

# Terms & Conditions of Sale

The Terms and Conditions of Sale listed here contain the policies of Gibson's Auctioneer's & Valuers Pty Ltd (herein after referred to as "Gibson's"). They are the Terms on which Gibson's and the Seller contract with the Buyer. They may be amended by printed Saleroom Notices or oral announcements made before and during the Sale. By Bidding at Auction you agree to be bound by these terms.

## 1. Definitions

The following conditions that are listed contain terms that are used regularly and have the following meanings:

**"Auction"** means the event at which any Lot is offered for Sale by Gibson's.

**"Auctioneer"** means the representative of Gibson's conducting the Auction.

**"Bid" / "Bidder"** means the action of notifying the Auctioneer of the intention to purchase the Lot by the Prospective Buyer. The Bidder is any person or entity that makes this makes this action. Bidding is understood by both the Bidder and Gibson's to be contractually obliging.

**"Buyer"** means the person with the highest Bid accepted by the Auctioneer.

**"Buyer's Premium"** means the charge payable by the Buyer to the Auction house as a percentage of the Hammer Price.

**"Forgery"** means an item constituting an imitation originally conceived and executed with fraudulent intention to deceive as to authorship, origin, age, period, culture, provenance or source where the correct description as to such matters is not reflected by the description in the catalogue. Accordingly no Lot shall be capable of being a forgery by reason of any damage or restoration work of any kind (including re-painting).

**"Hammer Price"** means the amount of the highest Bid accepted by the Auctioneer in relation to a Lot.

**"Insured Value"** means the amount that Gibson's in its absolute discretion from time to time shall consider the value for which a Lot should be covered for insurance (whether or not insurance is arranged by Gibson's).

**"Lot"** means any item within the Sale for Auction and in particular the item or items described against any Lot number in the catalogue.

**"Prospective Buyer"** means any person or entity with the intention of purchasing any Lot in the Auction.

**"Reserve"** means the confidential lowest amount at which Gibson's has contractually agreed with the Seller that the Lot can be sold.

**"Sale"** means any private treaty or Auction Sale at which a Lot is offered for Sale.

**"Seller"** means (as appropriate) the owner, their agent, executors or personal representatives, or the person in possession of the property consigned for Auction. Multiple owners, agents or persons in possession shall jointly and severally assume all obligations, liabilities, representations, warranties and indemnities in relation to the Sale of the Lot.

**"Dollars" or "\$"** means Australian currency. All Bids, Hammer Price, Reserves, Buyer's Premium and other expressions of value are understood to be in Australian Dollars unless otherwise specified.

## 2. Gibson's Auctioneers & Valuers as Agent

Except as otherwise stated Gibson's acts as agent for the Seller.

The contract for the Sale of the property is therefore made between the Seller and the Buyer.

## 3. Before the Sale

### A) EXAMINATION OF PROPERTY

Prospective Buyers are strongly advised to examine in person any property in which they are interested before the Auction takes place. Neither Gibson's nor the Seller provides any guarantee in relation to the nature of the property apart from the Limited Warranty in the paragraph below.

The property is otherwise sold "as is".

### B) CATALOGUE AND OTHER DESCRIPTIONS

All statements by Gibson's in the catalogue entry for the property or in the condition report, or made orally or in writing elsewhere, are statements of opinion and are not to be relied upon as statements of fact. Such statements do not constitute a representation, warranty or assumption of liability by Gibson's of any kind. References in the catalogue entry to the condition report, including damage or restoration are for guidance only and should be evaluated by personal inspection by the Bidder or a knowledgeable representative. 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. Estimates of the selling price should not be relied on as a statement that this is the price at which the item will sell or its value for any other purpose. Neither Gibson's nor the Seller is responsible for any errors or omissions in the catalogue or any supplemental material.

Images are measured height by width. Illustrations are provided only as a guide and should not be relied upon as a true representation of colour or condition. Images are not shown at a standard scale. Mention is rarely made of frames (which may be provided as supplementary images on the

website) which do not form part of the Lot as described in the printed catalogue.

