

WATERFORD'S

# Buyer's Agreement/ Terms of Sale

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Conditions of agreement between Auction House and Buyer of goods

**Buyer's Agreement/ Terms of Sale**

Bidesire LLC, a New Jersey Limited Liability Company, doing business as Waterford's (herein referred to as "the Auction House"), 147 Jackson Rd., Berlin NJ 08009.

All Bidders are responsible for reading and understanding these Terms of Sale as well as all supplemental notices.

**1. As-Is**

All lots are sold "As-Is" and without recourse. Neither the Auction House nor its consignor make any warranties, expressed or implied, with respect to such lots except for the limited warranties expressly stated in the Terms of Sale.

The Auction House makes no warranties, expressed or implied, of any nature with respect to fitness for purpose or merchantability or the correctness of catalogue or other descriptions of the attribution, period, genuineness, importance, medium, material, culture, source, origin, physical condition, size, or quality of any lot sold. References in the catalogue or condition reports to damage or restoration are for guidance only. The absence of any reference to condition or the reference to particular defects of any lot does not imply the absence of imperfections, effects of aging, or other defects.

The Terms of Sale are binding and no statement, written or oral, shall be deemed to create any warranty or assumption of liability. All statements by the Auction House in the catalogue entry or condition report for the lot are statements of opinion and are not to be relied on as statements of fact. Except as stated in the Terms of Sale, neither the Auction House nor the consignor selling the lot are responsible in any way for errors or omissions in the catalogue or in any supplemental material.

The Auction House and its consignor do not make, expressed or implied, any warranty of reproduction rights, copyrights, or other intellectual property rights with respect to the lots.

**2. Exclusions to Warranty**

This warranty does not apply to:

- a. Authorship of any lot created prior to 1900, unless the lot is determined to be a counterfeit which has a value at the date of the claim for rescission which is materially less than the purchase price paid for the lot; or
- b. Authorship which is determined in accordance with the generally accepted view of specialists and scholars on the date of the sale and subsequently altered by the later discovery of new information, historical or physical, pertaining to the artist, designer, workshop or school; or
- c. The identification, on the date of the sale, of periods or dates during which a lot was designed or created that is subsequently proven inaccurate by scientific processes which are unreasonably expensive or impractical at the time of the publication of the catalogue, or by scientific processes not generally accepted for use until after the Auction House's publication of the catalogue

### **3. Condition Reports**

Condition reports are made as statements of opinion by the staff of the Auction House and/or by independent consultants and are not made as or considered to be statements of fact. Condition reports in no way create any warranty or assumption of liability. The absence of a condition statement does not imply that the lot is in excellent condition or completely free from wear and tear, imperfections or the effects of aging.

### **4. Estimates**

The estimates provided for each lot in this catalogue represents the Auction House's opinion of the price range that a buyer would pay for the lot at auction. Estimates are based when possible on the prices paid for comparable items sold at auction in the past. Estimates are often determined several months before a sale and are subject to revision based on further research of the property, changes to market conditions, or fluctuations in currency. Estimates do not include the buyer's premium. The actual price realized for any lot may fall above or below the range of the estimate.

### **5. Reserves**

A reserve is the confidential minimum price a lot may be sold for at auction as established by the Auction House and the consignor. If the auctioneer decides that any bid is below the value of the lot offered, the auctioneer may reject the bid and withdraw the lot from the sale.

The Auction House acts as an agent of the seller and prohibits the consignor/seller from bidding on his or her own property at auction. The Auction House may implement the reserve by opening biddings or bidding successively on any lot by placing a bid on behalf of the seller up to the amount of the reserve.

### **6. Bidding**

All bidders must register and receive a bidding number from the Auction House prior to bidding on any lot, at any auction.

By bidding at the auction the buyer and all bidders agree to be bound by these terms or those changed or supplemented, whether bidding in person, through a representative, by phone, internet or other absentee bid.

The Auction House reserves the right, at our sole discretion, to refuse admission to the premises or participation in any auction. The Auction House also reserves the right to reject any bid and the right to refuse to acknowledge any bidder.

The Auction House reserves the exclusive right to determine the validity of any bid, and to settle any dispute that may arise between bidders. In the event of a dispute, or if the Auction House has any doubt of the validity of a bid, the auctioneer reserves the right to a) determine the successful bidder b) continue bidding or c) cancel a sale. Waterford's is not responsible for omissions, clerical or typographical errors in the catalogue and during the auction itself.

**7. Internet, Telephone and Absentee Bids**

The Auction House allows for clients to bid and buy online through the services of Live Auctioneers, Invaluable and Bidsquare. All clients must be registered to bid with the Auction House, and or through the websites prior to bidding online. Any client who chooses to use the service Live Auctioneers, Invaluable and/or Bidsquare is responsible for obtaining all necessary information for bidding and buying online from Live Auctioneers, Invaluable and/or Bidsquare. Any client who uses Live Auctioneers, Invaluable and/or Bidsquare to bid or buy online indemnifies and hold the Auction House and its consignors harmless against any claim arising out of or resulting from your use of Live Auctioneers, Invaluable and/or Bidsquare including all losses, damages, liabilities, and all fees (including attorney's fees), costs, and expenses incurred in connection with any claim. Under no circumstances, including, but not limited to, negligence, shall the Auction House and its consignors be liable for lost profits or any special, incidental, or consequential damages that result from the use of, or the inability to use, these sites.

