HENLEYS AUCTIONS

Terms and Conditions of Sale

Henleys Auction House Pty Ltd, trading as Henleys Auctions

These Terms and Conditions of Sale set out the policies of Henleys Auction House Pty Ltd, trading as Henleys Auctions (hereinafter referred to as “Henleys”). They are the terms on which Henleys 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 terms are used regularly throughout these conditions and have the following meanings:

“Auction” means the event at which any Lot is offered for Sale by Henleys.

“Auctioneer” means the representative of Henleys conducting the Auction.

“Bid / Bidder” means the act of notifying the Auctioneer of the intention to purchase a Lot, and the person or entity making that act. Bidding is understood by both the Bidder and Henleys to be contractually binding.

“Buyer” means the person with the highest Bid accepted by the Auctioneer.

“Buyer’s Premium” means the charge payable by the Buyer to Henleys 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 Henleys 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 Henleys).

“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 Henleys 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 Prices, Reserves, Buyer’s Premium and other expressions of value are understood to be in Australian Dollars unless otherwise specified.

2. Henleys as Agent

Except as otherwise stated, Henleys 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 Henleys nor the Seller provides any guarantee in relation to the nature of the property apart from the Limited Warranty set out in clause 7. The property is otherwise sold “as is”.

(b) Catalogue and other descriptions. All statements by Henleys 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 Henleys of any kind. References in the catalogue entry or the condition report, including 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. 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 Henleys 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, and 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 an item turns out to be a Forgery or is 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 Henleys 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. Condition reports are available on request via the “more info” link on each Lot listing.

4. At the Sale

(a) Refusal of admission. Henleys reserves the right at its 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. Henleys may request bank, trade or other financial references to substantiate this registration.

(c) Bidding as a principal. When making a Bid, a Bidder accepts 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 Henleys before the commencement of the Sale that the Bidder is acting as agent on behalf of an identified third party acceptable to Henleys, and that Henleys will only look to the principal for payment.

(d) International registrations. All international clients not known to Henleys will be required to provide, by scan or photograph, an accredited form of photographic identification and to pay a deposit at our discretion in cleared funds into the Henleys account at least 48 hours before the commencement of the Auction. Bids will not be accepted without this deposit. Henleys also reserves the right to request additional forms of identification prior to registering an overseas Bid. This deposit may be made using a credit card, is redeemable against any Auction purchase, and secure online credit card payments can be made via the Henleys website.

(e) Absentee bids. Henleys will use reasonable efforts to execute written Bids delivered to us at least 24 hours prior to the Sale, for the convenience of clients unable to attend the Auction in person. If Henleys 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 Henleys after the Auction whether they were successful. Unlimited or “buy” Bids will not be accepted. Please refer to the indicative bidding increments in clause 4(k) for appropriate absentee Bid amounts.

(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. Henleys 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 Henleys cannot be held responsible for any miscommunications in the process. The success of telephone bidding cannot be guaranteed due to unforeseen circumstances. Buyers should be aware of the risk and accept the consequences should contact be unsuccessful at the time of Auction. You must advise Henleys of the Lots in question and provide a “cover Bid” amount should there be any issue with technology or communication via the telephone number provided. Henleys will advise telephone Bidders who have registered at least 24 hours before the Auction of any relevant changes to descriptions, withdrawals or any other saleroom notices.

(g) Online bidding. Henleys 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, and may continue to Bid on behalf of the Seller up to the amount of the Reserve, either by placing consecutive Bids or by placing Bids in response to other Bidders.

(i) Auctioneer's discretion. The Auctioneer has the right, at its absolute and sole discretion, to refuse any Bid, to advance the bidding in such manner as it 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. In the event of a dispute, or where the Auctioneer or Henleys is of the opinion that there has been a misunderstanding or mistake regarding a Sale or a Lot, the Auctioneer may rescind the Sale and put any Lot up for a second Auction. If a Sale is rescinded, Henleys may put the Lot up at a second Auction, offer the Lot for Sale by private treaty, or withdraw the Lot from Sale entirely.

(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. Henleys shall not be liable for any breach of contract by either the Seller or the Buyer.

(k) Indicative bidding increments. Henleys reserves the right to refuse any Bid, to withdraw any Lot from Sale, to place a Reserve on any Lot, and to advance the bidding according to the following steps. Absentee Bids must follow these increments; any Bid that does not follow the steps will be rounded up to the nearest acceptable Bid.