All transactions are in Australian Dollars so there may be a small exchange rate risk, for international Buyers. The costs associated with acquiring a goods certificate will be borne by the Buyer. If the item turns out to be a Forgery or otherwise incorrectly described, all reasonable costs will be borne by the Seller.

### C) BUYER'S RESPONSIBILITY

All property is sold "as is" without representation or warranty of any kind by Gibson's or the Seller. Buyers are responsible for satisfying themselves concerning the condition of the property and the matters referred to in the catalogue by requesting a condition report

## 4. At the Sale

### A) REFUSAL OF ADMISSION

Gibson's reserves the right at our complete discretion to refuse admission to the Auction premises or participation in any Auction and to reject any Bid.

### B) REGISTRATION BEFORE BIDDING

Any new Prospective Buyer must complete and sign a registration form and provide photographic identification before Bidding. Gibson's may request bank, trade or other financial references to substantiate this registration.

### C) BIDDING AS A PRINCIPAL

When making a Bid, a Bidder is accepting personal liability to pay the purchase price including the Buyer's Premium and all applicable taxes, plus all other applicable charges, unless it has been explicitly agreed in writing with Gibson's before the commencement of the Sale that the Bidder is acting as agent on behalf of an identified third party acceptable to Gibson's and that Gibson's will only look to the principal for payment.

### D) INTERNATIONAL REGISTRATIONS

All international clients not known to Gibson's will be required to scan or fax through an accredited form of photo identification and pay a deposit at our discretion in cleared funds into Gibson's account at least 48 hours before the commencement of the Auction. Bids will not be accepted without this deposit. Gibson's also reserves the right to request any additional forms of identification prior to registering an overseas Bid.

This deposit can be made using a credit card, however the balance of any purchase price in excess of \$5,000 can not be charged to this card without prior arrangement. This deposit is redeemable against any Auction purchase.

### E) ABSENTEE BIDS

Gibson's will use reasonable efforts to execute written Bids delivered to us at **least 24 hours** prior to the Sale for the convenience of those clients who are unable to attend the Auction in person. If Gibson's receives identical written Bids on a particular Lot, and at the Auction these are the highest Bids on that Lot, then the Lot will be sold to the person whose written Bid was received and accepted first. Execution of written Bids is a free service undertaken subject to other commitments at the time of the Sale and we do not accept liability for failing to execute a written Bid or for errors or omissions which may arise. It is the Bidder's responsibility to check with Gibson's after the Auction if they were successful. Unlimited or "Buy" Bids will not be accepted. Please refer to our indicative Bidding increments below for appropriate absentee Bid amounts (Section K).

### F) TELEPHONE BIDS

Priority will be given to overseas and interstate Bidders. Arrangements for this service must be confirmed at **least 24 hours** prior to the Auction commencing. Gibson's accepts no responsibility whatsoever for any errors or failure to execute Bids. In telephone Bidding the Buyer agrees to be bound by all terms and conditions listed here and accepts that Gibson's cannot be held responsible for any miscommunications in the process. The success of telephone Bidding cannot be guaranteed due to circumstances that are unforeseen. Buyers should be aware of the risk and accept the consequences should contact be unsuccessful at the time of Auction. You must advise Gibson's of the Lots in question and recommend a 'Cover Bid' amount should there be any issues with technology or communication via the telephone number provided. Gibson's will advise Telephone Bidders who have registered at least 24 hours before the Auction of any relevant changes to descriptions, withdrawals or any other Sale room notices.

### G) ONLINE BIDDING

Gibson's accepts no responsibility for any errors, failure to execute Bids or any other miscommunications regarding this process. It is the online Bidder's responsibility to ensure the accuracy of the relevant information regarding Bids, Lot numbers and contact details.

