

## **CONSIGNMENT AGREEMENT**

Consignment agreement between \_\_\_\_\_ (the "**Seller**") and Auction Action Ltd. (the "**Auctioneer**") this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

In consideration of the respective covenants and agreements of the parties contained herein, the sum of one dollar paid by each party to the other and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties) it is agreed as follows:

### **1. CONSIGNMENT**

Seller consigns to the Auctioneer the property identified in the attached Schedule "A" (the "**Property**") which the Auctioneer, as Seller's agent, will offer for sale at public auction, unless otherwise agreed and subject to the provisions set forth in this agreement and the Auctioneer's standard conditions of sale and limited warranty (if any) in effect at the time of the auction.

### **2. COMMISSION**

For its services, the Auctioneer will receive and retain from the proceeds of the sale as a commission from Seller those amounts as indicated in the attached Schedule "A".

A premium of 10% of the final bid will be collected by Auctioneer from the buyer, up to a maximum of \$250.00 per lot.

### **3. INSURANCE**

The Property will be insured, at Seller's expense, from the time of receipt by Auctioneer until it ceases to be in Auctioneer's custody for an amount equal to the pre-sale estimate if unsold or for the amount of the final bid if sold (either amount, as the case may be, is referred to as the "**Valuation Base**"). Insurance for Property received at Auctioneer's auction premises will be charged to Seller at the rate of 1.5% of the Valuation Base, unless the Property is breakable, such as porcelain or glass or consists of photographs, in which event the rate shall be 2% of the Valuation Base. Auctioneer's liability to Seller resulting from loss of or damage to any Property shall not exceed the above-mentioned insurance coverage of such Property. While Auctioneer undertakes to exercise reasonable care in handling the Property, it shall not be responsible for any damage to any Property caused by climatic or atmospheric conditions, nor shall it be responsible for any damage to picture frames.

### **4. PACKING, TRANSPORT AND DELIVERY**

Seller agrees to pay all costs and expenses of packing, transport and delivery of the Property to Auctioneer's premises. While Auctioneer will, on request, suggest a carrier, it accepts no responsibility therefor, and packing, transport and delivery of the Property will be at the Seller's sole expense and risk. Auctioneer reserves the right to arrange for storage of the Property in a warehouse at Seller's expense.

### **5. ILLUSTRATION**

Seller agrees to pay all costs and expenses relating to catalogue illustrations of the Property.

### **6. TESTS AND PROCEDURES**

Seller agrees to pay all costs and expenses of tests, reports or procedures which, in Auctioneer's sole opinion, may be necessary to verify the authorship, attribution, quality or authenticity of any Property, including but not limited to, Carfax or CarProof reports, gemological tests of jewelry and related items.

## **7. SPECIAL CHARGES**

Seller agrees to pay all costs and expenses of agreed-upon restoration procedures, as well as special advertising and promotional efforts relating to the sale of the Property, together with additional costs and expenses not set forth in paragraphs 3 through 7 of this agreement as may be agreed to by Seller. Expenses incurred by Auctioneer for the Seller's account pursuant to paragraphs 4, 6 and 7 of this agreement shall include a 5% service charge.

## **8. DISCRETIONARY MATTERS**

Auctioneer shall have complete discretion as to:

- (a) the place and date of sale and the manner in which the sale is conducted, including the conditions of sale then in effect;
- (b) the illustration, if any, or the description or both of the Property in its catalogues or other literature;
- (c) retaining experts; and
- (d) the combination or division of the Property into such lots or separate auctions or both as may, in Auctioneer's sole opinion, be deemed appropriate.

## **9. SELLER'S RESERVE; ESTIMATES**

Unless otherwise agreed, all Property will be sold subject to a reserve which is the minimum price below which the Property will not be sold. Unless the reserve is indicated in Schedule "A" or mutually agreed upon between Seller and Auctioneer and confirmed by Seller in writing, which confirmation is received by Auctioneer at least one (1) day before the sale, the reserve will be determined by Auctioneer in its absolute discretion. The reserve and any printed pre-sale estimates shall not include the buyer's premium referred to in paragraph 2 or any applicable taxes. Auctioneer shall act to protect the reserve as agent of Seller by bidding through the auctioneer. If bidding does not reach the reserve on any lot, such lot will be withdrawn from sale by the auctioneer. Any appraisal, estimate or other statement of Auctioneer or its representatives with respect to the estimated or expected selling price of any article (whether or not in writing) is a statement of opinion only and shall not be relied upon by Seller or any third party as a prediction or guarantee of the actual selling price. In no event shall Auctioneer be liable for the failure of any Property to be sold at the estimated or expected price or to reach the reserve.

## **10. NO BIDDING BY SELLER**

Under no circumstances shall Seller, its principal, if any, its representatives, family members, employees or agents (other than Auctioneer acting as Seller's agent in accordance with paragraph 9), enter or cause to be entered a bid on any Property being offered for sale at the auction.

## **11. WITHDRAWAL**

No Property may be withdrawn after the date of this agreement without Auctioneer's consent. In the event that Auctioneer consents to such a withdrawal the Auctioneer shall be reimbursed for all out-of-pocket expenses incurred by Auctioneer. Auctioneer reserves the right to withdraw any Property at any time before actual sale if in Auctioneer's sole judgment:

- (a) there is doubt as to its attribution or to its authenticity;
- (b) there is doubt as to the accuracy of Seller's representations or warranties set forth herein in any respect;

- (c) Seller has breached or is about to breach any provision of this agreement; or
- (d) for other just cause,

and in such case, the Auctioneer shall be reimbursed for all out-of-pocket expenses incurred by Auctioneer.

