

## TERMS & CONDITIONS OF AUCTION SALE.

### **1. IN THIS DOCUMENT-**

**"Auctioneer"** mean E J Ainger (Special Sales) Pty Ltd A.C.N. 006 196 765 as Trustee of the John Ainger Family Trust ("Special") and its servants and agents including its Auctioneer(s) licensed under the Auction Sales Act 1958 who Special may at its absolute discretion choose to conduct the whole part of the auction of the Lot and where Special considers the Lot inappropriate for Decorative Arts or Antique auction or sale, the Vendor Authorizes Special to appoint E J Ainger Pty Ltd A.C.N. 004 566 036 ("EJA") to auction the Lot on the same terms and conditions of this document whereupon the Auctioneer mean EJA and its servants and agents including its licensed Auctioneers.

**"Business Day"** means a day other than a Federal or State public holiday, Saturday or Sunday.

**"Buyers premium"** means a premium payable to the Auctioneer of the 19.8% GST inclusive of the hammer price or such other % notified to the buyer prior to the bidding for the Lot commencing.

**"Lot"** means an article, good, chattel, artwork or item of property to be auctioned by the Auctioneer.

**"Proceeds of Sale"** means the hammer price for a Lot less than the amount referred to in clause 5.1.

**"Purchase Price"** means the aggregate of the hammer price and the Buyer's Premium.

**"Vendor"** means the owner of the Lot or legal representative of the owner.

### **2. CONDUCT OF THE AUCTION.**

- 2.1** The Auctioneer is entitled to refuse any person admission to its premises or to an auction conducted by it.
- 2.2** The Auctioneer may at its discretion combine any 2 or more Lots or may divide a Lot.
- 2.3** The Auctioneer may at its discretion withdraw from any lot from auction until the time of sale of the lot.
- 2.4** The lots offered for sale at auction are subject to a reserve which neither the Auctioneer or the Vendor are obligated to disclose to any person.

### **3. SALE OF LOTS.**

- 3.1** The highest bidder nominated as such by the Auctioneer must buy the lot subject to the reserve price and clause 3.2.
- 3.2** The Auctioneer has the right to refuse any bid and may advance or regulate the bidding at it or its servant's sole discretion.
- 3.3** If after the fall of the hammer the Auctioneer considers that a dispute has arisen between two or more bidders as to the identity of the highest bidder the Lot in respect of which the dispute has arisen shall immediately be put up for a sale again at the last undisputed bid or the dispute shall be determined by the Auctioneer whose decision shall be final.
- 3.4** Bids may only be withdrawn at any time prior to the fall of the hammer with the consent of the Auctioneer.
- 3.5** The contract of sale is concluded at the time of the Auctioneer knocking down the Lot to the bidder by the fall of the hammer.

- 3.6 Upon request by the Auctioneer the bidder must provide the Auctioneer with his or her full name and residential address.
- 3.7 Immediately upon the fall of the hammer the successful bidder shall make arrangements for payment of the purchase price if not already organized with the Auctioneer prior to the Auction commencing.
- 3.8 Each bidder shall be deemed to act as a principal unless prior to the commencement of the Auction he give the Auctioneer an authority to bid as agent for a disclosed principal.

#### **4. RISK AND TITLE.**

- 4.1 Title in the Lots does not pass to the Purchaser until such times as the Purchaser pay the Purchase Price in full.
- 4.2 If payment is made by a personal cheque title in the lot shall not pass to the Purchaser until the cheque has been cleared through the banking system.
- 4.3 The Lot will be at the Purchaser's risk from the time of the conclusion of sale under clause 3.5 and the Purchaser will insure the Lot at its replacement cost forthwith pending payment for and collection of the Lot.

#### **5. DELIVERY.**

- 5.1 The Purchaser must pay the Purchase Price and remove the Lot from the Auctioneers premises within two (2) Business Days of the Auction.
- 5.2 The Lot is to be removed at the Purchaser's expense and any Lot not paid for and removed within two (2) Business Days of the sale may be put into storage by the Auctioneer at the Expense and risk of the Purchaser.
- 5.3 If the Purchaser fails to pay the Purchase price and remove the Lot from the Auctioneers premises or storage within two (2) Business Days the Auctioneer may without prejudice to any other rights available to the Auctioneer or Vendor.
  - 5.3.1 proceed against the Purchaser for breach of contract.
  - 5.3.2 terminate the contract and resell the Lot in which case the Purchaser shall pay to the Auctioneer any resultant deficiency in the Purchase Price plus any additional costs incurred by reason of the Purchaser's default.

#### **6. BUYER'S PREMIUM.**

- 6.1 The Buyer's Premium applies to the sale of each Lot.
- 6.2 The buyer's premium is payable to the Auctioneer in addition to any commission fee or other entitlement that the Vendor of the Lot is obliged to pay the Auctioneer.

#### **7. RETURN OF LOT.**

Notwithstanding any other terms and conditions, if within fourteen (14) days after the sale, The Auctioneer receives from the Purchaser a written opinion from a person considered by the Auctioneer to be an expert valuer in respect of the Lot that the Lot purchased is a forgery and not later than seven (7) days after such notification the Purchaser returns the Lot in the same condition as at the time of sale and warrants that he has not sold the Lot or created any rights in the Lot in favour of any other person the Purchase Price will be refunded.

## **8. WARRANTY.**

- 8.1** The Auctioneers acts only as the Vendor's agent and is not responsible for any act or omission of the Vendor.
- 8.2** All Lots are sold with all faults and defects if any whether or not such faults or defects are apparent on visual inspection.
- 8.3** The purchaser acknowledges that he has or has had every opportunity to properly inspect the Lot and to verify the authenticity, quality and features to the lot prior to purchase.
- 8.4** Any representation or statement by the Auctioneer whether in any catalogue, advertising material or verbally in relation to the date, age, authorship, origin, attribution, genuineness or condition of any lot or any other matter concerning any Lot in a statement of opinion only and neither the Auctioneer nor the Vendor is responsible for the accuracy of any such representation or statement.
- 8.5** Any conditions and warranties whether express or implied, statutory or otherwise on the part of the Auctioneer or the Vendor relating in any way to any Lot other than those contained in these terms and conditions are expressly excluded.
- 8.6** These provisions do not operate so as to exclude such conditions or warranties as are implied by the state or federal law and which cannot legally be excluded or where such exclusion would render any contract of sale with a Purchaser void or voidable.

## **9. GOVERNING LAW.**

These terms and conditions are governed by the constructed in accordance with laws of the State of Victoria and each party submits to the jurisdiction of the courts of that state.

## **10. LEGAL BINDING TERMS & CONDITIONS.**

The Purchaser acknowledges that by making a bid for any Lot with the Auctioneer he agrees to be legally bound by these terms and conditions.

## **11. CONDITION REPORTS.**

Condition reports both verbal and written may be provided by E.J. Ainger Pty Ltd upon request. The opinions expressed in the condition reports are a guide only and should not be treated as a statement of fact. Prospective buyers are encouraged to inspect articles for sale at our pre-sale viewing where E.J. Ainger Pty Ltd staff are available for advice.

**PAYMENT BY PERSONAL CHEQUE, CASH, BANK CHEQUE, BANKCARD, VISA, MASTERCARD.  
CREDIT CARD PAYMENTS WILL INCUR A 2% SURCHARGE FOR WEEKLY AUCTIONS.**