

# TERMS AND CONDITIONS FOR SELLERS

These conditions set out the terms on which we (Spink and Son Limited of 69 Southampton Row, Bloomsbury London WC1B 4ET (company no. 04369748)) contract with you (Seller). You should read these conditions carefully.

- 1 DEFINITIONS**

The following definitions apply in these conditions:

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

"Buyer" means the person with the highest bid accepted by the auctioneer;

"Buyer's Premium" means the charge payable by the Buyer as a percentage of the Hammer Price, at the rates agreed by us and the Buyer;

"Estimated Value" means an amount equal to the mid-point of the estimated range of values for the Lot, or such other amount that Spink in its reasonable discretion shall consider to be the value for which a Lot should be covered by insurance (whether or not insurance is arranged by us);

"Expert Committee" means a committee of experts to whom a Lot may be sent for an extension in accordance with clause 10; "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 in the catalogue and which at the date of the auction had a value materially less than it would have had if it had been in accordance with the description in the catalogue. Accordingly, no Lot shall be capable of being a Forgery by reason of any damage and/or restoration work of any kind (including re-namelling); "Hammer Price" means the amount of the highest bid accepted by the auctioneer in relation to a Lot;

"Lot" means the items deposited with us by you, or on your behalf, for sale at auction;

"Reserve" the amount below which we agree with you that the Lot cannot be sold; "Spink Group" Spink and Son Limited, our subsidiaries and associated companies; and

"VAT" value added tax chargeable under VATA and any similar replacement or additional tax.
- 2 SPINK'S ROLE AS AGENT**

If we undertake a sale at public auction or otherwise on your behalf then we will be acting as your agent and the contract for the sale of the Lot will be between you and the Buyer.
- 3 COMMISSION**
  - 3.1 We shall charge you commission at a rate agreed between you and us prior to the auction. Please note that a minimum commission of £10 is chargeable on each Lot.
  - 3.2 VAT at the appropriate rate will be charged on the commission (see clause 11 below for more details). We shall also collect from the Buyer a premium in addition to the Hammer Price. Spink shall be entitled to retain this premium.
- 4 EXPENSES**
  - 4.1 You shall pay us an administration fee in respect of each Lot at the rate of 1% of either the Hammer Price or, if the Lot is unsold, of the Estimated Value.
  - 4.2 Unless otherwise agreed, you shall be responsible for all costs relating to:
    - a) packing and shipping the Lot to us for sale;
    - b) any applicable transit costs;
    - c) packing and shipping the Lot if it is returned to you;
    - d) any applicable customs duties;
    - e) catalogue illustration;
    - f) any restoration of the Lot agreed in advance with you;
    - g) any examination by external experts we believe necessary for catalogue description;
    - h) any external expert opinions we believe appropriate;
    - i) a contribution to our general expenses if the Lot is not sold, equal to 15% of the Reserve;
    - j) storage of the Lot after the auction, where applicable;
    - k) our administration costs if expenses are incurred under f), g), h), and j), equal to 10% of those expenses;
    - l) any applicable VAT.
- 5 WHERE THE LOT IS INCLUDED UNDER SPINK'S POLICY**
  - 5.1 Unless you instruct us otherwise pursuant to clause 6, we will accept liability for the period set out in clause 5.2, up to the Estimated Value, for the physical loss of, or damage to Lots and subject clause 19.1 and subject to the terms and conditions of our insurers which are available for inspection during office hours at Spink's office and are available by post upon request. In particular you should note that, subject to clause 14, we do not accept any liability for physical loss or damage caused by wear, tear, deterioration, moth or vermin; loss of market or delay no matter how occurring and any consequential losses; war and civil war; terrorism; radiation; fraudulent or otherwise invalid payments by third parties. The above mentioned terms and conditions of our insurers are deemed to be incorporated in full into these Terms and Conditions.
  - 5.2 Our liability under clause 5.1 commences from the time of handing over the Lots to us or from the time of despatch by you or your agents to us, subject to packing and despatch being performed by professional fine art carriers acting under our instruction, and shall cease on collection of the Lots by the Buyer or at the end of the seventh day after the auction, whichever is sooner. If the Lots have not been sold, the Lots will be at your risk on your collection of the Lots or at the end of the seventh day after the auction, whichever is sooner.
  - 5.3 Please note that the Estimated Value is not an undertaking by us that the Lot will be sold for this amount.
- 6 OWNER'S LIABILITY**

