PRIVATE SALE TERMS & CONDITIONS OF BUSINESS

HEFFEL GALLERY LIMITED, (herein "Heffel") conducts all sales in the lawful currency of Canada. These *Terms and Conditions of Business* represent the terms upon which Heffel contracts with the Seller and, acting in its capacity as agent on behalf of the Seller or as principal, contracts with the Purchaser. These *Terms and Conditions of Business* shall apply to the sale of the Artwork by Heffel to the Purchaser on behalf of the Seller, or as principal and shall supersede and take precedence over any previously agreed *Terms and Conditions of Business*. These *Terms and Conditions of Business* and the Heffel *Privacy Policy* are hereby incorporated into and form part of the Consignment Agreement, and/or our Statement of Purchase, entered into by Heffel and the Seller.

A. DEFINED TERMS

1. Artwork
   Any property, delivered by the Seller to Heffel to be placed for sale, or purchased by Heffel for resale on its premises, on heffel.com or elsewhere and, specifically that property described by the inventory number on Heffel's Consignment Receipt, Statement of Purchase, online catalogue or elsewhere;

2. Seller
   The person, corporation or other entity or such entity's agent, who sells or consigns the Artwork to Heffel;

3. Purchaser
   The person, corporation or other entity or such entity's agent, who purchases the Artwork;

4. Purchase Price
   The sale price plus GST / HST and PST chargeable and additional charges and expenses including any charges and expenses due from a defaulting Purchaser as set out herein;

5. GST / HST
   The Goods and Services Tax levied and exigible pursuant to the Excise Tax Act, and the regulations thereunder, as amended from time to time;

6. PST
   Provincial Sales Tax levied and exigible pursuant to applicable provincial social service tax regulations in the province of sale;

B. THE PURCHASER

1. Heffel
   Heffel acts as agent for the Seller; or as principal, if Heffel has purchased the Artwork from the Seller prior to the sale of Artwork to the Purchaser.

2. The Purchaser
   Heffel acts as agent for the Seller; or as principal, if Heffel has purchased the Artwork from the Seller prior to the sale of Artwork to the Purchaser.

3. Taxes
   GST / HST and PST are exigible on all Heffel transactions using place of supply rules as set out by the Canada Revenue Agency. The GST / HST and PST may be refundable in part in certain circumstances if the Artwork is delivered outside of the country or removed from the province of sale. Where the Purchaser can demonstrate, to the satisfaction of Heffel, that such delivery and / or removal is in compliance with the provisions of the relevant GST / HST and PST legislation, the refund may apply in whole or in part.

4. Payment of the Purchase Price

a) The Purchaser shall:

(i) unless he has already done so, provide Heffel with his name, address and banking or other suitable references; and,

(ii) pay to Heffel the Purchase Price within seven (7) days from the date of the sale. Payment shall be made by: a) Bank Wire direct to Heffel's account, b) Certified Cheque or Bank Draft, c) Personal or Corporate Cheque, d) Debit Card and Credit Card only by Visa, Mastercard, UnionPay or American Express, or e) Interac e-Transfer. Bank Wire payments should be made to the Royal Bank of Canada as per the account transit details provided on the invoice. All Certified Cheques, Bank Drafts and Personal or Corporate Cheques must be verified and cleared by Heffel's bank prior to all purchases being released. Credit Card payments are subject to our acceptance and approval and to a maximum of $5,000 if the Purchaser is providing their Credit Card details by telephone or to a maximum of $25,000 if paying online or if the Credit Card is presented in person with valid identification. A two percent (2.00%) Convenience Fee will apply to all Credit Card payments. In all circumstances, Heffel prefers payment by Bank Wire.

b) Subject to the provisions herein, the title to the property of Artwork shall not pass to the Purchaser until the Purchaser has paid the Purchase Price in full to Heffel.

