

# CONDITIONS OF BUSINESS

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## NOTICE TO BUYERS AND SELLERS

These conditions set out below and all other terms, conditions and notices set out in the catalogue of Henry Butcher Art Auctioneers Sdn Bhd (hereafter referred to as "HBAA"), or announced by the auctioneer or posted in the sale room by way of notice (hereinafter referred to as the 'Conditions of Business') form the terms on which HBAA contracts, as auctioneers, with actual and prospective sellers and buyers. They may be amended or supplemented by posted notices in the sale room or oral announcements made during the sale. The Conditions of Business apply to all aspects of business regarding the sale, purchase or holding of property provided by HBAA. The Conditions of Business would also apply to any sellers or buyers who require inspection, appraisal or valuation of property. Any future dealings with HBAA shall be governed by the Conditions of Business current at that particular time. By bidding at the auction you agree to be bound by these terms.

HBAA generally acts as agent for the seller. Any concluded contract of sale is made directly between the seller and the buyer. All relevant factual material pertaining to items offered for sale is derived from the seller. HBAA cannot and does not undertake full due diligence on every item sold. Buyers are responsible to carry out their own inspection and investigations on the items offered for sale which they are interested in buying.

All potential buyers are to take particular note of Conditions 5 and 6 which limit the extent to which HBAA and the seller may be liable. In addition, all sellers are to take particular note of Conditions 25, 27, 28 and 29 which set out the basis of the relationship between HBAA and the seller and limit the extent to which HBAA may be liable to the seller.

## A. DEFINITIONS

Unless the contrary intention appears, the following expressions shall have the meaning respectively assigned to them in this Condition of Business:

"bidder" shall mean a person who considers, makes or attempts to make a bid by whatever means at the auction and includes buyers;

"buyer" shall mean the person who makes the highest bid or offer accepted by HBAA, or that person's disclosed principal;

"buyer's premium" shall mean a payment of premium calculated at 10% of the hammer price and payable by a buyer to HBAA, together with all applicable taxes as may be set and revised by the Malaysian government from time to time;

"catalogue" shall mean the auction catalogue prepared by HBAA describing and illustrating all lots for sale by HBAA;

"estimated price range" shall mean the estimated price a lot may achieve at the auction and does not include the buyer's premium;

"expenses" in relation to the sale of any lot shall mean HBAA's costs including but not limited to legal expenses, charges and expenses for insurance, catalogue and other reproductions and illustrations, any customs duties, advertising, packing or shipping costs, reproduction rights' fees, taxes, levies, costs of testing, searches or enquiries relating to any lot, or costs of collection from a defaulting buyer together with any applicable taxes imposed by the Malaysian government from time to time.

"full amount due" shall mean the hammer price in respect of the lot sold, together with the buyer's premium and any charges, fees, interest, taxes and expenses due from a buyer or defaulting buyer.

"HBAA" shall mean Henry Butcher Art Auctioneers Sdn Bhd (Company no. 835541-K);

"hammer price" shall mean the highest bid accepted by HBAA by the fall of the hammer or; in the case of a post-auction sale, the agreed sale price; in both instances excluding the buyer's premium, any applicable taxes and any expenses;

"lot" shall mean each piece of property as described in the catalogue;

"net sales proceeds" shall mean the hammer price of the lot sold to the extent received by HBAA in cleared funds, less sales commission and expenses;

"purchase price" shall mean the hammer price and buyer's premium;

"reserve price" shall mean the confidential minimum price at which the seller has agreed to sell a lot and will not exceed the estimated price range;

"sales commission" shall mean the commission payable to HBAA by a seller at a percentage

as specified in the Consignment Form together with all applicable taxes as may be set and revised by the Malaysian government from time to time;

"seller" shall mean the owner or consignor who is offering the lot for sale including their agents, executors or personal representatives or the owner's agent or the person in possession of the lot consigned. If there are multiple owners or agents or persons in possession, each shall assume, jointly and severally, all obligations, liabilities, representations, warranties and indemnities as set forth in these Conditions of Business.

## B. CONDITIONS FOR BUYERS

### 2. Company Property

It is the general policy of HBAA to act as an agent only for the seller; however on occasions, HBAA may offer a lot which it owns in whole or in part. Such property is identified in the catalogue with the symbol \* next to its lot number:

### BEFORE THE SALE

#### 3. Examination of property

Solely as a convenience, HBAA may provide condition reports. Neither HBAA (and its employees or agents) nor the seller provides any guarantee in relation to the nature of the property.

References in the catalogue entry or the condition report to 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.

#### Estimated price range

The estimated price range of the lot should not be relied on as a statement that this is the price at which the lot will sell or its value for any other purpose. The estimated price range is based upon the opinion of HBAA's expert consultants and known recent transactions for a comparable property, condition, rarity, quality and provenance. The estimated price range is subject to change and may be revised anytime without prior notice. Buyers should not rely upon estimated price range as the representation or guarantee of actual selling prices. Estimated price range does not include the buyer's premium.

