



## Terms and Conditions of Site Use

THESE TERMS AND CONDITIONS OF USING THIS SITE ("AGREEMENT") GOVERN YOUR USE OF OUR WEBSITE TO SEARCH, BUY, OR BID FOR GOODS OR TO USE ANY OTHER SERVICES WE PROVIDE (COLLECTIVELY, THE "SERVICES") LOCATED AT WWW.HYMANS.COM.AU ("SITE"), AND RELATED SITES SUCH AS SIMULCAST.HYMANS.COM.AU, AND FORM A BINDING CONTRACTUAL AGREEMENT BETWEEN YOU AS THE USER OF THE SITE AND US, HYMANS VALUERS & AUCTIONEERS.

FOR THAT REASON THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT ARE IMPORTANT AND YOU SHOULD ENSURE THAT YOU READ THEM CAREFULLY AND CONTACT US WITH ANY QUESTIONS BEFORE YOU USE THE SITE. YOU CAN CONTACT US ON 1800 HYMANS.

BY USING THE SITE YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ AND UNDERSTAND THE AGREEMENT AND YOU AGREE TO BE BOUND BY IT. IF YOU DO NOT AGREE TO THE AGREEMENT, PLEASE DO NOT USE THE SITE.

### 1. General

- 1.1. This Agreement sets out your rights and obligations and our rights and obligations.
- 1.2. We take all reasonable steps to maintain continuous, secure and uninterrupted access to the Site but accept no responsibility for any bids not processed during any auction or you being unable to access any information on the Site due to:
  - i) access to the Site being suspended temporarily in the event of system failure, maintenance or repair or other reasons beyond our control; or
  - ii) any technological or administrative problems that occur.

### 2. Eligibility and Registration

- 2.1. To register with us and use the Services you must be able to enter into and form legally binding contracts under Australian law. For the avoidance of doubt, you hereby warrant that you are:
  - i) over the age of 18 years;
  - ii) not an undischarged bankrupt in the case of an individual;
  - iii) if you are a company, you are not under any type of external administration; or
  - iv) not acting as agent or trustee of any other party.
- 2.2. To register, you must provide the details requested which includes your legal name, address, phone number and email address.
- 2.3. You must ensure that all the details you have provided at the time of registration are accurate, complete, true, will not mislead and will not infringe any laws in Australia.
- 2.4. Hymans Valuers & Auctioneers reserves the right to refuse Services to anyone for violation of this Agreement.
- 2.5. You will only be eligible to bid on items for auction if you provide details of a credit card acceptable to us. By providing us with such details you irrevocably authorise us to process the transactions you make on this Site.
- 2.6. Your account is identified by your username selected by you at the time of registration and you are the only party authorised to use your username.
- 2.7. We will email you various notifications relating to the purchase of your goods, delivery or pick up of goods and promotional material including up to date status of auctions and invoices. We accept no responsibility should you not receive these emails.



2.8. Should you wish to cancel your registration with us you can do so by contacting us at [auctions@hymans.com.au](mailto:auctions@hymans.com.au). We will not allow you to cancel your registration if you are currently the highest bidder on an item for auction. If you have outstanding monies owed to Hymans Valuers & Auctioneers we will not allow you to cancel your registration until those monies are paid.

### 3. Your Responsibility

- 3.1. Items listed are for sale on an “as is” basis and it is the bidder’s responsibility to undertake their own enquiries or inspect the item, as necessary, prior to placing a bid on the item.
- 3.2. We offer inspection days for items for sale to provide potential buyers with an opportunity to inspect the item before bidding.
- 3.3. Details of the time and place for inspections to occur are located in either the item details or auction details on the Site, in a catalogue, in an advertisement or in an email.
- 3.4. You warrant that:
  - i) you have had an opportunity to inspect the item;
  - ii) if you inspected the item and place a bid that the item is:
    - a. sold “as is” and may contained defects not discernible from an inspection;
    - b. reasonably fit for your purpose; and
    - c. is of merchantable quality.
- 3.5. Any photographs depicted of an item for sale should not be relied upon by you for the quality or suitability of the item.
- 3.6. You assume complete responsibility for determining whether the products or services are sufficient for your purposes.

### 4. Pricing

- 4.1. All prices listed on the Site are in Australian dollars.
- 4.2. All prices listed are exclusive of Goods and Services Tax (GST) and Buyer’s Premium. At the conclusion of the auction, the Winning Bidder will be sent an invoice by email. This invoice will include the hammer price, the Buyer’s Premium and GST.

