

GORDON BROTHERS PTY LTD
(TRADING AS GORDON BROTHERS)

TERMS OF BUSINESS

SALE OF GOODS BY AUCTION AND/OR PRIVATE TREATY (INCLUDING ON-LINE)

1. INTRODUCTION

- 1.1 Gordon Brothers is the trading name of Gordon Brothers Pty Ltd (**Gordon Brothers**), a Limited Liability Company incorporated under the laws of New South Wales. The Company's registered office is at Level 14, 20 Hunter Street, Sydney, NSW 2000.
- 1.2 These are the terms and conditions (**Terms**) under which Gordon Brothers sells equipment, plant, machinery and other goods (**Goods**) by auction and/or private treaty to a buyer (**Buyer**).
- 1.3 It is recommended that Buyers review these Terms carefully as they will, together with any special conditions notified to the Buyer, govern the relationship between Gordon Brothers and the Buyer.
- 1.4 The Buyer's attention is particularly drawn to clause 10, which sets out the Buyer's liability to Gordon Brothers, and to clause 11, which sets out the extent of Gordon Brothers' liability to the Buyer.

2. FORMATION OF CONTRACT FOR SALE BY PRIVATE TREATY

- 2.1 If Gordon Brothers indicates that it is prepared to sell Goods by private treaty, such indication shall constitute an invitation to treat and not an offer to sell.
- 2.2 When the Buyer makes an offer to Gordon Brothers to purchase the Goods by private treaty, such offer shall be deemed to be made on these Terms and subject to any special conditions contained in the particulars of sale (**Sale Particulars**) or otherwise notified by Gordon Brothers to the Buyer in writing prior to the Buyer's offer being made or proposed in writing by the Buyer to Gordon Brothers as part of the offer.
- 2.3 Gordon Brothers may accept an offer verbally or in writing, at its option, at which point a contract shall come into existence between Gordon Brothers and the Buyer on these Terms and subject to any special conditions contained in the Sale Particulars.
- 2.4 The Buyer shall have no right to cancel a contract formed under this clause 2, unless Gordon Brothers agrees (in its absolute discretion) or as set out in these Terms.

3. FORMATION OF CONTRACT FOR SALE BY AUCTION

- 3.1 If Gordon Brothers indicates that it is prepared to sell Goods by auction (whether online or otherwise), such indication shall constitute an invitation to treat and not an offer to sell.
- 3.2 By submitting a bid for the Goods (**Bid**), the Buyer makes an offer to Gordon Brothers to purchase the Goods on these Terms and subject to any special conditions contained in the auction particulars (**Auction Particulars**).

- 3.3 The Buyer shall be the highest bidder at or above any reserve or upset price at the conclusion of the auction, at which point a contract for the sale and purchase of the Goods on these Terms and subject to any special conditions contained in the Auction Particulars shall come into existence between Gordon Brothers and the Buyer, subject to Gordon Brothers' right to reject Bids and to alter or withdraw Goods from auction under clause 5.
- 3.4 If any reserve or upset price is not met in a sale by auction, Gordon Brothers shall be entitled in its absolute discretion to accept any Bid received which is below the reserve price, in which case the Buyer shall be the person who has submitted that Bid.
- 3.5 The Buyer shall have no right to cancel a contract formed under this clause 3, unless Gordon Brothers agrees (in its absolute discretion) or as set out in these Terms.
- 3.6 The Buyer warrants and represents that each Bid it has made has complied with the Auction Particulars and was made in good faith.

4. **THE GOODS**

- 4.1 The Goods are sold on an "as is" and "where is" basis. The Buyer is responsible for inspecting and investigating the Goods prior to a sale by auction or private treaty and for satisfying itself on all matters relating to the Goods including as to the description of the Goods and their merchantability, quality, condition and fitness for purpose.
- 4.2 To the extent permitted by law, Gordon Brothers and its employees, representatives, agents and subcontractors give no representation or warranty as to the description of the Goods or their merchantability, quality, condition or fitness for purpose. If the Buyer is a "consumer" under the Australian Consumer Law, then certain non-excludable consumer guarantees may apply to the sale of the Goods.
- 4.3 Any illustrations, photographs and other images of Goods contained in Sale Particulars and Auction Particulars, or otherwise, shall be for identification purposes only and shall not be indicative of the accuracy of the description of the Goods or their merchantability, quality, condition or fitness for purpose.
- 4.4 Any descriptions in Sale Particulars, Auction Particulars or elsewhere (whether given verbally or in writing) shall be statements of opinion only. To the extent permitted by law, all Goods shall be sold subject to any faults, defects and imperfections which may subsist at the time of the sale.

