

Master Consignment Agreement

Name: Theo Armour **Contract #** _____

Business Name: _____

Address: 3400 Laguna Street #227

City: San Francisco **State:** CA **Zip:** 94123

Telephone (day): 415 828 0000 **(fax):** _____

Email: t.armour@gmail.com

This document, together with all attachments to it initially or added hereafter, including, specifically Property Schedule A, contains the entire agreement between Michaan's Auctions (Michaans, us, we) and you ("Consignor"), and describes our mutual rights and obligations. Any changes to this agreement must be in writing and signed by the parties. Upon signing, this agreement will be binding.

PLEASE READ CAREFULLY.

1. Commission:

a. For our services Michaans will retain a commission on the final hammer price at auction, calculated as follows:

Ten percent (10%) of all individual auction lots selling above \$8501

Fifteen percent (15%) of all individual auction lots selling between \$4501-8500

Twenty percent (20%) of all individual auction lots selling between \$1501-4500

Twenty five percent (25%) of all individual auction lots selling between \$501 -1500

Thirty five percent (35%) of all individual auction lots selling between \$1-500

b. In addition to the above, a Buyer's Premium based on the hammer price for each individual lot sold, as stated in our "Conditions of Sale," will be collected from the purchaser and retained by us. The "Conditions of Sale", constitutes our agreement with the buyer at auction and is provided for your information only. Consignor shall not receive any portion of the Buyer's Premium.

2. **Insurance:** Property consigned for sale will be covered by our insurance against "all risks" (subject to the usual form of exclusions including but not limited to earthquake and flood) while in our possession or under our control. Consignor will be charged an insurance fee of one and one half percent (1.5%) of the hammer price on property sold by us.

3. **Limitation of Liability:** (a) In the event that the consignor's property is damaged, lost or stolen, the consignor's sole remedy shall be: (i) if already sold, payment of the hammer price realized for the property, less any fees and commissions due us or (ii) if not sold, when possible and with consignor's consent we in our sole discretion elect to repair the damaged property to the condition it was in prior to being damaged and offer it for sale, or pay the consignor an amount equal to the established reserve for the property (or low estimate when there is no reserve) less any fees and commissions due to us. (b) We will not be liable for any loss whatsoever: (i) for events beyond our control, such as, but not limited to, acts of war or terrorism, strikes, chemical or nuclear contamination or atmospheric causes; (ii) existing (whether known or unknown) conditions or defects in the property and (iii) normal wear and tear. (c) We will not in any instance, be liable for any consequential damages, lost profits, or loss of business or business opportunity.

4. Other Expenses:

a. Photographic fees. Consignor agrees we have the right to photograph and video consigned property and to retain all the ownership rights, including all intellectual property and copyrights in or to said images, whether on film, plates, transparencies, digital images or otherwise. Consignor agrees that we may use such images in catalogues, advertising or other publications whether in print or electronic form. **Consignor shall not be charged video or photographic fees.** However, in the event that any third party shall successfully assert intellectual property rights and seek compensation for the use of protected images, such fees shall be paid by the Consignor.

b. Shipping, Packing and Related Insurance: Consignor is solely responsible for the packing, shipping and the related insurance connected with delivery of consigned property to Michaan's and if there is unsold property, for its return to Consignor. We may recommend a packaging or transport company upon request, but we explicitly and expressly assume and shall have no liability resulting from such advice.

c. Miscellaneous: Michaan's may, from time to time, recommend restoration, repair, reconditioning or other similar service; may require the opinion of specialists, as for example for authentication of objects of art, or recommend extraordinary advertisement of a consignment. In each case, Consignor will be advised of the scope of work and anticipated expense and shall be obligated for the expense incurred only upon Consignor's written approval of the action to be taken.

d. A ten percent (10%) service fee shall be charged on and repaid to us along with funds advanced by us for the benefit of the Consignor, including, but not limited to funds advanced for cartage, outside storage, restoration and such other repairs to property as may be necessary.

