

## **AUCTION**

### **Definitions**

#### **1. Definitions of terms:**

- a. The 'buyer' refers to the party with the highest accepted bid for any lot at auction and/or such party's principal where bidding as agent.
- b. The 'vendor' refers to the party consigning property for sale and/or such party's principal where acting as agent.
- c. 'Colville Gallery' reference to Studio Gallery Pty Ltd trading as Colville Gallery ABN 870 9245 8038
- d. The 'hammer price' refers to the final bid price (including and GST) accepted by the auctioneer, or in the case of a post-auction sale, the agreed price (including GST).
- e. The 'buyer's/ vendor's premium' is calculated at 21% + GST for sales between 0 - \$999, 18% + GST for sales between \$1000 - \$4999 and 16% + GST for sales \$5000 and above. Payable by the buyer calculated as a percentage of the hammer price.
- f. 'GST' refers to the goods and services tax imposed by the A New Tax System (Goods and Services) Act 1999 as amended.
- g. The 'lot' refers to the item(s) described against any lot number in the catalogue.
- h. The 'reserve' refers to the minimum price (including any GST) the consignor will accept for a lot.

### **CONDITIONS OF AUCTION AND SALE**

The terms and conditions of business set forth below are subject to amendment by verbal or written notice prior to and during the auction and sale. They constitute the entire contractual agreement with the buyer in respect to any lot offered at auction. By bidding at auction in any manner

compliant with bidding procedures, the buyer and all bidders agree to be bound by these terms and conditions and the terms of the prospective buyers and sellers guide contained in the catalogue, as amended. To the extent that an agent acts on behalf of the buyer, liability for obligation arising from these conditions of business will pass to the buyer. Multiple buyers are jointly and severally liable for obligations arising from this agreement.

## **PRELIMINARY CONDITIONS AND DISCLAIMER**

- 2. Agency:** Colville Gallery acts as agent for the vendor and the contract of sale for the lot will be between the buyer and the vendor.
- 3. Property is sold 'as is':** To the extent permitted by law:
  - a. no guarantees, warranties or representations are made (express or implied) by Colville Gallery or the vendor in relation to the nature and condition of any lot; and
  - b. Colville Gallery disclaims liability for any misrepresentations, errors or omissions, whether verbal or in writing, in the catalogue or any supplemental material.

All factual information provided by the vendor is merely passed on by Colville Gallery from the vendor or other source. Colville Gallery has made no attempt to verify this information. All additional statements of opinion represent the specialist opinion of the director of Colville Gallery and should not be relied upon as statements of fact.

- 4. Responsibility to inspect:** Responsibility remains with the buyer to satisfy its, his or her self by inspection and evaluation prior to purchase as to the nature and condition of any property.

## **CONDITIONS AT AUCTION**

- 5. Registration:** Bidders must register to bid and obtain a bidder's paddle minimum 24 hours prior to the commencement of the auction. Registration requires that bidders provide proof of identity and Colville Gallery may impose other obligations on the registration of bidders in its discretion.

**6. Auctioneer's discretion:** Colville Gallery reserves the right to absolute discretion over the conduct of the auction including the regulation of bidding and its increments. This discretion extends to the challenge or rejection of any bid, the right to withdraw any lot and the right to determine the successful bidder or reoffer a lot in the event of a dispute. The prospective buyers and sellers guide details an indicative process for the conduct of auctions. All parties are strongly urged to read the prospective buyers and sellers guide including in this catalogue.

**7. Bidding:** Colville Gallery may sell each lot to the highest bidder at auction providing the reserve price has been met or where the net amount accounted to the vendor is at least equivalent to the net amount that would have been achieved for a sale at the reserve price. The fall of the auctioneer's hammer marks the acceptance of the highest bid and the conclusion of a contract for sale between the vendor and the buyer. Unless otherwise agreed in writing with Colville Gallery, the individual physically present at the auction who signals the bid accepts personal liability to pay the purchase price, including the buyer's premium and all additional fees, taxes and charges.

## **POST-SALE CONDITIONS**

**8. Post auction private sale:** Should the lot fail to sell at auction, Colville Gallery is authorised to sell the lot privately for a period of seven days in which event this agreement shall apply to the relevant buyer to the full extent of its provisions.

