

Deborah Bates Conservation Ltd.

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FULL TERMS AND CONDITIONS

THESE TERMS GOVERN THE RELATIONSHIP BETWEEN YOU, THE CLIENT AND US, DEBORAH BATES LIMITED (THE CONSERVATOR), AS DEFINED BELOW. THIS IS A LEGALLY BINDING DOCUMENT AND YOU SHOULD READ IT BEFORE INSTRUCTING US.

1. Interpretation

1.1 In these Conditions:

'**CLIENT**' means (unless otherwise expressly agreed in writing) the person expressly accepting these terms and conditions or from whom the Conservator accepts instructions to supply Goods and the Conservator shall be entitled to recover payment for the Goods from such person

'**CONDITIONS**' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Conservator

'**CONTRACT**' means the contract for the restoration of the Goods

'**GOODS**' means the items delivered to the Conservator for repair, renovation, framing or other work (as the case may be)

'**CONSERVATOR**' means Deborah Bates Conservation Limited (registered in England under number 11834479) whose registered office is at 7a Denbigh Gardens, Richmond, Surrey, United Kingdom, TW10 6EN

'**SERVICES**' means restoration, repair, renovation, framing or other work carried out by the Conservator or on the Conservator's behalf relating to the Goods

'**WRITING**' includes email, cable, facsimile transmission and comparable means of communication.

1.2 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.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of the agreement

2.1 The Conservator shall perform the Services in accordance with any written estimate of the Conservator which is accepted by the Customer, or any written order of the Customer which is accepted by the Conservator, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such estimate is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2.2 No variation to these Conditions shall be binding upon the Conservator unless agreed in Writing between the authorised representatives of the Customer and the Conservator.

2.3 The Conservator's employees or agents are not authorised to make any representations concerning the Goods or the Services unless confirmed by the Conservator in Writing. In entering into Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Conservator or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods or the efficacy or effect of the services which is not confirmed in Writing by the Conservator is followed or acted upon entirely at the Customer's own risk, and accordingly the Conservator shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, estimate, price list, acceptance of offer, invoice or other document or information issued by the

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- Conservator shall be subject to correction without any liability on the part of the Conservator.
- 2.6 By accepting these terms and conditions, the Customer hereby warrants to the Conservator that the Customer is the legal owner of the Goods and that they are free of all liens, charges and encumbrances of any nature.
- 2.7 In the event that the Customer is acting as agent for the owner of the Goods, the Customer warrants that the principal upon whose behalf the Customer is acting as agent is the legal owner of the Goods and that they are free of all liens, charges and encumbrances of any nature and that the Customer has the principal's express authority to accept these terms and conditions upon the principal's behalf.
- 2.8 In the event that the Goods are owned by or the Services are rendered on behalf of a limited company or other legal entity, any person delivering or causing to be delivered the Goods to the Conservator and signing an order, estimate or memorandum of contract in respect of the Services shall be deemed to be the Customer and liable to the Conservator as surety for the obligations of such company or other legal entity and shall forthwith upon demand pay to the Conservator any sums due in respect of the Goods or Services under the Contract and the Conservator shall not be obliged to pursue any action or remedy against that company or legal entity or make any demand of any such company or legal entity prior to pursuing such person for payment.
- 2.9 The Conservator in the Conservator's absolute discretion shall determine the nature of and extent to which any Services to be rendered by the Conservator will be of benefit to the Goods and shall be entitled to cease further work at any time if in the Conservator's opinion the services have been satisfactorily performed pursuant to the specification as defined in condition 3 below, or if further work might be detrimental to the Goods, and there shall be no diminution in the price quoted by the Conservator which shall become due and payable upon presentation of the invoice notwithstanding that it has not been possible in the opinion of the Conservator to complete the Services envisaged.
- 2.10 The Conservator shall be under no liability whatsoever if the Customer should subsequently incur further expense by engaging a third party to provide similar Services in relation to the Goods