#### Buyer's responsibility

All property is sold "as is" without any representation or warranty of any kind by HBAA (and its employees or agents) or the seller. Buyers are responsible to examine a lot prior to the sale and to satisfy themselves as to the condition of the lot and that the lot matches any written or oral description provided by the seller or HBAA. Any illustrations in the catalogue are solely for identification and the guidance of buyers and should not be relied upon in terms of tone or colour or necessarily to reveal imperfections in any lot.

The prospective buyer undertakes:

- (i) to inspect and satisfy himself prior to the sale as to the condition and description of the lot;
- (ii) to rely on his own judgment as to whether the lot accords with its description;
- (iii) to seek any independent expert advice reasonable (in the light of the prospective buyer's particular expertise and the value of the lot) to satisfy himself as to authorship, attribution, authenticity, genuineness, origin, date, age, provenance or condition of the lot; and
- (iv) not to rely on any illustration in any catalogue.

The buyer will be deemed to have knowledge of all matters which he could reasonably have been expected to find out given his particular expertise and the exercise of his reasonable due diligence.

#### LIMITED WARRANTY BY HBAA IN RESPECT OF COUNTERFEIT LOTS

4. In the event the sale of a lot subsequently proves to be a counterfeit and:

- a) if the buyer at the time has not yet paid the full amount due, HBAA shall have the right to terminate the sale; or
- b) if HBAA has at that time paid the seller the whole or part of the full amount due to him, then the seller undertakes to refund to HBAA, on demand, the full amount paid. HBAA shall be entitled to exercise a lien over any properties of the seller in its possession pending settlement of all outstanding sums due from the seller to HBAA,

Provided that, no later than three (3) years after the date of the sale, the buyer:

- (i) notifies HBAA in writing of the number of the lot, the date of the auction at which it was purchased and the reasons why the buyer considers the lot to be counterfeit, within three (3) months of any information causing the buyer to question the authenticity or attribution of the lot coming to the buyer's attention;
- (ii) is able to transfer good title to HBAA free from any third party claims arising after the date of the sale to the buyer; and
- (iii) return the lot to HBAA in the same condition

as at the date of sale, provided that, in any event, no refund shall be available if either:

- (a) the catalogue description at the date of the sale was in accordance with the generally accepted opinions of scholars and experts at that time or the catalogue description indicated that there was a conflict of such opinions; or
- (b) the only method of establishing that the lot was a counterfeit at the date of publication of the catalogue was by means of processes which either were not generally accepted for use until after the publication of the catalogue or else were unreasonably expensive or impractical or likely to have caused damage to the lot or likely, in HBAA's reasonable opinion, to have caused loss of value to the lot. An item shall be considered counterfeit where, in HBAA's reasonable opinion, it is a deliberate modern forgery i.e. an imitation created since 1970 with the intention of deceiving as to authorship, origin, date, age, period, culture or source (where the correct description of such matters is not reflected by the description in the catalogue) and which, at the date of sale, had a value materially less than it would have had if the item had been in accordance with the description in the catalogue. No lot shall be considered a counterfeit by reason only of any damage and/or restoration and/or modification work of any kind (including repainting or overpainting).

It is HBAA's general policy, and HBAA shall have the right to request the buyer to obtain at the buyer's cost the reports of two independent and recognised experts in the field, mutually acceptable to the buyer and to HBAA, setting out the reasons why the lot in question is considered to be counterfeit and HBAA agrees that it will give due consideration to any such expert reports. However, HBAA reserves the right to seek additional independent advice itself in making its final determination as to whether the lot is a counterfeit and HBAA shall not be bound by any expert report produced by the buyer. If HBAA agrees with the buyer that the lot is a counterfeit, HBAA shall refund to the buyer the costs of obtaining two independent expert reports incurred by the buyer provided that (i) such costs were approved by HBAA in advance of obtaining such reports; and (ii) the buyer could not reasonably have obtained independent opinions prior to the sale. The benefit of this guarantee is not capable of being transferred and is solely for the benefit of the buyer.

#### HBAA'S LIABILITY TO BUYERS

5. Notwithstanding Condition 4 above given by HBAA to the buyer and the buyer's rights in relation to the conduct of auctions as set out in Condition 13:

- (a) HBAA gives no guarantee or warranties

to the buyer and any implied warranties or conditions are excluded (save in so far as such obligations cannot be excluded by statute);

- (b) In particular, any representations, written or oral and including those in any catalogue, report, commentary or valuation, in relation to any aspect or quality of any lot, including price or value, (i) are statements of opinion only and (ii) may be revised prior to the lot being offered for sale (including whilst the lot is on public view); and

- (c) None of HBAA, any HBAA's affiliated company, or any agent, employee or director thereof shall be liable for any errors or omissions in any such representations.

Without prejudice to Conditions 3 and 4 above, and save in so far as it relates to any liability which HBAA may have for personal injury or death, any claim against HBAA by the buyer shall be limited to the hammer price and the buyer's premium actually paid by the buyer to HBAA with regard to that lot.

#### 6. Seller's Liability To Buyers

The seller's obligations to the buyer are limited to the same extent as HBAA's obligations to the buyer. Any express or implied conditions or warranties are excluded save in so far as it is not possible to exclude obligations implied by statute.