Registered buyers interested in bidding by telephone must request to do so before the auction. All telephone bids must be received by the Auction House at least 72 hours prior to the beginning of the auction, unless previously registered the Auction House requires 24 hours' notice prior to the beginning of the auction. The buyer will receive a call from a Waterford's employee approximately five lots before the lot they wish to bid on goes to auction. The employee will then bid according to the instructions of the telephone buyer. The employee will keep the buyer informed of the progress of the auction until the buyer is successful in purchasing the lot or makes the decision to stop bidding. Any client who places a telephone bid with the Auction House, Live Auctioneers, Invaluable and/or Bidsquare and also bid in person or by absentee bid is solely responsible to cancel any or all telephone bids prior to the start of the auction. If the client does not cancel the bid, he or she is solely responsible for the property's purchase.

The Auction House also accepts absentee bids from registered bidders. All absentee bids must be received by the Auction House at least 72 hours prior to the beginning of the auction, unless previously registered the Auction House requires 24 hours' notice prior to the beginning of the auction. Any client who places an absentee bid with the Auction House, Live Auctioneers, Invaluable and/or Bidsquare and also bid in person or by phone is solely responsible to cancel any or all absentee bids prior to the start of the auction. If the client does not cancel the bid, he or she is solely responsible for the property's purchase.

Any Client who successfully buys a lot through Live Auctioneers, Invaluable and/or Bidsquare, telephone bid or by absentee bid, is subject to responsibilities stated in section 7.

**8. Buyer's Responsibility (Premium, Purchase Price, Taxes & Billing)**

Upon the fall of the auctioneer's hammer, the title passes to the successful buyer and owner of the property. The successful buyer and owner of the property is responsible for the amount of the successful bid, the buyer's premium, applicable taxes and all other charges as set forth in the Terms of Sale. The buyer's premium is 20% of the hammer price of each lot unless otherwise stated in a written agreement between the Auction House and the buyer.

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Any Client who successfully buys a lot through Bidsquare will be subject to an additional 1.5%, Live Auctioneers will be subject to an additional 3% buyer's premium and Invaluable will be subject to an additional 5% buyer's premium.

The buyer is responsible to pay the full amount due for their purchase, including the amount of the successful bid, the buyer's premium, all applicable taxes and all other charges set forth in the Terms of Sale to the Auction House within seven (7) days of the auction.

In the event that the Auction House executes absentee bids, telephone bids, or internet bids as a convenience to clients not present at the auction, the Auction House is not responsible for any errors in connection therewith. In the event that the Auction House has provided a written agreement allowing for a representative to bid on behalf of the buyer in his or her absence from the auction, the buyer is personally liable for all bidding or other actions made by the agreed upon representative.

## **Taxes**

Waterford's is currently registered to collect sales tax in the state of New Jersey. For any property collected, delivered to or received\* by the buyer in New Jersey, such property is subject to the applicable sales tax set by the state. Waterford's is legally required to collect and remit the tax, which will be added to your invoice.

\*Collected or received by the buyer can also include the hiring of a common carrier by the purchaser, which in essence makes the common carrier the purchaser's agent. Therefore, once the agent takes possession of the item within this State it becomes taxable, since the exchange takes place within the State.

A registered re-seller dealer is allowed to purchase items without incurring a tax liability, and Waterford's is not required to collect sales tax from such re-seller. However, the re-seller, when re-selling the property, may be required to charge sales tax to its client, or the client may be required to self-assess sales or use tax upon acquiring the item.

Other exemptions may apply.

## **9. Payment and Collection Responsibilities**

On the fall of the auctioneer's hammer, the buyer immediately assumes the title of the property, is liable for the full hammer price, buyer's premium and all other taxes and fees, and assumes full risk and responsibility for the property purchased, including all costs and expenses of handling, shipping, insurance, taxes.

The buyer will receive an invoice listing all fees and the total due for all purchases immediately following the auction. Any buyer not present will be sent an invoice by email within (72) hours of the auction's completion. All buyers must immediately pay for the lot purchased, within a maximum period of seven (7) days after the auction, and remove the property from the premises of the Auction House within thirty (30) days of the sale. Any lot not collected within thirty (30) days of the sale will be subject to a storage fee of ten (\$10) USD per day, per item.

All invoices not paid within thirty (30) days following the auction sale date will be subject to a 5% late payment fee on the entire invoice price. If payment is not submitted within thirty (30) days following the

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auction, Waterford's may charge the outstanding balance to the credit card provided by the buyer during registration.