### H) RESERVES

Unless otherwise indicated, all Lots are offered subject to a Reserve, which is the confidential minimum price below which the Lot will not be sold. The Reserve will not exceed the low estimate printed in the catalogue. The Auctioneer may open the Bidding on any Lot below the Reserve by placing a Bid on behalf of the Seller. The Auctioneer may continue to Bid

on behalf of Seller up to the amount of the Reserve, either by placing consecutive Bids or by placing Bids in response to other Bidders.

### I) AUCTIONEERS DISCRETION

The Auctioneer has the right at his absolute and sole discretion to refuse any Bid, to advance the Bidding in such a 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 and whether during or after the Sale, to determine the successful Bidder, to continue the Bidding, to cancel the Sale or to re-offer and resell the item in dispute. If any dispute arises after the Sale, then Gibson's Sale record is conclusive.

### J) SUCCESSFUL BID AND PASSING OF RISK

Subject to the Auctioneer's discretion, on the acceptance of a Bid by the fall of the Auctioneer's hammer, a contract of sale is made between the Seller and the Buyer. Risk and responsibility for the Lot (including frames or glass where relevant) passes immediately to the Buyer. Gibson's shall not be liable for any breach of contract by either the Seller or the Buyer.

### K) INDICATIVE BIDDING STEPS, ETC.

Gibson's reserves the right to refuse any Bid, withdraw any Lot from Sale, to place a Reserve on any Lot and to advance the Bidding according to the following:

Increment Amount	Dollar Range
\$20	\$0-\$500
\$50	\$500-\$1,000
\$100	\$1,000-\$2,000
\$200	\$2,000-\$5,000
\$500	\$5,000-\$10,000
\$1,000	\$10,000-\$20,000
\$2,000	\$20,000-\$50,000
\$5,000	\$50,000-\$100,000
\$10,000	\$100,000-\$200,000
\$20,000	\$200,000-\$500,000
\$50,000	\$500,000-\$1,000,000

Absentee Bids must follow these increments and any Bids that don't follow the steps will be rounded up to the nearest acceptable Bid.

## 5. After the Sale

### A) BUYER'S PREMIUM

In addition to the Hammer Price, the Buyer agrees to pay to Gibson's the Buyer's Premium. The Buyer's Premium is 22% of the Hammer Price plus GST. (Goods and Services Tax) where applicable.

### B) ONLINE SURCHARGE

In the case where the Buyer purchases via online Bidding platforms, the Buyer agrees to pay the online Bidding surcharge of 2% (Gibson's.com.au) or 5% (Invaluable.com) plus GST, where applicable.

### C) PAYMENT AND PASSING OF TITLE

The Buyer must pay the full amount due (comprising the Hammer Price, Buyer's Premium and any applicable taxes and GST) not later than three (3) days after the Auction date.

The Buyer will not acquire title for the Lot until Gibson's receives full payment in cleared funds, and no goods under any circumstances will be released without confirmation of cleared funds received. This applies even if the Buyer wishes to send items interstate or overseas.

Payment can be made by the following means:

- Bank Transfer/Direct Deposit is our preferred method of payment

Account Name:	Gibson's Auctions
Bank:	Bank of Melbourne (A division of St George)
BSB:	193879
Account No:	441701443
Swift Code:	SGBLAU2S
Routing Code:	021000021
Bank Address:	197-201 Glenferrie Road, Malvern, Vic, 3144

The Buyer is responsible for any bank fees and charges applicable for the transfer of funds into Gibson's account

- Personal, Company and Bank Cheques are not accepted without prior approval.
- EFTPOS (no charge)
- Credit cards: Visa and Mastercard (1.2% incl GST merchant fee) and American Express (2% incl GST merchant fee)

Please note that credit card transactions over \$5,000 will not be accepted over the telephone unless by prior arrangement.