5. **CONDUCT OF SALE**

- 5.1 Gordon Brothers may in its absolute discretion refuse to admit any person to the premises where the Goods are displayed for inspection (**Premises**).
- 5.2 Gordon Brothers may in its absolute discretion update or amend the Sale Particulars and the Auction Particulars for any reason at any time prior to the formation of a contract under clause 2 or clause 3.
- 5.3 Gordon Brothers may in its absolute discretion alter or withdraw Goods from sale by private treaty or auction at any time prior to the formation of a contract under clause 2 or clause 3.
- 5.4 Gordon Brothers may in its absolute discretion reject a Bid in a sale by auction at any time prior to the formation of a contract under clause 3.
- 5.5 Gordon Brothers may set a reserve or upset price in respect of Goods for sale by auction and reserves the right to submit Bids for Goods on behalf of a third party.

6. **PRICE AND PAYMENT**

- 6.1 Gordon Brothers may require the Buyer to pay a deposit of a portion of the price payable as Gordon Brothers considers reasonable to hold the Goods for the Buyer (in addition to any deposit required under clause 9.7).

- 6.2 The price payable by the Buyer for Goods sold by private treaty shall be the price offered by the Buyer and accepted by Gordon Brothers in accordance with clause 2, plus any buyer's premium and/or resale royalty (if applicable) specified in the Sale Particulars, plus Goods and Services Tax (if applicable) at the prevailing rate.
- 6.3 The price payable by the Buyer for Goods sold by auction shall be the amount of the Bid, plus any buyer's premium (and/or resale royalty (if applicable) specified in the Auction Particulars, plus goods and services tax (if applicable) at the prevailing rate.
- 6.4 Gordon Brothers shall invoice the Buyer for the Goods following completion of the sale. The Buyer shall pay for the Goods in cleared funds in the currency specified in the invoice prior to the collection or removal of the Goods and in any case within 3 days of the date of the invoice. Time for payment shall be of the essence.
- 6.5 The Buyer is liable to pay any form of taxation, duty, impost, levy deduction, withholding or rate or any amount payable to the revenue, customs or fiscal authorities or other Governmental body however described and whenever created or imposed including, without limitation, rates, customs, transfer of registration costs and other import and export duties and excise duties including all penalties, interest, fines or other charges relating to the sale of the Goods.

7. TITLE AND RISK

- 7.1 Gordon Brothers retains title to the Goods, and title to the Goods does not pass to the Buyer, until the Buyer pays in full the price for the Goods and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Buyer to Gordon Brothers on any account at any time. This is so even if the Buyer has taken possession of the Goods, or has enhanced or changed the Goods or performed work on them. Payment by cheque or other bill of exchange is not made until the cheque or bill is honoured in full.
- 7.2 The Goods and any proceeds from any dealing with the Goods are referred to in this clause collectively as the **Collateral**.
- 7.3 If the Buyer is permitted to remove the Goods before paying the price for the Goods and all other amounts payable, then until the Buyer pays in full the price for the Goods and all other amounts that are payable, the Buyer must:
- 7.3.1 store the Collateral properly and separately and mark the Collateral to identify it as being subject to Gordon Brothers' security interest; and
 - 7.3.2 fully insure the Collateral against loss or damage, ensuring that Gordon Brothers' interest as a secured party is noted on the policy, and promptly give Gordon Brothers upon request a copy of the policy and evidence of its currency.
- 7.4 The Buyer undertakes, if it disposes of any Collateral, that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of Gordon Brothers' security interest. If such a security interest does arise despite the previous sentence, the Buyer must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the Collateral, and must immediately pay those proceeds to Gordon Brothers in reduction of the amount owing.
- 7.5 Gordon Brothers can apply amounts it receives from the Buyer towards amounts owing to it in such order as Gordon Brothers chooses.
- 7.6 Gordon Brothers and the Buyer agree not to disclose information of the kind mentioned in section 275(1) of the *Personal Property Securities Act 2009* (Cth) (**PPSA**), except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Buyer agrees not to exercise its rights to make any request of Gordon Brothers under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section (but this does not limit the Buyer's rights to request information other than under section 275).