5. Method of Sale:

a. Time, place and lots: Michaan's and Consignor shall mutually agree to the date and location for sale of property and the venue in which the property is sold. We reserve the right to determine the manner in which any sale is conducted and the manner in which items are grouped in selling lots.

b. Reserves: (i) Unless we have agreed otherwise each lot with a low auction estimate of less than \$500 will be sold without reserve. Reserves shall be established at fifty percent (50%) of the low auction estimate unless another reserve is mutually determined by the Consignor and us based on agreed auction estimates. (ii) Should a lot fail to reach its reserve price at auction, absent consent from the Consignor to accept a lower reserve, we may, in our sole discretion sell the property at auction or for 30 days thereafter, below reserve, provided however, settlement with Consignor shall be as if the property sold at the reserve. If property remains unsold, it may be reoffered in a later sale at a lower auction estimate and reserve agreed to by Consignor and us or it will be returned to Consignor. There will be no reserve fee charged for unsold property.

c. Bidding: Consignor and Consignor's agent(s) or representative(s), if any, shall not bid on their consigned property. A violation of this section shall, at our sole election, result in any of the following: (i) the sale shall be voided if the Consignor is the successful bidder, the property withdrawn and a penalty equal to the combined buyer's premium and sellers commission, as calculated on the successful bid made, collected from the Consignor, before said property is returned; (ii) at the election of a successful underbidder to Consignor's bid, the property will be sold at the last good faith bid prior to any bid by Consignor; or (iii) the sale voided and the property subsequently sold by us without reserve to recover the commission, buyer's premium and costs, if any, due us from the voided sale as well as from the subsequent sale required by this section.

d. Completion of Sale: No sale will be considered complete until the buyer has made final and full payment with good funds and to our satisfaction. In the event of nonpayment by the buyer, we may cancel the sale and with consent of the Consignor, re-offer the item, or return it to the Consignor. There will be no reserve fee charged for returned property under this paragraph.

e. Settlement of Account: Payment of all net proceeds (after deduction of all commissions, taxes, other charges, if any, and payment of any fees required by law) will be made to the Consignor, not later than thirty (30) working days following the actual sale of any property, provided there is no legitimate claim made against said funds and further provided Michaans has not received notice of an intent to rescind from a purchaser.

6. Unsold/Unsaleable Property: Estimates will automatically be reduced by half on lots that do not sell and reoffered in a subsequent auction.

Lots not being kept for sale must be picked up by Consignor within 10 working days after notice in writing to do so. Property left more than 10 working days after notice is sent shall, in Michaan's sole discretion either be stored onsite at a fee of ten percent (10%) of the low estimate on file, per month, or removed to public storage. In either event, Consignor is solely responsible for insuring said property and the cost therefore, as well as for paying all costs, including attorneys' fees connected with storage and any eventual sale of the property. All costs and fees connected with the insuring, storage and the lawful sale of abandoned property shall be reimbursed to Michaans. Property stored for more than 90 days will be considered abandoned property and offered at auction without reserve to recover any storage costs. If property has not sold at auction after three unsuccessful attempts to sell it without reserve, and Consignor has not sought the return of the property, following ten (10) days written notice, at Michaan's sole discretion, property will either be disposed of at Consignor's expense, or by sale without reserve. We shall have no liability to Consignor in either event.

7. **Descriptions and Estimates of Auction Value:** All descriptions or other statements as to the property or the value of the property at auction, or any appraisal of property by us or any of our representatives are statements of opinion only and we shall have no liability to the consignor for any errors or omissions made in appraising or estimating value of the Consignor's property. We retain full discretion for the description of consigned property. Often estimates of the auction value of property are described by a range as between a high and low estimate. Actual sales price may be above or below the estimates and we shall have no liability whatsoever to the Consignor in that event. Nothing herein shall affect the representations and warranties made by Consignor in Paragraph 8, below, upon which Michaans and purchasers at auction rely.

