

**BUYER'S TERMS & CONDITIONS OF BUSINESS. Page 1.**

All items listed in this catalogue & the sale thereof, are subject to the following terms & conditions. In particular please note Conditions 3 & 4 which relate to the requirement to investigate lots prior to bidding & limitations & exclusions of legal liability of Australian Arms Auctions Pty Ltd ("AAA") & the Seller of the goods ("the Vendor").

**1. CONTRACTUAL RELATIONSHIPS**

- (a) These Buyer's Terms & Conditions of Business constitute the entire contractual relationship between AAA, the Vendor & the Buyer.
- (b) As auctioneer, AAA acts as agent for the Vendor. A sale contract is made directly between the Vendor & the Buyer. However, AAA may own a lot (& in such circumstances acts in a principal capacity as Vendor) &/or may have a legal, beneficial or financial interest in a lot as a secured creditor or otherwise.
- (c) Any person who bids on any item included in this catalogue or otherwise included in the sale, whether successful or unsuccessful in the bid, is deemed to have accepted these Buyer's Terms & Conditions of Business & agrees to unreservedly be bound by them.

**2. COMMON TERMS.** In these Buyer's Terms & Conditions of Business:

'AAA' means Australian Arms Auctions Pty Ltd (ABN 75 058 721 047) the address of which is PO Box 1142, Doncaster East, Victoria Australia 3109.

'ABN' means Australian Business Number as defined in a New Tax System (Australian Business Number) Act 1999 as amended;

'Australian Resident' means an Australian resident as defined in the GST Act;

'Bidder' is any person considering, making or attempting to make a bid, by whatever means, & includes Buyers;

'Buyer' is the person who makes the highest bid or offer accepted by the Auctioneer & includes such person's principal when bidding as agent;

'Buyer's Expenses' are any costs or expenses due to AAA from the Buyer, including GST;

'Buyer's Premium' is the commission payable by the Buyer on the Hammer Price in accordance with Condition 14 plus any applicable GST (see condition 13 regarding GST);

'GST' means a tax payable under the GST Act;

'GST Act' means a New Tax System (Goods & Services Tax) Act 1999 as amended;

'Hammer Price' is the highest bid accepted by the Auctioneer by the fall of the hammer, or in the case of a post-auction sale, the agreed sale price;

'Insurance' means transit insurance of Buyers goods & shall be charged unless notified otherwise.

'Purchase Price' is the Hammer Price & applicable Buyer's Premium & GST;

'Reserve' is the confidential minimum Hammer Price at which the Vendor has agreed to sell a lot;

'Storage Charge' is the amount in which AAA in its absolute discretion may impose in addition to the Purchase Price on any lot not collected within 2 days of the auction & such charge, if imposed, shall be deemed a Buyer's Expense.

'Transfer fee' is the amount, per licensed firearm, plus GST, due & payable on transfer of all licensed firearms & shall be deemed a Buyer's Expense.

'Tax Invoice' means a tax invoice as defined in the GST Act.

'Vendor' is the person offering a lot for sale (including any agent executors or personal representatives);

