

# Terms & Conditions

## Fellows & Sons Ltd

Fellows & Sons Ltd carries on business, including the conduct of Auctions, on these general conditions. This includes any business with Bidders, Buyers, Vendors, consignors, users of this website, and with all those present on the Premises prior to or in connection with an Auction (all as hereinafter defined).

### 1. Introduction

1.1 The following defined terms are used in these Conditions :

“Auction” means any Auction conducted by Fellows, either at their premises or elsewhere (including any internet-based auctions);

"Auctioneer" means Fellows or its authorised Auctioneer, as appropriate;

“Bidder” means a bidder at an Auction, including bidders personally present at the venue and those bidding by telephone or over the internet or otherwise;

“Buyer” means the bidder whose bid was the last bid when the Auctioneer brings down the hammer;

“Conditions” means these terms and conditions;

“Consigned Property” means the items consigned by the Vendor to Fellows for offer at an Auction;

“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 by Fellows 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;

“Fellows” means Fellows & Sons Ltd;

“Hammer Price” means the level of bidding reached (at or above any reserve) when the Auctioneer brings down the hammer;

“Includes” means “includes but not limited to”, and “including” means “including but not limited to”

“Lot” means any Consigned Property accepted by Fellows for offer at Auction;

“Stated Rate” means Fellows' published rates of commission for the time being and value added tax thereon (also available on request);

“Terms of Consignment” means any stipulated terms and rates of commission on which Fellows accepts instructions from Vendors or their agents;

“Total Amount Due” means the Hammer Price in respect of the Lot sold together with any premium, commission, value added tax chargeable and any additional charges payable by a defaulting Buyer under these Conditions;

“Vendor” means the vendor of an item (including Consigned Property) which is submitted to Fellows for offer for sale at an Auction;

“Website” means this website;

“You” means any person with whom Fellows do business with, including any user of the Website.

## **2. Website**

2.1 You may access most areas of the Website without registering your details with us. Certain areas of the Website are only open to you if you register. By accessing any part of the Website, you shall be deemed to have accepted these Conditions notice in full. If you do not accept this legal notice in full, you must leave the Website immediately.

2.2 Fellows may revise these Conditions at any time by updating this posting. You should check the Website from time to time to review the then current legal notice, because it is binding on you. Certain provisions of this legal notice may be superseded by expressly designated legal notices or terms located on particular pages at the Website.

2.3 Unless otherwise stated, the copyright and other intellectual property rights in all material on the Website (including without limitation photographs and graphical images) are owned by Fellows or its licensors. If you breach any of the terms in this legal notice, your permission to use the Website automatically terminates and you must immediately destroy any downloaded or printed extracts from the Website.

2.4 No part of the Website may be reproduced or stored in any other website or included in any public or private electronic retrieval system or service without Fellows’ prior written permission.

2.5 Any rights not expressly granted in these Conditions are reserved.

## **3. Visitor Material and Conduct**

3.1 Other than personally identifiable information, which is covered under our Privacy Policy, any material you transmit or post to the Website shall be considered non-confidential and non-proprietary. Fellows shall have no obligations with respect to such material. Fellows and its designees shall be free to copy, disclose, distribute, incorporate and otherwise use such material and all data, images, sounds, text and other things embodied therein for any and all commercial or non-commercial purposes.

3.2 You are prohibited from posting or transmitting to or from the Website any material: that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience; or for which you have not obtained all necessary licences and/or approvals; or which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or which is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).

3.3 You may not misuse the Website (including, without limitation, by hacking).

3.4 Each registration is for a single user only. Fellows does not permit you to share your user name and password with any other person nor with multiple users on a network.

3.5 Responsibility for the security of any passwords issued rests with you.

## 4. The Vendor

4.1 Fellows shall act as agent of the Vendor only. Any contract for the sale of a Lot will be formed between the Vendor and the Buyer.

4.2 The Vendor warrants and represents to Fellows and the Buyer that the Vendor is the sole and true owner of the Consigned Property or is properly authorised by the sole and 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. The Vendor warrants and representatives that the Vendor has revealed all pertinent information that the Vendor possesses about the items, including in relation to any repairs or alterations that may have been carried out. The Vendor shall indemnify Fellows and the Buyer against any loss and expense caused by any breach of this clause 4.2.

