

Terms & Conditions of Sale (Online Auction)

The following Terms & Conditions of Sale explain the terms pertaining to the legal relationship of Bid & Hammer with the Buyer. We suggest that you read these Terms & Conditions of Sale fully and are aware of their content prior to bidding.

1. DEFINITIONS

- Definitions for specific recurring terms in this document are explained below:
- “**Auction**” and “**Sale**” means all Sales made by way of Auction and or Private Treaty executed by B&H.
- “**Auctioneer**” means any person who conducts the Auction proceedings on behalf of B&H.
- “**B&H**” means Bid & Hammer
- “**Bid**” is an offer to buy a Lot at the Auction. This is accepted at the Auctioneer’s discretion.
- “**Bidder**” is that person or organization making that Bid or offer to buy.
- “**Buyer**” is the person whose bid is accepted by the Auctioneer at his discretion. Unless written authority is received that the Bidder is acting on behalf of a named person or institution, that person who executes the Bid shall be considered the principal and thus the Buyer of that lot.
- “**Commission**” means the Commission deducted by B&H, in lieu of its research & handling charges, from the amount/s due to the Seller.
- “**Forgery**” A forgery is defined as an object, which is described in such a way as to deceive a potential Buyer with respect to its attribution, authorship, date, age and provenance, unless it is made clear in the catalogue that this is the case. A forgery will be so described in order to effect and obtain a value in excess of its true value.
- “**Hammer Price**” means the price at which any Property is sold to a Buyer, exclusive of Premium and applicable taxes.
- “**Lot**” is the individual item or items offered for Sale and described in the Catalogue.
- “**Premises**” means any office, warehouse, hotel, hall or other store, owned, leased or let by B&H or any other place where B&H may hold their Sales.
- “**Premium**” means the Premium payable by the Buyer in addition to the Hammer Price.
- “**Property**” or “**Properties**” means the Property or Properties offered for Sale by B&H on behalf of the Seller.
- “**Seller**” is that person or organization that states clear ownership title to the Lot and authorizes B&H to sell said Lot on his behalf.
- “**Terms & Conditions of Sale**” means these standard notices and Terms & Conditions of Sale, which are applicable to all Buyers including prospective Buyers and Bidders in respect of Sales.
- “**Total Price**” means the total of the Hammer Price, the Premium and any taxes payable by the Buyer.

2. THE ROLE OF BID & HAMMER

- B&H undertakes to act solely on behalf of the Seller, as agent, in the arrangement and execution of the Sale of the Seller’s Property by way of Auction or Private Treaty.
- While every care is taken by B&H in establishing the provenance of the Lot to be sold, the Seller signs B&H’s terms of business with sellers or consignors in which he states his right to ownership and right to pass on that title at the Auction/Sale to the Buyer. Should there be any dispute prior to the Auction/Sale regarding rightful ownership, B&H may at its discretion withdraw the Lot and hold it until the matter is settled. B&H is not responsible for any court / legal proceedings that may arise in such a situation.
- B&H, under all normal circumstances, are not obliged to disclose the identity of the Seller to any person or entity.

3. BID & HAMMER’S RESPONSIBILITY TO BUYERS

- While every care is taken in the preparation of the catalogue details including provenance, attribution, date and age of the Lot, they represent solely the opinion of B&H, who are not liable for any discrepancies that may be found. It is the responsibility of the prospective Buyer to assure himself of the validity of the description of the Property and its condition.
- However, in the most unlikely event of the Property being a forgery, clause 7 and 10 of these Terms & Conditions of Sale shall apply.
- B&H may or may not choose to disclose the identity of the Buyer to any person or entity, as deemed appropriate by it.
- Certificate of Authenticity: B&H does not issue any such certificates. However, a purchase invoice from B&H can be used in lieu of the same and any dispute will be resolved under clause 7 and 10 of these Terms & Conditions of Sale.

