JOHN PYE PRIVATE TREATY AND TENDER SALES TERMS

1. DEFINITIONS

1.1 The defined terms used within these Terms have the following meanings:

"**Buyer Premium**" the percentage of the price for the Goods, or such other fixed fee as notified to the Potential Buyer after the Potential Buyer makes an offer to purchase the Goods.

"**Buyer**" means the Potential Buyer whose offer is accepted pursuant to clause 4.3 and who is the purchaser of the Goods and includes where appropriate the End Buyer.

"**Contract**" has the meaning given in clause 4.3.

"**Delivery Address**" means the address provided by the Buyer in accordance with clause 12.3.

"**Deposit**" a non-refundable monetary deposit in the amounts notified to a Potential Buyer.

"**End Buyer**" has the meaning given in clause 6.1.

"**Goods**" the plant, machinery, equipment, stock, assets, or other goods that JOHN PYE & SONS, as agent for the Seller, sells by private treaty or tender under these Terms.

"**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.

"**JOHN PYE & SONS**" means John Pye & Sons Limited (company number: 02564753) with registered office at James Shipstone House, Radford Road, Nottingham, NG7 7EA. VAT number:117777249. Where communications refer to the trading style "John Pye Business & Property" such reference shall be construed accordingly.

"**Potential Buyer**" a person who makes an offer to purchase the Goods.

"**Premises**" the premises where the Goods are displayed for inspection and, where applicable, collection by the Buyer takes place (which may be at JOHN PYE & SONS' premises or at the Seller's premises or somewhere else entirely).

"**Seller**" means the seller of the Goods.

"**Special Conditions**" any special conditions notified to the Potential Buyer by JOHN PYE & SONS before an offer is accepted in accordance with clause 4.3.

"**Terms**" means these terms and conditions for private treaty and tender sales.

"**Website**" www.johnpye.co.uk and www.johnpyeauctions.co.uk;

"**Working Days**" a day, other than a Saturday or Sunday or public holiday in England, when the JOHN PYE & SONS is open for business.

1.2 Clause headings shall not affect the interpretation of these Terms.

1.3 References to writing in these Terms includes e-mail but not faxes.

1.4 References to a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Consumers (being individuals acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession) are not permitted to purchase Goods under a private treaty or tender sale operated by JOHN PYE & SONS.

1.6 Except where the context otherwise requires, words in the singular shall include the plural and vice versa. Words denoting one gender shall include all genders.

1.7 Reference to a statute or statutory provision is a reference to it as in force for the time being, taking account of any amendment, extension or re-enactment and includes subordinate legislation made under it.

1.8 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.9 All sales and purchases of Goods by private treaty and all sales and purchases of Goods by tender, where JOHN PYE & SONS acts as agent for the Seller, shall be subject to these Terms.

1.10 The Buyer's attention is drawn in particular to the provisions of clause 16.

2. ROLE OF JOHN PYE & SONS

2.1 JOHN PYE & SONS acts as agent for the Seller. Any contract for sale of the Goods is made directly between the Seller and the Buyer, JOHN PYE & SONS shall have no responsibility for the actions or the omissions of the Seller, the Buyer or any other party.

3. PRIVATE TREATY & TENDER SALE CONDUCT

3.1 A Potential Buyer may be required to pay a Deposit before it is able to place an offer to purchase the Goods or before JOHN PYE & SONS (on behalf of the Seller) accepts an offer for the Goods. Payment of a Deposit must be made by the date specified by JOHN PYE & SONS, in British Pound Sterling (GBP), by BACS or CHAPS or as otherwise specified by JOHN PYE & SONS from time to time.

3.2 These Terms are binding on the Potential Buyer from the date the Potential Buyer makes an offer to purchase the Goods.

3.3 If the Buyer visits the Premises to view the Goods, the Potential Buyer may be required to provide valid photo identification at the Premises. JOHN PYE & SONS and/or the Seller may remove the Potential Buyer from the Premises, and/or may refuse to accept an offer, if the Potential Buyer fails to show a valid form of photo identification when requested.

3.4 JOHN PYE & SONS shall be entitled to conduct the sale of the Goods by any method it considers appropriate and to impose such special conditions as it sees fit in the circumstances.

3.5 Where JOHN PYE & SONS operates a tender process for the sale of the Goods, Potential Buyers must submit their offer for the Goods by the date and time specified by JOHN PYE & SONS. JOHN PYE & SONS reserves the right to refuse to accept any offer made after such date and time.

3.6 JOHN PYE & SONS and/or the Seller may in its absolute discretion:

3.6.1 limit or restrict who can participate in a private treaty or tender sale for the Goods;

3.6.2 refuse to admit any person to the Premises;

3.6.3 withdraw the Goods from sale prior to formation of the Contract; and

3.6.4 reject any offer at any time prior to formation of the Contract.

3.7 Neither JOHN PYE & SONS nor the Seller shall be bound to accept any offer for the Goods.

3.8 Any dispute between a Potential Buyer and the Seller or JOHN PYE & SONS, or the Buyer and the Seller or JOHN PYE & SONS, shall be referred to JOHN PYE & SONS for resolution who may make its decision without disclosing justification or explanation. JOHN PYE & SONS decision shall be final except in the case of manifest error or negligence.

3.9 The Website is provided "as is" and the availability of the Website may not be uninterrupted or error free. JOHN PYE & SONS gives no warranty as to the availability of the Website or any content on it.

3.10 The Potential Buyer, the Buyer and the Seller shall comply with all JOHN PYE & SONS' policies as issued, or made available via the Website, from time to time including without limitation the conditions of website use.

4. BASIS OF SALE & CONTRACT FORMATION

4.1 If JOHN PYE & SONS indicates that the Seller is prepared to sell the Goods by private treaty or by tender, such an indication shall constitute an invitation to treat and not an offer to sell.

4.2 A copy of these Terms shall be made available to Potential Buyers on request and in any event prior to acceptance by JOHN PYE & SONS of an offer in accordance with clause 4.3. When a Potential Buyer makes an offer to JOHN PYE & SONS to purchase the Goods, such an offer shall be deemed to have been made on these Terms subject to any Special Conditions.