4.3 The Vendor shall be entitled to place prior to the Auction a reserve on any Lot, being the minimum Hammer Price at which Lot may be sold. Reserves must be reasonable and Fellows may decline to offer goods which in Fellows' opinion would be subject to an unreasonably high reserve (in which case goods carry the storage and insurance charges stipulated in the terms of consignment). Reserves will not be accepted on items with a bottom estimate less than £50. The Auctioneer also reserves the right not to accept items which they deem to be unsuitable for Auction. Any estimate given shall be an opinion and is not an undertaking, warranty or representation of any kind and will not have any legal effect.

4.4 A reserve once set cannot be changed except with the written prior consent of Fellows.

4.5 Where a reserve has been placed only Fellows may bid on behalf of the Vendor.

4.6 The Vendor authorises Fellows to deduct commission from any sold items at a rate of 15% (plus VAT) on any item with a hammer price of £3,000 (or under) or 12.5% (plus VAT) on items over £3,000. Loss or liability for damage will be charged at a rate of 1.5% (plus VAT) calculated on the hammer price. A Marketing fee of £10 (plus VAT) will be charged for each Lot, if unsold we will charge a nominal handling fee of £5 (plus VAT). All items below £35 are subject to a minimum fee of £5 (plus VAT) per Lot.

4.7 Fellows will pay the Hammer Price achieved for the Lot (less the commission and applicable fees in accordance with clauses 4.6, 9.2, and 9.3), to the Vendor on receipt of payment of the Total Amount Due in full by the Buyer.

4.8 The Vendor authorises Fellows in their discretion to negotiate a sale by private treaty in the case of a Lot unsold at Auction, in which case the same charges will be payable as if the Lot had been sold at Auction.

4.9 Fellows do not themselves undertake the collection of any items but may, as the Vendor's agent, instruct a contractor on behalf of the Vendor. Fellows disclaims any liability for the actions of such contractor who contracts with the Vendor direct.

4.10 Fellows disclaims all liability for items delivered to their saleroom without sufficient sale instructions, and reserves the right to make a minimum warehousing charge of £1.00 plus VAT per item per day. Unsold items are subject to the same charges if the Vendor does not remove them within a reasonable time of notification. If not removed within three weeks Fellows reserves the right to sell the items and defray charges from any net proceeds of sale or at the Vendor's expense to consign them to the local authority for disposal. Fellows disclaims any liability for default by the Buyer or for paying out the Vendor before receiving payment by the Buyer.

4.11 Subject to clause 4.9, Fellows holds all items on their premises and in their custody covered against the risks of fire, burglary and water damage on the scale of charges notified in the terms of consignment and payable by the Vendor up to the date of any sale and (in Fellows' discretion) the Buyer thereafter until collection.

4.12 The right of Fellows to bid on behalf of the Vendor is expressly reserved. The Vendor acknowledges that Lots are sold subject to the stipulations of these Conditions in their entirety and on the Terms of Consignment as notified to consignors at the time of the entry of the Lot.

4.13 The Auctioneer reserves the right to dispose of any item that in their opinion is unsaleable. Items, including electrical goods and soft furnishings, which do not comply with current legislation will not be offered at Auction.

4.14 Any items unsold after an Auction will be reoffered in a subsequent Auction at a reduced reserve to be agreed within seven days. The Auctioneer may request the removal of an item if a reduced price cannot be agreed; items not removed within 14 days will be subject to a storage charge.

4.15 A charge of 10% (plus VAT) based on the middle estimate – plus any other charges incurred – may be levied for any Lot withdrawn by the Vendor from offer at an Auction. If the item has to be returned by post (or any other method) the Vendor will be responsible for this charge. These charges are to be paid before the item is returned.

4.16 By submitting the item to Fellows for offer at Auction, the Vendor agrees to the Terms of Consignment and authorises Fellows to deduct the specified charges.

## **5. Publicity**

5.1 Any catalogue and buyer guides are provided for information only and do not form by themselves form part of these Conditions. However, the catalogue and the buyer guides may contain additional terms and conditions.

5.2 Fellows reserve the right to use any photographs, background information, and research for publicity purposes both before and after the sale.

## **6. The Auction**

6.1 Any Auction shall be conducted at the absolute discretion of the Auctioneer.

6.2 The Auctioneer shall conduct the Auction with reasonable skill and care. For example, what constitutes a bid shall be at the absolute discretion of the Auctioneer, acting with reasonable skill and care.

