

## TERMS OF CONSIGNMENT

**Both the sale of goods at our auctions and your relationship with us are governed by the Terms of Consignment (primarily applicable to sellers), the Terms of Sale (primarily applicable to bidders and buyers) and any notices displayed in the saleroom or announced by us at the auction (collectively, the "Conditions of Business"). The Terms of Sale are available at our saleroom on request.**

**Please read these Terms of Consignment carefully. 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.**

### 1 Definitions and interpretation

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

<b>"Auctioneer"</b>	Means Byrne's (Chester) Ltd, a company registered in England and Wales with registration number 7794090 and whose registered office is located at Pullman House, The Sidings, Boundary Lane, Saltney, Chester, CH4 8RD, or its authorised auctioneer, as appropriate;
<b>"Bidder"</b>	means a person or persons including a firm or company who places a bid for Goods at our auction;
<b>"Buyer"</b>	means the person or persons including a firm or company 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 you consign to us for sale at our auction;
<b>"Hammer Price"</b>	means the level of the highest bid for the Goods accepted by the Auctioneer by the fall of the hammer;
<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 or co-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.byrnesauctioneers.co.uk">www.byrnesauctioneers.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 consignment 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 18 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 18 and 20 and terms regarding payment of any Proceeds due to you set out in Clause 17.
- 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 12);
  - 3.1.3 Your bank account details;
  - 3.1.4 Your address and contact details;
  - 3.1.5 Your VAT registration number (if applicable); and
  - 3.1.6 Your confirmation of whether you are selling the Goods as a Trader or as a Consumer.
- 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 you will be responsible for all haulage charges and we will not be responsible for any unauthorised removal of goods, nor for loss or damage to goods or property whilst being handled by carriers.

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

- 4.1 The contract between you and the Buyer will be formed when the auctioneer writes the hammer price and buyer's bidding reference on the selling sheets accepting the highest bid for the Goods at the auction.
- 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 the following rates (which include VAT at the current rate):

Hammer price up to £100 = 25%; £101-£1000 = 20%; over £1000 = 15%

#### **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 the hammer falls
- 6.2 Our liability for Goods is limited to our lower pre-sale estimate for the lot before the sale, or the Hammer Price if the lot has sold, or to the Reserve if the lot is unsold.
- 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 - 3 will not apply.

## **7 Photographs**

You will pay for the cost of photographing your Goods for auction catalogues. We reserve the right to photograph all Goods unless you specifically request us not to. 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 will normally be offered for sale at the auctioneer's discretion unless a Reserve is agreed between you and us at the point of consignment or with at least 48 hours' notice in the case of General Auctions and 21 days in the case of Specialist Auctions, 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 allow us "discretion" on the reserve we may accept a bid of up to 20% 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 you will be liable for any charges already incurred e.g. storage and photography, as 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**

- 10.1 Any electrical Goods consigned to us will be tested for safety by our external contractors prior to being offered for sale, for which a reasonable fee is payable. Any Goods failing such tests will be disposed of without recourse to you. Where antique Goods are concerned we reserve the right to make a judgement as to whether or not they can be accepted for sale.

## **11 Unsafe/Unsuitable Goods**

- 11.1 If in our opinion any of your Goods, in particular but not limited to, 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 us notifying you to do so, we may dispose of the Goods at your expense.
- 11.2 Any goods consigned which at the point of cataloguing are considered by us to be unsaleable may be disposed of for which a charge may be incurred and payable by you.

## **12 Warranties and information about the Goods**

- 12.1 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).
- 12.2 In addition to any warranties implied by law, you warrant to us and the Buyer that:
  - 12.2.1 any information that you provide in relation to the Goods is complete, correct and up-to-date;
  - 12.2.2 the Goods will match any description of the Goods that you provide to us;
  - 12.2.3 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.

- 12.2.4 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
- 12.2.5 you will pay all taxes and duties potentially due on the sale of the Goods.
- 12.3 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.
- 12.4 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.
- 12.5 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.

### **13 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.

### **14 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 12 or 13 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.

### **15 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.

### **16 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.

### **17 Settlement**

- 17.1 Provided that the Buyer has paid for the Goods, we will usually pay the net sum due to you within twenty one business days of the last day of the auction (by crossed cheque to the seller or electronic bank transfer).
- 17.2 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.

17.3 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.

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

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

## **18 Unsold and withdrawn items**

18.1 If the Goods are unsold at auction, you authorise us to negotiate a sale by private treaty not later than the close of business two 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.

18.2 In addition to Clause 18.1, we may, with your consent, re-offer unsold Goods at a future auction (or by private treaty thereafter as set out in Clause 18.1 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 seven 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. Where Goods have been offered without reserve and have failed to attract a bid, we will notify you that the Goods will be offered to or sold on behalf of charity, or disposed of.

18.3 You will pay us a charge of 10% of the reserve, or in the absence of a reserve, an estimated price to be reasonably fixed by the auctioneer (plus VAT) on any Goods that are unsold at the auction and fail to sell by private treaty as described in Clause 18.1.

18.4 You will pay us a charge of 10% of the reserve, or in the absence of a reserve, an estimated price to be reasonably fixed by the auctioneer (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.

## **19 Withdrawal of the Goods by us**

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

19.1.1 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);

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

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

## **20 Warehousing**

20.1 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 £5 per lot per day plus any applicable VAT.

20.2 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 20.1 above if you do not remove them within seven days of the date of our notification requesting you to do so.

20.3 If you do not remove your unsold or withdrawn Goods within thirty days of the date of our notification we may either: (a) sell such Goods and set off charges from any net proceeds of sale; or (b) at your expense dispose of such Goods.

20.4 We reserve the right to store your goods either on our own premises or to transport it offsite to an appropriate storage facility.

## **21 Our liability to you**

- 21.1 We will not be liable to you for any loss of opportunity or disappointment suffered as a result of participating in our auction.
- 21.2 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.
- 21.3 Subject to Clause 21.4, 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.
- 21.4 Notwithstanding the above, nothing in these Terms of Consignment limits the liability of us or our employees or agents for:
- 21.4.1 death or personal injury resulting from negligence (as defined in the Unfair Contract Terms Act 1977);
  - 21.4.2 fraudulent misrepresentation; or
  - 21.4.3 any liability which cannot be excluded by law.

## **22 Notices**

- 22.1 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.
- 22.2 Any notice referred in Clause 22.1 may be given:
- 22.2.1 by delivering it by hand;
  - 22.2.2 by first class pre-paid post or Recorded Delivery; or
  - 22.2.3 by email, provided that a copy is also sent by pre-paid post or Recorded Delivery.
- 22.3 Notices must be sent:
- 22.3.1 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.
  - 22.3.2 by email:
    - a. to us, by sending the notice to both the following email addresses:  
joboucher@byrnesauctioneers.co.uk  
auctions@byrnesauctioneers.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.
- 22.4 Notices will be deemed to have been received:
- 22.4.1 if delivered by hand, on the day of delivery; or

- 22.4.2 if sent by first class pre-paid post or Recorded Delivery, two business days after posting, exclusive of the day of posting; or
- 22.4.3 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 a copy has also been sent by pre-paid post or Recorded Delivery as set out in Clause 22.2.3.
- 22.5 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.

## **23 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 upon request.

## **24 General**

- 24.1 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.
- 24.2 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.
- 24.3 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.
- 24.4 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.
- 24.5 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.

E&OE January 2020