### 5. Single Item Online Auctions

- 5.1. Each auction will have specified commencement and conclusion times.
- 5.2. Each auction will have a minimum starting price.
- 5.3. Each auction will have a reserve.
- 5.4. The auction times are indicated in Australian Eastern Standard Time or Australian Eastern Daylight Savings Time, whichever is applicable at the time.
- 5.5. At the conclusion of the auction, if you hold the highest bidding price and it meets the reserve you will be notified by email.
- 5.6. If you experience any technological or administrative problems during an auction, please email [auctions@hymans.com.au](mailto:auctions@hymans.com.au) or call the Hymans head office on 02 8270 4444. We assume no responsibility for any bids which are not processed due to any technical error.
- 5.7. We may also end the auction early if:
  - i) we are instructed by our client to withdraw the item(s) from online auction; or
  - ii) we receive a written offer for the item(s) over the valuation amount and our client instructs us to accept the offer.



- 5.8. The auction will close at the end of the specified time for that auction where there are no bids within the five minutes immediately preceding the end of the specified time.
- 5.9. If there is a bid on an item within five minutes of the specified time for the close of the auction, the auction will be extended for five minutes (Auction Extension). The Auction Extension will be repeated each time there is a bid until a five minute period lapses and no new bid is placed.
- 5.10. If the reserve has been met at the end of the auction, the auction will close and the Winning Bidder will receive an invoice for the item(s) via email.
- 5.11. If the reserve has not been met at the end of the auction, the auction will close without selling the item(s). In this situation we may contact the highest bidders to commence negotiations.

## **6. Simulcast Auctions**

- 6.1. The first lot will have a specified commencement time.
- 6.2. All subsequent lots will follow per the bidding in the room. Hymans can offer estimated sale times for specific lot numbers but any such advice is nothing more than an estimate. The buyer is responsible to listen to and follow the sale in real time.
- 6.3. The auction will finish when all lots have been sold.
- 6.4. Each lot will have a minimum starting price.
- 6.5. Each lot will have a reserve.
- 6.6. The auction times are indicated in Australian Eastern Standard Time or Australian Eastern Daylight Savings Time, whichever is applicable at the time.
- 6.7. At the conclusion of the auction, if you hold the highest bidding price and it meets the reserve you will be notified by email.
- 6.8. If you experience any technological or administrative problems during an auction, please email [auctions@hymans.com.au](mailto:auctions@hymans.com.au) or call the Hymans head office on 02 8270 4444. We assume no responsibility for any bids which are not processed due to any technical error.
- 6.9. We may also end the auction early if:
  - i) we are instructed by our client to withdraw the item(s) from online auction; or
  - ii) we receive a written offer for the item(s) over the valuation amount and our client instructs us to accept the offer.
- 6.10. The auction will close when the hammer falls. Hymans will notify simulcast bidders when the hammer is going to fall using the "Fair Warning" notice in the bidding feed. Hymans assumes no responsibility for any bids which are not processed if the "Fair Warning" notice fails to appear due to administrative or technological problems.
- 6.11. If the reserve has been met at the end of the auction, the auction will close and the Winning Bidder will receive an invoice for the item(s) via email.
- 6.12. If the reserve has not been met at the end of the auction, the auction will close without selling the item(s). In this situation we may contact the highest bidders to commence negotiations.

## **7. Bidding**

- 7.1. Each bid you make represents the amount you are willing to pay for the item exclusive of Buyer's Premium and GST.
- 7.2. Before placing a bid it is your responsibility to ensure you understand all details and description of the item, including in respect of the delivery, collection and payment terms all of which are found with the details of each item for sale.
- 7.3. When you place a bid on an item, the bid represents your unconditional offer to purchase that item and if you are the Winning Bidder your offer is deemed to be accepted subject to these terms.



- 7.4. A bid can only be made by entering an amount which is more than or equal to the minimum bid amount specified on the item.
- 7.5. There is no limit on the number of bids that may be placed on an item in an auction.
- 7.6. A bid cannot be withdrawn once it is submitted.
- 7.7. The Winning Bidder must purchase the item.
- 7.8. You must not make a false bid aimed to mislead, or inflate the price of the auction.
- 7.9. Simulcast bids may not be accepted if:
  - i) The hammer has fallen in rooms; or
  - ii) An in-rooms bidder has made an equal or higher bid within that period; or
  - iii) Multiple simulcast bidders submit an equal bid simultaneously, in which case the auctioneer will accept the simulcast bid that appeared to come in first.

