

HERITAGE ANTIQUES, LLC  
TERMS & CONDITIONS OF SALE

1. INTERPRETATION

(i) In these Conditions:

“Buyer” means the person whose order for the Products is accepted by the Seller.

“Conditions” means these standard terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“Contract” means the contract for the purchase and sale of the Products.

“Delivery” means the actual or deemed delivery of the Products in accordance with Clause 6.

“Delivery Address” means the place where the Products are to be delivered as specified in the Order Acknowledgement.

“Products” means the products (including any installment of the products) which the Seller is to supply in accordance with these Conditions.

“Specification” means any specification set out in the Order Acknowledgement.

“Officer” means Company Secretary, Treasurer, President or Vice President.

“Order Acknowledgement” means the acceptance in writing by the Seller in response to the Buyer’s order, to sell the Products in accordance with the Seller’s quotation.

“Seller” means Heritage Antiques, LLC.

(ii) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. BASIS OF THE SALE

(i) The Seller shall sell and the Buyer shall purchase the Products in accordance with any written order of the Buyer which is accepted by the Seller by way of the Order Acknowledgement, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

(ii) No variation to these Conditions shall be binding on the Seller unless agreed in writing by an Officer of the Seller.

(iii) The Seller’s employees or agents are not authorized to make any representations concerning the Products unless confirmed by an Officer of the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

(iv) Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the Products which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

(v) Any typographical or clerical errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS

(i) No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until:

(a) the order is confirmed by way of the Order Acknowledgement; and

(b) the Seller has received a deposit equal to at least 50% of the Price of the Products.

(ii) The quantity, quality and description of and any Specification for the Products shall be those set out in the Order Acknowledgement.

4. PRICE OF THE PRODUCTS

(i) The Price of the Products shall be the price quoted by the Seller and confirmed in the Order Acknowledgement.

(ii) The Seller reserves the right, by giving notice to the Buyer at any time before Delivery to increase the Price of the Products to reflect any increase in the cost to the Seller due to any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

(iii) Except as otherwise stated in the Order Acknowledgement all prices shall be ex-works Seller’s warehouse and where the Seller agrees to deliver the Products other than at the Seller’s warehouse, the Buyer shall be liable to pay the Seller’s charges for any transportation, packaging and insurance.

(iv) The Price is exclusive of any applicable sales, use or other taxes, or duties, which the Buyer shall be additionally liable to pay or reimburse to the Seller.

## 5. TERMS OF PAYMENT

(i) The Buyer shall pay a deposit equal to at least 50% of the Price of the Products at the time of submission of the Buyer's order.

(ii) The Buyer shall pay the balance of the Price of the Products before the time of Delivery. Time of payment of the Price shall be of the essence of the Contract.

(iii) If the Buyer fails to make any payment on the due date then, without limitation to any other right or remedy available to the Seller, the Seller shall be entitled to:

(a) cancel the Contract or suspend any further deliveries to the Buyer;

(b) appropriate any payment made by the Buyer to such of the Products (or the Products supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

(c) charge interest to the Buyer at the lower of the rate of 3½% per annum above the Wells Fargo Bank West N.A. prime rate from time to time or the highest rate allowed by law, on the unpaid balance (such interest to accrue on a day to day basis from the due date for payment until receipt by the Seller of the full amount whether before or after any judgment);

(d) the Buyer shall indemnify the Seller against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by the Seller in recovering sums due or in exercising its rights pursuant to this Clause.

## 6. DELIVERY

(i) Delivery shall occur when the Seller or its carrier arrives at the Delivery Address and notifies the Buyer of such arrival, or where physical conditions surrounding the Delivery Address do not allow the carrier to reach its destination delivery shall occur at the place the journey is terminated when notified to the Buyer. Delivery shall also occur on the date the Seller proposes to make delivery where the Seller advises that the Products will be dispatched and the Buyer indicates that he will not take deliveries on such date. Where the Products are picked-up or to be picked-up by the Buyer, delivery occurs when they are made available to the Buyer or its carrier at the Seller's warehouse or when the Seller notifies the Buyer that the Products are available for pick-up. The Buyer warrants that in cases where Delivery is to be made by road transport by the Seller or by its carrier sufficient and suitable access to the said destination including a road surface capable of withstanding the weight and size of the transport and loads is available. In the event of any additional costs or expenses being incurred by the Seller directly or indirectly through its carrier the full amount thereof will be payable on demand.