**3. DUTIES OF BIDDERS & OF AAA IN RESPECT OF ITEMS FOR SALE**

- (a) AAA's knowledge in relation to each lot is partially dependent on information provided to it by the Vendor & AAA is not able to & does not carry out exhaustive due diligence on each lot. Bidders acknowledge this fact & accept responsibility for carrying out inspections & investigations to satisfy themselves as to the lots in which they may be interested.
- (b) Each lot offered for sale by AAA is available for inspection by Bidders prior to the sale. AAA accepts bids on lots solely on the basis that Bidders (& independent experts on their behalf, to the extent appropriate given the nature & value of the lot & the Bidder's own expertise) have fully inspected the lot prior to bidding & have satisfied themselves as to both the condition of the lot & the accuracy of its description.
- (c) Bidders acknowledge that many lots are of an age & type which means that they are not in perfect condition. All lots are offered for sale in the condition they are in at the time of the auction (whether or not Bidders are in attendance at the auction). Condition reports may be available to assist when inspecting lots. Catalogue descriptions & condition reports may on occasions make reference to particular imperfections of a lot, but Bidders should note that lots may have other faults not expressly referred to in the catalogue or condition report. Illustrations are for identification purposes only & will not convey full information as to the actual condition of lots.
- (d) Information provided to Bidders in respect of any lot, including any estimate, whether written or oral & including information in any catalogue, condition or other report, commentary or valuation, is not a representation of fact but rather is a statement of opinion genuinely held by AAA. Any estimate may not be relied on as a prediction of the selling price or value of the lot & may be revised from time to time in AAA's absolute discretion. Such revision may be given by a saleroom notice in writing or orally by the Auctioneer prior to the offering of the lot.
- (e) Subject to the matters referred to at 3(a) to 3(d) above & to the specific exclusions contained at Condition 4 below, AAA shall exercise such reasonable care when making express statements in catalogue descriptions or condition reports as is consistent with its role as Auctioneer of lots in the sale to which these Conditions relate, & in the case of (i) the information provided to it by the Vendor; (ii) scholarship & technical knowledge; & (iii) the generally accepted opinions of relevant experts, in each case at the time any such express statement is made.

**4. EXCLUSIONS & LIMITATIONS OF Liabilities' TO BUYERS**

- (a) In the light of the matters in Condition 3 above & subject to Condition 4(d), neither AAA nor the Vendor;
- (i) is liable for any errors or omissions in information provided to Bidders by AAA, whether orally or in writing, whether negligent or otherwise, except as set out in Condition 3(e) above;
- (ii) gives any guarantee or warranty to Bidders & any implied warranties & conditions are excluded (save in so far as such obligations cannot be excluded by law);
- (iii) accepts responsibility to any Bidders in respect of acts or omissions (whether negligent or otherwise) by AAA in connection with the conduct of auctions or for any matter relating to the sale of any lot;
- (b) Unless AAA owns a lot offered for sale, it is not responsible for any breach of these conditions by the Vendor;
- (c) Without prejudice to Condition 4(a), any claim against AAA or the Vendor by a Bidder is limited to the Purchase Price with regard to that lot. Neither AAA nor the Vendor shall under any circumstances be liable for any consequential losses, costs or any other amount on account of damages;

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(d) None of this Condition 4 shall exclude or limit AAA's liability in respect of any fraudulent misrepresentation made by AAA or the Vendor.

### **5. BIDDING AT AUCTION**

(a) AAA has absolute discretion to refuse admission to the auction. Bidders must complete a Bidder's registration form & supply photo ID & such information & references as required by AAA. Bidders act as principal unless they have AAA's prior written consent to bid as agent for another party. Bidders are personally liable for their bid & are jointly & severally liable with their principal if bidding as an agent. Bidders must supply, at the time of initial registration & each & every subsequent auction registration, any & all alternate delivery instructions along with their full details therein, no responsibility can be taken by AAA for instructions received thereafter;

(b) AAA advises Bidders to attend the auction but will seek to carry out absentee written bids which are in Australian dollars & in AAA's opinion, are unambiguous & received sufficiently in advance of the sale of the lot & will endeavour to ensure that the first received of identical written bids has priority;

(c) Where available, written & telephone bids are offered as an additional service for no extra charge, at the Bidder's risk & are undertaken subject to AAA's other commitments at the time of the auction; AAA therefore cannot accept liability for failure to place such bids & all buyers are encouraged to attend the auction in person or by engaging the services of an agent to inspect the goods & bid on their behalf. Telephone bids & the auctions may be recorded. Telephone bids will only be accepted when prior arrangements, satisfactory to AAA have been made & cannot be accepted on items with an estimate of \$1500 & under. Telephone bids shall be registered at the least of the lower estimate. Absentee Bidders are accorded the same bidding rights & priority as Bidders present in the room at the time of sale. Absentee bids will not be accepted outside AAA's accepted amount increments & an absentee bid will automatically be rounded up or down by AAA to the nearest bid increment;

(d) Telephone, mail, fax or email absentee bids may not be accepted after the Thursday preceding the auction;

(e) Additional images may be made available upon request & AAA reserve the option to limit images to 3 images per auction item & supplied only on items to the value of \$800 & greater. These images may not be available after Wednesday 4.00 pm.

