

# CONDITION OF BUSINESS FOR BUYER AND SELLER

The conditions set out below and all other terms, conditions and notices use in this auction organized by BOROBUDUR FINE ART AUCTION PTE. LTD. (here in after referred to as the "Borobudur").

## I. DEFINITIONS

- a. 'Bidder' means person who carries out bids in the auction.
- b. 'Borobudur's commission' means the commission payable to Borobudur by the seller at agreed rates.
- c. 'Buyer' means person who makes the highest bid in the auction accepted by auctioneer.
- d. 'Buyer's premium' means the commission on the 'hammer price' of each lot sold payable to 'Borobudur' by a 'buyer' at the following rates of **22%** and Internet buyer's premium is **24%**.
- e. 'Expenses' mean every and all Borobudur's charges and expenses 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, storage cost, reproduction rights' fees, taxes, levies, costs of testing, searches or enquiries relating to any lot, or costs of collection from a defaulting 'buyer'.
- f. 'Hammer price' means the price at which a lot is knocked down by the auctioneer.
- g. 'Net sale proceeds' means the 'hammer price' of the lot sold to the extent received by Borobudur in cleared funds, less 'Borobudur's commission' and 'expenses'.
- h. 'Pre-sale estimates' are intended as a guide for 'bidder'. All lots, depending on the degree of competition, can realize prices either above or below the pre- sale estimates.
- i. 'Reserve price' means the confidential minimum price determine between the seller and Borobudur.
- j. 'Seller' means the owner, vendor, consignee or the person in possession of the lot consigned.
- k. 'Total amount due' means the 'hammer price' altogether with the 'buyer's premium', and any charges, fees, interest, taxes, 'expenses' due from a 'buyer' or defaulting 'buyer'.

## II. GENERAL CONDITIONS:

- a. Bidding is carried out in Singapore Dollar. 'Buyer' should not rely on currency converter as a substitute for the Singapore Dollar bidding. Under no circumstances will Borobudur be liable for any exchange rate movements.
- b. Our sale takes place on our own premises or premises over which we have control for the sale.
- c. All properties in this catalog are sold "AS IS" with all faults and imperfections and errors of description in accordance with the Condition of business for buyer and seller.
- d. Borobudur does not make or give, nor has any person in the employment of Borobudur, any authority to make or give, any representation or warranty.
- e. Borobudur's capacity: Borobudur acts as an agent for the 'seller'. Any concluded contract of sale is made directly between the 'seller' and the 'buyer' through Borobudur. In case of dispute between buyer and seller, Borobudur is not liable for the payment of the lot in dispute.
- f. Borobudur acts as agent for the "seller", therefore Borobudur is entitled to bid on behalf of the seller up to the amount of the reserve price.
- g. Borobudur is not responsible for any faults or defects in any lot or the correctness of :
  - any statement as to the authorship
  - origin
  - date and age of the Lot
  - attribution
  - genuineness
  - provenance and conditions of any Lot
  - representations, written or oral and including those in any catalogue
  - report, commentary or valuation in relations to any aspect or quality.

- h. Borobudur does not provide any representation or warranties as to whether any lot is subject to any export/ import restrictions. Borobudur is not responsible for any liability arising from any failure to complete or submit required export/import manifest, list or documentation.
- i. Borobudur may request, each of the 'buyer', the 'seller' and any 'bidder' at auction and they must agree to provide (in a form acceptable to Borobudur) written confirmation of their name, permanent address, proof of identity, creditworthiness and obtain information about the clients from third parties (credit or bank information).
- j. Items made of or incorporating plant or animal material, such as coral, crocodile, ivory, whalebone, tortoiseshell, etc., irrespective of age or value, may require a license or certificate prior to exportation and require additional licenses or certificates upon importation to any country outside Singapore. Please note that the ability to obtain an export license or certificate does not ensure the ability to obtain import license or certificate in another country, and vice versa. Borobudur suggests that buyers check with their own government regarding wildlife import requirements prior to placing a bid. It is the buyer's responsibility to obtain any export or import licenses and/or certificates as well as any other required documentation.

