

# Grays User Agreement

Grays eCommerce Group Limited ACN 125 736 914 trading as **Grays** owns this website and all Grays mobile apps.

This User Agreement governs the Services that we offer at the Sites, including Online Auction sales, Pass-in Sales, Make an Offer sales and 'Buy Now' Sales.

Please read this User Agreement carefully.

**Important.** Please note that by entering into this User Agreement, you accept terms which, among other terms, state that:

- If you are the Winning Bidder, Winning Pass-in Bidder or Winner Offeror, **GST** and a **Buyers Premium** is ordinarily payable in addition to the Winner's Bid Amount, Winning Pass-in Bid Amount or Winner's Offer Amount (as applicable) (see clause 3.3(a) for further details of amounts payable).
- **Surcharges** are payable for amounts paid by Credit Card, PayPal or Online Payment Method following an Online Auction Pass-in Sale or Make an Offer (see clause 3.3(b) and (c) for more information) and also for 'Buy Now' Sales (see clause 3.4(b) and (c) for more information).
- If you are the Winning Bidder, Winning Pass-in Bidder or Winning Offeror or you purchase a 'Buy Now' Sale item and:
  - you do not pay the full Invoice Amount (in cleared funds) on or before the Payment Due Date, then a **late payment fee** (of \$30 (including GST)) may apply and be charged/debited by us to your Credit Card, PayPal or Online Payment Method account (as applicable) (see clauses 3.3(e) and 3.4(e) for more information);
  - you do not proceed with the purchase, **cancellation fees** are payable (see clause 3.3(g) and 3.4(f) for more information); or
  - you do not collect or take delivery of an item within certain timeframes you may be required to pay **storage fees**, and/or the item may be sold or disposed of (see clause 10.1 for more information).
- We do not accept liability for loss arising out of technical and/or software issues associated with Online Auctions, Pass-in Sales or Make an Offer (see clause 9.1 for more information).

## 1. General

### 1.1 Terms and conditions

- (a) Capitalised terms used throughout this User Agreement are defined in clause 18.
- (b) The terms and conditions contained in this User Agreement set out your obligations when using the Service. This User Agreement also sets out our obligations to you. If you are buying a motor vehicle the [Motor Vehicle Terms and Conditions](#) also apply. If you are buying a boat or vessel the [Marine Terms and Conditions](#) also apply.
- (c) If you have any questions regarding this User Agreement, please contact our customer service team at [customerservice@grays.com.au](mailto:customerservice@grays.com.au).
- (d) We may amend this User Agreement from time to time by posting an updated version of it on the Site. The updated version will become effective one month after

being posted on the Site. You should review this User Agreement from time to time. Your continued use of the Service following any amendments to this User Agreement will constitute your acceptance of this User Agreement as amended.

- (e) Further terms and conditions may apply in relation to particular sales, and will be set out on the Sale Overview, Lot Page or Item Page.
- (f) In these terms:
  - (i) a word denoting the singular includes the plural and vice versa;
  - (ii) a word denoting a gender includes each other gender;
  - (iii) a word denoting a natural person includes an entity and vice versa;
  - (iv) a reference to a clause is a reference to a clause in this form; and
  - (v) headings are for ease of reference only and shall be ignored in construing these terms.
- (g) If any of these terms are or later become illegal or unenforceable, the illegal or unenforceable part of those terms are taken to be severed from these terms, but all other terms remain in place.
- (h) Grays does not waive a right, power or remedy if it fails to exercise of delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **1.2 Use of the Service**

- (a) The Service is provided to you. You must not re-sell or distribute access to the Service to another person. You must not use your account to bid on Online Auctions and/or make offers on Make an Offer for or on behalf of any other person, in any capacity whatsoever.
- (b) You must not use the Service if you are the subject of any trade or economic sanctions or in a manner which contravenes any trade or economic sanctions, or if you are located in a country or region which is the subject of any trade or economic sanctions or your use of the Service would take place in any such country or region wholly or in part.
- (c) We may suspend or terminate your access (without notice) to the Service if:
  - (i) we reasonably suspect that you have engaged in fraudulent or criminal activity in connection with a Site or use of the Service; or
  - (ii) we are of the reasonable opinion that you have engaged in aggressive, intimidating or harassing conduct in connection with a Site or use of the Service; or
  - (iii) we reasonably suspect you are the subject of any trade or economic sanctions, or that your use of the Service may give rise to a contravention of any trade or economic sanctions applying by you or Grays or any other person, or that you are located in a country or region which is the subject of any trade or economic sanctions or your use of the Service would take place in any such country or region wholly or in part.

### **1.3 Obligation to maintain system integrity**

- (a) You must not interfere or attempt to interfere with the proper working of the Sites, the Service or any Sale being conducted on or through the Site(s).
- (b) You must not take any action which imposes an unreasonable or disproportionately large burden on our system or the Sites.
- (c) You must not disclose your user name and password to anyone else.
- (d) You must not use your account for an unauthorised purpose (including for commercial or criminal use).
- (e) You are solely responsible for your transmissions through the Service. You must:
  - (i) not forge communications or take any action to disguise your location when communicating on our Sites (either by direct message or email);
  - (ii) not allow another person to send communications that falsely identify your account as the origin;
  - (iii) not interfere with or disrupt networks connected to the Service;
  - (iv) not use the Service for any illegal or criminal purpose; and
  - (v) comply with all regulations, policies and procedures of networks connected to the Service which either apply by operation of law or are referred to on the Site(s).
- (f) Acting reasonably, we may immediately block, suspend or terminate your access to and use of the Service if you breach any of clauses 1.2(b), 1.2(c), 2.1(b), 2.2, 2.4 or 3.1(f) of this User Agreement, or any other material term or your use of the Service creates risk or legal exposure for us. Further, we reserve the right to bring a claim against you if the breach is significant.

## **2. Registration**

### **2.1 Registering for use**

- (a) You must register your details and create an account with us to use the Service. Registration is free and does not oblige you to purchase anything. In the case of Live Auctions, if you register for a Live Auction under clause 5.2, then your details will be registered with us and an account created with us to use the Service after the Live Auction.
- (b) You must not use any false or misleading information when registering for an account or using the Service. Your obligations to us will not be reduced in the event that you do provide us with such information.
- (c) You must update your account if any of your details change. We are not responsible for any loss or damage (including misdirected emails or deliveries) which may occur because you did not provide us with complete or accurate information.
- (d) When you register for the Service, you must choose a user name and password. You are responsible for the security of your user name and password. You will be responsible for any use of the Service where we can prove that access to and use of the Service was authorised by you or caused by your failure to properly secure your account and password details. This may include if you have failed to choose a strong password, or you have kept a written record of your account details that can

be viewed by others. You must notify us immediately if you become aware of any unauthorised use of your user name or password or of any other security breach.

- (e) We will send any relevant notices and communications to you via email, including information regarding:
  - (i) the status of an Online Auction in which you are participating, such as 'you have been outbid' e-mails, or 'you are the Winning Bidder' (or with equivalent wording) emails;
  - (ii) the status of a Pass-in Sale in which you are participating such as 'you have been outbid' e-mails, or 'you are the Winning Pass-in Bidder' (or with equivalent wording) emails;
  - (iii) the status of a Make an Offer in which you are participating, such as 'your offer has not been accepted' emails, or 'you are the Winning Offeror' (or with equivalent wording) emails;
  - (iv) sales confirmation for 'Buy Now' Sales;
  - (v) the status of your delivery (if applicable);
  - (vi) a copy of your invoice (if applicable);
  - (vii) offers, newsletters and promotional events, unless you tell us you do not wish to receive these communications; and
  - (viii) requests for customer feedback.
- (f) We accept no responsibility for any loss or damage incurred by you because you do not receive an electronic notification or communication from us relating to the Service.
- (g) You can request to close your account by emailing us at [customerservice@grays.com.au](mailto:customerservice@grays.com.au). You may not close your account while you are the highest bidder on an Online Auction or Pass-in Sale or highest offeror on a Make an Offer.
- (h) We will only close your account if:
  - (i) any Online Auction and/or Pass-in Sale in which you have bid has closed;
  - (ii) any Make an Offer in which you made an offer has closed;
  - (iii) any 'Buy Now' Sale in which you have participated is finalised; and
  - (iv) we have received, in cleared funds, all amounts you owe us.

## **2.2 Eligibility to participate**

You must not use the Service if you are:

- (a) under 18 years of age;
- (b) an undischarged bankrupt; or
- (c) (if you are a company) under any type of insolvency proceedings or administration.

## 2.3 Registration process

You must provide us with details of a valid Credit Card in order to register for, and use, the Service. We may, on registration, charge a nominal amount of \$1 to your Credit Card and then re-credit that amount to the same Credit Card. This process usually takes no more than one week. By registering for the service, you authorise us to process these transactions.

## 2.4 Information published on the Site

You must ensure that any information you provide to us at any time:

- (a) is true, accurate and complete;
- (b) is not false or misleading;
- (c) does not infringe upon any other person's rights (for example, intellectual property rights);
- (d) is not contrary to any applicable law;
- (e) is not defamatory, threatening or harassing;
- (f) is not obscene or pornographic; and
- (g) is free of any viruses or malware, (including 'Trojan horses', 'worms', 'time bombs', 'cancelbots' or any other computer software that may damage or interfere with our systems).