4.3 JOHN PYE & SONS may (on behalf of the Seller) accept an offer to purchase the Goods verbally or in writing (at its sole option), and at this point a contract shall come into existence between the Seller and the relevant Potential Buyer who is then the Buyer on these Terms subject to any Special Conditions notified to the relevant Potential Buyer prior to such acceptance (the "**Contract**"). The Terms apply to the Contract to the exclusion of any other terms that the Potential Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

4.4 The Buyer acknowledges and accepts that it has no right to cancel the Contract.

5. WARRANTIES

5.1 The Potential Buyer represents and warrants that:

5.1.1 it is not acting or making an offer to purchase the Goods for any purpose that is wholly or mainly outside of its trade, business, craft or profession;

5.1.2 it is authorised to enter into the Contract (if its offer is accepted by JOHN PYE & SONS (on behalf of the Seller) and the Contract is formed under clause 4.3) and to be legally bound by the terms hereunder;

5.1.3 any individual purporting to act for or on behalf of the Potential Buyer has the authority of the Potential Buyer; and

5.1.4 it has read and accepts these Terms and commits to buying the Goods if its offer to purchase the Goods is accepted by JOHN PYE & SONS (on behalf of the Seller) under clause 4.3.

6. RESPONSIBILITY FOR THE CONTRACT

6.1 If the Potential Buyer is acting as agent on behalf of a third party, or as principal for the ultimate benefit of a third party (the "**End Buyer**"), the Potential Buyer must disclose the full name of the End Buyer and any other information that JOHN PYE & SONS may require. Such information must be provided to JOHN PYE & SONS on or before the date the Potential Buyer makes an offer to purchase the Goods.

6.2 The Potential Buyer represents, warrants, and undertakes, that it has the necessary right, power and authority to enter into the Contract (if its offer is accepted by JOHN PYE & SONS on behalf of the Seller under clause 4.3) and to bind the End Buyer in full.

6.3 The Potential Buyer hereby guarantees the performance of the Contract by the End Buyer and will be jointly and severally liable with the End Buyer for the performance of the Contract in full.

6.4 For the avoidance of doubt, neither JOHN PYE & SONS nor the Seller shall have any liability to the End Buyer under or in connection with the Contract or in relation to the Goods.

7. CONDITION OF THE GOODS

7.1 The Buyer acknowledges that before the date the Contract is formed the Buyer has satisfied itself as to all matters relating to the Goods including the quality, value, condition, fitness for purpose and suitability of the Goods.

7.2 JOHN PYE & SONS and the Seller may (at each of their sole discretion) give the Buyer the opportunity to inspect and (if applicable) test the Goods.

7.3 Any images of the Goods (whether on the Website, in brochures, in catalogues or otherwise) are for illustrative purposes only and the Goods may vary from those images. The Goods may comprise of second-hand items, salvaged goods, raw returns, ex-display, repossessed goods and seized goods. The Goods may have been repaired or restored during the course of their normal life and they may incorporate parts that are not original to them. All Goods are sold as seen with no grading or guarantee given, and are sold subject to any faults, defects and imperfections which may subsist at the time of the sale. All Goods are purchased by the Buyer at their own risk.

7.4 Any descriptions of the Goods are for identification purposes only. Where errors or defects are not identified on the Website or notified to the Buyer by other means, there is no implied warranty as to the condition of the Goods or that they are free from any faults, imperfections, defects, repairs or restorations. JOHN PYE & SONS and the Seller shall not be held responsible for any damage or defect to the Goods that has not been expressly notified to the Buyer. JOHN PYE & SONS and the Seller do not make any representation or warranty that any of the Goods are in working order.

7.5 Unless otherwise stated expressly in writing by JOHN PYE & SONS, no warranty, condition or guarantee is given (whether express or implied) by JOHN PYE & SONS or the Seller as to the quality, age, weight, measurement, quantity, number correctness, condition, suitability, fitness for purpose or satisfactory quality of the Goods, and any and all express or implied conditions and warranties are excluded to the fullest extent permitted by law.

7.6 Where JOHN PYE & SONS or its representatives provide an estimate as to the value of the Goods or provide any guidance as to the authorship, genuineness, origin, date, age, weight, measurement, quantity, number, provenance or condition, this is an opinion given on behalf of the Seller and should not be relied upon by the Buyer. The Buyer must satisfy itself as to the value, authorship, genuineness, origin, date, age, weight, measurement, quantity, number, provenance and condition of the Goods.

7.7 No Goods are sold as new for the purpose of the Consumer Protection Act 1987 or any product liability legislation. The Goods are not sold as samples.

7.8 JOHN PYE & SONS and the Seller shall not be liable for any loss or damage suffered or incurred by the Buyer arising out of or in connection with any deficiency in the Goods, error in the description, the failure of Goods to function or mis-statement.

7.9 The Buyer acknowledges that the Goods may require ongoing service, replacements or further repair work and the Buyer is solely responsible for this work and the resulting cost.

7.10 The Buyer shall comply with any product recall affecting the Goods (whether by JOHN PYE & SONS, the Seller, any government or public body (such as Trading Standards) or otherwise), including any product recall relating to product safety or to protect the rights of third parties.

7.11 All other conditions, warranties and implied terms are, to the fullest extent permitted by law, excluded from the Contract.

8. TERMS SPECIFIC TO CERTAIN GOODS

8.1 This clause is additional to and does not replace the provisions set out in clause 7.

Clocks and watches

8.2 The absence in the description of the Goods of any reference to the condition of a clock or watch does not imply that the Goods are in good condition and without defects, repairs or restorations. Clocks and watches may have been repaired or restored during the course of their normal lifetime and may incorporate parts that are not original to them. JOHN PYE & SONS makes no representation or warranty that any clock or watch is in working order. As clocks and watches often contain fine and complex mechanisms, Potential Buyers acknowledge and accept that the watch or clock may require ongoing service, battery replacement or further repair work. The Buyer is solely responsible for this work and the resulting costs.