4. BEFORE THE AUCTION/SALE

- Condition of Lots:** Lots are sold with general reference to any restorations, imperfections or damage that may have occurred and verified by B&H. However, B&H cannot be held responsible for any errors or omissions of description in this respect. The prospective Buyer is strongly recommended to view the Lot personally or have his representative do so, to satisfy himself as to the condition of the Lot.
The absence of a condition statement does not imply that the lot is in perfect condition or completely free from wear and tear, imperfections or the effects of aging.

- Pre-Sale Estimates:** B&H publishes estimates for each Lot in its catalogue. These are there purely for the convenience and guidance of the Buyer and to provide an indication of the opinion of the Auction House. They do not necessarily indicate with any degree of accuracy the final Hammer Price. The prospective Buyer must ascertain the price upto which he wishes to Bid referring to the Estimated Price purely as the opinion of the Auction House.

- Registration:** All prospective Bidders/Buyers must register all details required by B&H or its third-party **ONLINE BIDDING** service providers. They must complete a form that will have their name, address (this cannot be changed at the time of invoicing & delivery) and other contact details at the same time as showing proof of identity such as driving license, passport, voter registration card, AADHAR card or income tax PAN card.
The Buyers bank and credit card information will also be required along with an earnest money /security deposit (refundable after deduction of nominal processing charges in case of unsuccessful bids) and or bankers guarantee against the Lot/s that the Buyer wishes to purchase. B&H can at its discretion refuse acceptance of registration, should personal details and identity documents not be acceptable or for any other reason whatsoever without explanation.

- Absentee or ‘Written’ or ‘Offline’ bidding:** B&H shall at its discretion accept absentee bids in writing or through e-mail upto and no later than 4 hours before commencement of the Auction. These written instructions shall indicate a maximum price up to which the prospective Buyer is prepared to bid. No ‘Buy’ or ‘Unlimited’ bids will be accepted. Prospective Buyers are asked to choose the absentee bidding option as well as specify their maximum bid in the registration form. B&H undertakes to buy the Lot/s at the lowest possible price for the absentee bidder dependent upon reserve price and other bidding. B&H cannot accept any responsibility for failure to execute an absentee bid, for whatever reason.

5. DURING THE AUCTION

- Opening or Starting Bids:** Once you click the ‘Bid Now’ button next to the lot of your choice, you cannot enter an amount that is less than the ‘starting bid’ or the ‘current bid’ on the lot which would be indicated to you. You can however place your ‘maximum bid’ and if someone outbids you, you will be alerted and given the choice to increase your bid further.

- Bidding Increments:** The bidding increments are pre-fixed and usually move in the following pattern ₹0 - ₹50,000 incremental of ₹2,000, ₹50,000 – ₹1,00,000 incremental of ₹5,000, ₹1,00,000 – ₹2,50,000 incremental of ₹10,000, ₹2,50,000 – ₹10,00,000 incremental of ₹25,000, ₹10,00,000 & above - incremental of ₹1,00,000. However, these increments can vary from auction to auction or lot to lot and can be known when placing the bids online.

- Bid Alerts:** Email alerts will keep the bidder informed about how his/her bids are progressing on each of the lots and how much time is left to increase or withdraw bids prior to the close of the auction. A lot is considered sold at the timed online auction to that bidder who has the highest bid when the time runs out or the auction closes. This then forms a binding contract between the Seller (represented by the Auction House and its third party service providers) and the Buyer.

6. AFTER THE AUCTION/SALE

6.1 Premium, Expenses and Taxes

Buyers’ Premium: After winning the bid, the Buyer will have to pay B&H the hammer price in full in addition to which he will also have to pay a Buyers Premium of 17% upto a value of Indian Rupees 1 (One) Crore and 14% on the excess thereafter, calculated on the hammer price.

In addition, all sales that take place within India are subject to a rate of 12% GST for paintings (for other categories the rates are as applicable between the range of 0-28%), on the winning bid value.

