

CONDITIONS OF SALE

Mallams carries on business with bidders, buyers and all those present in the auction room prior to or in connection with a sale on the following General Conditions and on such other terms, conditions and notices as may be referred to herein.

1. DEFINITIONS

In these Conditions:

- (a) "auctioneer" means the firm of Mallams or its authorised auctioneer, as appropriate;
- (b) "deliberate forgery" means an imitation made with the intention of deceiving as to authorship, origin, date, age, period, culture or source but which is unequivocally described in the catalogue as being the work of a particular creator and which at the date of the sale had a value materially less than it would have had if it had been in accordance with the description;
- (c) "hammer price" means the level of bidding reached (at or above any reserve) when the auctioneer brings down the hammer;
- (d) "terms of consignment" means the stipulated terms and rates of commission on which Mallams accepts instructions from sellers or their agents;
- (e) "total amount due" means the hammer price in respect of the lot sold together with any premium, Value Added Tax chargeable and any additional charges payable by a defaulting buyer under these Conditions;
- (f) "sale proceeds" means the net amount due to the seller, being the hammer price of the lot sold less commission at the stated rate, Value Added Tax chargeable and any other amounts due to us by the seller in whatever capacity and however arising;
- (g) "You", "Your", etc. refer to the buyer as identified in Condition 2.
- (h) The singular includes the plural and vice versa as appropriate.

2. BIDDING PROCEDURES AND THE BUYER

- (a) Bidders are required to register their particulars before bidding and to satisfy any security arrangements before entering the auction room to view or bid;
- (b) the maker of the highest bid accepted by the auctioneer conducting the sale shall be the buyer at the hammer price and any dispute about a bid shall be settled at the auctioneer's absolute discretion by reoffering the Lot during the course of the auction or otherwise. The auctioneer shall act reasonably in exercising this discretion.
- (c) Bidders shall be deemed to act as principals.
- (d) Once made, no bid may be withdrawn.
- (2) Our right to bid on behalf of the seller is expressly reserved up to the amount of any reserve and the right to refuse any bid is also reserved.

3. INCREMENTS

Bidding increments shall be at the auctioneer's sole discretion.

4. THE PURCHASE PRICE

The buyer shall pay the hammer price together with a premium thereon of 20%. This premium is subject to VAT at the rate imposed by law.

5. VALUE ADDED TAX

Value Added Tax on the hammer price is imposed by law on all items affixed with an asterisk or double asterisk. Value Added Tax is charged at the appropriate rate prevailing by law at the date of sale and is payable by buyers of relevant Lots. (Please refer to "Information for Buyers" for a brief explanation of the VAT position).

6. PAYMENT

- (1) Immediately a Lot is sold you will:
 - (a) give to us, if requested, proof of identity, and
 - (b) pay to us the total amount due in cash or in such other way as is agreed by us.
- (2) Any payments by you to us may be applied by us towards any sums owing from you to us on any account whatever without regard to any directions of you or your agent, whether express or implied.

7. TITLE AND COLLECTION OF PURCHASES

- (1) The ownership of any Lots purchased shall not pass to you until you have made payment in full to us of the total amount due.
- (2) You shall at your own risk and expense take away any lots that you have purchased and paid for not later than 3 working days following the day of the auction **or upon the clearance of any cheque used for payment** after which you shall be responsible for any removal, storage and insurance charges.
- (3) No purchase can be claimed or removed until it has been paid for.

8. REMEDIES FOR NON-PAYMENT OR FAILURE TO COLLECT PURCHASES

- (1) If any Lot is not paid for in full and taken away in accordance with these Conditions or if there is any other breach of these Conditions, we, as agent for the seller **and on our own behalf**, shall at our absolute discretion and without prejudice to any other rights we may have, be entitled to exercise one or more of the following rights and remedies:
 - (a) to proceed against you for damages for breach of contract;
 - (b) to rescind the sale of that Lot and/or any other Lots sold by us to you;
 - (c) to resell the Lot (by auction or private treaty) in which case you shall be responsible for any resulting deficiency in the total amount due (after crediting any part payment and adding any resale costs). Any surplus so arising shall belong to the seller;
 - (d) to remove, store and insure the Lot at your expense and, in the case of storage, either at our premises or elsewhere;
 - (e) to charge interest at a rate not exceeding *1.5% per month* on the total amount due to the extent it remains unpaid for more than 3 working days after the sale;
 - (f) to retain that or any other Lot sold to you until you pay the total amount due;

- (g) to reject or ignore bids from you or your agent at future auctions or to impose conditions before any such bids shall be accepted;
- (h) to apply any proceeds of sale of other Lots due or in future becoming due to you towards the settlement of the total amount due and to exercise a lien (that is a right to retain possession of) any of your property in our possession for any purpose until the debt due is satisfied.