## **8. Purchase**

- 8.1. If you are the Winning Bidder you must pay the total amount for the item you have purchased, inclusive of Buyer's Premium and GST.
- 8.2. If you purchase an item on a Buy Now Sale you must pay the total for the item you have purchased inclusive of Buyer's Premium and GST.
- 8.3. You are also obliged to pay any additional fees included in your purchase whether by auction or Buy Now Sale, such as Buyer's Premium, taxes, delivery fees, insurance costs and credit card surcharges. This can be paid by cash, EFT, credit card, debit card, PayPal, or bank cheque.
- 8.4. Should your payment be declined, not be processed or you do not deposit the monies into our nominated account within two business days at the conclusion of the auction, we reserve the right to refuse delivery of the goods until payment is made.
- 8.5. Should your credit card not allow the total amount to be deducted in one transaction, we are authorised to make multiple deductions until the total amount is paid.
- 8.6. If you fail to pay for any item for which you were the Winning Bidder or do not comply with any of the conditions within this Agreement, we have the right to resell the item and you agree to pay as a debt the cost of relisting and selling the item(s) together with any shortfall due between the sale price on resale of that item and your original winning bid.

## **9. Delivery and collection**

- 9.1. The description of the item will contain the suburb and state for collection of the item if the item is to be collected by the Winning Bidder.
- 9.2. If the item you have won is to be collected by you, collection times, location and details will be provided to you at the conclusion of the auction.
- 9.3. Failure to collect the purchased item within fourteen days after the auction has concluded will entitle us to charge you fees for storage at our discretion, and to resell the item without notice to you. In that event, your payment to us is forfeited.
- 9.4. All items that are to be inspected or collected are inspected or collected at your own risk.
- 9.5. Goods can only be delivered to your registered postal address which cannot be changed after the conclusion of the sale. We accept no responsibility for undelivered or misplaced items sent to your registered postal address.
- 9.6. You agree to accept all risk in the delivery, non-delivery or damage during delivery of goods and you agree to take any insurance on that delivery. We do not insure any postal delivery.
- 9.7. Title of the goods will not pass until the total invoice amount is received by us.



9.8. The title to the goods you have purchased and the risk in the goods you have purchased, will pass to you upon the delivery of the goods.

9.9. In the event the item you have purchased cannot be delivered, the risk in the goods passes to you on the time of the first attempt of delivery.

## **10. Refund and returns policy**

10.1. We will not provide any refund due to change of mind.

10.2. We will not provide a refund in circumstances where you have not inspected the item prior to placing the winning bid.

10.3. Apart from your rights under the relevant consumer protection legislation, you will only be able to return items for a refund if they were delivered by us, and if the item was incorrectly described or is damaged (and the item was not listed as damaged in the description on the Site).

10.4. To return the item and to seek a refund you must email Hymans Valuers & Auctioneers at [auctions@hymans.com.au](mailto:auctions@hymans.com.au) within fourteen days of the purchase of the goods.

10.5. Returned goods will only be accepted if it is returned in the same condition as it was sold and still in its original packaging.

10.6. Returned goods will be inspected and tested within five business days of receipt by us. If the item is not damaged and in good condition it will be returned to you, and all courier fees will be your responsibility. If the item is damaged or not in good condition or working order, we will arrange for a refund or replacement of goods within a further fourteen days.

## **11. Manufacturer's warranty**

11.1. If an item is sold on the Site which comes with an accompanying warranty from the manufacturer, we do not take any responsibility for that warranty.

## **12. Your account responsibilities**

12.1. You alone are responsible for maintaining the confidentiality of your registered account including any password(s) in connection with your access and use of the Services.

12.2. Please contact us immediately if you believe your account and/or password(s) have been misused or compromised by email at [auctions@hymans.com.au](mailto:auctions@hymans.com.au)

12.3. You are responsible and liable for all uses of your account, whether or not authorised by you.

12.4. If you use a false name, stolen or forged credit card we will refer such information to the police and we may then seek to recover from you any losses suffered as a result of such occurrence including costs of initiating legal action.

## **13. Our rights and responsibilities**

13.1. We reserve the right at all times to suspend or cancel your registration with us and use of the Services if you fail to pay for any item, breach any term of this Agreement or provide any information which is false or misleading.

13.2. If your registration is suspended or cancelled you cannot register a new account with Hymans Valuers & Auctioneers.

13.3. If you breach any of your obligations under this Agreement, we may terminate your registration with us or prevent you from using the Site. We may also make a claim against you or seek an order of damages against you.

13.4. We reserve the right to remove a listed item and cancel all bids if that item becomes damaged or there is a mistake in the pricing, description or ownership of the item.

13.5. We are responsible for ensuring products listed for auction on this Site are accurately described and available and for ensuring that title of those goods purchased are immediately passed to the purchaser upon sale.