Gemstones and jewellery

8.3 Gemstones may have been subjected to treatments to enhance their appearance. Where the Goods comprise of gemstones, the Potential Buyer acknowledges and accepts that the gemstones may have been exposed to treatment (including, without limitation, that diamonds may have been clarity enhanced).

8.4 Where the weight of gemstones or jewellery is provided by JOHN PYE & SONS, this is the weight assessed by JOHN PYE & SONS within its (or their) settings and the stated weight is JOHN PYE & SONS' opinion only. The Potential Buyer must satisfy itself with its own investigations as to the weight of the gemstones or jewellery (as applicable).

8.5 Where the Seller has provided JOHN PYE & SONS with certificates for gemstones that form part of the Goods, JOHN PYE & SONS shall provide those certificates to the Buyer following conclusion of the Contract. JOHN PYE & SONS shall not be liable for the contents of or the accuracy of the information in the certificates or any reliance placed on the certificates by the Buyer or otherwise.

9. **RISK & TITLE**

9.1 JOHN PYE & SONS is acting as agent of the Seller only and gives no warranty as to the Seller's title to the Goods.

9.2 Subject to clause 9.3, regardless of whether the Goods are already in the possession of the Buyer, title to the Goods shall pass to the Buyer only once JOHN PYE & SONS has received from the Buyer payment in full for all sums due to JOHN PYE & SONS and the Seller under the Contract. Unless expressly stated otherwise in writing by JOHN PYE & SONS, title to any Intellectual Property Rights which may subsist in the Goods shall not transfer to the Buyer.

9.3 Where JOHN PYE & SONS confirms in writing that the Buyer may pay for all or part of the sums due under the Contract by instalment, regardless of whether the Goods are already in the possession of the Buyer, title to the Goods shall pass to the Buyer only once JOHN PYE & SONS has received from the Buyer payment in full for all sums due to JOHN PYE & SONS and the Seller in each and every instalment under the Contract.

9.4 The Buyer acknowledges and accepts that the Seller may be a receiver, administrator, liquidator, or a trustee in bankruptcy. In such circumstances, the Seller (and JOHN PYE & SONS as agent on behalf of the Seller) will sell whatever right, title or interest the Seller may have (if any) to the Goods. Neither the Seller nor JOHN PYE & SONS warrants that the Goods are free from encumbrances.

9.5 Risk in the Goods shall pass to the Buyer from and including the date the Contract is formed under clause 4.3.

9.6 Until risk passes to the Buyer, the risk in the Goods remains with the Seller. JOHN PYE & SONS shall not be liable for any loss, theft, destruction of or damage caused to the Goods.

9.7 It is the Buyer's sole responsibility to obtain adequate insurance for the Goods from the time that risk passes to the Buyer. JOHN PYE & SONS and the Seller shall have no liability for the loss or theft of, or damage to, the Goods after this time.

9.8 No Goods shall be released to the Buyer or its agent until payment in full has been received by JOHN PYE & SONS for all sums due under the Contract and under any other contract with the Buyer for the sale of goods where JOHN PYE & SONS acts as agent or otherwise.

9.9 Until title to the Goods has passed to the Buyer, the Buyer shall (in relation to any Goods within its possession or control):

9.9.1 hold the Goods as the Seller's bailee;

9.9.2 store the Goods (at no cost to JOHN PYE & SONS or the Seller) separately from all other products of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

9.9.3 not destroy, deface or obscure any identifying mark or packaging on or relating to any of the Goods;

9.9.4 not combine or incorporate or annex any of the Goods into another product;

9.9.5 maintain the Goods in satisfactory condition and, without limitation to clause 9.7, keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of JOHN PYE & SONS and the Seller. On request the Buyer shall produce the policy of insurance to JOHN PYE & SONS;

9.9.6 give JOHN PYE & SONS and/or the Seller access to any premises of the Buyer or any third party where any of the Goods are, or may (in the opinion of JOHN PYE & SONS or the Seller, as applicable) be stored, in order to recover the Goods; and

9.9.7 not be permitted to resell or use any of the Goods before JOHN PYE & SONS receives payment for all sums due under the Contract in full except with JOHN PYE & SONS prior consent and provided that such sale is in the ordinary course of its business (but not otherwise). If the Buyer resells any of the Goods before that time (a) it does so as principal and not as JOHN PYE & SONS or the Sellers agent; (b) title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs; and (c) the Buyer shall hold the proceeds of sale on a fiduciary basis as the Seller's bailee.

10. PRICE AND PAYMENT

10.1 The price payable by the Buyer for the Goods shall be:

10.1.1 the price offered by the Buyer and accepted by JOHN PYE & SONS in accordance with clause 4.3;

10.1.2 the Buyer Premium (if applicable);

10.1.3 the artist's resale royalty (if applicable), V5 vehicle fee (if applicable), and any other fees or charges (including, without limitation, delivery charges, taxes, and payments due to third parties in relation to the Goods) specified by JOHN PYE & SONS and/or the Seller;

10.1.4 VAT at the prevailing rate.

10.2 The Goods are sold exclusive of VAT which (if applicable) shall be payable in addition by the Buyer at the prevailing rate.

10.3 Subject to clause 10.6, the Buyer shall pay for all sums due under the Contract in full and in cleared funds prior to the Buyer's collection or removal of the Goods, or (if applicable) JOHN PYE & SONS arranging for delivery of the Goods to the Buyer, and in any case within 48 hours of the date of invoice or such other period as notified to the Buyer by JOHN PYE & SONS. Time for payment shall be of the essence.

10.4 Payment must be made in British Pound Sterling (GBP) and can be made by BACS or CHAPS or as otherwise specified by JOHN PYE & SONS from time to time. The Buyer must specify the invoice number when making payment. For queries about payment, please contact the JOHN PYE & SONS' accounts department.