## **10. Methods of Payment**

Payment will be accepted by credit card, subject to a 3% transaction fee, debit card, wire transfer, money order, and/or cashier's check for any lots purchased, including the full hammer price, buyer's premium and all other taxes and fees, for Ten Thousand (\$10,000) US Dollars or less. Buyer is subject to a \$35 fee for bounced checks.

Lots purchased, including the full hammer prices, buyer's premium and all other taxes and fees, for over Ten Thousand (\$10,000) US Dollars must be paid for directly to the Auction House by wire transfer, money order, and/or cashier's check. Buyer is subject to a \$35 fee for bounced checks.

Paypal payments up to Three Thousand (\$3,000) US Dollars, which include the full hammer prices, buyer's premium and all other taxes and fees are subject to a 2.9% transaction fee for US based buyers, or 3.9% for buyers outside of the US. Auction House is not responsible for any delays or actions caused by Paypal.

## **11. Shipping Responsibilities**

The buyer is responsible for the packing and shipping all purchased property. Buyers may independently arrange for collection and shipment of their purchased lots using a delivery agent, please note the Auction House may apply a packaging fee. Delivery agent must show written authorization for shipping.

The Auction House is not responsible for any damage or loss that occurs while the buyer's purchased lots are in another's care. The Auction House is not responsible for any damage or loss that occurs in the packing or shipment of any purchased lot.

The delivery of expensive, heavy or large objects may be costly. All buyer's must consider this expense prior to bidding.

Items are also bought 'As Is' i.e. If a painting is purchased in a frame, the entire lot will be shipped.

## **12. Export or Import**

The buyer is solely responsible to familiarize himself or herself with U.S. and International laws or requirements for import or export. It is the buyer's sole responsibility to identify and obtain any necessary export, import, endangered species or other permit prior to bidding, and to abide by all applicable International laws and requirements and all U.S. laws and requirements. Neither the Auction House nor the consignor make any representations or warranties as to whether any lot is or is not subject to export or import restrictions. The Auction House and consignor assume no responsibilities with regard to these matters.

## **13. Returns**

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The Auction House will accept returns of any purchased items, for any reason as long as the item is returned to us in its original condition up to thirty (30) days following the auction sale date. Once thirty (30) days have passed, no returns for any reason will be accepted.

If a buyer does return an item within the thirty (30) days, a credit for the hammer price plus buyer's premium only will be applied to the buyer's account, which can be used for future auction sales.

## **14. Withdrawal and Rescission**

The Auction House reserves the right to withdraw any lot at any time prior to the commencement of bidding for such lot.

The buyer agrees to all statements of Warranty as set forth in the Terms of Sale. The warranty is made only to the original buyer at the auction, and only the registered bidder will be considered to be the original buyer. The buyer understands and agrees that the exclusive remedy for any breach of the warranty will be a rescission of the sale and refund of the original purchase price, including the bid, buyer's premium and any taxes paid. Neither the Auction House nor its Consignor shall be liable for damages beyond the remedy expressly provided for herein, such as, but not limited to, direct, indirect, special, incidental, punitive, or consequential, including the loss of profit or revenue, cost of obtaining alternative property, claims of customers of the buyer or otherwise.

## **15. Remedies available to Waterford's**

In addition to all other remedies available to us by federal law or the laws of the State of New Jersey, the Auction House reserves the right to exercise one or more of the following remedies or rights at our sole discretion:

- a. To hold any buyer who defaults liable for the total amount due and to initiate legal proceedings for its recovery together with interest, legal fees and costs as permitted under law
- b. Cancel any and all purchases made by a buyer who defaults on payment for any lot purchased
- c. Resell the property at public auction without reserve, with the defaulting buyer responsible for any deficiency, cost, expense, including handling charges and commission on both sales at the standard rate, and all other charges due herein
- d. When the defaulting buyer owes several amounts related to different transaction, the auction house will apply any amount paid to discharge any amounts owed by the buyer on any other transactions or purchases
- e. Offset any outstanding amounts owed by the buyer to the auction house against any amounts owed by the auction house to the buyer for any other transactions or purchases
- f. To reject any future bids made by or on behalf of the buyer
- g. To require a deposit from the buyer before accepting any future bids
- h. To take any other actions the auction house deems necessary
- i. To effect any combination thereof.

**16. Limitations of Liability**

The Auction House is in no way responsible for any default by a consignor. The Auction House acts only as an agent for the consignor and in no way accepts any liability for any breach by the consignor.

**17. Modification and Waiver of Conditions**

Any and all of these conditions may be waived or modified at the sole discretion of the Auction House if the modified Terms of Sale are agreed to in a written agreement signed by both parties.

If any provision or portion of these Terms of Sale shall be deemed unlawful, void or unenforceable under applicable law, that provision or portion shall be stricken and severed from the remaining provisions, which shall remain in full force and effect. Failure to enforce any of the provisions or portions in the Terms of Sale shall not be deemed a waiver of the right to enforce any other provision or portion of these Terms of Sale.