- 7.7 To the extent the law permits:
- 7.7.1 for the purposes of sections 115(1) and 115(7) of the PPSA:
 - 7.7.1.1 Gordon Brothers need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - 7.7.1.2 sections 142 and 143 are excluded;
 - 7.7.2 for the purposes of section 115(7) of the PPSA, Gordon Brothers need not comply with sections 132 and 137(3); and
 - 7.7.3 if the PPSA is amended to permit the Buyer and Gordon Brothers to agree to exclude other provisions of the PPSA, Gordon Brothers may notify the Buyer that Gordon Brothers need not comply with any of those provisions as notified to the Buyer by Gordon Brothers.
- 7.8 To the extent the law permits, the Buyer waives:
- 7.8.1 its rights to receive any notice that is required by:
 - 7.8.1.1 any provision of the PPSA (including a notice of a verification statement) ; or
 - 7.8.1.2 any other law before Gordon Brothers exercises a power, right, discretion or remedy; and
 - 7.8.2 any time period that must otherwise lapse under any law before Gordon Brothers exercises a power, right, discretion or remedy.
- 7.9 If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).
- 7.10 However, nothing in this clause prohibits Gordon Brothers from giving a notice under the PPSA or any other law.
- 7.11 If Gordon Brothers exercises a power, right, discretion or remedy in connection with these Terms, that exercise is taken not to be an exercise of a power, right, discretion or remedy under the PPSA unless Gordon Brothers states otherwise at the time of exercise. However, this clause does not apply to a power, right, discretion or remedy which can only be exercised under the PPSA.
- 7.12 The Buyer must promptly do anything Gordon Brothers requires to ensure that Gordon Brothers' security interest in the Collateral is a perfected security interest and has priority over all other security interests.
- 7.13 Title to any intellectual property rights which may subsist in the Goods shall not transfer to the Buyer. Any use by the Buyer of the Goods (including without limitation computer software) shall be subject to the terms of any existing licence or other intellectual property rights in and to such Goods.
- 7.14 All risk in the Goods shall pass to the Buyer from and including the date the contract is formed under clause 2 or clause 3. The Buyer should obtain adequate insurance cover for the Goods from the relevant date as Gordon Brothers shall have no responsibility for the loss or theft of, or damage to, the Goods after this time.
- 7.15 If after the contract is formed the Buyer or Gordon Brothers discovers that Gordon Brothers does not have title or unencumbered title to the Goods, then either the Buyer and Gordon Brothers shall be entitled to rescind the contract. If the contract is rescinded in such circumstances, then Gordon Brothers shall refund any sums paid by the Buyer and, to the extent permitted by law, Gordon Brothers shall not have any further liability to the Buyer.

7.16 If prior to the removal of the Goods a third party claims title to or possession of the Goods, Gordon Brothers shall be entitled to rescind the contract and refund any sums paid by the Buyer and, to the extent permitted by law, Gordon Brothers shall not have any further liability to the Buyer.

8. **HEALTH AND SAFETY**

8.1 The Buyer acknowledges the Goods may require specialist handling or treatment prior to their removal from the Premises and during their subsequent transfer and use.

8.2 The Buyer shall be solely responsible for ensuring at its own expense and risk that it is aware of any relevant health and safety legislation or codes of conduct relating to the Goods and that such legislation or codes (as amended) are complied with in full both during the removal, transfer and subsequent use of the Goods as well as in connection with the disposal of any hazardous materials, substances or other waste from the Goods. The Buyer shall produce evidence of its compliance if requested by Gordon Brothers.

9. **REMOVAL OF GOODS**

9.1 The Buyer shall be solely responsible at its own expense and risk for the safe and lawful removal of the Goods from the Premises (including any associated costs, including the costs of disconnecting, detaching or dismantling the Goods) and their onward transfer.