(2) We shall, as agent for the seller and on our own behalf pursue these rights and remedies only so far as is reasonable to make appropriate recovery in respect of breach of these conditions

9. THIRD PARTY LIABILITY

All members of the public on our premises are there at their own risk and must note the lay-out of the accommodation and security arrangements. Accordingly neither the auctioneer nor our employees or agents shall incur liability for death or personal injury (except as required by law by reason of our negligence) or similarly for the safety of the property of persons visiting prior to or at a sale.

10. COMMISSION AND TELEPHONE BIDS

Whilst prospective buyers are strongly advised to attend the auction and are always responsible for any decision to bid for a particular Lot and shall be assumed to have carefully inspected and satisfied themselves as to its condition we will if so instructed clearly and in writing execute bids on their behalf or by telephone. Neither the auctioneer nor our employees or agents shall be responsible for any failure to do so save where such failure is unreasonable. Where two or more commission bids at the same level are recorded we reserve the right in our absolute discretion to prefer the first bid so made.

11. WARRANTY OF TITLE AND AVAILABILITY

The seller warrants to the auctioneer and you that the seller is the true owner of the property consigned or is properly authorised by the true owner to consign it for sale and is able to transfer good and marketable title to the property free from any third party claims.

12. AGENCY

The auctioneer normally acts as agent only and disclaims any responsibility for default by sellers or buyers.

13. TERMS OF SALE

The seller acknowledges that Lots are sold subject to the stipulations of these Conditions in their entirety and on the Terms of Consignment as notified to the consignor at the time of the entry of the Lot.

14. DESCRIPTIONS AND CONDITION

- (1) Whilst we seek to describe lots accurately, it may be impractical for us to carry out exhaustive due diligence on each lot. Prospective buyers are given ample opportunities to view and inspect before any sale and they (and any independent experts on their behalf) must satisfy themselves as to the accuracy of any description applied to a lot. Prospective buyers also bid on the understanding that, inevitably, 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 shall be honestly and reasonably held and accept liability for opinions given negligently or fraudulently. Subject to the foregoing neither we the auctioneer nor our employees or agents nor the seller accept liability for the correctness of such opinions and all conditions and warranties, whether relating to description, condition or quality of lots, express, implied or statutory, are hereby excluded. This Condition is subject to the next following Condition concerning deliberate forgeries and applies save as provided for in paragraph 6 "information to buyers".
- (2) Private treaty sales made under these Conditions are deemed to be sales by auction for purposes of consumer legislation.

15. FORGERIES

Notwithstanding the preceding Condition, any Lot which proves to be a deliberate forgery (as defined) may be returned to us by you within *21 days* of the auction provided it is in the same condition as when bought, and is accompanied by particulars identifying it from the relevant catalogue description and a written statement of defects. If we are satisfied from the evidence presented that the Lot is a deliberate forgery we shall refund the money paid by you for the Lot including any buyer's premium provided that (1) if the catalogue description reflected the accepted view of scholars and experts as at the date of sale or (2) you personally are not able to transfer a good and marketable title to us, you shall have no rights under this condition.

The right of return provided by this Condition is additional to any right or remedy provided by law or by these Conditions of Sale.

GENERAL

- 16. We shall have the right at our discretion, to refuse admission to our premises or attendance at our auctions by any person.
- 17 (1) any right to compensation for losses liabilities and expenses incurred in respect of and as a result of any breach of these Conditions and any exclusions provided by them shall be available to the seller and/or the auctioneer as appropriate.
(2). Such rights and exclusions shall extend to and be deemed to be for the benefit of employees and agents of the seller and/or the auctioneer who may themselves enforce them.
- 18. Any notice to any buyer, seller, bidder or viewer may be given by first class mail or Swiftmail in which case it shall be deemed to have been received by the addressee 48 hours after posting.
- 19. Special terms may be used in catalogue descriptions of particular classes of items in which case the descriptions must be interpreted in accordance with any glossary appearing at the commencement of the catalogue.
- 20. Any indulgence extended to bidders buyers or sellers by us notwithstanding the strict terms of these Conditions or of the Terms of Consignment shall affect the position at the relevant time only and in respect of that particular concession only; in all other respects these Conditions shall be construed as having full force and effect.
- 21. English law applies to the interpretation of these Conditions.