- Cash up to AU\$10,000 can be accepted in cash. For any amount over this, cash is to be deposited directly into our account at a Bank of Melbourne/St George branch

## D) COLLECTION OF PURCHASES & INSURANCE

Gibson's is entitled to retain items sold until all amounts due to us have been received in full in good cleared funds. Subject to this, the Buyer shall collect purchased Lots within three (3) days from the date of the Sale unless otherwise agreed in writing between Gibson's and the Buyer.

At the fall of the hammer, insurance is the responsibility of the purchaser.

## E) PACKING, HANDLING AND SHIPPING

At the request of the Buyer, Gibson's may assist with packing of goods but takes no responsibility for loss, damage or breakage that may occur.

Gibson's at the request of the Buyer may arrange for a carrier, packer or shipper to have the property packed, insured and shipped at the Buyer's expense. All packing, shipping, insurance, postage & associated charges will be borne by the purchaser.

Gibson's can assist with removal companies that the Buyer can use but takes no responsibility whatsoever for the actions of any recommended third party.

## F) CULTURAL HERITAGE EXPORT LICENCES

Unless otherwise agreed by Gibson's in writing, the fact that the Buyer wishes to apply for an export licence does not affect their obligation to make full payment immediately, nor Gibson's right to charge interest or storage charges on late payment. It is the responsibility of the Buyer to check Australia's Protection of Moveable Cultural Heritage Act 1986 prior to purchase. Export/import licences applications are the responsibility of the Buyer and/or the Buyer's nominated shipper. Gibson's shall not be obliged to rescind a Sale nor to refund any expenses incurred by the Buyer in circumstances where an export licence is not granted.

## G) REMEDIES FOR NON-PAYMENT

If the Buyer fails to make full payment immediately, Gibson's is entitled to exercise one or more of the following rights or remedies (in addition to asserting any other rights or remedies available under the law)

- i) to charge interest at the ANZ visa credit card rate as published weekly in the Australian Financial Review;
- ii) to hold the defaulting Buyer liable for the total amount due and to commence legal proceedings for its recovery along with interest, legal fees and costs to the fullest extent permitted under applicable law;
- iii) to cancel the Sale;
- iv) to resell the property publicly or privately on such terms as we see fit;
- v) to pay the Seller an amount up to the net proceeds payable in respect of the amount Bid by the defaulting Buyer. In these circumstances the defaulting Buyer can have no claim upon Gibson's in the event that the Lot(s) are sold for an amount greater than the original invoiced amount;
- vi) to offset against any amounts which Gibson's may owe the Buyer across any other transactions;
- viii) to reject at any future Auction any Bids made by or on behalf of the Buyer or to obtain a deposit from the Buyer prior to accepting any Bids;
- ix) to exercise all the rights and remedies of a person holding security over any property in our possession owned by the Buyer whether by way of pledge, security interest or in any other way, to the fullest extent permitted by the law of the place where such property is located. The Buyer will be deemed to have been granted such security to us and we may retain such property as collateral security for such Buyer's obligations to us;
- x) to take such other action as Gibson's deem necessary or appropriate.

## H) FAILURE TO COLLECT PURCHASES

Where purchases are not collected within three (3) days from the Sale date, whether or not payment has been made, Gibson's shall be permitted to:

- i) remove, store and further insure the Lot at the expense of the Buyer, releasing only after full payment has been received from the Buyer for incurred costs;
- ii) re-sell the Lot without Reserve by Auction, private treaty or any other means whereby the Buyer agrees not to challenge the resale price achieved
- iii) rescind the Sale of that Lot or any other Lot sold by the Seller to the Buyer at the same or any other Auction

If Gibson's do re-sell the property under clauses H and G, the defaulting Buyer agrees to be liable for all payments of any deficiency between the total amount originally due and the price obtained, as well as the legal as all costs, expenses, damages, legal fees, commissions and premiums of whatever kinds associated with both Sales or otherwise arising from the default.

