, genuineness or provenance of any Lot nor for any other errors of description or for any faults or defects in any Lot. Every person interested should exercise and rely on his own judgment as to such matters.

### 3.3 Your Responsibility

You are responsible for satisfying yourself as to the condition of the goods and the matters referred to in the description.

### 3.4 Extensions – Stamps only

We will not accept any request for an extension on lots sold in timed auctions.

## 4 AT THE SALE

### 4.1 Refusal of participation

We have the right, exercisable at our complete discretion, to refuse participation in the timed auction.

### 4.2 Registration before bidding

You must be registered on Spink.com before you can place bids in timed auction. Please be aware that we usually require buyers to undergo a credit check. If you have not bid successfully with Spink in the past, or you are registering with us for the first time, we reserve the right to require a deposit of up to 50% of the amount you intend to spend. Such deposit will be deducted from your invoice should you be successful. If you are unsuccessful at auction, your deposit will be returned by the same means it was paid to Spink.

### 4.3 Bidding as Principal

When making a bid, you will be deemed to be acting as principal and will be accepting personal liability.

### 4.4 Placing bids

Lots offered by timed auction are available for sale online only. At any time before the closing time you can place a bid equal to a minimum bid or a higher bid. You could also place your maximum bid and we will bid on your behalf increasing the price in increments to keep you in the lead up to your maximum bid. The bidding increments are:

Up to \$6,000 by \$200  
\$6,000 to \$10,000 by \$200 or \$300  
\$10,000 to \$20,000 by \$500  
\$20,000 to \$60,000 by \$1,000  
\$60,000 to \$100,000 by \$2,000 or \$3,000  
\$100,000 to \$500,000 by \$5,000  
Above \$500,000 by \$10,000

### 4.5 Successful Bid

The highest bid at the closing time will be the successful bid and the price will be the hammer price and this will be a conclusion of a contract for sale between you and the Seller. All lots sold in the timed auction are subject to charges per section 5 and all clauses of these terms and conditions.

### 4.6 Return of Lot

4.14.1 Once your bid has been accepted for a Lot then you are liable to pay for that Lot in accordance with these Terms and Conditions. If there are any problems with a Lot then you must notify us within 7 days of receipt of the Lot, specifying the nature of the problem. We may then request that the Lot is returned to us for inspection. Save as set out in clause 5.13, the cancellation of the sale of any Lot and the refund of the corresponding purchase price is entirely at our sole discretion. We will not normally exercise that discretion if the Lot is not received by us in the same condition that it was in at the auction date.

4.14.2 No lot may be returned on account of condition if the condition was stated by a third party grading company (including, but not limited to PCGS, NGC, ANACS, ICG, PMG, WBG).

## 5 AFTER THE AUCTION

### 5.1 Buyer's Premium and other charges

In addition to the Hammer Price, you must pay us the Buyer's Premium at a rate of 22% of the final Hammer price of each lot, a processing fee of 3% on the hammer price and a fee for paying by credit card.

## 5.2 Payment

5.2.1 You must provide us with your full name and permanent address and, if so requested, details of the bank from which any payments to us will be made. You must pay the full amount due (comprising the Hammer Price, the Buyer's Premium, fee for bidding online, any applicable VAT and postage) within five working days after the date of the sale. This applies even if you wish to export the Lot and an export licence is (or may be) required.

5.2.2 You will not acquire title to the Lot until all amounts due have been paid in full.

5.2.3 Payment should be made in Hong Kong Dollars by one of the following methods:

ii (i) direct bank transfer to our account details of which are set out on the invoice. All bank charges shall be met by you. Please ensure that your client number is noted on the transfer.

i (ii) By cheque or bank draft made payable to Spink China Ltd and sent to Spink at 4/F, Hua Fu Commercial Building, 111 Queen's Road West, Sheung Wan, Hong Kong. Please note that the processing charges for payments made by cheques or bank drafts drawn on a non-Hong Kong bank shall be met by you. Please ensure that the remittance slip printed at the bottom of the invoice is enclosed with your payment.