#### AT THE SALE

##### 7. Refusal of admission

HBAA has the right, at its absolute discretion, to refuse admission to any person to the premises or participation of any person in any auction and to reject any bid.

##### 8. Registration before bidding

Prospective buyers who wish to bid in the saleroom can register in advance of the sale, or can come to the saleroom on the day of the sale at least one (1) hour before the start of the sale to register in person. A prospective buyer must complete and sign a registration form and provide identification before bidding. HBAA may require the production of bank or other financial references. Further information on the registration process can be found in HBAA's "Guide to Buying at Henry Butcher Art Auction".

##### 9. Bidding as principal

In making a bid at auction, a bidder is doing so as principal and will be held personally and solely liable for the bid, in particular 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 HBAA before the commencement of the sale that the bidder is acting as agent on behalf of an identified third party acceptable to

HBAA. In such circumstances, both the bidder and the third party will be jointly and severally liable for all obligations arising from the bid and the third party shall be bound by the Conditions of Business by the bidder's bid as his agent in the same way as if he were bidding personally.

#### 10. Absentee bids

HBAA will use reasonable efforts to carry out telephone bids or written bids delivered to HBAA prior to the sale for the convenience of clients who are not present at the auction in person, by an agent or by telephone provided that such written bids are sufficiently clear in HBAA's opinion. Bids must be placed in Ringgit Malaysia. Please refer to the catalogue for the Absentee Bid Form. The lots will be bought at the lowest possible price taking into account other bids placed and the reserve price. If written bids on a particular lot are received by HBAA for identical amounts, and at the auction these are the highest bids on the lot, it will be sold to the person whose written bid was received and accepted first. HBAA's obligation in relation to such written bids is undertaken subject to their other commitments at the time of sale and the conduct of the sale may be such that HBAA is unable to bid as requested. HBAA cannot accept liability for failure to make a written bid for any reason. Telephoned absentee bids must be confirmed no later than 24 hours before the sale by letter or fax. In such circumstances, HBAA reserve the right to require confirmation of relevant details in writing before HBAA agrees to do so. HBAA shall not be responsible for the failure of any telephone bid for any reason. HBAA reserve the right to record telephone bids. The auctioneer may also execute bids on behalf of the seller up to the amount of the reserve price. The auctioneer will not specifically identify bids placed on behalf of the seller. Under no circumstances will the auctioneer place any bid on behalf of the seller above the reserve price. Execution of written bids and telephone bids is a complimentary service undertaken subject to other commitments at the time of the sale and HBAA does not accept liability for failing to execute a written bid or for any errors and omissions in connection with it.

#### 11. Currency converter

Auctions are conducted in Ringgit Malaysia (RM), but HBAA may provide a currency converter in the sale room for the convenience of bidders. The figures shown in foreign currencies are only approximates and do not represent the exact exchange rates. HBAA does not accept liability to bidders who follow the currency converter rather than the actual bidding in the sale room.

#### 12. Video or digital images

At some auctions there may be a video or

digital screen in operation for the convenience of both buyers and sellers. Errors may occur in its operation and in the quality of the image and HBAA does not accept liability either for the quality of the image reproduced on the video screen, or for the correspondence of the screen image to the original.

#### 13. Conduct of the auction

The auctioneer will commence and advance the bidding in levels that he considers appropriate in the light of the value of the lot under auction and of competing bids. The auctioneer may continue to bid on behalf of the seller up to the amount of the reserve price, either by placing consecutive bids or by placing bids in response to other bidders, although the auctioneer will not indicate during the auction that he is making such bids on behalf of the seller. Unless otherwise indicated, all lots are offered subject to a reserve price, which is the confidential minimum price below which the lot will not be sold. The reserve price will not exceed the estimated price range printed in the catalogue. If any lots are not subject to a reserve price, they will be identified with the symbol next to the lot number. With respect to lots that are offered without reserve price, unless there are already competing bids, the auctioneer, in his or her discretion, will generally open the bidding at 50% of the estimated price range for the lot. In the absence of a bid at that level, the auctioneer will proceed backwards in his or her discretion until a bid is recognised, and then continue up from that amount. Absentee bids will, in the absence of a higher bid, be executed at approximately 50% of the estimated price range or at the amount of the bid if it is less than 50% of the estimated price range. In the event that there is no bid on a lot, the auctioneer may deem such lot unsold. The buyer acknowledges the rights of the auctioneer and the seller set out in this Conditions of Business and waives any claim that he might have in this connection against HBAA or the seller.

#### 14. Sale of a lot

The person who makes the highest bid accepted by the auctioneer (or that person's disclosed principal, if applicable) shall be the buyer. The striking of the auctioneer's hammer marks the acceptance of the highest bid and identifies the hammer price at which the lot is knocked down by the auctioneer to the buyer. The striking of the auctioneer's hammer also marks the conclusion of a contract of sale between the seller and the buyer.

The buyer will be asked to sign a Buyer's Acknowledgement Form upon the fall of hammer and to make payment of 5% of hammer price (or RM500, whichever is greater) as a non-refundable earnest deposit before leaving the

sale room. Failure to sign the form and make payment for the earnest deposit will render the sale to be null and void and the auctioneer may re-offer the lot for sale.