**9. Payment:** The buyer will not acquire title until payment has cleared in full. Interest at a rate of 17.5% p.a. will be charged over outstanding accounts where no extension of terms has been granted. Interest will be payable from the payment due date. With respect to each lot purchased, the buyer agrees to make the following payments within seven days from the date of sale:

- a. The hammer price.
- b. In exchange for services rendered by Colville Gallery, a 'buyer's premium' is calculated at 21% + GST for sales between 0 - \$999, 18% + GST for sales between \$1000 - \$4999 and 16% + GST for sales \$5000 and above, of the hammer price.

- c. Post sale packing, handling, shipping and storage where applicable.
- d. If payment is made via Visa, MasterCard or American Express, merchant fees payable of 3% on American Express to Colville Gallery on the transaction as indicated in the prospective buyers and sellers guide.

Payment must be made within seven days of the date of sale in Australian dollars by cash, cheque, direct debit, approved credit cards or electronic funds using the form and/or trust account details provided at the back of this catalogue. In certain circumstances, extensions of payments may be granted at the discretion of Colville Gallery. Once funds have cleared, the proceeds of the sale less the buyer's premium, GST and any commission or costs charged as agreed will be remitted to the vendor within thirty-five days of the date of sale provided payment has been received in full. Funds will be held in an interest bearing account by Colville Gallery until remitted to the vendor. Colville Gallery will be entitled to any interest earned during this period. Application for a cultural heritage export licence or any other licence in no way affects the buyer's obligation to make payment or collection within the period specified in sections 10 and 13a.

**12. Risk and Title:** Risk in the lot, including risk of loss or damage, will pass to the buyer on the earlier of:

- a. the date payment is due, whether or not it has been made; and
- b. collection by the buyer.

The buyer assumes risk for the property in all respects from this date and neither Colville Gallery nor the vendor will be liable for loss or damage occurring after the payment due date. The buyer is encouraged to make arrangements to ensure comprehensive cover is maintained from this date. Title in the lot does not pass to the buyer, even if the lot is released to the buyer, until the buyer has paid all sums owing to Colville Gallery. If a buyer makes a claim against Colville Gallery for damage or loss after sale, the buyer's premium and the final bid price shall be payable notwithstanding.

## **RESRVES**

The reserve is the minimum price the vendor is willing to accept and below which a lot will not be sold. This amount is confidential and will not exceed the low pre-sale estimate. Property offered for sale without a reserve is identified by the plus shaped symbol “+” next to the lot number.

## **GST SYMBOL**

Please note the following GST symbol “\*”. This symbol indicates that the lot has been consigned by a GST registered entity. This symbol “\*” displayed next to a lot number indicates GST at 10% is payable on the hammer price and buyer’s premium. In all other circumstances GST will only be payable on the buyer’s premium.

## **CONDITIONS OF SALE**

If you wish to bid in a sale, we encourage you to read the Conditions of Sale which appear in this catalogue. The Conditions of Sale outline the terms governing the purchase of property sold at auction. Colville Gallery will sell property to be auctioned on a GST exclusive basis. The asterisk shaped symbol “\*” indicates lots that are subject to payment of GST by the purchaser in addition to the hammer price and the buyer’s premium. The buyer’s premium will also be subject to GST.

## **PROVENANCE**

Colville Gallery, may list in the catalogue entry matters such as the history of ownership and other relevant information with respect to scholarship or that assists in distinguishing the work of art. Colville Gallery is not able to carry out detailed enquiries with respect to provenance on each lot. Bidders are responsible to make their own enquiries and investigations on provenance before bidding on any lot or otherwise making an offer to purchase.

The identity of the Seller or previous owners may not be disclosed for a variety of reasons. For example, such information may be excluded at the Seller’s request or because the identity of prior owners is unknown.

## **WITHDRAWAL OF PROPERTY**

Without any prior notice to the Vendor, Colville Gallery reserves the right to withdraw from sale the property or to have the property listed at auction.

## **PRIVACY OF INFORMATION POLICY**

Colville Gallery, ensures privacy of your personal information through its compliance with the Privacy Act 1988 (Cth) and the ten National Privacy Principles from Schedule 3 of the Act.

Personal information will only be collected from you in order that Colville Gallery can conduct the business of buying and selling with you, marketing purposes, authenticate bidding transactions, communicate and provide information in relation to the business to you, and maintain records necessary to the operation and management of the business and as required by law.

Colville Gallery use and disclosure of your personal information will only be within the business (including its related entities) for the purposes of conducting business transactions with you, forwarding invitations for you to submit pictures to auction and to attend marketing events, to distribute catalogues, publish results of auctions and provide information about services available to you in the best interest of maintaining a high level of client relationship with you.