(iii) By Visa, MasterCard or American Express. Payments made by Visa or MasterCard are subject to a 3% fee; Payments made by American Express are subject to a 4% fee. For all card payments there are limits to the amounts we will accept depending on the type of card being used and whether or not the cardholder is present. We are not responsible for any foreign exchange losses or charges that you may incur in connection with such card payments.

5.2.4 Payments should be made by the registered buyer and not by third parties, unless it has been agreed at the time of registration that you are acting as an agent on behalf of a third party.

## 5.3 Invoices

Invoices may consist of one or more pages and will show: Zero rated Lots (o); no symbol Lots sold under the Auctioneers' Margin Scheme; Lots marked (g) special scheme Investment Gold; Daggered Lots (†), imported Lots marked (x) and (Ω), (e) Lots with Zero rated hammer for EU VAT registered buyers.

## 5.4 Collection of Purchases

5.4.1 Unless specifically agreed to the contrary, we shall retain lots purchased until all amounts due to us, or to the Spink Group, have been paid in full. Buyers will be required to pay for their lots when they wish to take possession of the same, which must be within five working days of the date of the sale. Lots will not be released until cleared funds are received with regard to payments made by cheque.

5.4.2 Unless we notify you to the contrary, items retained by us will be covered in accordance with our policy which is available for inspection at our offices from the date of sale for a period of seven days or until the time of collection, whichever is sooner. After seven days or from the time of collection, whichever is the earlier, the Lot will be entirely at your risk.

5.4.3 Our policy will not cover and we are unable to accept responsibility for damage caused by woodworm, changes in atmospheric conditions or acts of terrorism.

## 5.5 Notification

We are not able to notify successful bidders by telephone. While Invoices are sent out by email after the auction we do not accept responsibility for notifying you of the result of your bid. You are requested to contact us by telephone or in person as soon as possible after the auction to obtain details of the outcome of your bids to avoid incurring charges for late payment.

## 5.6 Packing and handling

5.6.1 We shall use all reasonable endeavours to take care when handling and packing a purchased Lot but remind you that after seven days or from the time of collection, whichever is sooner, the Lot is entirely at your risk. Our postage charges are set out at the

End of these terms.

5.6.2 It is the responsibility of the Buyer to be aware of any Import Duties that may be incurred upon importation to the final destination. Spink will not accept return of any package in order to avoid these duties. The onus is also on the Buyer to be aware of any Customs import restrictions that prohibit the importation of certain collectibles. Spink will not accept return of the Lot(s) under these circumstances. Spink will not accept responsibility for Lot(s) seized or destroyed by Customs.

5.6.3 If the Buyer requires delivery of the Lot to an address other than the invoice address this will be carried out at the discretion of Spink.

## 5.7 Recommended packers and shippers

If required our shipping department may arrange shipment as your agent. Although we may suggest carriers if specifically requested, our suggestions are made on the basis of our general experience of such parties in the past and we are not responsible to any person to whom we have made a recommendation for the acts or omissions of the third parties concerned.

## 5.8 Remedies for non-payment or failure to collect purchases

5.8.1 If you fail to make payment within five working days of your stipulated payment date set out in your invoice, we shall be entitled to exercise one or more of the following rights or remedies:

5.8.1.1 To charge interest at the rate of 2% per month compound interest, calculated on a daily basis, from the date the full amount is due;

5.8.1.2 To set off against any amounts which the Spink Group may owe you in any other transaction the outstanding amount remaining unpaid by you;

5.8.1.3 We may keep hold of all or some of your Lots or other property in the possession of the Spink Group until you have paid all the amounts you owe us or the Spink Group, even if the unpaid amounts do not relate to those Lots or other property. Following fourteen days' notice to you of the amount outstanding and remaining unpaid, the Spink Group shall have the right to arrange the sale of such Lots or other property. We shall apply the proceeds in discharge of the amount outstanding to us or the Spink Group, and pay any balance to you;

5.8.1.4 where several amounts are owed by you to the Spink Group in respect of different transactions, to apply any amount paid to discharge any amount owed in respect of any particular transaction, whether or not you so direct;

5.8.1.5 To reject at any future auction any bids made by you or on your behalf or obtain a deposit from you before accepting any bids.