5. Artwork Description

a) All representation or statement made by Heffel, or in the Consignment Agreement, or in the Statement of Purchase, or in the online catalogue or other publication or report, as to the authorship, origin, date, age, size, medium, attribution, genuineness, provenance, condition or estimated selling price of the Artwork, is a statement of opinion only;

b) All photographic representations and other illustrations presented in the online catalogue, or elsewhere, are solely for guidance and are not to be relied upon in terms of tone or colour or necessarily to reveal any imperfections in the Artwork;

c) Many Artworks are of an age or nature which precludes their being in pristine condition and some descriptions in the online catalogue or given by way of condition report make reference to damage and / or restoration. Such information is given for guidance only and the absence of such a reference

does not imply that an Artwork is free from defects nor does any reference to particular defects imply the absence of others; and,

c) The Purchaser must satisfy himself as to the matters referred to in (a), (b) and (c) of this paragraph by inspection or otherwise prior to the sale of the Artwork. All Artwork offered for purchase by Heffel can be viewed on display at our locations of business. If the prospective Purchaser is unable to personally view the Artwork, Heffel upon request, will email or fax a condition report.

6. Purchased Artwork

a) Prior to any Artwork being removed from the premises of Heffel, the Purchaser shall pay to Heffel the full purchase price;

b) The Purchaser shall collect the Artwork from Heffel within seven (7) days from the date of the sale, after which date the Purchaser shall be responsible for all storage charges until the date the Artwork is removed from the offices of Heffel;

c) All packing and handling of the purchased Artwork by Heffel staff is undertaken solely as a service to the Purchaser, and will only be undertaken at Heffel's discretion and at the Purchaser's risk;

c) Heffel Gallery shall not be liable for any damage to glass or frames of the Artwork and shall not be liable for any errors or omissions or damage caused by packers and shippers, notwithstanding that Heffel may have recommended such shippers or packers to the Purchaser.

7. Risk

a) The purchased Artwork shall be at the Purchaser's risk in all respects from the time of collection or on the expiration of seven days from the date of sale, whichever is earlier.

b) Neither Heffel nor its employees nor its agents shall be liable for any loss or damage of any kind to the Property after the expiration of the seven days from the date of sale, whether caused by negligence or otherwise, while any Artwork is in or under the respective custody or control of Heffel.

8. Nonpayment and Failure to Collect Artwork(s)

If the Purchaser fails, either to pay for or to take away any Artwork within twenty-eight (28) days from the date of the sale, Heffel may in its absolute discretion be entitled to one or more of the following remedies without providing further notice to the Purchaser and without prejudice to any other rights or remedies Heffel may have:

a) To issue judicial proceedings against the Purchaser for damages for breach of contract together with the costs of such proceedings on a full indemnity basis;

b) To rescind the sale of any Artwork sold to the Purchaser;

c) To resell the Artwork or cause it to be resold by public or private sale, with any such deficiency to be claimed from the Purchaser and any surplus, after Expenses, to be delivered to the Purchaser;

d) To store the Artwork on the premises of Heffel or elsewhere, and to release the Artwork to the Purchaser only after payment of the full Purchase Price and associated cost to Heffel;

e) To charge interest on the Purchase Price at the rate of 5% above the Royal Bank of Canada base rate at the time of the sale and adjusted month to month thereafter;

f) To retain that or any other Artwork sold to the Purchaser at the same or any other time and release the same only after payment of the Purchase Price;

g) To apply any Proceeds of Sale of any Artwork then due or at any time thereafter becoming due to the Purchaser towards settlement of the Purchase Price, and Heffel shall be entitled to a lien on any other property of the Purchaser which is in Heffel possession for any purpose; and,

h) To apply any payments by the Purchaser to Heffel towards any sums owing from the Purchaser to Heffel or to any associated company of Heffel without regard to any directions of the Purchaser or his agent, whether express or implied.

9. Guarantee

Heffel, its employees and agents, shall not be responsible for the correctness of any statement as to the authorship, origin, date, age, size, medium, attribution, genuineness or provenance of any Artwork or for any other errors of description or for any faults or defects in any Artwork and no warranty whatsoever is given by Heffel, its employees or agents in respect of any Artwork and any express or implied conditions or warranties are hereby excluded.