The use and disclosure of your personal information to a third party will only be where Colville Gallery has contracted that third party to provide a service related to the prime activities of conducting business, providing client services and running marketing campaigns involving parties such as, a mailing house, a distribution centre, a freight forwarding centre or a marketing house, with a commitment Colville Gallery are the contracted third party to maintaining high levels of confidentiality and protection over the security of your personal information.

The management and staff of Colville Gallery is at all times aware of their responsibility to maintain quality and security of data, by applying care and diligence with the protection, maintenance of accuracy, currency and security of your valuable personal information in its use for purpose, record keeping, storage and safeguard from unauthorised access.

The quality and security of data can relate to written and electronic records of your communications with Colville Gallery, video or recorded phone records which may be made from time to time for security, legal or validation of bids made at auction and, photographic images of attendees at functions, events and auctions which may be published for future promotional or marketing purposes by Colville Gallery.

In the event that you wish to access and/or correct your personal information held by Colville Gallery and related entities, you may do so in the form of a written request stating whether you want a statement of the personal information held, or a correction made to the information held or, if you have an objection to the use of your personal information for Colville Gallery's marketing purposes.

Written requests should be made to:

**Trudi Young**

**Colville Gallery**

**91a Salamanca place**

**Hobart TAS 7000**

Colville Gallery would only disclose your personal information in a transborder data flow to a foreign country in completion of a business transaction with you which is in your direct interest and you are the beneficiary thereof. Such disclosure will only be made either where Colville Gallery has good reason to believe that the recipient is subject to privacy laws similar to Australia or, you give your consent for the disclosure where the recipient may not be believed to offer such protection.

**GST**

“GST” means the goods and services tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Com) (as amended).

I. Colville Gallery will sell the Property to be auctioned on a GST exclusive basis. The hammer price will therefore be exclusive of any GST payable. Colville Gallery will invoice the Purchaser for the hammer price, buyer's premium and the applicable GST. Colville Gallery will account to the Vendor for the GST

payable on the hammer price actually recovered from the Purchaser. The Vendor will be responsible to pay the GST to the Australian Tax Office.

II. The Purchaser must carefully assess whether input tax credits for any GST paid in addition to the hammer price will be available. We recommend you contact your accountant or lawyer on this question.

III. Colville Gallery will mark its sale catalogue with an asterisk “\*” against each lot declared to be subject to GST on sale. The Purchaser shall be responsible to pay GST on the hammer price for lots marked with an asterisk as a “taxable supply”

IV. Colville Gallery will provide the Purchaser with a valid “tax invoice” if GST is assessable on the sale.

V. Any overseas buyer eligible for exemption from GST must produce satisfactory proof to Colville Gallery that the property has or will leave the country as an export within 60 days of its purchase.

## **EXPORT LICENCE**

Any application for an export licence by the buyer pursuant to any of the following:

1. The Movable Cultural Heritage Act (1986); and
2. The Wildlife Protection (Regulations of Exports and Imports) Act 1982; and
3. Any other legislation or regulations that may prohibit the movement of or export of a lot from State to State or Territory and/or out of the Commonwealth of Australia;

shall not affect the obligations of the buyer to make payment to Colville Gallery within the time stipulated by these conditions. Unless there is an express written agreement by Colville Gallery to make an application for an export license on his or her behalf, then all disbursements and out of pocket expenses that relate to such an application shall be to the buyer's account.

## **PRIVACY OF INFORMATION**

Colville Gallery ensures client confidentiality and use of personal information in accordance with its Privacy of Information Policy as stated in this catalogue. Clients when requesting to bid or choosing to attend public events held by Colville Gallery agree to the collection, use and security of personal information in accordance with the policy.

## **AFTER AUCTION SALES**

Any post auction sale of lots offered at auction shall incorporate these Conditions as if sold in the auction.

## **COLVILLE GALLERY AS AGENT**

Except as otherwise stated Colville Gallery acts as agent for the seller.

The contract for the sale of the property is therefore made between the seller and the buyer.

## **BEFORE THE SALE:**

### **EXAMINATION OF PROPERTY**

Prospective Buyers are strongly advised to examine in person any property in which they are interested before the Auction takes place.

Neither Colville Gallery nor the seller provides any guarantee in relation to the nature of the property apart from the Limited warranty in the paragraph below.