#### 15. Auctioneer's discretion

Notwithstanding Conditions 13 and 14 above, the auctioneer has the absolute and sole discretion at any time to:

- (a) refuse any bid which does not exceed the previous bid by at least 5% or by such other proportion as the auctioneer will in his absolute discretion direct,
- (b) to advance the bidding in such a manner as he may decide,
- (c) to withdraw or divide any lot,
- (d) to combine any two or more lots and, in the case of errors or dispute, and whether during or after the sale, to determine the successful bidder; to continue the bidding, to cancel the sale or to reoffer and resell the lot in dispute and/or take any such actions as he reasonably thinks fit in the circumstances. If any dispute arises after the sale, the sale record of HBAA is conclusive.

#### 16. Successful bid and passing of risk

Subject to the auctioneer's discretion, the highest bidder accepted by the auctioneer will be the buyer and the striking of his hammer marks the acceptance of the highest bid and the conclusion of a contract for sale between the seller and the buyer. Risk and responsibility for the lot (including frames or glass where relevant) passes to the buyer at the expiration of seven (7) calendar days from the date of the sale or upon collection by the buyer; whichever is earlier.

While invoices are sent out by mail after the auction, HBAA does not accept responsibility for notifying the buyer of the result of his bids. Buyers are requested to contact HBAA by telephone or in person as soon as possible after the sale to obtain details of the outcome of their bids to avoid incurring unnecessary storage charges. Successful bidders will pay the full amount due plus any applicable taxes and costs.

#### AFTER THE SALE

##### 17. Payment

Upon conclusion of the relevant session of the auction in which the lot was sold, the buyer shall pay to HBAA the full amount due no later than seven (7) calendar days after the auction and provide HBAA with his or her name and permanent address and, if so requested, proof of identity. This applies even if the buyer wishes to export the lot and an export license is, or may be required. Payment will not be deemed to have been made until HBAA is in receipt of the full amount due to HBAA from the buyer either in cash or good cleared funds. Further information



on the payment method can be found in HBAA's "Guide to Buying at Henry Butcher Art Auction".

#### 18. Collection of purchases

Upon payment of the full amount due, the buyer shall collect the purchased lot in person (or by an authorised person with a letter of authorisation from the buyer), at his own expense, from HBAA's sale room no later than seven (7) calendar days after the date of the sale unless otherwise agreed between HBAA and the buyer. Unless HBAA exercise their discretion to do so, and without prejudice to Condition 23(g) below, HBAA shall be entitled to retain the purchased lot until the full amount due to HBAA has been received in full by HBAA either in cash or good cleared funds.

#### 19. Passing of title

The buyer shall always remain liable for the full amount due and shall not acquire title to the lot sold until payment of the full amount due has been made in full in respect of that lot and HBAA has applied such payment to the lot (even if, without prejudice to Condition 18, HBAA exercise their discretion to release it to the buyer). Other than where HBAA has agreed with the buyer to the contrary, and subject to Condition 23(m) below, any monies received from the buyer shall be applied in order of the oldest debt owed by the buyer to HBAA or the oldest purchase made by the buyer at HBAA or any HBAA affiliated company having regard to the date of sale and the number of the lot.

#### 20. Transfer of risk

Any lot purchased is entirely at the buyer's risk from the earlier of:

- (a) the time the buyer collects the lot purchased; or
- (b) the time that the buyer pays to HBAA the full amount due for the lot; or
- (c) seven (7) calendar days after the day of the sale.

The buyer shall be solely responsible for insuring the lot purchased from the time risk passes to the buyer. The buyer will be compensated for any loss or damage to the lot which occurs after sale but prior to the time risk passes to the buyer. The maximum amount of compensation shall be the hammer price of the lot, and shall exclude any indirect or consequential loss or damage. However, HBAA will not, in any circumstances, be liable for any loss or damage caused to frames or to glass which is covering prints, paintings or other works unless the frame or glass is, in itself, the object sold at auction.

#### 21. Packing, handling and shipping

The packing, handling and shipping of lots is entirely at the buyer's risk and expense (which

shall be paid in full before the lot is shipped out) and HBAA shall not, in any circumstances, be responsible for the acts or omissions of the packers or shippers. In circumstances where HBAA proposed handlers, packers or carriers if so requested, HBAA shall also not accept responsibility or liability for their acts or omissions.

#### 22. Export license

The export of any lot from Malaysia or import into any other country may be subject to one or more export or import licences being granted. It is the buyer's responsibility to obtain any relevant export or import licence. Lots purchased shall be paid for in accordance with Condition 17 above and the denial of any export or import licence required or any delay in the obtaining of such licence shall not justify the rescission or cancellation of the sale by the buyer or any delay by the buyer in making payment of the full amount due for the lot. HBAA shall not be obligated to rescind a sale nor to refund any interest or other expenses incurred by the buyer where payment is made by the buyer in circumstances where an export license is required.