Hammer price range	Bidding increment
$0 – $499	$20
$500 – $999	$50
$1,000 – $1,999	$100
$2,000 – $4,999	$200
$5,000 – $9,999	$500
$10,000 – $19,999	$1,000
$20,000 – $49,999	$2,000
$50,000 – $99,999	$5,000
$100,000 – $199,999	$10,000
$200,000 – $499,999	$20,000
$500,000 – $999,999	$50,000
$1,000,000 – $1,999,999	$100,000
$2,000,000 and above	$200,000

5. After the Sale

(a) Buyer's Premium. In addition to the Hammer Price, the Buyer agrees to pay to Henleys the Buyer's Premium. The Buyer's Premium is 22% of the Hammer Price, plus GST where applicable.

(b) Online surcharge. Where the Buyer purchases via an online bidding platform, the Buyer agrees to pay the online bidding surcharge of 2% (henleysauctions.com.au) or 5% (liveauctioneers.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) no later than three (3) days after the Auction date. The Buyer will not acquire title to the Lot until Henleys receives full payment in cleared funds, and no goods will be released under any circumstances without confirmation of cleared funds received. This applies even if the Buyer wishes to send items interstate or overseas.

Payment may be made by the following means:

- Bank transfer / direct deposit (our preferred method). Account name: Henleys Auctions; Bank: Westpac Banking Corporation; BSB: 033-059; Account No: 805840; SWIFT: WPACAU2S; Bank address: 156 Glenferrie Rd, Malvern, VIC 3144. The Buyer is responsible for any bank fees and charges applicable to the transfer of funds into the Henleys account.
- EFTPOS (no charge).
- Credit card: Visa, Mastercard and American Express. Credit card transactions over $5,000 will not be accepted over the telephone unless by prior arrangement.
- Cash up to AU$10,000. For any amount over this, cash is to be deposited directly into our account at a Westpac branch.
- Personal, company and bank cheques are not accepted without prior approval.

(d) Collection of purchases and insurance. Henleys 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 Henleys and the Buyer. From the fall of the hammer, insurance is the responsibility of the Buyer.

(e) Packing, handling and shipping. Buyers are required to make their own arrangements for packing, handling, shipping and transit insurance. At the request of the Buyer, Henleys may assist with packing, or may arrange for a carrier, packer or shipper to have the property packed, insured and shipped, in each case at the Buyer's expense. All packing, shipping, insurance, postage and associated charges will be borne by the Buyer. Henleys takes no responsibility for loss, damage or breakage that may occur, nor for the actions of any recommended third party. For an updated list of recommended shippers, please see henleysauctions.com.au/shipping.

(f) Cultural heritage export licences. Unless otherwise agreed by Henleys in writing, the fact that the Buyer wishes to apply for an export licence does not affect their obligation to make full payment within the time required under clause 5(c), nor Henleys' right to charge interest or storage charges on late payment. It is the responsibility of the Buyer to check the Protection of Movable Cultural Heritage Act 1986 (Cth) prior to purchase. Export and import licence applications are the responsibility of the Buyer and/or the Buyer's nominated shipper. Henleys 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 within the three (3) days required under clause 5(c), Henleys is entitled to exercise one or more of the following rights or remedies, in addition to 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, together 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 Henleys sees 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 which circumstances the defaulting Buyer can have no claim upon Henleys in the event that the Lot is sold for an amount greater than the original invoiced amount;

(vi) to offset against any amounts which Henleys may owe the Buyer across any other transactions;

(vii) to charge the payment via the Buyer's registered credit card and to retain any deposits;

(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 otherwise, to the fullest extent permitted by the law of the place where such property is located. The Buyer will be deemed to have granted such security to us, and we may retain such property as collateral security for the Buyer's obligations to Henleys;

(x) to take such other action as Henleys deems 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, Henleys shall be permitted to:

(i) remove, store and further insure the Lot at the expense of the Buyer, releasing it only after full payment has been received from the Buyer for the incurred costs;

(ii) resell 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 Henleys resells the property under clauses 5(g) or 5(h), the defaulting Buyer agrees to be liable for any deficiency between the total amount originally due and the price obtained, as well as all legal costs, expenses, damages, legal fees, commissions and premiums of whatever kind associated with both Sales or otherwise arising from the default.

6. Extent of Henleys' Liability

Henleys agrees to refund the purchase price, less the non-refundable Buyer's Premium, in the circumstances of the Limited Warranty set out in clause 7. Apart from that, neither the Seller nor Henleys, nor any of Henleys' employees or agents, is 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, nor for any faults or defects in any Lot. Except as stated in clause 7, neither the Seller, Henleys, nor its officers, agents or employees gives any representation, warranty or guarantee, or assumes 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 clause.