(ii) The Buyer shall be responsible at his expense for off-loading of the Products except where agreed otherwise in writing.

(iii) Any dates quoted for Delivery of the Products are approximate only and the Seller shall not be liable for any delay in Delivery of the Products howsoever caused.

(iv) The Seller reserves the right to Deliver the Products in installments.

(v) If the Buyer fails to take Delivery of the Products or fails to give the Seller adequate Delivery instructions when notified that the Products are ready for Delivery then, without limitation to any other right or remedy available to the Seller, the Seller may:

(a) store the Products until actual Delivery and charge the Buyer its storage charges current at the date thereof (including insurance); and

(b) in the event that the Buyer fails to accept Delivery for a period of three months the Seller may sell the Products at the best price readily obtainable and (after deducting all storage, packing, unpacking, transport and abortive Delivery costs and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

## 7. RISK AND SECURITY INTEREST

(i) Risk of damage to or loss of the Products shall pass to the Buyer upon Delivery.

(ii) Notwithstanding Delivery of the Products and the passing of risk of damage to or loss of the Products, or any other provision of these Conditions, the Seller shall retain a purchase price security interest in the Products until the Seller has received in cash or immediately available funds payment in full of the Price of the Products and all other Products agreed to be sold by the Seller to the Buyer for which payment is

then due.

(iii) The Seller shall be entitled at any time during which it retains a security interest in the Products to require the Buyer to deliver up the Products to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Products are situated and repossess the Products in accordance with the provisions of the Uniform Commercial Code and local law.

## 8. WARRANTIES AND LIABILITY

(i) Subject to the conditions set forth below the Seller warrants that the Products will correspond in all material respects with any Specification for the Products forming part of the Contract at the time of Delivery and at the time will be free from material defects in materials and workmanship.

(ii) The above limited warranty is given by the Seller subject to the following conditions:

(a) the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;

(b) the Seller shall be under no liability in respect of any defect arising from reasonable wear and tear, willful damage, negligence, incorrect movement, installation or erection, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Seller's approval.

(iii) In the event of loss or damage occurring to Products during transit where the Products are transported by the Seller or its carrier the Buyer must give written notice to the Seller within two working days of the date of Delivery and further where such Products are consigned by a carrier of the Seller the Buyer must

in addition comply in all respects with that carrier's conditions of carriage for notification for omissions from the Delivery or loss or damage in transit. The Buyer must give written notice to the Seller within three working days of receipt of invoice if the Products have not been delivered by the Seller or its carrier to the Delivery Address. Failure to give written notice pursuant to this sub-clause shall mean that the Buyer shall be deemed to have accepted the Products as being in good order and in conformity with the Contract.

(iv) Any claim by the Buyer which is based on any defect in the quality or condition of the Products or their failure to correspond with the Specification of the Products shall (whether or not Delivery is refused by the Buyer) be notified in writing to the Seller within 7 days from the date of Delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If Delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Products and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Price as if the Products had been delivered in accordance with the Contract.

(v) Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet the Specification of the Products is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Products (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price of the Products (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer.

(vi) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS CLAUSE 8.(i), THE SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND THE SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(vii) In no event shall the Seller be liable to the Buyer or any third party for any special, incidental or consequential damages (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Buyer.

(viii) In no event shall the Seller's total monetary liability to the Buyer under this Contract for any and all claims or causes of action exceed the cumulative amount of the payments made by the Buyer and actually received by the Seller for the Products under this Contract.