#### 23. Remedies for non payment or failure to collect purchases

If the buyer without the prior agreement of HBAA fails to make payment of the full amount due or any part of it on any lot in accordance with Condition 17 above, HBAA shall be entitled in their absolute discretion and without prejudice to any other rights which HBAA and the seller may have, be entitled, both for HBAA and as agent for the seller, to exercise one or more of the following rights or remedies:

- a) to charge the buyer, the seller's and HBAA's reasonable legal and administrative costs incurred;
- b) to charge interest at a rate not exceeding 8% (eight per cent) per annum on the full amount due to the extent that it remains unpaid for more than four (4) weeks after the date of the auction;
- c) to forfeit the buyer's earnest deposit as required under Condition 14;
- d) to hold the defaulting buyer liable for the full amount due and to commence legal proceedings for its recovery together with interest, legal fees and costs to the fullest extent permitted under applicable law;
- e) cancel the sale of the lot;
- f) to arrange and carry out a re-sale of the lot by public auction or private sale in mitigation of the debt owed by the buyer to HBAA. The buyer and the seller hereby consent to and authorise HBAA to arrange and carry out such re-sale on the Conditions of Business applicable at the time of the re-sale and agree that the level of the reserve and the estimates relevant to such re-sale shall be set at HBAA's sole discretion. The net sales proceeds will be applied in reduction of the buyer's debt. If a re-sale should result in

a lower price than the original hammer price obtained, HBAA and the seller shall be entitled to claim the balance from the buyer together with any costs incurred in connection with the buyer's failure to make payment. If the re-sale should result in a higher price than the original hammer price obtained, the surplus shall be paid to the seller. In such case, the buyer waives any claim which the buyer may have to title to the lot and agree that any re-sale price shall be deemed commercially reasonable;

g) set-off any amounts owed by HBAA or any HBAA's affiliated company to the buyer against any amounts owing by the buyer to HBAA or any HBAA's affiliated company, whether as the result of any proceeds of sale or otherwise;

h) exercise a lien over any of the buyer's property which is in HBAA's possession or in possession of any HBAA's affiliated company for any reason until payment of all outstanding full amount due to HBAA have been made in full. HBAA shall notify the buyer of any lien being exercised and the amount outstanding. If the amount outstanding then remains unpaid for fourteen (14) days following such notice, HBAA shall be entitled to arrange and carry out the sale of any such property in accordance with (f) above;

i) to insure, remove and store the lot either at HBAA's premises or elsewhere at the buyer's sole risk and expense;

j) to reject future bids made by or on behalf of the buyer at any future auction or render such bids subject to payment of a deposit to HBAA before such bids are accepted;

k) to retain that or any other lot sold to the same buyer at the same time or at any other auction and release it only after payment of the full amount due;

l) to apply any payments made by the buyer to HBAA or to any HBAA's affiliated company towards settlement of the full amount due or otherwise towards any costs or expenses incurred in connection with the sale of the lot;

m) to apply any payments made by the buyer to HBAA or to any HBAA's affiliated company towards settlement of the full amount due or otherwise towards any other debts owed by the buyer to HBAA or to any other HBAA affiliated company in respect of any other transaction;

n) to take such other action as HBAA deems necessary or appropriate.

#### 24. Remedies for failure to collect purchases

If the buyer does not collect a purchased lot within seven (7) calendar days after the sale, HBAA may arrange for storage of the lot at the buyer's risk and expense. This shall apply whether or not the buyer has made payment of the full amount due. HBAA shall release the purchased lot only upon full payment by the buyer of all storage, removal, insurance and any other costs incurred, together with payment of all other amount due to HBAA

including, if applicable, the full amount due. HBAA shall, in their absolute discretion, also be entitled to exercise any of the rights or remedies listed in Condition 23(a), (c), (d), (f), (g), (h) and (l) above, provided that HBAA shall not exercise their right under Condition 23(f) above for a period of ninety (90) days following the relevant sale. In the event that HBAA exercise their rights under Condition 23(f) above, HBAA undertakes to hold to the buyer's order the net sales proceeds received by HBAA in cleared funds less all storage, removal, insurance and any other costs or taxes incurred.

### C. CONDITIONS CONCERNING SELLERS

#### 25. Seller's warranties

This Condition governs the seller's relationship with both the buyer and HBAA. If HBAA or the buyer considers any of the warranties listed below to be breached in any way, either HBAA or the buyer may take legal action against the seller. The seller agrees to indemnify HBAA and any HBAA's affiliated company, their respective servants, directors, officers and employees and the buyer against any loss or damage resulting from any breach or alleged breach of any of the seller's representations or warranties, or other terms set forth in these Conditions of Business. Where HBAA reasonably believes that any breach of such representation or warranty has occurred, the seller hereby authorise HBAA in its sole discretion to rescind the sale.