10.5 All amounts due under these Terms from the Buyer shall be paid in full without set-off, withholding or deduction.

10.6 Where JOHN PYE & SONS confirms in writing that the Buyer may pay for all or part of the sums due under the Contract by instalment:

10.6.1 JOHN PYE & SONS may, as a condition of accepting payment by instalment, require the payment of a Deposit;

10.6.2 the first instalment must be paid by the Buyer within 5 days of the date of invoice for the Goods;

10.6.3 the Buyer shall pay each further instalment in the amounts and on the dates specified by JOHN PYE & SONS, usually this is on a monthly or weekly basis.

10.7 If the Buyer fails to pay the amounts due to JOHN PYE & SONS and/or the Seller by the due date(s) for payment then, without prejudice to any other right or remedy that JOHN PYE & SONS and the Seller may have, JOHN PYE & SONS and/or the Seller (as applicable) shall be entitled to charge the Buyer interest on any overdue sums from the due date(s) for payment at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. This interest shall accrue on a daily basis from the due date(s) until the date of actual payment of the overdue sum, whether before or after judgment. The Buyer must pay the interest together with any overdue amount on demand.

11. REMOVAL FROM THE PREMISES & COLLECTION

11.1 Unless otherwise agreed by JOHN PYE & SONS in writing, or if the Goods are already in the possession of the Buyer, the Buyer (or someone acting on its behalf) shall collect the Goods from the Premises, or such other location specified by JOHN PYE & SONS, in accordance with this clause 11. The Buyer is responsible for providing its own labour, packaging materials and equipment to be used in connection with collection of the Goods. Time for collection is of the essence.

11.2 The Buyer shall, at its own expense and risk, remove the Goods from the Premises by no later than 5pm UK time three Working Days immediately following the date that JOHN PYE & SONS receives payment in full for all amounts due under the Contract, or subject always to clause 19.5 and clause 19.6, such other date and/or time that JOHN PYE & SONS agrees in writing with the Buyer. If JOHN PYE & SONS agrees in writing to the removal of the Goods or any particular items comprising the Goods, on an alternative date and/or time to 5pm three Working Days immediately following the date of receipt of payment expressed above, that alternative date and/or time applies only to those Goods or to the particular items comprising the Goods as applicable and, without limitation, does not apply to all and any of the following, any other Goods, goods or items, any subsequent Contract entered into by that Buyer, any subsequent dealings between the parties. In all circumstances, JOHN PYE & SONS and/or the Seller shall be under no obligation to release the Goods to the Buyer until JOHN PYE & SONS has been able to confirm to its satisfaction that it has received payment in full and cleared funds for all amounts due before such removal takes place.

11.3 JOHN PYE & SONS and/or the Seller shall only release the Goods to the Buyer or its authorised agent, not to any other third party. Unless otherwise agreed by JOHN PYE & SONS, removal shall take place during JOHN PYE & SONS' normal working hours on a Working Day. For the avoidance of doubt, the Buyer or their authorised agent shall not be permitted to remove the Goods, or to procure the removal of the Goods, from the Premises without having received JOHN PYE & SONS' prior written consent. Before the Goods are released to the Buyer (or its authorised agent), JOHN PYE & SONS may require (and the Buyer shall in such circumstances provide) written authority from the Buyer that its agent is authorised to collect the Goods from the Premises on the Buyer's behalf.

11.4 The Buyer may be required to conduct a full and complete risk assessment acceptable to JOHN PYE & SONS and/or the Seller (and provide the same to JOHN PYE & SONS) before the Goods can be removed from the Premises. The Buyer shall be responsible for obtaining all necessary licences and consents for the removal of the Goods from the Premises and for their onward transfer. The Buyer shall be solely responsible for ensuring the safe and lawful removal of the Goods from the Premises and for their onward transfer. The Buyer shall comply, and shall procure that its agents and subcontractors comply, with all policies and procedures notified to the Buyer by JOHN PYE & SONS, the Seller and the owner of the Premises in relation to the removal of the Goods from the Premises. JOHN PYE & SONS reserves the right to stop the removal of the Goods from the Premises if, in JOHN PYE & SONS' opinion, the Goods have not or may not be removed in a safe and lawful manner and in compliance with the aforementioned policies and procedures.

11.5 The Buyer shall ensure that its employees, representatives, agents and sub-contractors involved with the removal and transfer of the Goods from the Premises are trained to do so safely and lawfully. The Buyer shall make good any damage caused by it or its employees, representatives, agents or sub-contractors in effecting removal of the Goods including any damage caused to goods or other assets and any damage caused to any utilities or supplies at the Premises or to the Premises.

11.6 The Buyer shall obtain or, if using agents or subcontractors, shall procure that its agents and subcontractors appointed to remove the Goods shall obtain, adequate insurance (including, without limitation, public liability insurance and employer's liability insurance) in respect of the removal of the Goods and will provide evidence of all such insurance cover to JOHN PYE & SONS before removal of the Goods commences. JOHN PYE & SONS reserves the right to refuse to permit the removal of the Goods from the Premises if adequate insurance is not in place prior to removal commencing.

11.7 JOHN PYE & SONS and the Seller and the owner of the Premises (if not JOHN PYE & SONS or the Seller) each reserve the right to require the Buyer to pay a non-refundable damage deposit of such sum as JOHN PYE & SONS, the Seller and/or the Premises' owner (as applicable) considers (in its absolute discretion) reasonable in respect of any damage that is likely to be caused to the Premises or to any property in the Premises, by the removal of the Goods ("**Damage Deposit**"). If the Buyer refuses to pay any such Damage Deposit, JOHN PYE & SONS, the Seller and/or the Premises owner (as applicable) 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 14.

11.8 Where the Buyer has paid the Damage Deposit to JOHN PYE & SONS, JOHN PYE & SONS may apply the Damage Deposit against the cost of repairing any damage caused to the Premises or to any property or person by the removal of the Goods. If the Damage Deposit is insufficient to cover the cost of repairing any damage referred to in this clause 11, JOHN PYE & SONS reserves the right to pursue the Buyer for any shortfall.