If you instruct us not to include the Lot under our insurance cover, it will remain at your risk at all times until the Buyer has made payment in full. You will indemnify us and our employees and agents, and the Buyer (where applicable) against any claim made against us or them in respect of the Lot, however that claim may arise. You will also reimburse us and them on demand for any expenses we or they may incur as a result of such a claim, even if we or they are found to have been negligent and even where such reimbursement is required of a payment made without any legal liability being proved. You must notify your insurers of the terms of this clause.
- 7 YOUR UNDERTAKINGS REGARDING THE LOT**
  - 7.1 This clause sets out the basis on which we shall handle the Lot and which will govern your relationship with the Buyer. If that basis proves incorrect in any way, we and/or the Buyer may take legal action against you.
  - 7.2 We shall handle the Lot, and the Buyer will purchase, on the basis of your undertakings that:
    - 7.2.1 you are the sole owner of the Lot with an unrestricted right to transfer title to the Buyer free from all third party rights or claims (including copyright claims);
    - 7.2.2 you have complied with all requirements, legal or otherwise relating to any export or import of the Lot and has notified us in writing of any failure by third parties to comply with such requirements in the past; and
    - 7.2.3 you have notified us in writing of any material alterations to the Lot of which you are aware and of any concerns expressed by third parties in relation to the ownership, condition or attribution of the Lot.
  - 7.3 If any of the above clauses 7.2.1, 7.2.2 or 7.2.3 is incorrect, you will indemnify us and the Buyer in full on demand against all claims, costs or expenses incurred by us and the Buyer as a result, whether arising in relation to the Lot or the proceeds of sale.
- 8 IMPORTING ITEMS FOR SALE**
  - 8.1 It is essential that all items imported for sale must be declared as such to Customs at the point of entry into the EC, and appropriate documents be obtained for presentation to us prior to the sale.
- 8.2** Particular attention should be paid to the import requirements and regulations regarding items containing ivory or other material from endangered species.
- 9 SALE ARRANGEMENTS**
  - 9.1 The auction will be conducted in accordance with the terms and conditions printed at the back of the auction catalogue. You must comply with those procedures in addition to these Terms and Conditions.
  - 9.2 We reserve the right to postpone an auction at any time. We shall endeavour to reschedule the auction within a reasonable period.
  - 9.3 We shall have complete discretion as to the way the Lot is described and illustrated in the catalogue or any condition report; the place and manner of sale; the decision as to which persons should be admitted to the auction, and as to which bids should be accepted; whether expert advice should be sought, and the combination or division of goods for sale.
  - 9.4 Any estimate given, orally or in writing, is a matter of opinion only and is not an assurance in relation to the price the Lot will eventually fetch.
  - 9.5 You may not withdraw the Lot from the auction without our consent. However, we reserve the right to withdraw the Lot from the auction at any time if (i) we have any doubt as to its attribution or authenticity or as to the accuracy of the statements made in clause 7.2.1, 7.2.2 or 7.2.3 above or (ii) there is any breach of these Terms and Conditions or (iii) we believe it would be improper to include the Lot in the auction.
  - 9.6 If either we or you withdraw the Lot, we shall charge you a fee equal to 20% of the Reserve or, if no Reserve has been agreed at that time, 20% of the Estimated Value, together with any applicable VAT and storage, handling and administrative charges and other expenses as set out in clause 4.
- 10 EXTENSIONS – STAMPS ONLY**
  - 10.1 Please be advised that prospective buyers may wish to obtain an expert opinion on stamps being sold on your behalf. This is known as an extension. If a request for an extension is accepted by Spink the Lot will be sent to an Expert Committee.