The seller warrants to HBAA and to the buyer that at all relevant times (including but not limited to the time of the consignment of the lot and the time of the sale):

- (a) the seller is the true owner of the lot, or are properly authorised to sell the lot by the true owner;
- (b) the seller is able to and shall, in accordance with these Conditions of Business, transfer possession to the buyer and good and marketable title to the lot free from any third party rights or claims or potential claims including, without limitation, any claims which may be made by governments or governmental agencies;
- (c) the seller has provided HBAA with all information concerning the provenance of the lot and has notified HBAA in writing of any concerns expressed by third parties in relation to the ownership, condition, authenticity, attribution, or export or import of the lot;
- (d) the seller is unaware of any matter or allegation which would render any description given by HBAA in relation to the lot inaccurate or misleading;
- (e) where the lot has been moved to Malaysia from another country, the lot has been lawfully imported into Malaysia; the lot has been lawfully and permanently exported as required by the

laws of any country in which it was located; required declarations upon the export and import of the lot have been properly made; any duties and taxes on the export and import of the lot have been paid;

(f) the seller has or will pay any and all taxes and/or duties that may be due on the net sale proceeds of the lot and the seller has notified HBAA in writing of any or all taxes and for duties that are payable by HBAA on behalf of the seller in any country other than the country of the sale; (g) unless HBAA is advised to the contrary in writing at the time the lot is delivered by the seller to HBAA, there are no restrictions, copyright or otherwise, relating to the lot (other than those imposed by law) and no restrictions on HBAA's rights to reproduce photographs or other images of the lot.

#### BEFORE THE SALE

#### 26. Preparation for sale

The seller agrees that HBAA shall have sole and absolute discretion as to:

- (a) the way in which property may be combined or divided into lots for sale;
- (b) the way in which lots are included in the sale;
- (c) the way in which any lot is described and illustrated in the catalogue or any condition report;
- (d) the date and place of the auction; and
- (e) the manner in which any sale is conducted.

HBAA reserves the right to consult with and rely on any outside experts, consultants or restorers of their choice in relation to the property and to carry out such other inquiries or tests in relation to the property either before or after the sale as HBAA may, in their absolute discretion, deem appropriate. This is however, a matter for HBAA's discretion and HBAA is under no duty to carry out such consultation, inquiries or tests.

#### 27. Estimates

Any estimate given by HBAA, whether written or oral, is a matter of opinion only and is intended only as a guide. An estimate shall not be relied upon as a guarantee of the anticipated selling price. Any estimate given (whether written or oral and whether in a catalogue or any marketing materials, receipt, letter or otherwise) may, in HBAA's absolute discretion, be revised from time to time.

#### 28. Exclusion of liability

Any representations, written or oral and including those in any catalogue, report, commentary or valuation in relation to any aspect or quality of any lot, including price or value (a) are statements of opinion only and (b) may be revised prior to the lot being offered for sale (including whilst the lot is on public view). Neither HBAA, any HBAA's

affiliated company, nor any agent employee or director thereof shall be liable for any errors or omissions in any such representations.

#### 29. Limitations on claims by seller

Any claim by the seller (excluding any claim covered by Condition 34) shall in any event, be limited to the net sales proceeds in respect of that lot.

#### 30. Withdrawal of lots by the seller

If the seller choose to withdraw a lot from the sale, provided that consent from HBAA must have first been obtained, after the earlier of (i) written agreement to sell the lot between the seller and HBAA and (ii) twelve (12) weeks before the date of the auction of the lot, the seller will be liable to pay to HBAA a withdrawal fee calculated in accordance with Condition 32 below. If the seller withdraws a lot before that time, no withdrawal fee shall be payable.

#### 31. Withdrawal of lots by HBAA

HBAA may withdraw a lot from sale without any liability if (i) HBAA reasonably believes that there is any doubt as to the authenticity or attribution of the lot or (ii) it is established or alleged that any of the seller's representations or warranties set out in Condition 25 above are inaccurate in any way or (iii) the seller breached any provisions of this Conditions of Business in any material respect or (iv) HBAA believes it would be improper to include the lot in the sale.

If HBAA becomes aware of a competing title claim to, or lien over, a lot consigned by the seller, HBAA shall not release the lot to the seller, which shall be held by HBAA at the seller's expense, until the title claim or lien, as applicable, has been finally resolved to HBAA's satisfaction.

#### 32. Withdrawal fee

If the lot is withdrawn because the circumstances described in any of (i) to (iv) of Condition 31 above occurs, HBAA reserves the right to charge an administrative fee equivalent to 0.5% of reserve price or RM500, whichever is greater) and the lot shall be returned to the seller at the seller's expense provided that there is no adverse title claim on the lot. If however the lot is withdrawn for any other reason, the seller shall pay HBAA a withdrawal fee equivalent to 10% of the reserve price, together with insurance and expenses. HBAA shall not be obliged to withdraw any lot from sale or to return it to the seller unless the seller has paid HBAA the withdrawal fee.

#### 33. Loss or damage

HBAA is unable to accept responsibility for any damages caused by the following:

- (a) normal wear and tear;

- (b) gradual deterioration;
- (c) inherent vice or defect including woodworm, mildew and other inherent defects not mentioned herein;
- (d) errors in processing;
- (e) changes in atmospheric conditions;
- (f) handling or storage; or
- (g) any loss, direct or indirect, consequential or otherwise, which may be suffered by the seller.