### III. BEFORE THE AUCTION

- a. 'Buyer' should note that descriptions of item are not warranties and that each lot is sold "AS IS", with all faults and imperfections and errors of descriptions. Borobudur cannot and does not undertake full due diligence on every item sold. 'Buyer' are strongly advised to inspect and investigate personally any item in which they are interested, before the auction take place. 'Buyer' undertakes to rely on 'buyer's own judgment as to whether a lot accords with its description and shall not rely on any illustration on Borobudur's catalog. Condition reports are usually available upon request.
- b. Borobudur will determine the 'reserve price' for each lot.
- c. 'Buyer' should register as the 'bidder' on the scheduled date.

### IV. AT THE AUCTION

- a. Borobudur has the right at its absolute and sole discretion to refuse admission to its premises to any person and to refuse any bid.
- b. Agent on behalf of an identified third party acceptable to Borobudur, bidding on behalf of 'buyer', will be jointly and severally liable for all obligations arising from the bid.
- c. Bids may be executed in person by paddle during the auction, in writing prior to the sale or by telephone:
  - (1) To bid in person at the auction or to bid by proxy with power of attorney legalized by notary, buyer' will need to register or and collect a numbered paddle before the auction begins; or
  - (2) Absentee bidder has to fill the attached bidding form for the Borobudur to execute the bid on behalf the absentee bidder. "Buy" and unlimited bids will not be accepted. Borobudur to bid on clients' behalf at the sale for the lot(s) up to the top limit stated. These bids to be executed as cheaply as is permitted by other bids or reserves and in amount up to but not exceeding the specified amount. In the event of identical bids, the earliest bid received will take precedence. This service is free and confidential. Borobudur provide this service of executing bids on behalf of clients' convenience and that Borobudur will not be held responsible for failing to execute bids or for error relating to its executions of bids. To ensure satisfactory service to 'bidder'; Borobudur must receive the 'bidder's confirmation at least 24 hour prior to the auction, or;
  - (3) 'Bidder' can bid by telephone. Borobudur has a right to record the conversation. This service must be confirmed in written instruction at least 24 hours before the auction and under no circumstances will Borobudur be liable to either the 'seller' or any 'bidder' as a result of failure to do so.
- d. 'Buyer' paddle number will be announced by the fall of the auctioneer's hammer.
- e. Borobudur has the absolute right to determine the 'buyer' of the auction.
- f. Striking of the auctioneer's hammer marks the acceptance of the highest bid and the conclusion of a contract of sale between the 'seller' and the 'buyer'. Auctioneer has the sole discretion at anytime to refuse any bids, to withdraw any lots, to re-offer any lots for sale (including after the fall of hammer) if auctioneer believes that may be an error or dispute and takes such other action as he thinks reasonably fits.