3 Orders and specifications

- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Conservator unless and until confirmed in Writing by the Conservator's authorised representative.
- 3.2 The Customer shall be responsible to the Conservator for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Conservator any necessary information relating to the Goods within a sufficient time to enable the Conservator to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods or the Services shall be those set out in the Conservator's estimate (if accepted by the Customer) or the Customer's order (if accepted by the Conservator).
- 3.4 If any process is to be applied to the Goods by the Conservator in accordance with a specification submitted by the Customer, the Customer shall indemnify the Conservator against all loss, damages, costs, claims and expenses suffered or incurred by the Conservator in connection with or paid or agreed to be paid by the Conservator in settlement of any claim of any nature by the Customer or any third party arising out of or connected with the said process or the Service.
- 3.5 No order which has been accepted by the Conservator may be cancelled by the Customer except with the agreement in Writing of the Conservator and on terms that the Customer shall indemnify the Conservator in full against all loss (including loss of profit), costs, (including storage costs and the cost of all labour and materials used), damages, charges and expenses incurred by the Conservator as a result of cancellation.

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3.6 The Customer hereby acknowledges that the Goods are subject to natural variations and deteriorations of colour, quality, markings and other visible and non-visible attributes. The Customer hereby agrees and acknowledges that such variations and deteriorations are innate having regard to the nature of the Goods and shall not form the basis for the Customer to reject all or part of the Goods nor shall such variations or deteriorations give rise to any claim by the Customer against the Conservator.

4 Price of the Goods

4.1 The price of the Service shall be the Conservator's quoted price. All prices quoted are exclusive of any applicable Value Added tax, charges for costs of carriage and insurance, which the Customer shall be additionally liable to pay to the Conservator and are valid for 14 days only or until earlier acceptance by the Customer, after which time they may be altered by the Conservator without giving notice to the Customer.

4.2 The Conservator reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Services to reflect any increase in the cost to the Conservator which is due to any factor beyond the control of the Conservator (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications of the Customer or failure of the Customer to give the Conservator adequate information or instructions.

4.3 Except as otherwise stated under the terms of any estimate or in any price list of the Conservator, and unless otherwise agreed in writing between the Customer and the Conservator, all prices are given by the Conservator on an ex works basis, and where the Conservator agrees to deliver the Goods otherwise than at the Conservator's premises, the Customer shall be liable to pay the Conservator's charges for storage, transport, packaging and (where applicable) insurance.

5 Terms of payment

5.1 The customer shall pay the price of the Services within one month of the date of the invoice, or on or before delivery, whichever is the sooner. (Except where the customer has established credit arrangements with the Conservator), and the Conservator shall be entitled to recover the Price, notwithstanding that delivery may not have taken place. The time of the payment of the price shall be the essence of the Contract. Receipts for payment will be issued only upon request.

5.2 Where the customer has agreed credit arrangements with the conservator all credit accounts shall be paid on or before the last day of the month in which the Goods are delivered. All such credit arrangements must be agreed in writing by the Conservator who shall be under no obligation to accept any credit proposal made by the Customer.

5.3 If the Customer fails to make any payment on the due date or fails to make any payment due under the terms of any credit arrangement agreed with the Conservator subject to condition 5.2 then, without prejudice to any other right or remedy available to the Conservator, the Conservator shall be entitled to:

5.3.1 a general lien on all Goods or other material supplied by the Customer in the Conservator's possession (irrespective of whether the Customer has paid for the restoration of the Goods or any Services or has made part payment thereof) for the unpaid price of any other Goods restored or delivered to the Customer by the Conservator or Services performed under the same or any other contract. The Conservator shall be entitled on the expiry of fourteen days' notice to dispose of such Goods or other material and to apply any proceeds towards such unpaid price. The Conservator shall be under no obligation or duty to the Customer or the owner of the Goods to obtain the best possible price for the Goods upon the exercise of the power of sale contained hereof;

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5.3.2 cancel the contract or suspend the performance of any further Service for, or any further deliveries to, the Customer;

5.3.3 appropriate any payment made by the Customer to such of the Goods or Services (or the goods supplied under any other contract between the Customer and the Conservator) as the Conservator may think fit (notwithstanding any purported appropriation by the Customer); and

5.3.4 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8 per cent per annum above National Westminster Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and storage at the rates applied by the Conservator from time to time.