5.8.2 If you fail to make payment within thirty-five days, we shall in addition be entitled:

5.8.2.1 To cancel the sale of the Lot or any other item sold to you at the same or any other auction;

5.8.2.2 To arrange a resale of the Lot, publicly or privately, and, if this results in a lower price being obtained, claim the balance from you together with all reasonable costs including a 20% seller's commission, expenses, damages, legal fees, commissions and premiums of whatever kind associated with both sales or otherwise, incurred in connection with your failure to make payment;

5.8.2.3 when reselling the Lot, place a notice in the description stating that you successfully purchased the Lot at auction but have subsequently failed to pay the Hammer Price of the Lot; or

5.8.2.4 Take any other appropriate action as we deem fit.

5.8.3 Where purchases are not collected within five working days after the sale, whether or not payment has been made, you will be required to pay a storage charge of HK\$20 per item per day plus any additional handling cost that may apply. You will not be entitled to collect the Lot until all outstanding charges are met, together with payment of all other amounts due to us.

## 5.9 Use of Default Information

If you fail to make payment for a Lot in accordance with these Terms and Conditions

5.9.1 We reserve the right to refuse you the right to make bids for any future auction irrespective of whether previous defaults have been settled; and

5.9.2 You consent to us disclosing details of such default to other auctioneers and live bidding platforms, which will include your name, address, nature of the default and the date of the default.

Auctioneers or live bidding platforms who receive details of the default may rely on such information when deciding whether to enter into a transaction with you in the future.

#### 5.10 Export Licence

5.10.1 If required we can, at our discretion, advise you on the detailed provisions of the export licensing regulations. Where we advise you in relation to export licensing regulations the ultimate responsibility in respect of any export will lie with you and we will not be responsible for your failure to apply for any necessary licences.

5.10.2 If the Lot is going to be hand carried by you, you may be required to produce a valid export licence to us or sign a waiver document stating that a licence will be applied for.

5.10.3 You should always check whether an export licence is required before exporting. Export licences are usually obtained within four weeks but delays can occur.

5.10.4 Unless otherwise agreed by us in writing, the fact that you wish to apply for an export licence does not affect your obligation to make payment within five working days nor our right to charge interest on late payment.

5.10.5 If you request that we apply for an export licence on your behalf, we shall be entitled to recover from you our disbursements and out of pocket expenses in relation to such application, together with any relevant VAT.

5.10.6 We will not be obliged to rescind a sale nor to refund any interest or other expenses incurred by you where payment is made by you despite the fact that an export licence is required.

#### 5.11 Refund in the case of Forgery

5.11.1 A sale will be cancelled, and the amount paid refunded to you if a Lot (other than a miscellaneous item not described in the description of this lot) sold by us proves to have been a Forgery. We shall not however be obliged to refund any amounts if either (a) the description or saleroom notice at the auction date corresponded to the generally accepted opinion of scholars or experts at that time, or fairly indicated that there was a conflict of opinions, or (b) it can be demonstrated that the Lot is a Forgery only by means of either a scientific process not generally accepted for use until after the sale or a process which at the date of the auction was unreasonably expensive or impracticable or likely to have caused damage to the Lot. Furthermore, you should note that this refund can be obtained only if the following conditions are met:

5.11.1.1 You must notify us in writing, within seven days of the receipt of the Lot(s), that in your view the Lot concerned is a Forgery;

5.11.1.2 You must then return the item to us within fourteen days from receipt of the Lot(s), in the same condition as at the auction date; and

5.11.1.3 As soon as possible following return of the Lot, you must produce evidence satisfactory to us that the Lot is a Forgery and that you are able to transfer good title to us, free from any third party claims.

5.11.1.4 You must provide to us all evidence obtained by you that a Lot is a Forgery no later than 7 days after you receive such evidence.

5.11.2 In no circumstances shall we be required to pay you any more than the amount paid by you for the Lot concerned and you shall have no claim for interest.