## 3. Your rights and obligations

### 3.1 Bidding at Online Auctions and Pass-in Sales

- (a) When you use the Service to bid at an Online Auction and/or Pass-in Sale, you are making an offer to buy the item at your bid price. If your bid price is:
  - (i) the Winner's Bid Amount, you will be the Winning Bidder; or
  - (ii) the Winner's Pass-in Bid Amount, you will be the Winning Pass-in Bidder, and must purchase the item and pay any applicable additional fees and charges.
- (b) Once your bid is placed at an Online Auction and/or Pass-in Sale, it cannot be withdrawn.
- (c) If you have set up the AutoBid function on your account, once your AutoBid is placed, it cannot be altered or withdrawn.
- (d) Goods offered by Auction are sold on an 'As is, Where is' basis. It is your responsibility to read the Product Information, Sale Overview, Lot Page and any other information we provide relating to any item listed for Auction or Pass-in Sale on the Site. Please do not rely solely on the title summary or any photographs of the item. Please read the information provided and attend any advised physical inspections, to assess the suitability of an item for you **before** bidding.
- (e) Please make sure you understand the delivery and payment terms, including any amendment to those terms and conditions as outlined in the item's description or in the Sale Overview and Lot Page. Generally, a Buyers Premium, and other fees and charges including a delivery fee, will apply to all Online Auctions and Pass-in Sales.

- (f) You must not engage in any form of bid manipulation or betting.
- (g) In relation to Live Auctions, bidding for an auction can take place both online on the Site and in person at the On The Floor Auction.

### **3.2 Making an offer under the Make an Offer process**

- (a) When you use the Service to make an offer for Make an Offer, you are making an offer to buy the item at your offer price. If your offer price is the Winner's Offer Amount, you will be the Winning Offeror and you must purchase the item and pay any applicable additional fees and charges.
- (b) Once your offer is placed for Make an Offer, it cannot be withdrawn.
- (c) There is no AutoBid function, or equivalent, for Make an Offer.
- (d) It is your responsibility to read the Product Information, Sale Overview, Lot Page and any other information we provide relating to any item listed on the Site. Please do not rely solely on the title summary or any photographs of the item. Please read the information provided and attend any advised physical inspections, to assess the suitability of an item for you **before** making an offer.
- (e) Please make sure you understand the delivery and payment terms, including any amendment to those terms and conditions as outlined in the item's description or in the Sale Overview and Lot Page. Generally, a Buyers Premium, and other fees and charges including a delivery fee, will apply to each item purchased through Make an Offer.
- (f) You must not engage in any form of manipulation or betting with respect to the Make an Offer process.

### **3.3 Payment for Online Auctions, Pass-in Sales and Make an Offer**

- (a) If you are either the Winning Bidder in an Online Auction, Winning Pass-in Bidder in a Pass-in Sale or the Winning Offeror in a Make an Offer, you must pay the Invoice Amount on or before the Payment Due Date.
- (b) The Invoice Amount for an Online Auction, Pass-in Sale or a Make an Offer may be paid by:
  - (i) Credit Card, PayPal or Online Payment Method (you authorise us to debit your Credit Card, PayPal or Online Payment Method account for the Invoice Amount of an Online Auction, Pass-in Sale or a Make an Offer sale); or
  - (ii) if the Invoice Amount exceeds \$10,000, direct deposit, IN FULL to our nominated bank account on or before the Payment Due Date.

In respect of Online Auctions, Pass-in Sales and Make an Offer, a surcharge equal to the amount of the charge levied on us by your financial institution, credit provider or payments system (depending on your payment method) will apply to all payments made by Credit Card, PayPal and/or Online Payment Method. Cleared funds must be received into our bank account before goods will be released for delivery or pick up. Bank, personal and business cheques and cash payments are not accepted.

- (c) If the Invoice Amount is more than \$10,000, and you do not wish to pay that amount by direct deposit, we may accept Credit Card, PayPal or Online Payment Method payment from you in person at one of our nominated offices (and the surcharges referred to at subclause (b), above, will apply).

- (d) If a payment you make by Credit Card or from your PayPal or Online Payment Method account is declined/dishonoured by either your financial institution, credit provider or payments system (depending on your payment method) due to insufficient funds being available at the time of processing a payment, invalid account details, Credit Card cancellation, blocks placed on your account or for any other reason, then we will endeavour to contact you and will attempt to process that payment again the following day. However, if a payment you make is declined/dishonoured (as described in this clause) this may result in you being charged a late payment fee in accordance with clause 3.3(e).
- (e) If you do not pay the full Invoice Amount (in cleared funds) on or before the Payment Due Date, then a late payment fee (of \$30 (including GST)) may apply and be charged/debited by us to your Credit Card or PayPal or Online Payment Method account (as applicable). If charged, then the late payment fee will only be charged once per outstanding Invoice Amount (it does not accrue). The requirement that you pay the full Invoice Amount by the Payment Due Date is based on Australian Eastern Standard Time (**AEST** or **AEDT**) time zone only and it does not take into account the State or Territory in which you, Grays, the Seller or an item is located.
- (f) If you:
- (i) refuse to pay or otherwise fail to complete the purchase of an item when you are the Winning Bidder or the Winning Offeror (for example, if your Credit Card or PayPal or Online Payment Method payment is declined due to insufficient funds being available at the time of processing a payment); or
  - (ii) do not comply with this User Agreement in a material respect,
- we may, in our discretion and acting reasonably:
- (i) bring court action against you for any outstanding amounts you owe us, including any Buyers Premium and all reasonable costs incurred by us as a result; and/or
  - (ii) resell the item in any manner and on such conditions as we see fit. In some circumstances we may make a claim against you for the losses we have incurred if the resale price is less than the Invoice Amount.
- (g) In addition to our rights under clause 3.3(e), if you refuse to pay or otherwise fail to complete the purchase of an item when you are the Winning Bidder or the Winning Offeror, we may, in our discretion and acting reasonably, charge you a cancellation fee of \$100 on an invoice that has an Invoice Amount (including GST) over \$1,000 to cover the actual and reasonable costs we incur because of your failure to complete the purchase; and these costs may include but are not limited to the cost of resale of the item, any lost commission and Buyers Premium (if any), administration costs, restocking costs and any other reasonable costs; and you authorise us to deduct from your Credit Card or PayPal or Online Payment Method account any amount owing to us under this subclause (g). In the event that we deduct an amount from your Credit Card or PayPal or Online Payment Method account we will inform you of this and provide you with reasonable details of the fee or charge.
- (h) Notwithstanding that you have been notified that you are a Winning Bidder or Winning Offeror, we may not proceed with completion of the sale of an item if:
- (i) your Credit Card, PayPal or Online Payment Method payment cannot be processed because you have provided us with incorrect details (including an incorrect or expired card expiry date);

- (ii) a payment you make by Credit Card or from your PayPal or Online Payment Method account is declined due to insufficient funds or the credit limit on your Credit Card is insufficient to cover the Invoice Amount;
- (iii) you do not pay the Invoice Amount into our nominated bank account on or before the Payment Due Date; or
- (iv) we have endeavoured, but are unable to contact you.

### 3.4 'Buy Now' Sales

- (a) If you purchase an item on a 'Buy Now' Sale, you must pay the Invoice Amount on or before the Payment Due Date.
- (b) The Invoice Amount for a 'Buy Now' Sale may be paid by:
  - (i) Credit Card, PayPal or Online Payment Method (you authorise us to debit your Credit Card or PayPal or Online Payment Method account for the Invoice Amount of a 'Buy Now' Sale); or
  - (ii) if the Invoice Amount exceeds \$10,000, direct deposit, IN FULL to our nominated bank account on or before the Payment Due Date.

In respect of 'Buy Now' Sale purchases, a surcharge equal to the amount of the charge levied on us by your financial institution, credit provider or payments system (depending on your payment method) will apply to all payments made by Credit Card, PayPal and/or Online Payment Method. Cleared funds must be received into our bank account before goods will be released for delivery or pick up. Bank, personal and business cheques and cash payments are not accepted.

- (c) If the Invoice Amount is more than \$10,000, and you do not wish to pay that amount by direct deposit, we may accept Credit Card payment from you in person at one of our nominated offices (and the surcharges referred to at subclause (b), above, will apply).
- (d) If a payment you make by Credit Card or from your PayPal or Online Payment Method account is declined/dishonoured by either your financial institution, credit provider or payments system (depending on your payment method) due to insufficient funds being available at the time of processing a payment, invalid account details, Credit Card cancellation, blocks placed on your account or for any other reason, then we will endeavour to contact you and will attempt to process that payment again the following day. However, if a payment you make is declined/dishonoured (as described in this clause) this may result in you being charged a late payment fee in accordance with clause 3.4(e).
- (e) If you do not pay the full Invoice Amount (in cleared funds) on or before the Payment Due Date, then a late payment fee (of \$30 (including GST)) may apply and be charged/debited by us to your Credit Card, PayPal or Online Payment Method account (as applicable). If charged, then the late payment fee will only be charged once per outstanding Invoice Amount (it does not accrue). The requirement that you pay the full Invoice Amount by the Payment Due Date is based on Australian Eastern Standard Time (**AEST** or **AEDT**) time zone only and it does not take into account the State or Territory in which you, Grays, the Seller or an item is located.
- (f) In addition to our rights under clause 3.4(e), if you refuse to pay or otherwise fail to complete the purchase of a 'Buy Now' Sale item, we may, in our discretion and acting reasonably, charge you a cancellation fee of \$100 on an invoice that has an Invoice Amount (including GST) over \$1,000 to cover the actual and reasonable costs we incur because of your failure to complete the purchase; and these costs may include but are not limited to the cost of resale of the item, any lost commission,



administration costs, restocking costs and any other reasonable costs; and you authorise us to deduct from your Credit Card, PayPal or Online Payment Method account any amount owing to us under this subclause (f). In the event that we deduct an amount from your Credit Card, PayPal or Online Payment Method account we will inform you of this and provide you with reasonable details of the fee or charge.

