



HOWARD DIXON
A S S O C I A T E S

Terms and Conditions of Consignment

These terms and conditions of business govern all aspects of the consignment, report, holding and sale of Property by Howard Dixon Associates Limited for Sellers and will be incorporated in all contracts between the Seller and HDA.

Definitions:

“Buyer” the person, firm or company that purchases Property from the Seller.

“Seller” is the owner of the Property, their agent, executors or the person in possession of the Property (as appropriate).

“HDA” means Howard Dixon Associates Limited, company registered in England and Wales under number 10748554.

“Property” is the property shown/listed in HDA’s property consignment receipt.

“Seller Fee” is a standard fee of 15% of the sale price (plus VAT) of the Property payable to Howard Dixon Associates Limited by the Seller, or such other fee agreed in writing by HDA.

“Expenses” are Howard Dixon Associates Limited’s expenses, fees and charges relating to the Property, including legal expenses, insurance charges, administration fees, customs duties, shipping and packing costs, tests, searches and enquiries.

“Reserve Price” is the minimum Hammer Price at which the Property may be sold, as agreed between the Seller, Howard Dixon Associates Limited and a third party auctioneer. From time to time Howard Dixon Associates Limited may agree with the Seller to offer a collection of Property for a Global Reserve Price and/or agree a discretionary reduction in the Reserve Price by 10% or to offer Property without a Reserve Price.

“Net Sale Proceeds” are the proceeds of sale received by Howard Dixon Associates Limited, less the Seller Fee and any Expenses.

“Data Protection Legislation” all legislation and regulatory requirements in force from time to time relating to the use of personal data and privacy of electronic communications.

The Seller Fee and all Expenses are subject to VAT, where applicable.

1. Seller's Warranties:

(a) The Seller warrants to HDA and the Buyer that :-

(i) the Seller is the owner of the Property or is properly authorised to sell it;

(ii) the Seller shall transfer possession and good title in the Property to the Buyer, free from any encumbrance or third party claims;

(iii) the Seller has provided all relevant information about the ownership, condition, authenticity, attribution, provenance and import/export history of the Property and that information is in all material respects complete, accurate and true;

(iv) there are no copyright or other restrictions on HDA's rights to produce and publish images of the Property.

(b) The Seller will indemnify HDA, its directors, employees, officers, sub-contractors, the Buyer(s) of the Property against all direct and indirect loss, damage, liabilities, costs and loss of reputation resulting from a breach of any of these warranties or terms and conditions of the contract between the Seller and HDA. HDA may cancel, rescind or postpone sales of Property where it reasonably believes that there has been or may be a breach of these warranties or any other terms and conditions of the contract with the Seller.

2. Sale:

(a) HDA shall have sole discretion as to how Property is marketed, and the date, venue and conduct of the sale.

(b) All oral or written estimates of value, appraisals and reports are statements of opinion by HDA and its employees only, and may not be relied upon as a prediction of the sale price. HDA may revise any price estimate, appraisal or report from time to time, without liability to the Seller.

(c) HDA may, without obligation, consult with third party experts and carry out such other research in respect of the Property as it deems necessary. HDA may transfer possession of the Property to such third parties and shall not be responsible for the acts and omissions of such third parties.

(d) HDA shall have the absolute right to produce and publish images of any Property consigned for sale and will retain copyright in any such images it produces.

(e) HDA will charge the Seller the Seller Fee plus Expenses on the sale of the Property, which is deductible from the proceeds of sale or is payable within 30 days of invoice.

(f) The Seller will provide HDA with such information and assistance as may be necessary for HDA to sell the Property and comply with all applicable laws relating to the Property and its sale.

3. Withdrawal of Property:

(a) If the Seller withdraws any Property from sale with HDA after their written agreement to sell it, HDA may charge the Seller 50% (+VAT) of the Seller Fee HDA would have received had the Property sold at its low estimate, plus all Expenses (the "Withdrawal Fee").

(b) HDA may withdraw any Property from sale without liability for any of the following reasons:- if (i) it reasonably believes that the authenticity or attribution is questionable; (ii) it reasonably believes that the Seller's Warranties or other Conditions of Business have been breached; (iii) there is a competing ownership claim or lien over the Property; (iv) the Property does not have all licences and permits required by law, including those required under the Convention on the International Trade in Endangered Species (CITES); (v) the condition of the Property has deteriorated since consignment; (vi) the sale has been postponed for any reason.

(c) If the Property is withdrawn for any of reasons 3(b)(ii) or (iii) the Seller shall pay the Withdrawal Fee, as per Condition (a). If withdrawn for any other reason, the Property shall be returned to the Seller at the Seller's expense.