9.2 The Buyer shall contact Gordon Brothers to make arrangements for the removal of the Goods and shall effect such removal under the supervision of Gordon Brothers during normal operating hours, or as reasonably specified by Gordon Brothers, by no later than the due date for payment for the Goods. However, Gordon Brothers shall be under no obligation to release the Goods to the Buyer until it has been able to confirm to its satisfaction that it has received full payment for the Goods in cleared funds. Gordon Brothers shall release the Goods only to the Buyer or its authorised agent and not to any third party.

9.3 Prior to the removal of the Goods, the Buyer shall at its own expense and where reasonably necessary carry out, or procure the carrying out of, a full risk assessment to assess the risk of disconnecting, detaching, dismantling and/or removing the Goods from the Premises. The Buyer shall make the results of such assessment available to Gordon Brothers on request.

9.4 The Buyer must comply with any site access requirements, policies or rules (including, without limitation, requirements imposed by law, by Gordon Brothers or by a third party that owns, operates or occupies the site) and shall ensure that the Premises (including any electrical, gas, water, steam, waste or other supply or utility) are left in a safe condition following the removal of the Goods and shall make good any damage caused by it or its employees, representatives, agents or subcontractors in effecting the removal of the Goods.

9.5 The Buyer shall not use flame cutters, explosives or any other dangerous equipment, substance or process in connection with the removal of the Goods without the prior written permission of Gordon Brothers.

9.6 Where the Goods comprise buildings or plant housings, the Buyer shall at its own expense obtain any necessary planning permissions prior to the removal of the Goods. It is the sole responsibility of the Buyer to investigate whether any planning permission is required in relation to the Goods.

9.7 If Gordon Brothers has reasonable grounds to believe that damage is likely to be caused to the Premises as a result of the removal of the Goods, the Buyer may be required to deposit such sum by way of deposit as Gordon Brothers in its absolute discretion considers reasonable. If the Buyer refuses to deposit the sum requested, Gordon Brothers shall be entitled to refuse to allow the Buyer to remove the Goods and the Buyer shall be deemed to be in default under clause 10.

9.8 The Buyer shall ensure that it engages appropriately licensed and certified tradespeople to disconnect, detach or dismantle the Goods to the extent that is necessary to remove the Goods from the Premises (solely at the Buyer's own cost).

9.9 The Buyer shall indemnify and keep indemnified Gordon Brothers against all liabilities, costs, claims, expenses, damages and losses (including but not limited to any direct, indirect or

consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) (**Liabilities**) suffered, incurred or paid by Gordon Brothers arising out of or in connection with the Buyer's inspection or removal of the Goods except to the extent that the Liabilities are caused or contributed to by Gordon Brothers.

9.10 After making payment for the Goods, the Buyer must remove the Goods from the Premises promptly and no later than 14 days of the date after the date that the invoice is issued to the Buyer, unless otherwise agreed in writing.

10. BUYER DEFAULT

10.1 If the Buyer fails to make any payment due to Gordon Brothers in full by the due date for payment, then without prejudice to any other rights Gordon Brothers may have Gordon Brothers shall be entitled to charge the Buyer interest on any overdue amount from the due date for payment (i) at a rate of 3% above the cash rate published by the Reserve Bank of Australia from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer must pay interest together with any overdue amount on demand.

10.2 In the event that the Goods are not removed from the Premises by the due date for removal (whether by agreement or otherwise), then without prejudice to any other rights Gordon Brothers may have Gordon Brothers reserves the right to charge the Buyer for its reasonable storage and administration costs (including any relocation costs should these be necessary) until the earlier of the date the Goods are removed by the Buyer or the date Gordon Brothers rescinds the contract.

10.3 Gordon Brothers may rescind the contract without incurring any liability to the Buyer if:

10.3.1 the Buyer fails to pay any sum due by the due date for payment;

10.3.2 the Buyer fails to remove the Goods within the time period permitted;

10.3.3 the Buyer does not comply with its obligations under clause 8 and clause 9 in effecting the removal of the Goods; or

10.3.4 the Buyer removes the Goods without obtaining the prior permission of Gordon Brothers.