## **12. SETTLEMENT OF ACCOUNT**

Provided Auctioneer has received payment in full from the buyer, Auctioneer will pay Seller the net proceeds received and collected from the sale of the Property within 21 calendar days after the sale after deducting its commissions, any reimbursable expenses incurred by Auctioneer and any other amounts due to Auctioneer or any affiliates (whether arising out of the sale of the Property or otherwise), unless Auctioneer shall have received notice of the buyer's intention to rescind the sale or of any other claim relating to the Property or its sale or shall for any reason have refunded such proceeds to the buyer prior to the expiration of such period.

## **13. NON-PAYMENT BY BUYER**

In the event of non-payment by the buyer, Auctioneer in its sole discretion may cancel the sale and return the Property to Seller, enforce payment by the buyer or take any other actions permitted by law. Auctioneer shall not, under any circumstances, be liable for any incidental or consequential damages resulting to Seller as a result of a breach or failure by the buyer.

## **14. RESCISSION OF SALE**

Auctioneer, as Seller's agent, is authorized to accept the return and rescind the sale of any Property at any time if the Auctioneer, in its sole judgment, determines that the offering for sale of any Property has subjected or may subject Auctioneer or Seller or both to any liability including any liability under warranty of authenticity of title. In such event, Auctioneer is further authorized to refund or credit to the buyer the purchase price of such returned Property, and if Auctioneer has already remitted to the Seller any proceeds of the rescinded sale, Seller shall forthwith pay Auctioneer on request an amount equal to the remitted proceeds.

## **15. UNSOLD PROPERTY**

For each lot offered but not sold, there will be a service charge, which is indicated in Schedule "A" attached. Property remaining unsold and not being kept for sale must be collected at Seller's expense within five (5) days after notice requiring Seller to do so. Thereafter, Seller will incur a storage charge of \$50.00 per day on each lot. Seller shall not be entitled to reclaim any unsold Property until all commissions, expenses and other amounts owed to Auctioneer have been paid in full. Any Property not picked up or re-consigned for sale within five (5) days of such notice to collect may be sold at public auction by Auctioneer at Auctioneer's standard commission rates and charges, with a reserve price set at Auctioneer's absolute discretion. The proceeds of such sale shall first be applied to the expenses of such sale, then to the indebtedness owing to Auctioneer and any excess will be remitted to Seller, or held by Auctioneer for Seller's account, at Auctioneer's sole discretion.

## **16. SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to the Auctioneer that:

- (a) Seller has the right to consign the Property for sale; and
- (b) the Property is, and until the completion of sale by Auctioneer will be free and clear of all encumbrances of others or restrictions on Auctioneer's right to offer and sell the Property at auction, and that good title and right to possession of the Property will pass to the buyer free of any such encumbrances or restrictions.

Seller agrees that the representations and warranties shall survive the completion of the transactions contemplated hereby. Seller agrees to notify Auctioneer promptly in writing of any events or circumstances that may cause the foregoing representations and warranties to be inaccurate or breached in any way.

#### **17. COPYRIGHT MATTERS**

Seller represents and warrants that there are not and until the completion of sale by Auctioneer there will not be, any restrictions on Seller's or Auctioneer's right to photograph or reproduce photographs of the Property or to exhibit the Property for sale and that Auctioneer shall retain all rights in and to all blocks, prints and plates and the right of reproduction therefrom.

#### **18. INDEMNIFICATION**

Seller shall indemnify and defend Auctioneer from and against any claims, liabilities and expenses (including interest, penalties and lawyer's fees on a lawyer and his/her own client full indemnity basis and amounts paid in investigation, defending or settling any of the foregoing) arising out of or in connection with:

- (a) any acts by or omissions of Seller, its agents or employees, or allegations based upon such acts or omissions, relating to or affecting the Property consigned to Auctioneer hereunder;
- (b) any inaccuracy of any representation or warranty made by Seller in connection with the transactions contemplated herein;
- (c) the claims of third parties claiming or challenging title to any Property consigned hereunder, or claiming infringement of any copyrights or similar proprietary interests; or
- (d) the claims of buyers, persons claiming for buyers or any other person resulting from Auctioneer offering for sale or selling any Property has been offered, sold or returned to Auctioneer.

#### **19. MISCELLANEOUS**

- (a) All prior negotiations, representations, contracts or agreements, if any, between the parties relating to the Property are merged into this agreement and this agreement is complete, entire and the only agreement between the parties.
- (b) In the event of any disputes arising hereunder, Auctioneer shall not be liable to Seller for any incidental or consequential damages.
- (c) This agreement shall be governed by and constructed in accordance with the laws of the Province of Alberta.
- (d) The parties shall sign such further and other documents, cause such meetings to be held and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this agreement and every part thereof.
- (e) This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument. This agreement may be delivered by fax, by email in PDF or by other electronic means.
- (f) Time shall be of the essence of this agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

- (g) This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.
- (h) Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

IN WITNESS WHEREOF the parties have duly executed this consignment agreement as of the date first written above.

**AUCTION ACTION LTD.**

Per: \_\_\_\_\_  
[Authorized Signing Officer]

**If Seller is a Corporation:**

\_\_\_\_\_

Per: \_\_\_\_\_  
[Authorized Signing Officer]

**If Seller is an Individual:**

\_\_\_\_\_  
Witness

\_\_\_\_\_