8. **Consignors Representations and Warranties; Indemnification: Consignor warrants and represents:**

- a. that as owner, or agent of the owner of the property, he/she has the authority and right to consign the property for sale and to take all action as may be required by this Agreement;
 - b. that the consigned property now and until sold, is and will remain free of all encumbrances, liens or third party claims, except as may be noted in writing on an attachment hereto;
 - c. that Consignor holds good title to the property and same shall pass to the purchaser on sale; and
 - d. that all representations about the property, both written and oral, affecting the value or pertaining to the condition, alterations, repairs, age, history, and provenance (including authorship, origins or period) are true and correct.
- Notwithstanding our rights as set forth in Paragraph 7, above, Consignor agrees that we and purchasers rely upon the foregoing warranties. Consignor agrees to defend, indemnify and hold Michaans, its employees, representatives, and agents, as well as the purchaser harmless, from and against all actions, claims, losses, liabilities and any damages and incurred expenses, including fees for the attorney of our choice, that arise or result from a breach of this agreement or the warranties contained herein, including, but not limited to third party claims of interest in or ownership of property; a third party's prior right to possession or challenges to our right to offer for sale or selling consigned property. Consignor's warranties and this indemnity shall apply to all property consigned hereunder and shall survive the conclusion of the matters called for in this agreement.

9. **Withdrawal of property:** Consignor shall not withdraw property consigned for sale any time after this agreement is signed by the parties hereto, without our consent. We, however, reserve the right to withdraw any property at any time before a sale for any of the following reasons:

- a. when, in our judgment, there is a question as to the ability to pass clear, unencumbered title on sale of the property;
 - b. when, in our judgment, there is a question whether Consignor has the right and authority to consign the property;
 - c. if the Consignor's representations about the property are, in any material respect, determined by us to be inaccurate.
- In the event of withdrawal by Consignor without consent or by us for the reasons above stated, Consignor shall be charged a withdrawal fee of Twenty-seven percent (27%) of the established low estimate of the withdrawn property. In the event of Consignor's demand for withdrawal, under this section the property shall be retained by us until the withdrawal fee (and any other sums due us) are paid in full. Notwithstanding the forgoing, we have no obligation to withdraw the property unless the withdrawal fee is paid. Any property left with us for more than 30 days following notice of fees due under this part, will be disposed of by subsequent sale, without reserve or further notice and we shall retain such sums due us plus the costs of sale, from the proceeds of sale. Remaining funds will be sent to the Consignor's address of record.

10. **Rescission:**

We are required to accept the return, and cancel the sale, of any property, when in the exercise of our judgment, we are satisfied that there has been a breach of the warranty of title, or that clear title cannot be or has not passed, or there has been a breach of Consignor's warranties or representations affecting the description of the property, including the condition, alterations, repairs, age, history, and provenance (including authorship, origins or period), or where the property is counterfeit (meaning a forgery intending to deceive). Consignor authorizes us to rescind any such sale for any of the foregoing reasons and in accord with the Conditions of Sale, and credit back or refund paid funds to the rescinding buyer. If funds have already been remitted to Consignor, then upon receipt of notice of rescission, Consignor shall immediately remit to us the entire purchase price (i.e. the full hammer price and buyers premium). If rescission is the result of an inaccurate description prepared by us without reliance on representations made by Consignor, then the amount remitted by Consignor shall only be the net proceeds of the sale of the subject property. Except when issues of ownership prohibit it, property returned pursuant to this section shall be returned to Consignor upon payment of all sums due hereunder. The foregoing is not a limitation to buyer's rights to seek rescission either under state law or the Conditions of Sale.