10.4 Without prejudice to any claims Gordon Brothers may have against the Buyer in tort or for breach of contract, or otherwise, if Gordon Brothers rescinds the contract under clause 10.3, then:

10.4.1 all sums paid by the Buyer shall be forfeited to Gordon Brothers; and

10.4.2 Gordon Brothers shall be entitled to resell the Goods to a third party privately or publicly without accounting to the Buyer in the event of a sale at a higher or lower price than that originally agreed to be paid by the Buyer (in which case the Buyer agrees that any resale price achieved by Gordon Brothers in respect of the Goods is commercially reasonable).

10.5 If Gordon Brothers rescinds the contract under clause 10.3, the Buyer shall indemnify and keep indemnified Gordon Brothers against all Liabilities suffered, incurred or paid by Gordon Brothers arising out of or in connection with:

10.5.1 the rescission of the contract and the resale of the Goods (including any loss arising out of the resale of the Goods at a lower price than that originally agreed to be paid by the Buyer);

10.5.2 the Buyer's failure to remove the Goods within the time period permitted;

10.5.3 the Buyer's failure to comply with its obligations under clause 8 in effecting the removal of the Goods; and

10.5.4 the Buyer's removal of the Goods without the prior permission of Gordon Brothers, provided that any sums forfeited by the Buyer under clause 10.4.1 shall be credited against such liabilities, costs, claims, expenses, damages and losses and except to the extent that the relevant Liabilities are caused or contributed to by Gordon Brothers.

10.6 The Buyer shall indemnify and keep indemnified Gordon Brothers against all Liabilities suffered, incurred or paid by Gordon Brothers arising out of or in connection with any breach of these Terms (including any Auction Particulars or Sale Particulars), or any agreement governing the use of a website used to inspect, purchase or bid for the Goods, by the Buyer except to the extent that the Liabilities are caused or contributed to by Gordon Brothers.

11. **LIMITATION OF LIABILITY TO BUYERS**

11.1 Nothing in these Terms shall limit or exclude the liability of Gordon Brothers, other members of Gordon Brothers' group of companies, third parties connected to Gordon Brothers and Gordon Brothers' directors, employees, subcontractors and agents for:

11.1.1 death or personal injury caused by its or their negligence; or

11.1.2 fraud or fraudulent misrepresentation.

11.2 Subject to clauses 11.1 and 11.5, all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity, including without limitation the terms implied the Sale of Goods Act, are, to the fullest extent permitted by law, expressly excluded.

11.3 Subject to clauses 11.1 and 11.5, the liability of Gordon Brothers, other members of Gordon Brothers' group of companies, third parties connected to Gordon Brothers and Gordon Brothers' directors, employees, subcontractors and agents for loss incurred or suffered by the Buyer shall be limited to the price paid by the Buyer for the Goods (or if no price has been paid, the price agreed under clause 2 or clause 3).

11.4 Subject to clause 11.1 and 11.5, Gordon Brothers, other members of Gordon Brothers' group of companies, third parties connected to Gordon Brothers and Gordon Brothers' directors, employees, subcontractors and agents shall under no circumstances whatsoever be liable to the Buyer or any other person, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, or otherwise, for any:

11.4.1 loss of income or revenue;

11.4.2 loss of business or business opportunity;

11.4.3 loss of profits;

11.4.4 loss of contracts;

11.4.5 loss of anticipated savings;

11.4.6 loss of, or corruption or damage to, information or data;

11.4.7 loss of or damage to goodwill;

11.4.8 loss arising from third party claims;

11.4.9 wasted management or office time; and

11.4.10 indirect, special or consequential loss,

arising under or in connection with these Terms and/or the sale of any Goods, provided that nothing in this clause 11.4 shall prevent claims for loss of or damage to the Buyer's or any other person's tangible property or any other claims for direct financial loss that are not excluded by any of the categories set out above.

