

# TERMS AND CONDITIONS FOR BUYERS

These conditions set out the terms on which we (Spink Switzerland SA, Via Balestra 7, 6900 Lugano Switzerland) 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 in this condition apply in these conditions.

**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;

**Certificate of Authenticity:** means a certificate issued by an Expert Committee confirming the authenticity of a Lot;

**Expert Committee:** means a committee of experts to whom a Lot may be sent for an extension in accordance with clause 3.4.3;

**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;

**Hammer Price:** means the amount of the highest bid accepted by the auctioneer 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 any catalogue;

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

**Spink Group:** Spink and Son Limited, our subsidiaries and associated companies;

**VAT:** means the value added tax.

## 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 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 personally any goods in which you are interested, before the auction takes place. Condition reports are usually available on request. We provide no guarantee to you other than in relation to Forgeries, as set out in clause 5.10 of these Terms and Conditions.

### 3.2 Catalogue descriptions

3.2.1 Statements by us in the catalogue or 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. Catalogue 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 illustrated in the catalogue 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 in the catalogue 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 5.10, 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 catalogue description.

### 3.4 Extensions – Stamps only

3.4.1 If you wish to obtain an expert opinion or Certificate of Authenticity on any Lot (other than a mixed Lot or Lot containing undescribed stamps) you must notify us in writing not less than forty-eight hours before the time fixed for the commencement of the first session of the sale. If accepted by us, such request shall have the same effect as notice of an intention to question the genuineness or description of the Lot for the purposes of clause 5.10 (Refund in the case of Forgery) of these Terms and Conditions and the provisions of clause 5.10 (Refund in the case of Forgery) shall apply accordingly.

3.4.2 Notice of a request for an expert opinion or Certificate of Authenticity must give the reason why such opinion is required and specify the identity of your proposed expert which will be subject to agreement by us. We reserve the right, at our discretion, to refuse a request for an expert opinion or Certificate of Authenticity including (without limitation) where the proposed expert is not known to us.

3.4.3 If we accept a request for an expert opinion or Certificate of Authenticity we will submit the Lot to the Expert Committee. You acknowledge and accept that the length of time taken by an Expert Committee to reach an opinion will vary depending on the circumstances and in any event is beyond our control.

3.4.4 We will not accept a request for an extension on account of condition. Any Lot described in the catalogue as having faults or defects may not be returned even if an expert opinion or Certificate of Authenticity cites other faults or defects not included in the catalogue description, other than in the case of a Forgery.

3.4.5 Should Spink accept a request for an extension under the foregoing provisions of this paragraph, the fact may be stated by the Auctioneer from the rostrum prior to the sale of the Lot.

3.4.6 It should be noted that any stamp accompanied by a Certificate of Authenticity is sold on the basis of that Certificate only and not on the basis of any other description or warranty as to authenticity. No request for an extension will be accepted on such a stamp and the return of such a stamp will not be accepted.

3.4.7 If you receive any correspondence from the Expert Committee in relation to the Lot, including but not limited to a Certificate of Authenticity, you must provide us with copies of such correspondence no later than 7 days after you receive such correspondence.

3.4.8 If the expert opinion or Certificate of Authenticity demonstrate the validity of the complaint, all the expenses for the appraisals will be paid by us. If the complaint is invalid, you shall pay for all the appraiser expenses.

## 4 AT THE SALE

### 4.1 Refusal of admission

Our sales usually take place on our own premises or premises over which we have control for the sale, and we have the right, exercisable at our complete discretion, to refuse admission to the premises or attendance at an auction.

### 4.2 Registration before bidding

You must complete and sign a registration form and provide identification before making a bid at 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.

Some lots may be designated, prior to the auction, as "Premium Lots", which means a deposit may be required before placing a bid on the item for sale. Information will be posted on our website in such an event.

### 4.3 Bidding as Principal

When making a bid (whether such bids are made in person or by way of telephone bids operated by Spink, commission or online or email bids), you will be deemed to be acting as principal and will be accepting personal liability, unless it has been agreed in writing, at the time of registration, that you are acting as agent on behalf of a third party buyer acceptable to us.

### 4.4 Commission Bids

If you give us instructions to bid on your behalf, by using the form provided in our catalogues or via our website, we shall use reasonable endeavours to do so, provided these instructions are received not later than 24 hours before the auction. If we receive commission bids on a particular Lot for identical amounts, and at auction these bids are the highest bids for the Lot, it will be sold to the person whose bid was received first. Commission bids are undertaken subject to other commitments at the time of the sale, and the conduct of the auction may be such that we are unable to bid as requested. Since this is undertaken as a free service to prospective buyers on the terms stated, we cannot accept liability for failure to make a commission bid. You should therefore always attend personally if you wish to be certain of bidding.

### 4.5 On-line Bidding

We offer internet services as a convenience to our clients. We will not be responsible for errors or failures to execute bids placed on the internet, including, without limitation, errors or failures caused by (i) a loss of internet connection by either party for whatever reason; (ii) a breakdown or problems with the online bidding software and/or (iii) a breakdown or problems with your internet connection, computer or system. Execution of on-line internet bids is a free service undertaken subject to other commitments at the time of the auction and we do not accept liability for failing to execute an online internet bid or for errors or omissions in connection with this activity. Buyers who acquire lots on the-saleroom.com will have a fee of 3% on the hammer price added to their invoice for using this facility.

### 4.6 Telephone Bids

If you make arrangements with us not less than 24 hours before the sale, we shall use reasonable endeavours to contact you to enable you to participate in bidding by telephone, but in no circumstances will we be liable to either the Seller or you as a result of failure to do so.