- (g) Notwithstanding that you purchased an item on a 'Buy Now' Sale, we may not proceed with completion of the sale of an item if:
  - (i) your Credit Card, PayPal or Online Payment Method payment cannot be processed because you have provided us with incorrect details (including an incorrect or expired card expiry date);
  - (ii) a payment you make by Credit Card or from your PayPal or Online Payment Method account is declined due to insufficient funds or the credit limit on your Credit Card is insufficient to cover the Invoice Amount;
  - (iii) you do not pay the Invoice Amount into our nominated bank account on or before the Payment Due Date; or
  - (iv) we have endeavoured, but are unable to contact you.

### **3.5 Requirement to hold a relevant permit, certificate, licence or registration**

- (a) When bidding on an Online Auction and/or Pass-In Sale or purchasing an item as part of a "Buy Now" sale, you acknowledge and agree that if you are required by law to hold a permit, certificate, licence or registration to purchase, transport, hold or use the item(s) that you are bidding on or buying, that you have or will obtain (within the required time frame) such permit, certificate, licence or registration.
- (b) If you do not hold such a permit, certificate, licence or registration as required by law, then you:
  - (i) release Grays from any obligation relating to such permit, certificate, licence or registration as part of your purchase; and
  - (ii) acknowledge that Grays may not be permitted by law to allow you to collect the item(s), even if you have paid the Invoice Amount in full, and Grays has the right to cancel the transaction and refund you the Invoice Amount.

## **4. The Online Auction Process (including Pass-in Sales)**

### **4.1 Online Auction Procedure**

- (a) You may bid in an Online Auction by:
  - (i) placing a manual bid; or
  - (ii) except in relation to Live Auctions, using AutoBid.
- (b) If you bid at an Online Auction using AutoBid, you are responsible for monitoring the Online Auction in which you are participating.
- (c) An Online Auction will start at the specified time and at the minimum starting price nominated by us.
- (d) With respect to bids placed at an Online Auction:

- (i) all bids must be made on a per-item basis;
- (ii) each initial bid placed for an item must be equal to or greater than the nominated starting bid amount (if any);
- (iii) subject to clause 4.1(e), if a Minimum Bid Threshold applies to a lot, then each bid placed for an item must be equal to or greater than the Minimum Bid Threshold amount; and
- (iv) bids may only be increased (refer to clause 4.1 (h)).

For example:

- (v) if a lot's starting bid is \$9 and the Minimum Bid Threshold is \$20, the initial bid placed must be at least \$29; and
  - (vi) if, for that same \$9 starting bid item, a bidder made an initial bid of say \$40, then each subsequent bid must continue to be at least \$20 (being the Minimum Bid Threshold) above the previous bid.
- (e) The Minimum Bid Threshold will not apply if you place a bid using Autobid and such bid then reaches its maximum Autobid amount and is the current winning bid. For example:
- (i) a lot's starting bid is \$9 and the Minimum Bid Threshold is \$9;
  - (ii) bidder 1 uses Autobid to place a bid with a maximum Autobid amount of \$30 which increases the current winning bid to \$18;
  - (iii) bidder 2 then places a standard bid of \$27; and
  - (iv) the final bid placed using Autobid from bidder 1 can only increase to their maximum Autobid amount of \$30 (so bidder 1's final bid placed via Autobid will be \$3 rather than reflecting the \$9 Minimum Bid Threshold).
- (f) We may close an Online Auction before the scheduled closing time if:
- (i) we suspect there is or may be fraudulent or malicious bidding;
  - (ii) there are or may be processing or systems errors;
  - (iii) there are or may be technological errors or Site failure;
  - (iv) we are not satisfied as to the proof of ownership of the item the subject of that auction; or
  - (v) we need to comply with law enforcement requirements or requests or in accordance with applicable Australian laws.
- (g) Subject to clause 5.4, which relates to Live Auctions, Bids will be ranked in the following order:
- (i) bid price; and
  - (ii) bid quantity.

If two or more bids are for the same bid price, the higher quantity bid will take precedence.

- (h) If you are the current highest bidder on an Online Auction, you will not be permitted to change your current bid to a lower bid, nor will you be permitted to lower your bid quantity with a new bid. If you want to decrease your bid quantity, you must wait until your current highest bid is exceeded by another bidder.
- (i) The winning bid placed at an Online Auction may be processed by us even if the bid is successful only in respect of a percentage of the lot or unit volume. For example, if a bidder bids on 10 units and is successful in relation to 2 of those units, but is outbid on the other 8 units, we will recognise the Winning Bid Amount placed by that bidder with respect to the 2 units only.

#### 4.2 Reserve Prices and Price Indication for auctions

The Seller may, or we may, nominate a minimum reserve price on an item. This minimum reserve price may be specifically stated or it may be hidden (and therefore participants will not be made aware by Grays or the Seller of the exact reserve). Subject to certain communication requirements between Grays and the Seller, the Seller and/or Grays (on behalf of the Seller) may (at its own discretion) change/amend the reserve price at any time.

If your bid is lower than the reserve price a notification of 'Reserve not met' will appear. Once bidding during an auction meets or exceeds the reserve price the 'Reserve not met' label will be removed and the highest bid for each item on the lot at the end of the auction will win. Please note that when you confirm your bid, it will be accepted as a valid bid, even when the 'Reserve not met' label is shown.

#### 4.3 Reserve Price not met at end of Auction

If the reserve price has not been met at end of the auction (that is, an **Unsuccessful Auction**), either of the following may occur (at Grays' discretion):

- (a) the highest bidder below the reserve price may be contacted;
- (b) a Make an Offer for the item may commence in accordance with clause 6.1; or

a referred sale may commence in accordance with clause 4.4 (**Pass-in Sale**). For the avoidance of doubt, a Pass-in Sale is not a 'stand-alone' sales method since it may only be available following an Unsuccessful Auction.

#### 4.4 Pass-in Sale

The following applies with respect to a Pass-in Sale if a Pass-in Sale is conducted in accordance with clause 4.3:

- (a) highest bidder during the Unsuccessful Auction and such other persons as determined by Grays and/or the Seller may participate in a Pass-in Sale;
- (b) the Pass-in Period will commence immediately after the closure of the Unsuccessful Auction or at the specified time and will continue for:
  - (i) 24 hours or such other period of time to be determined by Grays in its sole discretion; or
  - (ii) until such time that a bid is accepted for the item in accordance with subclause 4.4(e) below,

**(Pass-in Period);**

- (c) subject to clause 4.4(d)(ii), the item that was the subject of the Unsuccessful Auction will be made available for sale via Pass-in with a reserve price that may be the same

as or different to the reserve price that applied during the Unsuccessful Auction. Further, with respect to the reserve price that applies during a Pass-in Sale:

- (i) the minimum reserve price may be specifically stated or it may be hidden (and therefore participants will not be made aware by Grays or the Seller of the exact reserve);
  - (ii) subject to clause 4.4(d)(ii) and certain communication requirements between Grays and the Seller, the Seller and/or Grays (on behalf of the Seller) may (at its own discretion) change/amend the reserve price at any time;
  - (iii) if your bid is lower than the reserve price a notification of 'Reserve not met' will appear;
  - (iv) if your bid:
    - (i) is accepted by the Seller or Grays; or
    - (ii) meets or exceeds the reserve price,  
  
the 'Reserve not met' label will be removed and you may become the Winning Pass-in Bidder under clause 4.4(f); and
  - (v) when you confirm your bid, it will be accepted as a valid bid, even when the 'Reserve not met' label is shown;
- (d) unless otherwise notified by Grays, during the Pass-in Period:
- (i) bidders may bid (by placing a manual bid) no more than 3 times; and
  - (ii) the Seller may lower the reserve price no more than 3 times;
- (e) with respect to bids placed at a Pass-in Sale:
- (i) all bids must be made on a per-item basis;
  - (ii) each initial bid placed for an item must be equal to or greater than the nominated starting bid amount (if any);
  - (iii) if a Minimum Bid Threshold applies to a lot, then each bid placed for an item must be equal to or greater than the Minimum Bid Threshold amount; and
  - (iv) bids may only be increased (refer to clause 4.4 (k)).
- For example:
- (v) if a lot's starting bid is \$9 and the Minimum Bid Threshold is \$20, the initial bid placed must be at least \$29; and
  - (vi) if, for that same \$9 starting bid item, a bidder made an initial bid of say \$40, then each subsequent bid must continue to be at least \$20 (being the Minimum Bid Threshold) above the previous bid;
- (f) you may become the Winning Pass-in Bidder in which case the Pass-in will immediately close:
- (i) upon Grays receiving the first bid for the item that meets or exceeds the reserve price for the item;