### **6. CONDUCT OF THE AUCTION**

(a) Unless otherwise specified, all lots are offered subject to a Reserve, which shall be no higher than the low presale estimate at the time of the auction as disclosed in the catalogue or announced by the Auctioneer prior to the sale of any lot;

(b) The Auctioneer has discretion at any time to refuse any bid, withdraw any lot, re-offer a lot for sale (including after the fall of the hammer) if he believes there may be error or dispute, & take such other action as he reasonably thinks fit;

(c) The Auctioneer will commence & advance the bidding at the levels of \$0 to \$499 at \$25 increments; \$500 to \$999 at \$50 increments; \$1000 to \$1999 at \$100 increments; \$2000 to \$4,999 at \$200 increments; \$5000 to \$9,999 at \$500 increments; \$10,000 to \$19,999 increments \$1,000; \$20,000 to 49,999 at \$2,000 increments, auctioneer's discretion after that; notwithstanding he may at his discretion accept a bid not to this scale as he considers appropriate & is entitled to place a bid or series of bids on behalf of the Vendor up to the Reserve on the lot, without indicating he is doing so & whether or not other bids are placed;

(d) Subject to the Auctioneer's discretion referred to in Condition 6(b) above, the contract between the Buyer & the Vendor is concluded on the striking of the Auctioneer's hammer (or other signal indicating the conclusion of bidding), whereupon the Buyer becomes liable to pay the Purchase Price;

(e) Any post-auction sale of lots offered at auction shall incorporate these Conditions as if sold during the course of the auction.

### **7. PAYMENT & COLLECTION**

(a) Unless otherwise agreed, payment of the Purchase Price for a lot & any Buyer's Expenses are due in Australian dollars immediately on conclusion of the auction (the "Due Date") notwithstanding any requirements for export, import or other permits for such lot;

(b) Title in a purchased lot will not pass until AAA has received the Purchase Price & Buyer's Expenses for that lot in cleared funds. AAA is not obliged to release a lot to the Buyer until title in the lot has passed & appropriate identification has been provided, & any earlier release does not operate to pass of title in the goods which comprise the lot or release the Buyer from its unconditional obligation to pay the Purchase Price & Buyer's Expenses.

(c) The Buyer is obliged to arrange collection of purchased lots within two working days of the auction. Purchased lots are at the Buyer's risk (& therefore their sole responsibility for insurance) from the earliest of (i) collection or (ii) two working days after the auction. Until risk passes, AAA will compensate the Buyer for any loss or damage to the lot up to a maximum of the Purchase Price paid.

(d) The supply of an authority to release any lot to a third party by the Buyer shall constitute collection by the Buyer.

(e) All packing & handling is at the Buyer's risk. AAA will not be liable for any acts or omissions by, either itself, its agent or third party packers or shippers.