4. Limitation of Liability:

(a) Subject to condition 4(c) below, HDA shall not be liable for any errors or omissions in any written or oral information provided by Sellers or for acts or omissions relating to the conduct of the sale or any other matter relating to the sale of Property, whether negligent or otherwise which is outside HDA's control.

(b) Without prejudice to Condition 4(a), any claim against HDA shall be limited to the Net Sale Proceeds for the relevant Property. HDA shall not in any circumstances be liable for any indirect or consequential loss or damage or for loss of profit, damage to goodwill.

(c) Nothing in these conditions limits any liability which cannot be limited including HDA's liability to the Seller in respect of death or personal injury caused or omissions or for fraud or fraudulent misrepresentation.

5. Loss or Damage to Property:

(a) Unless otherwise agreed in writing, HDA will assume the risk of loss or damage to Property received from the Seller until:-

(i) risk passes to the Buyer; or

(ii) 6 months after receipt of the Property by HDA, if agreement has not been reached on a schedule for sale; or

(iii) the Property is released back to the Seller.

(b) If damage or loss occurs whilst the Property is at the risk of HDA, the maximum amount of HDA's liability shall be set at the Reserve Price of the Property or as otherwise stated on the Property Receipt or HDA's reasonable estimate of auction value where there are no pre-sale estimates.

(c) HDA will not be liable for any loss or damage caused by :- (i) normal wear and tear, gradual deterioration or inherent vice or defect; (ii) errors in processing; (iii) war or radioactive contamination.

6. Payment of Net Sale Proceeds

(a) Subject to Condition 8, HDA will pay the Net Proceeds of Sale to the Seller within 21 days of receipt of the funds from the Buyer. HDA will send the Net Sale Proceeds in pounds sterling to the Seller unless otherwise agreed in writing with the Seller, less any other amounts owed by the Seller to HDA including foreign currency bank charges.

7. Unsold/Uncollected Property.

(a) HDA will advise Sellers whether or not their Property has sold. Unsold Property may either (at the Seller's option):-

(i) be re-consigned for sale; or

(ii) be collected by/returned to the Seller, in which case relevant Expenses will be charged.

(b) If the Seller does not re-consign or make arrangements for the collection/return of the Property with 60 days of the Unsold Property notice being given as per Condition 7(a) above, HDA shall be released from any duty of bailment and may in its sole discretion be entitled to:-

(i) transfer the Property to independent storage at the Seller's expense; or

(ii) re-offer the Property at auction for no less than 50% of the original Reserve Price agreed with the Seller (where applicable), and subject to the Seller Fee on the re-sale plus all relevant Expenses.

(c) If the Seller deposits the Property with HDA for more than 1 year and neither collects, makes arrangements for its return or consigns it for sale, HDA shall be entitled to sell such Property at auction with estimates and reserves at HDA's discretion, after giving the Seller 60 days written notice sent to the Seller's last known address.

8. Rescission of Sales.

HDA may rescind the sale, whether the sale was undertaken as a Private Sale or through a third party auctioneer, where it reasonably believes the Property is counterfeit, in which case HDA shall send the Seller a notice of such rescission. The Seller agrees to return to HDA the Net Sale Proceeds received from the sale of such Property together with any additional Expenses incurred by HDA. HDA will return the Property to the Seller upon receipt of the Net Sale Proceeds and Expenses, unless prevented from doing so for reasons beyond HDA's control.

9. Miscellaneous.

(a) If any part of these Terms and Conditions of Business be held unenforceable, the remaining parts shall remain in full force and effect.

(b) These Conditions of Business shall be interpreted in accordance with English Law under the exclusive jurisdiction of the English Courts, in favour of HDA.

(c) All images of consigned items, written descriptions and all other materials produced by HDA are the copyright of HDA.

(d) HDA may assign any or all of its rights or obligations under any contract made with the Seller.

(e) Neither party shall be in breach of any contract incorporating these terms and conditions or for performing or failure to perform any of its obligations if such delay failure result from events or circumstances or causes beyond its control.

(f) HDA may give notice in writing to the Seller by hand or by next day delivery service addressed to the Sellers last known address which shall be deemed served 2 days after dispatch

10. Data Protection.

(a) Both parties will comply with all applicable Data Protection Legislation. The Seller will ensure he has all necessary consents and notices in place to enable lawful transfer of personal data.

(b) HDA will use information supplied by clients or otherwise obtained lawfully by HDA for the provision of sales related services, client administration, marketing and as otherwise required by law.

(c) By agreeing to these Conditions of Business, the Seller agrees to the processing of their personal information and to the disclosure of such information to third parties world-wide for the purposes outlined in Condition 10(a).