## 6. Extent of Gibson's Liability

Gibson's agrees to refund the purchase price in the circumstances of the Limited Warranty set out in paragraph 7. Apart from that, neither the Seller nor we, nor any of our employees or agents are responsible for the correctness of any statement of whatever kind concerning any Lot, whether written or oral, nor for any other errors or omissions in description or for any faults or defects in any Lots. Except as stated in paragraph 7 below, neither the Seller ourselves, our officers, agents or employees give any representation

warranty or guarantee or assume any liability of any kind in respect of any Lot with regard to merchantability, fitness for a particular purpose, description, size, quality, condition, attribution, authenticity, rarity, importance, medium, provenance, exhibition history, literature or historical relevance. Except as required by local law any warranty of any kind is excluded by this paragraph.

## 7. Limited Warranty

Subject to the terms and conditions of this paragraph, the warrants for the period of fourteen (14) days from the date of the Sale that any property described in this catalogue (noting such description may be amended by any Saleroom notice or announcement) which is stated without qualification to be the work of a named author or authorship is authentic and not a forgery. The term "Author" or "authorship" refers to the creator of the property or to the period, culture, source, or origin as the case may be, with which the creation of such property is identified in the catalogue.

The warranty is subject to the following:

- i) it does not apply where a) the catalogue description or Saleroom notice corresponded to the generally accepted opinion of scholars and experts at the date of the Sale or fairly indicated that there was a conflict of opinions, or b) correct identification of a Lot can be demonstrated only by means of a scientific process not generally accepted for use until after publication of the catalogue or a process which at the date of the publication of the catalogue was unreasonably expensive or impractical or likely to have caused damage to the property.
- ii) the benefits of the warranty are not assignable and shall apply only to the original Buyer of the Lot as shown on the invoice originally issued by Gibson's when the Lot was sold at Auction.
- iii) the original Buyer must have remained the owner of the Lot without disposing of any interest in it to any third party
- iv) The Buyer's sole and exclusive remedy against the Seller in place of any other remedy which might be available, is the cancellation of the Sale and the refund of the original purchase price paid for the Lot less the Buyer's Premium which is non refundable. Neither the Seller nor Gibson's will be liable for any special, incidental nor consequential damages including, without limitation, loss of profits not for interest.
- v) The Buyer must give written notice of claim to us within fourteen (14) days of the date of the Auction. The Seller shall have the right, to require the Buyer to obtain two written opinions by recognised experts in the field, mutually acceptable to the Buyer and Gibson's to decide whether or not to cancel the Sale under warranty.
- vi) the Buyer must return the Lot to Seller in the same condition that it was purchased.

## 8. Severability

If any part of these Conditions of Sale is found by any court to be invalid, illegal or unenforceable, that part shall be discounted and the rest of the Conditions shall continue to be valid to the fullest extent permitted by law.

## 9. Copyright

The copyright of all images, illustrations and written material produced by Gibson's relating to a Lot including the contents of this catalogue, is and shall remain the property at all times of Gibson's and shall not be used by the Buyer, nor by anyone else without our prior written consent. Gibson's and the Seller make no representation or warranty that the Buyer of a property will acquire any copyright or other reproduction rights in it.

## 10. Law and Jurisdiction

These terms and conditions and any matters concerned with the foregoing fall within the exclusive jurisdiction of the courts of the state in which the Auction is held.

## 11. Pre-Sale Estimates

Gibson's publishes with each catalogue our opinion as to the estimated price range for each Lot. These estimates are approximate prices only and are not intended to be definitive. They are prepared well in advance of the Sale and may be subject to revision. Interested parties should contact Gibson's prior to Auction for updated pre-Sale estimates and starting prices.

## 12. Sale results

After the Sale, Gibson's may publish (both verbally and in writing) the results of Sale at our discretion, including the prices achieved for specific Lots. Unless otherwise discussed with the Buyer, details of individual Buyers will remain confidential.

## 13. Goods and Service Tax

In accordance with A New Tax System (Goods and Services Tax) Act 1999, Gibson's Auctions will collect on behalf of the Australian Tax Office (ATO) a Goods and Service Tax (GST) of 10% on all applicable transactions.