(f) Credit card details must be supplied by overseas Buyers for shipping prior to the auction;

#### **(g) PAYMENT MAY BE MADE IN ONE OF THE FOLLOWING WAYS:**

(i) Cash (in Australian dollars only);

(ii) Personal or business cheque (subject to provision of appropriate details including but not limited to driver's licence number) in the case of residents of Australia;

(iii) Direct Deposits, International Bank cheque/draft & Telegraphic Transfers in Australian dollars made payable to Australian Arms Auctions P/L, C/o National Australia Bank, **Bank sort Code No. 083-535, Account No. 52-517-0889, IBAN/Swift code: NATAAU3303M.** Credit Card facilities are available by prior arrangement for Visa & Mastercard. Credit card payments carry a 1.59% surcharge, plus GST. American Express & Diners are not available as a method of payment;

(h) AAA reserves the right to withhold any lot from collection until funds paid for all lots purchased by the Buyer have cleared into AAA's bank account;

(i) No overseas personal or business cheques will be accepted as payment for all or any lot purchased by the Buyer;

(j) Buyers may not withhold payment on the main invoice in order to make one payment for both shipping & the main invoice;

(k) Legal title shall not pass to the Buyer until the purchase price, together with the premium & all other charges have been paid in full;

**8. REMEDIES FOR NON-PAYMENT:** Without prejudice to any rights the Vendor may have, if the Buyer, without prior agreement, fails to make payment for the lot within two working days of the auction, AAA may in its sole discretion (having informed the Vendor) exercise one or more of the following remedies:

(a) store the lot at its premises or elsewhere at the Buyer's sole risk & expense;

(b) cancel the sale of the lot;

(c) set off any amounts owed to the Buyer by AAA against any amounts owed to AAA by the Buyer in respect of the lot;

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- (d) reject future bids from the Buyer or render such bids subject to payment of a deposit;
- (e) charge interest at 10% per annum above the base lending rate quoted by the Commonwealth Bank of Australia from the Due Date to the date the Purchase Price & relevant Buyer's Expenses are received in cleared funds & this interest will be invoiced monthly;
- (f) exercise a lien over any of the Buyer's property which is in the possession of a AAA. AAA shall inform the Buyer of the exercise of any such lien & within 14 days of such notice may arrange the sale of such property & apply the proceeds to the amount owed to AAA;
- (g) resell the lot by auction or private sale, with any estimate or reserve at AAA's discretion. In the event such resale is for less than the Purchase Price & Buyer's Expenses for that lot, the Buyer will remain liable for the shortfall together with all costs incurred in such resale;
- (h) commence legal proceedings to recover the Purchase Price & Buyer's Expenses for that lot, together with interest & the costs of such proceedings on a full indemnity basis; or
- (i) release the name & address of the Buyer to the Vendor to enable the Vendor to commence legal proceedings to recover the amounts due & legal costs. AAA will take reasonable steps to notify the Buyer prior to releasing such details to the Vendor.

#### **9. FAILURE TO COLLECT PURCHASES**

- (a) If the Buyer pays the Purchase Price & Buyer's Expenses but fails to collect a purchased lot within 2 working days of the auction, the lot will be stored at the Buyer's expense (& risk) at AAA's premises or with a third party & will not be released until the payment of any Storage Charge imposed by AAA.
- (b) If a purchased lot is paid for but not collected within four months of the auction, the Buyer authorises AAA, having given notice to the Buyer, to arrange a resale of the item by auction or private sale, with estimates & reserves at AAA's discretion. The proceeds of such sale, less all costs incurred by AAA, will be forfeited unless collected by the Buyer within 2 years of the original auction.

#### **10. EXPORT & PERMITS**

It is the Buyer's sole responsibility to obtain any necessary export, import, firearm, endangered species, CITES, heritage or other permit for any lot. Without prejudice to Conditions 3 & 4 above, AAA & the Vendor make no representations or warranties as to whether any lot is subject to export or import restrictions or any embargoes. The denial of any permit or licence shall not justify cancellation or rescission of the sale contract or any delay in payment of any moneys due to the Buyer to AAA for the purchase of any lot.