IF CONSIGNOR DOES NOT PROMPTLY COMPLY WITH THE FOREGOING PROVISIONS, HE/SHE AUTHORIZES US TO ASSIGN ALL RIGHTS WE MAY HAVE UNDER THIS AGREEMENT TO THE BUYER, AND ACKNOWLEDGES THAT THE BUYER SHALL HAVE ALL THE RIGHTS TO TAKE ACTION PURSUANT TO THIS AGREEMENT, DIRECTLY AGAINST THE CONSIGNOR. THE CONSIGNOR FURTHER AUTHORIZES THE RELEASE TO A RESCINDING BUYER ALL INFORMATION TO TAKE ACTION, OR DISCLOSE SUCH INFORMATION AS MAY BE COMPELLED BY LEGAL PROCESS. ANY LIABILITY MICHAAN'S MAY HAVE WITH RESPECT TO THE SUBJECT PROPERTY WILL TERMINATE UPON THE ASSIGNMENT OF RIGHTS TO THE BUYER. CONSIGNOR EXRESSLY RELEASES MICHAAN'S, ITS AGENTS, REPRESENTATIVES AND EMPLOYEES, AND AGREES TO DEFEND, INDEMNIFY AND HOLD THEM HARMLESS FROM ANY LIABILITY ARISING OUT OF THE CLAIMS OR CONDITIONS GIVING RISE TO THE RESCISSION OF THE SALE OF THE SUBJECT PROPERTY, THAT CORRESPONDS TO THE WARRANTIES MADE IN PARAGRAPH 8.

c. The provisions of this paragraph shall survive the transactions governed by this agreement.

11. **Security Interest:** The Consigner hereby grants us a security interest in the Property consigned, and all the proceeds from the sale thereof to secure the payment of any sums for which the consignor may become obligated under this agreement or any other obligation or agreement or debt due us, and the consignor agrees to execute any documents we may request of the consignor to perfect the security interest. We shall have all the rights of a secured party under law. Any foreclosure sale or other action to pursue our rights shall be governed by the California Uniform Commercial Code (UCC) and shall be without regard to reserves as may have otherwise been established herein.

12. **Miscellaneous:**

- a. This Agreement and any and all signed schedules, attachments hereto, and other signed documents together with any representations by the consignor concerning the consigned property, constitutes the entire agreement between the consignor and us with respect to the Property and supersedes all prior negotiations or agreements regarding the consigned Property. Special Instructions, if any, are attached to this Agreement.
- b. Except as otherwise specified herein, no modifications or amendment of this Agreement shall be binding unless contained in writing signed by the party to be bound thereby and no waiver, promise or representation by us or any of our agents or representatives shall bind us unless contained in a writing signed by us.
- c. Any notice given hereunder must be in writing and shall be deemed effective upon deposit in the U.S. mail, prepaid first class postage, if addressed to either of the parties at their respective addresses indicated above. Receipted email is an acceptable alternative.
- d. If any part of this Agreement is deemed invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
- e. Except as provided by law, nothing contained herein shall be construed as any agency, partnership, or other joint enterprise between the parties.
- f. Michaans reserves the right to reject all or part of any consignment, upon delivery to us, if it has been materially altered or depleted since any prior viewing of the consignment by a representative of ours.

13. **Dispute Resolution:** Resolution of any dispute shall be by mediation or arbitration in accordance with the provisions set forth in the "Dispute Resolution" terms attached to and incorporated herein.

14. **Applicable Law; Effect on Successors in Interest:** This agreement shall be governed by, construed and enforced in accordance with the laws of the state of California. Any disputes shall be resolved in the State of California, County of Alameda, unless another venue is agreed upon by both parties. This agreement and resolution of any dispute shall be binding upon Consignor's heirs, executors, beneficiaries, successors and assigns and shall inure to the benefit of Michaans and its successors and assigns.

15. **Legal Status:** If you are executing this Agreement as an agent for another person or legal entity, place your initials here: _____. By doing so, you acknowledge and agree that both you and the person(s) or entities you represent shall jointly and severally assume all obligations and liabilities set out in this Agreement. You also agree to furnish us with any additional documents, including the name(s) of those for whom you are acting, as we may require.

By: _____
CONSIGNOR OR AUTHORIZED AGENT

DATE _____

By: _____
For Michaans Auctions

DATE _____

Michaans Auctions • PO Box 489 • 2751 Todd Street • Alameda, CA 94501 • (510)740-0220 • Fax: (510)749-7517
Bonded pursuant to California Civil Code sec. 1812.600 et seq. Bond # 70044066