10. Attendance by Purchaser

Prospective Purchasers are strongly advised to inspect the Artwork, and to satisfy themselves as to the description, attribution and condition of each Artwork. To this end Heffel will arrange suitable viewing conditions during business hours, or by private appointment.

11. Export Permits

Without limitation, the Purchaser acknowledges that certain property of Canadian cultural import sold by Heffel may be subject to the provisions of the *Cultural Property Import and Export Act (Canada)*, and that compliance with the provisions of the said Act is the sole responsibility of the Purchaser.

C. THE SELLER

1. Heffel

a) Heffel shall have absolute discretion as to whether the Artwork is suitable for sale, the manner in which the sale is conducted, the cataloguing descriptions of the Artwork, and any other matters related to the sale of the Artwork;

b) Heffel reserves the right to withdraw any Artwork offered for sale at any time in the sole discretion of Heffel.

2. Warranties and Indemnities

a) The Seller warrants to Heffel and to the Purchaser that the Seller has and shall be able to deliver unencumbered title to the Artwork, free and clear of all claims;

b) The Seller shall indemnify Heffel, its employees and agents and the Purchaser against all claims made or proceedings

brought by persons entitled or purporting to be entitled to the Artwork;

c) The Seller shall indemnify Heffel, its employees and agents and the Purchaser against all claims made or proceedings brought due to any default of the Seller in complying with any applicable legislation, regulations or requirements; and,

d) The Seller shall reimburse Heffel in full and on demand for all payments, costs, expenses or any other loss or damage whatsoever made, incurred or suffered as a result of any breach by the Seller of (a) and/or (c) above.

3. Commission and Expenses

a) The Seller of the consigned Artwork authorizes Heffel to deduct the Seller's Commission and Expenses from the Sale Price,

b) The Seller of the consigned Artwork shall pay, and hereby authorizes Heffel to deduct, all Expenses incurred on behalf of the Seller, together with any sales tax thereon; and,

c) The charge for digital photography, cataloguing and internet posting of consigned Artwork is $150 per piece of artwork or as updated by Heffel in its fee schedule from time to time.

4. Insurance

a) All consigned Artwork shall be covered by insurance under the Fine Arts Insurance Policy of Heffel Gallery;

b) The rate of insurance premium payable by the Seller is $15 per $1,000 of the value of the Artwork;

c) If the Seller of the consigned Artwork instructs Heffel not to insure the consigned Artwork, it shall at all times remain at the risk of the Seller who hereby undertakes to:

(i) indemnify Heffel against all claims made or proceedings brought against Heffel in respect of loss or damage to the Artwork of whatever nature, howsoever and wheresoever occurred, and in any circumstances even where negligence is alleged or proven;

(ii) reimburse Heffel on demand for all Expenses incurred or suffered by Heffel. Any payment which Heffel shall make in respect of such loss or damage or payments, costs or Expenses shall be binding upon the Seller and shall be accepted by the Seller as conclusive evidence that Heffel was liable to make such payment; and,

(iii) notify any insurer of the existence of the indemnity contained in this Condition;

d) Heffel does not accept responsibility for Artwork damaged by changes in atmospheric conditions and Heffel shall not be liable for such damage nor for any other damage to picture frames or to glass in picture frames; and,

e) The sum for which an Artwork is insured under Heffel's own Fine Arts Policy in accordance with subclause (b) above shall be the total amount due to the Seller of consigned Artwork in the event of a successful claim being made under the Fine Arts Policy.

5. Payment of Proceeds of Sale

a) Heffel shall pay the Proceeds of Sale to the Seller of the consigned Artwork thirty-five (35) days after the date of sale, if Heffel has been paid the Purchase Price in full by the Purchaser;

b) If by the due date Heffel has not received the Purchase Price in full from the Purchaser, then Heffel will pay the Proceeds of Sale within seven (7) working days after the date on which the Purchase Price in full is received from the Purchaser; and,

c) If before the Purchase Price is paid in full by the Purchaser, Heffel pays the Seller of consigned Artwork an amount equal to the Proceeds of Sale, title to the property in the Artwork shall pass to Heffel.