#### **11. GENERAL**

- (a) All images & other materials produced for the auction are the copyright of AAA, for use at AAA's discretion.
- (b) No cameras or phone cameras are permitted within the auction venue & no photographs are permitted without prior consent.
- (c) Notices to AAA should be in writing & addressed to the address for AAA provided in the front cover of the sale catalogue, quoting the sale date & if applicable the sale reference number specified in the sale catalogue. Notices by AAA's to any buyer or Bidder shall be addressed to the last address notified by them to AAA.
- (d) Should any provision or provisions of these Buyer's Terms & Conditions of Business be held unenforceable for any reason, that provision or those provisions shall be deemed to be severed from the contract, the remaining provisions remaining in full force & effect.
- (e) These Conditions of Business are not assignable by any Buyer without AAA's prior written consent, but are binding on Buyer's successors, assigns & representatives. No act, omission or delay by AAA shall be deemed a waiver or release of any of its rights or the rights of the Vendor.
- (f) These terms & conditions set out the entire agreement & understanding between the parties with respect to the subject matter hereof. It is agreed that, save in respect of liability for fraudulent misrepresentation, no party has entered into any contract pursuant to these terms in reliance on any representation, warranty or undertaking which is not expressly referred to in such materials.

#### **12. LAW**

**Governing Law:** These Conditions of Business & all aspects of all matters, transactions or disputes to which they relate or apply shall be governed, interpreted & adjudicated in accordance with the laws of & the courts in the state of Australia in which the sale takes place.

**Service of Process:** All Bidders hereby irrevocably consent to the service of process or any other documents in connection with any proceedings issued by AAA or the Vendor in any court by facsimile transmission or by prepaid post to the last address of the Buyer &/or the Bidder known to AAA.

#### **13. GST**

- (a) All monies payable to AAA under these Conditions of Business are GST exclusive & if AAA becomes liable for GST in respect of any supply made by AAA under these Buyer's Terms & Conditions of Business then the amount the Buyer must pay under these Buyer's Terms & Conditions of Business is to be increased so that AAA will receive an amount (the GST inclusive amount) which after subtracting the relevant amount of GST payable by AAA will leave as the resulting amount an amount which is the same as the GST exclusive amount. That increase is to take place on the earlier of:
  - (i) The date AAA becomes liable for GST;
  - (ii) The date the relevant supply is made;
- (b) If paragraph (a) above applies AAA will give the Buyer a Tax Invoice;
- (c) In addition to the Hammer Price GST will also be payable in respect of insurance, storage, transfer fees & other services supplied by AAA or its nominated suppliers. Additionally GST may also be payable in respect of some goods auctioned by AAA. Whether or not those goods attract GST will be indicated in the sale catalogue & the amount the Buyer must pay for such goods will be increased so that AAA will receive an amount (the GST inclusive amount) which after subtracting the relevant amount of GST payable by the Vendor will leave as the resulting amount an amount which is the same as the Hammer Price (the GST exclusive amount);
- (d) The Buyer's Premium plus GST on the Buyer's Premium will be added to & constitute part of the Hammer Price;
- (e) If proof of export of any of the purchased goods is provided to AAA within 30 days by way of an export certificate by the Buyer, AAA will then arrange for a GST refund. If the export is not made before the end of 60 days from the date of purchase, the GST free status of those goods will be lost unless the commissioner of taxation for Australia allows further time.

**14. BUYER'S PREMIUM.** A Buyer's Premium on each lot at a rate of fifteen percent (15%) plus GST of the Hammer Price is payable by the Buyer in addition to the Hammer Price.

**15. TRANSFER FEES.** A fee of \$25 per licensed firearm plus GST is due & payable on transfer of all licensed firearms.

**16. STORAGE FEES.** A fee of \$5.00 per lot, per week plus GST is due & payable for storage.

**17. INSURANCE.** AAA shall charge a transit insurance fee at the rate of 1.5% plus GST of the hammer price of the Lot.

**18. DATA PROTECTION:** AAA may use your data to notify you about changes to our services, or to provide you with information about upcoming auctions or events which we feel may be of interest to you. We will not disclose your data to any third party. The Buyer has the right to request AAA not to use the Buyer's information for these purposes by contacting AAA directly.