## V. AFTER THE AUCTION

- a. Payment must be made within 7 calendar days of the sale. This applies even if the 'buyer' wishes to export the lot and an export license is (or may be) required. Payment should preferably be made by telegraphic transfer directly to : Borobudur's nominated account as per our invoice. Payment will not be deemed to have been made until Borobudur is in receipt of cash or cleared funds. Credit cards and traveler's cheques are not accepted.
- b. 'Buyer' shall always remain liable for the 'total amount due' and 'buyer' shall not acquire title to the lot sold until 'buyer' have made payment in full of the 'total amount due' in respect of that lot and Borobudur has applied such payment to the lot.
- c. Any money received from 'buyer' shall be applied in order of the oldest debt owned by 'buyer' to Borobudur or the oldest purchase made by 'buyer' at Borobudur having regard to the date of sale and the number of the lot.
- d. If the 'buyer' fails to pay the 'total amount due' in good cleared funds within the time required above, Borobudur shall be entitled in its absolute discretion to exercise one or more of the following rights or remedies (in addition to asserting any other rights or remedies available to Borobudur by Law) to:
  - (1) Charge interest at 1% per month from the 'hammer price' and 'buyer's premium', charge insurance at 1% per month from the 'hammer price' and 'buyer's premium', and storage at SGD 300. per lot per month as Borobudur shall reasonable decide;
  - (2) Hold defaulting buyer liable for the 'total amount due' and to commence legal proceedings for its recovery on behalf of the seller (fees to be paid by seller), together with interest, legal fees and costs to the fullest extent permitted under applicable law;
  - (3) Re-sale the lot publicly or privately on such terms as Borobudur shall think fit;
    - (i) If the re-sale should result in a lower price than the original 'hammer price' obtained, Borobudur and 'the 'seller' shall be entitled to claim the balance from 'buyer' together with any costs incurred in connection with 'buyer's' failure to make payment.
    - (ii) If the re-sale should result in a higher price then the original 'hammer price' obtained, the surplus shall be paid to the 'seller'. In such case, 'buyer' waives any claim which 'buyer' may have to title to the lot and agree that any re-sale price shall be deemed commercially reasonable.
  - (4) Set off against any amounts which Borobudur may owe the 'buyer' in any other transactions, the outstanding amount remaining unpaid by the 'buyer';
  - (5) Reject any future auction any bids made by or on behalf of the 'buyer' or to obtain a deposit from the 'buyer' before accepting any bids;
  - (6) Exercise a lien over any of 'buyer's' lot in which is in Borobudur possession for any reason until payment of all outstanding amounts due to Borobudur has been made in full;
  - (7) Insure, remove, and store the lot either at our premises or elsewhere at 'buyer's' sole risk and expense.
  - (8) Take such other action as Borobudur deem necessary or appropriate.
- e. The risk of the lot will immediately passed to 'buyer':
  - (1) The time 'buyer' collects the lot purchased; or
  - (2) The time that 'buyer' pays to Borobudur the 'total amount due' for the lot; or
  - (3) 7 calendar days after the day of the sale 'buyer' shall be solely responsible for insuring the lot purchased from the time risk passes to 'buyer'.
- f. Borobudur provides insurance cover for maximum of 7 calendar days after the sale. If purchases are not collected within 7 calendar days after the sale, Borobudur shall arrange independent storage at the 'buyer's' expense.
- g. Collection:
  - (1) Lots will be released to 'buyer' or his/her authorized representative when full and cleared payment has been received by Borobudur.
  - (2) It is the 'buyer's' responsibility to collect purchases at Borobudur's office no later than 7 calendar days after the day of the sale, at 'buyer's' own expenses. The condition mentioned above will be effective if the 'buyer' has delivered the proof of full payment to Borobudur.
- h. The shipping, transportation, packing and handling of lots is entirely at 'buyer's' risk and expenses and Borobudur shall not under in any circumstances, be responsible for any acts or omissions of the packers or shippers.
- i. No part of this publication may be reproduced, stored in a retrieval system or transmitted by any form or by any means, electronic, mechanic, photocopying, recording or otherwise without the prior written permission of Borobudur.

## VI. CONDITIONS MAINLY CONCERNING SELLER

### a. 'Seller' warrants to Borobudur and 'buyer' that :

- (1) 'Seller' is the true owner of the lot, or is properly authorized to sell the lot by the true owner
- (2) 'Seller' is able to and shall transfer possession to the 'buyer' 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;
- (3) 'Seller' provided Borobudur with all information concerning the provenance of the lot.
- (4) Descriptions given to Borobudur in relation to the lot is accurate and not misleading;
- (5) There are no restrictions, copyright or otherwise, relating to the lot (other than those imposed by law and no restrictions on Borobudur's rights to reproduce photographs or other images of the lot).
- (6) Unless agree otherwise, Borobudur shall charge 'seller' a sum to cover insurance at the rate of 1% from the 'reserve price' or 'hammer price' whichever is higher. The lot will be automatically insured once arrived at Borobudur's premises.

### b. 'Seller' agrees that Borobudur has sole and absolute discretion as to:

- (1) The way in which lot may be combined or divided into lot for sale.
- (2) The way in which any lot is described and illustrated in the catalogue or any condition report;
- (3) The date and place of the auctions.
- (4) The manner in which any sale is conducted.

### c. Withdrawal of lots by 'seller':

- (1) If 'seller' chooses to withdraw lot from the sale after the earlier of :
  - (i) 'Seller' written agreement to sell the lot with Borobudur and
  - (ii) 60 calendar days before the day of the auction, 'seller' will be liable to pay Borobudur of 'withdrawal fee'
- (2) If 'seller' withdraws lot before that time there is no 'withdrawal fee' payable.

### d. Withdrawal of lots by Borobudur

Borobudur may withdraw a lot from sale without any liability if :

- (1) Borobudur believes that there is any doubt as to its authenticity or attribution or
- (2) Any of the 'seller' representation or warranties are inaccurate in any way or
- (3) Borobudur considers the lot to be of insufficient sale value or the lot suffers from lost or damage so that it is not in the state in which it was when Borobudur agrees to sell it or
- (4) The auction at which it was proposed to sell the lot is postponed for any reason.