### 4.7 Currency Converter

At some auctions, a currency converter will be operated, based on the one month forward rates of exchange quoted to us by BSI SA or any other appropriate rate determined by us, at opening on the date of the auction. Bidding will take place in a currency determined by us. The currency converter is not always reliable, and errors may occur beyond our control either in the accuracy of the Lot number displayed on the converter, or the foreign currency equivalent of bids made in the official currency of the auction. We shall not be liable to you for any loss suffered as a result of you following the currency converter.

### 4.8 Video images

At some auctions there will be a video screen. Mistakes may occur in its operation, and we cannot be liable to you regarding either the correspondence of the image to the Lot being sold or the quality of the image as a reproduction of the original.

## 4.9 Bidding Increments

Bidding opens at the starting price (or below the low estimate), in absence of higher commission bids, and advances in the following order although the auctioneer may vary the bidding increments during the course of the auction. The normal bidding increments are:

50 to 100	by 10
100 to 500	by 20
500 to 1,000	by 50
1,000 to 2,000	by 100
2,000 to 5,000	by 200
5,000 to 10,000	by 500
10,000 to 20,000	by 1,000
20,000 to 50,000	by 2,000
50,000 to 100,000	by 5,000
100,000 to 200,000	by 10,000
200,000 to 500,000	by 20,000

### 4.10 Bidding by Spink.

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

### 4.11 The Auctioneer's Discretion

The auctioneer has the right at his absolute discretion to refuse any bid, to advance the bidding in such manner as he may decide, to withdraw or divide any Lot, to combine any two or more Lots and, in the case of error or dispute, to put an item up for bidding again.

### 4.12 Successful Bid

Subject to the auctioneer's discretion, the striking of his hammer marks the acceptance of the highest bid, and the conclusion of a contract for sale between you and the Seller.

### 4.13 After Sale Arrangements

If you enter into any private sale agreements for any Lot with the Seller within 60 days of the auction, we, as exclusive agents of the Seller reserve the right to charge you the applicable Buyer's Premium in accordance with these Terms and Conditions, and the Seller a commission in accordance with the terms of the Seller's agreement.

### 4.14 Return of Lot

In the event that you have received a Lot and wish to return the Lot you must notify us in writing within 7 days of receipt of the Lot, stating the reason for the return. The Lot must then be returned to us within 14 days of receipt, in the same condition as at the auction date. Any such request is subject to our sole discretion.

## 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 20% of the final Hammer Price of each Lot. A fee of 3% on the hammer price total for using the-saleroom.com and a surcharge for paying by credit card.

### 5.2 Value Added Tax

In the event of sale with merchandise delivered in Switzerland that is not exported, VAT in the amount of 8% (eight percent) of the sale price will be charged, with this is construed as the price of sale plus the commission envisaged at point 5.1 and any insurance and transport costs to be charged if the purchased material is shipped. If the buyer wishes to pick up the merchandise and handle the customs formalities for export himself, the VAT will be charged and reimbursed to the buyer upon submission of the legal documentation certifying export.

### 5.3 Payment

5.3.1 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, the insurance and shipping cost if due and any applicable VAT) within seven days after the date of the sale.

5.3.2 You will not acquire title to the Lot until all amounts due to us have been paid in full to us, even in circumstances where we have released the Lot to you.

5.3.3 Payment has to be made in the sale currency (unless specific agreements) by one of the following methods:

(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.

(ii) By cheque or bank draft made payable to Spink Switzerland Sa and sent to Via Motta 44, 6900 Lugano Switzerland. Please note that the processing charges for payments made by cheques or bank drafts drawn 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. A charge of 3.00% will be applied for Visa and Mastercard and of 3.50% for American Express.

#### 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 7 days of the date of the sale, unless prior arrangements have been made with Spink. Without prior agreement, 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 mail 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. In case of shipment, our postage and insurance charges are set out at the back of the catalogue.

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.

#### 5.7 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 seven 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 1% per month compound interest, calculated on a daily basis, from the date the full amount is due, in addition to a penalty in the amount of 5% of the sale price.

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 of your stipulated payment date set out in your invoice, 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 our catalogue 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 seven days after the sale, whether or not payment has been made, you will be required to pay a storage charge of Chf 2.- 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 Refund in the case of Forgery

5.10.1 A sale will be cancelled, and the amount paid refunded to you if a Lot (other than a miscellaneous item not described in the catalogue) sold by us proves to have been a Forgery. We shall not however be obliged to refund any amounts if either (a) the catalogue 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 there was a Forgery only by means of either a scientific process not generally accepted for use until after publication of the catalogue 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:

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

5.10.1.2 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

5.10.1.3 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.

5.10.1.4 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.

5.10.2 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.

5.10.3 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.

5.10.4 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 registered letter, 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**

The sale, as well as all legal relationships that derive therefrom, are subject to Swiss law. If disputes or legal actions arise over the sale and/or legal relationships deriving therefrom, they shall be remitted to the exclusive jurisdiction of the Court of Lugano. Spink Switzerland SA reserves the right to take action against the debtor at his domicile. In this case, Swiss law is still applicable.

### **10.6 Importation and exportation of antiques**

The importation and exportation of antiques should be subject to regulations in force in the contracting countries of the Unesco Convention of 1970, which in Switzerland is enforced by a federal law called "Cultural Property Transfer Act CPTA" and the related "Cultural Property Transfer Ordinance CPTO" ([www.bak.admin.ch/bak/themen/kulturguetertransfer/01104/index.html?lang=en](http://www.bak.admin.ch/bak/themen/kulturguetertransfer/01104/index.html?lang=en)). Spink