- (ii) if Grays or the Seller (at its own discretion) lowers the reserve price in accordance with clause 4.4(d)(ii) and such reserve price is for an amount that is equal to or less than your bid;
  - (iii) if a Pass-in Sale commences and you were the highest bidder during the Unsuccessful Auction and the Seller or Grays (at its own discretion) lowers the reserve price that applied during the Unsuccessful Auction in accordance with clause 4.4(d)(ii) and such reserve price is for an amount that is equal to or less than your highest bid that applied during the Unsuccessful Auction; and/or
  - (iv) if Grays or the Seller accepts your bid during or at the end of the Pass-in Period (even if such bid is under the reserve price);
  - (v) for the avoidance of doubt, where a Seller lowers the reserve price in accordance with clause 4.4(d)(ii) and there are multiple bids above the new reserve price, the highest bid will be considered the winning bid.
- (g) we will accept bids at any time during the Pass-in Period so long as the item is listed on the Site;
  - (h) we may contact the Seller or bidders as agent of the Seller to discuss a bid made during a Pass-in Period;
  - (i) if the Seller fails to provide any required instructions to Grays with respect to your bid, then Grays may advise the relevant bidder that your bid has been declined by the Seller;
  - (j) we may close a Pass-in Sale before the scheduled closing time if:
    - (i) we suspect there is or may be fraudulent or malicious bidding;
    - (ii) there are or may be processing or systems errors;
    - (iii) there are or may be technological errors or Site failure;
    - (iv) we are not satisfied as to the proof of ownership of the item the subject of that Pass-in Sale; or
    - (v) we need to comply with law enforcement requirements or requests or in accordance with applicable Australian laws;
  - (k) if you are the current highest bidder on a Pass-in Sale, you will not be permitted to change your current bid to a lower bid, nor will you be permitted to lower your bid quantity with a new bid. If you want to decrease your bid quantity, you must wait until your current highest bid is exceeded by another bidder (if there are other bidders participating); and
  - (l) the winning bid placed at a Pass-in Sale may be processed by us even if the bid is successful only in respect of a percentage of the lot or unit volume. For example, if more than one bidder is participating and if a bidder bids on 10 units and is successful in relation to 2 of those units, but is outbid on the other 8 units, we will recognise the Winning Pass-in Bid Amount placed by that bidder with respect to the 2 units only.

#### **4.5 Conclusion of Online Auction or Pass-in Sale**

- (a) An Online Auction, excluding a Live Auction, will close at the end of the time period specified for that Online Auction, provided there are no new successful bids during

the 10 minutes immediately preceding the end of the time period specified. If there are any successful bids on a particular lot or item within 10 minutes of the time specified for the close of the Online Auction (the going, going, gone period), the auction will continue to be extended until there are no more within the Refresh Period. We accept no responsibility for any missed or unsuccessful bids resulting from any slight variations that may occur in the length of the Refresh Period.

- (b) A Pass-in Sale will close at the end of the timer period specified for that Pass-in Sale.
- (c) When an Online Auction or Pass-in Sale in which you have participated closes and you are the Winning Bidder or Winning Pass-in Bidder, we will notify you of this by e-mail, including the amount of your winning bid and the item number and description.
- (d) Non-receipt of a Winning Bidder or Winning Pass-in Bidder (or any other) email from us will not release you from your obligation to complete the purchase of the sale item.
- (e) If you are the Winning Bidder for an item at an Online Auction or the Winning Pass-in Bidder for an item at a Pass-in Sale, you must complete the transaction and purchase that item.
- (f) Unless otherwise stated all prices are quoted in Australian dollars.

#### **4.6 Technological errors**

With respect to Online Auctions and Pass-in Sales, if any errors or delays arise as a result of or in connection with technological difficulties, including technological difficulties associated with our servers, data hosting centre, internet service provider or software for Live Auctions, we may, acting reasonably:

- (a) prior to or after the original time set for conclusion of the Online Auction or Pass-in Sale, extend an Online Auction or Pass-in Sale for a period of time we choose;
- (b) prior to or after the original time set for conclusion of the Online Auction or Pass-in Sale, re-open an Online Auction or Pass-in Sale for a period of time we choose;
- (c) prior to or after the conclusion of an Online Auction or Pass-in Sale, retract any Winning Bidder's or Winning Pass-in Bidder emails which may have been sent out to bidders;
- (d) prior to or during an Online Auction, amend the start price allocated to an item for sale online; and/or
- (e) cancel an Online Auction or Pass-in Sale and conduct the Online Auction or Pass-in Sale again.

#### **4.7 Time**

When bidding on an Online Auction and/or Pass-in Sale, the time, referred to as 'GraysTime', will be approximately equal to Australian Eastern Standard Time (**AEST** or **AEDT**).

#### **4.8 Price Indication**

Any indication given by Grays of the value or price of an item for sale is indicative only and may not be relied upon by the bidder as any representation of the reserve price or likely reserve price.

## **5. Specific provisions applying to Live Auctions**

### **5.1 Procedure**

- (a) You may bid in an On The Floor Auction by:
  - (i) on the Site:
    - (i) placing a manual bid during a Live Auction; or
    - (ii) placing an Absentee Bid for a Live Auction on the Site in accordance with clause 5.3(b); or
  - (ii) attending the On The Floor Auction in person and:
    - (i) placing a bid in person in accordance with the On The Floor Auction Terms and Conditions; or
    - (ii) placing an Absentee Bid in person in accordance with clause 5.3(c).
- (b) The Auctioneer regulates the bidding at the On the Floor Auction. The Auctioneer may exercise his or her reasonable discretion to refuse to accept any bid or to exclude any person from placing a bid, including bids made through a Live Auction. In the event of any dispute arising during a Live Auction, the Auctioneer is the arbitrator and his or her decision is final.

### **5.2 Registration for Live Auctions**

You must register for each Live Auction where you wish to make a bid.

### **5.3 Absentee Bidding**

- (a) An Absentee Bid may be placed for a Live Auction if you are unable to either:
  - (i) attend the On The Floor Auction; or
  - (ii) bid live online on the day of the Live Auction.
- (b) For Absentee Bids placed on the Site, these Absentee Bids may be submitted on the Site before the Live Auction begins or during the Live Auction, provided that the relevant lot is not currently being offered or has not already been sold. We are not responsible for Absentee Bids which are not received because of technical issues.
- (c) For Absentee Bids placed in person, these Absentee Bids may be submitted in person before the On The Floor Auction begins provided that the relevant lot is not currently being offered or has not already been sold. These can be placed by attending the premises at which the On The Floor Auction is to be held and placing an Absentee Bid by completing a hard-copy absentee bid form and lodging it with us in accordance with any requirements set out in the On The Floor Auction Terms and Conditions. We are not responsible for Absentee Bids which have not been completed in accordance with any requirements set out in the On The Floor Auction Terms and Conditions.
- (d) If you have placed an Absentee Bid on a lot and another bidder has placed a higher Absentee Bid on the same lot, we may send you a notification that you have been outbid, so that you have the opportunity to increase your Absentee Bid.

## **5.4 Floor Priority**

If an Auctioneer receives a bid by a person at the On The Floor Auction around the same time that a bid is made through a Live Auction, the Auctioneer may give the person at the On The Floor Auction priority. In these circumstances, you may make another bid at the next asking price.

## **6. The Make an Offer Process**

### **6.1 Make an Offer**

Make an Offer may be held at Grays' discretion for certain items that have not been sold during an Online Auction (including a Live Auction) or for any other reason.

### **6.2 Procedure for making offers**

- (a) You may make an offer to purchase an item through Make an Offer by submitting a manual offer on the Site.
- (b) Make an Offer will start at the specified time and at the minimum starting price nominated by us.
- (c) All offers placed during a Make an Offer must be made on a per-item basis and any offer made may be increased by any amount unless Make an Offer has closed.
- (d) We may close a Make an Offer before the scheduled closing time if:
  - (i) an offer has been accepted in accordance with clause 6.3(b) or 6.3(d)(iv);
  - (ii) we suspect there is or may be fraudulent or malicious offers;
  - (iii) there are or may be processing or systems errors;
  - (iv) there are or may be technological errors or Site failure;
  - (v) we are not satisfied as to the proof of ownership of the item the subject of that Make an Offer; or
  - (vi) we need to comply with law enforcement requests or in accordance with applicable Australian laws.
- (e) Offers will be ranked in the following order:
  - (i) offer price; and
  - (ii) offer quantity.

If two or more offers are for the same offer price, the higher quantity offer will take precedence.

- (f) All offers made on Make an Offer are made on a per-item basis. If you are the current highest offeror on a Make an Offer, you will not be permitted to change your current offer to a lower offer, nor will you be permitted to lower your offer quantity with a new offer. If you want to decrease your offer quantity, you must wait until your current highest offer is exceeded by another offeror.
- (g) The winning offer made during Make an Offer may be processed by us even if the offer is successful only in respect of a percentage of the lot or unit volume. For example, if an offeror makes an offer on 10 units and is successful in relation to 2 of



those units, but is out-offered on the other 8 units, we will recognise the Winning Offer Amount placed by that offeror with respect to the 2 units only.

- (h) Offers made by offerors during Make an Offer will not be displayed on Sale Overview, Lot Page or Item Page.