If the Lot is being exported out of India, then GST is not applicable. Foreign nationals or entities are exempt from GST subject to travel/customs clearance documents. However, for Foreign nationals the Buyers Premium is 18% upto a value of Indian Rupees 1 (One) Crore and 15% on the excess thereafter, calculated on the hammer price

Please Note: On Gold, Silver and Jewellery items, GST is between 3-5%

6.2 Payment

- Time for Payment:** Payment should be made as soon as possible after the Sale up to an absolute maximum of 3 days from the date of Sale.
- Credit Card Payment:** Credit Card Payments are accepted upon payment of a 2% surcharge on the full invoiced amount. In the event the Credit Card company declines a Credit Card payment, liability to B&H for the Total Price remains with the Buyer and should be settled immediately by an alternative method. After the auction, B&H and or its third-party service providers have the right to charge the bidders credit card, the total amount of dues payable by the bidder, if within 3 days of Sale no payment has been received.
- Cheque Payment:** Lot/s will be released only after the cheque has been honoured and the funds are with B&H.
- Bank Transfer:** Clearance will have to be sought from B&H prior to making a bank transfer.
- Transfer of Ownership:** The Buyer shall not receive ownership of the Lot/s purchased until he makes payment of the Total Price for the Lot/s and until such payment is received as cleared funds by B&H.
- Foreign Buyers:** Foreign Buyers, including NRIs or Overseas Institutions with at least 60% of its shares owned by NRIs must effect payment in foreign convertible currency or Indian Rupees paid from NRI accounts as per the Foreign Exchange Management Act, 1999.
- Failure to pay:** A Buyer cannot cancel a sale after the auction. In the event the Buyer fails to pay within the stipulated 3 day period, B&H may cancel the Sale, proceed against the Buyer for the Total Price plus any costs incurred in the pursuance of the proceeds and resell the Lot to recover any or all of the outstanding costs. Any shortfall shall remain the responsibility of the Buyer to pay. Interest shall be charged at 2% per month pro rata on the Total Price from the 4th day after the Auction, until payment is received either from the Buyer in total or through resale in part, with the remainder from the Buyer. Should a Buyer who fails to pay have Lots with B&H for Sale, B&H may at its discretion withhold those items in lieu of the outstanding payment or may dispose of them to recoup the outstanding payment.

6.3 Collection, Storage & Shipping

- Collection of Lot/s purchased:** This must take place within 7 days of the Auction, but not prior to payment by the Buyer of the Total Price and the clearance of said funds. All packing, insurance, transport and forwarding and the costs thereof relating to the items purchased shall be the responsibility of the Buyer alone and B&H can only facilitate the same, at its discretion, through its known partners.
- Non-Collection/Storage:** Should the Lot not be collected within the stipulated 7 days, B&H will charge storage charges at a rate of 1% of the purchase price pro rata per month. Should storage space be unavailable at B&H’s Premises, B&H shall nominate a storage facility and all charges raised in transport to and storage at said facility including any insurance or other charges shall be passed on to the Buyer.
- Buyers’ Responsibility:** Responsibility for any damage or loss occurring after the 7 day period stipulated above shall be solely at the Buyer’s risk.
- Shipping:** Should the Buyer require B&H to arrange for collection and shipping this is a service B&H are happy to advise on entirely at cost to the Buyer. Any damage or loss occurring while goods are in the hands of shippers recommended by B&H shall be at the Buyer’s risk.

7. FORGERIES

- Should it be brought to B&H’s attention that an item offered at one of its Auctions or by way of Private Treaty Sale may be a forgery and satisfactory initial evidence given to that effect, B&H retains the right to withdraw the item for sale and hold it until further evidence as to the item’s legitimacy are delivered, or make it available to the necessary authorities for research to ascertain the validity of

the item, when a decision as to whether the item is a forgery can be delivered.