11.5 The Australian Consumer Law (contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) provides certain statutory guarantees in respect of goods or services supplied to consumers, which cannot be excluded, restricted or modified (the **Consumer Guarantees**). If the Consumer Guarantees applies to the supply of Goods to the Buyer under this contract, then to the extent permitted by law, our liability for breach of that non-excludable Consumer Guarantee will, at our option, be limited to:

11.5.1 the replacement of the goods or the supply of equivalent goods;

11.5.2 the repair of such goods;

11.5.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or

11.5.4 the payment of the cost of having the goods repaired.

11.6 Subject to clauses 11.1 and 11.5 and to the extent permitted by law, any claim arising under or in connection with these Terms and/or the sale of any Goods must be made within 90 days of the Buyer collecting the Goods.

12. CONTACTING GORDON BROTHERS

To contact Gordon Brothers with any comments, questions or complaints, the Buyer should telephone Gordon Brothers Sydney office on +61 (0)2 9220 0001 . Gordon Brothers will try to resolve any issues as soon as possible and, where appropriate, contact the Buyer to provide an answer or explain the outcome.

13. PRIVACY

We will comply with the *Privacy Act 1988* (Cth) and the terms of our [Privacy Policy](#) (which is available from Gordon Brothers' website) with respect to the collection use and disclosure of personal information relating to you.

14. INTELLECTUAL PROPERTY

14.1 In this clause **Intellectual Property Rights** means all patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

14.2 All Intellectual Property Rights in the Sale Particulars, the Auction Particulars, any catalogues or advertising materials issued by Gordon Brothers and any photographs, illustrations or other images of the Goods (**Intellectual Property**) are and shall remain the property of Gordon Brothers or its licensors.

14.3 The Buyer shall not copy, reproduce, alter, adapt, modify, translate or deface the Intellectual Property, in whole or in part and for any purpose, without the prior written permission of Gordon Brothers.

15. EVENTS BEYOND THE REASONABLE CONTROL OF GORDON BROTHERS

Gordon Brothers shall not be liable to the Buyer for any failure in the performance of its or their obligations caused by factors beyond its or their reasonable control.

16. NOTICES

16.1 Any notice required to be given under or in connection with these Terms shall be in writing and in English and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or by fax, but not by email. Gordon Brothers' address and fax number shall be as

set out in the Sale Particulars or the Auction Particulars and the Buyer's address and fax number shall be as notified to Gordon Brothers in writing.

16.2 Notices shall be deemed to have been received at the time the notice is left at the proper address if delivered by hand, at 9.00 am on the second working day after posting if delivered by pre-paid first-class post or other next working day delivery service, or at 9.00 am on the next working day after transmission if delivered by fax.

16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17. **STATUS OF THESE TERMS**

17.1 Subject to any variation agreed under clause 18 and to the extent permitted by law, any sale of Goods to the Buyer by auction or private treaty shall be on these Terms to the exclusion of all other terms and conditions, including any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

17.2 The Buyer acknowledges and agrees that it has not relied on any statement, promise or representation made or given by, or on behalf of, Gordon Brothers which is not set out in these Terms, save that nothing in these Terms shall exclude or limit Gordon Brothers' liability for fraudulent misrepresentation or liability arising under law that cannot be excluded.

17.3 Clauses which expressly or by implication survive termination of the contract shall continue in full force and effect.

17.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

18. **VARIATION**

18.1 Gordon Brothers may in its absolute discretion vary these Terms at any time and for any reason. Such amendments shall be posted on the Website or provided to the Buyer and shall be effective immediately provided that such amendments shall not affect any contract already concluded under clause 2 or clause 3.

18.2 Except as set out in these Terms, no other variation of these Terms, including the introduction of any additional terms and conditions, shall be effective unless agreed in writing signed by Gordon Brothers.

19. **SEVERANCE**

If any term of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant term shall be deemed deleted. Any modification to or deletion of a term under this clause shall not affect the validity and enforceability of the rest of these Terms.

20. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. **LAW AND JURISDICTION**

These Terms, together with the Sale Particulars, the Auction Particulars and any special conditions notified to the Buyer in writing prior to the sale of the Goods, shall be governed by New South Wales law and both parties irrevocably agree that the courts of New South Wales shall have exclusive jurisdiction to resolve any dispute or claim arising out of or in connection with the aforementioned documents (including non-contractual disputes or claims).