## 14. Limitation of liability

- 14.1. You will not hold Hymans Valuers & Auctioneers responsible for any loss you incur in connection with this Agreement.
- 14.2. We take all reasonable steps to maintain continuous, secure and uninterrupted access to the Site but make no guarantees you will be provided with continuous, secure or uninterrupted access to the Site.
- 14.3. You acknowledge that at times the Site and Services may not be available due to technical difficulties (either due to our act or omission or the act or omission of another party) which may result in bids not being processed and that we accept no responsibility for any bids which are not processed.
- 14.4. We do not guarantee that we can prevent illegal or inappropriate use of the Site, or that the information on the Site is correct or accurate.

## 15. Warranty

- 15.1. Except as specified herein, the Services on this website are provided on an "as is" basis without any warranties as to any implied warranties or conditions of merchantability, fitness for a particular purpose, title and non-infringement except to the extent that such disclaimers are held to be legally invalid in Australia.
- 15.2. Hymans Valuers & Auctioneers does not make any representations, warranties, guarantees, or conditions as to the quality, suitability, accuracy, timeliness, reliability or completeness of any of the products or services contained on this Site.

## 16. Intellectual Property and Licensing

- 16.1. Hymans Valuers & Auctioneers and/or its third party providers are the sole owners of the copyrighted work for all material on this Site, including but not limited to information, documents, products, logos, graphics, images, auctions, and services.
- 16.2. You must obtain the express written permission of Hymans Valuers & Auctioneers or its third party provider before you seek to copy, reproduce, distribute, republish, download, display, post or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means.
- 16.3. You may not "mirror" any materials contained on this Site on any other server or site without Hymans Valuers & Auctioneers' prior written consent.
- 16.4. We hereby grant you a limited worldwide, non-exclusive, non-transferable, non-assignable, non-sublicensable, license to use only this Site for personal, not commercial, purpose.
- 16.5. This license expressly excludes, any resale or commercial use of the Site, making a copy of the Site, the collection and use of any information contained on the Site or any data extraction.

## 17. Privacy

- 17.1. Hymans Valuers & Auctioneers values your right to keep your personal information private. Our Privacy Policy can be viewed on our Site.
- 17.2. We can at our own election change the Privacy Policy at any time.
- 17.3. You should check the Privacy Policy often for any variations or changes to the Privacy Policy.
- 17.4. By entering this Agreement you consent to the terms of the Privacy Policy and to us using your personal information as specified in the Privacy Policy.

## 18. Indemnity

- 18.1. In using the Services and the Site you hereby agree to release, discharge and waive any claims you may have against us howsoever arising in connection with or incidental to the use of the Services or the Site.
- 18.2. You agree to indemnify us from all claims, demands, losses, damages, costs, claimed to have been suffered by a third party as a consequence of any breach by you of this Agreement or your negligence



howsoever arising in connection with or incidental to your use of the Site or the Services and our performance of our obligations under the Agreement.

## 19. Variation

19.1. Hymans Valuers & Auctioneers may amend or vary this Agreement at any time by posting the amended terms on our site. The amended terms shall automatically be effective ten days after posting on the Site. If you continue to use this Site after any amendment or variation of its terms, you are taken to have accepted the terms of the amended Agreement.

## 20. Dispute

20.1. Any dispute or difference whatsoever arising out of or in connection with this Agreement shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation Rules.

## 21. Governing Law

21.1. This Agreement and this Site are subject to the laws of New South Wales. You agree to submit to the non-exclusive jurisdiction of the courts of New South Wales to determine any dispute which arises under this Agreement.

21.2. As a registered user of the Site you are required to abide by all applicable laws, statutes and regulations regarding the use of the Services.

## 22. Definitions and interpretation

In this Agreement, the following words and expressions have the following meanings:

'Agreement' means the terms and condition contained herein.

'"as is"' means the state and condition of an item at the time of auction.

'Auction Extension' means the additional five minute period that the specified time for an auction will be extended until such time as a five minute period lapses and no new bid is placed.

'business day' means day that is not a Saturday, a Sunday or a public holiday

'Buy Now Sale' means the purchase of an item at a specified price

'Buyer's Premium' means the amount or percentage charged as disclosed for each item for sale.

'hammer price' means the amount bid by the winning bidder.

'our' means Hymans Valuers & Auctioneers.

'Privacy Policy' means the Privacy Policy which appears on the Site.

'Services' means searching, auctioning, buying, bidding, or to use any other services offered by Hymans Valuers & Auctioneers on the Site.

'Site' means the Hymans Valuers & Auctioneers website

'us/we' means Hymans Valuers & Auctioneers.

'Winning Bidder' means the bidder who holds the highest bidding price at the end of the auction which meets the reserve.