11.9 The Buyer shall indemnify and keep indemnified JOHN PYE & SONS and the Seller against any and 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 any and all other professional costs and expenses) suffered, incurred or paid by JOHN PYE & SONS and/or the Seller arising out of or in connection with the removal of or failure to remove the Goods by the Buyer, its representatives, agents, or contractors, including in respect of any damage to property, death or personal injury.

12. DELIVERY OF THE GOODS

12.1 If agreed by JOHN PYE & SONS in writing (at its sole discretion), the Goods shall be delivered to the Buyer by JOHN PYE & SONS' third-party delivery carrier ("**Delivery Carrier**") in accordance with this clause 12.

12.2 Once payment for all sums due from the Buyer under the Contract has been received in full by JOHN PYE & SONS (including, if applicable, all delivery charges), JOHN PYE & SONS shall arrange for the Delivery Carrier to collect the Goods for delivery to the Delivery Address. Any times for collection and delivery of the Goods are approximate only and the time of delivery is not of the essence.

12.3 Delivery of the Goods shall be made to the Delivery Address supplied by the Buyer to JOHN PYE & SONS at the time that the Buyer makes payment for the Goods. The Buyer acknowledges and agrees that the Delivery Address cannot be changed after this time.

12.4 The Buyer must at the time they make payment for the Goods, provide an attended Delivery Address where the Goods can be safely delivered. If the Delivery Address is difficult to locate and/or to access then the Buyer must provide adequate instructions to JOHN PYE & SONS at the time that the Buyer makes payment for the Goods to enable the Delivery Carrier to locate or access the Delivery Address. Please be aware that JOHN PYE & SONS does not deliver to any addresses outside of the UK.

12.5 The Buyer is solely liable for ensuring that the Delivery Carrier has access to its Delivery Address which is free from all obstacles. If the Delivery Carrier is of the opinion that it is unable to deliver the Goods to the Delivery Address it may deliver the Goods as close to the entrance of the Delivery Address as is reasonably possible. Delivery will be deemed to have occurred at that point. The Buyer shall immediately ensure that the Goods do not cause an obstruction and are removed from any public highways or pavements or access points.

12.6 The Buyer shall comply with all directions of JOHN PYE & SONS and the Delivery Carrier for delivery of the Goods.

12.7 Delivery may be made in instalments as decided by JOHN PYE & SONS and the Delivery Carrier. Separate delivery charges may be applicable for each instalment.

12.8 JOHN PYE & SONS shall not be liable to the Buyer or any other person for:

12.8.1 loss of or damage to the Goods whilst the Goods are in the custody or control of the Delivery Carrier;

12.8.2 loss of or damage to property caused by the Delivery Carrier;

12.8.3 any delay in the delivery of the Goods.

12.9 In any event any claim made by the Buyer that any damage to property, or the Goods, or any items comprising the Goods, occurs prior to or during the delivery of the Goods, and/or that the Goods, or any items comprising the Goods, are missing on delivery, must be made within 30 days of the date of delivery or expected date of delivery in the case of missing items.

13. **HEALTH AND SAFETY**

13.1 The Buyer acknowledges and accepts that certain Goods may contain hazardous or deleterious materials and substances and may be subject to health and safety legislation, including without limitation the Health and Safety Act 1974, the Environmental Protection Act 1990, the Construction (Design and Management) Regulations 2007, the Control of Substances Hazardous to Health Regulations 2002 and the Furniture and Furnishings (Fire) (Safety) Regulations 1988.

13.2 The Buyer acknowledges and accepts that JOHN PYE & SONS is acting as agent for the Seller and JOHN PYE & SONS gives no warranty, representation or guarantee that the Goods comply with relevant health and safety legislation at the time they are sold.

13.3 The Buyer acknowledges and accepts that the Goods may not comply with relevant health and safety legislation at the time they are sold, may not be suitable for domestic use, and/or may require specialist handling or treatment prior to their removal from the Premises, during the physical transfer to the Buyer, and prior to their use.

13.4 It is the Buyer's sole responsibility to ensure that:

13.4.1 it understands, and complies at all times with, any and all health and safety legislation and codes of conduct relating to the Goods, the use of the Goods, including where clause 11 applies, at all times during the removal of the Goods from the Premises or any other premises under these Terms; and

13.4.2 (where applicable) the Buyer or its agent or subcontractor drains the Goods and/or any items comprising the Goods, of all fluids and/or matter, including but not limited to, oil, coolant and material remaining inside the Goods, including where clause 11 applies, **before** the Goods are removed from the Premises. The Buyer, its agent or subcontractor (as applicable) must take all reasonable steps to prevent escape or spillage of fluids and/or matter when removing the same from the Goods. Disposal of all fluids and/or matter that are removed or escape from the Goods is the sole responsibility of the Buyer.

13.4.3 For the avoidance of doubt, any fluids and/or matter that spills or leaks within the Premises, must be cleared up by the Buyer or its agent or subcontractor. If the Buyer breaches this clause 13.4.2, and any fluids and/or matter removed or that escapes from the Goods is left at the Premises, JOHN PYE & SONS and the Seller and the owner of the Premises each reserve the right to recover from the Buyer the cost of disposal of such fluid and/or matter including any costs incurred as a result of third party contractors being required to clean up or dispose of such fluid and/or matter.

13.5 The Buyer agrees and undertakes that it will relieve the Seller and JOHN PYE & SONS of any duties pursuant to section 6 of the Health and Safety at Work Act 1974 in respect of the Goods.

13.6 The Buyer shall provide JOHN PYE & SONS with written undertakings (in a form acceptable to JOHN PYE & SONS) that the Buyer will comply with all duties and obligations in respect of the Goods imposed by the Health and Safety at Work Act 1974.