### 6.3 Reserve Prices

- (a) The Seller will, or we will, nominate a minimum reserve price on an item sold via Make an Offer, with such price to be published on the Sale Overview, Lot Page or Item Page.
- (b) If at any time during Make an Offer, including during any Negotiation Period (defined at clause 6.3(d)(ii) below), an offer is made which meets or exceeds the reserve price for an item on the lot, the first of any such offer will immediately be the Winning Offer for that Item. In that event:
  - (i) the relevant Make an Offer will immediately close, even if such closure occurs before the scheduled closing time and no further offers will be accepted by Grays notwithstanding clause 6.5(a); and
  - (ii) a notification of 'Reserve met' and/or 'Make an Offer closed' will ordinarily appear.
- (c) If an offer is made for an item that is under the reserve price for that item, then a notification of 'Unsuccessful offer' will ordinarily appear.
- (d) If an offer is made for an item that is under the reserve price for that item but, in Grays' view, a reasonably competitive offer (**Negotiable Offer**), then:
  - (i) a notification of 'Unsuccessful offer' will ordinarily appear;
  - (ii) Grays may contact that offeror in order to negotiate or further discuss the Negotiable Offer (**Negotiation Period**) and the offeror may increase its Negotiable Offer during the Negotiation Period;
  - (iii) any other offer(s) for the item may be made by other offerors during the Negotiation Period and Grays may negotiate each Negotiable Offer; Grays is not bound to negotiate exclusively with any one offeror at any one time;
  - (iv) subject to clause 6.3(b), Grays may accept a Negotiable Offer and in that event:
    - (i) the offeror that has made such Negotiable Offer will immediately win the Make an Offer for that item and the offer will be the Winning Offer;
    - (ii) the relevant Make an Offer will immediately close, even if such closure occurs before the scheduled closing time, and no further offers will be accepted by Grays notwithstanding clause 6.5(a); and
    - (iii) a notification of 'Make an Offer closed' will ordinarily appear.
- (e) If at the end of the Make an Offer period there has been no Winning Offer in accordance with clauses 6.3(b) or 6.3(d)(iv), the highest Negotiable Offer for each item on the lot may be the Winning Offer.

- (f) If Grays contacts an offeror in relation to a Negotiable Offer, any negotiations or discussions undertaken during the Negotiation Period may be on instruction by the Seller.
- (g) Grays determines the Winning Offer.
- (h) Please note that when you confirm your offer, it will be accepted as a valid offer, even when the 'Unsuccessful offer' label is shown.

#### **6.4 Reserve Price not met at end of Make an Offer**

If the reserve price has not been met at the end of the Make an Offer, the highest bidder below the reserve price may be contacted by Grays.

#### **6.5 Conclusion of Make an Offer**

- (a) Make an Offer will ordinarily close at the end of the time period specified on the Site. However, Grays may extend this time period in its discretion, including if there are multiple offerors submitting offers. Grays also has the discretion to close Make an Offer prior to the time period specified on the Site for any reason including if an offer has been accepted.
- (b) When a Make an Offer in which you have participated closes and you are the Winning Offeror, we will notify you of this by e-mail, including the amount of your Winning Offer and the item number and description.
- (c) Non-receipt of a Winning Offeror (or any other) email from us will not release you from your obligation to complete the purchase of the Make an Offer sale item.
- (d) If you are the Winning Offeror for an item at a Make an Offer, you must complete the transaction and purchase that item.
- (e) Unless otherwise stated all prices are quoted in Australian dollars.

#### **6.6 Technological errors**

With respect to Make an Offer, if any errors or delays arise as a result of or in connection with technological difficulties, including technological difficulties associated with our servers, data hosting centre or internet service provider, we may, acting reasonably:

- (a) prior to or after the original time set for conclusion of the Make an Offer, extend the Make an Offer for a period of time we choose;
- (b) prior to or after the original time set for conclusion of the Make an Offer, re-open a Make an Offer for a period of time we choose;
- (c) prior to or after the conclusion of the Make an Offer, retract any Winning Offeror's emails which may have been sent out to bidders;
- (d) prior to or during the Make an Offer, amend the start price allocated to an item for sale online; and/or
- (e) cancel the Make an Offer and conduct the auction or Make an Offer again.

#### **6.7 Time**

When making an offer on a Make an Offer, the time, referred to as 'GraysTime', will be approximately equal to Australian Eastern Standard Time (**AEST** or **AEDT**).

## **7. Returns**

### **7.1 Your statutory rights**

- (a) Your rights in this User Agreement are in addition to any rights you have as a consumer under the Australian Consumer Law. You can generally find out more about consumer rights from consumer organisations and bodies such as the Australian Competition and Consumer Commission and State or Territory fair trading authorities.
- (b) There are a number of consumer guarantees in the Australian Consumer Law which do not apply to the sale of goods by auction that is conducted by an agent. These are, in the Australian Consumer Law, at:
  - (i) section 54, relating to acceptable quality;
  - (ii) section 55, relating to fitness for any disclosed purpose;
  - (iii) section 56, relating to the supply of goods by description;
  - (iv) section 57, relating to the supply of goods by way of sample;
  - (v) section 58, relating to repairs and spare parts; and
  - (vi) section 59, relating to express warranties.
- (c) The following consumer guarantees in the Australian Consumer Law do apply to the sale of goods by auction when conducted by an agent:
  - (i) section 51, relating to title;
  - (ii) section 52, relating to undisturbed possession; and
  - (iii) section 53, relating to undisclosed securities.
- (d) If you are a consumer under the Australian Consumer Law, and having regard to the above, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (e) If an item is described on the Site as being faulty or in a damaged or used condition, you acknowledge that condition when choosing to purchase that item. To the extent permitted under the Australian Consumer Law, we accept no liability for the condition of such an item.
- (f) Nothing in this User Agreement restricts or excludes any rights you may have under the Australian Consumer Law.

### **7.2 Return of goods – Online Auctions where we are agent for the Seller**

- (a) This clause 7.2 applies to sales of goods by auction on the Site where we are an agent of the Seller.
- (b) Subject to clause 7.2(c) and any rights you have under the Australian Consumer Law, items bought at Online Auction may not be returned to us for any reason, including if:

- (i) you change your mind; or
  - (ii) you had, or did not have, the opportunity to inspect the items before bidding.
- (c) In addition to any rights you have as a consumer under the Australian Consumer Law, we will permit an item purchased at Online Auction to be returned to us if we are responsible for delivering the item to you and the item was delivered to you in a damaged state due to the transit process.
- (d) If you wish to return an item, please contact our customer service team by email at [customerservice@grays.com.au](mailto:customerservice@grays.com.au) or call 1300 362 536 within 30 days of the date of the sale. You should provide full details of your purchase and the reason for returning the item. We will endeavour to email you a returns advice form (which will state the address to which the item must be sent), and, to assist with processing the return, please include the returns advice form with the returned item.
- (e) Goods should be returned in their original packaging where possible.
- (f) When we receive the returned item, we will inspect it and test it to determine whether it was damaged in transit. If, acting reasonably, we determine that it was not damaged in transit, we will notify you of this, the item will be returned to you and you will be charged the freight charges actually and reasonably incurred by us in returning the item to you. In these circumstances, we may charge your Credit Card or Pay Pal account with the freight charges.

### **7.3 Return of goods – Sales where we are the seller**

- (a) This clause 7.3 applies to:
- (i) 'Buy Now' Sales where Grays is the seller of the goods being sold, but does not apply to vehicles purchased through 'Buy Now' Sales. Conditions of sale for vehicles purchased through 'Buy Now' Sales are set out in the relevant [Motor Vehicle Terms and Conditions](#); and
  - (ii) Online Auctions, Pass-in Sales and Make an Offer where we are the seller of the goods being sold.
- (b) Subject to clause 7.4, you may not return goods to which this clause applies because you change your mind.
- (c) In addition to any rights you have as a consumer under the Australian Consumer Law, we will permit an item purchased to be returned to us if:
- (i) the description of the item on the Site was materially different to the item delivered to you;
  - (ii) we are responsible for delivery and the item was delivered to you in a damaged state; or
  - (iii) the item is faulty.
- (d) If you wish to return an item, please contact our customer service team by email at [customerservice@grays.com.au](mailto:customerservice@grays.com.au) or call 1300 362 536 within 30 days of the date of the sale. You should provide full details of your purchase and the reason for returning the item. We will endeavour to email you a returns advice form (which will state the address to which the item must be sent), and, to assist with processing the return, please include the returns advice form with the returned item.
- (e) Goods should be returned in their original packaging where possible.

- (f) When we receive the returned item, we will inspect it and test it to determine whether it was incorrectly described, damaged in transit, or faulty. If, acting reasonably, we determine that this is not the case, we will notify you of this, the item will be returned to you and you may be charged the freight charges actually and reasonably incurred by us in returning the item to you. In these circumstances, we may charge your Credit Card or PayPal or Online Payment Method account with the freight charges.
- (g) Subject to our obligations under the Australian Consumer Law, if we determine that your item is faulty or damaged or incorrectly described or does not meet an applicable consumer guarantee, we will endeavour, within 21 days, to replace, repair or refund your item.