GST is applicable on the Hammer Price in the case where the Seller is selling property that is owned by an entity registered for GST. GST is also applicable on the Hammer Price in the case where the Seller is not an Australian resident. These Lots are denoted by a dagger symbol † placed next to the estimate. GST is also applicable on the Buyer's Premium.

Overseas Buyers and non-resident Buyers in Australia will not be charged GST on both Hammer Price and Premiums under the following conditions:

1. The items are exported through a Gibson's approved freight company including Australia Post
2. The items are exported within 60 days of the date of the Sale

The invoice supplied by Gibson's for purchases will be regarded as a Tax invoice for GST purposes.

## 14. Resale Royalty Scheme

Under the legal obligations of the Resale Royalty Scheme for Visual Artists Act 2009, Sellers must provide the following information to comply with the act:

- was the artwork acquired after 8 June 2010?
- is the Sale/Reserve price (including GST) \$1,000 or more?
- is the artist from Australia or a country listed in the Regulations to the Act?
- is the artist alive, or deceased less than 70 years?

The Seller:

- i) acknowledges that he or she understands his or her legal obligations under the Resale Royalty for Visual Artists Act 2009 (the Act);
- ii) undertakes to comply with all requirements of the Act, including by providing its agent, the company, with accurate information sufficient for compliance with sections 28 and 29 of the Act;
- iii) undertakes to indemnify the company for any loss incurred by the company as a result of the vendor's failure to comply with any of the vendor's legal obligations under the Act; and
- iv) acknowledges that if he or she fails to comply with any of his or her legal obligations under the Act, the company may provide the vendor's name and contact details to Copyright Agency Limited (CAL).

Lots subject to payment of the Resale Royalty Scheme will be denoted by the symbol §. The Australian Resale Royalty is a flat rate of 5% on the Hammer Price (including GST). The Australian Resale Royalty is payable by the Seller in addition to the Buyer's Premium plus any applicable GST.

## 15. Jewels & Watches

### GEMSTONES

Gemstones have historically been subjected to a variety of treatments to enhance their appearance. Sapphire and rubies are routinely heat treated to improve their colour and clarity, similarly emeralds are frequently treated with oils or resin for the same purpose. Other treatments such as staining or dyeing, irradiation, filling or coating may have been used on other precious and semi-precious gemstones and organic material. These treatments may be permanent, whilst others may need special care to reserve their appearance. Buyers should assume that each Lot has been subject to some form of treatment and that the estimates reflect this.

A number of laboratories issue certificates that give detailed descriptions of gemstones, and in the event that Gibson's has been supplied with or obtained certificates for any Lot, this shall be noted in the catalogue. However, as there may not be consensus between different laboratories on the degree, or types of treatment of the gemstones, Gibson's supplies these without warranty.

Buyers should assume that all gemstones sold by Gibson's may have been subjected to such treatments, and that the catalogue estimates reflect this.

### PEARLS

Pearls, like gemstones, are also subject to various treatments. Buyers should assume that any pearls sold by Gibson's may have been subjected to such treatments, and that the catalogue estimates reflect this.

### WATCHES

Please note: All watches sold by Gibson's are sold on an "as is" basis. Gibson's makes no representation or warranty that any watch is in working order. Many watches have been repaired over their lifetime and may contain non-original parts. The absence of any reference to the condition of a watch does not imply that the Lot is in good condition and without defects, repairs or restorations. Buyers should be aware that a general service, change of battery or further repair work, for which the Buyer is solely responsible for, may be necessary.

### ESTIMATED WEIGHTS

If a stone has a known weight, it has been weighed out of the mount. If a stone has an estimated weight, it is an approximate weight only and has been measured by us in the mount and is a statement of opinion only. The information is given as a guide only and Buyers should satisfy themselves with regard to this information as to its accuracy.