#### 34. Risk of loss or damage by the seller

If the seller has specifically instructed HBAA not to insure the lot, it will remain at the seller's risk at all times until the buyer has made payment in full or until the lot is returned to the seller in the event it is not sold. The seller hereby undertakes to indemnify HBAA, its employees and agents, and the buyer (where applicable) against any claim made against them in respect of the lot, however those claims may arise even if HBAA, its employees and agents were found to be negligent.

#### AT THE SALE

#### 35. Reserve price

Unless otherwise agreed in writing, each lot will be offered for sale subject to a reserve price as agreed between the seller and HBAA. HBAA shall in no circumstances be liable if bids are not received at the level of or below the reserve price. HBAA shall however be entitled to sell the lot below the reserve price. In such circumstance, HBAA shall be obliged to account to the seller as if the hammer price was equal to the reserve price, and the seller will pay HBAA the sales commission as if the lot has been sold at a hammer price equal to the reserve price.

In the event the reserve price has not been mutually agreed between the parties and confirmed by the seller in writing prior to the auction date, HBAA shall have the right to, in its sole discretion, set the reserve price of the lot.

#### 36. Bidding at the sale

The seller may not bid for his own property. Although HBAA shall be entitled to bid on behalf of the seller up to the amount of the reserve price, the seller shall not instruct or permit any other person to bid for the property on behalf of the seller. If the seller should bid on his own behalf (or instruct someone else to do so), HBAA may treat the seller as the successful bidder. In those circumstances, the seller shall not be entitled to the benefits of Conditions 4 and 35 above and the seller shall pay to HBAA a sum representing the total of the sales commission, the buyer's premium and all expenses which was incurred by HBAA in connection with the sale of the lot. HBAA shall be entitled to exercise a lien over the lot until payment of that sum has been made by the seller in full.

#### AFTER THE SALE

#### 37. Payment

Following the sale, the seller will be liable to pay HBAA the sales commission and expenses. HBAA shall be entitled to deduct each of these items from monies received from the buyer. The seller hereby authorises HBAA to charge the buyer and retain the buyer's premium.

#### 38. Payment of net sales proceeds to the seller

Unless HBAA has been notified by the buyer of his intention to rescind the sale on the basis that the lot is a counterfeit, HBAA shall send to the seller within six (6) weeks from the date of the sale of the lot, the net sales proceeds received from the buyer in cleared funds, less any other amount owing by the seller to HBAA or any HBAA's affiliated company. The seller should note that the net sales proceeds payable to the seller is derived from the actual proceeds of sale received by HBAA from the buyer. In the event of late payment by the buyer, HBAA shall, within two (2) weeks of receipt of such payment in cleared funds from the buyer, make such remittance to the seller. HBAA reserves the right to release a lot to the buyer before receipt of the full amount due for the lot.

#### 39. Rescission

Where HBAA is satisfied that the lot is a counterfeit, HBAA shall rescind the sale and notify the seller of such rescission. HBAA shall, in their absolute discretion, be entitled to dispense with the requirements of Condition 4 in determining whether or not a particular lot is a counterfeit. Within ten (10) days of receipt of the notice advising the seller of the rescission of the sale, the seller undertakes to refund to HBAA on demand the full amount due if HBAA has at that time paid the seller the whole or part of the full amount due to him. In the latter case, HBAA shall exercise a lien over any properties of the seller in its possession pending settlement of the full amount of refund due from the seller.

For the avoidance of doubt, the seller shall indemnify HBAA and its employees in full on demand against all claims, costs or expenses incurred by HBAA in relation to the lot as well as any loss or damage resulting from the same.

#### 40. Non-payment by the buyer

In the event the buyer fails to pay the full amount due within four (4) weeks from the date of the sale, HBAA shall be entitled to agree to special terms on behalf of the seller for payment, storage and insurance, and to take any necessary steps to collect the amount due from the buyer. However, HBAA shall not be obliged to remit the payment due to the seller; nor to take any legal proceedings on behalf of the seller. HBAA shall discuss with

the seller and agree on the appropriate course of action to be taken to recover the payment due from the buyer. In addition, HBAA shall have absolute discretion to take and enforce any of the remedies set out in Condition 23 above including the right to cancel the sale and return the property to the seller. HBAA shall be entitled to charge the buyer interest for late payment in accordance with Condition 23(b) above and the seller hereby authorises HBAA to retain such interest for HBAA's own account.

If the buyer fails to pay the full amount due but HBAA agrees to remit to the seller an amount equal to the net sale proceeds, ownership of the relevant lot shall pass to HBAA. For the avoidance of doubt, HBAA shall have the benefit of all of the seller's representations, warranties and indemnities set out in these Conditions of Business.

#### 41. Post-auction sales

In the event the lot is bought in or otherwise remains unsold by auction, HBAA shall be authorised as the exclusive agent of the seller for a period of seven (7) days following the auction date to sell such lot privately for a price that will result in a payment to the seller of no less than the amount (after deducting all charges due from the seller) to which he would have been entitled had the lot been sold at a price equivalent to the reserve price, or for any lesser amount which HBAA and the seller may agree and set out in writing. In such case, the seller's obligations to HBAA and the buyer with respect to the lot are the same as if such lot had been sold during the auction. Any reference in the Conditions of Business to the date of the auction shall be treated as being a reference to the date of the post-auction sale.