14. BUYER'S DEFAULT & TERMINATION

14.1 If the Buyer fails to pay any amounts due under the Contract on the due date for payment, or if the Buyer fails to remove any of the Goods from the Premises in accordance with clauses 11 and/or 13 (where applicable), without incurring any liability to the Buyer and without prejudice to any other right or remedy that the Seller and/or JOHN PYE & SONS may have (including the right to terminate the Contract under clause 14.2), JOHN PYE & SONS and/or the Seller may (at each of their sole discretion):

14.1.1 retain any amounts paid by the Buyer under the Contract (if any);

14.1.2 refuse to accept, and may reject, any offer placed or which the Buyer attempts to place in a different or future auction or sale;

14.1.3 withhold the sale and/or release to the Buyer of any other goods purchased by the Buyer under any other contract until the Buyer pays all amounts due under the Contract in full and the Buyer has removed the Goods from the Premises in accordance with clause 11 (where applicable);

14.1.4 apply any proceeds of sale due to the Buyer for the sale of goods under any other contract with the Buyer where JOHN PYE & SONS acts as the Buyer's agent or otherwise towards settlement of any unpaid payments due from the Buyer under the Contract;

14.1.5 exercise a lien on any of the Buyer's property which is for any purpose in the possession of JOHN PYE & SONS;

14.1.6 if any of the Goods are already in the possession or control of the Buyer, retrieve any or all of the Goods from the Buyer. The Buyer hereby permits JOHN PYE & SONS, the Seller and/or each of their authorised representatives to enter into any premises where the Goods are stored (including any third-party premises) in order to remove and retrieve the Goods;

14.1.7 move the Goods to another premises, such removal shall be at the Buyer's risk and cost provided that JOHN PYE & SONS shall use reasonable skill and care;

14.1.8 charge the Buyer and/or pursue the Buyer for payment of:

14.1.8.1 an administration fee of £50 for each individual item comprising the Goods or, where the Goods are stored on a pallet, per pallet containing the Goods;

14.1.8.2 the cost of storage and insurance of the Goods (whether at the Premises or elsewhere) and JOHN PYE & SONS reserves the right to notify and charge the Buyer the cost of storage when that amount has to be ascertained from a third party. For the avoidance of any doubt those costs are payable per each individual item comprising the Goods or, where the Goods are stored on a pallet, per pallet containing the Goods;

14.1.8.3 (where the Goods are in the possession or control of the Buyer) the cost of retrieving and removing the Goods from the Buyer's premises (or any third-party premises where the Goods are or may be located);

14.1.8.4 the cost of remarketing and/or disposal of the Goods by JOHN PYE & SONS or the Seller;

14.1.8.5 any diminution in the amount paid by any buyer of the Goods in any resale as compared to the amount due under the Contract from the Buyer for the Goods;

14.1.8.6 VAT on the above amounts (if applicable); and/or

14.1.9 dispose of the Goods by way of private sale or public auction without restriction and without having to account to the Buyer for any increase or decrease to the price that was originally agreed to be paid by the Buyer.

14.2 The Seller and/or JOHN PYE & SONS can terminate the Contract without incurring any liability to the Buyer and without prejudice to any other right or remedy that the Seller and/or JOHN PYE & SONS may have, if:

14.2.1 the Buyer fails to pay any sum due under the Contract by the due date for payment;

14.2.2 the Buyer fails to comply with its obligations under clause 11 and/or clause 12 as applicable;

14.2.3 the Buyer fails to comply with its obligations under clause 13.6;

14.2.4 the Goods cannot be removed from the Premises without causing, or being reasonably likely to cause, damage to the Premises or to any property or person;

14.2.5 a third party provides evidence satisfactory to JOHN PYE & SONS and/or the Seller that it has superior title or right to the custody or possession of the Goods;

14.2.6 the Goods are unlawful (including, without limitation, if it is unlawful to sell the Goods) or if the Goods infringe any third-party rights;

14.2.7 a product recall is issued affecting the Goods, including for product safety or to protect the rights of third parties;

14.2.8 a government or public authority (such as Trading Standards) issues a restriction or prohibition on sale or requires the sale to be terminated,

the Contract shall be deemed terminated from either (a) the date that JOHN PYE & SONS markets the Goods for resale; or (b) such other date as JOHN PYE & SONS may inform the Buyer. If the Contract is terminated under clause 14.2.1, 14.2.2, and/or clause 14.2.3, or the Contract is deemed terminated for one of the reasons described in any of those clauses, the Buyer shall be liable to pay JOHN PYE & SONS the costs set out in clause 14.1.8.

14.3 In the event that the Contract is terminated (except where terminated pursuant to clause 14.2.4, clause 14.2.5, clause 14.2.6, clause 14.2.7 or clause 14.2.8), without prejudice to any other rights or remedies of the Seller and/or JOHN PYE & SONS:

14.3.1 any and all amounts paid by the Buyer to JOHN PYE & SONS under the Contract shall be forfeit and used to pay those amounts that are due to JOHN PYE & SONS or any third party (including any amount due in relation to any contract between the Seller and JOHN PYE & SONS relating to the Goods); and/or

14.3.2 JOHN PYE & SONS may charge the Buyer any one or more of the following:

14.3.2.1 an administration fee of £50 for each individual item comprising the Goods or, where the Goods are stored on a pallet, per pallet containing the Goods;

14.3.2.2 the cost of storage and insurance of the Goods (whether at the Premises or elsewhere) and JOHN PYE & SONS reserves the right to notify and charge the Buyer the cost of storage when that amount has to be ascertained from a third party. For the avoidance of any doubt those costs are payable per each individual item comprising the Goods or, where the Goods are stored on a pallet, per pallet containing the Goods;

14.3.2.3 (where the Goods are in the possession or control of the Buyer) the cost of retrieving and removing the Goods from the Buyer's premises (or any third-party premises where the Goods are or may be located);

14.3.2.4 the cost of remarketing and/or disposal of the Goods by JOHN PYE & SONS or the Seller;

14.3.2.5 any diminution in the amount paid by any buyer of the Goods in any resale as compared to the amount due under the Contract from the Buyer for the Goods;

14.3.2.6 VAT on the above amounts (if applicable); and/or

14.3.3 if any of the Goods are already in the possession or control of the Buyer, retrieve any or all the Goods from the Buyer. The Buyer hereby permits JOHN PYE & SONS, the Seller and/or each of their authorised representatives to enter into any premises where the Goods are stored (including any third-party premises) in order to remove and retrieve the Goods; and/or

14.3.4 resell the Goods to a third party (publicly or privately) without restriction and without having to account to the Buyer for any increase or decrease to the price that was originally agreed to be paid by the Buyer.