(ix) The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products,

if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limitation to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- (a) Act of God, weather conditions, explosion, flood, tempest, fire or accident;
  - (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, or local authority;
  - (d) import or export regulations or embargoes;
  - (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or a third party);
  - (f) difficulties in obtaining supplies, raw materials, labor, fuel, parts or machinery;
  - (g) power failure or breakdown in machinery.
- (x) SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE EXCLUSION IN CLAUSE 8.(vi), ABOVE, MAY NOT APPLY TO YOU AS THE BUYER. THIS WARRANTY GIVES THE BUYER SPECIFIC LEGAL RIGHTS, AND THE BUYER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

#### 9. ERECTION/INSTALLATION

The erection and installation of the Products is the Buyer's sole responsibility. The Buyer shall ensure compliance by the Buyer's employees, agents, contractors, licensees and customers with the Seller's recommendations and instructions for installation or erection of the Products.

#### 10. MOLDS

- (i) If as a result of any order the Seller has to make a special mold for the manufacture of the Products, the Seller reserves the right to charge the Buyer for the costs of the mold and such costs shall be paid upon the Seller's delivery of an invoice to the Buyer for the same. Any failure to pay these costs may result in a delay in manufacture or cancellation of the Contract by the Seller without limitation to its accrued rights.
- (ii) Any molds created or used by the Seller to make the Products shall remain the property of the Seller.

#### 11. CANCELLATION, CHANGES OR DELAYS

Once accepted by the Seller and confirmed by way of Order Acknowledgement, an order is not subject to cancellation or change except on terms acceptable and satisfactory to the Seller which may include, among other things, Seller retaining any and all deposits made by Buyer. Direction by the Buyer to cancel an order may be treated as a repudiation making the Buyer immediately liable for loss, expense and other damages. In addition to retention of the Buyer's deposit, it is understood that a cancellation charge may be due from the Buyer to the Seller computed on the basis of costs (direct and indirect) accumulated, including, without limitation, labor, materials and design related to the Contract and the articles described herein, plus twenty percent (20%) of the total Contract price as liquidated damages, and not as a penalty for such cancellation. The cancellation charge shall be due and payable at the time of receipt of the Buyer's written notice of cancellation at the Seller's office. In the event that the Buyer causes or requests

- (a) changes to be made that affect delivery, installation, specifications, completion dates or otherwise, or
- (b) the work to be delayed, whether directly or by other contractors or because the facilities, including utilities, electrical hookup, site preparation, governmental permits, approvals or licenses, apparatus or other conditions to be provided or arranged by the Buyer are lacking or insufficient, the Buyer will reimburse the Seller for any expense incurred by the Seller in respect of or resulting from each such change or delay upon presentation by the Seller of an invoice.

#### 12. INTELLECTUAL PROPERTY

All intellectual property rights in the molds and Products shall vest in the Seller absolutely and the Buyer shall at the Seller's expense execute any documents or do any acts necessary to give effect to the vesting of such rights in the Seller.

#### 13. GENERAL

- (i) No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

(ii) If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

(iii) The purchase order, Seller's Order Acknowledgment and these Conditions shall be governed by the laws of the state of North Carolina, and the parties hereto hereby submit themselves to the jurisdiction and venue of the North Carolina courts.

(iv) The remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or equity.

(v) These Conditions, along with the duly executed purchase order (other than any additional or different terms and conditions therein) and Seller's Order Acknowledgment, shall be deemed to contain the entire and only agreement between the parties relating to the subject matter hereof, and any terms or conditions relating hereto not incorporated herein shall not be binding upon either party.

(vi) Any dispute, controversy or claim arising out of or relating to these Conditions, the purchase order, including, without limitation, the interpretation or the breach thereof, shall be settled by arbitration in the City of Charlotte, and County of Mecklenburg, in the state of North Carolina, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then obtaining, and judgment upon the award rendered by a panel of three (3) arbitrators may be entered in any court having jurisdiction hereof. The panel shall be comprised of one arbitrator selected by each of the Buyer and the Seller, and a third arbitrator to be selected by the two arbitrators together. Judgment upon the decision or award rendered in arbitration shall be final and binding upon the parties hereto and may be entered in any court having jurisdiction. Notwithstanding the foregoing, this agreement to arbitrate shall not bar either party from seeking restraining orders, temporary or permanent injunctive relief or other equitable remedies in any court having jurisdiction thereof. In the event that a dispute, controversy or claim is arbitrated in accordance with this Clause 13.(vi), the Buyer and the Seller shall pay their own respective costs in connection therewith regardless of the outcome of the arbitration.