5.11.3 The benefit of this guarantee is not capable of being transferred, and is solely for the benefit of the person to whom the original invoice was made out by us in respect of the Lot when sold and who, since the sale, has remained the owner of the Lot without disposing of any interest in it to any third party.

5.11.4 We shall be entitled to rely on any scientific or other process to establish that the Lot is not a Forgery, whether or not such process was used or in use at the date of the auction.

## 6 LIABILITY

Nothing in these Terms and Conditions limits or excludes our liability for:

6.1 death or personal injury resulting from negligence; or

6.2 Any damage or liability incurred by you as a result of our fraud or fraudulent misrepresentation.

## 7 USE OF YOUR PERSONAL INFORMATION

7.1 We will use the personal information you provide to us to:

7.1.1 Process the bids you make on Lots (whether successful or otherwise) and other auction related services we provide;

7.1.2 Process your payment relating to a successful purchase of a Lot;

7.1.3 arrange for delivery of any Lot you purchase, which will include passing your details to shipping providers and, on overseas deliveries, to customs where they make enquiries regarding the Lot;

7.1.4 Inform you about similar products or services that we provide, but you may stop receiving these at any time by contacting us.

7.2 In accordance with clause 4.2, you agree that we may pass your information to credit reference agencies and that they may keep a record of any search that they do.

7.3 In accordance with clause 5.9, you agree that where you default on making payment for a Lot in accordance with these terms and conditions we may disclose details of such default to other auctioneers and live bidding platforms.

7.4 We are also working closely with third parties (including, for example, other auctioneers and live bidding platforms) and may receive information about you from them.

## 8 COPYRIGHT

8.1 We shall have the right (on a non-exclusive basis) to photograph, video or otherwise produce an image of the Lot. All rights in such an image will belong to us, and we shall have the right to use it in whatever way we see fit.

8.2 The copyright in all images, illustrations and written material relating to a Lot is and shall remain at all times our property and we shall have the right to use it in whatever way we see fit. You shall not use or allow anyone else to use such images, illustrations or written material without our prior written consent.

## 9 NOTICES

All notices given under these Terms and Conditions may be served personally, sent by post, or faxed to the address given to the sender by the other party. Any notice sent by post will be deemed to have been received on the second working day after posting or, if the addressee is overseas, on the fifth working day after posting. Any notice sent by fax or served personally will be deemed to be delivered on the first working day following despatch.

## 10 ADDITIONAL PROVISIONS

The following provisions of this clause 10 shall apply only if you are acting for the purposes of your business.

### 10.1 Limitation of Liability

Subject to clause 6, we shall not be liable, whether in tort (including for negligence) or breach of statutory duty, contract, misrepresentation or otherwise for any:

10.1.1 Loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information; or 10.1.2 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

### 10.2 Severability

If any part of these Terms and Condition is found by any court to be invalid, illegal or unenforceable, that part may be discounted and the rest of the conditions shall continue to be valid and enforceable to the fullest extent permitted by law.

### 10.3 Force majeure

We shall have no liability to you if we are prevented from, or delayed in performing, our obligations under these Terms and Conditions or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving our workforce or the workforce of any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or

direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

#### **10.4 Waiver**

10.4.1 A waiver of any right under these Terms and Conditions is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under these Terms and Conditions or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

10.4.2 Unless specifically provided otherwise, rights arising under these Terms and Conditions are cumulative and do not exclude rights provided by law.

#### **10.5 Law and Jurisdiction**

10.5.1 These Terms and Conditions and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the law of Hong Kong Special Administrative Region (HKSAR).

11.5.2 The parties irrevocably agree that the courts of HKSAR shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, Terms and Conditions or their subject matter.

#### **Postal Charges**

Shipments of more than 2kg or volumetric measurement of more than 2kg have to be sent by courier. Certain countries may incur extra charge when courier services are required by our insurance policy. For lots sent by courier please contact [china@spink.com](mailto:china@spink.com) for calculation of any further relevant cost in addition to the above charges.