#### **7.4 Return of Goods for change of mind – applicable ‘Buy Now’ Sale items**

- (a) You may return a ‘Buy Now’ Sale item (excluding underwear, swimwear, cosmetics, fragrances, earrings, software, CDs and DVDs) for a full refund (minus delivery and shipping costs) where you change your mind if:
  - (i) the ‘Buy Now’ Sale item is returned in the same condition as when it was purchased;
  - (ii) the ‘Buy Now’ Sale item is returned with all internal and external packaging, accessories, manuals, swing tags and labels undamaged;
  - (iii) you notify us within 30 days from the date that your order is first placed, of your intention to return the ‘Buy Now’ Sale item;
  - (iv) where you have already received the item, you return the ‘Buy Now’ Sale item within 14 days of notifying us of your intention to return the ‘Buy Now’ Sale item; and
  - (v) the ‘Buy Now’ Sale item is returned at your own cost.
- (b) If you purchased a ‘Buy Now’ Sale item with free delivery, we reserve the right to deduct the cost of delivery and shipping from the refunded amount.

#### **7.5 Return of Goods – ‘Buy Now’ Sales, Pass-in Sales and Make an Offer sales where we are agent for the Seller**

- (a) Grays is not the seller of many goods sold on the Site. Generally, we are the agent of the Seller. If we are agent for the Seller, you may have rights against the Seller, in addition to any rights you have against Grays.
- (b) Subject to clause 7.4, you may not return goods purchased through the ‘Buy Now’ Sales, Pass-in Sales or Make an Offer sales process, where we are the agent for the Seller, because you change your mind.
- (c) In respect of goods sold through ‘Buy Now’ Sales, Pass-in Sales or Make an Offer sales where we are the agent for the Seller, and in addition to any rights you have under the Australian Consumer Law, we will permit an item purchased to be returned to us if:
  - (i) the description of the item on the Site was materially different to the item delivered to you; and/or
  - (ii) we are responsible for delivery of the item to you and the item was delivered to you in a damaged state due to the transit process.

- (d) If you wish to return an item under clause 7.5(c), the procedure set out in clauses 7.3(d) to 7.3(f) will apply.

## **7.6 Return of Goods – ‘30 Day Money Back Guarantee’**

- (a) Where ‘30 Day Money Back Guarantee’ appears on the product listing, you may return the item for a full refund where you change your mind if:
  - (i) the item (or remaining bottles, if one has been sampled) are returned in the same condition as when purchased;
  - (ii) the item is returned with all internal and external packaging, tags and labels undamaged;
  - (iii) you notify us within 30 days from the date that your order is first placed, of your intention to return the item; and
  - (iv) where you have already received the item, you return the item within 14 days of notifying us of your intention to return the item.
- (b) The ‘30 Day Money Back Guarantee’ does not apply to spirits, wine liquidation, private investor or bulk pallet sales.

## **7.7 Reference to Retail Prices**

- (a) In certain circumstances, an item for sale on the Site may display the manufacturer's Original Retail Price (**ORP**). Please be aware that this is not a reference to the current recommended retail price of the goods but rather a reference to the original retail price supplied by the manufacturer, distributor or retailer of the item. The ORP may not be the current retail price as at the time of the sale. Please satisfy yourself as to the value of the item being sold.
- (b) In certain circumstances, an item for sale on the Site may include reference to the manufacturer's Recommended Retail Price (**RRP**). Usually if a RRP is included with a sale item, the RRP has been supplied by the Seller, manufacturer or supplier of the item and we assume the Seller, manufacturer or supplier of the item considers the RRP is current at the time the item is placed on the Site for sale. We accept no responsibility for the accuracy of any RRP included on any item listed for sale on the Site. You must satisfy yourself as to the value of the item being sold.

## **7.8 Manufacturer's liability**

- (a) Subject to any rights you may have under any law, if an item is sold with an accompanying manufacturer's warranty, we take no responsibility for the content, fulfilment or enforcement of that manufacturer's warranty. It is your responsibility to contact the relevant manufacturer in relation to the warranty.
- (b) To the extent permitted by law, we do not provide any representation or warranty in relation to any manufacturer's warranty that accompanies a product. In particular, we do not represent that the manufacturer's warranty is compliant with the Australian Consumer Law. Any rights that you may have under any manufacturer's warranty are against the manufacturer and not us.

## **8. Our rights**

### **8.1 Suspension from use of Service**

We may permanently refuse you the right to use the Service if you:

- (a) do not pay for an item and/or refuse delivery of an item;
- (b) give information which is untrue, inaccurate or incomplete;
- (c) have engaged in any form of bid manipulation;
- (d) in our reasonable opinion, engage in aggressive or harassing conduct.

## **8.2 False or Misleading Conduct**

It is illegal to use a false name or to buy items or make bids with an invalid or stolen credit card or PayPal or Online Payment Method account which you are not authorised to use. We will refer any fraudulent use of the Service to the relevant law enforcement authorities.

## **8.3 Rights as agent and/or seller**

- (a) We may at any time withdraw and/or re-offer an item for sale at any time if the item:
  - (i) becomes unavailable due to damage;
  - (ii) in the case of items sold via auction, Pass-in Sale or Make an Offer, has uncertain ownership, or is withdrawn by us, the manufacturer, distributor or Seller;
  - (iii) in the case of a 'Buy Now' Sale, is no longer in stock or has uncertain ownership;
  - (iv) has been erroneously listed twice;
  - (v) is incorrectly described;
  - (vi) is incorrectly priced; or
  - (vii) is the subject to a law enforcement requirement or requests or in accordance with applicable Australian laws.
- (b) With respect to Live Auctions, we may re-offer an item for sale at any time if an issue arises and the Auctioneer, acting reasonably, determines that the item should be re-offered for sale.
- (c) In order to comply with our legal obligations, and if requested by a law enforcement agency or government body, we may remove certain items and/or information from the Site.
- (d) We also reserve the right to change any of the following, at any time before a sale, Online Auction, Pass-in Sale or Make an Offer is completed:
  - (i) the quantity of any items posted;
  - (ii) the maximum number of items which you may buy, bid or make an offer for; or
  - (iii) with respect to Online Auctions and Pass-in Sales, set or change the nominated starting bid amount and/or Minimum Bid Threshold during an auction.

## **9. Liability and indemnities**

### **9.1 Our liability to you**

- (a) As stated at clause 7.1, above, your rights in this User Agreement are in addition to any rights you have as a consumer under the Australian Consumer Law. Nothing in this User Agreement restricts or excludes any rights you may have under the Australian Consumer Law.
- (b) In an Online Auction and/or Pass-in Sale, we are not responsible for bids not received, processed or accepted which is reasonably due to technical difficulties, including bids placed by AutoBid, unless it arises directly from our fraud, gross negligence or wilful misconduct. In particular, we are not responsible for any loss, liability or damage incurred by you as a result of a bid not received, processed or accepted which is reasonably due to technical difficulties.
- (c) Without limiting clause 9.1(b), in respect of Live Auctions, we accept no liability for any loss or damage arising out of, or in connection with, the performance or failure of the Live Auction software, unless it arises directly from our fraud, gross negligence or wilful misconduct. We do not warrant that the Live Auction software will meet your requirements, operate without interruptions, or operate without errors. We are not responsible for bids attempted to be placed on Live Auctions which are not received, processed or accepted due to technological or software issues. If you have concerns about the operation of the Live Auction software, there is usually the option of attending an On The Floor Auction in person.
- (d) In Make an Offer, we are not responsible for offers not received, processed or accepted which is reasonably due to technical difficulties, unless it arises directly from our fraud, gross negligence or wilful misconduct. In particular, we are not responsible for any loss, liability or damage incurred by you as a result of an offer not received, processed or accepted which is reasonably due to technical difficulties.
- (e) Subject to our obligations under the Australian Consumer Law, we provide the Sites and the Service without any express or implied warranty or condition concerning their capacity or availability.
- (f) Subject to our obligations under the Australian Consumer Law, neither we nor our suppliers are liable for any lost profits or any consequential damages arising out of or in connection with the delivery of the Service or the sale of any goods.
- (g) We do not guarantee continuous, uninterrupted or secure access to the Service or the Site. Operation of the Site may be restricted by factors outside of our control or maintenance.

### **9.2 Limitation of our liability to you**

- (a) In relation to the items sold on the Site, and subject to the Australian Consumer Law, we will endeavour to:
  - (i) provide accurate descriptions to fairly reflect each item; and
  - (ii) ensure that each item listed on the Site is in fact available and ready for purchase.
- (b) Subject to this clause, and to the extent permitted by law, all express or implied conditions or warranties in connection with the Service, the Site and the sale of any items that are able to be excluded by agreement are excluded.
- (c) Subject to our obligations under the Australian Consumer Law, Grays will not incur liability for any loss or damage exceeding the relevant sale or purchase price paid by



you for an item nor on account of losses or damages suffered by you including loss of profit, damage to property, or personal injury arising from that supply or that agreement, whether arising directly, incidentally or consequently, unless it arises directly from our fraud, gross negligence or wilful misconduct.

- (d) We do not exclude liability under any guarantee, condition or warranty which cannot be excluded by law. For example, we do not exclude guarantees under the Australian Consumer Law that apply to goods we sell. However, to the fullest extent permissible by law, we expressly limit our liability for breach of a consumer guarantee in respect of the supply of products which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, at our option:
  - (i) in the case of goods supplied, to:
    - (i) the replacement or repair of the goods;
    - (ii) the supply of equivalent goods; or
    - (iii) making a full refund to you; and
  - (ii) in the case of services supplied, to:
    - (i) supply of the services again;
    - (ii) payment of the costs of having the services supplied again; or
    - (iii) making a full refund to you.