#### 42. Unsold lots

In the event the lot remains unsold and are not re-consigned to HBAA for sale or has been withdrawn from sale for whatever reason, it must be collected from the premises of HBAA (or its storage solution provider) within seven (7) days after the auction date or within thirty (30) days after HBAA sends the seller a notice requiring the seller to collect the lot (whichever occurs first). If the lot remains uncollected at the end of such period, HBAA shall arrange for storage of the lot at the seller's expense, which may involve removal of the lot to a third party storage facility. The lot shall only be released upon full payment of all storage, transportation, insurance and any other costs incurred, together with payment of all other monies due to HBAA.

If the lot remains uncollected in ninety (90) days after the auction date, HBAA shall have the right to dispose of it as they see fit, which may involve



offering the lot for sale by public auction or private sale on such price and terms as HBAA considers appropriate including those relating to estimates and reserves. HBAA shall then account to the seller for the proceeds of sale (after deducting all payments due to HBAA under the terms of the Consignment Agreement).

Without prejudice to the above, HBAA shall be entitled to keep possession of any unsold lot until the seller has paid all amounts owing to HBAA under the Consignment Agreement, and HBAA shall have the right to sell the lot on such terms as HBAA considers appropriate, to use or deal with it in order to recover any outstanding sums from the seller; and HBAA shall then account to the seller for the proceeds of sale after having deducted from the proceeds all amounts due to HBAA from the seller.

#### **D. CONDITIONS CONCERNING BOTH BUYERS AND SELLERS**

##### **43. Governing law**

These Conditions of Business and any amendment to them shall be governed by and interpreted and construed in accordance with the laws of Malaysia.

##### **44. Jurisdiction**

HBAA and all buyers and sellers (and any prospective buyers or sellers) agree that the courts of Malaysia are to have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the validity, effect, interpretation or performance of, or the legal relationships established by, these Conditions of Business or otherwise arising in connection with these Conditions of Business.

##### **45. Service of process**

All buyers and sellers irrevocably consent to service of process or any other documents in connection with proceedings in any Court by facsimile transmission, personal service, delivery at the last address known to HBAA or any other usual address, mail or in any other manner permitted by Malaysian law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

##### **46. Photographs and illustrations**

The buyers and sellers agree that HBAA shall have the absolute right (on a non-exclusive basis) to photograph, video and otherwise reproduce images of each lot consigned to HBAA for sale. The copyright of all images, illustrations, written materials and published contents produced by or on behalf of HBAA relating to each lot shall remain at all times the property of HBAA and shall not be used by any person without the prior written consent of HBAA. HBAA shall have

the right to use all such materials in whatever manner it deems fit in the normal course of HBAA's business and the business of its affiliated companies.

##### **47. Copyright**

No representations or warranties are made by either the seller or HBAA as to whether any lot is subject to copyright nor as to whether the buyer acquires any copyright in any lot sold.

##### **48. Export/Import and embargoes**

No representations or warranties are made by HBAA or the seller as to whether any lot is subject to any export restrictions from Malaysia or any import restrictions of any other country. Similarly, HBAA makes no representations or warranties as to whether any embargoes exist in relation to particular lots.

##### **49. Notices**

Any letter, notice, request, demand or certificate: (a) if delivered personally shall be deemed to be received at the time of receipt by the recipient; or

(b) if despatched by prepaid registered post, first class post or express or air mail or other fast postal service shall be deemed to have been duly served within seven (7) days of despatch (notwithstanding that it is returned through the post undelivered); or

(c) if sent by telex or by facsimile transmission or other electronic media shall be deemed to have been given at the time of transmission, and if sent by telegram or cable shall be deemed to have been given 24 hours after despatch.

Any notice sent to HBAA shall be sent to:

Wisma Henry Butcher, No. 25 Jalan Yap Ah Shak, Off Jalan Dang Wangi, 50300 Kuala Lumpur, Wilayah Persekutuan.

Any notice which HBAA delivers to the buyer or seller may be sent to the last address known to HBAA.

##### **50. Severability**

If any part of these Conditions of Business 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.

##### **51. Personal details**

If HBAA so requests, each of the buyer, the seller and any bidder at auction agrees to provide (in a form acceptable to HBAA) written confirmation of their name, permanent address, proof of identity and creditworthiness.

##### **52. Introductory fees**

HBAA reserves the right to claim for the payment of an introductory fee or selling commission for the lot from any party.

##### **53. Miscellaneous**

(a) The headings and introduction to these Conditions of Business do not form part of the Conditions of Business, but are for convenience only.

(b) No act, failure to act or partial act by HBAA shall be deemed a waiver of any of its rights hereunder.

(c) The singular includes the plural and vice versa where the context requires.

(d) These Conditions of Business shall not be assignable by the buyer or the seller without the prior written agreement of HBAA. However, these Conditions of Business shall be binding on any of your successors, assigns, trustees, executors, administrators and representatives.

(e) Where terms have special meanings ascribed to them, a glossary may appear before the first lot in the relevant catalogue.