6.3 The Auctioneer shall have the right to refuse any bid which does not exceed the previous bid by at least 10% or by such greater proportion as the Auctioneer shall in his or her absolute discretion direct.

6.4 Where two or more bids at the same level are simultaneously received by the Auctioneer, the Auctioneer at his absolute discretion shall determine which bid to prefer. Subject to the foregoing, where two or more bids at the same level are simultaneously received by the Auctioneer, any bid by a Bidder personally present at an Auction shall take preference over any bid submitted by telephone or over the internet. Any bid made or attempted by telephone or over the internet shall be deemed to have been made only if received by the Auctioneer.

6.5 Fellows shall have the right, at its absolute discretion, to refuse admission to its premises or attendance at (or participation in) any Auction by any person.

## **7. Bidders**

7.1 Bidders may be required to register their particulars. Bidders attending in person may be required to satisfy Fellows' security arrangements before entering any part of the premises to view or bid.

7.2 You accept full liability for all bids submitted via your My Fellows account.

Once a bid has been made by a Bidder on our website, the bid can be lowered or increased up until 9am on the day of the auction. You must sign into your My Fellows account to do this and you will receive an email confirmation for any changes made.

Should a bid be placed in error on the website you must contact Fellows immediately. Failure to contact Fellows before the auction takes place will result in liability for the full payment of the item.

7.3 Subject to clause 6.3, the highest Bidder at the Hammer Price shall be the Buyer. Any dispute about a bid shall be settled at the Auctioneer's absolute discretion.

7.4 Bidders are deemed to act as principals unless there is a written prior acknowledgement by Fellows that a Bidder is acting as an agent for a named principal.

7.5 Bidders are strongly encouraged to attend the Auction in person. Bidders shall be responsible for any decision to bid for a particular Lot and shall be deemed to have carefully inspected and satisfied themselves as to its condition. Neither Fellows nor its employees or agents shall be responsible for any neglect or default in doing or failing to do so.

7.6 Bidders are given ample opportunities to view and inspect before any sale and prospective Buyers must satisfy themselves as to all such matters. Neither Fellows nor its employees and agents nor the Vendor accept liability for the correctness of such opinions, and all conditions and warranties, express, implied or statutory are hereby excluded.

## **8. The Buyer**

8.1 Immediately a Lot is sold, the Buyer shall:

(a) give to Fellows their name and address and, if requested proof of identity, and

(b) pay to Fellows the Total Amount Due.

8.2 Fellows may, at its absolute discretion, agree credit terms with the Buyer before an Auction under which the Buyer may be entitled to take possession of Lots up to an agreed value in advance of payment by a stipulated future date of the Total Amount Due.

8.3 Cheques shall not be acceptable by Fellows (unless Fellows in its absolute discretion permits payment by such method) nor are third party references or credit facilities with other Auction houses. If a cheque is tendered Fellows reserves the right to instruct its bank to check the Buyer's status and account balance before exercising any discretion. Any credit arrangement must be settled at least 4 days before the relevant sale. Any permitted payment by credit card shall carry an extra charge to the Buyer of such percentage of the Total Amount Due as is displayed on the premises.

8.4 Any payments by a Buyer to Fellows may be applied by Fellows towards any sums owing from that Buyer to Fellows on any account whatever without regard to any directions of the Buyer or his agent, whether express or implied.

## **9. The Purchase Price**

9.1 On the first £50,000 of the Hammer Price (of any Lot) the Buyer will pay the Hammer Price and a premium of 20% (plus VAT on the total of the Hammer Price and the premium). Value Added Tax is charged at the rate prevailing by law at the date of sale.

9.2 On the excess over £50,000 of the Hammer Price (of any individual Lot), the Buyer will pay the Hammer Price and a premium of 10% (plus VAT) or 12% (inclusive of VAT). The said premium not being negotiable and payable by ALL Buyers. The Vendor authorises Fellows to retain beneficially the premium payable by Buyers.

9.3 Value Added Tax on the Hammer Price is imposed on all items affixed with an asterisk thus - \*.

9.4 Buyers will pay a commission charge of an additional 3% + VAT of the hammer price if lots are successfully purchased online via Live Auctioneers and the-saleroom.com.

## **10. Title and Collection of Purchases**

10.1 The ownership of any Lot purchased shall not pass to the relevant Buyer until they have made payment in full to Fellows of the Total Amount Due.