14.4 In the event that the Contract is terminated pursuant to clause 14.2.4, clause 14.2.5, clause 14.2.6, clause 14.2.7 or clause 14.2.8, without prejudice to any other right or remedy of the Seller and/or JOHN PYE & SONS:

14.4.1 the Seller shall refund such portion of consideration for the Goods as JOHN PYE & SONS shall deem appropriate; and

14.4.2 (except where terminated pursuant to clause 14.2.4) if the Goods have been removed from the Premises, the Buyer shall deliver the Goods to such address as JOHN PYE & SONS shall specify or shall make available the Goods for collection by JOHN PYE & SONS (at JOHN PYE & SONS' election).

14.5 Where the Goods are resold by JOHN PYE & SONS as agent for the Seller, the proceeds of such sale and any deposit and (if applicable) any instalments paid by the Buyer on resale and held by JOHN PYE & SONS will be applied to discharge liabilities owed to JOHN PYE & SONS in the following order:

14.5.1 the costs incurred by JOHN PYE & SONS for its services provided in relation to the Goods, including the storage (whether at JOHN PYE & SONS' or a third party's premises), removal and/or collection and insurance of the Goods up to the point of conclusion of the resale;

14.5.2 the Buyer Premium (if any);

14.5.3 any artist's resale royalty, V5 vehicle fee, and any other fees or charges (including delivery charges, taxes, and payments due to third parties in relation to the Goods), in each case as applicable;

14.5.4 any unpaid sums due to the Seller under the Contract with the Buyer for the original sale.

once the above liabilities have been discharged, the amount remaining (if any) from resale of the Goods shall be paid to the Buyer.

14.6 The Buyer shall indemnify and keep indemnified JOHN PYE & SONS and the Seller 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 professional costs and expenses) suffered, incurred or paid by JOHN PYE & SONS and/or the Seller arising out of or in connection with:

14.6.1 the non-payment of any amounts due under the Contract;

14.6.2 the termination of the Contract (except where terminated pursuant to clause 14.2.4 or clause 14.2.5 or clause 14.2.6 or clause 14.2.7 or clause 14.2.8); and/or

14.6.3 the resale of the Goods (including any loss arising out of the resale of the Goods at a lower price than originally agreed to be paid by the Buyer).

14.7 If the Buyer commits a breach of these Terms, JOHN PYE & SONS reserves the right to reject or ignore any bids or offers made by or on behalf of the Buyer at a future auction or sale.

14.8 The Buyer acknowledges that if it shall be found that the Seller does not have title or unencumbered title to any of the Goods or if any of the Goods cannot be used by the Buyer this shall not be a ground or grounds for terminating, avoiding or varying any or all of the provisions of the Contract or for the recovery from the Seller or JOHN PYE & SONS of any or all of the sums payable or paid by the Buyer under the Contract or of any other form of compensation by way of damages or otherwise.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Where the Goods have been de-branded/de-badged, the Buyer shall ensure that the Goods remain de-branded or de-badged. If the Goods have not been de-branded or de-badged, the Buyer shall de-brand and de-badge the Goods at its own cost without delay upon the later of (a) formation of the Contract pursuant to clause 4.3, and (b) the Goods coming into the Buyer's possession or control. If any trademarks are included on or get-up included in the Goods that does not imply any right for the Buyer to use such trademarks or get-up in the course of trade. No trademarks, web images, logos or any other Intellectual Property Rights may be copied or used by the Buyer unless the Buyer has an express legal right to do so. Without limiting JOHN PYE & SONS' and the Seller's other rights or remedies, failure to comply with this restriction may result in the Buyer being permanently excluded from JOHN PYE & SONS' auctions and sales.

15.2 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.

15.3 All Intellectual Property Rights in and to the Website and any advertising materials, catalogues or brochures issued by JOHN PYE & SONS and any photographs, illustrations or other images of the Goods are and shall remain the property of JOHN PYE & SONS or the Seller or their licensors. The Buyer shall not copy, reproduce, alter, adapt, modify, translate or deface such Intellectual Property Rights in whole or in part for any purpose, without the prior written permission of JOHN PYE & SONS.

16. LIMITATION OF LIABILITY

16.1 Buyers are reminded that JOHN PYE & SONS acts only as an agent of the Seller and is not the manufacturer or supplier or owner of the Goods.

16.2 Subject to clause 16.4, the Buyer acknowledges that the Seller may be a trustee in bankruptcy or be represented, in relation to the sale of the Goods, by one or more liquidator, administrator or insolvency practitioner ("**Seller's Agent**") and the Buyer agrees that the Seller's Agent is (or are) acting as agent on behalf of the Seller and shall incur no personal liability whatsoever whether on their own part or in respect of any part of the Seller to observe, perform or comply with any obligations hereunder, whether such liability would arise under the Insolvency Act 1986 or otherwise.

16.3 Subject to clause 16.4, 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 by section 13 to 15 of the Sale of Goods Act 1979, are, to the fullest extent permitted by law, expressly excluded.

16.4 Nothing in these Terms shall limit or exclude the liability of JOHN PYE & SONS, the Seller, or those third parties connected to JOHN PYE & SONS and/or the Seller, and each of their directors, employees, subcontractors and agents for:

16.4.1 death or personal injury caused by negligence;

16.4.2 fraud or fraudulent misrepresentation;

16.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession), however attention is drawn to clause 9.1;

16.4.4 any other matter for which it would be illegal or unlawful to exclude or attempt to exclude liability.