6. Collection of the Purchase Price

If the Purchaser fails to pay to Heffel the Purchase Price within thirty (30) days after the date of sale, Heffel will endeavor to take the instructions from the Seller of the consigned Artwork, as to the appropriate course of action to be taken and, so far as in Heffel opinion such instructions are practicable, will assist the Seller of consigned Artwork to recover the Purchase Price from the Purchaser, save that Heffel shall not be obligated to issue judicial proceedings against the Purchaser in its own name. Notwithstanding the foregoing, Heffel reserves the right and is hereby authorized at the expense of the Seller of consigned Artwork, and in each case at Heffel's absolute discretion, to agree to special terms for payment of the Purchase Price, to remove, store and insure the Artwork sold, to settle claims made by or against the Purchaser on such terms as Heffel shall think fit, to take such steps as are necessary to collect monies from the Purchaser to the Seller of consigned Artwork and, if appropriate, to set aside the sale and refund money to the Purchaser.

7. Charges for Withdrawn Consigned Artwork

The Seller of consigned Artwork may not withdraw the Artwork prior to the term of the Consignment Agreement without the consent of Heffel. In the event that such consent is given, or in the event of a withdrawal pursuant to Condition C.1 (b), a charge of 20% of the consigned value or, if no consigned value has yet been agreed, a charge of 20% of the figure at which the Artwork has been valued for insurance as determined by Heffel together with any GST/HST and PST chargeable thereon and Expenses shall become payable to Heffel.

8. Unsold Artwork

a) Unsold Artwork must be collected at the expense of the Seller of the consigned Artwork within the period of ninety (90) days after receipt by the Seller of notice from Heffel and will be subject to the *Unclaimed Property Act (British Columbia)* and any amendments thereto.

b) Artwork returned at the request of the Seller of the consigned Artwork shall be returned at the Seller's risk and expense and will not be insured in transit unless Heffel is otherwise instructed by the Seller.

9. Seller's GST/HST Status

The Seller shall give to Heffel Gallery all relevant information as to his GST/HST status with regard to the Artwork to be sold, which he warrants is and will be correct and upon which Heffel shall be entitled to rely.

10. Reproduction, Exhibition and Moral Rights
The Seller hereby assigns to Heffel the copyright, exhibition and moral rights to the Artwork, as defined in the Copyright Act and any amendments thereto.

D. GENERAL CONDITIONS

1. Heffel as agent for the Seller of the consigned Artwork is not responsible for any default by the Seller or the Purchaser.
2. Heffel shall have the right at its absolute discretion to refuse admission to its premises by any person.
3. Heffel has the right at its absolute discretion to refuse any offer to purchase the Artwork.
4. Any indemnity hereunder shall extend to all actions, proceedings, costs, claims and demands whatsoever incurred or suffered by the person for whose benefit the indemnity is given; and, Heffel shall hold any indemnity on trust for its employees and agents where it is expressed to be for their benefit.
5. Any notice given hereunder shall be in writing and if given by post shall be deemed to have been duly received by the addressee within three (3) business days.
6. The copyright for all illustrations and written matter relating to the Artwork shall be and will remain at all times the absolute property of Heffel and shall not, without the prior written consent of Heffel, be used by any other person.
7. This Agreement shall be governed by and construed in accordance with British Columbia Law and the Federal Laws of Canada applicable therein and all parties concerned hereby submit to the non-exclusive jurisdiction of the British Columbian Courts.
8. Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.
9. All words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine and neuter genders and the word "person" shall include an individual, a trust, a partnership, a body corporate, an association or other incorporated or unincorporated organization or entity.
10. In the event of any discrepancy or conflict between the English and French versions of these *Terms and Conditions of Business*, the English version will prevail.

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