6 Delivery

6.1 Delivery of the Goods shall be made to the person presenting the receipt supplied by the Conservator at the time when the Goods were deposited by the Customer with the Conservator and collecting the Goods at the Conservator's premises at any time after the Conservator has notified the Customer that the Goods are ready for collection. Any person so presenting the receipt to the Conservator shall for all purposes be deemed duly authorised by the Customer to take delivery of the Goods. The Conservator shall not be liable for any loss suffered by the Customer in the event of delivery being made to an unauthorised person on presentation of the receipt.

6.2 Any dates quoted for performance of the services or delivery of the Goods are approximate only and the Conservator shall not be liable for any delay in delivery of the Goods however caused. Time for such performance or delivery shall not be of the essence. The Goods may be delivered or the Services performed by the Conservator in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6.3 If the Customer fails to take delivery of the Goods within 14 days of the Conservator giving notice that the Goods may be collected, or if the Customer cannot produce the receipt for the Goods and satisfactory proof of ownership cannot be proved, or fails to give the Conservator adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Conservator's fault) then, without prejudice to any other right or remedy available to the Conservator, the Conservator may:

6.3.1 store the Goods until actual delivery and charge the Customer a storage charge calculated at the Conservator's rates from time to time in force; or

6.3.2 sell the Goods at the best price readily obtainable at the time of such sale and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7 Risk

7.1 The risk of damage to or loss of the Goods shall be and shall remain throughout the period of the Contract the sole and exclusive responsibility of the Customer notwithstanding that the Goods shall not be in the possession of the Customer and by instructing the Conservator the Customer hereby agrees that the Customer will take all necessary steps to insure the Goods whilst in the custody of the Conservator and the Conservator will have no responsibility to insure the Goods unless specifically requested to do so by the Customer in writing at least 28 days prior to the Goods being delivered to the Conservator and specifically accepted on that basis in writing by the Conservator in which case the Customer shall be liable for the payment to the Conservator of all premiums necessary to effect such insurance on or prior to delivery of the Goods.

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7.2 The Conservator may at any time refuse to accept the Customers instructions to insure the Goods in which case the responsibility to insure will revert to the Customer

8 Warranties and Liability

- 8.1 The Conservator shall be under no liability in respect of any defect in the Goods or the Services arising from any drawing, design, specification or information supplied by the Customer and shall not be liable for any loss of or damage to any Goods howsoever caused where the Goods have not been reclaimed within 14 days of the Conservator notifying the Customer that the Goods are available for collection subject to the condition 6.3 of these terms and conditions;
- 8.2 The Conservator shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Conservator's instructions (whether oral or in writing), misuse, or alteration or repair of the Goods without the Conservator's approval;
- 8.3 the Customer shall indemnify the Conservator against all losses, costs, claims, damages and expenses (including professional fees) incurred by the Conservator and arising in whole or in part from the nature or condition of the Goods (or damage thereof) and from any lawful claims made by a third party resulting from the performance of the Services or carrying out of any works of restoration, renovation or otherwise on the Goods including without limitation the infringement of any registered design or copyright or right of any third party by the Conservator to the Goods;
- 8.4 The Customer warrants that nothing whatsoever shall be included in the Goods which shall constitute a breach or infringement of any copyright which shall be in any way illegal, scandalous or libellous and the Customer will indemnify the Conservator against any liability in respect thereof and shall pay all consequential costs and expenses which may be incurred by the Conservator arising therefrom.
- 8.5 Subject as expressly provided in these Conditions, and except where the Goods are sold to or the Services are performed for a person dealing as a consumer (within the meaning of the Unfair Contract terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.6 Where the Goods are sold or the Services are performed under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.
- 8.7 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the customer) be notified to the Conservator within 7 days from the date of delivery or (where the defect or failure is not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Conservator accordingly, the Customer shall not be entitled to reject the Goods or the Services and the Conservator shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered and the Services performed in accordance with the Contract.
- 8.8 Where any valid claim in respect of any of the Goods or the services which is based on any defect in the quality or condition of the Goods or the services or their failure to meet specification is notified to the Conservator in accordance with these Conditions, the Conservator shall be entitled to retrieve the Goods (or the part in question) for the purpose of seeking to remedy any such defect or, at the Conservator's sole discretion, refund to the Customer the price of the Services (or a proportionate part of the price), but the Conservator shall have no further liability to the Customer.
- 8.9 Except in respect of the death or personal injury caused by the Conservator's negligence, the