16.5 Subject to clause 16.4 and clause 16.6, the liability of JOHN PYE & SONS and the Seller and those third parties connected to JOHN PYE & SONS and the Seller, and each of their directors, employees, subcontractors and agents, for loss incurred or suffered by any Potential Buyer or the Buyer or any other person arising out of or in connection with the Contract or the Goods shall be limited to the price paid by the Buyer under the Contract as at the first date of the event giving rise to the liability less any VAT, artist's resale royalty, V5 vehicle fee, and any other fees or charges (including delivery charges, taxes, and payments due to third parties in relation to the Goods), in each case as applicable.

16.6 Subject to clause 16.3, JOHN PYE & SONS and the Seller and those third parties connected to JOHN PYE & SONS and the Seller, and each of their directors, employees, sub-contractors and agents shall under no circumstances whatsoever be liable to any Potential Buyer or the Buyer or any other person, under or in connection with the Contract or the Goods, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, or otherwise, for any:

16.6.1 loss of profits;

16.6.2 loss of income or revenue;

16.6.3 loss of business or business opportunity;

16.6.4 loss of anticipated savings;

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

16.6.6 loss or damage to goodwill;

16.6.7 wasted management or office time;

16.6.8 loss arising from third party claims;

16.6.9 indirect, special or consequential loss.

17. **DATA PROTECTION**

17.1 Personal data that is processed by JOHN PYE & SONS in relation to the Contract shall be processed by JOHN PYE & SONS in accordance with its Privacy Policy which can be viewed at www.johnpyetrade.co.uk/terms/privacy.

18. **FORCE MAJEURE**

18.1 JOHN PYE & SONS and the Seller shall not be liable to the Buyer for any delay or failure in the performance of its or their obligations under the Contract caused by factors beyond its or their reasonable control including (without limitation):

18.1.1 acts of God, flood, drought, earthquake or other natural disaster;

18.1.2 epidemic, pandemic or public health crisis;

18.1.3 terrorist attack, civil war, civil commotion or riots, war, threat or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

18.1.4 nuclear, chemical or biological contamination or sonic boom;

18.1.5 any law or action taken by a government or public authority, including any restrictions or guidance affecting JOHN PYE & SONS' opening hours or trade, imposing an export or import restriction, quota, or prohibition, or failing to grant a necessary licence or consent;

18.1.6 collapse of building, fire, explosion or accident;

18.1.7 any labour or trade disputes, strikes, industrial action or lock-outs;

18.1.8 non-performance by suppliers or subcontractors (including by any Delivery Carrier); or

18.1.9 interruption or failure of utility service.

18.2 In such circumstances, JOHN PYE & SONS shall notify the Buyer and take reasonable steps to minimise any delay. The time for performance by JOHN PYE & SONS and/or the Seller shall be deemed to be extended for the period that any of the above continues. Notwithstanding the foregoing, the Buyer shall remain liable to make payments to JOHN PYE & SONS and the Seller under this Contract in full.

19. **GENERAL TERMS**

19.1 JOHN PYE & SONS reserves the right to revise and amend these Terms from time to time. Such amendments shall be posted on the Website and shall be effective immediately provided that such amendments shall not affect any contract already concluded under clause 4.3.

19.2 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 and signed by JOHN PYE & SONS.

19.3 If any court or competent authority decides that any provision whether in whole or part within these Terms is invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid and enforceable to the fullest extent permitted by law.

19.4 If, or to the extent that, any of these Terms (as amended from time to time in writing by JOHN PYE & SONS) are Terms to which any of the provisions of the Unfair Contract Terms Act 1977 or the Supply of Goods and Services Act 1982 or any subsequent modification or re-enactment thereof apply then such Terms shall be enforceable only to the extent permitted by those Acts or their subsequent modification or re-enactment and these Terms shall be construed accordingly.

19.5 If at any time JOHN PYE & SONS fails to insist that the Seller and/or Buyer perform their obligations under the Contract, or if JOHN PYE & SONS does not exercise any of its rights or remedies under the Contract, that will not mean that JOHN PYE & SONS has waived such rights or remedies and will not mean that the Seller and/or Buyer does not have to comply with those obligations. If JOHN PYE & SONS waives a default by the Seller and/or Buyer that will not mean that JOHN PYE & SONS automatically waives any prior and/or subsequent default by the Seller and/or Buyer. No waiver by JOHN PYE & SONS of any provision of the Contract shall be effective unless JOHN PYE & SONS expressly states that it is a waiver and JOHN PYE & SONS tell the Buyer and Seller so in writing.

19.6 No waiver by the Seller shall be effective unless the Seller expressly states that it is a waiver and the Seller tells the Buyer and JOHN PYE & SONS so in writing.

19.7 The Contract constitutes the entire agreement between the parties and supersedes all prior representations, agreements, negotiations and understandings between the parties.

19.8 The Buyer acknowledges and agrees that it has not relied on any statement, promise or representation made or given by, or on behalf of, JOHN PYE & SONS or the Seller that is not set out in the Terms.

19.9 With the exception of JOHN PYE & SONS, a person who is not party to the Contract shall not have any rights under or in connection with them under Contracts (Rights of Third Parties) Act 1999.

19.10 The Contract, the sale of the Goods, any disputes and/or claims arising out of it shall be governed by English law and JOHN PYE & SONS, the Seller and the Buyer all agree to the exclusive jurisdiction of the English courts to resolve any such disputes.

19.11 The Buyer may not commence any court proceedings or arbitration in relation to any dispute arising out of the Contract until it has attempted to resolve the dispute via mediation and either the mediation has terminated, or the other party has declined or failed to participate in mediation, provided that the right to issue proceedings is not prejudiced by a delay.

20. CONTACT JOHN PYE & SONS

20.1 For questions, comments or complaints, please contact JOHN PYE & SONS using the details below:

Write: Business Assets Department, John Pye & Sons Limited, James Shipstone House, Radford Road, New Basford, Nottingham, NG7 7EA

E-mail: businessassets@johnpye.co.uk

Call: 0115 9 70 60 60