  - 10.2 You should be aware that the length of time to reach an opinion by an Expert Committee is variable. Please note that until a decision has been reached by the Expert Committee and Spink has been advised in writing of such decision and the stamps have been returned to Spink by the Expert Committee, no payment will be made to you in respect of the sale of such stamps. If the Expert Committee determines that any Lot is not authentic or is incorrectly described, such Lot shall be returned to you and all associated costs or charges in this regard shall be borne by you and deducted from the amount due to you under Clause 13.1.2.
- 11 VAT**
  - 11.1 VAT at the standard rate is charged on the Seller's commission to all UK residents and to other EC residents where lots are sold using the Auctioneers' Margin Scheme. Sellers resident outside the EC are not liable for payment of such VAT.
  - 11.2 Where lots are sold using the Auctioneers' Margin Scheme, HMRC regulations require that the Seller's commission must be charged inclusive of any VAT which may be due. Other service charges made to Sellers, such as catalogue illustration costs and handling charges, will be subject to VAT in accordance with EC VAT legislation.
  - 11.3 Commission for Sellers who are registered for VAT in a country within the EC other than the United Kingdom, and are selling their Lots outside the Auctioneers' Margin Scheme at Standard rate of VAT, will be zero rated provided that notification of their VAT registration is included on the Spink receipt form prior to the auction and an intention to sell outside the Auctioneers' Margin Scheme is given to us in writing.
- 12 CONDUCT OF THE AUCTION**
  - 12.1 Where applicable, the Lot will be sold subject to the Reserve, which cannot be above the low estimate printed in the catalogue unless the Reserve is agreed to in a currency other than pounds sterling and the exchange rates fluctuate between the time the Reserve is agreed and the day of the auction. In this case, unless we agree otherwise, the Reserve shall be an amount equal to the pound sterling equivalent based on the closing exchange rate on the business day immediately preceding the auction. We shall in no circumstances be liable if bids are not received at the level of the Reserve. We shall however be entitled to sell the Lot below the Reserve. If we do so, we shall be obliged to account to you to us if the Hammer Price was equal to the Reserve.
  - 12.2 We reserve the right not to accept Reserves on lots with the low estimate of £300 or below. If such requests are accepted please refer to par. 4.2.i for related cost.
  - 12.3 You may not bid for the Lot nor employ any person to do so on your behalf, although we shall have the right to bid on your behalf up to the amount of the Reserve.
- 13 AFTER THE AUCTION**
  - 13.1 Accounting**
    - 13.1.1 Following the auction, we will provide you with a statement detailing the number of Lots sold by us on your behalf, the price realised on such Lots and the number and description of Lots which have been sent to an Expert Committee for an extension in accordance with clause 10.
    - 13.1.2 After the auction, we shall require payment in full from the Buyer, including payment of the Buyer's Premium. Provided this has occurred and subject to clause 10.2 or unless we receive notice that the Lot is a Forgery, we shall remit to you an amount equal to the Hammer Price less all charges due from you 35 days after the date of the auction.
    - 13.1.3 The Spink Group reserves the right to set off against any amounts which you may owe the Spink Group in any other transaction the proceeds of sale due to you.
    - 13.1.4 In the event of late payment by the Buyer we shall make such remittance to you within seven days of that payment by the Buyer.
    - 13.1.5 If for any reason we make payment to you of the amount due before payment by the Buyer, we shall acquire complete ownership of and title in the Lot, save only that in the event that we are obliged to accept the Lot back from the Buyer on the basis that it is a Forgery, you will refund to us the proceeds of sale paid to you.
    - 13.1.6 Payment will be made in sterling for sales held in the United Kingdom unless you instruct otherwise in writing. If you require payment other than in sterling, you will be charged a handling fee for the currency exchange.
  - 13.2 Non-Payment by the Buyer**