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Conservator shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), cost, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Conservator, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer or the performance of the Services.

- 8.10 The Conservator shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any loss of or damage arising by virtue of any of the circumstances set out below or any delay in performing, or any failure to perform, any of the Conservator's obligations in relation to the Goods. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Conservator's reasonable control:
- 8.10.1 Act of God, explosion, flood, tempest, fire, atmospheric change or accident;
 - 8.10.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.10.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.10.4 import or export regulations or embargoes;
 - 8.10.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Conservator or of a third party);
 - 8.10.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.10.7 power failure or breakdown in machinery;
 - 8.10.8 theft, vandalism or other criminal act of any other person
 - 8.10.9 chemical or physical reaction of a kind not within the reasonable contemplation of the Conservator.
- 8.11 The Customer acknowledges that in the event of any damage or loss being sustained to the Goods for any reason whilst in the possession or control of the Conservator it is not reasonable for the extent of the Conservator's liability to be assessed by reference to the value or alleged value of any Goods in question which value may be wholly disproportionate to the price of the Services being rendered by the Conservator. Accordingly it is agreed that, subject to the Customer first using the Customer's best endeavours to recover all losses howsoever suffered in relation to the Goods under any insurance policy which may be in force, the maximum amount of the Conservator's liability for any loss or damage arising in respect of all Goods so lost or damaged equal to five times the price or the estimated price of the services to be rendered by the Conservator in accordance with the specification or instructions of the Customer. The Conservator agrees that such a limit on liability is reasonable having regard to the custom of the market and the primary obligation of the Customer to arrange insurance.
- 8.12 The Customer will upon request provide evidence of insurance of the Goods to the satisfaction of the Conservator and, in the event of a claim in respect of the Goods, hereby appoints the Conservator, at the Conservator's discretion, as the duly authorised attorney of the Customer to do all acts and things and sign all documents in the name and on behalf of the Customer pertinent to the pursuit and settlement of any claim and compromise any such claim on terms satisfactory to the Conservator and the Customer will indemnify the Conservator against all costs and liabilities incurred whilst acting as attorney
- 8.13 Without prejudice to the foregoing, in any dispute as to the value of any Goods in the possession or control of the Conservator the opinion of the Conservator acting as expert and not as arbitrator as to the likely price to be obtained if the Goods were sold immediately at trade auction shall be valid and binding on the Customer.



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8.14 The Customer by tendering delivery of the Goods into the possession or control of the Conservator accepts that these terms and conditions are reasonable having respect to the nature of the Goods and the nature and price of the Services to be performed and the other terms and conditions of this Contract.

9 Insolvency of Customer

9.1 This condition applies if:

9.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

9.1.3 the Customer ceases, or threatens to cease, to carry on business; or

9.1.4 the Conservator reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

9.2 If this condition applies then, without prejudice to any other right or remedy available to the Conservator, the Conservator shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability to the Customer, and if the Goods have been delivered or the Services rendered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 General

10.1 Any Notice served by the Conservator by pre-paid first class recorded delivery post to the Customer at the address provided by the Customer shall be deemed to have been duly served three days after the posting thereof.

10.2 No waiver by the Conservator of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of these conditions is held by any 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 provision in question shall not be affected.

10.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or in default of agreement between the parties within 14 days of the first notification by either party nominated on the application of either party by the President for the time being of the institute of Chartered Arbitrators.

10.5 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.