### **9.3 Indemnities**

- (a) You waive, release, discharge and relinquish any and all claims that you now have or may have against us, our affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives which are connected with, arise out of, relate to or are incidental to the use of the Service, except to the extent that any claim arises directly from our fraud, gross negligence or wilful misconduct.
- (b) You agree to indemnify and hold us, our affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives (the **Indemnified Parties**) harmless from and against any and all claims, loss, damage, tax, liability and/or expense that may be incurred by the Indemnified Parties arising out of or in connection with the performance of their obligations under this User Agreement including any legal costs, fees and expenses of defending ourselves against any claim by any or all of the parties to any transaction and/or by any other person, as a result of your negligent act or omission.
- (c) You further agree to indemnify and hold us, and the Indemnified Parties harmless from any claim or demand, including legal fees on a full indemnity basis, made by any third party due to or arising out of a breach of this User Agreement by you.

## **10. Collection, delivery and risk**

### **10.1 Collection and delivery**

- (a) We may withhold delivery or collection of any item until you have paid all amounts owing to us.
- (b) Any collection times stated in the Sale Overview, Item Page, lot or Lot Page or otherwise are estimates only. While we will use reasonable endeavours to comply

with the stated collection times, we will not be liable to you for any loss or damage you suffer as a result of our failure to comply with such times.

- (c) Where items are not held by us on our premises, you must strictly observe and comply with any collection times and arrangements we specify. This is because we may have limited ability to access the items. If you do not comply with the collection times and arrangements that we specify, there is a risk that the item will be removed from the premises, after notice to you, and in such circumstances we will not be liable to you for the unavailability of the item and we will not refund the purchase price to you. We will, however, use all reasonable endeavours to assist you to arrange access to the item again.
- (d) If you visit any place where goods are stored to inspect or collect them, you must comply with:
  - (i) any relevant laws regarding occupational health and safety;
  - (ii) any directions or warnings about the goods or their location in the Sale Overview, Item Page, lot or Lot Page; and
  - (iii) any directions given by us or anyone authorised by us when inspecting or removing any goods from any location.
- (e) You acknowledge that you inspect or remove goods at any location at your own risk and agree to indemnify Grays for any liability or loss you or your agents or employees suffer while seeking to take, or in the course of taking possession of goods, unless the liability or loss arises directly from our fraud, gross negligence or wilful misconduct.
  - (i) If we are unable to deliver an item or you do not collect it within 7 days of a Sale we may charge a storage charge in accordance with our usual rates, as set out in clause 10.1(f), below, or at other rates we may reasonably specify. For motor vehicles and industrial equipment, unless otherwise agreed, our storage charges are \$50 per day or \$250 per week.
- (f) Subject to any applicable legislation governing the disposal of uncollected goods, if you do not collect or take delivery of an item within 7 days of a sale, and after 3 months' notice to you:
  - (i) where the item was purchased for \$100 or more, we may sell the item on terms we consider reasonable and refund the proceeds of the sale to you, less Buyers Premium, a storage charge of \$5 per day and an administration fee of \$40; and
  - (ii) where the item was purchased for less than \$100, we may sell or otherwise dispose of the item, without refund to you.
- (g) Where clause 11 applies (but only to the extent provided in clause 11) or if you have paid a 'Shipping, Handling & Admin Fee', whilst any goods are in the care, custody or control of Grays (during delivery by Grays to the buyer and before the time when risk passes to the buyer under clause 10.3), Grays remains legally responsible for the goods under the User Agreement or at general law to pay the buyer compensation for damage limited to a refund of the purchase price. For the avoidance of doubt, neither clause 10.1(g) or clause 11 apply to any claims for damage made by a Seller.
- (h) You acknowledge that Grays has no liability to you for damage to goods purchased and collected directly from the Seller whilst they are in the care, custody or control of the Seller and the Seller remains liable for that damage, except where clause 11 applies.

- (i) You agree to promptly report any damage to the goods that has occurred during delivery by Grays.

## **10.2 Salvage Vehicles**

Most salvage vehicles cannot be moved without the use of a forklift or other equipment to lift the vehicle. You acknowledge that forklifts and/or other equipment may cause damage to the vehicle. We accept no liability for any loss or damage arising in these circumstances, except to the extent that such loss or damage arises directly from our gross negligence or wilful misconduct.

## **10.3 Risk and title**

- (a) If an item is to be delivered to a delivery address nominated by you, the risk in it will pass to you:
  - (i) when it is delivered; or
  - (ii) if we are unable to deliver the item to the address nominated by you, in accordance with your instructions (for example if no one is present to accept delivery), when we or our carrier first attempts to deliver the item.
- (b) The address nominated for delivery must be a valid residential or commercial street address, and not a PO box or storage facility.
- (c) Receipt of the item must be acknowledged by signature.
- (d) You cannot change or request to change your nominated delivery address details, or arrange to collect an item, after a Sale has closed. We are not responsible if an item is not delivered where the arrangements or delivery address details are changed in this way.
- (e) Title in any item will only pass to you when we receive the Invoice Amount in cleared funds.

## **11. GraysProtect (no longer sold)**

### **11.1 Application**

This clause 11 only applies if a separate fee for GraysProtect has been included in your purchase. It applies to the buyer only and does not apply to the Seller. From 23 November 2022, Grays no longer offers GraysProtect in goods listed for sale, so the terms in this clause only apply to applicable goods listed prior to 23 November 2022.

### **11.2 Grays assumption of liability**

After you have paid the full Invoice Amount in cleared funds, Grays will jointly (with the Seller) bear the risk of liability to you (the buyer), but not the Seller who also remains liable, for the goods included in such invoice in the event of accidental damage, theft or destruction in a fire between:

- (a) the time when we receive the Invoice Amount in cleared funds; and
- (b) at the final collection time on the last date for collection (as specified in the lot description or Invoice) or the time you actually collect the goods, whichever occurs first.

### **11.3 GraysProtect Refund**

Grays will refund the Invoice Amount less the fee paid for GraysProtect where the goods have suffered accidental damage (except when in connection with a weather event), theft or destruction in a fire during the time specified in clause 11.2.

### **11.4 Procedure**

The following procedure applies:

- (a) If Grays becomes aware of a potential refund request under GraysProtect through information from the Seller or from within Grays, Grays will notify you of the next steps to assess and process the potential refund.
- (b) If you intend to apply for a GraysProtect refund, you must notify Grays Customer Service as soon as practicable by calling 1300 362 536 or emailing [graysprotect@grays.com.au](mailto:graysprotect@grays.com.au) and in any event no later than three Business Days after you have collected the items. It is your responsibility to check the goods for damage as soon as practicable after collection.
- (c) Nothing in this clause affects your rights under the Australian Consumer Law.

## **12. Listing of items – Seller Obligations**

### **12.1 Application**

This clause 12 applies to a Seller if the Seller lists an item on the Sites in accordance with an Agency Agreement between the Seller and Grays and:

- (a) the item is subject to GraysProtect fee; or
- (b) the item is subject to a 'Shipping, Handling and Admin fee'.

### **12.2 Reasonable precautions**

Where the item is not located at a Grays storage facility, the Seller must take all reasonable precautions to protect, safeguard and preserve the item(s) to ensure no material change in condition from the time the item(s) are paid for in full in cleared funds by the buyer until the time they are dispatched or collected by the buyer.

### **12.3 Insurance**

The Seller must maintain adequate insurance cover in respect of the Assets for the full replacement value, including whilst the Assets are located on Grays' premises or under the control or in the possession of Grays, and including during transit. If insurance is not available to the Seller, the Seller understands and agrees that the Assets will be uninsured and the Seller remains at risk in relation to any uninsured Assets.

### **12.4 Fees**

The Seller expressly authorises Grays to retain any fees charged to the buyer including but not limited to Administration Fees, 'Shipping, Handling & Admin fee' & GraysProtect fees. For the avoidance of doubt, this clause applies to any fees currently charged by Grays as well as any fees which may be introduced or varied from time to time.

**13. Statements of opinion**

All statements by Grays or employees, agent or representatives of Grays in a catalogue (if available), website, or made orally or in writing elsewhere as to the assessment of the condition of an item, are statements of opinion and are not to be relied on as statements of fact. Such statements do not constitute a representation, warranty or assumption of liability by us of any kind.

**14. Information supplied by third parties**

Where information (for example, lot description or photographs or any supplemental material) is provided by third parties such as the vendor or seller, you agree, to the extent permitted by law, that Grays is not responsible for any errors or omissions in that information.

**15. Non-disparagement**

Grays values your honest and constructive feedback and does not wish to discourage you from commenting on our Service, including in online reviews. However, you agree that you, your agents and employees shall not, in any communications with the press or other media or any customer, client, or supplier Grays, any affiliates of Grays or any other person make a statement which is false or dishonest about Grays, its products, services or its employees.

**16. Governing law**

This User Agreement is governed by and will be construed according to the laws of New South Wales and is subject to the jurisdiction of the courts of New South Wales.