If the Buyer fails to pay the full amount due within 35 days after the date of auction, we shall be entitled to agree special terms on your behalf for payment, storage and insurance, and to take any steps we consider necessary to collect the amount due from the Buyer. However, we shall not be obliged to remit the price due to you ourselves, nor to take any legal proceedings on your behalf. We shall discuss with you the appropriate course of action to be taken to recover the purchase price from the Buyer.
  - 13.3 Forgeries**

If within seven days of the date of the auction the Buyer satisfies us that the Lot is a Forgery (as defined in Clause 1 of these Terms and Conditions), then (i) if the Buyer at that time has not yet paid the full amount due, we shall have the right to cancel the transaction and/or (ii) if we have at that time paid you the whole or part of the full amount due to you, then you must refund to us, on demand, the total amount paid. In the latter case we shall exercise a lien over any of your property under our control as security for the amount due.
- 13.4 Unsold Lots**
  - 13.4.1 If any Lot is unsold, or is not included in an auction, or is withdrawn from the auction for any reason, it must be collected from us within 60 days of the auction. If any such Lot remains uncollected for a period exceeding 60 days, a storage charge of £2 per item per day plus an additional handling cost will apply. You will not be entitled to collect the Lot until all outstanding charges are met.
  - 13.4.2 If any such Lot is not collected within 90 days after the date of the auction or the date of the notice referred to above (whichever occurs first), it may be disposed of by us as we see fit, which may involve its removal to a third party warehouse at your expense and its sale by public auction on such terms as we consider appropriate, including those relating to estimates and reserves. We shall then account to you for the proceeds of the auction, having deducted all amounts due.
  - 13.4.3 If any Lot is bought in or otherwise unsold by auction, we are authorised as the exclusive agent for you for a period of 60 days following the auction to sell such Lot privately for a price that will result in a payment to you of not less than the net amount – i.e. after deduction of all charges due from you – to which you would have been entitled had the Lot been sold at a price equal to the Reserve, or for such lesser amount as we and you shall agree. In such event your obligations to us with respect to such a Lot are the same as if it had been sold at auction.
  - 13.4.4 If you enter into any private sale agreements for any Lot within such period of 60 days, we, as your exclusive agents, reserve the right to charge you the agreed commission in accordance with clause 3 of this agreement.
- 14 LIABILITY**

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

  - 14.1 death or personal injury resulting from negligence; or
  - 14.2 any damage or liability incurred by you as a result of our fraud or fraudulent misrepresentation.
- 15 USE OF YOUR PERSONAL INFORMATION**
  - 15.1 We will use the personal information you provide to us as set out in our privacy notice (available at <https://spink.com/privacy-policy>) and in particular to:
    - 15.1.1 handle the sale of the Lot on your behalf;
    - 15.1.2 after sale of the Lot, the remittance of payments to you from the Buyer in accordance with these Terms and Conditions;
    - 15.1.3 arrange for return of any Lot, which will include passing your details to shipping providers and, on overseas deliveries, to customs where they make enquiries regarding the Lot; and
    - 15.1.4 inform you about similar products or services that we provide, but you may stop receiving these at any time by contacting us.
  - 15.2 You agree that we may pass your personal information to customs, storage suppliers, shipping companies and our insurers.
  - 15.3 We will not give your personal data to any other third party.
- 16 COPYRIGHT**
  - 16.1 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.
  - 16.2 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.
- 17 VAT STATUS**

You shall give us all relevant information about your VAT status and that of the Lot to ensure that the correct information is printed in the catalogues. Once printed, the information cannot be changed. If we incur any unforeseen cost or expense as a result of the information being incorrect, you will reimburse to us on demand the full amount incurred.
- 18 NOTICES**

All notices given under these Terms and Conditions may be served personally, sent by 1st class 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.
- 19 ADDITIONAL PROVISIONS**

The following provisions of this clause 19 shall apply only if you are acting for the purposes of your business.

  - 19.1 Limitation of Liability**

Subject to clause 14, we shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for any:

    - 19.1.1 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
    - 19.1.2 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
  - 19.2 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.
  - 19.3 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.
  - 19.4 Waiver**
    - 19.4.1 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.
    - 19.4.2 Unless specifically provided otherwise, rights arising under these Terms and Conditions are cumulative and do not exclude rights provided by law.
- 20 LAW AND JURISDICTION**
  - 20.1 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 England and Wales.
  - 20.2 The parties irrevocably agree that the courts of England and Wales 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.