The property is otherwise sold "AS IS"

### **CATALOGUE AND OTHER DESCRIPTIONS**

All statements by Colville Gallery in the catalogue entry for the property or in the condition report, or made orally or in writing elsewhere, are statements of opinion and are not to be relied upon as statements of fact. Such statements do not constitute a representation, warranty or assumption of liability by Colville Gallery of any kind. References in the catalogue entry to the condition report to damage or restoration are for guidance only and should be evaluated by personal inspection by the

bidder or a knowledgeable representative. The absence of such a reference does not imply that an item is free from defects or restoration, nor does a reference to particular defects imply the absence of any others. Estimates of the selling price should not be relied on as a statement that this is the price at which the item will sell or its value for any other purpose. Neither Colville Gallery nor The Seller is responsible for any errors or omissions in the catalogue or any supplemental material.

### **BUYERS RESPONSIBILITY**

All property is sold "as is" without representation or warranty of any kind by Colville Gallery or the Seller. Buyers are responsible for satisfying themselves concerning the condition of the property and the matters referred to in the catalogue by requesting a condition report.

### **AT THE SALE:**

#### **ABSENTEE BIDS**

Colville Gallery will use reasonable efforts to carry written bids delivered to us AT LEAST 24 Hours to the sale for the convenience of those clients who are not present at the auction in person, by an agent or by telephone. Bids must be placed in Australian Dollars. Please refer to the catalogue for the Absentee/Telephone Bids form. If we receive written bids on a particular lot for identical amounts, and at the auction these are the highest bids on that lot, then it will be sold to the person whose written bid was received and accepted first. Execution of written bids is a free service undertaken subject to other commitments at the time of the sale and we do not accept liability for failing to execute a written bid or for errors and omissions in connection with it. It is the buyer's responsibility to check with the auctioneer immediately after the auction if they were successful at the auction with any absentee bids.

#### **TELEPHONE BIDS**

Priority will be given to overseas and interstate bidders. Arrangements for this service must be confirmed at least 24 hours prior to the auction. Colville Gallery accepts no responsibility whatsoever for any errors or

failure to execute bids. In telephone bidding the buyer agrees to be bound by all terms and conditions listed here and accepts that Colville Gallery cannot be held responsible for any miscommunications in the process. The buyer also agrees to check all lots are as catalogued at least and about one hour before the start of the auction sale.

#### **AFTER THE SALE:**

##### **COLLECTION OF PURCHASES AND INSURANCE**

Colville Gallery is entitled to retain items sold until all amounts due to us have been received in full in good cleared funds. Subject to this, the buyer shall collect purchased lots within 48 hours from the date of sale unless otherwise agreed in writing between Colville Gallery and the Buyer.

At the fall of the hammer, insurance is the responsibility of the purchaser.

##### **PACKING, HANDLING AND SHIPPING**

Colville Gallery will be able to suggest removals companies that the buyer can use but takes no responsibility whatsoever for the actions of any recommended third party. Neither the Director nor the staff of Colville Gallery will pack and handle goods purchased at the auction and it is the responsibility of the buyer/s to organise this.

##### **CULTURAL HERITAGE EXPORT LICENCES**

Unless otherwise agreed by us in writing, the fact that the buyer wishes to apply for an export licence does not affect his or her obligation to make full payment immediately, nor our right to charge interest or storage charges on late payment. It is the buyer's responsibility to check Australia's protection of Moveable Cultural Heritage Act 1986 before purchase. If the buyer requests Colville Gallery to apply for an export licence then we shall be entitled to charge a fee for this service. We shall not be obliged to rescind a sale nor to refund any interest or other expenses incurred by the buyer where payment is made by the buyer in circumstances where an export licence is required.

## **REMEDIES FOR NON-PAYMENT**

If the buyer fails to make full payment immediately, Colville Gallery is entitled to exercise one or more of the following rights or remedies (in addition to asserting any other rights or remedies available to the law)

- I) to charge interest at such a rate as we shall reasonably decide
- II) to hold the defaulting buyer liable for the total amount due and to commence legal proceedings for its recovery along with interest, legal fees and costs to the fullest extent permitted under applicable law
- III) to cancel the sale
- IV) to resell the property publicly or privately on such terms as we see fit
- V) to pay the seller an amount up to the net proceeds payable in respect of the amount bid by the defaulting buyer
- VI) to set off against any amounts which Colville Gallery may owe the buyer in any other transactions, the outstanding amount remaining unpaid by the buyer
- VII) where several amounts are owed by the buyer to us, in respect of different transactions, to apply any amount paid to discharge any amount owed in respect of any particular transaction, whether or not the buyers so directs
- VIII) to reject at any future auction any bids made by or on behalf of the buyer or to obtain a deposit from the buyer prior to accepting any bids
- IX) to exercise all the rights and remedies of a person holding security over any property in our possession owned by the buyer whether by way of pledge, security interest or in any other way, to the fullest extent permitted by the law of the place where such property is located. The buyer will be

deemed to have been granted such security to us and we may retain such property as collateral security for such buyer's obligations to us

- X) to take such other action as Colville Gallery deem necessary or appropriate

If we do sell the property under paragraph (IV), then the defaulting buyer shall be liable for payment of any deficiency between the total amount originally due to us and the price obtained upon reselling as well as for all costs, expenses, damages, legal fees and commissions and premiums of whatever kinds associated with both sales or otherwise arising from the default.