**17. No retraction of bids**

(a) Unless otherwise prevented by law and for the purposes of protecting the integrity of the auction process, the parties agree to exclude the right of the bidder to retract from a bid in the relevant 'Sale of Goods Act' in the appropriate State or territory, being:

- (i) Section 60, Sale of Goods Act 1923 (NSW);
- (ii) Section 60, Sale of Goods Act 1954 (ACT);
- (iii) Section 60, Sale of Goods Act 1972 (NT);
- (iv) Section 59, Sale of Goods Act 1896 (QLD);
- (v) Section 57, Sale of Goods Act 1895 (SA);
- (vi) Section 62, Sale of Goods Act 1896 (Tas);
- (vii) Section 64, *Goods Act 1958* (Vic); or
- (viii) Section 57, Sale of Goods Act 1895 (WA).

(b) Despite clause 16(a), Grays in its discretion may permit a bidder to retract a bid before an Online Auction closes if there are exceptional circumstances.

**18. Exclusion of operation of Proportionate Liability**

To the extent permitted by the 'Civil Liability Act' in the appropriate State or territory, the parties exclude the operation of Proportionate Liability in relation to any claims rights,

obligations and liabilities arising under or in connection with this agreement (however arising).

## 19. Trust

- (a) If you are the trustee of a trust (whether disclosed to Grays or not), you warrant to Grays that:
  - (i) you enter into the Agreement in both your capacity as trustee and in your personal capacity;
  - (ii) you have the right to be indemnified out of trust assets;
  - (iii) you have the power under the trust deed to enter into the Agreement; and
  - (iv) you will not retire as trustee as the trust or appoint any new or additional trustee without advising Grays.
- (b) You must give Grays a copy of any relevant trust deed upon request.

## 20. Force Majeure

Grays is not liable for the cancellation or partial delivery of any item or part of an item if performance by Grays is prevented or delayed directly or indirectly by any cause beyond the reasonable control of Grays whether such cause existed or was foreseeable by the date of the bid on or purchase of the item. For the avoidance of any doubt, a preventing or delaying factor includes any effects of COVID-19 or related virus.

## 21. External Policies

You hereby agree to the terms of the Grays privacy policy and returns policy, which are available on <https://www.grays.com/>.

## 22. Definitions

- (a) **Absentee Bid** means a bid for an item in an On The Floor Auction or Live Auction which you submit to us for us to execute on your behalf during the auction.
- (b) **Auctioneer** means the auctioneer at an On The Floor Auction.
- (c) **AutoBid** means the process by which you elect and submit a maximum bid amount and our Online Auction system will automatically incrementally increase your existing bid in the event that your existing bid is exceeded by another bidder up to your maximum bid amount on the Site.
- (d) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- (e) **'Buy Now' Sale** means a sale of anything located in the 'Buy Now' Sale section of the Site.
- (f) **Buyers Premium** means:
  - (i) with respect to an Online Auction, a fixed fee and/or that percentage of the Winner's Bid Amount as identified on the Sale Overview and Lot Page. Buyers Premium is payable by the Winning Bidder of an Online Auction. The

Buyers Premium is payable in addition to and at the same time as the Winner's Bid Amount, and will form part of the total Invoice Amount to be paid by the winning bidder for the purchase of the sale lot;

- (ii) with respect to Make an Offer, a fixed fee and/or that percentage of the Winner's Offer Amount as identified on the Sale Overview and Lot Page. Buyers Premium is payable by the Winning Offeror of Make an Offer. The Buyers Premium is payable in addition to and at the same time as the Winner's Offer Amount, and will form part of the total Invoice Amount to be paid by the Winning Offeror for the purchase of the sale lot.

The Buyers Premium may be inclusive or exclusive of GST as identified in the Sales Overview and Lot Page.

- (g) **Credit Card** means the credit card that you have registered on your account with Grays, which must be either American Express, Diners Club, MasterCard and/or Visa.
- (h) **GST** means goods and services tax determined in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*.
- (i) **Invoice Amount** means:
  - (i) for an Online Auction or Pass-in Sale (as applicable):
    - (i) the Winner's Bid Amount or Winner's Pass-in Bid Amount (as applicable);
    - (ii) the Buyers Premium; and
    - (iii) any other fees and charges specified in the Sale Overview and Lot Page, including but not limited to tax, delivery, Credit Card, PayPal or Online Payment Method payment surcharge fees, Administration Fees, 'Shipping, Handling & Admin fee' & GraysProtect fees;
  - (ii) for a Make an Offer:
    - (i) the Winner's Offer Amount;
    - (ii) the Buyers Premium; and
    - (iii) any other fees and charges specified in the Sale Overview and Lot Page, including but not limited to tax, delivery, Credit Card, PayPal or Online Payment Method payment surcharge fees, Administration Fees, 'Shipping, Handling & Admin fee' & GraysProtect fees; and
  - (iii) for 'Buy Now' Sales, the purchase price together with any other applicable fees and charges, for example delivery charges.
- (j) **Item Page** means the specific page on the Site that contains the special terms and conditions attached to a particular item for sale.
- (k) **Live Auction** means a live stream on a Site of an On The Floor Auction.
- (l) **Lot Description** means the description of an item contained within the sale catalogue and identified with its individual lot number.
- (m) **Lot Page** means a page that describes a particular item for sale by Online Auction, Pass-in Sale or Make an Offer and may include special terms and conditions.

- (n) **Make an Offer** means a sale or prospective sale of an item on a Site by way of the process known as 'Make an Offer' which involves you clicking the button called 'Make an Offer' when offering to purchase an item.
- (o) **Minimum Bid Threshold** means, if a minimum bid threshold applies to an Auction or Pass-in Sale, the minimum amount that each bid placed must be equal to or greater than.
- (p) **On The Floor Auction** means a physical auction we hold before an audience of bidders at a physical premises.
- (q) **On The Floor Auction Terms and Conditions** means the terms and conditions that apply to the On The Floor Auction and are available from us upon request.
- (r) **Online Auction** means a sale or prospective sale of an item by auction on a Site, including a Live Auction.
- (s) **Online Payment Method** means an online payment method accepted by Grays (which such acceptance being advised by Grays to you from time to time).
- (t) **Pass-in Sale** means a sale or prospective sale of an item by way of the process known as 'Pass-in Sale' which is described in clause 4.4.
- (u) **Payment Due Date** means 11:59pm (AEST or AEDT), three (3) days after the invoice date (inclusive) (the invoice date is stated on the Grays invoice issued to you for the Invoice Amount). For example, if the invoice date is 23 March 2020, then for that invoice, the Payment Due Date is 11:59pm (AEST or AEDT) 25 March 2020. This is unless your invoice specifically states that another Payment Due Date applies or as agreed with us in writing.
- (v) **Product Information** means any information posted by us on the Site in relation to any item posted by us for sale on the Site.
- (w) **Proportionate Liability** means the relevant part of the 'Civil Liability Act' in each State or Territory where such provision can be excluded, being:
  - (i) Part 4, *Civil Liability Act 2002* (NSW);
  - (ii) Part 9A, *Civil Liability Act 2002* (Tas); and
  - (iii) Part 1F, *Civil Liability Act 2002* (WA).
- (x) **Refresh Period** means the time between nine minutes and one second and nine minutes and fifty-nine seconds (inclusive), being the period that the Site's timing mechanism has entered the tenth minute. For example:
  - (i) where a bid is placed at 2:53:00 pm, assuming there are no further bids placed, the auction will close at 3:03:00 pm;
  - (ii) where a bid is placed at 2:53:45 pm, assuming there are no further bids placed, the auction will close at 3:03:00 pm;
  - (iii) where a bid is placed at 2:54 pm, assuming there are no further bids placed, the auction will close at 3:04:00 pm.
- (y) **Sale** means a sale conducted by Grays, including an Online Auction, Pass-in Sale, Make an Offer or 'Buy Now' sale.



- (z) **Sale Overview** means any special terms and conditions and product specifications attached to a particular item.
- (aa) **Seller** refers to the seller of any goods sold on the Site, including through an Online Auction, Pass-in Sale, Make an Offer or 'Buy Now' Sales, who is not Grays or a related entity of Grays.
- (bb) **Service** means any of the services offered by Grays (including Online Auction sales, Pass-in Sales, Make an Offer sales and 'Buy Now' Sales).
- (cc) **Site(s)** means the Grays' website including grays.com and liveauction.grays.com and Grays' mobile apps.
- (dd) **User Agreement** refers to these terms and conditions.
- (ee) **Us/we/our** and **Grays** means Grays eCommerce Group Limited ACN 125 736 914 of 376 Newbridge Road, Moorebank NSW 2170.
- (ff) **Winner's Bid Amount** refers to:
  - (i) the amount of the highest bid; or
  - (ii) where two or more bids are for the same price, the bid amount that is for the greater quantity of goods.
- (gg) **Winning Bidder** refers to the bidder who has the highest bid at the conclusion of the Online Auction.
- (hh) **Winner's Offer Amount** refers to the amount offered by a person and accepted by Grays during a Make an Offer.
- (ii) **Winning Offeror** refers to a person whose offer has been accepted by Grays during a Make an Offer.
- (jj) **Winner's Pass-in Bid Amount** refers to the bid made by a person and accepted by Grays or the Seller during a Pass-in Sale in accordance with the terms contained in clause 4.4.
- (kk) **Winning Pass-in Bidder** refers to the bidder who is successful in winning an item during a Pass-in Sale in accordance with the terms contained in clause 4.4.