10.2 Buyers shall at their own risk and expense take away any Lot that they have purchased and paid for not later than 5 working days following the day of the Auction after which they shall be responsible for any removal, storage and insurance charges. Any delivery costs shall be paid in advance by the Buyer.

## **11. Default by Buyer or Vendor**

11.1 As Fellows act as agent for the Vendor, Fellows is not responsible for default by the Vendor or the Buyer.

11.2 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, Fellows as agent for the Vendor shall at its absolute discretion and without prejudice to any other rights it may have, be entitled to exercise all or any of the following rights and remedies:

- (a) to proceed against the Buyer for an action for debt or damages for breach of contract;
- (b) to rescind the sale of that Lot and/or any other Lots sold by Fellows to the defaulting Buyer;
- (c) to re-sell the Lot by Auction or private treaty. If a lower Hammer Price is achieved on the re-sale than that achieved on the original sale the defaulting Buyer shall be liable for the difference (after crediting any part payment and adding any re-sale costs). Fellows will account to the Vendor for any surplus achieved on a re-sale, however, it shall only be required to account to the Vendor for any resulting deficiency in the event that it receives payment of such sum in full from the defaulting Buyer.
- (d) to remove, store and insure the Lot at the expense of the defaulting Buyer and, in the case of storage, either at Fellows' 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 2 working days after the sale;

(f) to retain that or any other Lot sold to the defaulting Buyer until that Buyer pays the total amount due;

(g) to reject or ignore bids from the defaulting Buyer 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 the defaulting Buyer towards the settlement of the total amount due and to exercise a lien on any of the Buyer's property in Fellows' possession for any purpose.

## **12. Deliberate Forgeries**

12.1 Subject to clause 12.2, any representation or statement by Fellows (including in any catalogue) as to authorship, genuineness, origin, date, age, provenance, condition or estimated selling price is a statement of opinion only. Prospective Buyers are given ample opportunities to view and inspect before any sale and prospective Buyers must satisfy themselves as to all such matters. Neither Fellows or its employees or agents nor the Vendor accept liability for the correctness of such opinions and all conditions and warranties, express, implied or statutory are hereby excluded.

12.2 Any Lot which proves to be a Deliberate Forgery may be returned to Fellows by the Buyer 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 Fellows is satisfied from the evidence presented that the Lot is a Deliberate Forgery Fellows shall refund the money paid by the Buyer for the Lot (but not the amount of any consequential loss, damages, expenses or interest) provided that (1) if the catalogue description reflected the accepted view of scholars and experts as at the date of sale or (2) the Buyer personally is not able to transfer a good and marketable title to Fellows.

## **13. Limitations of Liability**

13.1 All members of the public on the premises are there at their own risk and must note the lay-out of the accommodation and security arrangements.

13.2 Any indemnity under these Conditions shall extend to all actions, costs, expenses, claims and demands whatsoever suffered or incurred by the person entitled to the benefit of it and Fellows declares itself to be a trustee of the benefit of every such indemnity so far as it is expressed to be for the benefit of its employees and agents.

13.3 While Fellows endeavours to ensure that the information on the Website is correct, Fellows does not warrant the accuracy and completeness of the material on the Website. Fellows may make changes to the material on the Website, or to the products and prices described in it, at any time without notice. The material on the Website may be out of date, and Fellows makes no commitment to update such material.

13.4 The material on the Website is provided "as is", without any conditions, warranties or other terms of any kind. Accordingly, to the maximum extent permitted by law, Fellows provides you with the Website on the basis that Fellows excludes all representations, warranties, conditions and other terms which, but for this legal notice, might have effect in relation to the Website.

## **14. General**

14.1 Any notice to any Buyer, Vendor, Bidder or viewer may be given by first class mail or email in which case it shall be deemed to have been received by the addressee 48 hours after posting or sending. All notices to Fellows must be sent in writing and email is not acceptable.

14.2 Any indulgence extended to any person by Fellows notwithstanding the strict terms of these Conditions or 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.

14.3 These Conditions and any disputes or claims arising out of or in connection with it or their subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

14.4 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **15. Shipping**

15.1 We offer a tracked and insured shipping service for a standard rate of £15.00\* per parcel.

15.2 \*Larger items, as well as those exceeding a value of £5,000 or weighing in excess of 2kg may be subject to additional fees.

15.3 Due to the size and vulnerability of the items in our Antique Furniture and Silver auctions, we are unable to post these items and advise buyers to check the cost of shipping before bidding.