7. Limited Warranty

Subject to the terms and conditions of this clause, Henleys warrants, for the period of fourteen (14) days from the date of the Sale, that any property described in the catalogue (as 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 terms "author" and "authorship" refer to the creator of the property, or to the period, culture, source or origin, as the case may be, with which the creation of the 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 publication of the catalogue was unreasonably expensive or impractical, or likely to have caused damage to the property;

(ii) the benefit of the warranty is not assignable and applies only to the original Buyer of the Lot as shown on the invoice originally issued by Henleys 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, 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 Henleys will be liable for any special, incidental or consequential damages, including, without limitation, loss of profits or interest;

(v) the Buyer must give written notice of claim to Henleys within fourteen (14) days of the date of the Auction. Henleys 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 Henleys, to decide whether to cancel the Sale under warranty;

(vi) the Buyer must return the Lot to Henleys in the same condition in which 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 remainder of the conditions shall continue to be valid to the fullest extent permitted by law.

9. Copyright

The copyright in all images, illustrations and written material produced by Henleys relating to a Lot is and shall remain at all times the property of Henleys, and shall not be used by the Buyer or anyone else without our prior written consent. Henleys 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 of Victoria.

11. Pre-Sale Estimates

Henleys publishes with each catalogue its 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 Henleys prior to Auction for updated pre-Sale estimates and starting prices.

12. Sale Results

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

13. Goods and Services Tax

In accordance with A New Tax System (Goods and Services Tax) Act 1999, Henleys collects on behalf of the Australian Taxation Office (ATO) a Goods and Services Tax (GST) of 10% on all applicable transactions.

GST applies to the Hammer Price where the Seller is registered for GST, or where the Seller is not an Australian resident. These Lots are denoted by a dagger symbol (†) placed next to the estimate.

GST of 10% applies to the Buyer’s Premium on every Sale. The Buyer’s Premium is consideration for the auction and agency services performed by Henleys in Australia in relation to goods situated in Australia, and is therefore subject to GST regardless of the Buyer’s place of residence or the destination of the goods.

Overseas and non-resident Buyers will not be charged GST on the Hammer Price where both of the following apply:

1. the goods are exported through a Henleys-approved freight company, including Australia Post; and
2. the goods are exported within 60 days of the earlier of the date of payment or the date of the invoice.

For the avoidance of doubt, the GST exemption available to overseas and non-resident Buyers applies to the Hammer Price only. GST on the Buyer’s Premium remains payable in all cases.

The invoice supplied by Henleys for purchases will be regarded as a Tax Invoice for GST purposes.

14. Resale Royalty Scheme

Under the Resale Royalty Right for Visual Artists Act 2009 (Cth), Sellers must provide the following information to comply with the Act:

- Was the artwork acquired after 8 June 2010?
- Is the Sale or 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 they understand their legal obligations under the Resale Royalty Right for Visual Artists Act 2009 (the Act);

(ii) undertakes to comply with all requirements of the Act, including by providing its agent, Henleys, with accurate information sufficient for compliance with sections 28 and 29 of the Act;

(iii) undertakes to indemnify Henleys for any loss incurred as a result of the Seller’s failure to comply with any of the Seller’s legal obligations under the Act; and

(iv) acknowledges that, if they fail to comply with any of their legal obligations under the Act, Henleys may provide the Seller’s name and contact details to Copyright Agency Limited (CAL).

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

15. Jewels and Watches

Gemstones. Gemstones have historically been subjected to a variety of treatments to enhance their appearance. Sapphires 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. Some treatments are permanent, while others may need special care to preserve their appearance. A number of laboratories issue certificates giving detailed descriptions of gemstones, and where Henleys has been supplied with or obtained a certificate for any Lot, this shall be noted in the catalogue. However, as there may not be consensus between different laboratories on the degree or type of treatment, Henleys supplies these without warranty. Buyers should assume that all gemstones sold by Henleys 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 Henleys may have been subjected to such treatments, and that the catalogue estimates reflect this.

Watches. All watches sold by Henleys are sold on an “as is” basis. Henleys 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, 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, has been measured in the mount, and is a statement of opinion only. This information is given as a guide only, and Buyers should satisfy themselves as to its accuracy.

Gold. Gold is sold in good faith that its purity is as marked or hallmarked on the object. Should an item have a gold content 15% less than the catalogued amount, Henleys will refund in accordance with these Terms and Conditions.