If we pay any amount to the seller under paragraph (V) the buyer acknowledges that Colville Gallery shall have all of the rights of the seller, however arising, to pursue the buyer for such amount.

#### **FAILURE TO COLLECT PURCHASES**

Where purchases are not collected within 48 hours from the sale, whether or not payment has been made, we shall be permitted to remove the property to a third party warehouse at the buyer's expense, and only release the items after payment in full has been made of removal, storage handling, insurance and any other costs incurred, together with payment of all other amounts due to us.

#### **EXTENT OF COLVILLE GALLERY LIABILITY**

Colville Gallery agrees to refund the purchase price in the circumstances of the Limited Warranty set out in paragraph 7 below. Apart from that, neither the seller nor we, nor any of our employees or agents are responsible for the correctness of any statement of whatever kind concerning any lot, whether written or oral, not for any other errors or omissions in description or for any faults or defects in any lots. Except as stated in paragraph 7 below, neither the seller ourselves, our officers, agents or employees give any representation warranty or guarantee or

assume any liability of any kind in respect of any lot with regard to merchantability, fitness for a particular purpose, description, size, quality, condition, attribution, authenticity, rarity, importance, medium, provenance, exhibition history, literature or historical relevance. Except as required by local law any warranty of any kind is excluded by this paragraph.

### **LIMITIED WARRANTY**

Subject to the terms and conditions of this paragraph, the owner warrants for the period of thirty days from the date of the sale that any property described in this catalogue (as such description may be amended by any saleroom notice or announcement) which is stated without qualification to be the work of a named author or authorship is authentic and not a forgery. The term "Author" or "authorship" refers to the creator of the property or to the period, culture, source, or origin as the case may be, with which the creation of such property is identified in the catalogue.

This warranty does not apply to supplemental material, which appears below the first line description of each lot, and neither the owner nor Colville Gallery will be held responsible for any errors or omissions in such material. The terms used in the first line descriptions are further explained in Important Notice and Explanation of Cataloguing Practice. The warranty does not apply to any heading, which is stated to represent a qualified opinion. The warranty is subject to the following:

- I) it does not apply where a) the catalogue description or saleroom notice corresponded to the generally accepted opinion of scholars and experts at the date of the sale or fairly indicated that there was a conflict of opinions, or b) correct identification of a lot can be demonstrated only by means of a scientific process not generally accepted for use until after publication of the catalogue or a process which at the date of the publication of the catalogue was unreasonably expensive or impractical or likely to have caused damage to the property.

- II) the benefits of the warranty are not assignable and shall apply only to the original buyer of the lot as shown on the invoice originally issued by Colville Gallery when the lot was sold at Auction.
- III) the Original Buyer must have remained the owner of the lot without disposing of any interest in it to any third party.

## **LAW AND JURISDICTION**

The rights and obligations of the parties with respect to these Conditions of Sale, the conduct of the auction and any of the foregoing shall be governed and interpreted by the laws of the jurisdiction in which the auction is held. By bidding at auction, whether present in person or by agent, by written bid, telephone bid or other means, the buyer shall be deemed to have submitted for the benefit of Colville Gallery, to the exclusive jurisdiction of the courts of that country, state or province and (if applicable) of the federal courts sitting in such state.

## **RESALE ROYALTY SCHEME**

The seller:

- I) acknowledges that he or she understands his or her obligations under the Resale Royalty for Visual Artists Act 2009 (the Act);
- II) undertakes to comply with all requirements of the Act, including by providing its agent, the company, with accurate information sufficient for compliance with sections 28 and 29 of the Act;
- III) undertakes to indemnify the company for any loss incurred by the company as a result of the vendor's failure to comply with any of the vendor's legal obligations under the Act; and
- IV) acknowledges that if he or she fails to comply with any of his or her legal obligations under the Act, the company may provide the vendor's name and contact details to Copyright Agency Limited (CAL).