### e. Withdrawal fee

If the lot is withdrawn by Borobudur because of the circumstances described in chapter VI. d. 1, 2, 3, or 4 then 'seller' shall not be charged a 'withdrawal fee' and the lot shall be returned to 'seller' at 'seller's' expense. If the lot is withdrawn by Borobudur for any other reason, 'seller' shall pay Borobudur a 'withdrawal fee' plus 'expenses'.

The 'withdrawal fee' shall be equal to the sum of the 'Borobudur's commission' and the 'buyer's premium' and shall be calculated as if the withdrawn lot has sold at the 'reserve'. Borobudur is not obligated to withdraw any lot from sale or to return it to the 'seller' unless 'seller' has paid Borobudur the withdrawal fee.

### f. Reserve

All lots should have a confidential reserved price agreed upon signing of contract. Borobudur shall be entitled to sell the lot below the reserve and for that, Borobudur shall pay 'seller' the sale proceeds which 'seller' would have received if the lot had been sold at the reserve.

### g. Bidding at sale

'Seller' may not bid for its own lot. Although we shall be entitled to bid on your behalf up to the amount of the reserve, but 'seller' shall not permit any other person to bid your property on your behalf. If 'seller' should bid or instruct someone else to bid on its own lot, Borobudur may treat 'seller' as 'buyer'. In those circumstances, 'seller' shall pay Borobudur a sum representing the total of the 'Borobudur's commission', the 'buyer's premium' and all 'expenses' incurred in connection with the sale of the lot. Borobudur shall be entitled to exercise a lien over the lot until 'seller' paid the sum in full.

### h. Payment of net sale proceeds

Borobudur shall pay 'seller' the 'net sale proceed' less any amount that 'seller' owes Borobudur within 30 business days of receipt of cleared fund from 'buyer'.

### i. Post-auction sales

If any lot fails to sell at auction, Borobudur shall be entitled for a period of 7 calendar days following the auction to sell the lot for a price that is not lower than the reserve price unless previously agreed by the 'seller'.

j. Unsold Lot

If any lot fails to sell at auction, Borobudur shall send a 'seller' a notice to the address given in relevant lot receipt form. If such lot has not been sold privately pursuant to Chapter VI.i. above, 'seller' shall re-consign the lot for re-sale or collect the lot.

If 'seller' fails either to re-consign or collect the lot within 7 calendar days of the auction, Borobudur shall, in its sole discretion, be entitled to:

- (1) Store the lot at an independent storage facility at 'seller's risk and 'expense';
  - (2) Re-offer the lot for sale at public auction with a reserve no less than fifty percent (50%) of the original reserve;
- In the event of such re-sale, Borobudur shall be entitled to deduct from the 'hammer price' the 'Borobudur's commission' on the re-sale plus 'expenses'. Borobudur reserves the right to charge 'seller' on Borobudur's reasonable legal and administrative costs incurred.

VII. LAW AND JURISDICTION

The rights and obligations of the parties with respect to this Condition of Sale, the conduct of the auction and any matters connected with any of the foregoing shall be governed and interpreted by the Singapore Law. For our benefit, the 'buyer' and 'seller' hereby submits to the exclusive jurisdiction of the Singapore Law.

VIII. NOTICES

a. All notices, requests, claims and other matters shall be made in writing and shall be delivered to the address below with registered mail or courier

BOROBUDUR FINE ART AUCTION PTE. LTD.  
60 Ubi Crescent #01-02, Ubi Techpark, Singapore 408569  
Phone: +65 67456066  
Fax : +65 67456466

b. Notice is considered received within 3 calendar days after the date of delivery if the notice is sent through a courier and 3 calendar days after the Delivery if the notice is sent through facsimile and the sender has received confirmation.

IX. SEVERABILITY

In the event that any provision of this Condition of Business for Buyer and Seller shall prove to be invalid, null and void, illegal or unenforceable by law, as long as such provision does not affect, cancel or cause the other provisions in this Condition of Business for Buyer and Seller become invalid, thus all other provisions will remain valid and binding.