- Should a Buyer believe an item he has bought to be a forgery, he must first prove legal title to the item and then furnish the necessary proof which will be examined by the relevant B&H expert or consultant, for scrutiny. Thereafter, a mutually agreeable panel of experts (nominated by both the Buyer and B&H) would be constituted. The experts nominated by the Buyer and B&H will in turn nominate an Umpire. Their decision would be final. Please note that matters relating to possible forgery may only be raised by the Buyer of the item from a B&H Auction/ Private Treaty Sale and within 7 days from date of Sale. The method of dispute resolution shall be that envisaged in clause 10 of these Terms & Conditions of Sale.

- Notwithstanding clause 7.2 above, if the description given at the time of the Auction/Sale was a generally accepted opinion or if the means of testing used to determine whether the item was a forgery, was not available at the time of the sale, B&H shall not be held liable.

- Based on clause 7.2 and 7.3 above, should the proof that a Lot is a forgery be compelling, B&H shall cancel the Sale and refund the Total Price to the Buyer but only after receiving the Sale proceeds from the Seller, should he already have been paid and then return the object to the Seller. The Seller shall bear the costs of any necessary research undertaken to establish the forgery.

8. NON-EXPORTABLE PROPERTY

Any property which in B&H’s opinion is Non Exportable (out of India) because it is described as an ‘Antiquity’ or a ‘National Art Treasure’ under the Antiquities and Art Treasures Act, 1972, shall be indicated as ‘Non Exportable’ in the catalogue & website. Any attempt to export such a marked item without the express permission of the Archaeological Survey of India (A.S.I) and or the CBIC & Customs shall be entirely at the Buyer’s risk. Properties not carrying the ‘Non Exportable’ tag may in B&H’s opinion only be exported in accordance with Indian Law. Should a Buyer wish to export such an object he must get the necessary clearances from the authorities himself. At its discretion, B&H may only endeavour to assist the Buyer.

9. ANTIQUITIES

Any Seller wishing to consign for Auction/Sale an object property deemed to be an Antiquity must have said object registered as such with the Archaeological Survey of India (A.S.I) under the Antiquities and Art Treasures Act, 1972., prior to offering it to B&H and after it is sold at Auction or by way of Private Treaty Sale, it is the responsibility of the Buyer to get the registration transferred in his name and communicate with the A.S.I to ensure that they receive the registration certificate. B&H as auctioneers/agents only facilitate the open market Sale and cannot be held legally responsible for failure to do so on the Buyer’s part.

10. JURISDICTION

Notwithstanding the Terms & Conditions of Sale above, these shall be governed by Indian Law and are subject to the jurisdiction of the courts at Bengaluru. Any disputes arising between Seller, Buyer or B&H or anyone else in connection with the lots or B&H’s auctions shall be settled in accordance with the Arbitration and Conciliation Act, 1996 or as deemed appropriate by B&H. Language of such settlements shall be English. Place of arbitration shall be Bengaluru.

11. OTHERS

- The printing quality of the catalogue might not exactly match with the original works.
- All estimates, if also given in US\$ or any other foreign currency, would be subject to exchange rate in Indian Rupees on the date of sale.
- All text, pertaining to description and research on the lots, on the website or in the catalogue, without any acknowledgment or reference to authorship is copyrighted to B&H.
- Errors & Omissions, on the website or in the catalogue, if any, are sincerely regretted and may be excused.
- B&H can make changes to these Terms & Conditions of Sale from time to time without any prior notification. It is the responsibility of the Buyer to ensure that he reads the updated Terms & Conditions of Sale in each new catalogue or on the website from time to time so as to make himself aware of these changes if any. If the Terms & Conditions of Sale have changed, in no instance shall the old Terms & Conditions of Sale be applied unless the item/s were purchased from an auction catalogue that had the old Terms & Conditions of Sale. However, in the unlikely event of a change in the Terms & Conditions of Sale post the publication of an upcoming auction catalogue, but prior to the auction, the same will be notified to the Buyer and he has to adhere to these new Terms & Conditions of Sale.